

PLEASE USE IN LAW
COLLECTION AREA

THE HIGH COURT RULES

1988

PREFACE

The High Court Rules 1988 now replaces the Supreme Court Rules 1968 which has been revoked. The latter Rules has regulated civil proceedings in the Supreme Court (now the High Court) since 1969. Those Rules were adapted from the English Rules of the Supreme Court 1965 by way of modifications of those Rules to suit local circumstances. In this context the term "modifications" denoted the method of adaptation of the English Rules to be applied in Fiji i.e. by exceptions, qualifications, deletions, substitutions and additions. The English Rules were thus extensively annotated to produce the "Applied Rules", as the local version of the Rules was known. The idea that Fiji should have its own self-contained rules of court was mooted often over the years. Because of lack of funds and non-availability of a suitable person to undertake the work, matters had remained in the doldrums until two years ago when this project started. Before this and for a long time judges and legal practitioners alike were obliged to use the annotated version of the 1965 English Rules contained in the 1967 volume of the English Supreme Court Practice to discover the Applied Rules. To compound the problem only few volumes of the English Supreme Court Practice 1967 were available for general use. Under these circumstances the promulgation of the High Court Rules 1988 is certain to be greeted with profound satisfaction.

It was Mr Stanley Weinberg of the British Voluntary Services Unit who was mainly responsible for the arduous work of collating and arranging the rules for publication in a new setting. Our deep appreciation goes to him and to the Unit for making his services available to us. A Rules Committee comprising two former judges and several members of the legal profession acted in an advisory capacity. Their advice on revisional aspects of the project is greatly appreciated. Mr Neil Adsett formerly of the Crown Law Office studiously checked the completed draft text and arrangements of the rules and made corrections inevitable in a work of this size and complexity. His dedicated work made it possible for the first proof of the rules to become available from the Government Printer much earlier than it would have been. We are much indebted to him. The staff of the Government Printer were most helpful in publishing the rules and binding them in book form. We are grateful to them as we do all others who contributed in one way or other in making a success of this important project.

The High Court Rules can with justification be described as home-grown rules having been tested in our courts in multifarious litigations over the years. The same numbering of Orders as in the English Rules has been maintained. This was done to assist reference to English case law on interpretation of rules similar to our own.

The publication and binding of the High Court Rules in a book format has brought to fruition a long cherished goal of the Judicial Department and the legal profession. The achievement marks an important and historic milestone in the development of procedural laws in Fiji.

T. U. TUIVAGA
Chief Justice

March, 1988.

FIJI
THE HIGH COURT RULES, 1988

Rules* made by the Chief Justice in exercise of his powers under Section 25 of the Supreme Court Act.

* In force on 31 March 1988 (see Legal Notice No. 37 of 1988). The former Supreme Court Rules published in Cap. 13 of the 1978 Revised Edition of the Laws of Fiji (and amended by Legal Notice Nos. 3 of 1981, 78 of 1981, 24 of 1982, 54 of 1984, 79 of 1985, 31 of 1987) are repealed from 30 March 1988 but continue to apply, in certain circumstances, to actions commenced before that day (see O.I.R.13 and the transitional provisions in Legal Notice No. 37 of 1988.)

THE HIGH COURT OF FIJI

RULES OF THE HIGH COURT

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PRELIMINARY

ORDER 1

SHORT TITLE, INTERPRETATION, APPLICATION, FORMS

Short title (O.1, r.1)

1. These Rules may be cited as the High Court Rules, 1988.

Interpretation (O.1, r.2)

- 2.—(1) In these Rules, unless the context otherwise requires :—
 - “action” means a civil proceeding commenced by writ or in such other manner as may be prescribed by these Rules but does not include a criminal proceeding by the State;
 - “an action for personal injuries” means an action in which there is a claim for damages in respect of personal injuries to the plaintiff or any other person or in respect of a person’s death, and “personal injuries” includes any disease and any impairment of a person’s physical or mental condition;
 - “assisted person” means a party proceeding in *forma pauperis* or with legal aid;
 - “cause” includes any action, suit or other original proceeding between a plaintiff and defendant;
 - “the Court” means the High Court or any judge thereof, whether sitting in court or in chambers, and, where appropriate, the Registrar; provided that this definition shall not be taken to affect any provision of these Rules and, in particular, the provisions of Order 32, Rule 9, by virtue of which the authority and jurisdiction of the Registrar are defined and regulated;
 - “defendant” includes any person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings;
 - “judgment” includes decree;
 - “matter” includes every proceeding in court not in a cause;
 - “notice of intention to defend” means an acknowledgement of service containing a statement to the effect that the person by whom or on whose behalf it is signed, intends to contest the proceedings to which the acknowledgement relates;
 - “originating summons” means every summons other than a summons in a pending cause or matter;
 - “party” includes every person served with notice of or attending any proceeding, although not named on the record;

0.1, r.3 SHORT TITLE, INTERPRETATION, APPLICATION, FORMS

“petitioner” includes every person making any application to the Court, either by petition, motion or summons, otherwise than against any defendant;

“plaintiff” includes every person seeking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding whether the proceeding is by action, suit, petition, motion, summons or otherwise;

“pleading” includes any petition or summons, and also includes the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant; but does not include a petition, summons or preliminary act;

“Registrar” means the Chief Registrar of the High Court and includes any Deputy Registrar when lawfully discharging any of the functions of the Chief Registrar under these Rules;

“Registry” means the Registry of the High Court in Suva, and includes any district registry of the Supreme Court, where such district registry is established outside Suva;

“Solicitor” means Barrister and Solicitor;

“suit” includes action;

“writ” means a writ of summons.

(2) In these Rules, unless the context otherwise requires, any reference to acknowledging service of a document or giving notice of intention to defend any proceedings is a reference to lodging in the appropriate court office an acknowledgment of service of that document or, as the case may be, a notice of intention to defend those proceedings.

Construction of references to orders, rules, etc. (0.1, r.3)

3.—(1) Unless the context otherwise requires, any reference in these Rules to a specified Order, rule or Appendix is a reference to that Order or rule of, or that Appendix to, these Rules and any reference to a specified rule, paragraph or sub-paragraph is a reference to that rule of the Order, that paragraph of the rule, or that sub-paragraph of the paragraph, in which the reference occurs.

(2) Any reference in these Rules to anything done under a rule of these Rules includes a reference to the same thing done before the commencement of that rule under any corresponding rule of court ceasing to have effect on the commencement of that rule.

(3) Except where the context otherwise requires, any reference in these Rules to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment.

Construction of references to action, etc. for possession of land (0.1, r.4)

4. Except where the context otherwise requires, references in these Rules to an action or claim for the possession of land shall be construed as including references to proceedings against the State for an order

declaring that the plaintiff is entitled as against the State to the land or to the possession thereof.

Rules not to exclude conduct of business by post (O.1, r.5)

5. Nothing in these Rules shall prejudice any power to regulate the practice of the Court by giving directions enabling any business or class of business to be conducted by post.

Forms (O.1, r.6)

6. The forms in Appendix A shall be used where applicable with such variations as the circumstances of the particular case may require:

Provided that—

- (i) the Court may permit departures from strict compliance with such forms;
- (ii) Admiralty forms used for the time being in Her Majesty's High Court of Justice in England shall have effect in Fiji subject to any law in force in Fiji with respect to Admiralty proceedings.

Practice where no express provision in the Rules (O.1, r.7)

7. Where no express provision is made by these Rules with respect to the practice or procedure in any circumstances arising in any cause or matter, then the jurisdiction of the High Court shall be exercised in conformity with the practice and procedure being adopted in the like circumstances in Her Majesty's High Court of Justice in England.

Proceedings to which these Rules do not apply (O.1, r.8)

8.—(1) Where, for the time being, by or under any law in force in Fiji, specific provision is made for regulating the practice and procedure in, or in relation to, any particular form of proceedings in the High Court, these Rules shall not apply thereto except in so far as any such provision applies, incorporates, or imports the application of these Rules, whether by express reference thereto or by reference to the rules of Court of, or the practice or procedure in, the High Court.

(2) These Rules shall not apply to any criminal proceedings in the High Court.

Fees, costs, etc. (O.1, r.9)

9.—(1) The fees set out in Appendix 2 shall be paid to and received in the Registry in respect of the matters set out therein. Fees payable and receivable in respect of any matters not specifically set out therein shall be as directed by the Chief Justice:

Provided that no fees shall be payable by a public officer in connection with any proceeding by or against him in his official capacity but any fee which would have been payable but for this proviso shall be recoverable from any other party ordered to pay the costs of such public officer in any such proceeding.

(2) The fees set out in Appendix 3 shall be paid to and received by the Sheriff or his deputies concerned in the execution of any process directed to the Sheriff, in the several proceedings mentioned therein.

O.1, r.10 SHORT TITLE, INTERPRETATION, APPLICATION, FORMS

- (3) (a) Subject to any special order made in any proceedings by the trial judge there shall be allowed to barristers and solicitors in the High Court costs amounting to not less than those prescribed under the Lower Scale and not exceeding those prescribed under the Higher Scale in Part I of Appendix 4 in relation to the matters set out therein, in the discretion of the taxing officer.
- (b) In exercising his discretion under sub-paragraph (a), the taxing officer shall have regard to all relevant circumstances and in particular to—
- (i) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
 - (ii) the skill, specialized knowledge and responsibility required of, and the time and labour expended by the solicitor;
 - (iii) the number and importance of the documents (however brief) prepared or perused;
 - (iv) the place and circumstances in which the business involved is transacted and whether the solicitor concerned was in the circumstances obliged to act through his agent in Suva, Lautoka or Labasa, as the case may be;
 - (v) the importance of the cause or matter to the client;
 - (vi) where money or property is involved, its amount or value;
 - (vii) any other fees and allowances payable to the solicitor in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.
- (c) Fixed costs shall be allowed as provided in Part 2 of Appendix 4.

Pleading of criminal conviction (O.1, r.10)

10.—(1) If in any action which is to be tried with pleadings any party intends, in reliance on Section 9 of the Evidence Act (convictions as evidence in civil proceedings) to adduce evidence that a person was convicted of an offence by or before a court in Fiji, he must include in his pleading a statement of his intention with particulars of—

- (a) the conviction and the date thereof,
- (b) the court which made the conviction, and
- (c) the issue in the proceedings to which the conviction is relevant.

(2) Where a party's pleading includes such a statement as is mentioned in paragraph (1), then if the opposite party—

- (a) denies the conviction, or
- (b) alleges that the conviction was erroneous, or

SHORT TITLE, INTERPRETATION, APPLICATION, FORMS O.1, r.11

(c) denies that the conviction is relevant to any issue in the proceedings,

he must make the denial in his pleading.

Non-contentious probate rules (O.1, r.11)

11. The Rules for the time being in force in Her Majesty's High Court of Justice in England, and the practice and procedure of that Court with respect of non—contentious probate business shall apply so far as they are applicable, with such modifications as may be necessary, to grants of probate and administration issued in common form from the Registry of the High Court.

Provision respecting acts, etc., required of consuls (O.1, r.12)

12. Where, under these Rules, any act or thing is required to be done in a country outside Fiji by a Fiji Consul, and there is no Fiji Consular Representation in that country, it shall be sufficient, for the purposes of these Rules, if such act or thing is done there by the consul of some other country in pursuance of an arrangement in force with respect to such acts or things between Fiji and the authority of such second mentioned country.

Repeal and savings (O.1, r.13)

13.—(1) The High Court Rules in force immediately before the making of these Rules are hereby repealed.

(2) Nothing in this rule shall affect any judgment, order, direction, writ, summons, petition, pleading or any other act or thing done, made, issued or given before the commencement of these Rules in accordance with Rules hereby repealed and every such judgment, order, direction, writ, summons, petition or other act or thing shall have effect as if done, made, issued or given under these Rules.

Commencement (O.1, r.14)

14. These Rules shall come into operation on such day as the Chief Justice shall by notice in the Gazette appoint.

ORDER 2

EFFECT OF NON-COMPLIANCE

Non-Compliance with rules (O.2, r.1)

1.—(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.

Application to set aside for irregularity (O.2, r.2)

2.—(1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) An application under this rule may be made by summons or motion and the grounds of objection must be stated in the summons or notice of motion.

ORDER 3

TIME

“Month” means calendar month (O.3, r.1)

1. Without prejudice to any law affecting the interpretation of subsidiary legislation, the word “month”, where it occurs in any judgment, order, direction or other document forming part of any proceedings in the High Court, means a calendar month unless the context otherwise requires.

Reckoning periods of time (O.3, r.2)

2.—(1) Any period of time fixed by these Rules or by any judgment, order or direction for doing any act shall be reckoned in accordance with the following provisions of this rule.

(2) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

(3) Where the act is required to be done within or not less than a specified period before a specified date, the period ends immediately before that date.

(4) Where the act is required to be done a specified number of clear days before or after a specified date, at least that number of days must intervene between the day on which the act is done and that date.

(5) Where, apart from this paragraph, the period in question, being a period of 7 days or less, would include a Saturday, Sunday or public holiday that day shall be excluded.

Time expires on Saturday, Sunday, etc. (O.3, r.3)

3. Where the time prescribed by these rules, or, by any judgment, order or direction, for doing any act at an office of the High Court expires on a Saturday or Sunday or other day on which that office is closed, and by reason thereof that act cannot be done on that day, the act shall be in time if done on the next day on which that office is open.

Extension, etc., of time (O.3, r.4)

4.—(1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these rules, or by any judgment, order or direction, to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.

(3) The period within which a person is required by these Rules, or by any order or direction to serve, file or amend any pleading or other docu-

ment may be extended by consent (given in writing) without an order of the Court being made for that purpose.

Notice of intention to proceed after year's delay (O.3, r.5)

5. Where a year or more has elapsed since the last proceeding in a cause or matter, the party who desires to proceed must give to every other party not less than one month's notice of his intention to proceed.

A summons on which no order was made is not a proceeding for the purpose of this rule.

COMMENCEMENT AND PROGRESS OF PROCEEDINGS

ORDER 4

CONSOLIDATION OF PROCEEDINGS

1. Where two or more causes or matters are pending, then, if it appears to the Court—

- (a) that some common question of law or fact arises in both or all of them, or
- (b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or
- (c) that for some other reason it is desirable to make an order under this rule,

the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.

ORDER 5

MODE OF BEGINNING CIVIL PROCEEDINGS

Mode of beginning civil proceedings (O.5, r.1)

1. Subject to the provisions of any Act and of these Rules, civil proceedings in the High Court may be begun by writ, originating summons, originating motion or petition.

Proceedings which must be begun by writ (O.5, r.2)

2. Subject to any provision of an Act, or of these Rules, by virtue of which any proceedings are expressly required to be begun otherwise than by writ, the following proceedings must, notwithstanding anything in rule 4, be begun by writ; that is to say, proceedings—

- (a) in which a claim is made by the plaintiff for any relief or remedy for any tort, other than trespass to land;
- (b) in which a claim made by the plaintiff is based on an allegation of fraud;
- (c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under an Act or independently of any contract or any such provision), where the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person or in respect of damage to any property;
- (d) in which a claim is made by the plaintiff in respect of the infringement of a patent.

Proceedings which must be begun by originating summons

(O.5, r.3)

3. Proceedings by which an application is to be made to the High Court or a judge thereof under any Act must be begun by originating summons except where by these Rules or by or under any Act the application in question is expressly required or authorised to be made by some other means.

This rule does not apply to an application made in pending proceedings.

Proceedings which may be begun by writ or originating summons

(O.5, r.4)

4.—(1) Except in the case of proceedings which by these Rules or by or under any Act are required to be begun by writ or originating summons or are required or authorised to be begun by petition, proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate.

(2) Proceedings—

- (a) in which the sole or principal question at issue is, or is likely to be, one of the construction of an Act or of any instrument made under an Act, or of any deed, will, contract or other document, or some other question of law, or
- (b) in which there is unlikely to be any substantial dispute of fact,

are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 86 or for any other reason considers the proceedings more appropriate to be begun by writ.

Proceedings to be begun by motion or petition (O.5, r.5)

5. Proceedings may be begun by originating motion or petition if, but only if, by these rules or by or under any Act the proceedings in question are required or authorised to be so begun.

Right to sue in person (O.5, r.6)

6.—(1) Subject to paragraph (2) and to Order 80, rule 2, any person (whether or not he sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the High Court by a barrister and solicitor or in person.

(2) Except as expressly provided by or under any enactment, a body corporate may not begin or carry on any such proceedings otherwise than by a barrister and solicitor.

ORDER 6

WRITS OF SUMMONS; GENERAL PROVISIONS

Form of writ (O.6, r.1)

1. Every writ must be in Form 1 in Appendix A.

Indorsement of claim (O.6, r.2)

- 2.—(1) Before a writ is issued it must be indorsed—
 - (a) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;
 - (b) where the claim made by the plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if, within the time limited for appearing, the defendant pays the amount so claimed to the plaintiff, his solicitor or agent;
 - (c) where the action is brought to enforce a right to recover possession of goods, with a statement showing the value of the goods.

Indorsement as to capacity (O.6, r.3)

3. Before a writ is issued it must be indorsed—
 - (a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;
 - (b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.

Indorsement as to solicitor and address (O.6, r.4)

- 4.—(1) Before a writ is issued, it must be indorsed—
 - (a) where the plaintiff sues by a solicitor, with the plaintiff's address and the solicitor's name or firm and a business address of his within the jurisdiction and also (if the solicitor is the agent of another) the name or firm and business address of his principal;
 - (b) where the plaintiff sues in person, with the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent.
- (2) The address for service of a plaintiff shall be —
 - (a) where he sues by a solicitor, the business address of the solicitor indorsed on the writ or where there are two such addresses so

indorsed, the business address of the solicitor who is acting as agent for the other;

(b) where he sues in person, the address within the jurisdiction indorsed on the writ.

(3) Where a solicitor's name is indorsed on a writ, he must, if any defendant who has been served with or who has acknowledged service of the writ requests him in writing so to do, declare in writing whether the writ was issued by him or with his authority or privity.

(4) If a solicitor whose name is indorsed on a writ declares in writing that the writ was not issued by him or with his authority or privity, the Court may on the application of any defendant who has been served with or who has entered an appearance to the writ, stay all proceedings in the action begun by the writ.

Concurrent writ (O.6, r.5)

5.—(1) One or more concurrent writs may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time thereafter before the original writ ceases to be valid.

(2) Without prejudice to the generality of paragraph (1), a writ for service within the jurisdiction may be issued as a concurrent writ with one which is to be served out of the jurisdiction, and a writ which is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.

(3) A concurrent writ is a true copy of the original writ with such differences only (if any) as are necessary having regard to the purpose for which the writ is issued.

Issue of writ (O.6, r.6)

6.—(1) No writ which is to be served out of the jurisdiction shall be issued without the leave of the Court:

Provided that if every claim made by a writ is one which by virtue of an enactment the High Court has power to hear and determine, notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction, the foregoing provision shall not apply to the writ.

(2) Issue of a writ takes place upon its being sealed by an officer of the Registry.

(3) The officer by whom a concurrent writ is sealed must mark it as a concurrent writ with an official stamp.

(4) No writ shall be sealed unless at the time of tender thereof for sealing the person tendering it leaves at the Registry a copy thereof signed, where the plaintiff sues in person, by him or, where he does not so sue, by or on behalf of his solicitor and produces to an officer of the Registry a form of acknowledgment of service in Form No. 2 in Appendix A for service with the writ on each defendant.

Duration and renewal of writ (O.6, r.7)

7.—(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for twelve months beginning with the date of

O.6, r.7 WRITS OF SUMMONS: GENERAL PROVISIONS

its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding twelve months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.

(3) Before a writ, the validity of which has been extended under this rule, is served, it must be marked with an official stamp showing the period for which the validity of the writ has been so extended.

(4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order.

ORDER 7

ORIGINATING SUMMONSES; GENERAL PROVISIONS

Application (O.7, r.1)

1. The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any Act.

Form of Summons, etc. (O.7, r.2)

2.—(1) Every originating summons (other than an *ex parte* summons) shall be in Form No. 3 or, if so authorised or required, in Form No. 4 in Appendix A, and every *ex parte* originating summons shall be in Form No. 5 in Appendix A.

(2) The party taking out an originating summons (other than an *ex parte* summons) shall be described as a plaintiff, and the other parties shall be described as defendants.

Contents of Summons (O.7, r.3)

3.—(1) Every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the High Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy.

(2) Order 6, rules 3, 4 and 7 shall apply in relation to an originating summons as they apply in relation to a writ.

Ex parte originating summonses (O.7, r.4)

4.—(1) Rules 2(1) and 3(1) shall, so far as applicable, apply to *ex parte* originating summonses; but, save as aforesaid, the foregoing rules of this Order shall not apply to *ex parte* originating summonses.

(2) Order 6, rule 6(2) and (4) shall, with the necessary modifications, apply in relation to an *ex parte* originating summons as they apply in relation to a writ.

ORDER 8

ORIGINATING AND OTHER MOTIONS: GENERAL PROVISIONS

Application (O.8, r.1)

1. The provisions of this Order apply to all motions subject, in the case of originating motions of any particular class, to any special provisions relating to motions of that class made by these Rules or by or under any Act.

Notice of motion (O.8, r.2)

2.—(1) Except where an application by motion may properly be made *ex parte*, no motion shall be made without previous notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceedings in the ordinary way would or might entail irreparable or serious mischief may make an order *ex parte* on such terms as to costs or otherwise, and subject to such undertaking, if any, as it thinks just; and any party affected by such order may apply to the Court to set it aside.

(2) Unless the Court gives leave to the contrary, there must be at least 2 clear days between the service of notice of a motion and the day named in the notice for hearing the motion.

Form and issue of notice of motion (O.8, r.3)

3.—(1) The notice of an originating motion must be in Form No. 6 in Appendix A and the notice of any other motion in Form No. 7 in that Appendix.

Where leave has been given under rule 2(2) to serve short notice of motion, that fact must be stated in the notice.

(2) The notice of a motion must include a concise statement of the nature of the claim made or the relief or remedy required.

(3) Order 6, rule 4, shall, with the necessary modifications, apply in relation to notice of an originating motion as it applies in relation to a writ.

(4) Issue of the notice of an originating motion takes place upon its being sealed by an officer of the Registry.

Service of notice of motion with writ, etc. (O.8, r.4)

4. Notice of a motion to be made in an action may be served by the plaintiff on the defendant with the writ of summons or originating summons or at any time after service of such writ or summons, whether or not the defendant has entered an appearance in the action.

Adjournment of hearing (O.8, r.5)

5. The hearing of any motion may be adjourned from time to time on such terms, if any as the Court thinks fit.

ORDER 9

PETITIONS; GENERAL PROVISIONS

Application (O.9, r.1)

1. Rules 2 to 4 apply to petitions by which civil proceedings in the High Court are begun, subject, in the case of petitions of any particular class, to any special provisions relating to petitions of that class made by these Rules or by or under any Act.

Contents of petition (O.9, r.2)

2.—(1) Every petition must include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun thereby.

(2) Every petition must include at the end thereof a statement of the names of the persons, if any, required to be served therewith or if no person is required to be served, a statement to that effect.

(3) Order 6, Rule 4, shall, with the necessary modifications, apply in relation to a petition as it applies in relation to a writ.

Answer to petition (O.9, r.3)

3.—(1) A respondent who wishes to defend the petition or to dispute any facts alleged in it, shall, within 21 days after the date of the service thereof, file an answer to the petition.

(2) An answer may be filed at any time before directions have been given for the trial of the cause, notwithstanding that the time for filing the answer has expired.

(3) Where, in the opinion of the Court, it is expedient in the interests of justice to do so, the Court may direct the respondent to give notice of whether or not he intends to defend and limit the time within which the notice is to be given.

(4) If the respondent —

(a) fails to give notice of his intention within the time limited under paragraph (3); or

(b) having given such notice fails to file an answer to the petition within 21 days after the day of the giving of the notice,

he may be held to have admitted every material allegation of fact made in the petition.

Fixing time for hearing petition (O.9, r.4)

4. A day and time for the hearing of a petition which is required to be heard shall be fixed by the Registrar.

Certain applications not to be made by petition (O.9, r.5)

5. No application in any cause or matter may be made by petition.

ORDER 10

SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS

General provisions (O.10, r.1)

1.—(1) A writ must be served personally on each defendant by the plaintiff or his agent.

(2) A writ for service on a defendant within the jurisdiction may, instead of being served personally on him, be served—

- (a) by sending a copy of the writ by ordinary post to the defendant at his usual or last known address, or
- (b) if there is a letter box for that address, by inserting through the letter box a copy of the writ enclosed in a sealed envelope addressed to the defendant.

(3) Where a writ is served in accordance with paragraph (2)—

(a) the date of service shall, unless the contrary is shown, be deemed to be the seventh day (ignoring Order 3, rule 2(5)) after the date on which the copy was sent to or, as the case may be, inserted through the letter box for the address in question;

(b) any affidavit proving due service of the writ must contain a statement to the effect that—

(i) in the opinion of the deponent (or, if the deponent is the plaintiff's solicitor or an employee of that solicitor, in the opinion of the plaintiff) the copy of the writ, if sent to, or, as the case may be inserted through the letter box for, the address in question, will have come to the knowledge of the defendant within 7 days thereafter; and

(ii) in the case of service by post, the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.

(4) Where a defendant's solicitor indorses on the writ a statement that he accepts service of the writ on behalf of that defendant, the writ shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made.

(5) Subject to Order 12, rule 7, where a writ is not duly served on a defendant but he acknowledges service of it, the writ shall be deemed, unless the contrary is shown, to have been duly served on him and to have been so served on the date on which he acknowledges service.

(6) Every copy of a writ for service on a defendant shall be sealed with the seal of the High Court and shall be accompanied by a form of acknowledgment of service in Form No. 2 in Appendix A, in which the title of the action and its numbers has been entered.

SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS O.10, r.2

(7) This rule shall have effect subject to the provision of any Act and these Rules and in particular to any enactment which provides for the manner in which documents may be served on bodies corporate.

Service of writ on agent of overseas principal (O.10, r.2)

2.—(1) Where the Court is satisfied on an *ex parte* application that—

- (a) a contract has been entered into within the jurisdiction with or through an agent who is either an individual residing or carrying on business within the jurisdiction or a body corporate having a registered office or a place of business within the jurisdiction, and
- (b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such an individual nor such a body corporate, and
- (c) at the time of the application either the agent's authority has not been determined or he is still in business relations with his principal,

the court may authorise service of a writ beginning an action relating to the contract to be effected on the agent instead of the principal.

(2) An order under this Rule authorising service of a writ on a defendant's agent must limit a time within which the defendant must acknowledge service.

(3) Where an order is made under this Rule authorising service of a writ on a defendant's agent, a copy of the order and of the writ must be sent by post to the defendant at his address out of the jurisdiction.

Service of writ in pursuance of contract (O.10, r.3)

3.—(1) Where —

- (a) a contract contains a term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the High Court has jurisdiction to hear and determine any such action, and
- (b) the contract provides that, in the event of any action in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, in such manner, or at such place (whether within or out of the jurisdiction), as may be so specified,

then, if an action in respect of the contract is begun in the High Court and the writ by which it is begun is served in accordance with the contract, the writ shall, subject to paragraph (2), be deemed to have been duly served on the defendant.

(2) A writ which is served out of the jurisdiction in accordance with a contract shall not be deemed to have been duly served on the defendant by virtue of paragraph (1) unless leave to serve the writ, or notice thereof, out of the jurisdiction has been granted under Order 11, rule 1 or 2.

O.10, r.4 SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS

Service of writ in certain actions for possession of land (O.10, r.4)

4. Where a writ is indorsed with a claim for the possession of land, the Court may—

- (a) if satisfied on an *ex parte* application that no person appears to be in possession of the land and that service cannot be otherwise effected on any defendant, authorise service on that defendant to be effected by affixing a copy of the writ to some conspicuous part of the land;
- (b) if satisfied on such an application that no person appears to be in possession of the land and that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the writ to some conspicuous part of the land shall be treated as good service on that defendant.

Service of originating summons, notice of motion or petition

(O.10, r.5)

5.—(1) The foregoing rules of this Order shall apply, with any necessary modifications, in relation to an originating summons (other than *ex parte* originating summons or an originating summons under Order 113) as they apply in relation to a writ.

(2) Rule 1 (1), (2), (3) and (4) shall apply, with any necessary modifications, in relation to a notice of an originating motion and a petition as they apply in relation to a writ.

ORDER 11

SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION

Principal cases in which service of writ out of jurisdiction is permissible (O.11, r.1)

1.—(1) If a writ is not a writ to which paragraph (2) of this Rule applies, service of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ—

- (a) relief is sought against a person domiciled within the jurisdiction;
- (b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);
- (c) the claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;
- (d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages, or obtain other relief in respect of the breach of a contract, being (in either case) a contract which —
 - (i) was made within the jurisdiction, or
 - (ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or
 - (iii) is by its terms, or by implication, governed by the law of Fiji, or
 - (iv) contains a term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of the contract;
- (e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
- (f) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction;
- (g) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;

O.11, r.2 SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION

- (h) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction;
- (i) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, situate within the jurisdiction;
- (j) the claim is brought to execute the trusts of a written instrument being trusts that ought to be executed according to English law and of which the person to be served with the writ is a trustee or for any relief or remedy which might be obtained in any such action;
- (k) the claim is made for the administration of the estate of a person who died domiciled within the jurisdiction or for any relief or remedy which might be obtained in any such action;
- (l) the claim is brought in a probate action within the meaning of Order 76;
- (m) the claim is brought to enforce any judgment or arbitral award.

(2) Service of a writ out of the jurisdiction is permissible without the leave of the Court provided that each claim made by the writ is a claim which by virtue of any enactment the High Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction.

(3) Where a writ is to be served out of the jurisdiction under paragraph (2), the time to be inserted in the writ within which the defendant served therewith must acknowledge service shall be 42 days.

Application for, and grant of, leave to serve writ out of jurisdiction (O.11, r.2)

2.—(1) An application for the grant of leave under rule 1(1) must be supported by an affidavit stating—

- (a) the grounds on which the application is made,
- (b) that in the deponent's belief the plaintiff has a good cause of action,
- (c) in what place or country the defendant is, or probably may be found, and
- (d) where the application is made under rule 1(1)(c), the grounds for the deponent's belief that there is between the plaintiff and the person on whom a writ has been served a real issue which the plaintiff may reasonably ask the Court to try.

SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION O.11, r.3

(2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.

(3) An order granting under rule 1 leave to serve a writ out of the jurisdiction must limit a time within which the defendant to be served must enter an appearance.

Service of writ abroad: general (O.11, r.3)

3.—(1) Subject to the following provisions of this Rule, Order 10 rule 1 (1), (4), (5) and (6) and Order 65, rule 4, shall apply in relation to the service of a writ, notwithstanding that the writ is to be served out of the jurisdiction, save that the accompanying form of acknowledgment of service shall be modified in such manner as may be appropriate.

(2) Nothing in this rule or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.

(3) A writ which is to be served out of the jurisdiction—

(a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected; and

(b) need not be served by the plaintiff or his agent if it is served by a method provided for by Rule 4.

(4) An official certificate stating that a writ as regards which Rule 4 has been complied with has been served on a person personally, or in accordance with the law of the country in which service was effected, on a specified date, being a certificate—

(a) by a Fiji consular authority in that country, or

(b) by the government or judicial authorities of that country, or

(c) by any other authority designated in respect of that country under the Hague Convention,

shall be evidence of the facts so stated.

(5) A document purporting to be such a certificate as is mentioned in paragraph (4) shall, until the contrary is proved, be deemed to be such a certificate.

(6) In this rule and rule 6 "the Hague Convention" means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on November 15, 1965.

Service of writ abroad through foreign governments, judicial authorities and Fiji consuls (O.11, r.4)

4.—(1) Where in accordance with these Rules a writ is to be served on a defendant in any country with respect to which there subsists a Civil

O.11, r.4 SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION

Procedure Convention (other than the Hague Convention) providing for service in that country of process of the High Court, the writ may be served—

- (a) through the judicial authorities of that country; or
- (b) through a Fiji Consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).

(2) Where in accordance with these Rules, a writ is to be served on a defendant in any country which is a party to the Hague Convention, the writ may be served—

- (a) through the authority designated under the Convention in respect of that country; or
- (b) if the law of that country permits—
 - (i) through the judicial authorities of that country, or
 - (ii) through a Fiji consular authority in that country.

(3) Where in accordance with these Rules a writ is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country of process of the High Court, the writ may be served—

- (a) through the government of that country, where that government is willing to effect service; or
- (b) through a Fiji consular authority in that country, except where service through such an authority is contrary to the law of that country.

(4) A person who wishes to serve a writ by a method specified in paragraph (1), (2), or (3) must lodge in the Registry a request for service of the writ by that method, together with a copy of the writ and an additional copy thereof for each person to be served.

(5) Every copy of a writ lodged under paragraph (4) must be accompanied by a translation of the writ in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected:

Provided that this paragraph shall not apply in relation to a copy of a writ which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a Fiji consular authority on a Fiji subject, unless the service is to be effected under paragraph (2) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.

(6) Every translation lodged under paragraph (5) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(7) Documents duly lodged under paragraph (4) shall be sent by the Registrar to the Minister with a request that he arrange the writ to be served by the method indicated in the request lodged under paragraph (4)

SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION O.11, r.5

or, where alternative methods are so indicated, by such one of those methods as is most convenient.

Undertaking to pay expenses of service (O.11, r.5)

5. Every request lodged under rule 4(4) must contain an undertaking by the person making the request to be responsible for all expenses incurred by the Minister in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Minister and to produce a receipt for the payment to the Registrar.

Service of originating summons, petition, notice of motion, etc. (O.11, r.6)

6.—(1) Subject to Order 73, rule 4, rule 1 of this Order shall apply to the service out of the jurisdiction of an originating summons, notice of motion or petition as it applies to service of a writ.

(2) Subject to Order 73, rule 4, service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court, but leave shall not be required for such service in any proceedings in which the writ, originating summons, motion or petition may by these Rules or under any Act be served out of the jurisdiction without leave.

(3) Rule 2 shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as it applies in relation to an application for the grant of leave under rule 1.

(4) An order granting under this rule leave to serve out of the jurisdiction an originating summons must limit a time within which the defendant to be served with the summons must acknowledge service.

(5) Rules 3, 4 and 5 shall apply in relation to any document for the service of which out of the jurisdiction leave has been granted under this rule as they apply in relation to a writ.

ORDER 12

ACKNOWLEDGMENT OF SERVICE TO WRIT OR ORIGINATING SUMMONS

Mode of acknowledging service (O.12, r.1)

1.—(1) Subject to paragraph (2) and to Order 80, rule 2, a defendant to an action begun by writ may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) acknowledge service of the writ and defend the action by a solicitor or in person.

(2) The defendant to such an action who is a body corporate may acknowledge service of the writ and give notice of intention to defend the action either by a solicitor or by a person duly authorised to act on the defendant's behalf but, except as aforesaid or as expressly provided by any enactment, such a defendant may not take steps in the action otherwise than by a solicitor.

(3) Service of a writ may be acknowledged by properly completing an acknowledgment of service, as defined by rule 3, and handing it in at, or sending it by post to the Registry out of which the writ was issued.

(4) If two or more defendants to an action acknowledge service by the same solicitor and at the same time, only one acknowledgment of service need be completed and delivered for those defendants.

(5) The date on which service is acknowledged is the date on which the acknowledgment of service is received at the appropriate office.

Acknowledgment of service (O.12, r.2)

2.—(1) An acknowledgment of service must be in Form No. 2 in Appendix A, and, except as provided in rule 1(2), must be signed by the solicitor acting for the defendant specified in the acknowledgment or, if the defendant is acting in person, by that defendant.

(2) An acknowledgment of service must specify—

(a) in the case of a defendant acknowledging service in person, the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent, and

(b) in the case of a defendant acknowledging service by a solicitor, a business address of his solicitor's within the jurisdiction; and where the defendant acknowledges service in person, the address within the jurisdiction specified under sub-paragraph (a) shall be his address for service, but otherwise his solicitor's business address shall be his address for service.

ACKNOWLEDGEMENT OF SERVICE TO WRIT O.12, r.3

In relation to a body corporate the references in sub-paragraph (a) to the defendant's place of residence shall be construed as references to the defendant's registered or principal office.

(3) Where the defendant acknowledges service by a solicitor who is acting as agent for another solicitor having a place of business within the jurisdiction, the acknowledgment of service must state that the first-named solicitor so acts and must also state the name and address of that other solicitor.

(4) If an acknowledgment of service does not specify the defendant's address for service or the Court is satisfied that any address specified in the acknowledgment of service is not genuine, the Court may on application by the plaintiff set aside the acknowledgment or order the defendant to give an address or, as the case may be, a genuine address for service and may in any case direct that the acknowledgment shall nevertheless have effect for the purposes of Order 10, rule 1(5), and Order 65, rule 9.

Procedure on receipt of acknowledgment of service (O.12, r.3)

3. On receiving an acknowledgment of service an officer of the Registry must—

- (a) affix to the acknowledgment an official stamp showing the date on which he received it;
- (b) enter the acknowledgment in the cause book with a note showing, if it be the case, that the defendant has indicated in the acknowledgment an intention to contest the proceedings or to apply for a stay of execution in respect of any judgment obtained against him in the proceedings;
- (c) make a copy of the acknowledgment, having affixed to it an official stamp showing the date on which he received the acknowledgment, and send it by post to the plaintiff or, as the case may be, his solicitor at the plaintiff's address for service.

Time limited for acknowledging service (O.12, r.4)

4. References in these Rules to the time limited for acknowledging service are references—

- (a) in the case of a writ served within the jurisdiction, to fourteen days after service of the writ (including the day of service) or, where that time has been extended by or by virtue of these Rules, to that time as so extended; and
- (b) in the case of a writ served out of the jurisdiction, to the time limited under Order 10, Rule 2(2), Order 11, Rule 1(3) or, where that time has been extended as aforesaid, to that time as so extended.

Late acknowledgment of service (O.12, r.5)

5.—(1) Except with the leave of the Court, a defendant may not give notice of intention to defend in an action after judgment has been obtained therein.

(2) Except as provided by paragraph (1), nothing in these Rules or any writ or order thereunder shall be construed as precluding a defendant

O.12, r.6 ACKNOWLEDGEMENT OF SERVICE TO WRIT

from acknowledging service in an action after the time limited for so doing, but if a defendant acknowledges service after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other act later than if he had acknowledged service within that time.

Acknowledgment not to constitute waiver (O.12, r.6)

6. The acknowledgment by a defendant of service of a writ shall not be treated as a waiver by him of any irregularity in the writ or service thereof or in any order giving leave to serve the writ out of the jurisdiction or extending the validity of the writ for the purpose of service.

Dispute as to jurisdiction (O.12, r.7)

7.—(1) A defendant who wishes to dispute the jurisdiction of the Court in the proceedings by reason of any such irregularity as is mentioned in Rule 6 or on any other ground shall give notice of intention to defend the proceedings and shall, within the time limited for service of a defence apply to the Court for—

- (a) an order setting aside the writ or service of the writ on him, or
- (b) an order declaring that the writ has not been duly served on him, or
- (c) the discharge of any order giving leave to serve the writ on him out of the jurisdiction, or
- (d) the discharge of any order extending the validity of the writ for the purpose of service, or
- (e) the protection or release of any property of the defendant seized or threatened with seizure in the proceedings, or
- (f) the discharge of any order made to prevent any dealing with any property of the defendant, or
- (g) a declaration that in the circumstances of the case the Court has no jurisdiction over the defendant in respect of the subject matter of the claim or the relief or remedy sought in the action, or
- (h) such other relief as may be appropriate.

(2) An application under paragraph (1) must be made by summons or motion, and the notice of motion or summons must state the grounds of the application.

(3) An application under paragraph (1) must be supported by an affidavit verifying the facts on which the application is based and a copy of the affidavit must be served with the notice of motion or summons by which the application is made.

(4) Upon hearing an application under paragraph (1), the Court, if it does not dispose of the matter in dispute, may give such directions for its disposal as may be appropriate, including directions for the trial thereof as a preliminary issue.

(5) A defendant who makes an application under paragraph (1) shall not be treated as having submitted to the jurisdiction of the Court by

reason of his having given notice of intention to defend the action; and if the Court makes no order on the application or dismisses it, the notice shall cease to have effect, but the defendant may, subject to rule 6(1), lodge a further acknowledgment of service and in that case paragraph (6) shall apply as if the defendant had not made any such application.

(6) Except where the defendant makes an application in accordance with paragraph (1), the acknowledgment by a defendant of service of a writ shall, unless the acknowledgment is withdrawn by leave of the Court under Order 21, rule 1, be treated as a submission by the defendant to the jurisdiction of the Court in the proceedings.

Acknowledgment of service of originating summons (O.12, r.8)

8.—(1) Each defendant named in and served with an originating summons (other than an *ex parte* originating summons or an originating summons under Order 113) must acknowledge service of the summons as if it were a writ.

(2) The foregoing rules of this Order shall apply in relation to an originating summons (other than an *ex parte* originating summons or an originating summons under Order 113) as they apply to a writ except that after the word “extended”, wherever it occurs in Rule 4(a), there shall be inserted the words “or abridged” and for the reference in Rule 4(b) to Order 11, Rule 1(3), there shall be substituted a reference to Order 11, Rule 6(5).

Acknowledgment of service to be treated as entry of appearance (O.12, r.9)

9. For the purpose of any enactment referring expressly or impliedly to the entry of appearance as a procedure provided by rules of Court for responding to a writ or other process issuing out of the High Court, or of any rule of law, the acknowledgment of service of the writ or other process in accordance with these Rules shall be treated as the entry of an appearance to it, and related expressions shall be construed accordingly.

ORDER 13

FAILURE TO GIVE NOTICE OF INTENTION TO DEFEND

Claim for liquidated demand (O.13, r.1)

1.—(1) Where a writ is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

(2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest accruing after the date of the writ at an unspecified rate, but any such interest shall be computed from the date of the writ to the date of entering judgment at the rate of 5 per cent.

Claim for unliquidated damages (O.13, r.2)

2. Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

Claim for detention of goods (O.13, r.3)

3.—(1) Where a writ is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant failed to give notice of intention to defend the plaintiff may, after the prescribed time and subject to Order 42, rule 2—

(a) at his option enter either—

- (i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs, or
- (ii) interlocutory judgment for the value of the goods to be assessed and costs, or

(b) apply by summons for judgment against that defendant for delivery of the goods without giving him the alternative of paying their assessed value,

and in any case proceed with the action against the other defendants, if any.

(2) A summons under paragraph (1)(b) must be supported by affidavit and notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

Claim for possession of land (O.13, r.4)

4.—(1) Where a writ is indorsed with a claim against a defendant for possession of land only, then, subject to paragraph (2), if that defendant fails to give notice of intention to defend the plaintiff may, after the prescribed time, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit stating that he is not claiming any relief in the action of the nature specified in Order 88, rule 1, enter judgment for possession of the land as against that defendant and costs, and proceed with the action against the other defendants, if any.

(2) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

Mixed claims (O.13, r.5)

5. Where a writ issued against any defendant is indorsed with two or more of the claims mentioned in the foregoing rules, and no other claim, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim indorsed on the writ, and proceed with the action against the other defendants, if any.

Other claims (O.13, r.6)

6.—(1) Where a writ is indorsed with a claim of a description not mentioned in rules 1 to 4 then, if any defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time and, if that defendant has not acknowledged service, upon filing an affidavit proving service of the writ on him and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, proceed with the action as if that defendant had given notice of intention to defend.

(2) Where a writ issued against a defendant is indorsed as aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter judgment with the leave of the Court against that defendant for costs.

(3) An application for leave to enter judgment under paragraph (2) shall be by summons which must, unless the Court otherwise orders, and notwithstanding anything in Order 65, rule 9, be served on the defendant against whom it is sought to enter judgment.

Prescribed time (O.13, r.7)

7. In the foregoing Rules of this Order "the prescribed time" in relation to a writ issued against a defendant means the time limited for the defendant to acknowledge service of the writ or, if within that time the defendant has returned to the Registry an acknowledgment of service containing a statement to the effect that he does not intend to contest the

O.13, r.8 FAILURE TO GIVE NOTICE OF INTENTION TO DEFEND

proceedings, the date on which the acknowledgment was received at the Registry.

Proof of service of writ (O.13, r.8)

8.—(1) Judgment shall not be entered against a defendant under this Order unless—

- (a) the defendant has acknowledged service on him of the writ; or
- (b) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ on the defendant; or
- (c) the plaintiff produces the writ indorsed by the defendant's solicitor with a statement that he accepts service of the writ on the defendant's behalf.

(2) Where, in an action begun by writ, an application is made to the Court for an order affecting a party who has failed to acknowledge service, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of acknowledgment of service.

(3) Where, after judgment has been entered under this Order against a defendant purporting to have been served by post under Order 10, rule 1(2)(a), the copy of the writ sent to the defendant is returned to the plaintiff through the post, undelivered to the addressee, the plaintiff, shall, before taking any step or further step in the action or the enforcement of the judgment either—

- (a) make a request for the judgment to be set aside on the ground that the writ has not been duly served; or
- (b) apply to the Court for directions.

(4) A request under paragraph (3)(a) shall be made by producing to an officer of the Registry and leaving with him for filing, an affidavit stating the relevant facts, and thereupon the judgment shall be set aside and the entry of the judgment and of any proceedings for its enforcement made in the book kept in the Registry for that purpose shall be marked accordingly.

(5) An application under paragraph (3)(b) shall be made ex parte by affidavit stating the facts on which the application is founded and any order or direction sought, and on the application the Court may—

- (a) set aside the judgment; or
- (b) direct that, notwithstanding the return of the copy of the writ, it shall be treated as having been duly served; or
- (c) make such other order and give such other direction as the circumstances may require.

Stay of execution on default judgment (O.13, r.9)

9. Where judgment for a debt or liquidated demand is entered under this Order against a defendant who has returned to the Registry an acknowledgment of service containing a statement to the effect that, although he does not intend to contest the proceedings, he intends to apply for a stay of execution of the judgment by writ of *fiery facias*, execu-

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tion of the judgment by such a writ shall be stayed for a period of 14 days from the acknowledgment of service and, if within that time the defendant issues and serves on the plaintiff a summons for such a stay supported by an affidavit in accordance with Order 47, rule 1, the stay imposed by this rule shall continue until the summons is heard or otherwise disposed of, unless the Court after giving the parties an opportunity of being heard otherwise directs.

Setting aside judgment (O.13, r.10)

10. Without prejudice to rule 8(3) and (4), the Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

ORDER 14

SUMMARY JUDGMENT

Application by plaintiff for summary judgment (O.14, r.1)

1.—(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

(2) Subject to paragraph (3), this rule applies to every action begun by writ other than—

- (a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment,
- (b) an action which includes a claim by the plaintiff based on an allegation of fraud.

(3) This Order shall not apply to an action to which Order 86 applies.

Manner in which application under Rule 1 must be made

(O.14, r.2)

2.—(1) An application under rule 1 must be made by summons supported by an affidavit verifying the facts on which the claim, or the part of a claim to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the case may be, or no defence except as to the amount of any damages claimed.

(2) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(3) The summons, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than 10 clear days before the return day.

Judgment for Plaintiff (O.14, r.3)

3.—(1) Unless on the hearing of an application under rule 1., either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or the part of a claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, the Court may give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed.

(2) The Court may by order, and subject to such conditions, if any, as may be just, stay execution of any judgment given against a defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.

Leave to defend (O.14, r.4)

4.—(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

(2) Rule 2(2) applies for the purposes of this rule as it applies for the purposes of that rule.

(3) The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(4) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity—

- (a) to produce any document;
- (b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

Application for summary judgment on counterclaim (O.14, r.5)

5.—(1) Where a defendant to an action begun by writ has served a counterclaim on the plaintiff, then, subject to paragraph (3), the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such a claim, apply to the Court for judgment against the plaintiff on that claim or part.

(2) Rules 2, 3 and 4 shall apply in relation to an application under this rule as they apply in relation to an application under rule 1 but with the following modifications, that is to say—

- (a) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;
- (b) the words in rule 3(2) “any counterclaim made or raised by the defendant in” shall be omitted; and
- (c) the reference in rule 4(3) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

(3) This rule shall not apply to a counterclaim which includes any such claim as is referred to in rule 1(2).

Directions (O.14, r.6)

6.—(1) Where the Court—

- (a) orders that a defendant or a plaintiff have leave (whether conditional or unconditional) to defend an action or counterclaim, as the case may be, with respect to a claim or a part of a claim, or

- (b) gives judgment for a plaintiff or a defendant on a claim or part of a claim but also orders that execution of the judgment be stayed pending the trial of a counterclaim or of the action, as the case may be,

the Court shall give directions as to the further conduct of the action, and Order 25, rules 2 to 7, shall, with the omission of so much of Rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under rule 1 of this Order or rule 5 thereof, as the case may be, on which the order was made were a summons for directions.

Costs (O.14, r.7)

7.—(1) If the plaintiff makes an application under rule 1 where the case is not within this Order or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 62, and, in particular, to rule 2(1) thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an assisted person, require the costs to be paid by him forthwith.

(2) The Court shall have the same power to dismiss an application under rule 5 as it has under paragraph (1) to dismiss an application under rule 1, and that paragraph shall apply accordingly with the necessary modifications.

Right to proceed with residue of action or counterclaim (O.14, r.8)

8.—(1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim or as respects the remainder of the claim or against any other defendant.

(2) Where on an application under rule 5 a defendant obtains judgment on a claim or part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim as respects any other claim or as respects the remainder of the claim or against any other defendant to the counterclaim.

Judgment for delivery up of chattel (O.14, r.9)

9. Where the claim to which an application under rule 1 or rule 5 relates is for the delivery up of a specific chattel and the Court gives judgment under this Order for the applicant, it shall have the same power to order the party against whom judgment is given to deliver up the chattel without giving him an option to retain it on paying the assessed value thereof as if the judgment had been given after trial.

Relief against forfeiture (O.14, r.10)

10. A tenant shall have the same right to apply for relief after judgment for possession of land on the ground of forfeiture for non-payment of rent has been given under this Order as if the judgment had been given after trial.

Setting aside judgment (O.14, r.11)

11. Any judgment given against a party who does not appear at the hearing of an application under rule 1 or rule 5 may be set aside or varied by the Court on such terms as it thinks just.

No summary judgment against the State (O.14, r.12)

12. Nothing in the foregoing provisions of this Order shall apply or be construed in derogation of, or in any way affect, the provisions contained in Order 77 in so far as they apply in relation to proceedings against the State.

ORDER 15

CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES

Joinder of causes of action (O.15, r.1)

1.—(1) Subject to rule 5(1), a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action—

- (a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action, or
- (b) if the plaintiff claims or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of all the others, or
- (c) with the leave of the Court.

(2) An application for leave under this rule must be made *ex parte* by affidavit before the issue of the writ or originating summons, as the case may be, and the affidavit must state the grounds of the application.

Counterclaim against plaintiff (O.15, r.2)

2.—(1) Subject to rule 5(2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he must add the counterclaim to his defence.

(2) Rule 1 shall apply in relation to a counterclaim as if the counterclaim were a separate action and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

(3) A counterclaim may be proceeded with notwithstanding that judgment is given for the plaintiff in the action or that the action is stayed, discontinued or dismissed.

(4) Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance, so, however, that this provision shall not be taken as affecting the Court's discretion with respect to costs.

Counterclaim against additional parties (O.15, r.3)

3.—(1) Where a defendant to an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject matter of the counterclaim, or claims against such other person any

relief relating to or connected with the original subject matter of the action, then, subject to rule 5(2), he may join that other person as a party against whom the counterclaim is made.

(2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim and in the case of a person who is not already a party to the action, a form of acknowledgment of service in Form No. 2 in Appendix A with such modification as the circumstances may require; and a person on whom a copy of a counterclaim is served shall, if he is not already a party to the action, become a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.

(3) A defendant who is required by paragraph (2) to serve a copy of the counterclaim made by him on any person who before service is already a party to the action must do so within the period within which, by virtue of Order 18, rule 2, he must serve on the plaintiff the defence to which the counterclaim is added.

(4) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on a person who is not already a party to the action, the following provisions of these Rules, namely, Order 10, 11, 12 and 13 shall apply in relation to the counterclaim and the proceedings arising from it as if—

(a) the counterclaim were a writ and the proceedings arising from it an action; and

(b) the party making the counterclaim were a plaintiff and the party against whom it is made a defendant in that action.

(5) A copy of a counterclaim required to be served on a person who is not already a party to the action must be indorsed with a notice, in Form No. 8 in Appendix A, addressed to that person.

Joinder of parties (O.15, r.4)

4.—(1) Subject to rule 5(1), two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where—

(a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions, and

(b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.

(2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any Act and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant.

This paragraph shall not apply to a probate action.

O.15, r.5 CAUSES OF ACTION, COUNTER-CLAIMS AND PARTIES

Court may order separate trials, etc. (O.15, r.5)

5.—(1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

(2) If it appears on the application of any party against whom a counterclaim is made that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

Misjoinder and nonjoinder of parties (O.15, r.6)

6.—(1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party; and the Court may determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

(2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application—

(a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;

(b) order any of the following persons to be added as a party, namely—

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

(3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.

(4) No person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

(5) No person shall be added or substituted as a party after the expiry of any relevant period of limitation unless either—

- (a) the relevant period was current at the date when proceedings were commenced and it is necessary for the determination of the action that the new party should be added, or substituted, or
- (b) the relevant period arises under the provisions of subparagraph (i) of the proviso to paragraph 4(1)(d) of the Limitation Act and the Court directs that those provisions should not apply to the action by or against the new party.

In this paragraph “any relevant period of limitation” means a time limit under the Limitation Act. (Cap. 35)

(6) The addition or substitution of a new party shall be treated as necessary for the purposes of paragraph (5)(a) if, and only if, the Court is satisfied that—

- (a) the new party is a necessary party to the action in that property is vested in him at law or in equity and the plaintiff's claim in respect of an equitable interest in that property is liable to be defeated unless the new party is joined, or
- (b) the relevant cause of action is vested in the new party and the plaintiff jointly but not severally, or
- (c) the new party is the Attorney-General and the proceedings should have been brought by relator proceedings in his name, or
- (d) the new party is a company in which the plaintiff is a shareholder and on whose behalf the plaintiff is suing to enforce a right vested in the company, or
- (e) the new party is sued jointly with the defendant and is not also liable severally with him and failure to join the new party might render the claim unenforceable.

Proceedings against estates (O.15, r.7)

7.—(1) Where any person against whom an action would have lain has died but the cause of action survives, the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased.

(2) Without prejudice to the generality of paragraph (1), an action brought against “the personal representatives of A.B. deceased” shall be treated, for the purposes of that paragraph, as having been brought against his estate.

(3) An action purporting to have been commenced against a person shall be treated, if he was dead at its commencement, as having been commenced against his estate in accordance with paragraph (1), whether or not a grant of probate or administration was made before its commencement.

(4) In any such action as is referred to in paragraph (1) or (3)—

- (a) the plaintiff shall, during the period of validity for service of the writ or originating summons, apply to the Court for an order

O.15, r.8 CAUSES OF ACTION, COUNTER-CLAIMS AND PARTIES

appointing a person to represent the deceased's estate for the purpose of the proceedings or, if a grant of probate or administration has been made for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;

(b) the court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in sub-paragraph (a) and allow such amendments (if any) to be made and make such other order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the Court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

(6) Where an order is made under paragraph (4) appointing the Public Trustee to represent the deceased's estate, the appointment shall be limited to his accepting service of the writ or originating summons by which the action was begun unless, either on making such an order or on a subsequent application, the court, with the consent of the Public Trustee, directs that the appointment shall extend to taking further steps in the proceedings.

(7) Where an order is made under paragraph (4), rules 8(4) and 9(3) and (4) shall apply as if the order had been made under rule 8 on the application of the plaintiff.

(8) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.

Change of parties by reason of death, etc. (O.15, r.8)

8.—(1) Where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankruptcy.

(2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party.

An application for an order under this paragraph may be made *ex parte*.

(3) An order may be made under this rule for a person to be made a party to a cause or matter notwithstanding that he is already a party to it on the other side of the record; or on the same side but in a different capacity; but—

- (a) if he is already a party on the other side, the order shall be treated as containing a direction that he shall cease to be a party on that other side, and
- (b) if he is already a party on the same side but in another capacity, the order may contain a direction that he shall cease to be a party in that other capacity.

(4) The person on whose application an order is made under this rule must procure the order to be noted in the cause book, and after the order has been so noted that person must, unless the Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun and form of acknowledgment of service in Form 2 in Appendix A.

(5) Any application to the Court by a person served with an order made *ex parte* under this rule for the discharge or variation of the order must be made within 14 days after the service of the order on that person.

Provisions consequential on making of order under rule 6 or 8

(O.15, r.9)

9.—(1) Where an order is made under rule 6 the writ by which the action in question was begun must be amended accordingly and must be indorsed with—

- (a) a reference to the order in pursuance of which the amendment is made, and

- (b) the date on which the amendment is made;

and the amendment must be made within such period as may be specified in the order or, if no period is so specified, within 14 days after the making of the order.

(2) Where by an order under rule 6 a person is to be made a defendant, the rules as to service of a writ of summons shall apply accordingly to service of the amended writ on him, but before serving the writ on him the person on whose application the order was made must procure the order to be noted in the cause book.

(3) Where by an order under rule 6 or 8 a person is to be made a defendant, the rules as to acknowledgment of service shall apply accordingly to acknowledgment of service by him, subject, in the case of a person to be made a defendant by an order under rule 8, to the modification that the time limited for acknowledging service shall begin with the date on which the order is served on him under rule 8(4) or, if the order is not required to be served on him, with the date on which the order is noted in the cause book.

O.15, r.10

(4) Where by an order under rule 6 or 8 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until —

- (a) where the order is made under rule 6, the writ has been amended in relation to him under this rule and (if he is a defendant) has been served on him, or
- (b) where the order is made under rule 8, the order has been served on him under rule 8(4) or, if the order is not required to be served on him, the order has been noted in the cause book;

and where by virtue of the foregoing provision a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old, except that acknowledgment of service by the old party shall not dispense with acknowledgment of service by the new.

(5) The foregoing provisions of this rule shall apply in relation to an action begun by originating summons as they apply in relation to an action begun by writ.

Failure to proceed after death of a party (O.15, r.10)

10.—(1) If after the death of a plaintiff or defendant in any action the cause or action survives, but no order under rule 8 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the action is proceeded with within such time as may be specified in the order the action shall be struck out as against the plaintiff or defendant, as the case may be, who has died; but where it is the plaintiff who has died, the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested persons who, in the opinion of the Court, should be notified.

(2) Where in any action a counterclaim is made by a defendant, this rule shall apply in relation to the counterclaim as if the counterclaim were a separate action and as if the defendant making the counterclaim were the plaintiff and the person against whom it is made a defendant.

Actions for possession of land (O.15, r.11)

11.—(1) Without prejudice to rule 6, the Court may at any stage of the proceedings in an action for possession of land order any person not a party to the action who is in possession of the land (whether in actual possession or by a tenant) to be added as a defendant.

(2) An application by any person for an order under this rule may be made *ex parte*, supported by an affidavit showing that he is in possession of the land in question and if by a tenant, naming him. The affidavit shall specify the applicant's address for service and Order 12, rule 2(2), (3) and (4), shall apply as if the affidavit were an acknowledgment of service.

(3) A person added as a defendant by an order under this rule shall serve on the plaintiff a copy of the order giving the added defendant's address for service specified in accordance with paragraph (2).

Actions for wrongful interference with goods (O.15, r.12)

12.—(1) Where the plaintiff in an action for wrongful interference with goods is one of two or more persons having or claiming any interest in the goods, then, unless he has the written authority of every other such person to sue on the latter's behalf, the writ or originating summons by which the action was begun shall be indorsed with a statement giving particulars of the plaintiff's title and identifying every other person who, to his knowledge, has or claims any interest in the goods.

This paragraph shall not apply to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle.

(2) A defendant to an action for wrongful interference with goods who desires to show that a third party has a better right than the plaintiff as respects all or any part of the interest claimed by the plaintiff may, at any time after giving notice of intention to defend, and before any judgment or order is given or made on the plaintiff's claim, apply for directions as to whether any person named in the application (not being a person whose written authority the plaintiff has to sue on his behalf) should be joined with a view to establishing whether he has a better right than the plaintiff.

(3) An application under paragraph (2) shall be made by summons, which shall be served personally on every person named in it as well as being served on the plaintiff.

(4) Where a person named in an application under paragraph (2) fails to appear on the hearing of the summons or to comply with any direction given by the Court on the application, the Court may by order deprive him of any right of action against the defendant for the wrong, either unconditionally or subject to such terms and conditions as the Court thinks fit.

Relator actions (O.15, r.13)

13. Before the name of any person is used in any action as a relator, that person must give a written authorisation so to use his name to his solicitor and the authorisation must be filed in the Registry.

Representative proceedings (O.15, r.14)

14.—(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 15, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

(2) At any stage of proceedings under this rule the Court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons as representing whom the defendants are sued to represent all, or all except one or more, of those persons in the proceedings; and where, in exercise of the

O.15, r.15

power conferred by this paragraph, the Court appoints a person not named as a defendant, it shall make an order under rule 6 adding that person as a defendant.

(3) A judgment or order given in proceedings under this rule shall be binding on all the persons as representing whom the plaintiffs sue or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the leave of the Court.

(4) An application for the grant of leave under paragraph (3) must be made by summons which must be served personally on the person against whom it is sought to enforce the judgment or order.

(5) Notwithstanding that a judgment or order to which any such application relates is binding on the person against whom the application is made, that person may dispute liability to have the judgment or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

(6) The Court hearing an application for the grant of leave under paragraph (3) may order the question whether the judgment or order is enforceable against the person against whom the application is made to be tried and determined in any manner in which any issue or question in an action may be tried and determined.

Representation of interested persons who cannot be ascertained, etc. (O.15, r.15)

15.—(1) In any proceedings concerning—

- (a) the estate of a deceased person, or
- (b) property subject to a trust, or

(c) the construction of a written instrument, including a statute, the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in paragraph (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceedings.

(2) The conditions for the exercise of the power conferred by paragraph (1) are as follows—

- (a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;
- (b) that the person, class or some member of the class, though ascertained, cannot be found;
- (c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.

(3) Where in any proceedings to which paragraph (1) applies, the Court exercises the power conferred by that paragraph, a judgment or order of the Court given or made when the person or persons appointed in exercise of that power are before the Court shall be binding on the person or class represented by the person or persons so appointed.

(4) Where, in any such proceedings, a compromise is proposed and 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) but—

(a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise, or,

(b) the absent persons are represented by a person appointed under paragraph (1) who so assents

the Court, 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, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

Representation of beneficiaries by trustees, etc. (O.15, r.16)

16.—(1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators could not or did not in fact represent the interests of those persons in the first-mentioned proceedings.

(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 15.

Representation of deceased person interested in proceedings (O.15, r.17)

17.—(1) Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings.

(2) Before making an order under this rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

O.15, r.18

Declaratory judgment (O.15, r.18)

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

Conduct of proceedings (O.15, r.19)

19. The Court may give the conduct of any action, inquiry or other proceeding to such person as it thinks fit.

ORDER 16

THIRD PARTY AND SIMILAR PROCEEDINGS

Third party notice (O.16, r.1)

1. (1) Where in any action a defendant who has given notice of intention to defend—

- (a) claims against a person not already a party to the action any contribution or indemnity; or
- (b) claims against such a person 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) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the action;.

then, subject to paragraph (2), the defendant may issue a notice in Form No. 9 in Appendix A, (in this Order referred to as a third party notice), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

(2) A defendant to an action may not issue a third party notice without the leave of the Court unless the action was begun by writ and he issues the notice before serving his defence on the plaintiff.

(3) Where a third party notice is served on the person against whom it is issued, he shall as from the time of service be a party to the action (in this Order referred to as a third party) with the same rights in respect of his defence against any claim made against him in the notice and otherwise as if he had been duly sued in the ordinary way by the defendant by whom the notice is issued.

Application for leave to issue third party notice (O.16, r.2)

2.—(1) Application for leave to issue a third party notice may be made *ex parte* but the Court may direct a summons for leave to be issued.

(2) An application for leave to issue a third party notice must be supported by an affidavit stating -

- (a) the nature of the claim made by the plaintiff in the action;
- (b) the stage which proceedings in the action have reached;
- (c) the nature of the claim made by the applicant or particulars of the question or issue required to be determined, as the case may

O.16, r.3 THIRD PARTY AND SIMILAR PROCEEDINGS

- be, and the facts on which the proposed third party notice is based; and
- (d) the name and address of the person against whom the third party notice is to be issued.

Issue, service and acknowledgment of service, of third party notice (O.16, r.3)

- 3.—(1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.
- (2) There must be served with every third party notice a copy of the writ or originating summons by which the action was begun and of the pleadings (if any) served in the action and a form of acknowledgment of service in Form No. 2 in Appendix A with such modifications as may be appropriate.
- (3) Subject to the foregoing provisions of this rule, the following provisions of these Rules, namely, Order 6, rule 6(3), Order 10, Order 11 and Order 12, shall apply in relation to a third party notice and to the proceedings begun thereby as if—
- (a) the third party notice were a writ and the proceedings begun thereby an action; and
- (b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action;

Provided that in the application of Order 11, rule (1)(c) leave may be granted to serve a third party notice outside the jurisdiction on any necessary or proper party to the proceedings brought against the defendant.

Third party directions (O.16, r.4)

- 4.—(1) If the third party gives notice of intention to defend, the defendant who issued the third party notice must, by summons to be served on all the other parties to the action, apply to the Court for directions.
- (2) If no summons is served on the third party under paragraph (1), the third party may, not earlier than 7 days after giving notice of intention to defend by summons to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.
- (3) On an application for directions under this rule the Court may—
- (a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant; or
- (b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or
- (c) dismiss the application and terminate the proceedings on the third party notice;

and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.

(4) On an application for directions under this rule the Court may give the third party leave to defend the action, either alone or jointly with any defendant, upon such terms as may be just, or to appear at the trial and to take such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the third party is to be bound by any judgment or decision in the action.

(5) Any order made or direction given under this rule may be varied or rescinded by the Court at any time.

Default of third party, etc. (O.16, r.5)

5.—(1) If a third party does not give notice of intention to defend or, having been ordered to serve a defence, fails to do so—

(a) he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action in so far as it is relevant to any claim, question or issue stated in that notice; and

(b) the defendant by whom the third party notice was issued may, if judgment in default is given against him in the action, at any time after satisfaction of that judgment and, with the leave of the Court, before satisfaction thereof, enter judgment against the third party in respect of any contribution or indemnity claimed in the notice, and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

(2) If a third party or the defendant by whom a third party notice was issued makes default in serving any pleading which he is ordered to serve, the Court may, on the application by summons of that defendant or the third party, as the case may be, order such judgment to be entered for the applicant as he is entitled to on the pleadings or may make such other order as may appear to the Court necessary to do justice between the parties.

The Court may at any time set aside or vary a judgment entered under paragraph (1)(b) or paragraph (2) on such terms (if any) as it thinks just.

Setting aside third party proceedings (O.16, r.6)

6. Proceedings on a third party notice may, at any stage of the proceedings, be set aside by the Court.

Judgment between defendant and third party (O.16, r.7)

7.—(1) Where in any action a defendant has served a third party notice, the Court may at or after the trial of the action or, if the action is decided otherwise than by trial, on an application by summons or motion, order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant.

O.16, r.8 THIRD PARTY AND SIMILAR PROCEEDINGS

(2) Where judgment is given for the payment of any contribution or indemnity to a person who is under a liability to make a payment in respect of the same debt or damage, execution shall not issue on the judgment without the leave of the Court until that liability has been discharged.

Claims and issues between a defendant and some other party (O.16, r.8)

8.—(1) Where in any action a defendant who has given notice of intention to defend—

- (a) claims against a person who is already a party to the action any contribution or indemnity; or
- (b) claims against such a person 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) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and himself but also as between either or both of them and some other person who is already a party to the action;

then, subject to paragraph (2), the defendant may, without leave, issue and serve on that person a notice containing a statement of the nature and grounds of his claim or, as the case may be, of the question or issue required to be determined.

(2) Where a defendant makes such a claim as is mentioned in paragraph (1) and that claim could be made by him by counterclaim in the action, paragraph (1) shall not apply in relation to the claim.

(3) No acknowledgment of service of such a notice shall be necessary if the person on whom it is served has acknowledged service of the writ or originating summons in the action or is a plaintiff therein, and the same procedure shall be adopted for the determination between the defendant by whom, and the person on whom, such a notice is served of the claim, question or issue stated in the notice as would be appropriate under this Order if the person served with the notice were a third party and (where he has given notice of intention to defend the action or is a plaintiff) had given notice of intention to defend the claim, question or issue.

Claims by third and subsequent parties (O.16, r.9)

9.—(1) Where a defendant has served a third party notice and the third party makes such a claim or requirement as is mentioned in rule 1 or rule 8, this Order shall, with the modification mentioned in paragraph (2) and any other necessary modifications, apply as if the third party were a defendant; and similarly where any further person to whom by virtue of this rule this Order applies as if he were a third party makes such a claim or requirement.

(2) The modification referred to in paragraph (1) is that paragraph (3) shall have effect in relation to the issue of a notice under rule 1 by a third party in substitution for rule 1(2).

(3) A third party may not issue a notice under rule 1 without the leave of the Court unless the action in question was begun by writ and he issues the notice before the expiration of 14 days after the time limited for acknowledging service of the notice issued against him.

Offer of contribution (O.16, r.10)

10. If, at any time after he has acknowledged service, a party to an action who stands to be held liable in the action to another party to contribute towards any debt or damages which may be recovered against that other party in the action, makes (without prejudice to his defence) a written offer to that other party to contribute to a specified extent to the debt or damages, then, notwithstanding that he reserves the right to bring the offer to the attention of the Judge at the trial, the offer shall not be brought to the attention of the Judge until after all questions of liability and amount of debt or damages have been decided.

Counterclaim by defendant (O.16, r.11)

11. Where in any action a counterclaim is made by a defendant, the foregoing provisions of this Order shall apply in relation to the counterclaim as if the subject-matter of the counterclaim were the original subject-matter of the action, and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

ORDER 17

INTERPLEADER

Entitlement to relief by way of interpleader (O.17, r.1)

1.—(1) Where—

- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto, or
- (b) claim is made to any money, goods or chattels taken or intended to be taken by a sheriff in execution under any process, or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued,

the person under liability as mentioned in sub-paragraph (a), or (subject to rule 2) the sheriff, may apply to the Court for relief by way of interpleader.

(2) References in this Order to a sheriff shall be construed as including references to any other officer charged with the execution of process by or under the authority of the High Court.

Claim to goods, etc., taken in execution (O.17, r.2)

2.—(1) Any person making a claim to or in respect of any money, goods or chattels taken or intended to be taken in execution under process of the Court, or to the proceeds or value of any such goods or chattels, must give notice of his claim to the sheriff charged with the execution of the process and must include in his notice a statement of his address, and that address shall be his address for service.

(2) On receipt of a claim made under this rule the sheriff must forthwith give notice thereof to the execution creditor and the execution creditor must, within 7 days after receiving the notice, give notice to the sheriff informing him whether he admits or disputes the claim.

An execution creditor who gives notice in accordance with this paragraph admitting a claim shall only be liable to the sheriff for any fees and expenses incurred by the sheriff before receipt of that notice.

(3) Where—

- (a) the sheriff receives a notice from an execution creditor under paragraph (2) disputing a claim, or the execution creditor fails, within the period mentioned in that paragraph, to give the required notice, and
- (b) the claim made under this rule is not withdrawn, the sheriff may apply to the Court for relief under this Order.

(4) A sheriff who receives a notice from an execution creditor under paragraph (2) admitting a claim made under this rule shall withdraw

from possession of the money, goods or chattels claimed and may apply to the Court for relief under this Order of the following kind, that is to say, an order restraining the bringing of an action against him for or in respect of his having taken possession of that money or those goods or chattels.

Mode of application (O.17, r.3)

3.—(1) An application for relief under this Order must be made by originating summons unless made in a pending action, in which case it must be made by summons in the action.

(2) Where the applicant is a sheriff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2(4), the summons must be served on any person who made a claim under that rule to or in respect of that money or those goods or chattels, and that person may attend the hearing of the application.

(3) An originating summons under this rule shall be in Form No. 10 in Appendix A.

(4) Subject to paragraph (5), a summons under this rule must be supported by evidence that the applicant—

- (a) claims no interest in the subject-matter in dispute other than for charges or costs,
- (b) does not collude with any of the claimants to that subject-matter, and
- (c) is willing to pay or transfer that subject-matter into Court or to dispose of it as the Court may direct.

(5) Where the applicant is a sheriff, he shall not provide such evidence as is referred to in paragraph (4) unless directed by the Court so to do.

(6) Any person who makes a claim under rule 2 and who is served with a summons under this rule shall within 14 days serve on the execution creditor and the sheriff an affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.

(7) Where the applicant is a sheriff a summons under this rule must give notice of the requirement in paragraph (6).

Powers of Court hearing summons (O.17, r.4)

4.—(1) Where on the hearing of a summons under this Order all the persons by whom adverse claims to the subject-matter in dispute (hereafter in this Order referred to as “the claimants”) appear, the Court may order—

- (a) that any claimant be made a defendant in any action pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this Order, or
- (b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which defendant.

(2) Where—

- (a) the applicant on a summons under this Order is a sheriff, or
- (b) all the claimants consent or any of them so requests, or
- (c) the question at issue between the claimants is a question of law and the facts are not in dispute,

the Court may summarily determine the question at issue between the claimants and make an order accordingly on such terms as may be just.

(3) Where a claimant, having been duly served with a summons for relief under this Order, does not appear on the hearing of the summons or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the claimant, and all persons claiming under him, for ever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

Power to order sale of goods taken in execution (O.17, r.5)

5. Where an application for relief under this Order is made by a sheriff who has taken possession of any goods or chattels in execution under any process, (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 may order those goods or chattels or any part thereof to be sold and may direct that the proceeds of sale be applied in such manner and on such terms as may be just and as may be specified in the order.

Power to stay proceedings (O.17, r.6)

6. Where a defendant to an action applies for relief under this Order in the action, the Court may by order stay all further proceedings in the action.

Other powers (O.17, r.7)

7. Subject to the foregoing rules of this Order, the Court may in or for the purposes of any interpleader proceedings make such order as to costs or any other matter as it thinks just.

One order in several causes or matters (O.17, r.8)

8. Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several causes or matters, the Court may make such an order; and the order shall be entitled in all those causes or matters and shall be binding on all the parties to them.

Discovery (O.17, r.9)

9. Orders 24 and 26 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other cause or matter.

Trial of interpleader issue (O.17, r.10)

10. (1) Order 35 shall, with the necessary modifications, apply to the trial of an interpleader issue as it applies to the trial of an action.

(2) The Court by whom an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

ORDER 18

PLEADINGS

Service of statement of claim (O.18, r.1)

1. Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are two or more defendants, on each defendant, and must do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 14 days after that defendant gives notice of intention to defend.

Service of defence (O.18, r.2)

2.—(1) Subject to paragraph (2), a defendant who gives notice of intention to defend an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 14 days after the time limited for acknowledging service of the writ or after the statement of claim is served on him, whichever is the later.

(2) If a summons under Order 14, rule 1, or under Order 86, rule 1, is served on a defendant before he serves his defence, paragraph (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within 14 days after the making of the order or within such other period as may be specified therein.

Service of reply and defence to counterclaim (O.18, r.3)

3.—(1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with rule 7 and if no reply is served, rule 13(1) will apply.

(2) A plaintiff on whom a defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to counterclaim.

(3) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, he must include them in the same document.

(4) A reply to any defence must be served by the plaintiff before the expiration of 14 days after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of 14 days after the service on him of the counterclaim to which it relates.

Pleadings subsequent to reply (O.18, r.4)

4. No pleading subsequent to a reply or a defence to counterclaim shall be served except with the leave of the Court.

Pleadings: formal requirements (O.18, r.5)

- 5.—(1) Every pleading in an action must bear on its face -
- (a) the year in which the writ in the action was issued and the number of the action,
 - (b) the title of the action,
 - (c) the description of the pleading, and
 - (d) the date on which it was served.
- (2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.
- (3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.
- (4) Every pleading of a party must be indorsed -
- (a) where the party sues or defends in person, with his name and address;
 - (b) in any other case, with the name or firm and business address of the solicitor by whom it was served and also (if the solicitor is the agent of another) the name or firm and business address of his principal.
- (5) Every pleading must be signed by the party's solicitor or by the party, if he sues or defends in person.

Facts, not evidence, to be pleaded (O.18, r.6)

- 6.—(1) Subject to the provisions of this rule, and rules 9, 10 and 11, every pleading must 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 those facts are to be proved, and the statement must be as brief as the nature of the case admits.
- (2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.
- (3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.
- (4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

Matters which must be specifically pleaded (O.18, r.7)

- 7.—(1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality-
- (a) which he alleges makes any claim or defence of the opposite party not maintainable; or

- (b) which, if not specifically pleaded, might take the opposite party by surprise; or
 - (c) which raises issues of fact not arising out of the preceding pleading.
- (2) Without prejudice to paragraph (1), a defendant to an action for the recovery of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.
- (3) A claim for exemplary damages must be specifically pleaded together with the facts on which the party pleading relies.

Matter may be pleaded whenever arising (O.18, r.8)

8. Subject to rules 6(1), 9 and 14(2), a party may in any pleading plead any matter which has arisen at any time, whether before or since the issue of the writ.

Departure (O.18, r.9)

9.—(1) A party shall not in any pleading make an allegation of fact, or raise any new ground or claim, inconsistent with a previous pleading of his.

(2) Paragraph (1) shall not be taken as prejudicing the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

Points of law may be pleaded (O.18, r.10)

10. A party may by his pleading raise any point of law.

Particulars of pleading (O.18, r.11)

11.—(1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words—

(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and

(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.

(3) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.

(4) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (3) the Court may, on such terms as it thinks just, order that party to serve on any other party—

(a) where he alleges knowledge, particulars of the facts on which he relies, and

(b) where he alleges notice, particulars of the notice.

(5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(6) Where the applicant for an order under this rule did not apply by letter for the particulars he requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

(7) Where particulars are given pursuant to a request, or order of the Court, the request or order shall be incorporated with the particulars, each item of the the particulars following immediately after the corresponding item of the request or order.

Admissions and denials (O.18, r.12)

12.—(1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 13 operates as a denial of it.

(2) A traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

(3) Subject to paragraph (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them.

(4) Any allegation that a party has suffered damage and any allegation as to the amount of damages is deemed to be traversed unless specifically admitted.

Denial by joinder of issue (O.18, r.13)

13.—(1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

(2) Subject to paragraph (3)—

(a) there is at the close of pleadings an implied joinder of issue on the pleading last served, and

(b) a party may in his pleading expressly join issue on the next preceding pleading.

(3) There can be no joinder of issue, implied or express, on a statement of claim or counterclaim.

(4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an implied or express join-

der of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a denial of every other such allegation.

Statement of claim (O.18, r.14)

14.—(1) A statement of claim must state specifically the relief or remedy which the plaintiff claims; but costs need not be specifically claimed.

(2) A statement of claim must not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned; but subject to that, a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the indorsement of the writ without amending the indorsement.

(3) Every statement of claim must bear on its face a statement of the date on which the writ in the action was issued.

Defence of tender (O.18, r.15)

15. Where in any action a defence of tender before action is pleaded, the defendant must pay into court in accordance with Order 22 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into court has been made.

Defence of set-off (O.18, r.16)

16. Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

Counterclaim and defence to counterclaim (O.18, r.17)

17. Without prejudice to the general application of this Order to a counterclaim and a defence to counterclaim, or to any provision thereof which applies to either of those pleadings specifically,—

(a) rule 14(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff;

(b) Rules 7(2), 15 and 16 shall, with the necessary modifications apply to a defence to counterclaim as they apply to a defence.

Striking out pleadings and indorsements (O.18, r.18)

18.—(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that—

(a) it discloses no reasonable cause of action or defence, as the case may be; or

(b) it is scandalous, frivolous or vexatious; or

- (c) it may prejudice, embarrass or delay the fair trial of the action; or
 - (d) it is otherwise an abuse of the process of the court;
- and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

Close of pleadings (O.18, r.19)

19.—(1) The pleadings in an action are deemed to be closed—

- (a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim, or
- (b) if neither a reply nor a defence to counterclaim is served, at the expiration of 14 days after service of the defence.

(2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

Trial without pleadings (O.18, r.20)

20.—(1) Where in an action to which this rule applies any defendant has given notice of intention to defend in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings, or further pleadings, as the case may be.

(2) If, on the hearing of an application under this rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any other reason the action can properly be tried without pleadings or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree such a statement, may settle the statement itself.

(3) Where the Court makes an order under paragraph (2), it shall, and where it dismisses an application for such an order, it may, give such directions as to the further conduct of the action as may be appropriate, and Order 25, rules 2 to 7, shall, with the omission of so much of rule 6(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application under this rule were a summons for directions.

(4) This rule applies to every action begun by writ other than one which includes—

- (a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or
- (b) a claim by the plaintiff based on an allegation of fraud.

Conviction, etc. to be adduced in evidence: matters to be pleaded
(O.18, r.21)

21.—(1) If in any action which is to be tried with pleadings, any party intends to adduce evidence that a person was convicted of an offence by or before a court in Fiji or by a Fiji court-martial there or elsewhere, he must include in his pleading a statement of his intention with particulars of—

- (a) the conviction and the date thereof,
- (b) the court or court-martial which made the conviction, and
- (c) the issue in the proceedings to which the conviction is relevant.

(2) Where a party's pleading includes such a statement as is mentioned in paragraph (1) then if the opposite party -

- (a) denies the conviction, to which the statement relates, or
- (b) alleges that the conviction was erroneous, or
- (c) denies that the conviction is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading.

ORDER 19

DEFAULT OF PLEADINGS

Default in service of statement of claim (O.19, r.1)

1. Where the plaintiff is required by these Rules to serve a statement of claim on a defendant and he fails to serve it on him, the defendant may, after the expiration of the period fixed by or under these Rules for service of the statement of claim, apply to the Court for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

Default of defence: claim for liquidated demand (O.19, r.2)

2.—(1) Where the plaintiff's claim against a defendant is for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

(2) Order 13, rule 1(2), shall apply for the purposes of this rule as it applies for the purposes of that rule.

Default of defence: claim for unliquidated damages (O.19, r.3)

3. Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

Default of defence: claim for detention of goods (O.19, r.4)

4.—(1) Where the plaintiff's claim against a defendant relates to the detention of goods only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for the service of the defence—

(a) at his option enter either—

(i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs, or

(ii) interlocutory judgment for the value of the goods to be assessed and costs, or

(b) apply by summons for judgment against that defendant for delivery of the goods without giving him the alternative of paying their assessed value,

and in any case proceed with the action against the other defendants, if any.

(2) A summons under paragraph (1)(b) must be supported by affidavit and, notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

Default of defence: Claim for possession of land (O.19, r.5)

5.—(1) Where the plaintiff's claim against a defendant is for possession of land only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may after the expiration of the period fixed by or under these Rules for service of the defence, and on producing a certificate by his barrister and solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in order 88 rule 1, enter judgment for possession of the land as against that defendant and for costs, and proceed with the action against the other defendants, if any.

(2) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

Default of defence: mixed claims (O.19, r.6)

6. Where the plaintiff makes against a defendant two or more of the claims mentioned in rules 2 to 5, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim made, and proceed with the action against the other defendants, if any.

Default of defence: other claims (O.19, r.7)

7.—(1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

(2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may—

- (a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or
- (b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or

is set down on motion for judgment, against the other defendants.

(3) An application under paragraph (1) must be by summons or motion.

Default of defence to counterclaim (O.19, r.8)

8. A defendant who counterclaims against a plaintiff shall be treated for the purposes of rule 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to counterclaim, those rules shall apply as if the counterclaim were a statement of claim, the defence to counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period fixed by or under these Rules for service of the defence were references to the period so fixed for service of the defence to counterclaim.

Setting aside judgment (O.19, r.9)

9. The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

ORDER 20

AMENDMENT

Amendment of writ without leave (O.20, r. 1)

1.—(1) Subject to paragraph (3), the plaintiff may, without the leave of the Court, amend the writ once at any time before the pleadings in the action begun by the writ are deemed to be closed.

(2) Where a writ is amended under this rule after service thereof, then, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on each defendant to the action.

(3) This rule shall not apply in relation to an amendment which consists of—

(a) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued, or

(b) the addition or substitution of a new cause of action, or

(c) (without prejudice to rule 3(1)) an amendment of the statement of claim (if any) indorsed on the writ,

unless the amendment is made before service of the writ on any party to the action.

Amendment of acknowledgment of service (O.20, r. 2)

2.—(1) Subject to paragraph (2), a party may not amend his acknowledgment of service without the leave of the Court.

(2) A party whose acknowledgment of service contains a statement to the effect that—

(a) he does, or

(b) he does not

intend to contest the proceedings to which the acknowledgment relates may, without the leave of the Court, amend the acknowledgment by substituting for that statement a statement to the opposite effect, provided that in a case falling under sub-paragraph (b) the amendment is made before judgment has been obtained in the proceedings.

(3) Where an acknowledgment of service is authorised to be amended under this rule, a fresh acknowledgment, amended as so authorised, must be handed in at or sent by post to the Registry and Order 12, rule 3 shall apply accordingly.

Amendment of pleadings without leave (O.20, r.3)

3.—(1) A party may, without the leave of the Court, amend any pleading of his once at any time before the pleadings are deemed to be closed and, where he does so, he must serve the amended pleading on the opposite party.

(2) Where an amended statement of claim is served on a defendant—

- (a) the defendant, if he has already served a defence on the plaintiff, may amend his defence, and
- (b) the period for service of his defence or amended defence, as the case may be, shall be either the period fixed by or under these Rules for service of his defence or a period of 14 days after the amended statement of claim is served on him, whichever expires later.

(3) Where an amended defence is served on the plaintiff by a defendant—

- (a) the plaintiff, if he has already served a reply on that defendant, may amend his reply, and
- (b) the period for service of his reply or amended reply, as the case may be, shall be 14 days after the amended defence is served on him.

(4) In paragraphs (2) and (3) references to a defence and a reply include references to a counterclaim and a defence to counterclaim respectively.

(5) Where an amended counterclaim is served by a defendant on a party (other than the plaintiff) against whom the counterclaim is made, paragraph (2) shall apply as if the counterclaim were a statement of claim and as if the party by whom the counterclaim is made were the plaintiff and the party against whom it is made a defendant.

(6) Where a party has pleaded to a pleading which is subsequently amended and served on him under paragraph (1), then, if that party does not amend his pleading under the foregoing provisions of this rule, he shall be taken to rely on it in answer to the amended pleading, and Order 18, rule 13(2), shall have effect in such a case as if the amended pleading had been served at the time when that pleading, before its amendment under paragraph (1), was served.

Application for disallowance of amendment made without leave

(O.20, r.4)

4.—(1) Within 14 days after the service on a party of a writ amended under rule 1(1) or of a pleading amended under rule 3(1), that party may apply to the Court to disallow the amendment.

(2) Where the Court hearing an application under this rule is satisfied that if an application for leave to make the amendment in question had been made under rule 5 at the date when the amendment was made under rule 1(1) or rule 3(1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.

(3) Any order made on an application under this rule may be made on such terms as to costs or otherwise as the Court thinks just.

Amendment of writ or pleading with leave (O.20, r.5)

5.—(1) Subject to Order 15, rules 6, 8 and 9 and the following provisions of this rule, the Court may at any stage of the proceedings allow

the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.

(4) An amendment to alter the capacity in which a party sues may be allowed under paragraph (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or has since acquired.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

Amendment of other originating process (O.20, r.6)

6. Rule 5 shall have effect in relation to an originating summons, a petition and an originating notice of motion as it has effect in relation to a writ.

Amendment of certain other documents (O.20, r.7)

7.—(1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) This rule shall not have effect in relation to a judgment or order.

Failure to amend after order (O.20, r.8)

8. Where the Court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, of a period of 14 days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the Court to extend the period.

Mode of amendment of writ, etc. (O.20, r.9)

9.—(1) Where the amendments authorised under any rule of this Order to be made in a writ, pleading or other document are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as so authorised, must be prepared and, in the case of a writ or originating summons, re-issued, but, except as aforesaid and subject to any direction given under rule 5 or 7, the amendments so authorised may be effected by making in writing the necessary alterations of the document and, in the case of a writ or originating summons, causing it to be re-sealed and filing a copy thereof.

(2) A writ, pleading or other document which has been amended under this Order must be indorsed with a statement that it has been amended, specifying the date on which it was amended, the name of the Judge or Registrar by whom the order (if any) authorising the amendment was made and the date thereof, or, if no such order was made, the number of the rule of this Order in pursuance of which the amendment was made.

Amendment of judgment and orders (O.20, r.10)

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

ORDER 21

WITHDRAWAL AND DISCONTINUANCE

Withdrawal of acknowledgment of service (O.21, r.1)

1. A party who has acknowledged service in an action may withdraw the acknowledgment at any time with the leave of the Court.

Discontinuance of action, etc., without leave (O.21, r.2)

2.—(1) Subject to paragraph (3), the plaintiff in an action begun by writ may, without the leave of the court, discontinue the action, or withdraw any particular claim made by him therein, as against any or all of the defendants at any time not later than 14 days after service of the defence on him, or, if there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned, and filing in the Registry a copy thereof.

(2) Subject to paragraph (3), a defendant to an action begun by writ may, without the leave of the Court,—

(a) withdraw his defence or any part of it at any time,

(b) discontinue a counterclaim, or withdraw any particular claim made by him therein, as against any or all of the parties against whom it is made, at any time not later than 14 days after service on him of a defence to counterclaim or, if the counterclaim is made against two or more parties, of the defence to counterclaim last served,

by serving a notice to that effect on the plaintiff or other party concerned, and filing in the Registry a copy thereof.

(3) A party in whose favour an interim payment has been ordered, in accordance with Order 29, rule 11, may not discontinue any action or counterclaim, or withdraw any particular claim therein, except with the leave of the Court or the consent of all the other parties.

(4) Where there are two or more defendants to an action begun by writ not all of whom serve a defence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period.

This paragraph shall apply in relation to a counterclaim as it applies in relation to an action with the substitution for references to a defence, to the plaintiff and to paragraph (1), of references to a defence to counterclaim, to the defendant and to paragraph (2) respectively.

(5) The plaintiff in an action begun by originating summons may, without the leave of the Court, discontinue the action or withdraw any

particular question or claim in the originating summons, as against any or all of the defendants at any time not later than 14 days after service on him of the defendant's affidavit evidence filed pursuant to Order 28, rule 2 or, if there are two or more defendants, of such evidence last served, by serving a notice to that effect on the defendant concerned.

(6) When there are two or more defendants to an action begun by originating summons not all of whom serve affidavit evidence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his affidavit evidence expires after the latest date on which any other defendant serves his affidavit evidence, paragraph 5 shall have effect as if the reference therein to the service of the affidavit evidence last served were a reference to the expiration of that period.

(7) If all the parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by a written consent to the action being withdrawn signed by all the parties.

Discontinuance of action, etc., with leave (O.21, r.3)

3.—(1) Except as provided by rule 2, a party may not discontinue an action (whether begun by writ or otherwise) or counterclaim, or withdraw any particular claim made by him therein, without the leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counterclaim to be discontinued, or any particular claim made therein to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.

(2) An application for the grant of leave under this rule may be made by summons or motion or by notice under Order 25, Rule 7.

Effect of discontinuance (O.21, r.4)

4. Subject to any terms imposed by the Court in granting leave under rule 3, the fact that a party has discontinued an action or counterclaim or withdrawn a particular claim made by him therein shall not be a defence to a subsequent action for the same, or substantially the same, cause of action.

Stay of subsequent action until costs paid (O.21, r.5)

5.—(1) Where a party has discontinued an action or counterclaim or withdrawn any particular claim made by him therein and he is liable to pay any other party's costs of the action or counterclaim or the costs occasioned to any other party by the claim withdrawn, then if, before payment of those costs, he subsequently brings an action for the same, or substantially the same, cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.

(2) An application for an order under this rule may be made by summons or motion or by notice under Order 25, Rule 7.

Withdrawal of summons (O.21, r.6)

6. A party who has taken out a summons in a cause or matter may not withdraw it without the leave of the Court.

ORDER 22

PAYMENT INTO AND OUT OF COURT

Payment into court (O.22, r.1)

1.—(1) In any action for a debt or damages any defendant may at any time pay into Court a sum of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all of those causes of action.

(2) On making any payment into Court under this rule, and on increasing any such payment already made, the defendant must give notice thereof in Form No. 11 in Appendix A to the plaintiff and every other defendant (if any); and within three days after receiving the notice the plaintiff must send the defendant a written acknowledgement of its receipt.

(3) A defendant may, without leave, give notice of an increase in a payment made under this rule but, subject to that and without prejudice to paragraph (5), a notice of payment may not be withdrawn or amended without the leave of the Court which may be granted on such terms as may be just.

(4) Where two or more causes of action are joined in the action and money is paid into Court under this rule in respect of all, or some only of, those causes of action, the notice of payment—

- (a) must state that the money is paid in respect of all those causes of action or, as the case may be, must specify the cause or causes of action in respect of which the payment is made, and
- (b) where the defendant makes separate payments in respect of each, or any two or more, of those causes of action, must specify the sum paid in respect of that cause or, as the case may be, those causes of action.

(5) Where a single sum of money is paid into Court under this rule in respect of two or more causes of action, then, if it appears to the Court that the plaintiff is embarrassed by the payment, the Court may, subject to paragraph (6), order the defendant to amend the notice of payment so as to specify the sum paid in respect of each cause of action.

(6) Where a cause of action under the Compensation to Relatives Act (Cap. 29) and a cause of action under the Law Reform (Miscellaneous Provisions) (Death and Interest) Act are joined in an action, with or without any other cause of action, the causes of action under the said Acts shall, for the purpose of paragraph (5), be treated as one cause of action. (Cap. 27)

(7) For the purposes of this rule, the plaintiff's cause of action in respect of a debt or damages shall be construed as a cause of action in res-

pect, also, of such interest as might be included in the judgment, if judgment were given at the date of the payment into Court.

Payment in by defendant who has counterclaimed (O.22, r.2)

2. Where a defendant, who makes by counterclaim a claim against the plaintiff for a debt or damages, pays a sum or sums of money into Court under rule 1, the notice of payment must state, if it be the case, that in making the payment the defendant has taken into account and intends to satisfy—

- (a) the cause of action in respect of which he claims, or
- (b) where two or more causes of action are joined in the counterclaim, all those causes of action or, if not all, which of them.

Acceptance of money paid into Court (O.22, r.3)

3.—(1) Where money is paid into Court under rule 1, then subject to paragraph (2), within 21 days after receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within 21 days after receipt of the notice of the last payment or the amended notice but, in any case, before the trial or hearing of the action begins, the plaintiff may—

- (a) where the money was paid in respect of the cause of action or all the causes of action in respect of which he claims, accept the money in satisfaction of that cause of action or those causes of action, as the case may be, or
- (b) where the money was paid in respect of some only of the causes of action in respect of which he claims, accept in satisfaction of any such cause or causes of action the sum specified in respect of that cause or those causes of action in the notice of payment, by giving notice in Form No. 12 in Appendix A to every defendant to the action.

(2) Where after the trial or hearing of an action has begun—

- (a) money is paid into court under rule 1, or
- (b) money in court is increased by a further payment into court under that rule,

the plaintiff may accept the money in accordance with paragraph (1) within 2 days after receipt of the notice of payment or notice of the further payment, as the case may be, but, in any case, before the judge begins to deliver judgment.

(3) Rule 1 (5) shall not apply in relation to money paid into court in an action after the trial or hearing of the action has begun.

(4) On the plaintiff accepting any money paid into court all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates, both against the defendant making the payment and against any other defendant sued jointly with or in the alternative to him shall be stayed.

(5) Where money is paid into court by a defendant who made a counterclaim and the notice of payment stated, in relation to any sum so paid, that in making the payment the defendant had taken into account and satisfied the cause or causes of action, or the specified cause or causes of

action in respect of which he claimed, then, on the plaintiff accepting that sum, all further proceedings on the counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.

(6) A plaintiff who has accepted any sum paid into court shall, subject to rules 4 and 9 and Order 80, rule 10, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptance relates.

Order for payment out of money accepted required in certain cases (O.22, r.4)

4.—(1) Where a plaintiff accepts any sum paid into Court and that sum was paid into Court—

- (a) by some but not all of the defendants sued jointly or in the alternative by him, or
- (b) with a defence of tender before action, or
- (c) in satisfaction either of causes of action arising under the Compensation to Relatives Act and the Law Reform (Miscellaneous Provisions) (Death and Interest) Act, or of a cause of action arising under the first mentioned Act where more than one person is entitled to the money,

(Cap. 29)
(Cap. 27)

the money in Court shall not be paid out except under paragraph (2) or in pursuance of an order of the Court, and the order shall deal with the whole costs of the action or of the cause of action to which the payment relates, as the case may be.

(2) Where an order of the Court is required under paragraph (1) by reason only of paragraph (1)(a), then if, either before or after accepting the money paid into Court by some only of the defendants sued jointly or in the alternative by him, the plaintiff discontinues the action against all other defendants and those defendants consent in writing to the payment out of that sum, it may be paid out without an order of the Court.

(3) Where after the trial or hearing of an action has begun a plaintiff accepts any money paid into court and all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates are stayed by virtue of rule 3(4), then, notwithstanding anything in paragraph (2), the money shall not be paid out except in pursuance of an order of the Court, and the order shall deal with the whole costs of the action.

Money remaining in Court (O.22, r.5)

5. If any money paid into Court in an action is not accepted in accordance with rule 3, the money remaining in court shall not be paid out except in pursuance of an order of the Court which may be made at any time before, at or after the trial or hearing of the action; and where such an order is made before the trial or hearing the money shall not be paid out except in satisfaction of the cause or causes of action in respect of which it was paid in.

Counterclaim (O. 22, r.6)

6. A plaintiff against whom a counterclaim is made and any other defendant to the counterclaim may pay money into Court in accordance with rule 1, and that rule and rules 3 (except paragraph (5)), 4 and 5 shall apply accordingly with the necessary modifications.

Non-disclosure of payment into Court (O.22, r.7)

7. Except in an action to which a defence of tender before action is pleaded, and except in an action all further proceedings in which are stayed by virtue of rule 3(4) after the trial or hearing has begun, the fact that money has been paid into Court under the foregoing provisions of this Order shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or counterclaim or of any question or issue as to the debt or damages until all questions of liability and of the amount of debt or damages have been decided.

Money paid into Court under order (O.22, r.8)

8.—(1) Subject to paragraph (2) money paid into Court under an order of the Court or a certificate of the Registrar shall not be paid out except in pursuance of an order of the Court.

(2) Unless the Court otherwise orders, a party who has paid money into Court in pursuance of an order made under Order 14—

(a) may by notice to the other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made in the writ or counterclaim, as the case may be, and specified in the notice, or

(b) if he pleads a tender, may by his pleading appropriate the whole or any part of the money as payment into Court of the money alleged to have been tendered;

and money appropriated in accordance with this rule shall be deemed to be money paid into Court in accordance with rule 1 or money paid into Court with a plea of tender, as the case may be, and this Order shall apply accordingly.

To whom payment to be made (O.22, r.9)

9. Payment out of money in Court shall be made to the person entitled or, on his written authority, to his solicitor, or, if the Court so orders, to his solicitor without such authority.

Payment out: small intestate estates (O.22, r.10)

10. Where a person entitled to a fund in Court, or a share of such fund, dies intestate and the Court is satisfied that no grant of administration of his estate has been made and that the assets of his estate do not exceed \$2,000 in value, including the value of the fund or share, it may order that the fund or share shall be paid to the person who, being a widower, widow, child, father, mother, brother or sister of the deceased, would have the prior right to a grant of administration of the estate of the deceased.

Mode in which money in Court to be dealt with (O.22, r.11)

11. Money to be paid into Court shall be paid to the Registrar who shall pay it into his official banking account.

ORDER 23

SECURITY FOR COSTS

Security for costs of action, etc. (O.23, r.1)

1.—(1) Where, on the application of a defendant to an action or other proceeding in the High Court, it appears to the Court—

- (a) that the plaintiff is ordinarily resident out of the jurisdiction, or
- (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so, or
- (c) subject to paragraph (2), that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein, or
- (d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just.

(2) The court shall not require a plaintiff to give security by reason only of paragraph (1)(c) if he satisfies the Court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.

(3) The references in the foregoing paragraphs to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counterclaim.

Manner of giving security (O.23, r.2)

2. Where an order is made requiring any party to give security for costs, the security shall be given in such manner, at such time, and on such terms (if any), as the Court may direct.

Saving for enactments (O.23, r.3)

3. This Order is without prejudice to the provisions of any enactment which empowers the Court to require security to be given for the costs of any proceedings.

The State may not be ordered to give security (O.23, r.4)

4. For the avoidance of doubt it is hereby declared that an order to give security for costs may not be made against the State in any proceedings.

ORDER 24

DISCOVERY AND INSPECTION OF DOCUMENTS

Mutual discovery of documents (O.24, r.1)

1.—(1) After the close of pleadings in an action begun by writ there shall, subject to and in accordance with the provisions of this Order, be discovery by the parties to the action of the documents which are or have been in their possession, custody or power relating to matters in question in the action.

(2) Nothing in this Order shall be taken as preventing the parties to an action agreeing to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

Discovery by parties without order (O.24, r.2)

2.—(1) Subject to the provisions of this rule and of rule 4, the parties to an action between whom pleadings are closed must make discovery by exchanging lists of documents and, accordingly, each party must, within 14 days after the pleadings in the action are deemed to be closed as between him and any other party, make and serve on that other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the action. Without prejudice to any directions given by the Court under Order 16, rule 4, this paragraph shall not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

✓(2) Unless the Court otherwise orders, a defendant to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle shall not make discovery of any documents to the plaintiff under paragraph (1).

(3) Paragraph (1) shall not be taken as requiring a defendant to an action for the recovery of any penalty recoverable by virtue of any enactment to make discovery of any documents.

(4) Paragraphs (2) and (3) shall apply in relation to a counterclaim as they apply in relation to an action but with the substitution, for the reference in paragraph (2) to the plaintiff, of a reference to the party making the counterclaim.

(5) On the application of any party required by this rule to make discovery of documents, the Court may—

(a) order that the parties to the action or any of them shall make discovery under paragraph (1) of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order, or

(b) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at the stage of the action, order that

there shall be no discovery of documents by any or all of the parties either at all or at that stage;
and the Court shall make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the action or for saving costs.

(6) An application for an order under paragraph (5) must be by summons, and the summons must be taken out before the expiration of the period within which by virtue of this rule discovery of documents in the action is required to be made.

(7) Any party to whom discovery of documents is required to be made under this rule may, at any time before the summons for directions in the action is taken out, serve on the party required to make such discovery a notice requiring him to make an affidavit verifying the list he is required to make under paragraph (1), and the party on whom such a notice is served must, within 14 days after service of the notice, make and file an affidavit in compliance with the notice and serve a copy of the affidavit on the party by whom the notice was served.

Order for discovery (O.24, r.3)

3.—(1) Subject to the provisions of this rule and of rules 4 and 8, the Court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.

(2) Where a party who is required by rule 2 to make discovery of documents fails to comply with any provision of that rule, the Court, on the application of any party to whom the discovery was required to be made, may make an order against the first-mentioned party under paragraph (1) of this rule or, as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under rule 2 and to serve a copy thereof on the applicant.

(3) An order under this rule may be limited to such documents or classes of document only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

Order for determination of issue, etc., before discovery (O.24, r.4)

4.—(1) Where on an application for an order under rule 2 or 3 it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

(2) Where in an action begun by writ an order is made under this rule for the determination of an issue or question, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application on which the order was made were a summons for directions.

Form of list and affidavit (O.24, r.5)

5.—(1) A list of documents made in compliance with rule 2 or with an order under rule 3 must be in Form No. 13 in Appendix A, and must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

(2) If it is desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made as aforesaid verifying a list of documents must be in Form No. 14 in Appendix A.

Defendant entitled to copy of co-defendant's list (O.24, r.6)

6.—(1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing rules of this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) A party required by virtue of paragraph (1) to supply a copy of a list of documents must supply it free of charge on a request made by the party entitled to it.

(3) Where in an action begun by originating summons the Court makes an order under rule 3 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.

(4) In this rule "list of documents" includes an affidavit verifying a list of documents.

Order for discovery of particular documents (O.24, r.7)

7.—(1) Subject to rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power, when he parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 2 or rule 3.

(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

Discovery to be ordered only if necessary (O.24, r.8)

8. On the hearing of an application for an order under rule 3 or 7, the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

Inspection of documents referred to in list (O.24, r. 9)

9. A party who has served a list of documents on any other party, whether in compliance with rule 2 or with an order under rule 3, must allow the other party to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies thereof and, accordingly, he must when he serves the list on the other party also serve on him a notice stating a time within 7 days after the service thereof at which the said documents may be inspected at a place specified in the notice.

Inspection of documents referred to in pleadings and affidavits (O.24, r.10)

10.—(1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies thereof.

(2) The party on whom a notice is served under paragraph (1) must, within 4 days after service of the notice, serve on the party giving the notice a notice stating a time within 7 days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he objects to produce and on what grounds.

Order for production for inspection (O.24, r.11)

11.—(1) If a party who is required by rule 9 to serve such a notice as is therein mentioned or who is served with a notice under rule 10(1)—

- (a) fails to serve a notice under rule 9 or, as the case may be, rule 10(2), or
- (b) objects to produce any document for inspection, or
- (c) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there;

then, subject to rule 13(1), the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

(2) Without prejudice to paragraph (1), but subject to rule 13(1) the Court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.

O.24, r.12 DISCOVERY AND INSPECTION OF DOCUMENTS

(3) An application for an order under paragraph (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the cause or matter.

Order for production to Court (O.24, r.12)

12. At any stage of the proceedings in any cause or matter the Court may, subject to rule 13(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit.

Production to be ordered only if necessary, etc. (O.24, r.13)

13.—(1) No order for the production of any documents for inspection or to the Court shall be made under any of the foregoing rules unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where on an application under this Order for production of any document for inspection or to the Court, privilege from such production is claimed or objection is made to such production on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

Production of business books (O.24, r.14)

14.—(1) Where production of any business books for inspection is applied for under any of the foregoing rules, the Court may, instead of ordering production of the original books for inspection, order a copy of any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.

(2) Any such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

Document disclosure of which would be injurious to public interest: saving (O.24, r.15)

15. The foregoing provisions of this Order shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

Failure to comply with requirement for discovery, etc. (O.24, r.16)

16.—(1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose, fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision, to rules 3(2) and 11(1),—

- (a) that party shall not be entitled subsequently to produce a document in respect of which default was made without the leave of the Court, and
 - (b) the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.
- (2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.
- (3) Service on a party's barrister and solicitor of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.
- (4) A barrister and solicitor on whom such an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

Revocation and variation of orders (O.24, r.17)

17. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

ORDER 25

SUMMONS FOR DIRECTIONS

Summons for directions (O.25, r.1)

1.—(1) With a view to providing, in every action to which this rule applies, an occasion for the consideration by the Court of the preparations for the trial of the action, so that—

- (a) all matters which must or can be dealt with on interlocutory applications and have not already been dealt with may so far as possible be dealt with, and
- (b) such directions may be given as to the future course of the action as appear best adapted to secure the just, expeditious and economical disposal thereof,

the plaintiff must, within one month after the pleadings in the action are deemed to be closed, take out a summons (in these Rules referred to as a summons for directions) returnable in not less than 14 days.

(2) This rule applies to all actions begun by writ except—

- (a) actions in which the plaintiff or defendant has applied for judgment under Order 14, or in which the plaintiff has applied for judgment under Order 86, and directions have been given under the relevant Order;
- (b) actions in which the plaintiff or defendant has applied under Order 18, rule 20, for trial without pleadings or further pleadings and directions have been given under that rule;
- (c) actions in which an order has been made under Order 24, rule 4, for the trial of an issue or question before discovery;
- (d) actions in which directions have been given under Order 29, rule 7;
- (e) actions in which an order for the taking of an account has been made under Order 43, r. 1;
- (f) actions for personal injuries for which automatic directions are provided by rule 8.

(3) Where, in the case of any action in which discovery of documents is required to be made by any party under Order 24, rule 2, the period of 14 days referred to in paragraph (1) of that rule is extended, whether by consent or by order of the Court or both by consent and by order, paragraph (1) of this rule shall have effect in relation to that action as if for the reference therein to one month after the pleadings in the action are deemed to be closed there were substituted a reference to 14 days after the expiration of the period referred to in paragraph (1) of the said rule 2 as so extended.

(4) If the plaintiff does not take out a summons for directions in accordance with the foregoing provisions of this rule, the defendant or any defendant may do so or apply for an order to dismiss the action.

(5) On an application by a defendant to dismiss the action under paragraph (4) the Court may either dismiss the action on such terms as may be just or deal with the application as if it were a summons for directions.

(6) In the case of an action which is proceeding only as respects a counterclaim, references in this rule to the plaintiff and defendant shall be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.

(7) Notwithstanding anything in paragraph (1), any party to an action to which this rule applies may take out a summons for directions at any time after the defendant has given notice of intention to defend, or, if there are two or more defendants, at least one of them has given such notice.

Duty to consider all matters (O.25, r.2)

2.—(1) When the summons for directions first comes to be heard, the Court shall consider whether—

- (a) it is possible to deal then with all the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons for directions, or
- (b) it is expedient to adjourn the consideration of all or any of those matters until a later stage.

(2) If when the summons for directions first comes to be heard the Court considers that it is possible to deal then with all the said matters, it shall deal with them forthwith and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are also then dealt with.

(3) If, when the summons for directions first comes to be heard, the Court considers that it is expedient to adjourn the consideration of all or any of the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons, the Court shall deal forthwith with such of those matters as it considers can conveniently be dealt with forthwith and adjourn the consideration of the remaining matters and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are dealt with either then or at a resumed hearing of the summons for directions.

(4) Subject to paragraph (5), and except where the parties agree to the making of an order under Order 33 as to the place or mode of trial before all the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons for directions have been dealt with, no such order shall be made until all those matters have been dealt with.

(5) If, on the summons for directions, an action is ordered to be transferred to a Magistrate's court or some other court or tribunal

paragraph (4) shall not apply and nothing in this Order shall be construed as requiring the Court to make any further order on the summons.

(6) If the hearing of the summons for directions is adjourned without a day being fixed for the resumed hearing thereof, any party may restore it to the list on 2 days' notice to the other parties.

Particular matters for consideration (O.25, r.3)

3. On the hearing of the summons for directions the Court shall in particular consider, if necessary of its own motion, whether for the purpose of saving costs any order should be made or direction given in the exercise of the powers conferred by any of the following provisions, that is to say—

- (a) section 3(2) of the Evidence Act (which enables the Court to order the admission in evidence of statements in documents notwithstanding that the makers of the statements are not called as witnesses and notwithstanding that the original document is not produced);
- (b) Order 20, rule 5 and Order 38, rules 2 to 7.

Admissions and agreements to be made (O.25, r.4)

4. At the hearing of the summons for directions, the Court shall endeavour to secure that the parties make all admissions and all agreements as to the conduct of the proceedings which ought reasonably to be made by them and may cause the order on the summons to record any admissions or agreements so made, and (with a view to such special order, if any, as to costs as may be just being made at the trial) any refusal to make any admission or agreement.

Limitation of right of appeal (O.25, r.5)

5. Nothing in rule 4 shall be construed as requiring the Court to endeavour to secure that the parties shall agree to exclude or limit any right of appeal, but the order made on the summons for directions may record any such agreement.

Duty to give all information at hearing (O.25, r.6)

6.—(1) Subject to paragraph (2), no affidavit shall be used on the hearing of the summons for directions except by the leave or direction of the Court, but, subject to paragraph (4), it shall be the duty of the parties to the action and their advisers to give all such information and produce all such documents on any hearing of the summons as the Court may reasonably require for the purposes of enabling it properly to deal with the summons.

The Court may, if it appears proper so to do in the circumstances, authorise any such information or documents to be given or produced to the Court without being disclosed to the other parties but, in the absence of such authority, any information or document given or produced under this paragraph shall be given or produced to all the parties present or represented on the hearing of the summons as well as to the Court.

(2) No leave shall be required by virtue of paragraph (1) for the use of an affidavit by any party on the hearing of the summons for directions in connection with any application thereat for any order if, under any of these rules, an application for such an order is required to be supported by an affidavit.

(3) If the Court on any hearing of the summons for directions requires a party to the action or his solicitor to give any information or produce any document and that information or document is not given or produced, then, subject to paragraph (4), the Court may—

- (a) cause the facts to be recorded in the order with a view to such special order, if any, as to costs as may be just being made at the trial, or
- (b) if it appears to the Court to be just so to do, order the whole or any part of the pleadings of the party concerned to be struck out, or, if the party is plaintiff or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.

(4) Notwithstanding anything in the foregoing provisions of this rule, no information or documents which are privileged from disclosure shall be required to be given or produced under this rule by or by the advisers of any party otherwise than with the consent of that party.

Duty to make all interlocutory applications on summons for directions (O.25, r.7)

7.—(1) Any party to whom the summons for directions is addressed must so far as practicable apply at the hearing of the summons for any order or directions which he may desire as to any matter capable of being dealt with on an interlocutory application in the action and must not less than 7 days before the hearing of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons.

(2) If the hearing of the summons for directions is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or directions not asked for by the summons or in any notice given under paragraph (1), he must, not less than 7 days before the resumed hearing of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons or in any such notice as aforesaid.

(3) Any application subsequent to the summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action must be made under the summons by 2 clear days' notice to the other party stating the grounds of the application.

Automatic directions in personal injury actions (O.25, r.8)

8.—(1) When the pleadings in any action to which this rule applies are deemed to be closed the following directions shall take effect automatically:

- (a) there shall be discovery of documents within 14 days in accordance with Order 24, rule 2, and inspection within seven days thereafter, save that where liability is admitted, or where the action arises out of a road accident, discovery shall be limited to disclosure by the plaintiff of any documents relating to special damages;
- (b) subject to paragraph (2), where any party intends to place reliance at the trial on expert evidence, he shall, within 10 weeks, disclose the substance of that evidence to the other parties in the form of a written report, which shall be agreed if possible;
- (c) unless such reports are agreed, the parties shall be at liberty to call as expert witnesses those witnesses the substance of whose evidence has been disclosed in accordance with the preceding sub-paragraph, except that the number of expert witnesses shall be limited in any case to two medical experts and one expert of any other kind;
- (d) photographs, a sketch plan and the contents of any police accident report book shall be receivable in evidence at the trial, and shall be agreed if possible.

(2) Where paragraph 1(b) applies to more than one party the reports shall be disclosed by mutual exchange, medical for medical and non-medical for non-medical, within the time provided or as soon thereafter as the reports on each side are available.

(3) Nothing in paragraph (1) shall prevent any party to an action to which this rule applies from applying to the Court for such further or different directions or orders as may, in the circumstances, be appropriate.

(4) For the purposes of this rule—

“a road accident” means an accident on land due to a collision or apprehended collision involving a vehicle; and “documents relating to special damages” include documents relating to any industrial injury, industrial disablement or sickness benefit rights.

(5) This rule applies to any action for personal injuries except any action where the pleadings contain an allegation of a negligent act or omission in the course of medical treatment.

ORDER 26

INTERROGATORIES

Discovery by interrogatories (O.26, r.1)

1.—(1) A party to any cause or matter may apply to the Court for an order—

- (a) giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter, and
- (b) requiring that other party to answer the interrogatories on affidavit within such period as may be specified in the order.

(2) A copy of the proposed interrogatories must be served with the summons, or the notice under Order 25, rule 7, by which the application for such leave is made.

(3) On the hearing of an application under this rule, the Court shall give leave as to such only of the interrogatories as it considers necessary either for disposing fairly of the cause or matter or for saving costs; and in deciding whether to give leave the Court shall take into account any offer made by the party to be interrogated to give particulars or to make admissions or to produce documents relating to any matter in question

(4) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) shall be disallowed notwithstanding that it might be admissible in oral cross-examination of a witness.

Interrogatories where party is a body of persons (O.26, r.2)

2. Where a party to a cause or matter is a body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or be sued whether in its own name or in the name of an officer or other person, the Court may, on the application of any other party, make an order allowing him to serve interrogatories on such officer or member of the body as may be specified in the order.

Statement as to party, etc., required to answer (O.26, r.3)

3. Where interrogatories are to be served on two or more parties or are required to be answered by an agent or servant of a party, a note at the end of the interrogatories shall state which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.

Objection to answer on ground of privilege (O.26, r.4)

4. Where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his affidavit in answer.

Insufficient answer (O.26, r.5)

5. If any person on whom interrogatories have been served answers any of them insufficiently, the Court may make an order requiring him to make a further answer, and either by affidavit or on oral examination as the Court may direct.

Failure to comply with order (O.26, r.6)

6.—(1) If a party against whom an order is made under rule 1 or 5 fails to comply with it, the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If a party against whom an order is made under rule 1 or 5 fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.

(3) Service on a party's solicitor of an order to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

Use of answers to interrogatories at trial (O.26, r.7)

7. A party may put in evidence at the trial of a cause or matter, or of any issue therein, some only of the answers to interrogatories, or part only of such an answer, without putting in evidence the other answers or, as the case may be, the whole of that answer, but the Court may look at the whole of the answers and if of opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one ought not to be so used without the other, the Court may direct that that other answer or part shall be put in evidence.

Revocation and variation of orders (O.26, r.8)

8. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

ORDER 27

ADMISSIONS

Admission of case of other party (O.27, r.1)

1. Without prejudice to Order 18, rule 13, a party to a cause or matter may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Notice to admit (O.27, r.2)

2.—(1) A party to a cause or matter may not later than 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit, for the purpose of that cause or matter only, such facts or such part of his case as may be specified in the notice.

(2) An admission made in compliance with a notice under this rule shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made or in favour of any person other than the person by whom the notice was given, and the Court may at any time allow a party to amend or withdraw an admission so made by him on such terms as may be just.

Judgment on admissions (O.27, r.3)

3. Where admissions of fact or of part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court 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 and the Court may give such judgment or make such order on the application as it thinks just.

Admission and production of documents specified in list of documents (O.27, r.4)

4.—(1) Subject to paragraph (2) and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a list of documents is served in pursuance of any provision of Order 24 shall, unless the Court otherwise orders, be deemed to admit—

(a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been, and

(b) that any document described therein as a copy is a true copy.

This paragraph does not apply to a document the authenticity of which the party has denied in his pleading.

(2) If before the expiration of 21 days after inspection of the documents specified in a list of documents or after the time limited for

inspection of those documents expires, whichever is the later, the party on whom the list is served serves on the party whose list it is a notice stating, in relation to any document specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial, he shall not be deemed to make any admission in relation to that document under paragraph (1).

(3) A party to a cause or matter by whom a list of documents is served on any other party in pursuance of any provision of Order 24 shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the documents specified in the list as are in his possession, custody or power.

(4) The foregoing provisions of this rule apply in relation to an affidavit made in compliance with an order under Order 24, rule 7, as they apply in relation to a list of documents served in pursuance of any provision of that Order.

Notices to admit or produce documents (O.27, r.5)

5.—(1) Except where rule 4(1) applies, a party to a cause or matter may within 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit the authenticity of the documents specified in the notice.

(2) If a party on whom a notice under paragraph (1) is served desires to challenge the authenticity of any document therein specified he must, within 21 days after service of the notice, serve on the party by whom it was given a notice stating that he does not admit the authenticity of the document and requires it to be proved at the trial.

(3) A party who fails to give a notice of non-admission in accordance with paragraph (2) in relation to any document shall be deemed to have admitted the authenticity of that document unless the Court otherwise orders.

(4) Except where rule 4(3) applies, a party to a cause or matter may serve on any other party a notice requiring him to produce the documents specified in the notice at the trial of the cause or matter.

ORDER 28

ORIGINATING SUMMONS PROCEDURE

Application (O.28, r.1)

1. The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these rules or by or under any Act; and, subject as aforesaid, Order 32, rule 5, shall apply in relation to originating summonses as it applies in relation to other summonses.

Affidavit evidence (O.28, r.2)

2.—(1) In any cause or matter begun by originating summons (not being an *ex parte* summons) the plaintiff must, before the expiration of 14 days after the defendant has acknowledged service, or, if there are two or more defendants, at least one of them has acknowledged service, file with the Registry the affidavit evidence on which he intends to rely.

(2) In the case of an *ex parte* summons the applicant must file his affidavit evidence not less than 4 clear days before the day fixed for the hearing.

(3) Copies of the affidavit evidence filed in court under paragraph (1) must be served by the plaintiff on the defendant, or, if there are two or more defendants, on each defendant, before the expiration of 14 days after service has been acknowledged by that defendant.

(4) Where a defendant who has acknowledged service wishes to adduce affidavit evidence he must within 28 days after service on him of copies of the plaintiff's affidavit evidence under paragraph (3) file his own affidavit evidence with the Registry and serve copies thereof on the plaintiff and on any other defendant who is affected thereby.

(5) A plaintiff on whom a copy of a defendant's affidavit evidence has been served under paragraph (4) may within 14 days of such service file with the Registry further affidavit evidence in reply and shall in that event serve copies thereof on that defendant.

(6) No other affidavit shall be received in evidence without the leave of the Court.

(7) Where an affidavit is required to be served by one party on another party it shall be served without prior charge.

(8) The provisions of this rule apply subject to any direction by the Court to the contrary.

(9) In this rule references to affidavits and copies of affidavits include references to exhibits to affidavits and copies of such exhibits.

Fixing time for attendance of parties before Court (O.28,r.3)

3.—(1) In the case of an originating summons which is in Form No. 3 in Appendix A the plaintiff must, within one month of the expiry of the

time within which copies of affidavit evidence may be served under rule 2, obtain an appointment for the attendance of the parties before the Court for the hearing of the summons, and a day and time for their attendance shall be fixed by a notice (in Form No. 15 in Appendix A) sealed with the seal of the Court.

(2) A day and time for the attendance of the parties before the Court for the hearing of an originating summons which is in Form No. 14 in Appendix A, or for the hearing of an *ex parte* originating summons, may be fixed on the application of the plaintiff or applicant, as the case may be and, in the case of a summons which is required to be served, the time limited for acknowledging service shall, where appropriate, be abridged so as to expire on the next day but one before the day so fixed, and the time limits for lodging affidavits under rule 2(2) and (3) shall, where appropriate, be abridged so as to expire, respectively, on the fifth day before, and the next day but one before, the day so fixed.

(3) Where a plaintiff fails to apply for an appointment under paragraph (1), any defendant may, with the leave of the Court, obtain an appointment in accordance with that paragraph provided that he has acknowledged service of the originating summons.

Notice of hearing (O.28, r.4)

4.—(1) Not less than 4 clear days before the day fixed under rule 3 for the attendance of the parties before the Court for the hearing of an originating summons which is in Form No. 3 in Appendix A, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party who has acknowledged service of the summons and, if the first-mentioned party is a defendant, on the plaintiff.

(2) Not less than 4 clear days before the day fixed under rule 3 for the hearing of an originating summons which is in Form No. 4 in Appendix A, the plaintiff must serve the summons on every defendant or, if any defendant has already been served with the summons, must serve on that defendant notice of the day fixed for hearing.

Directions, etc., by Court (O.28, r.5)

5.—(1) The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the order may be varied or revoked by a subsequent order of the Court on such terms as it thinks just.

(2) In any case where the Court does not dispose of any originating summons altogether at a hearing, or order, the cause or matter begun by it to be transferred to a Magistrate's Court or some other court or tribunal or make an order under rule 9, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(3) Without prejudice to the generality of paragraph (2), the Court shall, at as early a stage of the proceedings on the summons as appears to

it to be practicable, consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing the summons on oral evidence or mainly on oral evidence and, if it thinks fit, may order that no further evidence shall be filed and that the summons shall be heard on oral evidence or partly on oral evidence and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.

(4) Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination and any directions which it could give under Order 25 if the cause or matter had been begun by writ and the summons were a summons for directions under that Order.

Adjournment of summons (O.28, r.6)

6.—(1) The hearing of the summons by the Court may (if necessary) be adjourned from time to time, either generally or to a particular date, as may be appropriate, and the powers of the Court under rule 5 may be exercised at any resumed hearing.

(2) If the hearing of the summons is adjourned generally, the party on whose application the day for its hearing was fixed under rule 3 may restore it to the list on two days' notice to all the other parties (except, unless the Court otherwise directs, a defendant who, in the case of a summons in Form No. 13 in Appendix A, has failed to acknowledge service of the summons or, in the case of a summons in Form No. 14 in Appendix A, has not been served with the summons), and any of those parties may restore it with the leave of the Court.

Applications affecting party who has not acknowledged service (O.28, r.7)

7. Where in a cause or matter begun by originating summons an application is made to the Court for an order affecting a party who has failed to acknowledge service, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party has so failed.

Counterclaim by defendant (O.28, r.8)

8.—(1) A defendant to an action begun by originating summons who has acknowledged service of the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however arising) may make a counterclaim in the action in respect of that matter instead of bringing a separate action.

(2) A defendant who wishes to make a counterclaim under this rule must at as early a stage in the proceedings as is practicable, inform the Court of the nature of his claim and, without prejudice to the powers of the Court under paragraph (3), the claim shall be made in such manner as the Court may direct under rule 5 or rule 9.

(3) If it appears on the application of a plaintiff against whom a counterclaim is made under this rule that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

Continuation of proceedings as if cause or matter begun by writ (O.28, r.9)

9.—(1) Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

(2) Where the Court decides to make such an order, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if there had been a summons for directions in the proceedings and that order were one of the orders to be made thereon.

(3) This rule applies notwithstanding that the cause or matter in question could not have been begun by writ.

(4) Every reference in these Rules to an action begun by writ shall, unless the context otherwise requires, be construed as including a reference to a cause or matter proceedings in which are ordered under this rule to continue as if the cause or matter had been so begun.

Order for hearing or trial (O.28, r.10)

10. Except where the Court disposes of a cause or matter begun by originating summons in chambers or orders it to be transferred to a Magistrate's Court or some other court or tribunal or makes an order in relation to it under rule 9 or some other provision of these Rules, the Court shall, on being satisfied that the cause or matter is ready for determination, make such order as to the hearing of the cause or matter as may be appropriate.

Failure to prosecute proceedings with despatch (O.28, r.11)

11.—(1) If the plaintiff in a cause or matter begun by originating summons makes default in complying with any order or direction of the Court as to the conduct of the proceedings, or if the Court is satisfied that the plaintiff in a cause or matter so begun is not prosecuting the proceedings with due despatch, the Court may order the cause or matter to be dismissed or may make such other order as may be just.

(2) Paragraph (1) shall, with any necessary modifications, apply in relation to a defendant by whom a counterclaim is made under rule 8 as it applies in relation to a plaintiff.

(3) Where, by virtue of an order made under rule 9, proceedings in a cause or matter begun by originating summons are to continue as if the cause or matter had been begun by writ, the foregoing provisions of this

rule shall not apply in relation to the cause or matter after the making of the order.

Abatement etc. of action (O.28, r.12)

12. Order 34, rule 5, shall apply in relation to an action begun by originating summons as it applies in relation to an action begun by writ.

ORDER 29

INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, INTERIM PAYMENTS, ETC

1. INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, ETC

Application for injunction (O.29, r.1)

1.—(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made *ex parte* on affidavit but, except as aforesaid, such application must be made by motion or summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

Detention, preservation, etc., of subject matter of cause or matter (O.29, r.2)

2.—(1) On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured.

(4) An order under this rule may be made on such terms, if any, as the Court thinks just.

(5) An application for an order under this rule must be made by summons or by notice under Order 25, rule 7.

(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he acknowledges service of the writ or originating summons by which the cause or matter was begun.

Power to order samples to be taken, etc. (O.29, r.3)

3.—(1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of a party to the cause or matter, and on such terms, if any, as it thinks just, by order authorise or require any sample to be taken of any property which is the subject-matter of the cause or matter or as to which any question may arise therein, any observation to be made on such property or any experiment to be tried on or with such property.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

Sale of perishable property, etc. (O.29, r.4)

4.—(1) The Court may, on the application of any party to a cause or matter, make an order for the sale by such person, in such manner and on such terms (if any) as may be specified in the order, of any property (other than land) which is the subject-matter of the cause or matter or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other good reason it is desirable to sell forthwith.

In this paragraph "land" includes any interest in, or right over, land.

(2) Rule 2 (5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

Order for early trial (O.29, r.5)

5. Where on the hearing of an application, made before the trial of a cause or matter, for an injunction or the appointment of a receiver or an order under rule 2, 3 or 4 it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits thereof for the purposes of the application, the Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires.

Where the Court makes an order for early trial it shall by the order determine the place and mode of the trial.

Recovery of personal property subject to lien, etc. (O.29, r.6)

6. Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings (if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking

to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum (if any) for interest and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it.

Directions (O.29, r.7)

7.—(1) Where an application is made under any of the foregoing provisions of this Order, the Court may give directions as to the further proceedings in the cause or matter.

(2) If, in an action begun by writ, not being any such action as is mentioned in sub-paragraphs (a) to (c) and (e) to (h) of Order 25, rule 1 (2), the Court thinks fit to give directions under this rule before the summons for directions, rules 2 to 7 of that Order shall, with the omission of so much of rule 7 (1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application were a summons for directions.

Allowance of income of property pendente lite (O.29, r.8)

8. Where any real or personal property forms the subject-matter of any proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

II. INTERIM PAYMENTS**Interpretation of Part II (O.29, r.9)**

9. In this Part of this Order—

“interim payments”, in relation to a defendant, means a payment on account of any damages, debt or other sum (excluding costs) which he may be held liable to pay to or for the benefit of the plaintiff; and any person who, for the purpose of the proceedings, acts as next friend of the plaintiff or guardian of the defendant.

Application for interim payment (O.29, r.10)

10.—(1) The plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to acknowledge service has expired, apply to the Court for an order requiring that defendant to make an interim payment.

(2) An application under this rule shall be made by summons but may be included in a summons for summary judgment under Order 14 or Order 86.

(3) An application under this rule shall be supported by an affidavit which shall—

(a) verify the amount of the damages, debt or other sum to which the application relates and the grounds of the application;

- (b) exhibit any documentary evidence relied on by the plaintiff in support of the application.
- (4) The summons and a copy of the affidavit in support and any documents exhibited thereto shall be served on the defendant against whom the order is sought not less than 10 clear days before the return day.
- (5) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown.

Order for interim payment in respect of damages (O.29, r.11)

11.—(1) If, on the hearing of an application under rule 10 in an action for damages, the Court is satisfied—

- (a) that the defendant against whom the order is sought (in this paragraph referred to as “the respondent”) has admitted liability for the plaintiff’s damages; or
- (b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or
- (c) that if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent or, where there are two or more defendants, against any of them, the Court may, if it thinks fit and subject to paragraph (2), order the respondent to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-off, cross-claim or counterclaim on which the respondent may be entitled to rely.

(2) No order shall be made under paragraph (1) in an action for personal injuries if it appears to the Court that the defendant is not a person falling within one of the following categories, namely—

- (a) a person who is insured in respect of the plaintiff’s claim;
- (b) a public authority; or
- (c) a person whose means and resources are such as to enable him to make the interim payment.

Order for interim payment in respect of sums other than damages (O.29, r.12)

12. If, on the hearing of an application under rule 10, the Court is satisfied—

- (a) that the plaintiff has obtained an order for an account to be taken as between himself and the defendant and for any amount certified due on taking the account to be paid; or
- (b) that the plaintiff’s action includes a claim for possession of land and, if the action proceeded to trial, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant’s use and occupation of the land during the pendency

of the action, even if a final judgment or order were given or made in favour of the defendant; or

- (c) that if the action proceeded to trial the plaintiff would obtain judgment against the defendant for a substantial sum of money apart from any damages or costs,

the Court may, if it thinks fit, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set-off, cross-claim or counterclaim on which the defendant may be entitled to rely.

Manner of payment (O.29, r.13)

13.—(1) Subject to Order 80, rule 12, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into court, and where the amount is paid into court, the court may, on the application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.

(2) An application under the preceding paragraph for money in Court to be paid out may be made *ex parte*, but the Court may direct a summons to be issued.

(3) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.

(4) Where a payment is ordered in respect of the defendant's use and occupation of land the order may provide for periodical payments to be made during the pendency of the action.

Directions on application under rule 10 (O.29, r.14)

14. Where an application is made under rule 10, the Court may give directions as to the further conduct of the action, and, so far as may be applicable, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application were a summons for directions, and, in particular, the Court may order an early trial of the action.

Non-disclosure of interim payment (O.29, r.15)

15. The fact that an order has been made under rule 11 or 12 shall not be pleaded and, unless the defendant consents or the Court so directs, no communication of that fact or of the fact that an interim payment has been made, whether voluntarily or pursuant to an order, shall be made to the Court at the trial, or hearing, of any question or issue as to liability or damages until all questions of liability and amount have been determined.

Payment into court in satisfaction (O.29, r.16)

16. Where, after making an interim payment, whether voluntary or pursuant to an order, a defendant pays a sum of money into Court under Order 22, rule 1, the notice of payment must state that the defendant has taken into account the interim payment.

Adjustment on final judgment or order or on discontinuance
(O.29, r.17)

17. Where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether voluntarily or pursuant to an order, the Court may, in giving or making a final judgment or order, or granting the plaintiff leave to discontinue his action or to withdraw the claim in respect of which the interim payment has been made, or at any other stage of the proceedings on the application of any party, make such order with respect to the interim payment as may be just, and in particular—

- (a) an order for the repayment by the plaintiff of all or part of the interim payment, or
- (b) an order for the payment to be varied or discharged, or
- (c) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

Counterclaims and other proceedings (O.29, r.18)

18. The preceding rules in this Part of this Order shall apply, with the necessary modifications, to any counterclaim or proceeding commenced otherwise than by writ, where one party seeks an order for an interim payment to be made by another.

ORDER 30

RECEIVERS

Application for receiver and injunction (O.30, r.1)

1.—(1) An application for the appointment of a receiver may be made by summons or motion.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

(3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so *ex parte* on affidavit.

(4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver and may require such a summons returnable on such date as the Court may direct, to be issued.

Giving of security by receiver (O.30, r.2)

2.—(1) A judgment or order directing the appointment of a receiver may include such directions as the Court thinks fit for the giving of security by the person appointed.

(2) Where by virtue of any judgment or order appointing a person named therein to be receiver a person is required to give security in accordance with this rule, he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee.

(4) The guarantee must be filed in the Registry and it shall be kept there as of record until duly vacated.

Remuneration of receiver (O.30, r.3)

3. A person appointed receiver shall be allowed such proper remuneration, if any, as may be authorised by the Court, and the Court may direct that such remuneration shall be fixed by reference to such scales or rates of professional charges as it thinks fit.

Service of order and notice (O.30, r.4)

4. A copy of the judgment or order appointing a receiver shall be served by the party having conduct of the proceedings on the receiver and all other parties to the cause of matter in which the receiver has been appointed.

Receiver's Accounts (O.30, r.5)

5.—(1) A receiver shall submit such accounts to such parties at such intervals or on such dates as the Court may direct.

(2) Any party to whom a receiver is required to submit accounts may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to the accounts.

(3) Any party who is dissatisfied with the accounts of the receiver may give notice specifying the item or items to which objection is taken and requiring the receiver within not less than 14 days to lodge his accounts with the Court and a copy of such notice shall be lodged in the Registry.

(4) Following an examination by or on behalf of the Court of an item or items in an account to which objection is taken the result of such examination must be certified by the Registrar, and an order may thereupon be made as to any costs or expenses incurred.

Payment into Court by receiver (O.30, r.6)

6. The Court may fix the amounts and frequency of payments into court to be made by a receiver.

Default by receiver (O.30, r.7)

7.—(1) Where a receiver fails to attend for the examination of any account of his, or fails to submit any account, provide access to any books or papers or do any other thing which he is required to submit, provide or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in Chambers to show cause for the failure, and the Court may, either in Chambers or after adjournment into court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1), where a receiver fails to attend for the examination of any account of his or fails to submit any account or fails to pay into Court on the date fixed by the Court any sum required to be so paid, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into Court, charge him with interest, if any, as may be currently payable in respect of judgment debts in the High Court.

Directions to receivers (O.30, r.8)

8. A receiver may at any time request the Court to give him directions and such a request shall state in writing the matters with regard to which directions are required.

ORDER 31

SALES, ETC. OF LAND BY ORDER OF COURT

Power to order sale of land (O.31, r.1)

1. Where in any cause or matter relating to any land it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.

In this Order, "land" includes any interest in, or right over, land.

Manner of carrying out sale (O.31, r.2)

2.—(1) Where an order is made, whether in court or in chambers, directing any land to be sold, the Court may permit the party or person having the conduct of the sale to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.

(2) The Court may give such directions as it thinks fit for the purpose of effecting the sale, including, without prejudice to the generality of the foregoing words, directions—

- (a) appointing the party or person who is to have the conduct of the sale;
- (b) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;
- (c) fixing a reserve or minimum price;
- (d) requiring payment of the purchase money into Court or to trustees or other persons;
- (e) for settling the particulars and conditions of sale;
- (f) for obtaining evidence of the value of the property;
- (g) fixing the security (if any) to be given by the auctioneer, if the sale is to be by public auction, and the remuneration to be allowed him.

Certifying result of sale (O.31, r.3)

3.—(1) If either the Court has directed payment of the purchase money into Court or the Court so directs, the result of a sale by order of the Court must be certified—

- (a) in the case of a sale by public auction, by the auctioneer who conducted the sale, and

(b) in any other case, by the solicitor of the party or person having the conduct of the sale;
and the Court may require the certificate to be verified by the affidavit of the auctioneer or solicitor, as the case may be.

(2) The solicitor of the party or person having the conduct of the sale must file the certificate and any affidavit in the Registry.

Mortgage, exchange or partition under order of the Court

(O.31, r.4)

4. Rules 2 and 3 shall, so far as applicable and with the necessary modifications, apply in relation to the mortgage, exchange or partition of any land under an order of the Court as they apply in relation to the sale of any land under such an order.

ORDER 32

APPLICATIONS AND PROCEEDINGS IN CHAMBERS

Mode of making application (O.32, r.1)

1. Except as provided by Order 25, rule 7, every application in chambers not made *ex parte* must be made by summons.

Issue of summons (O.32, r.2)

2.—(1) Issue of a summons by which an application in chambers is to be made takes place on its being sealed by the Registrar.

(2) A summons may not be amended after issue without the leave of the Court.

Service of summons (O.32, r.3)

3. A summons asking only for the extension or abridgment of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid and unless the Court otherwise orders or any of these Rules otherwise provides, a summons must be served on every other party not less than two clear days before the day so specified.

Adjournment of hearing (O.32, r.4)

4. The hearing of a summons may be adjourned from time to time, either generally or to a restore it to the list on two clear days' notice to all the other parties on whom the summons was served.

Proceeding in absence of party failing to attend (O.32, r.5)

5.—(1) Where any party to a summons fails to attend on the first or any resumed hearing thereof, the Court may proceed in his absence if, having regard to the nature of the application, it thinks it expedient so to do.

(2) Before proceeding in the absence of any party the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.

(3) Where the Court hearing a summons proceeded in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may re-hear the summons.

(4) Where an application made by summons has been dismissed without a hearing by reason of the failure of the party who took out the summons to attend the hearing, the Court, if satisfied that it is just to do so, may allow the summons to be restored to the list.

Order made *ex parte* may be set aside (O.32, r.6)

6. The Court may set aside an order made *ex parte*.

Subpoena for attendance of witness (O.32, r.7)

7. A writ of subpoena *ad testificandum* or a writ of subpoena *duces tecum* to compel the attendance of a witness for the purpose of proceedings in chambers may be issued out of the Registry by or on the authority of the Registrar.

Persons authorised to administer oaths (O.32, r.8)

8. The following officers of the Judicial Department, namely the Registrar, any officer being a Commissioner for Oaths or a Magistrate, and any officer specially authorised by the Chief Justice in that behalf shall have authority to administer oaths and take affidavits for the purpose of proceedings in the High Court.

Jurisdiction of the Registrar (O.32, r.9)

9. The Registrar shall, subject to the directions of the Chief Justice given generally or in respect of any particular case, have the powers, authority and jurisdiction of a judge in chambers with respect to the following matters—

- (a) the place, time for setting down for trial, and mode of trial, and other matters usually arising on a summons for directions;
- (b) the discovery of documents, and production of documents for inspection; and discovery by interrogatories;
- (c) the amendment of a writ, pleading, memorandum of appearance, or other document;
- (d) extension or enlargement of time;
- (e) renewal of a writ;
- (f) addition, omission or substitution of parties;
- (g) substituted service within the jurisdiction;
- (h) garnishee orders *nisi*, orders to third persons to attend garnishee proceedings (under Order 49 rule 6), and garnishee orders absolute;
- (i) security for costs;
- (j) leave to enter judgment for costs under Order 13 rule 6(2);
- (k) judgment under Order 14;
- (l) leave to defend, under Order 14, absolute or conditional and consequential directions;
- (m) leave to withdraw summons, under Order 21, rule 6;
- (n) judgment or order on an admission, or on a summons under Order 27 rule 3, for a sum of money only.

Reference of matter to judge (O.32, r.10)

10. The Registrar may refer to a judge any matter which he thinks should properly be decided by a judge and the judge may either dispose of the matter or refer it back to the Registrar with such directions as he thinks fit.

Power to direct hearing in Court (O.32, r.11)

11.—(1) The judge in chambers may direct that any summons, application or appeal shall be heard in court or shall be adjourned into

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court to be so heard if he considers that by reason of its importance or for any other reason it should be so heard.

(2) Any matter heard in court by virtue of a direction under paragraph (1) may be adjourned from court into chambers.

The Registrar may summon parties, etc. (O.32, r.12)

12.—(1) For the purpose of any proceedings before him the Registrar may—

- (a) issue a summons requiring any party to the proceedings to attend before him;
- (b) at the request of any such party, issue a summons requiring any person to attend before him as a witness;
- (c) require the production of documents; and
- (d) examine any party or witness either orally or on interrogatories.

(2) A summons under paragraph (1)(b) must be served personally on the person against whom it is issued.

(3) If a person refuses or fails to obey a summons duly served on him under this rule the Registrar may make an order requiring that person to attend before him.

(4) The Registrar may examine any party or witness either orally or on interrogatories.

Obtaining assistance of experts (O.32, r.13)

13. If the Court thinks it expedient in order to enable it better to determine any matter arising in proceedings in chambers, it may obtain the assistance of any person especially qualified to advise on that matter and may act upon his opinion.

Notice of filing, etc. of affidavit (O.32, r.14)

14. Any party—

- (a) filing an affidavit intended to be used by him in any proceedings in chambers, or
- (b) intending to use in any such proceedings any affidavit filed by him in previous proceedings,

must serve every other party with a copy of the affidavit not less than two clear days before the hearing.

Disposal of matters in Chambers (O.32, r.15)

15. The judge may by any judgment or order made in court in any proceedings direct that such matters (if any) in the proceedings as he may specify shall be disposed of in chambers.

Papers for use of Court, etc. (O.32, r.16)

16. The original of any document which is to be used in evidence in proceedings in chambers must, if it is available, be brought in, and copies of any such document or of any part thereof shall not be made unless the Court directs that copies of that document or part be supplied for the use of the Court or be given to the other parties to the proceedings.

Notes of proceedings in Chambers (O.32, r.17)

17. A note shall be kept of all proceedings in the judge's chambers with the dates thereof so that all such proceedings in any cause or matter are noted in chronological order with a short statement of the matters decided at such hearing.

ORDER 33

PLACE AND MODE OF TRIAL

Place of trial (O.33, r.1)

1. Subject to the provisions of these Rules, the place of trial of a cause or matter, or of any question or issue arising therein, shall be determined by the court.

Mode of trial (O.33, r.2)

2. Subject to the provisions of these Rules, a cause or matter, or any question or issue arising therein, may be tried before—

- (a) a judge alone, or
- (b) a judge with the assistance of assessors.

Time, etc. of trial of questions or issues (O.33, r.3)

3. The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

Determining the place and mode of trial (O.33, r.4)

4.—(1) In every action begun by writ, an order made on the summons for directions shall determine the place and mode of the trial; and any such order may be varied by a subsequent order of the Court made at or before the trial.

(2) In any such action different questions or issues may be ordered to be tried at different places or by different modes of trial and one or more questions or issues may be ordered to be tried before the others.

Split trial: offer on liability (O.33, r.5)

5.—(1) This rule applies where an order is made under rule 4(2) for the issue of liability to be tried before any issue or question concerning the amount of damages to be awarded if liability is established.

(2) After the making of an order to which paragraph (1) applies, any party against whom a finding of liability is sought may (without prejudice to his defence) make a written offer to the other party to accept liability up to a specified proportion.

(3) Any offer made under the preceding paragraph may be brought to the attention of the Judge after the issue of liability has been decided, but not before.

Trial with assistance of assessors (O.33, r.6)

6. A trial of a cause or matter with the assistance of assessors shall take place in such manner and on such terms as the Court may direct.

Dismissal of action, etc. after decision of preliminary issue

(O.33, r.7)

7. If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment therein as may be just.

ORDER 34

SETTING DOWN FOR TRIAL

Time for setting down action (O.34, r.1)

1.—(1) Every order made in an action which provides for trial before a judge shall, wherever the trial is to take place, fix a period within which the plaintiff is to set down the action for trial.

(2) Where the plaintiff does not, within the period fixed under paragraph (1), set the action down for trial, the defendant may set the action down for trial or may apply to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or may make such order as it thinks just.

Pre-trial conference (O.34, r.2)

2.—(1) The provisions of this rule apply only in proceedings in which all the parties are represented by solicitors.

(2) Before an action may be set down for trial the solicitor acting for any of the parties shall make a written request to all the other solicitors acting for other parties to the action to attend a conference at a mutually convenient time and place, with the object of reaching agreement as to possible ways of curtailing the duration of the trial, and, in particular, as to all or any of the following matters—

- (a) the possibility of obtaining admission of facts or documents;
- (b) the holding of inspections and examinations;
- (c) the discovery of documents;
- (d) the exchange between parties of reports of experts;
- (e) the plans, diagrams, photographs, models and similar articles to be used at the trial;
- (f) the quantum of damages; and
- (g) the consolidation of trials.

(3) If any solicitor refuses to attend such a conference, the solicitor requesting the same may apply to the Court for an order that such conference be held, and the Court may order that such conference be held at such time and place and for such purpose as shall be specified in the order, or may order that such conference need not be held.

(4) At the conclusion of any such conference the barristers and solicitors attending it shall draw up and sign a minute of the matters, if any, on which they are agreed.

(5) When a barrister and solicitor sets an action down for trial or makes a written request for a date for the hearing thereof he must state in writing whether a pre-trial conference under this rule has been held and also state the particulars of any order made under paragraph (3).

a pre-trial conference under this rule has been held and also state the particulars of any order made under paragraph (3).

(6) Before the trial proceeds the judge may call to his chambers the solicitors representing the parties in the action with a view to bringing about an agreement on any matter likely to curtail the duration of the trial or save the costs.

(7) When giving judgment on the action the Court may award portions of the costs against any parties who should have agreed to certain matters at a pre-trial conference but had refused to do so, if such an agreement would have curtailed the duration of the trial or saved the costs.

Setting down for trial on points of law only or where pre-trial conference has been held (O.34, r.3)

3.—(1) In cases where—

(a) the parties have stated a special case for the adjudication of the Court on a question of law only, or

(b) an order has been made under Order 33, rule 4 that a question of law shall be tried before other questions or issues,

any of the parties may apply to the Registrar to set the case down for trial on a date to be agreed upon by all the parties and the Registrar.

(2) In cases where the pleadings have been closed and a pre-trial conference has been held, the plaintiff may apply to the Registrar to set the case down for trial and, if he does not so apply within 30 days of the date on which the pleadings were closed or on which the pre-trial conference was held (whichever shall be the later date) either the plaintiff or the defendant may set the case down for trial.

(3) At least two days notice of the date on which application will be made under paragraph (1) or (2) must be given to all other parties who shall be entitled to appear before the Registrar and to state any objections they may have to the proposed date of set-down.

(4) When a case has been set down the party who sets it down shall forthwith give written notice of the set-down to all other parties. Thereafter the party who sets the case down may withdraw the set-down only with the consent of all the other parties or by order of the Court given after application has been made on notice to all other parties.

(5) After a set-down has been withdrawn either party may apply to the Registrar for a new date on which the case may be set down. Notice of such application must be given to all the parties.

Lodging of documents when setting down (O.34, r.4)

4.—(1) In order to enter an action for trial, the party seeking to enter it for trial shall take out a summons returnable before the Registrar applying for an order that the action be entered for trial at the place specified in the order made on the summons for directions.

(2) The party taking out the summons shall file in the Registry two certified true copies (which may be photostat copies or copies made by a

similar process) of the following documents, bound up in book form in chronological order—

- (a) the writ;
- (b) the pleadings (including any affidavits ordered to stand as pleadings), any request or order for particulars and the particulars given;
- (c) the minutes of a pre-trial conference, if any, held under rule 2; and
- (d) all orders made on the summons for directions.

One set of such copies shall serve as the record and the other shall be for the use of the judge.

(3) At the hearing of the summons the Registrar shall enquire of the parties whether his assistance would be likely to facilitate a settlement or compromise of the action before it is entered for trial.

(4) If the parties agree that further time is required for consideration of a settlement of the action the Registrar shall adjourn the hearing to such time and place as he thinks fit.

(5) Where at the hearing of the summons or at any adjournment thereof the parties agree that such assistance is desirable to facilitate a settlement, the Registrar may in his discretion either afford such assistance himself, or adjourn the hearing and direct that the matter be referred to a person designated by him for the purpose of facilitating the bringing about of a settlement.

(6) Where the Registrar refers the summons to another person under paragraph (5), that person shall hear and discuss the matter with the parties in an attempt to bring about a settlement and shall report to the Registrar either the terms of settlement that have been reached or his failure to bring about a settlement.

(7) Except where a party having been duly served with the summons fails to attend at the hearing, no order to enter an action for trial shall be made unless the Registrar is satisfied that the parties have had a reasonable opportunity to consider and reach a settlement or that no settlement appears to be likely to be reached between them.

(8) No court record shall be kept of any such discussions held with a view to bringing about a settlement and no statement, concessions or admissions made thereat shall be admissible in evidence at the trial of the action or the trial of any other action.

(9) Any such discussions as aforesaid shall, unless a settlement is reached and entered by consent as a judgment of the Court, be without prejudice and shall be deemed to have been held in confidence on an occasion of absolute privilege.

(10) No process of the Court shall be issued for the purpose of enforcing the attendance at any court or tribunal of any person as a witness to give evidence of anything said or disclosed at the hearing of a summons for an order for the entry of an action for trial, or any adjournment thereof, or at any discussion between the parties by a person referred to in paragraph (6).

(11) At the hearing of any summons or any adjournment thereof the Registrar, after hearing the parties, may either enter judgment by consent on any terms agreed or order that the case be entered for trial or make such other order as may be appropriate.

(12) In this rule the words "party" and "parties" mean, where a plaintiff or defendant is legally represented, his barrister and solicitor, and where he is not so represented, the plaintiff or defendant in person. In any case where the plaintiff or defendant is legally represented he may, if he wishes, be present in chambers in person with his barrister and solicitor or, if his barrister and solicitor consents, without his barrister and solicitor.

Abatement, etc., of action (O.34, r.5)

5.—(1) Where after an action has been set down for trial the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the barrister and solicitor for the plaintiff or other party having the conduct of the action must, as soon as practicable after becoming aware of it, certify the abatement or change of interest or liability and send the certificate to the Registrar who shall cause the appropriate entry to be made in the list of actions set down for trial.

(2) Where in any such list an action stands for one year marked as abated or ordered to stand over generally, the action shall on the expiration of that year be struck out of the list unless, in the case of an action ordered to stand over generally, the order otherwise provides.

ORDER 35

PROCEEDINGS AT TRIAL

Failure to appear by both parties or one of them (O.35, r.1)

1.—(1) If, when the trial of an action is called on, neither party appears, the action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a judge.

(2) If, when the trial of an action is called on, one party does not appear, the judge may proceed with the trial of the action or any counter-claim in the absence of that party.

Judgment, etc. given in absence of party may be set aside

(O.35, r.2)

2.—(1) Any judgment, order or verdict obtained where one party does not appear at the trial may be set aside by the Court, on the application of that party, on such terms as it thinks just.

(2) An application under this rule must be made within 7 days after the trial.

Adjournment of trial (O.35, r.3)

3. The judge may, if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit.

Change of place of trial etc. (O.35, r.4)

4. If the judge in any place is of opinion that any cause or matter set down for trial at that place cannot, for any sufficient reason, be conveniently tried at that place, or at that place and at the appointed time, he may, upon or without an application for that purpose, change the place of trial or postpone the trial.

Order of speeches (O.35, r.5)

5.—(1) The judge before whom an action is tried may give directions as to the party to begin and the order of speeches at the trial, and, subject to any such directions, the party to begin and the order of speeches shall be that provided by this rule.

(2) Subject to paragraph (6), the plaintiff shall begin by opening his case.

(3) If the defendant elects not to adduce evidence, then, whether or not the defendant has in the course of cross-examination of a witness for the plaintiff or otherwise put in a document, the plaintiff may, after the evidence on his behalf has been given, make a second speech closing his case and the defendant shall then state his case.

(4) If the defendant elects to adduce evidence, he may, after any evidence on behalf of the plaintiff has been given, open his case and, after the evidence on his behalf has been given, make a second speech

closing his case, and at the close of the defendant's case the plaintiff may make a speech in reply.

(5) Where there are two or more defendants who appear separately or are separately represented, then—

- (a) if none of them elects to adduce evidence, each of them shall state his case in the order in which his name appears on the record;
- (b) if each of them elects to adduce evidence, each of them may open his case and the evidence on behalf of each of them shall be given in the order aforesaid and the speech of each of them closing his case shall be made in that order after the evidence on behalf of all the defendants has been given;
- (c) if some of them elect to adduce evidence and some do not, those who do not shall state their cases in the order aforesaid after the speech of the plaintiff in reply to the other defendants.

(6) Where the burden of proof of all the issues in the action lies on the defendant or, where there are two or more defendants and they appear separately or are separately represented, on one of the defendants, the defendant or that defendant, as the case may be, shall be entitled to begin, and in that case paragraphs (2), (3) and (4) shall have effect in relation to, and as between, him and the plaintiff as if for references to the plaintiff and the defendant there were substituted references to the defendant and the plaintiff respectively.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this paragraph, be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may make a further speech in reply, but only in relation to that point of law or that authority, as the case may be.

Inspection by judge (O.35, r.6)

6. The judge by whom any cause or matter is tried may inspect any place or thing with respect to which any question arises in the cause or matter.

Death of party before giving of judgment (O.35, r.7)

7. Where a party to any action dies after the verdict or finding of the issues of fact and before judgment is given, judgment may be given notwithstanding the death, but the foregoing provision shall not be taken as affecting the power of the judge to make an order under Order 15, rule 7(2), before giving judgment.

List of exhibits (O.35, r.8)

8.—(1) The court clerk in attendance at the trial shall take charge of every document or object put in as an exhibit during the trial of any action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in or the witness by whom it is proved, and with a number, so that all the exhibits put in by a party, or proved by a witness, are numbered in one consecutive series.

In this paragraph a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

(2) The court clerk shall cause a list to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee, have an office-copy of that list.

(3) The list of exhibits when completed shall be attached to the pleadings and shall form part of the record of the action.

(4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit.

Custody of exhibit after trial (O.35, r.9)

9. It shall be the duty of every party to an action who has put in any exhibit to apply to the court clerk immediately after the trial for the return of the exhibit, and, so far as is practicable, regard being had to the nature of the exhibit, to keep it duly marked and labelled as before, so that in the event of an appeal to the Court of Appeal or the Supreme Court of Fiji he may be able to produce the exhibit so marked and labelled at the hearing of the appeal in case he is required by the Court of Appeal or the Supreme Court of Fiji to do so.

Impounded documents (O.35, r.10)

10.—(1) Documents impounded by order of the Court shall not be delivered out of the custody of the Court except in compliance with an order made by a judge on an application made by motion:

Provided that where a Law Officer makes a written request in that behalf, documents so impounded shall be delivered into his custody.

(2) Documents impounded by order of the Court, while in the custody of the Court, shall not be inspected except by a person authorised to do so by an order signed by a judge.

ORDER 36

INQUIRIES BY THE REGISTRAR AND SPECIAL REFEREES

Application and interpretation (O.36, r.1)

1. In this Order the Registrar's or special referees' business includes, without prejudice to any right to a trial, any cause or matter—

- (a) which involves a prolonged examination of documents or accounts, or a technical, scientific or local investigation such as could more conveniently be conducted by the Registrar or special referee; or
- (b) for which a report by the Registrar or special referee is desirable in the interests of one or more of the parties on grounds of expedition, economy or convenience or otherwise.

Reference to the Registrar or special referee (O.36, r.2)

2.—(1) In any cause or matter the Court may refer to the Registrar or to a special referee (being a person nominated by the Court) for inquiry and report any question or issue of fact or mixed law and fact arising therein, and, unless the Court otherwise orders, further consideration of the cause or matter shall stand adjourned until the receipt of the report.

(2) Before a special referee enters upon the reference, the Registrar shall supply him with—

- (a) a certified copy of the order of reference,
- (b) a copy of the pleadings, and
- (c) a copy of such other documents as may be directed by the Court.

(3) The Court may make such order as it thinks fit to provide for the remuneration of a special referee and may give such directions as may be necessary for the collection thereof from the parties and for the payment thereof to the special referee.

Report on reference under rule 2 (O.36, r.3)

3.—(1) The report made by the Registrar or special referee in pursuance of a reference under this Order shall be made to the Court and notice thereof served on the parties to the reference.

(2) The Registrar or the special referee may in his report submit any question arising therein for the decision of the Court or make a special statement of facts from which the Court may draw such inferences as it thinks fit.

(3) On the receipt of the report of the Registrar or special referee the Court may—

- (a) adopt the report in whole or in part;
- (b) vary the report;
- (c) require an explanation from him;

- (d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other special referee; or
- (e) decide the question or issue originally referred to him on the evidence taken before him, either with or without additional evidence.

(4) When the report has been made, an application to vary the report or remit the whole or any part of the question or issue originally referred may be made on the hearing by the Court of the further consideration of the cause or matter, after giving not less than 4 days' notice thereof, and any other application with respect to the report may be made on that hearing without notice.

(5) Where the Court orders that the further consideration of the cause or matter in question shall not stand adjourned until the receipt of the report, the order may contain directions with respect to the proceedings on the receipt of the report, and the foregoing provisions of this rule shall have effect subject to any such directions.

Powers, etc. of official referees (O.36, r.4)

4.—(1) Subject to any directions contained in the order referring any business to the Registrar or special referee—

- (a) the Registrar or special referee shall for the purpose of dealing with any matter (including any interlocutory application therein) or any other business referred to him have the same jurisdiction, powers and duties (including the power of committal and discretion as to costs) as a judge, exercisable or, as the case may be, to be performed as nearly as circumstances admit in the like cases, in the like manner and subject to the like limitations; and
- (b) proceedings before the Registrar or special referee shall, as nearly as circumstances admit, be conducted in the like manner as the like proceedings before a judge.

(2) No steps or proceedings shall be taken to enforce any order made or any direction given by the Registrar or special referee in the exercise of any of the powers referred to in paragraph (1)(a) until such order or direction has been confirmed by a judge.

(3) The Registrar or special referee may hold any proceeding before him at any place which appears to him to be convenient and may adjourn the proceedings from place to place as he thinks fit.

ORDER 37

ASSESSMENT OF DAMAGES

Assessment of damages (O.37, r.1)

1.—(1) Where judgment is given for damages to be assessed and no provision is made by the judgment as to how they are to be assessed, the damages shall, subject to the provisions of this Order, be assessed by the Registrar, and the party entitled to the benefit of the judgment may, after obtaining the necessary appointment from the Registrar and, at least 7 days before the date of the appointment, serving notice of the appointment on the party against whom the judgment is given, proceed accordingly.

(2) Notwithstanding anything in Order 65, rule 9, a notice under this rule must be served on the party against whom the judgment is given.

(3) Without prejudice to the powers of the Registrar under Order 32, rule 12, the attendance of witnesses and the production of documents before the proceedings under this Order may be compelled by writ of subpoena, and the provisions of Order 35 shall, with the necessary adaptations, apply in relation to those proceedings as they apply in relation to proceedings at a trial.

Certificate of amount of damages (O.37, r.2)

2. Where in pursuance of this Order or otherwise damages are assessed by the Registrar, he shall certify the amount of the damages and file the certificate in the Registry.

Default judgment against some but not all defendants (O.37, r.3)

3. Where any such judgment as is mentioned in rule 1 is given for failure to give notice of intention to defend or in default of defence, and the action proceeds against other defendants, the damages under the judgment shall be assessed at the trial unless the Court otherwise orders.

Assessment by special referee etc. (O.37, r.4)

4.—(1) Where judgment is given for damages to be assessed, the Court may order—

- (a) that the assessment of the damages be referred to a special referee, or
- (b) that the damages be assessed by the Registrar, or
- (c) that the action shall proceed to trial before a judge as respects the damages.

(2) Where the Court orders that the action shall proceed to trial, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires the parties to serve a notice specifying the orders and directions which

they desire and with any other necessary modifications, apply as if the application to the Court in pursuance of which the Court makes the order, were a summons for directions under Order 25.

Assessment of value (O.37, r.5)

5. The foregoing provisions of this Order shall apply in relation to a judgment for the value of goods to be assessed, with or without damages to be assessed, as they apply to a judgment for damages to be assessed, and references in those provisions to the assessment of damages shall be construed accordingly.

Assessment of damages to time of assessment (O.37, r.6)

6. Where damages are to be assessed (whether under this Order or otherwise) in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

ORDER 38

EVIDENCE

I: GENERAL RULES

General rule: witnesses to be examined orally (O.38, r.1)

1. Subject to the provisions of these Rules and of the Evidence Act and any other enactment relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

Evidence by affidavit (O.38, r.2)

2.—(1) The Court may, at or before the trial of an action begun by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.

(2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavits and as to the production of the deponents for cross-examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.

(3) In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence may be given by affidavit unless in the case of any such cause, matter or application any provision of these Rules otherwise provides or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence without the leave of the Court.

Evidence of particular facts (O.38, r.3)

3.—(1) Without prejudice to rule 2, the Court may, at or before the trial of any action, order that evidence of any particular fact shall be given at the trial in such manner as may be specified by the order.

(2) The power conferred by paragraph (1) extends in particular to ordering that evidence of any particular fact may be given at the trial—

- (a) by statement on oath of information or belief, or
- (b) by the production of documents or entries in books, or
- (c) by copies of documents or entries in books, or
- (d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.

Limitation of expert evidence (O.38, r.4)

4. The Court may, at or before the trial of any action, order that the number of medical or other expert witnesses who may be called at the trial shall be limited as specified by the order.

Limitation of plans, etc. in evidence (O.38, r.5)

5. Unless, at or before the trial, the Court otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least 10 days before the commencement of the trial the parties, other than the party producing it, have been given an opportunity to inspect it and to agree to the admission thereof without further proof.

Revocation or variation of orders under rules 2 to 5 (O.38, r.6)

6. Any order under rules 2 to 5 (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the Court made at or before the trial.

Evidence of finding on foreign law (O.38, r.7)

7.—(1) A party to any cause or matter who intends to adduce in evidence a finding or decision on a question of foreign law shall—

- (a) in the case of an action to which Order 25, rule 1, applies, within 14 days after the pleadings in the action are deemed to be closed, and
- (b) in the case of any other cause or matter, within 21 days after the date on which an appointment for the first hearing of the cause or matter is obtained,

or in either case, within such other period as the Court may specify, serve notice of his intention on every other party to the proceedings.

(2) The notice shall specify the question on which the finding or decision was given or made and specify the document in which it is reported or recorded in citable form.

(3) In any cause or matter in which evidence may be given by affidavit, an affidavit specifying the matters contained in paragraph (2) shall constitute notice under paragraph (1) if served within the period mentioned in that paragraph.

Application to trials of issues, references, etc. (O.38, r.8)

8. The foregoing rules of this Order shall apply to trials of issues or questions of fact or law, references, inquiries and assessments of damages as they apply to the trial of actions.

Depositions: when receivable in evidence at trial (O.38, r.9)

9.—(1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless—

- (a) the deposition was taken in pursuance of an order under Order 39, rule 1, and
- (b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or beyond the jurisdiction of the court or unable from sickness or other infirmity to attend the trial.

(2) A party intending to use any deposition in evidence at the trial of a cause or matter must, a reasonable time before the trial, give notice of his intention to do so to the other party.

(3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

Court documents admissible or receivable in evidence (O.38, r.10)

10.—(1) Office copies of writs, records, pleadings and documents filed in the High Court or Court of Appeal shall be admissible in evidence in any cause or matter and between all parties to the same extent as the original would be admissible.

(2) Without prejudice to the provisions of any enactment, every document purporting to be sealed with the seal of any office or department of the High Court or Court of Appeal shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in, or issued out of, that office or department shall be deemed to be an office copy of that document without further proof unless the contrary is shown.

Evidence of consent of new trustee to act (O.38, r.11)

11. A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person shall be evidence of such consent.

Evidence at trial may be used in subsequent proceedings

(O.38, r.12)

12. Any evidence taken at the trial of any cause or matter may be used in any subsequent proceedings in that cause or matter.

Order to produce document at proceeding other than trial

(O.38, r.13)

13.—(1) At any stage in a cause or matter the Court may order any person to attend any proceedings in the cause or matter and produce any document, to be specified or described in the order, the production of which appears to the Court to be necessary for the purpose of that proceeding.

(2) No person shall be compelled by an order under paragraph (1) to produce any document at a proceeding in a cause or matter which he could not be compelled to produce at the trial of that cause or matter.

II. WRITS OF SUBPOENA

Form and issue of writ of subpoena (O.38, r.14)

14.—(1) A writ of subpoena must be in Form No. 16 in Appendix A.

(2) Issue of a writ of subpoena takes place upon its being sealed by an officer of the Court.

(3) Before a writ of subpoena is issued a *praecipe* for the issue of the writ must be filed in the office out of which the writ is to issue; and the *praecipe* must contain the name and address of the party issuing the writ, if he is acting in person, or the name or firm and business address of that

party's barrister and solicitor and also (if the barrister and solicitor is the agent of another) the name or firm and business address of his principal, and the name and address of the person to be summoned.

(4) Unless the Court otherwise directs every writ of subpoena which is issued or served less than seven clear days before the date of hearing shall bear the following endorsement—

“NOTE— If this subpoena is served less than 7 clear days before the hearing you are not obliged to attend if, as a result of short notice, it is inconvenient for you to do so. In this event you should so inform the Court.”

(5) Unless a writ of subpoena is duly served on the person to whom it is directed not less than 7 clear days, or such other period as the Court may fix, before the date of hearing together with appropriate conduct money that person shall not be liable to any penalty or process for failing to obey the writ.

More than one name may be included in one writ of subpoena

(O.38, r.15)

15. The names of two or more persons may be included in one writ of subpoena *ad testificandum*.

Amendment of writ of subpoena (O.38, r.16)

16. Where there is a mistake in any person's name or address in a writ of subpoena, then, if the writ has not been served, the party by whom the writ was issued may have the writ re-sealed in correct form by filing a second *praecipe* under rule 14 (3) indorsed with the words “Amended and re-sealed”.

Service of writ of subpoena (O.38, r.17)

17. A writ of subpoena must be served personally and, subject to rule 19, the service shall not be valid unless effected within 12 weeks after the date of issue of the writ and not less than four days or such other period as the Court may fix, before the day on which attendance before the Court is required.

Duration of writ of subpoena (O.38, r.18)

18. Subject to rule 19, a writ of subpoena continues to have effect until the conclusion of the trial at which the attendance of the witness is required.

Writ of subpoena in aid of inferior court or tribunal (O.38, r.19)

19.—(1) The office of the High Court out of which a writ of subpoena *ad testificandum* or a writ of subpoena *duces tecum* in aid of an inferior court or tribunal may be issued is the Registry, and no order of the Court for the issue of such a writ is necessary.

(2) A writ of subpoena in aid of an inferior court or tribunal continues to have effect until the disposal of the proceedings before that court or tribunal at which the attendance of the witness is required.

(3) A writ of subpoena issued in aid of an inferior court or tribunal must be served personally.

(4) Unless a writ of subpoena issued in aid of an inferior court or tribunal is duly served on the person to whom it is directed not less than 7 days, or such other period as the Court may fix, before the day on which the attendance of that person before the court or tribunal is required by the writ, that person shall not be liable to any penalty or process for failing to obey the writ.

(5) An application to set aside a writ of subpoena issued in aid of an inferior court or tribunal shall be heard by a judge.

ORDER 39

EVIDENCE BY DEPOSITION: EXAMINERS OF THE COURT

Power to order deposition to be taken (O.39, r.1)

1.—(1) The Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order (in Form No. 17 in Appendix A) for the examination on oath before a judge, an officer of the Court or some other person, at any place, of any person.

(2) An order under paragraph (1) may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court thinks fit.

Where person to be examined is out of the jurisdiction (O.39, r.2)

2.—(1) Where the person in relation to whom an order under rule 1 is required is out of the jurisdiction, an application may be made—

(a) for an order (in Form No. 18 in Appendix A) under that rule for the issue of a letter of request to the judicial authorities of the country in which that person is to take, or cause to be taken, the evidence of that person, or

(b) if the government of that country allows a person in that country to be examined before a person appointed by the Court, for an order (in Form No. 19 in Appendix A) under that rule appointing a special examiner to take the evidence of that person in that country.

(2) An application may be made for the appointment as special examiner of a Fiji consul in the country in which the evidence is to be taken or his deputy—

(a) if there subsists with respect to that country a Civil Procedure Convention providing for the taking of the evidence of any person in that country for the assistance of proceedings in the High Court, or

(b) with the consent of the Attorney-General.

Order for issue of letter of request (O.39, r.3)

3.—(1) Where an order is made under rule 1 for the issue of a letter of request to the judicial authorities of a country to take, or cause to be taken, the evidence of any person in that country the following provisions of this rule shall apply.

(2) The party obtaining the order must prepare the letter of request and lodge it in the Registry, and the letter must be in Form No. 20 in Appendix A, with such variations as the order may require.

(3) If the evidence of the person to be examined is to be obtained by means of written questions, there must be lodged with the letter of request a copy of the interrogatories and cross-interrogatories to be put to him on examination.

(4) Each document lodged under paragraph (2) or (3) must be accompanied by a translation of the document in the official language of the country in which the examination is to be taken or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where the examination is to be taken unless one of the official languages of that country is English.

(5) Every translation lodged under paragraph (4) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(6) The party obtaining the order must, when he lodges in the Registry the documents mentioned in paragraphs (2) to (5), also file in that office an undertaking signed by him or his solicitor to be responsible personally for all expenses incurred by the Attorney-General in respect of the letter of request and, on receiving due notification of the amount of those expenses, to pay that amount to the Attorney-General.

Enforcing attendance of witness at examination (O.39, r.4)

4. Where an order has been made under rule 1—

- (a) for the examination of any person before an officer of the Court or some other person (in this rule and rules 5 to 14 referred to as "the examiner"), or
- (b) for the cross-examination before the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of that person before the examiner and the production by him of any document at the examination may be enforced by writ of subpoena in like manner as the attendance of a witness and the production by a witness of a document at a trial may be enforced.

Refusal of witness to attend, be sworn, etc. (O.39, r.5)

5.—(1) If any person, having been duly summoned by writ of subpoena to attend before the examiner, refuses or fails to attend or refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document therein, a certificate of his refusal or failure, signed by the examiner, must be filed in the Registry, and upon the filing of the certificate the party by whom the attendance of that person was required may apply to the Court for an order requiring that person to attend, or to be sworn or to answer any question or produce any document, as the case may be.

(2) An application for an order under this rule may be made *ex parte*.

(3) If the Court makes an order under this rule, it may order the person against whom the order is made to pay any costs occasioned by his refusal or failure.

(4) A person who wilfully disobeys any order made against him under paragraph (1) is guilty of contempt of court.

O.39, r.11 EVIDENCE BY DEPOSITION: EXAMINERS OF THE COURT

Taking of depositions (O.39, r.11)

11.—(1) The deposition of any person examined before the examiner must be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner but, subject to paragraph (2) and rule 10(1), the deposition need not set out every question and answer so long as it contains as nearly as may be the statement of the person examined.

(2) The examiner may direct the exact words of any particular question and the answer thereto to be set out in the deposition if that question and answer appear to him to have special importance.

(3) The deposition of any person shall be read to him, and he shall be asked to sign it, in the presence of such of the parties as may attend, but the parties may agree in writing to dispense with the foregoing provision.

If a person refuses to sign a deposition when asked under this paragraph to do so, the examiner must sign the deposition.

(4) The original deposition of any person, authenticated by the signature of the examiner before whom it was taken, must be sent by the examiner to the Registry and shall be filed therein.

Time taken by examination to be indorsed on depositions (O.39, r.12)

12. Before sending any deposition to the Registry under rule 11(4), the examiner must indorse on the deposition a statement signed by him of the time occupied in taking the examination and the fees received in respect thereof.

Special report by examiner (O.39, r.13)

13. The examiner may make a special report to the Court with regard to any examination taken before him and with regard to the absence or conduct of any person thereat, and the Court may direct such proceedings to be taken, or make such order, on the report as it thinks fit.

Order for payment of examiner's fees (O.39, r.14)

14.—(1) If the fees and expenses due to an examiner are not paid he may report that fact to the Court, and the Court may direct the Registrar to apply for an order against the party on whose application the order for examination was made to pay the examiner the fees and expenses due to him in respect of the examination.

(2) An order under this rule shall not prejudice any determination on the taxation of costs or otherwise as to the party by whom the costs of the examination are ultimately to be borne.

Perpetuation of testimony (O.39, r.15)

15.—(1) Witnesses shall not be examined to perpetuate testimony unless an action has been begun for the purpose.

(2) Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity or office, or to any estate or interest in any real or personal property, the right or claim to which cannot be brought to trial

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by him before the happening of such event, may begin an action to perpetuate any testimony which may be material for establishing such right or claim.

(3) No action to perpetuate the testimony of witnesses shall be set down for trial.

Fees and expenses of examiners (O.39, r.16)

16.—(1) The party prosecuting the order must pay all reasonable expenses as certified by the Registrar in addition to the prescribed fees for an examination.

(2) The Registrar may require an amount estimated by him to cover the expenses of the examination to be deposited before the order for the examination is sealed.

ORDER 40

COURT EXPERT

Appointment of expert to report on certain questions (O.40, r.1)

1.—(1) In any cause or matter in which any question for an expert witness arises the Court may at any time, on the application of any party, appoint an independent expert or, if more than one such question arises, two or more such experts, to inquire and report upon any question of fact or opinion not involving questions of law or of construction.

An expert appointed under this paragraph is referred to in this Order as a “court expert”.

(2) Any court expert in a cause or matter shall, if possible, be a person agreed between the parties and, failing agreement, shall be nominated by the Court.

(3) The question to be submitted to the court expert and the instructions (if any) given to him shall, failing agreement between the parties, be settled by the Court.

(4) In this rule “expert”, in relation to any question arising in a cause or matter, means any person who has such knowledge or experience of or in connection with that question that his opinion on it would be admissible in evidence.

Report of court expert (O.40, r.2)

2.—(1) The court expert must send his report to the Court, together with such number of copies thereof as the Court may direct, and the Registrar must send copies of the report to the parties or their barristers and solicitors.

(2) The Court may direct the court expert to make a further or supplemental report.

(3) Any part of a court expert’s report which is not accepted by all the parties to the cause or matter in which it is made shall be treated as information furnished to the Court and be given such weight as the Court thinks fit.

Experiments and tests (O.40, r.3)

3. If the Court expert is of opinion that an experiment or test of any kind (other than one of a trifling character) is necessary to enable him to make a satisfactory report he shall inform the parties or their solicitors and shall, if possible, make an arrangement with them as to the expenses involved, the persons to attend and other relevant matters; and if the parties are unable to agree on any of those matters it shall be settled by the Court.

Cross-examination of court expert (O.40, r.4)

4. Any party may, within 14 days after receiving a copy of the court expert’s report, apply to the Court for leave to cross-examine the expert

on his report, and on that application the Court shall make an order for the cross-examination of the expert by all the parties either—

- (a) at the trial, or
- (b) before an examiner at such time and place as may be specified in the order.

Remuneration of court expert (O.40, r.5)

5.—(1) The remuneration of the court expert shall be fixed by the Court and shall include a fee for his report and a proper sum for each day during which he is required to be present either in court or before an examiner.

(2) Without prejudice to any order providing for payment of the court expert's remuneration as part of the costs of the cause or matter, the parties shall be jointly and severally liable to pay the amount fixed by the Court for his remuneration, but where the appointment of a court expert is opposed the Court may, as a condition of making the appointment, require the party applying for the appointment to give such security for the remuneration of the expert as the Court thinks fit.

Calling of expert witnesses (O.40, r.6)

6. Where a court expert is appointed in a cause or matter, any party may, on giving to the other parties a reasonable time before the trial notice of his intention to do so, call one expert witness to give evidence on the question reported on by the court expert but no party may call more than one such witness without the leave of the Court, and the Court shall not grant leave unless it considers the circumstances of the case to be exceptional.

ORDER 41

AFFIDAVITS

Form of affidavit (O.41, r.1)

1.—(1) Subject to paragraphs (2) and (3), every affidavit sworn in a cause or matter must be entitled in that cause or matter.

(2) Where a cause or matter is entitled in more than one matter, it shall be sufficient to state the first matter followed by the words “and other matters”, and where a cause or matter is entitled in a matter or matters and between parties, that part of the title which consists of the matter or matters may be omitted.

(3) Where there are more plaintiffs than one, it shall be sufficient to state the full name of the first followed by the words “and others”, and similarly with respect to defendants.

(4) Every affidavit must be expressed in the first person and, unless the Court otherwise directs, must state the place of residence of the deponent and his occupation or, if he has none, his description, and if he is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state that fact.

In the case of a deponent who is giving evidence in a professional, business or other occupational capacity the affidavit may, instead of stating the deponent's place of residence, state the address at which he works, the position he holds and the name of his firm or employer, if any.

(5) Every affidavit must be in book form, following continuously from page to page.

(6) Every affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(7) Dates, sums and other numbers must be expressed in an affidavit in figures and not in words.

(8) Every affidavit must be signed by the deponent and the jurat must be completed and signed by the person before whom it is sworn.

Affidavit by two or more deponents (O.41, r.2)

2. Where an affidavit is made by two or more deponents, the names of the persons making the affidavit must be inserted in the jurat except that, if the affidavit is sworn by both or all the deponents 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.

Affidavit by illiterate or blind person or person who does not understand English (O.41, r.3)

3.—(1) Where it appears to the person administering the oath that the

deponent is illiterate or blind, he must certify in the jurat that—

- (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 signature or mark in his presence;

and the affidavit shall not be used in evidence without such a certificate unless the Court is otherwise satisfied that it was read to and appeared to be perfectly understood by the deponent.

(2) Where it appears to the person administering the oath that the deponent does not understand the English language he must certify in the jurat that—

- (a) the affidavit was read, explained and interpreted, either by himself or through the medium of a sworn and named interpreter in his presence, to the deponent in a specified language with which the deponent was familiar,
- (b) the deponent seemed perfectly to understand it, and
- (c) the deponent made his signature or mark in his presence;

and the affidavit shall not be used in evidence without such a certificate.

Use of defective affidavit (O.41, r.4)

4. An affidavit may, with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.

Contents of affidavit (O.41, r.5)

5.—(1) Subject to Order 14, rules 2(2) and 4(2), to Order 86, rule 2(1), to paragraph (2) of this rule and to any order made under Order 38, rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.

(2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.

Scandalous, etc., matter in affidavit (O.41, r.6)

6. The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.

Alterations in affidavits (O.41, r.7)

7.—(1) An affidavit which has in the jurat or body thereof any interlineation, erasure or other alteration shall not be filed or used in any proceeding without the leave of the Court unless the person before whom the affidavit was sworn has initialled the alteration and, in the case of an erasure, has re-written in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.

(2) Where an affidavit is sworn at any office of the High Court, the official stamp of that office may be substituted for the signature or initials required by this rule.

Affidavit not to be sworn before barrister and solicitor of party, etc. (O.41, r.8)

8. No affidavit shall be sufficient if sworn before the barrister and solicitor of the party on whose behalf the affidavit is to be used or before any agent, partner or clerk of that barrister and solicitor.

Filing of affidavits (O.41, r.9)

9.—(1) Except as otherwise provided by these Rules, every affidavit must be filed in the Registry.

(2) Every affidavit must be indorsed with a note showing on whose behalf it is filed and the dates of swearing and filing, and an affidavit which is not so indorsed may not be filed or used without the leave of the Court.

Use of original affidavit or office copy (O.41, r.10)

10.—(1) Subject to paragraph (2) an original affidavit may be used in proceedings notwithstanding that it has not been filed in accordance with rule 9.

† (2) An original affidavit may not be used in any proceedings unless it has previously been stamped with the stamp duty.

(3) Where an original affidavit is used then, unless the party whose affidavit it is undertakes to file it, he must immediately after it is used leave it with the proper officer in court or in chambers, as the case may be, and that officer shall send it to be filed.

(4) Where an affidavit has been filed, an office copy thereof may be used in any proceedings.

Document to be used in conjunction with affidavit to be exhibited to it (O.41, r.11)

11.—(1) Any document to be used in conjunction with an affidavit must be exhibited to the affidavit.

(2) Any exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn.

Affidavit taken in Commonwealth country admissible without proof of seal, etc. (O.41, r.12)

12. A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a court, judge, notary public or person having authority to administer oaths in a part of the Commonwealth outside Fiji in testimony of an affidavit being taken before it or him in that part shall be admitted in evidence without proof of the seal or signature being the seal or signature of that court, judge, notary public or person.

ORDER 42

JUDGMENTS AND ORDERS

Form of judgment, etc. (O.42, r.1)

1.—(1) If, in the case of any judgment, a form thereof is prescribed by Appendix A the judgment must be in that form.

(2) The party entering any judgment shall be entitled to have recited therein a statement of the manner in which, and the place at which, the writ or other originating process by which the cause or matter in question was begun was served.

(3) Every order must be marked with the name of the judge or other person by whom it was made and must be sealed.

Judgment in favour of reversioner for detention of goods

(O.42, r.2)

2. Where a claim relating to the detention of goods is made by a partial owner whose right of action is not founded on a possessory title, any judgment or order given or made in respect of the claim shall be for the payment of damages only.

In this paragraph “partial owner” means one of two or more persons having interests in the goods, unless he has the written authority of every other such person to sue on the latter’s behalf.

Judgment, etc., requiring act to be done: time for doing it

(O.42, r.3)

3.—(1) Subject to paragraph (2), a judgment or order which requires a person to do an act must specify the time after service of the judgment or order, or some other time, within which the act is to be done.

(2) Where the act which any person is required by any judgment or order to do is to pay money to some other person, give possession of any land or deliver any goods, a time within which the act is to be done need not be specified in the judgment or order by virtue of paragraph (1), but the foregoing provision shall not affect the power of the Court to specify such a time and to adjudge or order accordingly.

Date from which judgment or order takes effect (O.42, r.4)

4.—(1) A judgment or order of the Court takes effect from the day of its date.

(2) Such a judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court orders it to be dated as of some other earlier or later day, in which case it shall be dated as of that other day.

Orders required to be drawn up (O.42, r.5)

5.—(1) Subject to paragraph (2), every order of the Court shall be drawn up unless the Court otherwise directs.

- (2) An order—
 - (a) which—
 - (i) extends the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act, or
 - (ii) grants leave for the doing of any of the acts mentioned in paragraph (3), and
 - (b) which neither imposes any special terms nor includes any special directions other than a direction as to costs, need not be drawn up unless the Court otherwise directs.
- (3) The acts referred to in paragraph (2)(a)(ii) are—
 - (a) the issue of any writ, other than a writ of summons for service out of the jurisdiction;
 - (b) the amendment of a writ of summons or other originating process or a pleading;
 - (c) the filing of any document;
 - (d) any act to be done by an officer of the Court other than a barrister and solicitor.

Drawing up and entry of judgments and orders (O.42, r.6)

6.—(1) Every judgment given in a cause or matter and every order required to be drawn up shall be settled by or under the direction of the Registrar before being entered or drawn up.

(2) The party seeking to enter a judgment or to have an order drawn up may and shall if so required by the Registrar prepare a draft of the judgment or order and present the draft to the Registrar.

(3) If the party in whose favour a judgment is given or an order is made does not prepare it, have it settled and enter it within 21 days after it is given or made any other party affected by the judgment or order may prepare it, have it settled and entered.

(4) Every judgment when entered shall be endorsed with the date of entry.

Default in connection with drawing up judgments etc. (O.42, r.7)

7. If a party fails to attend an appointment made by a judge or the Registrar for settling any judgment or order or fails to produce any documents required by the judge or the Registrar in order to enable him to draw up the judgment or order, the judge or the Registrar may draw up and pass the judgment or order in the absence of that party.

ORDER 43

ACCOUNTS AND INQUIRIES

Summary order for account (O.43, r.1)

1.—(1) Where a writ is indorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant has acknowledged service of the writ or after the time limited for acknowledging service, apply for an order under this rule.

(2) A defendant to an action begun by writ who has served a counter-claim, which includes a claim for an account or a claim which necessarily involves taking an account, on—

(a) the plaintiff, or

(b) any other party, or

(c) any person who becomes a party by virtue of such service may apply for an order under this rule.

(3) An application under this rule must be made by summons and, if the Court so directs, must be supported by affidavit or other evidence.

(4) On the hearing of the application, the Court may, unless satisfied by the defendant that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

Court may direct taking of accounts, etc. (O.43, r.2)

2.—(1) The Court may, on an application made by summons at any stage of the proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made.

(2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgment or order so that, as far as may be, each distinct account and inquiry may be designated by a number.

Directions as to manner of taking account or making inquiry (O.43, r.3)

3.—(1) Where the Court orders an account to be taken or inquiry to be made it may by the same or a subsequent order give directions with regard to the manner in which the account is to be taken or vouched or the inquiry is to be made.

(2) Without prejudice to the generality of paragraph (1), the Court may direct that in taking an account the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections thereto as they think fit.

Account to be made, verified etc. (O.43, r.4)

4.—(1) Where an account has been ordered to be taken, the accounting party must make out his account and, unless the Court otherwise directs, verify it by an affidavit to which the account must be exhibited.

(2) The items on each side of the account must be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party must lodge the account with the Court and must at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

Notice to be given of alleged omissions, etc. in account (O.43, r.5)

5. Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of amount or in any other respect must give him notice thereof stating, so far as he is able, the amount sought to be charged, with brief particulars thereof or, as the case may be, the grounds for alleging that the item is erroneous.

Allowances (O.43, r.6)

6. In taking any account directed by any judgment or order all just allowances shall be made without any direction to that effect.

Delay in prosecution of accounts, etc. (O.43, r.7)

7.—(1) If it appears to the Court that there is undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or for expediting them or for the conduct thereof and for costs as the circumstances require.

(2) The Court may direct any party or appoint a suitable person to take over the conduct of the proceedings in question and to carry out any directions made by an order under this rule and may make such order as it thinks fit as to the payment of any costs incurred.

Distribution of fund before all persons entitled are ascertained (O.43, r.8)

8. Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to meet the subsequent costs of ascertaining those other persons.

Guardian's accounts (O.43, r.9)

9. The accounts of a person appointed guardian of a minor's estate must be verified and passed in such manner as the Court may direct.

ORDER 44

PROCEEDINGS UNDER JUDGMENTS AND ORDERS

Application to Orders (O.44, r.1)

1. In this Order references to a judgment include references to an order.

Service of notice of judgment on person not a party (O.44, r.2)

2.—(1) Where in an action for—

- (a) the administration of the estate of a deceased person, or
- (b) the execution of a trust, or
- (c) the sale of any property,

the Court gives a judgment or makes a direction which affects persons not parties to the action, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any such person and any person so served shall, subject to paragraph (4), be bound by the judgment as if he had originally been a party to the action.

(2) Every notice of a judgment for service under this rule must be indorsed with a memorandum in Form No. 21 in Appendix A and accompanied by a form of acknowledgment of service in Form No. 2 in Appendix A with such modifications as may be appropriate.

(3) A person served with notice of a judgment may, within one month after service of the notice on him, and without acknowledging service apply to the court to discharge, vary or add to the judgment.

(4) A person served with notice of a judgment may, after acknowledging service of the notice, attend the proceedings under the judgment.

(5) Order 12, rules 1 to 3, shall apply in relation to the acknowledgment of service of a notice of judgment as if the judgment were a writ, and the person by whom the notice is served were the plaintiff and the person on whom it is served a defendant.

Directions by the Court (O.44, r.3)

3.—(1) Where a judgment given in a cause or matter contains directions which make it necessary to proceed in chambers under the judgment the Court may, when giving the judgment or at any time during proceedings under the judgment, give further directions for the conduct of those proceedings, including, in particular, directions with respect to—

- (a) the manner in which any account or inquiry is to be prosecuted,
- (b) the evidence to be adduced in support thereof,
- (c) the preparation and service on the parties to be bound thereby of the draft of any deed or other instrument which is directed by the

O.44, r.4 PROCEEDINGS UNDER JUDGMENTS & ORDERS

judgment to be settled by the Court and the service of any objections to the draft,

- (d) the parties required to attend all or any part of the proceedings,
- (e) the representation by the same barristers and solicitors of parties who constitute a class and by different barristers and solicitors of parties who ought to be separately represented, and
- (f) the time within which each proceeding is to be taken, and may fix a day or days for the further attendance of the parties.

(2) The Court may revoke or vary any directions given under this rule.

Application of rr. 5 to 8 (O.44, r.4)

4.—Rules 5 to 8 apply—

- (a) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next of kin or other ascertained claimants to be made, and
- (b) where in proceedings for the execution under the direction of the court of a trust the judgment directs any such inquiry to be made, and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs an account of debts or other liabilities to be taken or any inquiry to be made.

Advertisements for creditors and other claimants (O.44, r.5)

5. The court may, when giving a judgment or at any stage of proceedings under a judgment, give directions for the issue of advertisements for creditors or other claimants and may fix the time within which creditors and claimants may respond.

Examination of claims (O.44, r.6)

6.—(1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must—

- (a) examine the claims of persons claiming to be creditors of the estate,
- (b) determine, so far as he is able, to which of such claims the estate is liable, and
- (c) at least seven clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them and listing all the other debts of the deceased which are or may still be due.

(2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must—

- (a) examine the claims,
- (b) determine, so far as he is able, which of them are valid, and

- (c) at least seven clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them.

(3) If the personal representatives or trustees concerned are not the parties directed by the Court to examine claims, they must join with the party directed to examine them in making the affidavit required by this rule.

Adjudication on claims (O.44, r.7)

7. For the purpose of adjudicating on claims the Court may—
- (a) direct any claim to be investigated in such manner as it thinks fit,
 - (b) require any claimant to attend and prove his claim or to furnish further particulars or evidence of it, or
 - (c) allow any claim after or without proof thereof.

Notice of adjudication (O.44, r.8)

8. The Court shall give directions that there be served on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of that fact.

Interest on debts (O.44, r.9)

9.—(1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed—

- (a) on any such debt as carries interest, at the rate it carries, and
- (b) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date.

(2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt in accordance with paragraph (1)(b) out of any assets which may remain after satisfying the costs of the cause or matter, the debts which have been established and the interest on such of those debts as by law carry interest.

(3) For the purposes of this rule "debt" includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in paragraph (1)(b) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.

Interest on legacies (O.44, r.10)

10. Where an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the Court, interest shall be allowed on each legacy at the rate of five per cent, per annum beginning at the expiration of one year after the testator's death.

Registrar's order (O.44, r.11)

11.—(1) The result of proceedings under a judgment shall be stated in the form of an order.

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(2) Subject to any direction under paragraph (3) an order under this rule shall have effect as a final order disposing of the cause or matter in which it is made.

(3) An order under this rule shall contain such directions as the Court thinks fit as to the further consideration, either in court or in chambers, of the cause or matter in which it is made.

(4) Every order made under this rule shall have immediate binding effect on the parties to the cause or matter in which it is made and copies of the order shall be served on such of the parties as the Court may direct.

Appeal against Registrar's order (O.44, r.12)

12. Subject to paragraph (2), Order 58, rule 1 shall apply to an order under this rule as it applies to any judgment, order or decision of the Registrar.

ENFORCEMENT OF JUDGMENTS AND ORDERS

ORDER 45

ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL

Enforcement of judgment, etc., for payment of money (O.45, r.1)

1.—(1) Subject to the provisions of these Rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into court, may be enforced by one or more of the following means, that is to say—

- (a) writ of *fiери facias*;
- (b) garnishee proceedings;
- (c) a charging order;
- (d) the appointment of a receiver;
- (e) in a case in which rule 4 applies, an order of committal;
- (f) in such a case, writ of sequestration.

(2) Subject to the provisions of these Rules, a judgment or order for the payment of money into court may be enforced by one or more of the following means that is to say—

- (a) the appointment of a receiver;
- (b) in a case in which rule 4 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(3) Paragraphs (1) and (2) are without prejudice to any other remedy available to enforce such a judgment or order as is therein mentioned or to the power of a court under the Debtors Act, to commit to prison a person who makes default in paying money adjudged or ordered to be paid by him, or to the right of a person prosecuting a judgment or order for the payment of money to a person to apply under any enactment to have the judgment or order enforced in a Magistrate's Court or to the enactments relating to bankruptcy or the winding up of companies.

(4) In this Order references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.

Enforcement of judgment for possession of land (O.45, r.2)

2.—(1) Subject to the provisions of these Rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say—

- (a) writ of possession;
- (b) in a case in which rule 4 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was given or made in a mortgage action to which Order 88 applies.

(3) Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled.

(4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

Enforcement of judgment for delivery of goods (O.45, r.3)

3.—(1) Subject to the provisions of these Rules, a judgment or order for the delivery of any goods which does not give a person against whom the judgment is given or order made the alternative of paying the assessed value of the goods may be enforced by one or more of the following means, that is to say—

(a) writ of delivery to recover the goods without alternative provision for recovery of the assessed value thereof (hereafter in this rule referred to as a “writ of specific delivery”);

(b) in a case in which rule 4 applies, an order of committal;

(c) in such a case, writ of sequestration.

(2) Subject to the provisions of these Rules, a judgment or order for the delivery of any goods or payment of their assessed value may be enforced by one or more of the following means, that is to say—

(a) writ of delivery to recover the goods or their assessed value;

(b) by order of the Court, writ of specific delivery;

(c) in a case in which rule 4 applies, writ of sequestration.

An application for an order under sub-paragraph (b) shall be made by summons, which must, notwithstanding Order 65, rule 9, be served on the defendant against whom the judgment or order sought to be enforced was given or made.

(3) A writ of specific delivery, and a writ of delivery to recover any goods or their assessed value, may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

(4) A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money.

Enforcement of judgment to do or abstain from doing any act (O.45, r.4)

4.—(1) Where—

(a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under Order 3, rule 4, or

- (b) a person, disobeys a judgment or order requiring him to abstain from doing an act,
- then, subject to the provisions of these Rules, the judgment or order may be enforced by one or more of the following means, that is to say—
- (i) with the leave of the Court, a writ of sequestration against the property of that person;
 - (ii) where that person is a body corporate, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the body;
 - (iii) subject to the provisions of the Debtors Act, an order of committal against that person or, where that person is a body corporate, against any such officer.

(2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 5 requiring the act to be done within some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as references to the order made under rule 5.

(3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under paragraph (1), but the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first mentioned person to deliver the goods to the applicant within a time specified in the order, and that order may be so enforced.

Judgment, etc. requiring act to be done: order fixing time for doing it (O.45, r.5)

5.—(1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court shall, without prejudice to Order 3, rule 4 have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.

(2) Where, notwithstanding Order 42 rule 3(1), or by reason of Order 42 rule 3(2), a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.

(3) An application for an order under this rule must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the person required to do the act in question.

Service of copy of judgment, etc., prerequisite to enforcement under rule 5 (O.45, r.6)

6.—(1) In this rule references to an order shall be construed as including references to a judgment.

O.45, r.6 ENFORCEMENT OF JUDGMENTS & ORDERS: GENERAL

(2) Subject to Order 24, rule 16(3), Order 26, rule 6(3), and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 4 unless—

- (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question, and
- (b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.

(3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 4(1)(ii) or (iii) unless—

- (a) a copy of the order has also been served personally on the officer against whose property leave is sought to issue a writ of sequestration or against whom an order of committal is sought, and
- (b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.

(4) There must be indorsed on the copy of an order served under this rule a notice informing the person on whom the copy is served—

- (a) in the case of service under paragraph (2), that if he neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he disobeys the order, he is liable to process of execution to compel him to obey it, and
- (b) in the case of service under paragraph (3), that if the body corporate neglects to obey the order within the time so specified or, if the order is to abstain from doing an act, that if the body corporate disobeys the order, he is liable to process of execution to compel the body to obey it.

(5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order made under Order 3, rule 4, extending or abridging the time for doing the act and, where the first-mentioned order was made under rule 4(3) or 5 of this Order, a copy of the previous order requiring the act to be done.

(6) An order requiring a person to abstain from doing an act may be enforced under rule 4 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either—

- (a) by being present when the order was made, or
- (b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

(7) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

Court may order act to be done at expense of disobedient party
(O.45, r.7)

7. If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

Execution by or against person not being a party (O.45, r.8)

8.—(1) Any person, not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.

(2) Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

Conditional judgment: waiver (O.45, r.9)

9. A party entitled under any judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

Matters occurring after judgment: stay of execution, etc.
(O.45, r.10)

10. Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

Forms of writs (O.45, r.11)

- 11.—(1) A writ of *fiery facias* must be in Form 22 in Appendix A.
- (2) A writ of delivery must be in Form No. 23 in Appendix A.
- (3) A writ of possession must be in Form No. 24 in Appendix A.
- (4) A writ of sequestration must be in Form No. 25 in Appendix A.

O.45, r.12 ENFORCEMENT OF JUDGMENTS & ORDERS: GENERAL

Enforcement of judgments and orders for recovery of money, etc.

(O.45, r.12)

12.—(1) Rule 1(1) of this Order, with the omission of sub-paragraphs (e) and (f) thereof, and Orders 46 to 51 shall apply in relation to a judgment or order for the recovery of money as they apply in relation to a judgment or order for the payment of money.

(2) Rule 2 of this Order, with the omission of paragraph(1)(b) and (c) thereof, and Order 47, rule 2(2) shall apply in relation to a judgment or order for the recovery of possession of land as they apply in relation to a judgment or order for the giving or delivery of possession of land.

(3) Rule 3 of this Order, with the omission of paragraphs (1)(b) and (c) and (2)(c) thereof, and Order 47, rule 2(2), shall apply in relation to a judgment or order that a person do have a return of any goods, and to a judgment or order that a person do have a return of any goods or do recover the assessed value thereof, as they apply in relation to a judgment or order for the delivery of any goods and a judgment or order for the delivery of any goods or payment of the assessed value thereof respectively.

ORDER 46

WRITS OF EXECUTIONS: GENERAL

Definition (O.46, r.1)

1. In this Order, unless the context otherwise requires, “writ of execution” includes a writ of *fiery facias*, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs.

When leave to issue any writ of execution is necessary (O.46, r.2)

2.—(1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases, that is to say—

- (a) where six years or more have elapsed since the date of the judgment or order;
- (b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;
- (c) where the judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the judgment or order, and it is sought to issue execution against such assets;
- (d) where under the judgment or order any person is entitled to relief subject to the fulfilment of any condition which it is alleged has been fulfilled;
- (e) where any goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.

(2) Paragraph (1) is without prejudice to any enactment or rule by virtue of which a person is required to obtain the leave of the Court for the issue of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order.

(3) Where the Court grants leave, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting such leave, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

Leave required for issue of writ in aid of other writ (O.46, r.3)

3. A writ of execution in aid of any other writ of execution shall not issue without the leave of the Court.

Application for leave to issue writ (O.46, r.4)

4.—(1) An application for leave to issue a writ of execution may be made *ex parte* unless the Court directs it to be made by summons.

- (2) Such an application must be supported by an affidavit—
- (a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date of the application;
 - (b) stating, where the case falls within rule 2(1)(a), the reasons for the delay in enforcing the judgment or order;
 - (c) stating where the case falls within rule 2(1)(b), the change which has taken place in the parties entitled or liable to execution since the date of the judgment or order;
 - (d) stating, where the case falls within rule 2(1)(c) or (d), that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so;
 - (e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.
- (3) The Court hearing such application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in an action may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

Application for leave to issue writ of sequestration (O.46, r.5)

5.—(1) Notwithstanding anything in rules 2 and 4, an application for leave to issue a writ of sequestration must be made to a judge by motion.

(2) Subject to paragraph (3), the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ.

(3) Without prejudice to its powers under Order 65, rule 4, the court may dispense with service of the notice of motion under this rule if it thinks it just to do so.

(4) the judge hearing an application for leave to issue a writ of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Order 52, rule 5, but, except in such a case, the application shall be heard in open court.

Issue of writ of execution (O.46, r.6)

6.—(1) Issue of a writ of execution takes place on its being sealed by an officer of the Registry.

(2) Before such a writ is issued a *praecipe* for its issue must be filed.

(3) The *praecipe* must be signed by or on behalf of the barrister and solicitor of the person entitled to execution or, if that person is acting in person, by him.

(4) No such writ shall be sealed unless at the time of the tender thereof for sealing—

(a) the person tendering it produces—

(i) the judgment or order on which the writ is to issue, or an office copy thereof,

(ii) where the writ may not issue without the leave of the Court, the order granting such leave or evidence of the granting of it, and

(b) the officer authorised to seal it is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.

(5) Every writ of execution shall bear the date of the day on which it is issued.

Duration and renewal of writ of execution (O.46, r.7)

7.—(1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.

(2) Where a writ has not been wholly executed the Court may by order extend the validity of the writ from time to time for a period of 12 months at any time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire or such later day, if any, as the Court may allow.

(3) Before a writ the validity of which has been extended under this rule is executed, either the writ must be sealed with the seal of the Registry showing the date on which the order extending its validity was made or the applicant for the order must serve a notice sealed as aforesaid, on the sheriff to whom the writ is directed informing him of the making of the order and the date thereof.

(4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally delivered to the sheriff.

(5) The production of a writ of execution, or of such a notice as is mentioned in paragraph (3), purporting in either case to be sealed as mentioned in that paragraph, shall be evidence that the validity of that writ or, as the case may be, of the writ referred to in that notice, has been extended under this rule.

Return to writ of execution (O.46, r.8)

8.—(1) Any party at whose instance a writ of execution was issued may serve a notice on the sheriff to whom the writ was directed requiring him, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.

(2) If a sheriff on whom such a notice is served fails to comply with it the party by whom it was served may apply to the Court for an order directing the sheriff to comply with the notice.



ORDER 47

WRITS OF FIERI FACIAS

Power to stay execution by writ of fieri facias (O.47, r.1)

1.—(1) Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other party liable to execution—

(a) that there are special circumstances which render it inexpedient to enforce the judgment or order, or

(b) that the applicant is unable from any cause to pay the money, then, notwithstanding anything in rule 2, the Court may by order stay the execution of the judgment or order by writ of *fieri facias* either absolutely or for such period and subject to such conditions as the Court thinks fit.

(2) An application under this rule, if not made at the time the judgment is given or order made, must be made by summons and may be so made notwithstanding that the party liable to execution did not acknowledge service of the writ of originating summons in the action or did not state in his acknowledgment of service that he intended to apply for a stay of execution under this rule pursuant to order 13, rule 9.

(3) An application made by summons must be supported by an affidavit made by or on behalf of the applicant stating the grounds of the application and the evidence necessary to substantiate them and, in particular, where such application is made on the grounds of the applicant's inability to pay, disclosing his income, the nature and value of any property of his and the amount of any other liabilities of his.

(4) The summons and a copy of the supporting affidavit must, not less than 4 clear days before the return day, be served on the party entitled to enforce the judgment or order.

(5) An order staying execution under this rule may be varied or revoked by a subsequent order.

Separate writs to enforce payment of costs, etc. (O.47, r.2)

2.—(1) Where only the payment of money, together with costs to be taxed, is adjudged or ordered, then, if when the money becomes payable under the judgment or order the costs have not been taxed, the party entitled to enforce that judgment or order may issue a writ of *fieri facias* to enforce payment of the sum (other than for costs) adjudged or ordered and, not less than 8 days after the issue of that writ, he may issue a second writ to enforce payment of the taxed costs.

(2) A party entitled to enforce a judgment or order for the delivery of possession of any property (other than money) may, if he so elects, issue a separate writ of *fieri facias* to enforce payment of any damages or costs awarded to him by that judgment or order.

ORDER 48

EXAMINATION OF JUDGMENT DEBTOR, ETC.

Order for examination of judgment debtor (O.48, r.1)

1.—(1) Where a person has obtained a judgment or order for the payment by some other person (hereinafter referred to as “the judgment debtor”) of money, the Court may, on an application made *ex parte* by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a body corporate, an officer thereof, to attend before the Registrar or such Magistrate as the Court may appoint and be orally examined on the questions—

- (a) whether any and, if so, what debts are owing to the judgment debtor, and
- (b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment or order;

and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.

(2) An order under this rule must be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination, and appropriate conduct money must be paid or tendered.

Examination of party liable to satisfy other judgment (O.48, r.2)

2. Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than such a judgment or order as is mentioned in rule 1, the Court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications.

Examiner to make record of debtor's statement (O.48, r.3)

3. The Registrar or the Magistrate conducting the examination shall take down, or cause to be taken down, in writing the statement made by the judgment debtor or other person at the examination, read it to him and ask him to sign it; and if he refuses the Registrar or the Magistrate, as the case may be, shall sign the statement.

ORDER 49

GARNISHEE PROCEEDINGS

Attachment of debt due to judgment debtor (O.49, r.1)

1.—(1) Where a person (in this Order referred to as “the judgment creditor”) has obtained a judgment or order for the payment by some other person (in this Order referred to as “the judgment debtor”) of money, not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order referred to as “the garnishee”) is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in paragraph (1), or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that paragraph and the costs of the garnishee proceedings.

Application for order (O.49, r.2)

2. An application for an order under rule 1 must be made *ex parte* supported by an affidavit—

- (a) stating the name and last known address of the judgment debtor,
- (b) identifying the judgment or order to be enforced and stating the amount of such judgment or order and the amount remaining unpaid under it at the time of the application,
- (c) stating, that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent’s information or the grounds for his belief, and
- (d) stating, where the garnishee is a bank having more than one place of business, the name and address of the branch at which the judgment debtor’s account is believed to be held or, if it be the case, that this information is not known to the deponent.

Service and effect of order to show cause (O.49, r.3)

3.—(1) Unless the Court otherwise directs, an order under rule 1 to show cause must be served—

- (a) on the garnishee personally at least 15 days before the time appointed thereby for the further consideration of the matter, and

- (b) on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the time appointed by the order for the further consideration or the matter.

(2) Such an order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

No appearance or dispute of liability by garnishee (O.49, r.4)

4.—(1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may make an order absolute under rule 1 against the garnishee.

(2) An order absolute under rule 1 against the garnishee may be enforced in the same manner as any other order for the payment of money.

Dispute of liability by garnishee (O.49, r.5)

5. Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried, without, if it orders trial before a master, the need for any consent by the parties.

Claims of third persons (O.49, r.6)

6.—(1) If in garnishee proceedings it is brought to the notice of the Court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien upon it, the Court may order that person to attend before the Court and state the nature of his claim with particulars thereof.

(2) After hearing any person who attends before the Court in compliance with an order under paragraph (1), the Court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for determining the validity of the claim of such other person as is mentioned in paragraph (1) be tried in such manner as is mentioned in rule 5.

Discharge of garnishee (O.49, r.7)

7. Any payment made by a garnishee in compliance with an order absolute under this Order, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose reversed.

Money in court (O.49, r.8)

8.—(1) Where money is standing to the credit of the judgment debtor in court, the judgment creditor shall not be entitled to take garnishee pro-

ceedings in respect of that money but may apply to the Court by summons for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) Unless the Court otherwise directs, the summons must be served on the judgment debtor at least 7 days before the day named therein for the hearing of it.

Costs (O.49, r.9)

9. The costs of any application for an order under rule 1 or 8, and of any proceedings arising therefrom or incidental thereto, shall, unless the Court otherwise directs, be retained by the judgment creditor out of the money recovered by him under the order and in priority to the judgment debt.

ORDER 50

CHARGING ORDERS, STOP ORDERS, ETC

Order imposing charge on land, etc., (O.50, r.1)

1.—(1) This rule shall apply to any order which by virtue of any enactment the Court is empowered to make imposing a charge on any land or interest in land of a judgment debtor or levying execution thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and imposing the charge until that time in any event.

(3) An application for an order to which this rule applies may be made *ex parte*.

(4) There may be joined with an application for an order to which this rule applies an application for the appointment of a receiver to enforce the charge imposed by the order.

(5) The application must be supported by an affidavit—

- (a) identifying the judgment or order to be enforced, and stating the name of the judgment debtor on whose land or interest it is sought to impose a charge and the amount remaining unpaid under the judgment or order at the time of the application;
- (b) specifying the land on which, or an interest in which, it is sought to impose a charge; and
- (c) stating that to the best of the information or belief of the deponent the land or interest in question is the judgment debtor's and stating the sources of the deponent's information or the grounds for his belief

(6) Unless the Court otherwise directs, a copy of the order must at least seven days before the time appointed for the further consideration of the matter be served on the judgment debtor and if the judgment debtor does not attend on such consideration proof of service must be given.

(7) On the further consideration of the matter the Court shall, unless it appears (whether on the representation of the judgment debtor or otherwise) that there is sufficient cause to the contrary, make the order absolute with or without modifications.

(8) Where on the further consideration of the matter it appears to the Court that the order should not be made absolute, it shall discharge the order.

(9) This rule shall have effect subject to the provisions of any enactment whereunder any such order as aforesaid may be made.

Order imposing charge on securities (O.50, r.2)

2.—(1) The Court may for the purpose of enforcing a judgment or order for the payment of an ascertained sum of money to a person, by order impose on any interest to which the judgment debtor is

beneficially entitled in such of the securities to which this rule applies as may be specified in the order, a charge for securing payment of the amount due under the judgment or interest and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and imposing the charge until that time in any event.

(3) The securities to which this rule applies are—

(a) any government stock, and any stock of any company registered under any enactment, and

(b) any dividend or interest payable on such stock.

(4) In this Order “government stock” means any stock issued by Her Majesty’s government in Fiji or any funds of or annuity granted by that government, and “stock” includes shares, debentures and debenture stock.

Application for an order under rule 2 (O.50, r.3)

3. An application for an order under rule 2 must be made *ex parte* supported by an affidavit—

(a) identifying the judgment or order to be enforced, stating the amount unpaid under it at the date of the application, and showing that the applicant is entitled to enforce the judgment or order;

(b) specifying the securities on the judgment debtor’s interest in which it is sought to impose a charge and in whose name they stand;

(c) stating that to the best of the information or belief of the deponent, the judgment debtor is beneficially entitled to an interest in the securities in question, describing that interest, and stating the sources of the deponent’s information or the grounds for his belief.

Service of notice of order to show cause (O.50, r.4)

4.—(1) Unless the Court otherwise directs, a copy of the order under rule 2 to show cause must, at least 7 days before the time appointed thereby for the further consideration of the matter, be served on the judgment debtor, and if he does not attend on such consideration, proof of service must be given.

(2) Notice of the making of the order to show cause, with a copy of that order, must as soon as practicable after the making of the order be served—

(a) where the order relates to government stock, on the Minister responsible for Finance, or

(b) where the order relates to other stock, on the company concerned.

Effect of order to show cause (O.50, r.5)

5.—(1) No disposition by the judgment debtor of his interest in any securities to which an order under rule 2 to show cause relates, made after

the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.

(2) Until such order is discharged or made absolute the Minister responsible for Finance or, as the case may be, a company shall not permit any transfer of any such stock as is specified in the order, or pay to any person any dividend thereof, or interest payable thereon, except with the authority of the Court.

(3) If, after notice of the making of such order is served on the Minister responsible for Finance or a company, the Minister or company permits any transfer or makes any payment prohibited under paragraph (2), the Minister or the company shall be liable to pay the judgment creditor the value of the stock transferred or, as the case may be, the amount of the payment made or, if that value or amount is more than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.

Making and effect of charging order absolute (O.50, r.6)

6.—(1) On the further consideration of the matter the Court shall, unless it appears that there is sufficient cause to the contrary, make the order absolute with or without modifications.

(2) Where, on the further consideration of the matter, it appears to the Court that the order should not be made absolute it shall discharge the order.

(3) A charge imposed by an order under rule 2 made absolute under this rule shall have the same effect, and the judgment creditor in whose favour it is made shall, subject to paragraph (4), have the same remedies for enforcing it, as if it were a valid charge effectively made by the judgment debtor.

(4) No proceedings to enforce a charge imposed by an order made absolute under this rule shall be taken until after the expiration of 6 months from the date of the order to show cause.

Discharge, etc. of charging order (O.50, r.7)

7. The Court, on the application of the judgment debtor or any other person interested in the securities to which an order under rule 2 relates, may at any time, whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs as it thinks just.

Money in court: charging order (O.50, r.8)

8.—(1) The Court may for the purpose of enforcing a judgment or order for the payment of an ascertained sum of money to a person, by order impose on any interest to which the judgment debtor is beneficially entitled to any money in court identified in the order, a charge for securing payment of the amount due under the judgment or order and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for the further consideration of the matter and imposing the charge until that time in any event.

(3) Rules 3 and 4(1) shall, with the necessary modifications, apply in relation to an application for an order under this rule and to the order as they apply in relation to an application for an order under rule 2 and to such order.

(4) Notice of the making of an order under this rule to show cause, with a copy of that order, must as soon as practicable after the making of the order, be served on the Registrar.

(5) Rules 5(1), 6(1) and (2) and 7 shall, with the necessary modifications, apply in relation to an order under this rule as they apply in relation to an order under rule 2.

Injunctions, ancillary or incidental to charging orders (O.50, r.9)

9. An application for an injunction, ancillary or incidental, to a charging order under rules 1, 2 or 8, may be joined with the application for such order.

Funds in court: stop order (O.50, r.10)

10.—(1) The Court, on the application of any person—

- (a) who has a mortgage or charge on the interest of any person in funds in court, or
- (b) to whom that interest has been assigned, or
- (c) who is a judgment creditor of the person entitled to that interest,

may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon, without notice to the applicant.

(2) An application for an order under this rule must be made by summons in the cause or matter relating to the funds in court, or, if there is no such cause or matter, by originating summons.

(3) The summons must be served on every person whose interest may be affected by the order applied for and on the Registrar but shall not be served on any other person.

(4) Without prejudice to the Court's powers and discretion as to costs, the Court may order the applicant for an order under this rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds, occasioned by the application.

Securities not in court: stop notice (O.50, r.11)

11.—(1) Any person claiming to be beneficially entitled to an interest in any securities to which rule 2 applies other than securities in court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.

(2) A person claiming to be so entitled must file in the Registry—

- (a) an affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises, and
- (b) a notice in Form No. 26 in Appendix A (a stop notice), signed by the deponent to the affidavit, and annexed to it, addressed to the

Minister responsible for Finance or, as the case may be, the company concerned,

and must serve an office copy of the affidavit, and a copy of the notice sealed with the seal of the Court on the Minister or that company.

(3) There must be indorsed on the affidavit filed under this rule a note stating the address to which any such notice as is referred to in rule 12 is to be sent and, subject to paragraph (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the affidavit is filed.

(4) A person on whose behalf an affidavit under this rule is filed may change his address for service of the purpose of rule 12 by serving on the Minister responsible for Finance, or, as the case may be, the company concerned, notice to that effect, and as from the date of service of such a notice the address stated therein shall for the purpose of that rule be the address for service of that person.

Effect of stop notice (O.50, r.12)

12. Where a stop notice has been served in accordance with rule 11, then, so long as the stop notice is in force, the Minister responsible for Finance or company shall not register a transfer of the securities or take any other step restrained by the stop notice until 14 days after sending notice thereof, by ordinary first class post, to the person on whose behalf the stop notice was filed, but shall not by reason only of that notice refuse to register a transfer, or to take any other step, after the expiry of that period.

Amendment of stop notice (O.50, r.13)

13. If any securities are incorrectly described in a stop notice which has been filed and of which a sealed copy has been served in accordance with rule 11, an amended stop notice may be filed and served in accordance with the same procedure and shall take effect as a stop notice on the day on which the sealed copy of the amended notice is served.

Withdrawal, etc. of stop notice (O.50, r.14)

14.—(1) The person on whose behalf a stop notice was filed may withdraw it by serving a request for its withdrawal on the Minister responsible for Finance or the Company on whom the notice was served.

(2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be witnessed by a practising solicitor.

(3) The Court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a stop notice relates, may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made by originating summons, and the summons must be served on the person on whose behalf a stop notice was filed.

Order prohibiting transfer, etc. of securities (O.50, r.15)

15.—(1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any government stock or any stock of any company may by order prohibit the Minister responsible for Finance, or, as the case may be, that company from registering any transfer of or such part thereof as may be specified in the order or from paying any dividend thereof or interest thereon.

The name of the holder of the stock to which the order relates shall be stated in the order.

(2) An application for an order under this rule must be made by motion or summons.

(3) The Court, on the application of any person claiming to be entitled to an interest in any securities to which an order under this rule relates, may vary or discharge the order on such terms (if any) as to costs or otherwise as it thinks fit.

ORDER 51

UNALLOCATED

ORDER 52

COMMITTAL

Committal for contempt of court (O.52, r.1)

1.—(1) The power of the High Court to punish for contempt of court may be exercised by an order of committal.

(2) This Order applies to contempt of court—

(a) committed in connection with—

(i) any proceedings before the Court, or

(ii) proceedings in an inferior Court;

(b) committed otherwise than in connection with any proceedings.

(3) An order of committal may be made by a single judge.

(4) Where by virtue of any enactment the High Court has power to punish or take steps for the punishment of any person charged with having done any thing in relation to a court, tribunal or person which would, if it had been done in relation to the High Court, have been a contempt of that Court, an order of committal may be made by a single judge.

Application for order of committal (O.52, r.2)

2.—(1) No application for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made *ex parte* to a judge in chambers, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for leave not later than the preceding day to the Registry and must at the same time lodge at the Registry copies of the statement and affidavit.

Application for order after leave to apply granted (O.52, r.3)

3.—(1) When leave has been granted under rule 2 to apply for an order of committal, the application for the order must be made by motion and, unless the Court granting leave has otherwise directed, there must be at least 8 clear days between the service of the notice of motion and the day named therein for the hearing.

(2) Unless within 14 days after such leave was granted the motion is entered for hearing the leave shall lapse.

(3) Subject to paragraph (4), the notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave

under rule 2, must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the court or judge under Order 65, rule 4, the Court or judge may dispense with service of the notice of motion under this rule if it or he thinks it just to do so.

Saving for power to commit without application (O.52, r.4)

4. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the High Court or Court of Appeal to make an order of committal of its own motion against a person guilty of contempt of court.

Provisions as to hearing (O.52, r.5)

5.—(1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say —

- (a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;
- (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder;
- (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;
- (d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private;

but, except as aforesaid, the application shall be heard in open court.

(2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open court state—

- (a) the name of that person,
- (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made, and
- (c) if he is being committed for a fixed period, the length of that period.

(3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the statement under rule 2.

The foregoing provision is without prejudice to the powers of the Court under Order 20, rule 7.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

Power to suspend execution of committal order (O.52, r.6)

6.—(1) The Court may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

Discharge of person committed (O.52, r.7)

7.—(1) The Court may, on the application of any person committed to prison for any contempt of court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

Saving for other powers (O.52, r.8)

8. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the High Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

Saving for power summarily to punish contempt (O.52, r.9)

9. Nothing in the foregoing provisions of this Order shall be taken to affect the power of the Court summarily to commit for contempt.

ORDER 53

APPLICATIONS FOR JUDICIAL REVIEW

Cases appropriate for application for judicial review (O.53, r.1)

1.—(1) An application for an order of mandamus, prohibition or certiorari shall be made by way of an application for judicial review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the court may grant the declaration or injunction claimed if it considers that having regard to—

- (a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari,
- (b) the nature of the persons and bodies against whom relief may be granted by way of such an order, and
- (c) all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

Joinder of claims for relief (O.53, r.2)

2. On an application for judicial review any relief mentioned in rule 1(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

Grant of leave to apply for judicial review (O.53, r.3)

3.—(1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.

(2) An application for leave must be made *ex parte* and must be supported—

- (a) by a statement, setting out the name and description of the applicant, the name and address of his barrister and solicitor (if any), the relief sought and the grounds on which it is sought, and
- (b) by affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application to the Principal or District Registry not later than the day before the application is made and must at the same time lodge in such Registry copies of the statement and every affidavit in support.

(4) Without prejudice to its powers under Order 20, rule 8, the Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.

(5) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(6) Where leave is sought to apply for an order of *certiorari* to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(7) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(8) Where leave to apply for judicial review is granted, then—

(a) if the relief sought is an order of prohibition or *certiorari* and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

Delay in applying for relief (O.53, r.4)

4.—(1) Subject to the provisions of this rule, where in any case the Court considers that there has been undue delay in making an application for judicial review or, in a case to which paragraph (2) applies, the application for leave under rule 3 is made after the relevant period has expired, the Court may refuse to grant—

(a) leave for the making of the application, or

(b) any relief sought on the application,

if, in the opinion of the Court, the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

(2) In the case of an application for an order of *certiorari* to remove any judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of paragraph (1) is three months after the date of the proceeding.

(3) Paragraph (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

Mode of applying for judicial review (O.53, r.5)

5.—(1) When leave has been granted to make an application for judicial review, the application shall be made either by originating motion or by originating summons.

(2) The notice of motion or summons must be served on all persons directly affected and where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons must also be served on the court officer or registrar of the court and, where any objection to the conduct of the judge is to be made, on the judge.

(3) Unless the judge granting leave has otherwise directed, there must be at least ten days between the service of the notice of motion or summons and the day named therein for the hearing.

(4) A motion must be entered for hearing within 14 days after the grant of leave.

(5) An affidavit giving the names and addresses of, and the places, and dates of service on, all persons who have been served with the notice of motion or summons must be filed before the motion or summons is entered for hearing and, if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion or summons.

(6) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.

Statements and affidavits (O.53, r.6)

6.—(1) Copies of the statement in support of an application for leave under rule 3 must be served with the notice of motion or summons and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may on the hearing of the motion or summons allow the applicant to amend his statement, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Each party to the application must supply to every other party on demand and on payment of the proper charges copies of every affidavit which he proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under rule 3.

Claim for damages (O.53, r.7)

7.—(1) On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if—

(a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the the application relates, and

(b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

(2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

Application for discovery, interrogatories, cross-examination etc.
(O.53, r.8)

8.—(1) The Court may hear any interlocutory application in proceedings on an application for judicial review.

In this paragraph “interlocutory application” includes an application for an order under Order 24 or 26 or Order 38 rule 2(3), or for an order dismissing the proceedings by consent of the parties.

(2) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the State.

Hearing of application for judicial review (O.53, r.9)

9.—(1) On the hearing of any motion or summons under rule 5, any person who desires to be heard in opposition to the motion or summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons.

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has lodged in the Principal or District Registry a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion or summons.

(3) Where an order of certiorari is made in any such case as is referred to in paragraph (2), the order shall, subject to paragraph (4), direct that the proceedings shall be quashed forthwith on their removal into Court.

(4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had begun by writ; and Order 28, rule 8, shall apply as if, in the case of an application made by motion, it had been made by summons.

Saving for person acting in obedience to mandamus (O.53, r.10)

10. No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

Meaning of “Court” (O.53, r.11.)

11. In relation to the hearing by a judge of an application for leave under rule 3 or of an application for judicial review, any reference in this Order to “the Court” shall, unless the context otherwise requires, be construed as a reference to the judge.

ORDER 54

APPLICATIONS FOR WRIT OF HABEAS CORPUS

Application for writ of habeas corpus ad subjiciendum (O.54, r.1)

1.—(1) Subject to rule 11, an application for a writ of *habeas corpus ad subjiciendum* shall be made to the Court, except that—

(a) it may be made to a judge otherwise than in court at any time when no judge is sitting in court; and

(b) any application on behalf of a minor must be made in the first instance to a judge otherwise than in court.

(2) An application for such writ may be made *ex parte* and, subject to paragraph (3), must be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the affidavit required by paragraph (2), the affidavit may be made by some other person on his behalf and that affidavit must state that the person restrained is unable to make the affidavit himself and for what reason.

Power of Court to whom *ex parte* application made (O.54, r.2)

2.—(1) The court or judge to whom an application under rule 1 is made *ex parte* may make an order forthwith for the writ to issue, or may—

(a) where the application is made to a judge otherwise than in court, direct that an originating summons for the writ be issued, or that an application therefor be made by originating motion;

(b) where the application is made to Court, adjourn the application so that notice thereof may be given.

(2) The summons or notice of the motion must be served on the person against whom the issue of the writ is sought and on such other persons as the Court or judge may direct, and, unless the court or judge otherwise directs, there must be at least 8 clear days between the service of the summons or notice and the date named therein for the hearing of the application.

Copies of affidavits to be supplied (O.54, r.3)

3. Every party to an application under rule 1 must supply to every other party on demand and on payment of the proper charges copies of the affidavits which he proposes to use at the hearing of the application.

Power to order release of person restrained (O.54, r.4)

4. Without prejudice to rule 2(1), the Court or judge hearing an application for a writ of *habeas corpus ad subjiciendum* may in its or his

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discretion order that the person restrained be released, and such order shall be a sufficient warrant to any governor of a prison, constable or other person for the release of the person under restraint.

Directions as to return to writ (O.54, r.5)

5. Where a writ of *habeas corpus ad subjiciendum* is ordered to issue, the Court or judge by whom the order is made shall give directions as to the Court or judge before whom, and the date on which, the writ is returnable.

Service of writ and notice (O.54, r.6)

6.—(1) Subject to paragraphs (2) and (3), a writ of *habeas corpus ad subjiciendum* must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to a governor of a prison or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in the manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) There must be served with the writ a notice (in Form No. 28 in Appendix A) stating the Court or judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

Return to the writ (O.54, r.7)

7.—(1) The return to a writ of *habeas corpus ad subjiciendum* must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.

(2) The return may be amended, or another return substituted therefor, by leave of the Court or judge before whom the writ is returnable.

Procedure at hearing of writ (O.54, r.8)

8. When a return to a writ of *habeas corpus ad subjiciendum* is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his counsel shall be heard first, then the counsel for the State, and then one counsel for the person restrained in reply.

Bringing up prisoner to give evidence, etc. (O.54, r.9)

9.—(1) An application for a writ of *habeas corpus ad testificandum* or of *habeas corpus ad respondendum* must be made on affidavit to a judge in chambers.

(2) An application for an order to bring up a prisoner, otherwise than by writ of *habeas corpus*, to give evidence in any cause or matter, civil or

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criminal, before any court, tribunal or justice, must be made on affidavit to a judge in chambers.

Form of writ (O.54, r.10)

10. A writ of *habeas corpus ad subjiciendum* must be in Form No. 28 in Appendix A.

ORDER 55

APPEALS TO HIGH COURT FROM COURT, TRIBUNAL OR GENERAL PERSON

Application (O.55, r.1)

1.—(1) Subject to paragraphs (2) and (3), this Order shall apply to every appeal which by or under any enactment lies to the High Court from any court, tribunal or person.

(2) This Order shall not apply to—

(a) any appeal by case stated; or

(b) any appeal under any enactment for which rules governing appeals have been made thereunder, save to the extent that such rules do not provide for any matter dealt with by these rules.

(3) The following Rules of this Order shall, in relation to appeals to which this Order applies, have effect subject to any provision made specifically in relation to such appeals by these Rules or by or under any enactment.

(4) In this Order references to a tribunal shall be construed as references to any tribunal constituted by or under any enactment other than any of the ordinary courts of law.

Bringing of appeal (O.55, r.3)

3.—(1) An appeal to which this Order applies shall be by way of rehearing and must be brought by originating motion.

(2) Every notice of the motion by which such an appeal is brought must state the grounds of the appeal and, if the appeal is against a judgment, order or other decision of a court, must state whether the appeal is against the whole or a part of that decision and, if against a part only, must specify the part.

(3) The bringing of such an appeal shall not operate as a stay of proceedings on the judgment, determination or other decision against which the appeal is brought unless the Court by which the appeal is to be heard or the court, tribunal or person by which or by whom the decision was given so orders.

Notice of motion and entry of appeal (O.55, r.4)

4.—(1) The persons to be served with notice of the motion by which an appeal to which this Order applies is brought are the following:—

(a) if the appeal is against a judgment, order or other decision of a court, the Registrar or clerk of the court and any party to the proceedings in which the decision was given who is directly affected by the appeal;

(b) if the appeal is against an order, determination, award or other decision of a tribunal, Minister of the State, government depart-

ment or other person, the chairman of the tribunal, Minister, government department or person, as the case may be, and every party to the proceedings (other than the appellant) in which the decision appealed against was given.

(2) The notice must be served, and the appeal entered, within 28 days after the date of the judgment, order, determination or other decision against which the appeal is brought.

(3) In the case of an appeal against a judgment, order or decision of a court, the period specified in paragraph (2) shall be calculated from the date of the judgment or order or the date on which the decision was given.

(4) In the case of an appeal against an order, determination, award or other decision of a tribunal, Minister, government department or other person, the period specified in paragraph (2) shall be calculated from the date on which notice of the decision, or, in a case where a statement of the reasons for a decision was given later than such notice, on which such a statement was given to the appellant by the person who made the decision or by a person authorised in that behalf to do so.

Date of hearing of appeal (O.55, r.5)

5. Unless the Court having jurisdiction to determine the appeal otherwise directs, an appeal to which this Order applies shall not be heard sooner than 21 days after service of notice of the motion by which the appeal is brought.

Amendment of grounds of appeal, etc. (O.55, r.6)

6.—(1) The notice of the motion by which an appeal to which this Order applies is brought may be amended by the appellant, without leave, by supplementary notice served not less than 7 days before the day appointed for the hearing of the appeal, on each of the persons on whom the notice to be amended was served.

(2) Within 2 days after service of a supplementary notice under paragraph (1) the appellant must lodge two copies of the notice in the Registry.

(3) Except with the leave of the Court hearing any such appeal, no grounds other than those stated in the notice of the motion by which the appeal is brought or any supplementary notice under paragraph (1) may be relied upon by the appellant at the hearing; but that Court may amend the grounds so stated or make any other order, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(4) The foregoing provisions of this rule are without prejudice to the powers of the Court under Order 20.

Powers of court hearing appeal (O.55, r.7)

7.—(1) In addition to the power conferred by rule 6(3), the Court hearing an appeal to which this Order applies shall have the powers conferred by the following provisions of this rule.

(2) The Court shall have power to receive further evidence on questions of fact, and the evidence may be given in such manner as the Court

may direct either by oral examination in court, by affidavit, by deposition taken before an examiner or in some other manner.

(3) The Court shall have power to draw any inferences of fact which might have been drawn in the proceedings out of which the appeal arose.

(4) It shall be the duty of the appellant to apply to the judge or other person presiding at the proceedings in which the decision appealed against was given for a signed copy of any note made by him of the proceedings and to furnish that copy for the use of the Court; and in default of production of such a note, or, if such note is incomplete, in addition to such note the Court may hear and determine the appeal on any other evidence or statement of what occurred in those proceedings as appears to the Court to be sufficient.

Except where the Court otherwise directs, an affidavit or note by a person present at the proceedings shall not be used in evidence under this paragraph unless it was previously submitted to the person presiding at the proceedings for his comments.

(5) The Court may give any judgment or decision or make any order which ought to have been given or made by the court, tribunal or person and make such further or other order as the case may require or may remit the matter with the opinion of the Court for rehearing and determination by it or him.

(6) The Court may, in special circumstances, order that such security shall be given for the costs of the appeal as may be just.

(7) The Court shall not be bound to allow the appeal on the ground merely of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court substantial wrong or miscarriage has been thereby occasioned.

Right of Minister, etc., to appeal and be heard (O.55, r.8)

8. Where an appeal to which this Order applies is against an order, determination or other decision of a Minister of the State or government department, the Minister or department, as the case may be, shall be entitled to appear and be heard in the proceedings on the appeal.

ORDER 56

APPEALS TO HIGH COURT BY CASE STATED: GENERAL

Application (O.56, r.1)

1.—(1) Subject to paragraphs (2) and (3), this Order shall apply to every appeal which by or under any enactment lies to the High Court by case stated from any court, tribunal or person.

(2) This Order shall not apply to any appeal by case stated under any enactment for which rules governing such appeals have been made thereunder save to the extent that such rules do not provide for any matter dealt with by these Rules.

(3) This Order shall, in relation to an appeal to which it applies, have effect subject to any provision made specifically, in relation to such appeals, by or under any enactment.

(4) In this Order references to a tribunal shall be construed as references to any tribunal constituted by or under any enactment other than any of the ordinary courts of law.

Form of case (O.56, r.2)

2. Where the judgment, order or decision of the court, tribunal or person in respect of which a case is to be stated states all the relevant facts found by that court, tribunal or person and the questions of law to be determined by the High Court, a copy of the judgment, order or decision must be annexed to the case and the facts so found and the question of law to be determined shall be sufficiently stated in that case by referring to the statement thereof in the judgment, order or decision.

Case stated by magistrates' court: lodging case, etc. (O.56, r.3)

3.—(1) Where a case has been stated by a magistrate's court the appellant must—

- (a) within 10 days after receiving the case, lodge it in the Registry, and
- (b) within 4 days after lodging the case as aforesaid serve on the respondent a notice of the entry of appeal together with a copy of the case.

(2) Unless the Court otherwise directs, the appeal shall not be heard sooner than 8 clear days after service of notice of the entry of the appeal.

Case stated by Ministers, tribunal, etc. (O.56, r.4)

4.—(1) This rule and the following rules of this Order shall apply to proceedings for the determination of a case stated by, or a question of law referred to the Court by a Minister of the State, government department, tribunal or other person.

(2) In the following rules references to a Minister shall be construed as including references to a government department, and in those rules and this rule "case" includes a special case.

Application for order to state a case (O.56, r.5)

5.—(1) An application to the Court for an order directing a Minister, tribunal or other person to state a case for determination by the Court or to refer a question of law to the Court by way of case stated must be made by originating motion; and the persons to be served with notice thereof are the Minister, secretary of the tribunal or other person, as the case may be, and every party (other than the applicant) to the proceedings to which the application relates.

(2) The notice of such motion must state the grounds of the application, the question of law on which it is sought to have the case stated and any reasons given by the Minister, tribunal or other person for his or its refusal to state a case.

(3) The motion must be entered for hearing, and the notice thereof served, within 14 days after receipt by the applicant of notice of the refusal of his request to state a case.

Signing and service of case (O.56, r.6)

6.—(1) A case stated by a tribunal must be signed by the chairman or president of the tribunal, and a case stated by any other person must be signed by him or by a person authorised in that behalf to do so.

(2) The case must be served on the party at whose request, or as a result of whose application to the Court, the case was stated; and if a Minister, tribunal, arbitrator or other person is entitled by virtue of any enactment to state a case, or to refer a question of law by way of case stated, for determination by the High Court without request being made by any party to the proceedings before that person, the case must be served on such party to those proceedings as the Minister, tribunal, arbitrator or other person, as the case may be, thinks appropriate.

(3) When a case is served on any party under paragraph (2), notice must be given to every other party to the proceedings in question that the case has been served on the party named, and on the date specified, in the notice.

Proceedings for determination of case (O.56, r.7)

7.—(1) Proceedings for the determination by the High Court of a case stated, or a question of law referred by way of case stated, by a Minister, tribunal, arbitrator or other person must be begun by originating motion by the person on whom the case was served in accordance with rule 6(2).

(2) The persons to be served with the notice of such motion are—

- (a) the Minister, secretary of the tribunal, arbitrator or other person by whom the case was stated, and
- (b) any party (other than the applicant) to the proceedings in which the question of law to which the case relates arose;

and a copy of the case stated must be served with the notice on any such party.

(3) The notice of such motion must set out the applicant's contentions on the question of law to which the case stated relates.

(4) The motion must be entered for hearing, and the notice thereof served, within 14 days after the case stated was served on the applicant.

(5) If the applicant fails to enter the motion within the period specified in paragraph (4), then, after obtaining a copy of the case from the Minister, tribunal, arbitrator or other person by whom the case was stated, any other party to the proceedings in which the question of law to which the case relates arose may, within 14 days after the expiration of the period so specified, begin proceedings for the determination of the case, and paragraphs (1) to (4) shall have effect accordingly with the necessary modifications.

The references in this paragraph to the period specified in paragraph (4) shall be construed as including references to that period as extended by any order of the Court.

(6) Unless the Court having jurisdiction to determine the case otherwise directs, the motion shall not be heard sooner than 7 days after service of notice of the motion.

Amendment of case (O.56, r.8)

8. The Court hearing a case stated by a Minister, tribunal, arbitrator or other person may amend the case or order it to be returned to that person for amendment, and may draw inferences of fact from the facts stated in the case.

Right of Minister to appear and be heard (O.56, r.9)

9. A Minister shall be entitled to appear and be heard in proceedings for the determination of a case stated, or a question of law referred by way of case stated, by him.

ORDER 57

SUPPLEMENTARY PROVISIONS IN RESPECT OF PROCEEDINGS BEFORE A SINGLE JUDGE

Application (O.57, r.1)

1. This Order shall apply to—
 - (a) any proceedings before a single judge under Order 52 rule 2, Order 53 or Order 54, and
 - (b) any proceedings before a single judge, being proceedings which consist of or relate to an appeal to the High Court from any court, tribunal or person including an appeal by case stated and the reference of a question of law by way of case stated.

Entry of motions (O.57, r.2)

2.—(1) Every motion in proceedings to which this Order applies must be entered for hearing in the Registry; and entry shall be made when a copy of the notice of motion, and any other documents required to be lodged before entry, have been lodged in the Registry.

(2) The party entering the motion for hearing must lodge in the Registry copies of the proceedings for the use of the judges.

Issue, etc., of originating summons (O.57, r.3)

3. An originating summons by which any proceedings to which this Order applies are begun must be issued in the Registry.

Filing of affidavits and drawing up of orders (O.57, r.4)

4.—(1) Every affidavit used in proceedings to which this Order applies must be filed in the Registry.

(2) Every order made in proceedings to which this Order applies shall be drawn up in the Registry, and a copy of any order made by a judge in chambers in any such proceedings must be filed in the Registry.

Issue of writs (O.57, r.5)

5.—(1) Every writ issued in proceedings to which this Order applies shall be issued out of the Registry and must be prepared by the party seeking to issue it.

(2) Every such writ must be filed in the Registry together with the return thereto and a copy of any order made thereon.

ORDER 58

APPEALS FROM REGISTRAR AND DEPUTY REGISTRARS

1.—(1) An appeal shall lie to a judge in chambers from any judgment, order or decision of the Registrar or Deputy Registrar.

(2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice to attend before the judge on a day specified in the notice, or on such other day as may be directed.

(3) Unless the Court otherwise orders, the notice must be issued within 5 days after the judgment, order or decision appealed against was given or made and an appeal to which this rule applies shall not be heard sooner than two clear days after service of the notice by which the appeal is brought.

(4) Except so far as the Court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

ORDERS 59—61

(Unallocated)

ORDER 62

COSTS

Preliminary

Interpretation (O.62, r.1)

1.—(1) In this Order, unless inconsistent with the context—

“certificate” includes allocatur;

“contentious business” means business done as a barrister and solicitor in or for the purposes of proceedings begun before a court, tribunal or arbitrator;

“the Court” means the High Court or any one or more judges thereof, whether sitting in court or in chambers, or the Registrar;

“non-contentious business” means any business done as a barrister and solicitor, other than contentious business;

“taxed costs” means costs taxed in accordance with this Order;

“taxing officer” means the Registrar or any officer for the time being authorised by the Chief Justice to act as a taxing officer.

(2) In this Order references to a fund, being a fund out of which costs are to be paid or which is held by a trustee or personal representative, include references to any estate or property, whether real or personal, held for the benefit of any person or class of persons; and references to a fund held by a trustee or personal representative include references to any fund to which he is entitled (whether alone or together with any other person) in that capacity, whether the fund is for the time being in his possession or not.

Application (O.62, r.2)

2.—(1) Where by virtue of any Act the costs of or incidental to any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any Act, not being proceedings in the High Court, are taxable in the High Court, the following provisions of this Order, that is to say, rule 7(4) and (5), rule 8(6), rules 13 to 15, rule 16(1), rule 17, rule 20, rules 21 to 23 and rules 31 to 35, shall have effect in relation to proceedings for taxation of those costs as they have effect in relation to proceedings for taxation of the costs of or arising out of proceedings in the High Court.

(3) This Order shall have effect subject to the provisions of any enactment which limit the costs recoverable.

(4) The powers and discretion of the Court as to costs shall be exercised subject to and in accordance with this Order.

*Entitlement to Costs***When costs to follow the event (O.62, r.3)**

3.—(1) Subject to the following provisions of this Order, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceedings except under an order of the Court.

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

(3) The costs of and occasioned by any amendment made without leave in the writ of summons or any pleading shall be borne by the party making the amendment, unless the Court otherwise orders.

(4) The costs of and occasioned by any application to extend the time fixed by these Rules, or any direction or order thereunder, for serving or filing any document or doing any other act (including the costs of any order made on the application) shall be borne by the party making the application, unless the Court otherwise orders.

(5) If a party on whom a notice to admit facts is served under Order 27, rule 2, refuses or neglects to admit the facts within 7 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts shall be paid by him, unless the Court otherwise orders.

(6) If a party —

(a) on whom a list of documents is served in pursuance of any provision of Order 24, or

(b) on whom a notice to admit documents is served under Order 27, rule 5,

gives notice of non-admission of any of the documents in accordance with Order 27, rule 4(2) or 5(2), as the case may be, the costs of proving that document shall be paid by him, unless the Court otherwise orders.

(7) Where a defendant by notice in writing and without leave discontinues his counterclaim against any party or withdraws any particular claim made by him therein against any party, that party shall, unless the Court otherwise directs, be entitled to his costs of the counterclaim or his costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.

(8) Where a plaintiff accepts money paid into Court by a defendant who counterclaimed against him, then, if the notice of payment given by that defendant stated that he had taken into account and satisfied the cause of action or, as the case may be, all the causes of action in respect of which he counterclaimed, that defendant shall, unless the Court otherwise directs, be entitled to his costs of the counterclaim incurred to the time of receipt of the notice of acceptance by the plaintiff of the money paid into court.

(9) Where any person claiming to be a creditor seeks to establish his claim to a debt under any judgment or order in accordance with Order 44 he shall, if his claim succeeds, be entitled to his costs incurred in establishing it, unless the Court otherwise directs, and, if his claim or any part of it fails, may be ordered to pay the costs of any person incurred in opposing it.

(10) Where a claimant is entitled to costs under paragraph (9), the amount of the costs shall be fixed by the Court unless it thinks fit to direct taxation and the amount fixed or allowed shall be added to the claimant's debt.

(11) Where a claimant (other than a person claiming to be a creditor) having established a claim to be entitled under a judgment or order in accordance with Order 44 has been served with notice of the judgment or order pursuant to rule 3 of that Order, he shall, if he acknowledges service of the notice be entitled as part of his costs of action (if allowed) to costs incurred in establishing his claim, unless the Court otherwise directs; and where such a claimant fails to establish his claim or any part of it he may be ordered to pay the costs of any person incurred in opposing it.

Stage of proceedings at which costs to be dealt with (O.62, r.4)

4.—(1) Costs may be dealt with by the Court at any stage of the proceedings or after the conclusion of the proceedings; and any order of the Court for the payment of any costs may, if the Court thinks fit, and the person against whom the order is made is not an assisted person require the costs to be paid forthwith notwithstanding that the proceedings have not been concluded.

(2) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal and of the proceedings connected with it, may be dealt with by the Court hearing the appeal; and in the case of any proceedings transferred or removed to the High Court from any other court, the costs of the whole proceedings, both before and after the transfer or removal, may (subject to any order of the court ordering the transfer or removal) be dealt with by the Court to which the proceedings are transferred or removed.

(3) Where under paragraph (2) the Court makes an order as to the costs of any proceedings before another court, rules 25, 29 and 30 shall not apply in relation to those costs, but, except in relation to costs of proceedings transferred or removed from a magistrate's court, the order—

- (a) shall specify the amount of the costs to be allowed, or
- (b) shall direct that the costs shall be assessed by the court before which the proceedings took place or taxed by an officer of that court, or
- (c) if the order is made on appeal from a magistrate's court in relation to proceedings in that court may direct that the costs shall be taxed by a taxing officer.

Special matters to be taken into account in exercising discretion
(O.62, r.5)

5. The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account—

- (a) any such offer of contribution as is mentioned in Order 16, rule 10, which is brought to its attention in pursuance of a reserved right to do so;
- (b) any payment of money into court and the amount of such payment.

Restriction of discretion to order costs (O.62, r.6)

6.—(1) Notwithstanding anything in this Order—

- (a) unless the Court is of opinion that there was no reasonable ground for opposing the will, no order shall be made for the costs of the other side to be paid by the party opposing a will in a probate action who has given notice with his defence to the party setting up the will that he merely insists upon the will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the will;
- (b) except in special circumstances, no order shall be made giving more than one set of costs among all the opponents of a petition or originating summons for extension of the term of a patent if the Court refuses the prayer of the petition or the relief sought by the summons.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

Costs arising from misconduct or neglect (O.62, r.7)

7.—(1) Where in any cause or matter any thing is done or omission is made improperly or unnecessarily by or on behalf of a party, the Court may direct that any costs to that party in respect of it shall not be allowed to him and that any costs occasioned by it to other parties shall be paid by him to them.

(2) Without prejudice to the generality of paragraph (1) the Court shall for the purpose of that paragraph have regard in particular to the following matters, that is to say—

- (a) the omission to do any thing the doing of which would have been calculated to save costs;
- (b) the doing of any thing calculated to occasion, or in a manner or at a time calculated to occasion, unnecessary costs;
- (c) any unnecessary delay in the proceedings.

(3) The Court may, instead of giving a direction under paragraph (1) of this rule in relation to any thing done or omission made, direct the taxing officer to inquire into it and, if it appears to him that such a direction as aforesaid should have been given in relation to it, to act as if the appropriate direction had been given.

(4) The taxing officer shall, in relation to any thing done or omission made in the course of taxation and in relation to any failure to procure taxation, have the same power to disallow or to award costs as the Court has under paragraph (1) to direct that costs shall be disallowed to or paid by any party.

(5) Where a party entitled to costs fails to procure or fails to proceed with taxation, the taxing officer in order to prevent any other parties being prejudiced by that failure, may allow the party so entitled a nominal or other sum for costs or may certify the failure and the costs of the other parties.

Personal liability of solicitor for costs (O.62, r.8)

8.—(1) Subject to this rule, where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Court may make against any barrister and solicitor whom it considers to be responsible (whether personally or through a servant or agent) an order—

- (a) disallowing the costs as between the barrister and solicitor and his client; and
- (b) directing the barrister and solicitor to repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or
- (c) directing the barrister and solicitor personally to indemnify such other parties against costs payable by them.

(2) No order under this rule shall be made against a barrister and solicitor unless he has been given a reasonable opportunity to appear before the Court and show cause why the order should not be made, except where any proceeding in Court or in chambers cannot conveniently proceed, and fails or is adjourned without useful progress being made—

- (a) because of the failure of the barrister and solicitor to attend in person or by a proper representative; or
- (b) because of the failure of the barrister and solicitor to deliver any document for the use of the Court which ought to have been delivered or to be prepared with any proper evidence or account or otherwise to proceed.

(3) Before making an order under this rule the Court may, if it thinks fit, refer the matter (except in the cases excepted from paragraph (2) or in the case of undue delay in the drawing up of, or in any proceedings under, an order or judgment as to which the Registrar has reported to the Court) to a taxing officer for inquiry and report and direct the barrister and solicitor in the first place to show cause before the taxing officer.

(4) The Court may, if it thinks fit, direct or authorise the Attorney-General to attend and take part in any proceedings or inquiry under this rule, and may make such order as it thinks fit as to the payment of his costs.

(5) The Court may direct that notice of any proceedings or order against a barrister and solicitor under this rule shall be given to his client in such manner as may be specified in the direction.

(6) Where in any proceedings before a taxing officer the barrister and solicitor representing any party is guilty of neglect or delay or puts any other party to any unnecessary expense in relation to those proceedings, the taxing officer may direct the barrister and solicitor to pay costs personally to any of the parties to those proceedings; and where any barrister and solicitor fails to leave his bill of costs (with the documents required by this Order) for taxation within the time fixed by or under this Order or otherwise delays or impedes the taxation, then, unless the taxing officer otherwise directs, the solicitor shall not be allowed the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation.

(7) If, on the taxation of costs to be paid out of a fund, other than the legal aid fund, one sixth or more of the amount of the bill for those costs is taxed off, the barrister and solicitor whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.

(8) In any proceedings in which the party by whom the fees prescribed by the Orders as to Court fees are payable is represented by a barrister and solicitor, if the fees or part of the fees payable under the said Orders are not paid as therein prescribed, the Court may, on the application of the Attorney-General by summons, order the barrister and solicitor personally to pay that amount in the manner so prescribed and to pay the costs of the Attorney-General of the application.

Fractional or gross sum in place of taxed costs (O.62, r.9)

9.—(1) Subject to this Order, where by or under these Rules or any order or direction of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs.

(2) Paragraph (1) shall not apply to costs which by or under any order or direction of the Court—

(a) are to be paid to a receiver appointed by the High Court in respect of his remuneration, disbursements or expenses; or

(b) are to be assessed or settled by the Registrar,

but rules 25, 27, 29 and 30 shall apply in relation to the assessment or settlement of costs which are to be assessed or settled as aforesaid as they apply in relation to the taxation of costs by a taxing officer.

(3) Where a writ in an action is indorsed in accordance with Order 6, rule 2(1)(b), and judgment is entered in default of appearance or of defence for the amount claimed for costs (whether alone or together with any other amount claimed), paragraph (1) of this rule shall not apply to those costs; but if the amount claimed for costs as aforesaid is paid in ac-

cordance with the indorsement (or is accepted by the plaintiff as if so paid) the defendant shall nevertheless be entitled to have those costs taxed.

(4) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled—

(a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or

(b) to a gross sum so specified in lieu of taxed costs,

but where the person entitled to such a gross sum is a litigant in person, rule 27 shall apply with the necessary modifications to the assessment of the gross sum as it applies to the taxation of the costs of a litigant in person.

When a party may sign judgment for costs without an order

(O.62, r.10)

10.—(1) Where a plaintiff by notice in writing and without leave either wholly discontinues his action against any defendant or withdraws any particular claim made by him therein against any defendant, the defendant may tax his costs of the action or his costs occasioned by the matter withdrawn, as the case may be, and, if the taxed costs are not paid within 4 days after taxation, may sign judgment for them.

(2) If a plaintiff accepts money paid into court in satisfaction of the cause of action, or all the causes of action, in respect of which he claims, or if he accepts a sum or sums paid in respect of one or more specified causes of action and gives notice that he abandons the others, then subject to paragraph (4), he may, after 4 days from payment out and unless the court otherwise orders, tax his costs incurred to the time of receipt of the notice of payment into court and 48 hours after taxation may sign judgment for his taxed costs.

(3) Where a plaintiff in an action for libel or slander against several defendants, sued jointly accepts money paid into court by one of the defendants, he may, subject to paragraph (4), tax his costs and sign judgment for them against that defendant in accordance with paragraph (2).

(4) Where money paid into court in an action is accepted by the plaintiff after the trial or hearing has begun, the plaintiff shall not be entitled to tax his costs under paragraph (2) or (3).

When order for taxation of costs not required (O.62, r.11)

11.—(1) Where an action, petition or summons is dismissed with costs, or a motion is refused with costs, or an order of the Court directs the payment of any costs, or any party is entitled under rule 10 to tax his costs, no order directing the taxation of those costs need be made.

(2) Where a summons is taken out to set aside with costs any proceeding on the ground of irregularity and the summons is dismissed but no direction is given as to costs, the summons is to be taken as having been dismissed with costs.

Powers of taxing officers (O.62, r.12)

12.—(1) A taxing officer shall have power to tax—

- (a) the costs of or arising out of any cause or matter in the High Court,
- (b) the costs directed by an award made on a reference to arbitration under any Act or pursuant to an arbitration agreement to be paid, and
- (c) any other costs the taxation of which is directed by an order.

(2) Where by or under any enactment any costs are directed to be taxed or settled in or by the High Court, a taxing officer shall have power to tax those costs.

Supplementary powers of taxing officers (O.62, r.13)

13. A taxing officer may, in the discharge of his functions with respect to the taxation of costs—

- (a) take an account of any dealings in money made in connection with the payment of the costs being taxed, if the Court so directs;
- (b) require any party represented jointly with any other party in any proceedings before him to be separately represented;
- (c) examine any witness in those proceedings;
- (d) direct the production of any document which may be relevant in connection with those proceedings;
- (e) correct any clerical mistake in any certificate or order, or any error arising therein from any accidental slip or omission.

Disposal of business by one taxing officer for another (O.62, r.14)

14.—(1) If, apart from this paragraph, a taxing officer has power to tax any costs, the taxation of which has been assigned to some other taxing officer, he may tax those costs and if, apart from this paragraph, he has power to issue a certificate for the taxed costs he shall issue a certificate for them.

(2) Any taxing officer may assist any other taxing officer in the taxation of any costs the taxation of which has been assigned to that other officer.

(3) On an application in that behalf made by a party to any cause or matter, a taxing officer may, and if the circumstances require it shall, hear and dispose of any application in the cause or matter on behalf of the taxing officer by whom the application would otherwise be heard.

Extension, etc., of time (O.62, r.15)

15.—(1) A taxing officer may—

- (a) extend the period within which a party is required by or under this Order to begin proceedings for taxation or to do anything in or in connection with proceedings before that officer;
- (b) extend the period provided by rule 31(2) beyond the signing of the taxing officer's certificate by setting the certificate aside;
- (c) where no period is specified by or under this Order or by the Court for the doing of anything in or in connection with such

proceedings, specify the period within which the thing is to be done.

(2) Where an order of the Court specifies a period within which anything is to be done by or before a taxing officer then, unless the Court otherwise directs, the taxing officer may from time to time extend the period so specified on such terms (if any) as he thinks just.

(3) A taxing officer may extend any such period as is referred to in the foregoing provisions of this rule although the application for extension is not made until after the expiration of that period.

Interim certificates (O.62, r.16)

16.—(1) A taxing officer may from time to time in the course of the taxation of any costs by him issue an interim certificate for any part of those costs which has been taxed.

(2) If, in the course of the taxation of a barrister and solicitor's bill to his own client, it appears to the taxing officer that in any event the barrister and solicitor will be liable in connection with that bill to pay money to the client, he may from time to time issue an interim certificate specifying an amount which in his opinion is payable by the barrister and solicitor to his client.

(3) On the filing of a certificate issued under paragraph (2) the Court may order the amount specified therein to be paid forthwith to the client or into court.

Power of taxing officer where party liable to be paid and to pay costs (O.62, r.17)

17. Where a party entitled to be paid costs is also liable to pay costs, the taxing officer may—

- (a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance, or
- (b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

Taxation of bill of costs comprised in account (O.62, r.18)

18.—(1) Where the Court directs an account to be taken and the account consists in part of a bill of costs, the Court may direct a taxing officer to tax those costs and the taxing officer shall tax the costs in accordance with the direction and shall return the bill of costs, after taxation thereof, together with his report thereon to the Court.

(2) A taxing officer taxing a bill of costs in accordance with a direction under this rule shall have the same powers, and the same fees shall be payable in connection with the taxation, as if an order for taxation of the costs had been made by the Court.

Taxing officer may fix certain fees (O.62, r.19)

19.—(1) Where the Court refers any matter to any person or under Order 32 rule 13 obtains the assistance of any person, the fees payable in

respect of the work done in connection with the reference or in assisting the Court, as the case may be, may be fixed by a taxing officer.

(2) An appeal from the decision of a taxing officer under this rule shall lie to the Court, and the decision of the Court shall be final.

Procedure on taxation

Mode of beginning proceedings for taxation (O.62, r.20)

20.—(1) A party entitled to require any costs to be taxed must begin proceedings for the taxation of those costs by producing at the Registry his bill of costs and a copy thereof.

(2) Where a party is entitled to require any costs to be taxed by virtue of—

- (a) a judgment, direction or order given or made in proceedings in the High Court, or
- (b) rule 10,

he must begin proceedings for the taxation of those costs within 3 months after the judgment, direction or order was entered, signed or otherwise perfected or, as the case may be, within 3 months after service of the notice given by him under Order 21 rule 2 (where he is so entitled by virtue of rule 10(1)) or given to him under Order 22, rule 3 (where he is so entitled by virtue of rule 10(2) or (3)).

Notification of time appointed for taxation (O.62, r.21)

21.—(1) Where proceedings for taxation have been duly begun in accordance with rule 20 then, subject to paragraph (2), the party beginning the proceedings shall obtain an appointment for the taxation and shall serve a copy of the bill of costs endorsed with the date and time appointed for the taxation on every other party entitled to be heard in the taxation not less than seven days before the said appointment.

(2) A copy of the bill of costs under this rule need not be given to any party who has not acknowledged service or taken any part in the proceedings which gave rise to the taxation proceedings:

Provided that this paragraph shall not apply where an order for the taxation of a barrister and solicitor's bill of costs made at the instance of the solicitor gave rise to the taxation proceedings.

Provisions as to bills of costs (O.62, r.22)

22.—(1) In any barrister solicitor's bill of costs the professional charges and the disbursements must be entered in separate columns and every column must be cast before the bill is left for taxation.

(2) Before a barrister and solicitor's bill of costs is left for taxation it must be indorsed with—

- (a) the name or firm and business address of the barrister and solicitor whose bill it is, and
- (b) if the barrister and solicitor is the agent of another, with the name or firm and business address of that other barrister and solicitor.

Provisions as to taxation proceedings (O.62, r.23)

23.—(1) If any party entitled to be heard in any taxation proceedings does not attend within a reasonable time after the time appointed for the taxation, the taxing officer, if satisfied by affidavit or otherwise that the party had due notice of the time appointed, may proceed with the taxation.

(2) The taxing officer by whom any taxation proceedings are being conducted may, if he thinks it necessary to do so, adjourn those proceedings from time to time.

Powers of taxing officer taxing costs payable out of fund (O.62, r.24)

24.—(1) Where any costs are to be paid out of a fund the taxing officer may give directions as to the parties who are entitled to attend on the taxation of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.

(2) Where the Court has directed that a bill of costs be taxed for the purpose of being paid out of a fund the taxing officer by whom the bill is being taxed may, if he thinks fit, adjourn the taxation for a reasonable period and direct the party whose bill it is to send to any person having an interest in the fund a copy of the bill, or of any part thereof, free of charge together with a letter containing the following information, that is to say—

- (a) that the bill of costs, a copy of which or of part of which is sent with the letter, has been referred to a taxing officer for taxation;
- (b) the name of the taxing officer and the address of the office at which the taxation is proceeding;
- (c) the time appointed by the taxing officer at which the taxation will be continued; and
- (d) such other information, if any, as the taxing officer may direct.

*Assessment of Costs***Costs payable to one party by another or out of a fund (O.62, r.25)**

25.—(1) This rule applies to costs which by or under these Rules or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative).

(2) Subject to the following provisions of this rule, costs to which this rule applies shall be taxed on the party and party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.

(3) The Court in awarding costs to which this rule applies may in any case in which it thinks fit to do so order or direct that the costs shall be taxed on the common fund basis.

(4) On a taxation on the common fund basis, being a more generous basis than that provided for by paragraph (2), there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and paragraph (2) shall not apply; and accordingly in all cases where costs are to be taxed on the common fund basis the ordinary rules applicable on a taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are interested shall be applied, whether or not the costs are in fact to be so paid.

(5) The Court in awarding costs to which this rule applies to any person may if it thinks fit and if—

- (a) the costs are to be paid out of a fund; or
- (b) the person to whom the costs are to be paid is or was a party to the proceedings in the capacity of trustee or personal representative,

order or direct that the costs shall be taxed as if that person were a trustee of the fund or as if the costs were to be paid out of a fund held by that person, as the case may be, and where the Court so orders or directs rule 31(2) shall have effect in relation to the taxation in substitution for paragraph (2) of this rule.

(6) The foregoing provisions of this rule, shall be without prejudice to the provisions of any enactment which limit, or enable the court to limit, the amount of costs allowable or payable in respect of any proceedings.

Costs payable to a barrister and solicitor by his own client

(O.62, r.26)

26.—(1) On the taxation of a barrister and solicitor's bill to his own client (except a bill with respect to non-contentious business) all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.

(2) For the purposes of paragraph (1), all costs incurred with the express or implied approval of the client shall, subject to paragraph (3), be conclusively presumed to have been reasonably incurred and, where the amount thereof has been expressly or impliedly approved by the client, to have been reasonable in amount.

(3) For the purpose of paragraph (1), any costs which in the circumstances of the case are of an unusual nature and such that they would not be allowed on a taxation of costs in a case to which rule 25(2) applies shall, unless the barrister and solicitor expressly informed his client before they were incurred that they might not be so allowed, be presumed, until the contrary is shown, to have been unreasonably incurred.

(4) In paragraphs (2) and (3), references to the client shall be construed, whenever necessary, as references to his committee, guardian *ad litem* or next friend.

Costs of litigation in person (O.62, r.27)

27.—(1) On a taxation of the costs of a litigant in person there may, subject to the provisions of this rule, be allowed such costs as would have

been allowed if the work and disbursements to which the costs relate had been done or made by a barrister and solicitor on the litigant's behalf.

(2) The amount allowed in respect of any item shall be such sum as the taxing officer thinks fit not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the taxing officer would have been allowed in respect of that item if the litigant had been represented by a barrister and solicitor.

(3) Where in the opinion of the taxing officer the litigant has not suffered any pecuniary loss in doing any work to which the costs relate, he shall not be allowed in respect of the time reasonably spent by him on the work more than \$4 an hour.

(4) A litigant who is allowed costs in respect of attending court to conduct his own case shall not be entitled to a witness allowance in addition.

(5) Nothing in Order 6, rule 2(1)(b), or rule 30(4) of this Order or Appendix 3 shall apply to the costs of a litigant in person.

(6) For the purposes of this rule a litigant in person does not include a litigant who is a practising barrister and solicitor.

Costs payable to barrister and solicitor where money recovered by or on behalf of infant, etc. (O.62, r.28)

28.—(1) This rule applies to—

(a) any proceedings in which money is claimed or recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person who is an infant or incapable by reason of mental disorder, of managing and administering his property and affairs or in which money paid into Court is accepted by or on behalf of such a person; and (Cap. 29)

(b) any proceedings under the Compensation to Relatives Act, in which money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, the widow of the person whose death gave rise to the proceedings in satisfaction of a claim under the said Act or in which money paid into Court is accepted by her or on her behalf in satisfaction of such a claim, if the proceedings were for the benefit also of a person who, when the money is recovered, or adjudged or ordered or agreed to be paid, or accepted, is an infant; and

(c) any proceedings in the Court of Appeal on an application or appeal made in connection with any proceedings to which this rule applies by virtue of the foregoing provisions of this paragraph.

(2) Unless the Court otherwise directs the costs payable to his barrister and solicitor by any plaintiff in any proceedings to which this rule applies by virtue of paragraph 1(a) or (b), being the costs of those proceedings or incident to the claim therein or consequent thereon, shall be taxed under rule 26; and no costs shall be payable to the barrister and solicitor of any plaintiff in respect of those proceedings except such

amount of costs as may be certified in accordance with this rule on the taxation under rule 26 of the barrister and solicitor's bill to that plaintiff.

(3) On the taxation under rule 26 of a barrister and solicitor's bill to any plaintiff in any proceedings to which this rule applies by virtue of paragraph 1(a) or (b) who is his own client, the taxing officer shall also tax any costs payable to that plaintiff in those proceedings and shall certify:-

(a) the amount allowed on the taxation under rule 26, the amount allowed on the taxation of any costs payable to that plaintiff in those proceedings and the amount (if any) by which the first mentioned amount exceeds the other, and

(b) where necessary, the proportion of the amount of the excess payable respectively by, or out of money belonging to, any party to the proceedings who is an infant or incapable, by reason of mental disorder of managing and administering his property and affairs or the widow of the man whose death gave rise to the proceedings and any other party.

(4) Paragraphs (2) and (3) shall apply in relation to any proceedings to which this rule applies by virtue of paragraph (1)(c) as if for references to a plaintiff there were substituted references to the party, whether appellant or respondent, who was the plaintiff in the proceedings which gave rise to the first-mentioned proceedings.

(5) Nothing in the foregoing provisions of this rule shall prejudice a solicitor's lien for costs.

(6) This rule shall apply *mutatis mutandis* to counterclaims.

Costs payable to a trustee out of the trust fund, etc. (O.62, r.29)

29.—(1) This rule applies to every taxation of the costs which a person who is or has been a party to any proceedings in the capacity of trustee or personal representative is entitled to be paid out of any fund which he holds in that capacity.

(2) On any taxation to which this rule applies, no costs shall be disallowed, except in so far as those costs or any part of their amount should not, in accordance with the duty of the trustee or personal representative as such, have been incurred or paid, and should for that reason be borne by him personally.

Scales of costs (O.62, r.30)

30.—(1) On a taxation in relation to which rule 26 or rule 29(2) has effect and in other special cases costs may on the special order of a judge be allowed—

(a) in relation to items not mentioned in the scales of costs for the time being in force, or

(b) of an amount greater than that prescribed by the higher scale of costs for the time being in force.

(2) Where the amount of a barrister and solicitor's remuneration in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated (in the absence of agreement to the contrary) by any enactment or rules made thereunder for the time being in force, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same.

Review

Application to taxing officer for review (O.62, r.31)

31.—(1) Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by a taxing officer, or with the amount allowed by a taxing officer in respect of any item, may apply to the taxing officer to review his decision in respect of that item.

(2) An application under this rule for review of a taxing officer's decision may be made at any time within 14 days after that decision or such other period as may be fixed by the taxing officer:

Provided that no application under this rule for review of a decision in respect of any item may be made after the signing of the taxing officer's certificate dealing finally with that item.

(3) Every applicant for review under this rule must at the time of making his application deliver to the taxing officer objections in writing specifying by a list the items or parts of items the allowance or disallowance of which or the amount allowed in respect of which, is objected to and stating concisely the nature and grounds of the objection in each case, and must deliver a copy of the objections to each other party (if any) who attended on the taxation of those items or to whom the taxing officer directs that a copy of the objections shall be delivered.

(4) Any party to whom a copy of the objections is delivered under this rule may, within 14 days after delivery of the copy to him or such shorter period as may be fixed by the taxing officer, deliver to the taxing officer answers in writing to the objections stating concisely the grounds on which he will oppose the objections, and must at the same time deliver a copy of the answers to the party applying for review and to each other party (if any) to whom a copy of the objections has been delivered or to whom the taxing officer directs that a copy of the answers shall be delivered.

(5) An application under this rule for review of the taxing officer's decision in respect of any item shall not prejudice the power of the taxing officer under rule 16 to issue an interim certificate in respect of items his decision as to which is not objected to.

Review by taxing officer (O.62, r.32)

32.—(1) On reviewing any decision in respect of any item, a taxing officer may receive further evidence and may exercise all the powers which he might exercise on an original taxation in respect of that item, including the power to award costs of and incidental to the proceedings before him; and any costs awarded by him to any party may be taxed by him and may be added to or deducted from any other sum payable to or by that party in respect of costs.

(3) On a hearing of a review under rule 3 a party to whom a copy of objections was delivered under paragraph (4) of that rule shall be entitled to be heard in respect of any item to which the objections relate notwithstanding that he did not deliver written answers to the objections under that paragraph.

(4) A taxing officer who has reviewed a decision in respect of any item shall issue his certificate accordingly and, if requested to do so by any party to the proceedings before him, shall state in his certificate or otherwise in writing by reference to the objections to that decision the reasons for his decision on the review, and any special facts or circumstances relevant to it.

A request under this paragraph must be made within 14 days after the review or such shorter period as may be fixed by the taxing officer.

Review of taxing officer's certificate by a judge (O.62, r.33)

33.—(1) Any party who is dissatisfied with the decision of a taxing officer to allow or to disallow any item in whole or in part on review under rule 31 or 32, or with the amount allowed in respect of any item by a taxing officer on any such review, may apply to a judge for an order to review the taxation as to that item or part of an item, if, but only if, one of the parties to the proceedings before the taxing officer requested that officer in accordance with rule 32(4) to state the reasons for his decision in respect of that item or part on the review.

(2) An application under this rule for review of a taxing officer's decision in respect of any item may be made at any time within 14 days after the taxing officer's certificate in respect of that item is signed, or such longer time as the taxing officer at the time when he signs the certificate, or the Court at any time, may allow.

(3) An application under this rule shall be made by summons and shall, except where the judge thinks fit to adjourn into Court, be heard in chambers.

(4) Unless the judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on the review by the taxing officer but, save as aforesaid, on the hearing of any such application the judge may exercise all such powers and discretion as are vested in the taxing officer in relation to the subject matter of the application.

(5) If the judge thinks fit to exercise in relation to an application under this rule the power of the Court to appoint assessors, the judge shall appoint not less than two assessors, of whom one shall be a taxing officer.

(6) On an application under this rule the judge may make such order as the circumstances require, and in particular may order the taxing officer's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another taxing officer for taxation.

GENERAL AND ADMINISTRATIVE PROVISIONS

ORDER 63

FILING, INSPECTION, ETC. OF DOCUMENTS IN REGISTRY

Date of filing to be marked, etc. (O.63, r.1)

1. Any document filed in the Registry, in any proceedings must be sealed with a seal showing the date on which the document was filed, the fees paid and the Revenue Receipt number.

Right to inspect, etc. certain documents filed (O.63, r.2)

2.—(1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any of the following documents filed in the Registry namely—

- (a) the copy of any writ of summons or other originating process,
- (b) any judgment or order given or made in court or the copy of any such judgment or order, and
- (c) with the leave of the Court, which may be granted on an application made *ex parte*, any other document.

(2) Nothing in the foregoing provisions shall be taken as preventing any party to a cause or matter searching for, inspecting and taking or bespeaking a copy of any affidavit or other document filed in the Registry in that cause or matter or filed therein before the commencement of that cause or matter but made with a view to its commencement.

Deposit of documents (O.63, r.3)

3. Where the Court orders any documents to be lodged in court, then, unless otherwise directed the documents must be deposited in the Registry.

Restriction on removal of documents (O.63, r.4)

4. No document filed in or in the custody of any office of the High Court shall be taken out of that office without the leave of the Court unless the document is to be sent to another such office or to a Magistrates' Court.

ORDER 64

SITTINGS, VACATIONS AND OFFICE HOURS

Sittings of the High Court (O.64, r.1)

1. The Registrar shall give notice in the Gazette of any vacation directed by the Chief Justice to be observed under section 28 of the Act.

Sittings of vacation judge (O.64, r.2)

2. A judge shall sit in vacation to hear and deal with such causes, matters and applications as required to be heard or dealt with in vacation by a judge.

High Court offices: days on which open and office hours (O.64, r.3)

3.—(1) The offices of the High Court shall be open on every day of the year except Saturdays, Sundays and public holidays and such other days as the Chief Justice may direct.

(2) On such days as the offices of the High Court are open the Registry shall be open for the filing of documents, the issue of process and the transaction of other public business from 9.00 a.m. to 1.00 p.m. and from 2.00 p.m. to 3.00 p.m.

ORDER 65

SERVICE OF DOCUMENTS

When personal service required (O.65, r.1)

1.—(1) Any document which by virtue of these Rules is required to be served on any person need not be served personally unless the document is one which by an express provision of these Rules or by order of the Court is required to be so served.

(2) Paragraph (1) shall not affect the power of the Court under any provision of these Rules to dispense with the requirement for personal service.

Personal service: how effected (O.65, r.2)

2. Personal service of a document is effected by leaving a copy of the document with the person to be served.

Service on body corporate (O.65, r.3)

3.—(1) Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any enactment, be effected by serving it in accordance with rule 2 on the mayor, chairman or president of the body, or the town clerk, secretary, treasurer or other similar officer thereof.

(2) Where a writ is served on a body corporate in accordance with Order 10, rule 1(2), that rule shall have effect as if for the reference to the usual or last known address of the defendant there were substituted a reference to the registered or principal office of the body corporate and as if for the reference to the knowledge of the defendant there were substituted a reference to the knowledge of a person mentioned in paragraph (1).

Substituted service (O.65, r.4)

4.—(1) If, in the case of any document which by virtue of any provision of these Rules is required to be served personally or a document to which Order 10, rule 1, applies, it appears to the Court that it is impracticable for any reason to serve that document in the manner prescribed on that person, the Court may make an order for substituted service of that document.

(2) An application for an order for substituted service may be made by an affidavit stating the facts on which the application is founded.

(3) Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.

Ordinary service: how effected (O.65, r.5)

5.—(1) Service of any document, not being a document which by virtue of any provision of these rules is required to be served personally or a document to which Order 10, rule 1, applies, may be effected—

- (a) by leaving the document at the proper address of the person to be served, or
- (b) by registered post, or
- (c) in such other manner as the Court may direct.

(2) For the purposes of this rule the proper address of any person on whom a document is to be served in accordance with this rule shall be the address for service of that person, but if at the time when service is effected that person has no address for service his proper address for the purposes aforesaid shall be—

- (a) in any case, the business address of the barrister and solicitor (if any) who is acting for him in the proceedings in connection with which service of the document in question is to be effected, or
- (b) in the case of an individual, his usual or last known address, or
- (c) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business of the firm within the jurisdiction, or
- (d) in the case of a body corporate, the registered or principal office of the body.

(3) Nothing in this rule shall be taken as prohibiting the personal service of any document or as affecting any enactment which provides for the manner in which documents may be served on bodies corporate.

Service of documents on Government, etc. (O.65, r.6)

6. Where for the purpose of or in connection with any proceedings in the High Court, not being civil proceedings by or against the State within the meaning of Part II of the State Proceedings Act, any document is required by any enactment or these Rules to be served on the Government of Fiji, a Minister, a government department or a public officer within the meaning of the Constitution, the document must be served on the Attorney-General in accordance with the provisions of Order 77, rule 3.

Effect of service after certain hours (O.65, r.7)

7. Any document (other than a writ of summons or other originating process) service of which is effected under rule 2 or under rule 5(1)(a) between 12 noon on a Saturday and midnight on the following day or after 4 in the afternoon on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Saturday or on the day following that other weekday, as the case may be.

Affidavit of Service (O.65, r.8)

8. Except as provided in Order 10, rule 1(3)(b) and Order 81, rule 3(2)(b), an affidavit of service of any document must state by whom the document was served, the day of the week and date on which it was served, where it was served and how.

No service required in certain cases (O.65, r.9)

9. Where by virtue of these Rules any document is required to be served on any person but is not required to be served personally or in accordance with Order 10, rule 1(2) and at the time when service is to be effected that person is in default as to acknowledgment of service or has no address for service, the document need not be served on that person unless the Court otherwise directs or any of these Rules otherwise provides.

Service of process on Sunday (O.65, r.10)

10—(1) No process shall be served or executed within the jurisdiction on a Sunday except, in case of urgency, with the leave of the Court.

(2) For the purposes of this rule “process” includes a writ, judgment, notice, order, petition, originating or other summons or warrant.

ORDER 66

PAPER, PRINTING, NOTICES AND COPIES

Quality and size of paper (O.66, r.1)

1.—(1) Unless the nature of the document renders it impracticable, every document prepared by a party for use in the High Court must be on A4 ISO paper of durable quality having a margin not less than one and a half inches wide, to be left blank on the left side of the face of the paper and on the right side of the reverse.

(2) In these Rules the expressions “A3,” “A4” and “A5” followed by the letters “ISO” mean respectively the size of paper so referred to in the specifications of the International Standards Organisation.

Regulations as to printing, etc. (O.66, r.2)

2.—(1) Except where these Rules otherwise provide, every document prepared by a party for use in the High Court must be produced by one of the following means, that is to say, printing, writing (which must be clear and legible) and typewriting otherwise than by means of a carbon, and may be produced partly by one of those means and partly by another or others of them.

(2) For the purpose of these Rules a document shall be deemed to be printed if it is produced by type lithography or stencil duplicating.

(3) Any type used in producing a document for use as aforesaid must be such as to give a clear and legible impression and must be not smaller than 11 point type for printing or elite type for type lithography, stencil duplicating or typewriting.

(4) Any document produced by a photographic or similar process giving a positive and permanent representation free from blemishes shall, to the extent that it contains a facsimile of any printed, written or typewritten matter, be treated for the purposes of these Rules as if it were printed, written or typewritten, as the case may be.

(5) Any notice required by these Rules may not be given orally except with the leave of the Court.

Copies of documents for other party (O.66, r.3)

3.—(1) Where a document prepared by a party for use in the High Court is printed, the party by whom it was prepared must, on receiving a written request from any other party entitled to a copy of that document and on payment of the proper charges, supply him with such number of copies thereof, not exceeding 10, as may be specified in the request.

(2) Where a document prepared by a party for use in the High Court is written or typewritten, the party by whom it was prepared must supply any other party entitled to a copy of it, not being a party on whom it has been served, with one copy of it and, where the document in question is an affidavit, of any document exhibited to it.

The copy must be ready for delivery within 48 hours after a written request for it, together with an undertaking to pay the proper charges, is received and must be supplied thereafter on payment of those charges.

Requirements as to copies (O.66, r.4)

4. Before a copy of a document is supplied to a party under these Rules, it must be indorsed with the name and address of the party or barrister and solicitor by whom it was supplied.

The party by whom a copy is supplied under rule 3, or, if he sues or appears by a barrister and solicitor, his barrister and solicitor, shall be answerable for the copy being a true copy of the original or of an office copy, as the case may be.

ORDER 67

CHANGE OF BARRISTER AND SOLICITOR

Notice of change of barrister and solicitor (O.67, r.1)

1.—(1) A party to any cause or matter who sues or defends by a barrister and solicitor may change his barrister and solicitor without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are served in accordance with this rule, the former barrister and solicitor shall, subject to rules 5 and 6, be considered the barrister and solicitor of the party until the final conclusion of the cause or matter, whether in the High Court or the Court of Appeal.

(2) Notice of change of barrister and solicitor must be filed in the Registry.

(3) The party giving the notice must serve on every other party to the cause or matter (not being a party in default as to acknowledgment of service) and on the former barrister and solicitor a copy of the notice indorsed with a memorandum stating that the notice has been duly filed.

(4) The party giving the notice may perform the duties prescribed by this rule in person or by his new barrister and solicitor.

Notice of change of agent barrister and solicitor (O.67, r.2)

2.—(1) Where a barrister and solicitor for whom some other barrister and solicitor is acting as agent in a cause or matter changes the barrister and solicitor so acting, notice of the change must be given, and rule 1(2) shall apply in relation to a notice of change of agent as it applies in relation to a notice of change of barrister and solicitor.

(2) The barrister and solicitor giving the notice must serve on every party to the cause or matter (not being the party for whom he is acting or a party in default as to acknowledgment of service) and on the barrister and solicitor formerly acting as agent a copy of the notice indorsed with a memorandum stating that the notice has been duly filed.

Notice of appointment of barrister and solicitor (O.67, r.3)

3. Where a party, after having sued or defended in person, appoints a barrister and solicitor to act in the cause or matter on his behalf, the change may be made without an order for that purpose and rule 1(2), (3) and (4) shall, with the necessary modifications, apply in relation to a notice of appointment of a barrister and solicitor as they apply in relation to a notice of change of barrister and solicitor.

Notice of intention to act in person (O.67, r.4)

4. Where a party, after having sued or defended by a barrister and solicitor, intends and is entitled to act in person, the change may be made

without an order for that purpose and rule 1 shall, with the necessary modifications, apply in relation to a notice of intention to act in person as it applies in relation to a notice of change of barrister and solicitor except that the notice of intention to act in person must contain an address for service of the party giving it.

Removal of barrister and solicitor from record at instance of another party (O.67, r.5)

5.—(1) Where—

- (a) a barrister and solicitor who has acted for a party in a cause or matter has died or become bankrupt or cannot be found or has failed to take out a practising certificate or has been struck off the roll of barristers and solicitors or has been suspended from practising or has for any other reason ceased to practise, and
- (b) the party has not given notice of change of barrister and solicitor or notice of intention to act in person in accordance with the foregoing provisions of this Order,

any other party to the cause or matter may apply to the Court for an order declaring that the barrister and solicitor has ceased to be the barrister and solicitor acting for the first-mentioned party in the cause or matter, and the Court may make an order accordingly.

(2) An application for an order under this rule must be made by summons and the summons must unless the Court otherwise directs, be served on the party to whose barrister and solicitor the application relates.

The application must be supported by an affidavit stating the grounds of the application.

(3) Where an order is made under this rule the party on whose application it was made must—

- (a) serve on every other party to the cause or matter (not being a party in default as to acknowledgment of service) a copy of the order, and
- (b) procure the order to be entered in the Registry, and
- (c) leave at the Registry a copy of the order and a certificate signed by him or his barrister and solicitor that the order has been duly served as aforesaid.

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

Withdrawal of barrister and solicitor who has ceased to act for party (O.67, r.6)

6.—(1) Where a barrister and solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with rule 1, or notice of intention to act in person in accordance with rule 4, the barrister and solicitor may apply to the Court for an order declaring that the barrister and solicitor has ceased to be the barrister and solicitor acting for the party in the cause or matter,

and the Court may make an order accordingly, but unless and until the barrister and solicitor—

- (a) serves on every party to the cause or matter (not being a party in default as to acknowledgment of service) a copy of the order, and
 - (b) procures the order to be entered in the Registry, and
 - (c) leaves at that office a copy of the order and a certificate signed by him that the order has been duly served as aforesaid,
- he shall, subject to the foregoing provisions of this Order, be considered the barrister and solicitor of the party until the final conclusion of the cause or matter.

(2) An application for an order under this rule must be made by summons and the summons must, unless the Court otherwise directs, be served on the party for whom the barrister and solicitor acted.

The application must be supported by an affidavit stating the grounds of the application.

(3) An order made under this rule shall not affect the rights of the barrister and solicitor and the party for whom he acted as between themselves.

(4) Notwithstanding anything in paragraph (1), where the appointment of barrister and solicitor to represent an assisted person is revoked or discharged, or the assisted person ceases to be an assisted person, such barrister and solicitor shall cease to be the barrister and solicitor acting in the cause or matter; and if the assisted person desires to proceed with the cause or matter without legal aid and appoints either that barrister and solicitor or another barrister and solicitor to act on his behalf the provisions of rule 3 shall apply as if that party had previously sued or defended in person.

Address for service of party whose barrister and solicitor is removed, etc., (O.67, r.7)

7.—Where—

- (a) an order is made under rule 5, or
- (b) an order is made under rule 6, and the applicant for that order has complied with rule 6(1), or
- (c) a barrister and solicitor ceases to be the barrister and solicitor acting in the cause or matter by virtue of rule 6(4),

then, unless and until the party to whose barrister and solicitor or to whom, as the case may be, the order relates, either appoints another barrister and solicitor and complies with rule 3 or, being entitled to act in person, gives notice of his intention so to do and complies with rule 4, his last known address or, where the party is a body corporate, its registered or principal office shall, for the purpose of the service on him of any document not required to be served personally, be deemed to be his address for service.

ORDER 68

OFFICIAL SHORTHAND NOTE

1.—(1) An official shorthand note may be directed to be taken of any proceedings in the High Court or before the Registrar or a special referee.

(2) When an official shorthand note is taken the transcription thereof shall be the official record of such proceedings provided however that, where the judge, Registrar or special referee, as the case may be, has taken a note of the proceedings or an part thereof, and such note conflicts with or is not included in the official record, such note shall prevail and the official record shall be amended or supplemented accordingly.

(3) Any party to the proceedings and any other person who is so authorised by the Registrar, shall upon payment of the prescribed fee be entitled to be supplied with a copy of the official record.

(4) Where the Registrar is satisfied that it is reasonably necessary for a party to the proceedings to be supplied with a copy of the official record and that it would be an excessive burden on that party, on account of poverty, to pay the prescribed fee therefor, he may authorise the supply of a copy of the record to such party at no fee or at such reduced fee as he thinks fit in the circumstances.

Evidence when not to be transcribed (O.68, r.2)

2.—(1) If the judge intimates that in the event of an appeal his note will be sufficient, the shorthand note of the evidence need not be transcribed for the purposes of an appeal.

(2) If the parties agree or the judge is of opinion that the evidence or some part of the evidence of any witness would, in the event of an appeal, be of no assistance to the Court of Appeal, the shorthand note of such evidence need not be transcribed for the purposes of an appeal.

(3) If any party requires a transcript of any such evidence as aforesaid the charge therefor shall be borne by that party in any event.

Mechanical recording (O.68, r.3)

In this Order any reference to a shorthand note of any proceedings shall be construed as including a reference to a record of the proceedings made by mechanical means.

PROVISIONS AS TO FOREIGN PROCEEDINGS ORDER 69

SERVICE OF FOREIGN PROCESS

Definitions (0.69, r.1)

1. In this Order—

“a convention country” means a foreign country in relation to which there subsists a civil procedure convention providing for service in that country of process of the High Court, and includes a country which is a party to the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at the Hague on 15 November 1965;

“process” includes a citation;”

“process server” means the process server appointed under rule 4 or his authorised agent,

Applications (0.69, r.2)

2. This order applies to the service on a person in Fiji of any process in connection with civil or commercial proceedings in a foreign court or tribunal where the Registrar receives a written request for service—

(a) from the Minister for Foreign Affairs, with a recommendation by him that service should be effected, or

(b) where the foreign court or tribunal is in a convention country, from a consular or other authority of that country.

Service of process (0.69), r.3)

3.—(1) The request shall be accompanied by translation thereof in English, two copies of the process and, unless the foreign court or tribunal certifies that the person to be served understands the language of the process, two copies of a translation thereof.

(2) Subject to paragraphs (3) and (5) and to any enactment providing for the manner of service of documents on corporate bodies, the process shall be served by the process server's leaving a copy of the process and a copy of the translation or certificate, as the case may be, with the person to be served.

(3) The provisions of Order 10, rule 1(2)(b) regarding service by insertion through a letter-box shall apply to the service of foreign process as they apply to the service of writs, except that service may be proved by an affidavit or by a certificate or report in such form as the Registrar may direct.

(4) The process server shall send to the Registrar a copy of the process and an affidavit, certificate or report proving due service of process or stating the reason why service could not be effected, as the case may be,

and shall, if the Court so directs, specify the costs incurred in effecting or attempting to effect service.

(5) Order 65, rule 4 (substituted service) shall apply to the service of foreign process as it applies to the service of writs, except that the Registrar may make an order for substituted service of foreign process on the basis of the process server's affidavit, certificate or report, without an application being made to him in that behalf.

(6) The Registrar shall send a certificate, together with a copy of the process, to the consular or other authority or the Minister as the case may be stating—

- (i) when and how service was effected or the reason why service could not be effected, as the case may be;
- (ii) where appropriate, the amount certified by the Registrar to be the costs of effecting or attempting to effect service.

Appointment of process server (O.69, r.4)

4. The Registrar may appoint a process server for the purposes of this Order.

ORDER 70

OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC.

Application (0.70, r.1)

1.—(1) This Order applies to the powers of the High Court under any enactment to make, in relation to a matter pending before a court or tribunal in a place outside the jurisdiction, an order for the examination of witnesses and for their attendance and for the production of documents, and to give directions therein.

(2) All such powers shall be exercised by a judge.

Application for order (0.70, r.2)

2.—(1) Subject to rule 3 an application for an order referred to in rule 1 must be made *ex parte* and must be supported by affidavit.

(2) There shall be exhibited to the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation thereof in that language.

Application by Attorney-General in certain cases (0.70, r.3)

3. Where a request—

(a) is received by the Minister for Foreign Affairs, and sent by him to the Registrar with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in Fiji of any party to the matter pending or contemplated before the foreign court or tribunal, or

(b) is received by the Registrar in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in Fiji for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such party,

the Registrar shall send the document to the Attorney-General who may make an application for an order referred to in rule 1 and take such other steps as may be necessary, to give effect to the request.

Person to take and manner of taking examination (0.70, r.4)

4.—(1) Any order made in pursuance of this Order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before an examiner of the Court or before such other qualified person as to the Court seems fit.

(2) Subject to rule 6 and to any special directions contained in any order made in pursuance of this Order for the examination of any witness, the examination shall be taken in manner provided by Order 39, rules 5 to 10 and 11(1) to (3), and an order may be made under Order 39,

rule 14, for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications.

Dealing with deposition (0.70, r.5)

5. Unless any order made in pursuance of this Order for the examination of any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the Registrar and the Registrar shall—

- (a) give a certificate sealed with the seal of the High Court identifying the documents annexed thereto, that is to say, the request, the order of the Court for examination and the deposition taken in pursuance of the order; and
- (b) send the certificate with the documents annexed thereto to the Minister for Foreign Affairs, or, where the request was sent to the Registrar by some other person in accordance with a Civil Procedure Convention to that other person, for transmission to that court or tribunal.

ORDER 71

RECIPROCAL ENFORCEMENT OF JUDGMENTS

1 The Reciprocal Enforcement of Judgments Rules made under the Reciprocal Enforcement of Judgments Act shall apply, with necessary *(Cap. 39)* modifications, to proceedings under the Foreign Judgments (Reciprocal *(Cap. 40)* Enforcement) Act.

ORDER 72

(Unallocated)

ORDER 73

ARBITRATION PROCEEDINGS

Matters for a judge (0.73, r.1)

1.—(1) Every application to the Court—

(a) to remit an award under section 11(1) of the Arbitration Act; (*Cap. 38*)
or

(b) to remove an arbitrator or umpire under section 12(1) of that Act; or

(c) to set aside an award under section 12(2) thereof,
must be made by origination motion to a judge in court.

(2) An application for a declaration that an award made by an arbitrator or umpire is not binding on a party to the award on the ground that it was made without jurisdiction may be made by originating motion to a judge in court, but the foregoing provision shall not be taken as affecting the judge's power to refuse to make such a declaration in proceedings begun by motion.

Proceedings in chambers (0.73, r.2)

2.—(1) The jurisdiction of the High Court or a judge thereof under the Arbitration Act may be exercised by a judge in chambers.

(2) An application for an order section 15 of the Arbitration Act directing an arbitrator or umpire to state a case must be made by originating summons and the summons must be served on the arbitrator or umpire and on any other party to the reference.

Special provisions as to applications to remit or set aside an award (0.73, r.3)

3.—(1) An application to the Court—

(a) to remit an award under section 11(1) of the Arbitration Act,
or

(b) to set aside an award under section 12(2) of that Act or
otherwise

must be made, and the summons or notice must be served within 21 days after the award has been made and published to the parties.

(2) In the case of every such application the notice of originating motion or, as the case may be, the originating summons, must state the ground of application; and, where the motion or summons is founded on evidence by affidavit, a copy of every affidavit to be used must be served with that notice.

Service out of the jurisdiction of summons, notice, etc. (0.73, r.4)

4.—(1) Service out of the jurisdiction—

(a) of an originating summons for the appointment of an arbitrator or umpire or for leave to enforce an award, or

(b) of notice of an originating motion to remove an arbitrator or umpire or to remit or set aside an award, or

(c) of any order made on such a summons or motion as aforesaid,

is permissible with the leave of the Court provided that the arbitration to which the summons, motion or order relates has been, is being, or is to be held, within the jurisdiction.

(2) An application for the grant of leave under this rule must be supported by an affidavit stating the grounds on which the application is made and showing in what place or country the person to be served is, or probably may be found; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for the service out of the jurisdiction under this rule.

(3) Order 11, rules 3, 4 and 5 shall apply in relation to any such summons, notice or order as is referred to in paragraph (1) as they apply in relation to a writ.

(4) Service out of the jurisdiction of an originating summons for leave to enforce an award is permissible with the leave of the Court whether or not the arbitration is governed by the law of Fiji.

Registration of foreign awards (O.73, r.5)

5. Where an award is made in proceedings on an arbitration in any part of Her Majesty's dominions or other territory to which Part II of the Foreign Judgments (Reciprocal Enforcement) Act extends, being a part extended thereto, then, if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as to judgment given by a court in that place, Order 71 shall apply in relation to the award as it applies in relation to a judgment given by that court, subject to necessary modifications. *(Cap. 40)*

ORDERS 74 and 75

(Unallocated)

SPECIAL PROVISIONS TO PARTICULAR PROCEEDINGS

ORDER 76

PROBATE PROCEEDINGS

Application and interpretation (O.76, r.1)

1.—(1) This Order applies to probate causes and matters, and the other provisions of these Rules apply to those causes and matters including applications for the rectification of a will subject to the provisions of this Order.

(2) In these Rules “probate action” means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.

(3) In this Order, “will” includes a codicil.

Requirements in connection with issue of writ (O.76, r.2)

2.—(1) A probate action must be begun by writ, and the writ must be issued out of the Registry.

(2) Before a writ beginning a probate action is issued it must be indorsed with—

- (a) a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates; and
- (b) a memorandum signed by the Registrar showing that the writ has been produced to him for examination.

Parties to action for revocation of grant (O.76, r.3)

3. Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his will or letters of administration of his grant shall be made a party to any action for revocation of the grant.

Lodgment of grant in action for revocation (O.76, r.4)

4.—(1) Where, at the commencement of an action for the revocation of a grant of probate of the will or letters of administration of the estate of a deceased person, the probate or letters of administration as the case may be, have not been lodged in court, then—

- (a) if the action is commenced by a person to whom the grant was made, he shall lodge the probate or letters of administration in the Registry within 7 days after the issue of the writ;

(b) if any defendant to the action has the probate or letters of administration in his possession or under his control, he shall lodge it or them in the Registry within 14 days after the service of the writ upon him.

(2) Any person who fails to comply with paragraph (1) may, on the application of any party to the action, be ordered by the Court to lodge the probate or letters of administration in the office of the Registrar within a specified time; and any person against whom such an order is made shall not be entitled to take any step in the action without the leave of the Court until he has complied with the order.

Affidavit of testamentary scripts (O.76, r.5)

5.—(1) Unless the Court otherwise directs, the plaintiff and every defendant who has acknowledged service of the writ in a probate action must swear an affidavit—

(a) describing any testamentary script of the deceased person, whose estate is the subject of the action, of which he has any knowledge or, if such be the case, stating that he knows of no such script, and

(b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person.

(2) Any affidavit required by this rule must be filed, and any testamentary script referred to therein which is in the possession or under the control of the deponent must be lodged in the Registry within 14 days after the acknowledgment of service by a defendant to the action or, if no defendant acknowledges service and the Court does not otherwise direct, before an order is made for the trial of the action.

(3) Where any testamentary script required by this rule to be lodged or any part thereof is written in pencil, then, unless the Court otherwise directs, a facsimile copy of that script, or of the page or pages thereof containing the part written in pencil, must also be lodged and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Except with the leave of the Court, a party to a probate action shall not be allowed to inspect an affidavit filed, or any testamentary script lodged by any other party to the action under this rule, unless and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.

(5) In this rule “testamentary script” means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

Failure to acknowledge service (O.76, r.6)

6.—(1) Order 13 shall not apply in relation to a probate action.

(2) Where any of several defendants to a probate action fails to acknowledge service of the writ, the plaintiff may, after the time for acknowledging service has expired and upon filing an affidavit proving due service of the writ, or notice of the writ, on that defendant proceed with the action as if that defendant had acknowledged service.

(3) Where the defendant, or all the defendants, to a probate action, fails or fail to acknowledge service of the writ, then, unless on the application of the plaintiff the Court orders the action to be discontinued, the plaintiff may after the time limited for acknowledging service by the defendant apply to the Court for an order for trial of the action.

(4) Before applying for an order under paragraph (3) the plaintiff must file an affidavit providing due service of the writ, or notice of the writ, on the defendant and, if no statement of claim is indorsed on the writ, he must lodge a statement of claim in the Registry.

(5) Where the Court grants an order under paragraph (3), it may direct the action to be tried on affidavit evidence.

Service of statement of claim (O.76, r.7)

7. The plaintiff in a probate action must, unless the Court gives leave to the contrary or unless a statement of claim is indorsed on the writ, serve a statement of claim on every defendant who acknowledges service of the writ in the action and must do so before the expiration of 6 weeks after acknowledgment of service by that defendant or of 8 days after the filing by that defendant of an affidavit under rule 5, whichever is the later.

Counterclaim (O.76, r.8)

8.—(1) Notwithstanding anything in Order 15, rule 2(1), a defendant to a probate action who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the action must add to his defence a counterclaim in respect of that matter.

(2) If the plaintiff fails to serve a statement of claim, any such defendant may, with the leave of the Court, serve a counterclaim and the action shall then proceed as if the counterclaim were the statement of claim.

Contents of pleadings (O.76, r.9)

9.—(1) Where the plaintiff in a probate action disputes the interest of a defendant he must allege in his statement of claim that he denies the interest of that defendant.

(2) In a probate action in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in his pleading that if the allegations made therein are proved he would be entitled to an interest in the estate.

(3) Without prejudice to Order 18, rule 6, any party who pleads that at the time when a will, the subject of the action, was alleged to have been executed the testator did not know and approve of its contents must specify the nature of the case on which he intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas, that is to say:—

- (a) that the will was not duly executed,
- (b) that at the time of the execution of the will the testator was not of sound mind, memory and understanding, and
- (c) that the execution of the will was obtained by undue influence or fraud,

shall be made by that party unless that other plea is also pleaded.

Default of pleadings (O.76, r.10)

10.—(1) Order 19 shall not apply in relation to a probate action.

(2) Where any party to a probate action fails to serve on any other party a pleading which he is required by these rules to serve on that other party, then, unless the Court orders the action to be discontinued or dismissed, that other party may, after the expiration of the period fixed by or under these Rules for service of the pleading in question, apply to the Court for an order for trial of the action; and if an order is made the Court may direct the action to be tried on affidavit evidence.

Discontinuance and dismissal (O.76, r.11)

11.—(1) Order 21 shall not apply in relation to a probate action.

(2) At any stage of the proceedings in a probate action the Court may, on the application of the plaintiff or of any party to the action who has entered acknowledged service of the writ therein, order the action to be discontinued or dismissed on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will, or letters of administration of the estate, of the deceased person, as the case may be, which is the subject of the action, be made to the person entitled thereto.

(3) An application for an order under this rule may be made by motion or summons or by notice under Order 25, rule 7.

Compromise of action: trial on affidavit evidence (O.76, r.12)

12. Where, whether before or after the service of the defence in a probate action, the parties to the action agree to a compromise, the Court may order the trial of the action on affidavit evidence.

Application for order to bring will, etc. (O.76, r.13)

13.—(1) Any application in a probate action for an order under section 26 of the Court of Probate Act 1857 shall be for an order requiring a person to bring a will or other testamentary paper into the office of the Registrar or to attend in court for examination.

(2) An application under paragraph (1) shall be made by summons in the action, which must be served on the person against whom the order is sought.

(3) Any application in a probate action for the issue of a subpoena under section 23 of the Court of Probate Act 1858 shall be for the issue of a subpoena requiring a person to bring into the office of the Registrar a will or other testamentary paper.

(4) An application under paragraph (3) may be made *ex parte* and must be supported by an affidavit setting out the grounds of the application.

(5) An application under paragraph (3) shall be made to the Registrar who may, if the application is granted, authorise the issue of a subpoena accordingly.

(6) Any person against whom a subpoena is issued under the said section 23 and who denies that the will or other testamentary paper referred to in the subpoena is in his possession or under his control may file an affidavit to that effect.

Administration pendente lite (O.76, r.14)

14.—(1) An application for the grant of administration *pendente lite* shall be made by summons.

(2) An administrator to whom a grant of administration *pendente lite* is made must at the time when he begins proceedings for taxation of his costs, or at such other time as the Registrar may direct, produce at the Registry an account (verified by affidavit) of the moneys and other property received or paid or otherwise dealt with by him in his capacity as such an administrator.

(3) Unless the Court otherwise directs, the account shall be referred to the Registrar for examination and Order 62, rules 21, 22 and 23 shall with the necessary modifications apply in relation to proceedings for the examination of the account as they apply in relation to proceedings for taxation of the administrator's costs.

(4) Except where the remuneration of the administrator has been fixed by judge, the Registrar shall, on the completion of the examination of the administrator's account and taxation of his costs, assess and provide for the administrator's remuneration.

Probate counterclaim in other proceedings (O.76, r.15)

15.—(1) In this rule "probate counterclaim" means a counterclaim in any action other than a probate action by which the defendant claims any such relief as is mentioned in rule 1(2).

(2) Subject to the following paragraphs, this order shall apply with the necessary modifications to a probate counterclaim as it applies to a probate action.

(3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the plaintiff in the estate of the deceased to which the counterclaim relates.

(4) Before it is served a probate counterclaim must be indorsed with a memorandum signed by the Registrar showing that the counterclaim has been produced to him for examination and that three copies of it have been lodged with him.

Rectification of wills (O.76, r.16)

16.—(1) Where an application is made for rectification of a will, and the grant has not been lodged in Court, rule 4 shall apply, with the necessary modifications, as if the proceedings were a probate action.

(2) A memorandum of every order made for the rectification of a will shall be endorsed, or permanently annexed to, the grant under which the estate is administered.

ORDER 77

PROCEEDINGS BY AND AGAINST THE STATE

Application and interpretation (O.77, r.1)

1.—(1) These Rules apply to civil proceedings to which the State is a party subject to the following rules of this Order.

(2) In this Order—

“civil proceedings by the State”, “civil proceedings against the State” and “civil proceedings by or against the State” have the same respective meanings as in Part II of the Crown Proceedings Act, and ^(Cap. 24) do not include any of the proceedings specified in section 18(3) of that Act;

“civil proceedings to which the State is a party” has the same meaning as it has for the purposes of Part IV of the Crown Proceedings Act, by virtue of section 32(3) of that Act;

“order against the State” means any order (including an order for costs) made in any civil proceedings by or against the State or in connection with any arbitration to which the State is a party, in favour of any person against the State or against a government department or against an officer of the State as such;

“order” includes a judgment, decree, rule, award or declaration.

Particulars to be included in indorsement of claim (O.77, r.2)

2.—(1) In the case of a writ which begins civil proceedings against the State the indorsement of claim required by Order 6, rule 2, shall include a statement of the circumstances in which the State’s liability is alleged to have arisen and as to the government department and officers of the State concerned.

(2) If in civil proceedings against the State a defendant considers that the writ does not contain a sufficient statement as required by this rule, he may, before the expiration of the time limited for acknowledging service of the writ, apply to the plaintiff by notice for a further and better statement containing such information as may be specified in the notice.

(3) Where a defendant gives a notice under this rule, the time limited for acknowledging service of the writ shall not expire until 4 days after the defendant has notified the plaintiff in writing that the defendant is satisfied with the statement supplied in compliance with the notice or 4 days after the Court has, on the application of the plaintiff by summons served on the defendant not less than 7 days before the return day, decided that no further information as to the matters referred to in paragraph (1) is reasonably required.

Service on the Crown (O.77, r.3)

3.—(1) Orders 10 and 11 and any other provision of these Rules relating to service out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the State are begun.

(2) Personal service of any document required to be served on the State or on the Attorney-General on behalf of the State is not requisite and may be effected by—

- (a) leaving the document at the chambers of the Attorney-General in Suva with a responsible member of his staff, or
- (b) posting it by registered post in an envelope addressed to the Attorney-General at his chambers in Suva.

(3) In relation to the service of any document required to be served on the State for the purpose of or in connection with any civil proceedings by or against the State, Order 65, rules 5 and 9, shall not apply, and Order 65, rule 7, shall apply as if the reference therein to rules 2 and 5(1)(a) of that Order were a reference to paragraph (2)(a) of this rule.

Counterclaim and set-off (O.77, r.4)

4.—(1) Notwithstanding Order 15, rule 2, and Order 18, rules 16 and 17, a person may not in any proceedings by the State make any counterclaim or plead a set-off if the proceedings are for the recovery of, or the counterclaim or set-off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties.

(2) Notwithstanding Order 15, rule 2, and Order 18, rules 16 and 17, no counterclaim may be made, or set-off pleaded, without the leave of the Court, by the State in proceedings against the State, or by any person in proceedings by the State—

- (a) if the State is sued or sues in the name of a Government department and the subject-matter of the counterclaim or set-off does not relate to that department; or
- (b) if the State is sued or sues in the name of the Attorney-General.

(3) Any application for leave under this rule must be made by summons.

Summary judgment (O.77, r.5)

5.—(1) No application against the State shall be made under Order 14, rule 1, or Order 86, rule 1, in any proceedings against the State nor under Order 14, rule 5, in any proceedings by the State.

(2) Where an application is made by the State under Order 14, rule 1, Order 14, rule 5, or Order 86, rule 1, the affidavit required in support of the application must be made by—

- (a) the solicitor acting for the State, or
- (b) a person duly authorised by the solicitor so acting or by the department concerned, or
- (c) a member of the Crown Law Office,

and the affidavit shall be sufficient if it states that in the deponent's belief

the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed.

Judgment in default (O.77, r.6)

6.—(1) Except with the leave of the Court, no judgment in default of notice of intention to defend or of pleading shall be entered against the State in civil proceedings against the State or in third party proceedings against the State.

(2) Except with the leave of the Court, Order 16, rule 5(1)(a), shall not apply in the case of third party proceedings against the State.

(3) An application for leave under this rule may be made by summons or, except in the case of an application relating to Order 16, rule 5, by motion; and the summons or, as the case may be, notice of the motion must be served not less than 7 days before the return day.

Third party notices (O.77, r.7)

7.—(1) Notwithstanding anything in Order 16, a third party notice (including a notice issuable by virtue of Order 16, rule 9) for service on the State shall not be issued without the leave of the Court, and the application for the grant of such leave must be made by summons, and the summons must be served on the plaintiff and the State.

(2) Leave to issue such a notice for service on the State shall not be granted unless the Court is satisfied that the State is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the State has arisen and as to the departments and officers of the State concerned.

Interpleader: application for order against State (O.77, r.8)

8. No order shall be made against the State under Order 17, rule 4(3), except upon an application by summons served not less than 7 days before the return day.

Discovery and interrogatories (O.77, r.9)

9.—(1) Order 24, rules 1 and 2, shall not apply in civil proceedings to which the State is a party.

(2) In any civil proceedings to which the State is a party any order of the Court made under the powers conferred by section 23(1) of the Crown Proceedings Act, shall be construed as not requiring the disclosure of the existence of any document the existence of which it would, in the opinion of a Minister of the State, be injurious to the public interest to disclose.

(3) Where in any such proceedings an order of the Court directs that a list of documents made in answer to an order for discovery against the State shall be verified by affidavit, the affidavit shall be made by such officer of the State as the Court may direct.

(4) Where in any such proceedings an order is made under the said section 23 for interrogatories to be answered by the State, the Court shall direct by what officer of the State the interrogatories are to be answered.

Evidence (O.77, r.10)

10.—(1) Civil proceedings against the State may be instituted under Order 39, rule 15, in any case in which the State is alleged to have an interest or estate in the honour, title, dignity or office or property in question.

(2) For the avoidance of doubt it is hereby declared that any powers exercisable by the Court in regard to the taking of evidence are exercisable in proceedings by or against the State as they are exercisable in proceedings between subjects.

Execution and satisfaction of orders (O.77, r.11)

11.—(1) Nothing in Orders 45 to 52 shall apply in respect of any order against the State.

(2) An application under the proviso to subsection (1) of section 20 of the Crown Proceedings Act, for a direction that a separate certificate shall be issued under that subsection with respect to the costs (if any) ordered to be paid to the applicant, may be made to the Court *ex parte* without summons.

Attachment of debts, etc. (O.77, r.12)

12.—(1) No order—

- (a) for the attachment of debts under Order 49, or
- (b) for the appointment of a sequestrat or under Order 45, or
- (c) for the appointment of a receiver under Order 30,

shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the State.

(2) Every application to the Court for an order under section 22(1) of the Crown Proceedings Act, restraining any person from receiving money payable to him by the State and directing payment of the money to the applicant or some other person must be made by summons served at least 4 days before the return day on the State and, unless the Court otherwise orders, on the person to be restrained or his barrister and solicitor; and the application must be supported by an affidavit setting out the facts giving rise to it, and in particular identifying the particular debt from the State in respect of which it is made.

(3) Order 49, rules 5 and 6, shall apply in relation to such an application as is mentioned in paragraph (2) for an order restraining a person from receiving money payable to him by the State as those rules apply to an application under Order 49, rule 1, for an order for the attachment of a debt owing to any person from a garnishee, except that the Court shall not have power to order execution to issue against the State.

Proceedings relating to postal packets (O.77, r.13)

13.—(1) An application by any person under section 6(3) of the Crown Proceedings Act, 1947, for leave to bring proceedings in the name of the sender or addressee of a postal packet or his personal representatives must be made by originating summons.

(2) The State and the person in whose name the applicant seeks to bring proceedings must be made defendants to a summons under this rule.

Applications under s.24(2) of Crown Proceedings Act
(O.77, r.14)

14. An application such as is referred to in section 24(2) of the Crown Proceedings Act, may be made to the Court at any time before trial by motion or summons, or may be made at the trial of the proceedings.

ORDER 78

PROCEEDINGS TRANSFERRED OR REMOVED TO HIGH COURT

Application and interpretation (O.78, r.1)

1.—(1) This Order applies where an order has been made under any enactment for the transfer or removal of any proceedings from a Magistrate's Court to the High Court.

(2) An application for leave under this rule must be made by summons which must, notwithstanding anything in Order 65, rule 9, be served on the defendant, and the address for service of the defendant shall be his address for service in the proceedings in the Magistrate's Court.

(3) References in the following provisions of this Order to the plaintiff and the defendant shall, in relation to proceedings begun in the Magistrate's Court otherwise than by writ of summons, be construed as references to the applicant and the respondent respectively.

Duties of the Registrar (O.78, r.2)

2.—(1) On receipt by the Registrar of the relevant documents from the Magistrate's Court, he shall—

- (a) file the said documents and make the appropriate entries in the cause book, and
- (b) give notice in writing to all parties to the proceedings that the action has been transferred to the High Court and that the defendant is required to acknowledge service of the notice.

Acknowledgment of Service (O.78, r.3)

3. The defendant must, within 7 days after receipt of the notice referred to in rule 2, acknowledge service thereof in accordance with Order 12, rules 1 to 3, and Order 12, rules 1 and 3, shall apply as if the proceedings transferred or removed were an action begun by writ.

Judgment on failure to give notice of intention to defend (O.78, r.4)

4.—(1) If the defendant fails, or all the defendants (if more than one) fail, to give notice of intention to defend within the period prescribed by rule 3, the plaintiff, after having caused an address for service to be entered in the cause book, may, with the leave of the Court, enter judgment against the defendant or defendants, as the case may be, with costs.

(2) An application for leave under this rule must be made by summons which must, notwithstanding anything in Order 65, rule 9, be served on the defendant, and the address for service of the defendant shall be his address for service in the proceedings in the Magistrate Court.

Summons for directions or summary judgment (O.78, r.5)

5.—(1) Where a defendant gives notice of intention to defend in the

PROCEEDINGS TRANSFERRED OR REMOVED TO HIGH COURT

action the plaintiff must, within 7 days after such notice is given, cause an address for service to be entered in the cause book and either—

(a) take out and serve on the defendant a summons for directions returnable in not less than 21 days, or

(b) except where the defendant is the State, make an application under Order 14, rule 1, for judgment against the defendant;

and where a summons is served on the defendant under sub-paragraph (a), Order 25 rules 2 to 7, shall, with any necessary modifications, apply as if that summons were a summons for directions under that Order.

(2) If the plaintiff fails either to take out such a summons, or make such an application, as is referred to in paragraph (1) within the period prescribed thereby the defendant or any defendant may take out such a summons or may apply for an order dismissing the action.

(3) On the hearing of an application to dismiss the action the Court may either dismiss the action on such terms as may be just or may deal with the application as if it were a summons for directions.

ORDER 79

(Unallocated)

ORDER 80

DISABILITY

Interpretation (O.80, r.1)

1. In this Order —

“patient” means a person who, by reason of mental disorder is incapable of managing and administering his property and affairs;

“person under disability” means a person who is an infant or a patient.

Person under disability must sue etc. by next friend or guardian ad litem (O.80, r.2)

2.—(1) A person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not acknowledge service, defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order notice of which has been served on him, except by his guardian *ad litem*.

(2) Subject to the provisions of these Rules, anything which in the ordinary conduct of any proceedings is required or authorised by a provision of these Rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian *ad litem*.

Appointment of next friend or guardian ad litem (O.80, r.3)

3.—(1) Except as provided by paragraph (3) or (4) or by rule 6, an order appointing a person next friend or guardian *ad litem* of a person under disability is not necessary.

(2) Where a person is authorised under any enactment to conduct legal proceedings in the name of a patient or on his behalf, that person shall be entitled to be next friend or guardian *ad litem*, as the case may be, of the patient in any proceedings to which his authority extends unless, in a case to which paragraph (3) or (4) or rule 6 applies, some other person is appointed by the Court under that paragraph or rule to be next friend or guardian *ad litem*, as the case may be, of the patient in those proceedings.

(3) Where a person has been or is next friend or guardian *ad litem* of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing him such friend or guardian in substitution for the person previously acting in that capacity.

(4) Where, after any proceedings have been begun, a party to the proceedings becomes a patient, an application must be made to the Court for the appointment of a person to be next friend or guardian *ad litem*, as the case may be, of that party.

- (5) Except where the next friend or guardian *ad litem*, as the case may be, of a person under disability has been appointed by the Court—
- (a) the name of any person shall not be used in a cause or matter as next friend of a person under disability,
 - (b) service shall not be acknowledged in a cause or matter for a person under disability, and
 - (c) a person under disability shall not be entitled to appear by his guardian *ad litem* on the hearing of a petition, summons or motion which, or notice of which, has been served on him, unless and until the documents listed in paragraph (6) have been filed in the appropriate office.
- (6) The documents referred to in paragraph (5) are the following—
- (a) a written consent to be next friend or guardian *ad litem*, as the case may be, of the person under disability in the cause or matter in question given by the person proposing to be such friend or guardian;
 - (b) where the person proposing to be such friend or guardian of the person under disability, being a patient, is authorised under any enactment to conduct the proceedings in the cause or matter in question in the name of the patient or on his behalf, an office copy, sealed with the seal of the Court of the order or other authorisation made or given under any enactment by virtue of which he is so authorised; and
 - (c) except where the person proposing to be such friend or guardian of the person under disability, being a patient, is authorised as mentioned in sub-paragraph (b), a certificate made by the barrister and solicitor for the person under disability certifying—
 - (i) that he knows or believes, as the case may be, that the person to whom the certificate relates is an infant or a patient, giving (in the case of a patient) the grounds of his knowledge or belief; and
 - (ii) where the person under disability is a patient, that there is no person authorised as aforesaid; and
 - (iii) where the person named in the certificate as next friend or guardian *ad litem*, as the case may be, is the Public Trustee, that the person so named has no interest in the cause or matter in question adverse to that of the person under disability.

Appointment of guardian where person under disability does not acknowledge service (O.80, r.4)

4.—(1) Where—

- (a) in an action against a person under disability begun by writ, or by originating summons no acknowledgment of service is given in the action for that person, or

- (b) the defendant to an action serves a defence and counterclaim on a person under disability who is not already a party to the action, and no acknowledgment of service is given for that person, an application for the appointment by the Court of a guardian *ad litem* of that person must be made by the plaintiff or defendant, as the case may be, after the time limited (as respects that person) for acknowledging service and before proceeding further with the action or counterclaim.
- (2) Where a party to an action has served on a person under disability who is not already a party to the action a third party notice within the meaning of Order 16 and no acknowledgment of service is given for that person to the notice, an application for the appointment by the Court of a guardian *ad litem* of that person must be made by that party after the time limited (as respects that person) for acknowledging service and before proceeding further with the third party proceedings.
- (3) Where in any proceedings against a person under disability begun by petition or motion, that person does not appear by a guardian *ad litem* at the hearing of the petition or motion, as the case may be, the Court hearing it may appoint a guardian *ad litem* of that person in the proceedings or direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian.
- (4) At any stage in the proceedings under any judgment or order, notice of which has been served on a person under disability, the Court may, if no acknowledgment of service is given for that person, appoint a guardian *ad litem* of that person in the proceedings or direct that an application be made for the appointment of such a guardian.
- (5) An application under paragraph (1) or (2) must be supported by evidence proving—
- (a) that the person to whom the application relates is a person under disability,
 - (b) that the person proposed as guardian *ad litem* is willing and a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability,
 - (c) that the writ, originating summons, defence and counterclaim or third party notice, as the case may be, was duly served on the person under disability, and
 - (d) subject to paragraph (6), that notice of the application was, after the expiration of the time limited for acknowledging service and at least 7 days before the day named in the notice for hearing of the application, so served on him.
- (6) If the Court so directs, notice of an application under paragraph (1) or (2) need not be served on a person under disability.
- (7) An application for the appointment of a guardian *ad litem* made in compliance with a direction of the Court given under paragraph (3) or (4) must be supported by evidence proving the matters referred to in paragraph (5)(b).

Application to discharge or vary certain orders (O.80, r.5)

5. An application to the Court on behalf of a person under disability served with an order made *ex parte* under Order 15, rule 8, for the discharge or variation of the order must be made—

- (a) if a next friend or guardian *ad litem* is acting for that person in the cause or matter in which the order is made, within 14 days after the service of the order on that person;
- (b) if there is no next friend or guardian *ad litem* acting for that person in that cause or matter, within 14 days after the appointment of such a friend or guardian to act for him.

Admission not to be implied from pleading of person under disability (O.80, r.6)

6. Notwithstanding anything in Order 18, rule 12(1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

Discovery and interrogatories (O.80, r.7)

7. Orders 24 and 26 shall apply to a person under disability and to his next friend or guardian *ad litem*.

Compromise, etc., by person under disability (O.80, r.8)

8. Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the court.

Approval of settlement (O.80, r.9)

9.—(1) Where, before proceedings in which a claim for money is made by or on behalf of a person under disability (whether alone or in conjunction with any other person) are begun, an agreement is reached for the settlement of the claim, and it is desired to obtain the Court's approval to the settlement, then, notwithstanding anything in Order 5, rule 2, the claim may be made in proceedings begun by originating summons and in the summons an application may also be made for—

- (a) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or as may be necessary or expedient,
- (b) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this rule a claim is made under the Compensation to Relatives Act, the originating summons must contain full particulars of the person or persons to whom and on whose behalf the action is brought and of the nature of the claim in respect of which damages are sought to be recovered. (Cap. 29)

(3) An originating summons under this rule shall be in Form No. 14 in Appendix A.

(4) In this rule "settlement" includes a compromise.

Control of money recovered by person under disability (O.80, r.10)

10.—(1) Where in any proceedings—

(a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability, or

(b) money paid into court is accepted by or on behalf of a plaintiff who is a person under disability,

the money shall be dealt with in accordance with directions given by the Court and not otherwise.

(2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into the Court and invested or otherwise dealt with there.

(3) Without prejudice to the foregoing provisions of this rule, directions given under this rule may include any general or special directions that the Court thinks fit to give and, in particular, directions as to how the money is to be applied or dealt with and as to any payment to be made, either directly or out of the amount paid into court and whether before or after the money is transferred to or paid into a Magistrates' court, to the plaintiff, or to the next friend in respect of moneys paid or expenses incurred for or on behalf or for the benefit of the person under disability or for his maintenance or otherwise for his benefit or to the plaintiff's barrister and solicitor in respect of costs.

(4) Where in pursuance of directions given under this rule money is paid into the Court to be invested or otherwise dealt with there, the money (including any interest thereon) shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of court, except in accordance with an order of the Court.

(5) The foregoing provisions of this rule shall apply in relation to a counterclaim by or on behalf of a person under disability, and a claim made by or on behalf of such a person under disability, and a claim made by or on behalf of such a person in an action by any other person for relief under section 504 of the Merchant Shipping Act, 1894, as if for references to a plaintiff and a next friend there were substituted references to a defendant and to a guardian *ad litem* respectively.

Application of rule 10 to money recovered by certain widows (O.80, r.11)

11. Rule 10 shall apply, with the necessary modifications, to all moneys which are, by any enactment, subject to the control of the Court, and directions under rule 10 may include directions as to any payment to be made to a widow or any other person on whose behalf the claim in question was made.

Proceedings under Compensation to Relatives Act: Apportionment by Court (O.80, r.12)

12.—(1) Where a single sum of money is paid into court under Order 22, rule 1, in satisfaction of causes of action arising under the Compensation to Relatives Act or the Law Reform (Miscellaneous Provisions) (Cap. 27)

(Death and Interest) Act, and that sum is accepted, the money shall be apportioned between the different causes of action by the Court either when giving directions for dealing with it under rule 10 (if that rule applies) or when authorising its payment out of court.

(2) Where, in an action in which a claim under the Compensation to Relatives Act is made by or on behalf of more than one person, a sum in respect of damages is adjudged or ordered or agreed to be paid in satisfaction of the claim, or a sum of money paid into court under Order 22, rule 1, is accepted in satisfaction of the cause of action under the said Act, then it shall be apportioned between those persons by the Court. The reference in this paragraph to a sum of money paid into court shall be construed as including a reference to part of a sum so paid, being the part apportioned by the Court under paragraph (1) to the cause of action under the said Act.

Service of certain documents on person under disability
(O.80, r.13)

13.—(1) Where in any proceedings a document is required to be served personally or in accordance with Order 10, rule 1(2), on any person and that person is a person under disability this rule shall apply.

(2) Subject to the following provisions of this rule and to Order 24, rule 16(3), and Order 26, rule 6(3), the document must be served—

(a) in the case of an infant who is not also a patient, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;

(b) in the case of a patient, on the person (if any) who is authorised under any enactment to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served or, if there is no person so authorised, on the person with whom he resides or in whose care he is; and must be served in the manner required by these Rules with respect to the document in question.

(3) Notwithstanding anything in paragraph (2), the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

(4) A judgment or order requiring a person to do, or refrain from doing, any act, a notice of motion or summons for the committal of any person, and a writ of subpoena against any person, must, if that person is a person under disability, be served personally on him unless the Court otherwise orders. This paragraph shall not apply to an order for interrogatories or for discovery or inspection of documents.

ORDER 81

PARTNERS

Actions by and against firms within jurisdiction (O.81 r.1)

1. Subject to the provisions of any enactment, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.

Disclosure of partners' names (O.81, r.2).

2.—(1) Any defendant to an action brought by partners in the name of a firm may serve on the plaintiffs or their solicitor a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the plaintiffs or their solicitor to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the action be stayed on such terms as the Court may direct.

(2) When the names of the partners have been declared in compliance with a notice or order given or made under paragraph (1), the proceedings shall continue in the name of the firm but with the same consequences as would have ensured if the persons whose names have been so declared had been named as plaintiffs in the writ.

(3) Paragraph (1) shall have effect in relation to an action brought against partners in the name of a firm as it has effect in relation to an action brought by partners in the name of a firm but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiff and the defendants respectively, and with the omission of the words "or may order" to the end.

Service of writ (O.81, r.3)

3.—(1) Where by virtue of rule 1 partners are sued in the name of a firm, the writ may, except in the case mentioned in paragraph (3) be served—

- (a) on any one or more of the partners, or
- (b) at the principal place of business of the partnership within the jurisdiction, on any person having at the time of service the control or management of the partnership business there, or
- (c) by sending a copy of the writ by ordinary first-class post (as defined in Order 10, rule 1(2)) to the firm at the principal place of business of the partnership within the jurisdiction,

and subject to paragraph (2) where service of the writ is effected in accordance with this paragraph, the writ shall be deemed to have been duly served on the firm, whether or not any member of the firm is out of the jurisdiction.

(2) Where a writ is served on a firm in accordance with sub-paragraph (1)(c)—

(a) the date of service shall, unless the contrary is shown, be deemed to be the seventh day (ignoring Order 3, rule 2(5)) after the date on which the copy was sent to the firm; and

(b) any affidavit proving due service of the writ must contain a statement to the effect that—

(i) in the opinion of the deponent (or, if the deponent is the plaintiff's barrister and solicitor or an employee of that the solicitor, in the opinion of the plaintiff) the copy of the writ, if sent to the firm at the address in question, will have come to the knowledge of one of the persons mentioned in paragraph (1)(a) or (b) within 7 days thereafter, and

(ii) the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.

(3) Where a partnership has, to the knowledge of the plaintiff, been dissolved before an action against the firm is begun, the writ by which the action is begun must be served on every person within the jurisdiction sought to be made liable in the action.

(4) Every person on whom a writ is served under paragraph (1)(a) or (b) must at the time of service be given a written notice stating whether he is served as a partner or as a person having the control or management of the partnership business or both as a partner and as such a person; and any person on whom a writ is so served but to whom no such notice is given shall be deemed to be served as a partner.

Acknowledgment of service in action against firm (O.81, r.4)

4. (1) Where persons are sued as partners in the name of their firm, service may not be acknowledged in the name of the firm but only by the partners thereof in their own names, but the action shall nevertheless continue in the name of the firm.

(2) Where in an action against a firm the writ by which the action is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may acknowledge service of the writ and state in his acknowledgment 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.

An acknowledgment of service given in accordance with this paragraph shall, unless and until it is set aside, be treated as an acknowledgment by the defendant firm.

(3) Where an acknowledgment of service has been given by a defendant in accordance with paragraph (2), then—

(a) the plaintiff may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a

material time or may leave that question to be determined at a later stage of the proceedings;

(b) the defendant may either apply to the Court to set aside the service of the writ on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence on the plaintiff denying in respect of the plaintiff's claim either his liability as a partner or the liability of the defendant firm or both.

(4) The Court may at any stage of the proceedings in an action in which a defendant has acknowledged service in accordance with paragraph (2), on the application of the plaintiff or of that defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.

(5) Where in an action against a firm the writ by which the action is begun is served on a person as a person having the control or management of the partnership business, that person may not acknowledge service in the action unless he is a member of the firm sued.

Enforcing judgment or order against firm (O.81, r.5)

5.—(1) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6, issue against any property of the firm within the jurisdiction.

(2) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6 and to the next following paragraph, issue against any person who—

- (a) acknowledged service of the writ in the action as a partner, or
- (b) having been served as a partner with the writ of summons, failed to acknowledge service of it in the action, or
- (c) admitted in his pleading that he is a partner, or
- (d) was adjudged to be a partner.

(3) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the writ of summons was issued unless he—

- (a) acknowledged service of the writ in the action as a partner, or
- (b) was served within the jurisdiction with the writ as a partner, or

(c) was, with the leave of the Court given under Order 11, served out of the jurisdiction with the writ, as a partner;
and, except as provided by paragraph (1) and by the foregoing provisions of this paragraph, a judgment or order given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the writ was issued.

(4) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this rule do

not apply in relation to that person, that party may apply to the Court for leave to issue execution against that person, the application to be made by summons which must be served personally on that person.

(5) Where the person against whom an application under paragraph (4) is made does not dispute his liability, the Court hearing the application may, subject to paragraph (3), give leave to issue execution against that person, and, where that person disputes his liability, the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

Enforcing judgment or order in actions between partners etc.
(O.81, r.6)

6.—(1) Execution to enforce a judgment or order given or made in—

(a) an action by or against a firm in the name of the firm against or by a member of the firm, or

(b) an action by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,

shall not issue except with the leave of the Court.

(2) The Court hearing an application under this rule may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

Attachment of debts owed by firm (O.81, r.7)

7.—(1) An order may be made under Order 49, rule 1, in relation to debts due or accruing due from a firm carrying on business within the jurisdiction notwithstanding that one or more members of the firm is resident out of the jurisdiction.

(2) An order to show cause under the said rule 1 relating to such debts as aforesaid must be served on a member of the firm within the jurisdiction or on some other person having the control or management of the partnership business.

(3) Where an order made under the said rule 1 requires a firm to appear before the Court, an appearance by a member of the firm constitutes a sufficient compliance with the order.

Actions begun by originating summons (O.81, r.8)

8. Rules 2 to 7 shall, with the necessary modifications, apply in relation to an action by or against partners in the name of their firm begun by originating summons as they apply in relation to such an action begun by writ.

Application to person carrying on business in another name
(O.81, r.9)

9. An individual carrying on business within the jurisdiction in a name or style other than his own name, may, whether or not he is within the jurisdiction, be sued in that name or style as if it were the name of a

firm, and rules 2 to 8 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

Applications for orders charging partner's interest in partnership property, etc. (O.81, r.10)

10.—(1) Every application to the Court by a judgment creditor of a partner for an order under section 24 of the Partnership Act (which authorises the High Court or a judge thereof to make certain orders on the application of a judgment creditor of a partner, including an order charging the partner's interest in the partnership property), and every application to the Court by a partner of the judgment debtor made in consequence of the first-mentioned application must be made by summons.

(2) Every summons issued by a judgment creditor under this rule, and every order made on such a summons, must be served on the judgment debtor and on such of his partners as are within the jurisdiction or, if the partnership is a cost book company, on the judgment debtor and the purser of the company.

(3) Every summons issued by a partner of a judgment debtor under this rule, and every order made on such a summons, must be served—

(a) on the judgment creditor, and

(b) on the judgment debtor, and

(c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction or, if the partnership is a cost book company, on the purser of the company.

(4) A summons or order served in accordance with this rule on the purser of a cost book company or, in the case of a partnership not being such a company, on some only of the partners thereof, shall be deemed to have been served on that company or on all the partners of that partnership, as the case may be.

ORDER 82

(Unallocated)

ORDER 83

MONEYLENDERS' ACTIONS

Application and interpretation (O.83, r.1)

1.—(1) These Rules apply to a moneylender's action subject to the following rules of this Order.

(2) In these rules—

"moneylender" has the meaning assigned to it by section 2 of the Moneylenders Act;

"moneylender's action" means an action for the recovery of money lent by a moneylender or for the enforcement of any agreement or security relating to money so lent, being an action brought by the lender or an assignee.

Indorsement of writ (O.83, r.2)

2. Before a writ beginning a moneylender's action is issued it must be indorsed with a statement that at the time of the making of the loan or contract or the giving of the security in question the lender was licensed as a moneylender.

Particulars to be included in statement of claim (O.83, r.3)

3. Every statement of claim in a moneylender's action (whether indorsed on the writ or not) must state—

- (a) the date on which the loan was made;
- (b) the amount actually lent to the borrower;
- (c) the rate per cent. per annum of interest charged;
- (d) the date when the contract for repayment was made;
- (e) the fact that a note or memorandum of the contract was made and was signed by the borrower;
- (f) whether the note or memorandum consists of a promissory note and, if so, full particulars thereof;
- (g) the date when a copy of the note or memorandum was delivered to the borrower;
- (h) the amount repaid;
- (i) the amount due but unpaid;
- (j) the date upon which such unpaid sum or sums became due; and
- (k) the amount of interest accrued due and unpaid on every such sum.

Judgment in default (O.83, r.4)

4.—(1) Notwithstanding anything in Order 13 or Order 19, in a moneylender's action judgment on failure to give notice of intention to defend or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this rule must be made by summons, and the summons must, notwithstanding anything in Order 65, rule 9, be served on the defendant.

(3) If the application is for leave to enter judgment in default, as referred to in paragraph (1), the summons shall not be issued until after the time limited for the giving of the notice of intention to defend.

(4) On the hearing of such an application, whether the defendant gives notice of intention to defend or not, the Court—

(a) may exercise the powers of the Court under sections 21 and 22 of the Moneylenders Act;

(b) where it refuses leave under this rule to enter judgment on a claim or any part of a claim, may make or give any such order or directions as it might have made or given had the application been an application under Order 14, rule 1, for judgment on the claim.

Particulars to be included in originating summons (O.83, r.5)

5. Where a moneylender's action is begun by originating summons, the summons must contain a statement of the matters specified in rules 2 and 3.

ORDER 84

(Unallocated)

ORDER 85

ADMINISTRATION AND SIMILAR ACTIONS

Interpretation (O.85, r.1)

1. In this Order “administration action” means an action for the administration under the direction of the Court of the estate of a deceased person or for the execution under the direction of the Court of a trust.

Determination of questions, etc., without administration (O.85, r.2)

2.—(1) An action may be brought for the determination of any question or for any relief which could be determined or granted, as the case may be, in an administration action and a claim need not be made in the action for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the relief is sought.

(2) Without prejudice to the generality of paragraph (1), an action may be brought for the determination of any of the following questions:—

- (a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;
- (b) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;
- (c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.

(3) Without prejudice to the generality of paragraph (1), an action may be brought for any of the following reliefs:—

- (a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;
- (b) an order requiring the payment into court of money held by a person in his capacity as executor, administrator or trustee;
- (c) an order directing a person to do or abstain from doing a particular act in his capacity as executor, administrator or trustee;
- (d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee;
- (e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which

the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court.

Parties (O.85, r.3)

3.—(1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration action or such an action as is referred to in rule 2 relates must be parties to the action, and where the action is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff must be made a defendant.

(2) Notwithstanding anything in Order 15, rule 4(2), and without prejudice to the powers of the Court under that Order, all the persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, to which such an action as is mentioned in paragraph (1) relates need not be parties to the action; but the plaintiff may make such of those persons, whether all or any one or more of them, parties as, having regard to the nature of the relief or remedy claimed in the action, he thinks fit.

(3) Where, in proceedings under a judgment or order given or made in an action for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the action, no party other than the executors or administrators of the estate shall be entitled to appear in any proceedings relating to that claim without the leave of the Court, and the Court may direct or allow any other party to appear either in addition to, or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

Grant of relief in action begun by originating summons (O.85, r.4)

4. In an administration action or such an action as is referred to in rule 2, the Court may make any certificate or order and grant any relief to which the plaintiff may be entitled by reason of any breach of trust, wilful default or other misconduct of the defendant notwithstanding that the action was begun by originating summons, but the foregoing provision is without prejudice to the power of the Court to make an order under Order 28, rule 9, in relation to the action.

Judgments and orders in administration actions (O.85, r.5)

5.—(1) A judgment or order for the administration or execution under the direction of the Court of an estate or trust need not be given or made unless in the opinion of the Court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order.

(2) Where an administration action is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the plaintiff alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the Court may—

- (a) order that proceedings in the action be stayed for a period specified in the order and that the executors, administrators or trustees, as the case may be, shall within that period furnish the plaintiff with proper accounts;
- (b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate to which the action relates and include therein an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the leave of the judge in person.

Conduct of sale of trust property (O.85, r.6)

6. Where in an administration action an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees, as the case may be, shall have the conduct of the sale unless the Court otherwise directs.

ORDER 86

ACTIONS FOR SPECIFIC PERFORMANCE, ETC.: SUMMARY JUDGMENT

Application by plaintiff for summary judgment (O.86, r.1)

- 1.—(1) In any action begun by writ indorsed with a claim—
- (a) for specific performance of an agreement (whether in writing or not) for the sale, purchase, exchange, mortgage or charge of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages, or
 - (b) for rescission of such an agreement, or
 - (c) for the forfeiture or return of any deposit made under such an agreement,
- the plaintiff may, on the ground that the defendant has no defence to the action, apply to the Court for judgment.
- (2) An application may be made against a defendant under this rule whether or not he has acknowledged service of the writ.

Manner in which application under rule 1 must be made (O.86, r.2)

- 2.—(1) An application under rule 1 shall be made by summons supported by an affidavit verifying the facts on which the cause of action is based and stating that in the deponent's belief there is no defence to the action.
- Unless the Court otherwise directs, an affidavit for the purposes of this paragraph may contain statements of information or belief with the sources and grounds thereof.
- (2) The summons must set out or have attached thereto minutes of the judgment sought by the plaintiff.
- (3) The summons, a copy of the affidavit in support and of any exhibit referred to therein must be served on the defendant not less than 4 clear days before the return day.

Judgment for plaintiff (O.86, r.3)

3. Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action, the Court may give judgment for the plaintiff in the action.

Leave to defend (O.86, r.4)

- 4.—(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.
- (2) The Court may give a defendant against whom such an application is made leave to defend the action either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

**ACTIONS FOR SPECIFIC PERFORMANCE, ETC.:
SUMMARY JUDGMENT**

O.86, r.5

(3) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity—

(a) to produce any document;

(b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

Directions (O.86, r.5)

5. Where the Court orders that a defendant have leave to defend the action, the Court shall give directions as to the further conduct of the action, and Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under rule 1 were a summons for directions.

Costs (O.86, r.6)

6. If the plaintiff makes an application under rule 1 where the case is not within this Order, or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 62, and, in particular, to rule 4(1) thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an assisted person, require the costs to be paid by him forthwith.

Setting aside judgment (O.86, r.7)

7. Any judgment given against a defendant who does not appear at the hearing of an application under rule 1 may be set aside or varied by the Court on such terms as it thinks just.

ORDER 87

DEBENTURE HOLDERS' ACTIONS: RECEIVER'S REGISTER

Receiver's register (O.87, r.1)

1. Every receiver appointed by the Court in an action to enforce registered debentures or registered debenture stock shall, if so directed by the Court, keep a register of transfers of, and other transmissions of title to, such debentures or stock (in this Order referred to as "the receiver's register").

Registration of transfers, etc. (O.87, r.2)

2.—(1) Where a receiver is required by rule 1 to keep a receiver's register, then, on the application of any person entitled to any debentures or debenture stock by virtue of any transfer or other transmission of title, and on production of such evidence of identity and title as the receiver may reasonably require, the receiver shall, subject to the following provisions of this rule, register the transfer or other transmission of title in that register.

(2) Before registering a transfer the receiver must, unless the due execution of the transfer is proved by affidavit, send by post to the registered holder of the debentures or debenture stock transferred at his registered address a notice stating—

- (a) that an application for the registration of the transfer has been made, and
 - (b) that the transfer will be registered unless within the period specified in the notice the holder informs the receiver that he objects to the registration,
- and no transfer shall be registered until the period so specified has elapsed.

The period to be specified in the notice shall in no case be less than 7 days after a reply from the registered holder would in the ordinary course of post reach the receiver if the holder had replied to the notice on the day following the day when in the ordinary course of post the notice would have been delivered at the place to which it was addressed.

(3) On registering a transfer or other transmission of title under this rule the receiver must indorse a memorandum thereof on the debenture or certificate of debenture stock, as the case may be, transferred or transmitted, containing a reference to the action and to the order appointing him receiver.

Application for rectification of receiver's register (O.87, r.3)

3.—(1) Any person aggrieved by any thing done or omission made by a receiver under rule 2 may apply to the Court for rectification of the receiver's register, the application to be made by summons in the action in which the receiver was appointed.

DEBENTURE HOLDERS' ACTIONS: RECEIVER'S REGISTER
O.87, r.4

(2) The summons shall in the first instance be served only on the plaintiff or other party having the conduct of the action but the Court may direct the summons or notice of the application to be served on any other person appearing to be interested.

(3) The court hearing an application under this rule may decide any question relating to the title of any person who is party to the application to have his name entered in or omitted from the receiver's register and generally may decide any question necessary or expedient to be decided for the rectification of that register.

Receiver's register evidence of transfers, etc. (O.87, r.4)

4. Any entry made in the receiver's register, if verified by an affidavit made by the receiver or by such other person as the Court may direct, shall in all proceedings in the action in which the receiver was appointed be evidence of the transfer or transmission of title to which the entry relates and, in particular, shall be accepted as evidence thereof for the purposes of any distribution of assets, notwithstanding that the transfer or transmission has taken place after the making of a certificate in the action certifying the holders of the debentures or debenture stock certificates.

Proof of title of holder of bearer debenture, etc. (O.87, r.5)

5.—(1) This rule applies in relation to an action to enforce bearer debentures or to enforce debenture stock in respect of which the company has issued debenture stock bearer certificates.

(2) Notwithstanding that judgment has been given in the action and that a certificate has been made therein certifying the holders of such debentures or certificates as are referred to in paragraph (1), the title of any person claiming to be such a holder shall (in the absence of notice of any defect in the title) be sufficiently proved by the production of the debenture or debenture stock certificate, as the case may be, together with a certificate of identification signed by the person producing the debenture or certificate identifying the debenture or certificate produced and certifying the person (giving his name and address) who is the holder thereof.

(3) Where such a debenture or certificate as is referred to in paragraph (1) is produced in the chambers of the judge, the barrister and solicitor of the plaintiff in the action must cause to be indorsed thereon a notice stating—

- (a) that the person whose name and address is specified in the notice (being the person named as the holder of the debenture or certificate in the certificate of identification produced under paragraph (2)) has been recorded in the chambers of the judge as the holder of the debenture or debenture stock certificate, as the case may be, and
- (b) that that person will, on producing the debenture or debenture stock certificate, as the case may be, be entitled to receive payment of any dividend in respect of that debenture or stock unless before payment a new holder proves his title in accordance with paragraph (2), and

- (c) that if a new holder neglects to prove his title as aforesaid he may incur additional delay, trouble and expense in obtaining payment.
- (4) The barrister and solicitor of the plaintiff in the action must preserve any certificates of identification produced under paragraph (2) and must keep a record of the debentures and debenture stock certificates so produced and of the names and addresses of the persons producing them and of the holders thereof, and, if the Court requires it, must verify the record by affidavit.

Requirements in connection with payments (O.87, r.6)

6.—(1) Where in an action to enforce any debentures or debenture stock an order is made for payment in respect of the debentures or stock, no person shall make a payment in respect of any such debenture or stock unless either there is produced to him the certificate for which paragraph (2) provides or the Court has in the case in question for special reason dispensed with the need for the certificate and directed payment to be made without it.

(2) For the purpose of obtaining any such payment the debenture or debenture stock certificate must be produced to the solicitor of the plaintiff in the action or to such other person as the Court may direct, and that solicitor or person must indorse thereon a memorandum of payment and must make and sign a certificate certifying that the statement set out in the certificate has been indorsed on the debenture or debenture stock certificate, as the case may be.

ORDER 88

MORTGAGE ACTIONS

Application and interpretation (O.88, r.1)

1.—(1) This Order applies to any action (whether begun by writ or originating summons) by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being an action in which there is a claim for any of the following reliefs, namely—

- (a) payment of moneys secured by the mortgage,
- (b) sale of the mortgaged property,
- (c) foreclosure,
- (d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property,
- (e) redemption,
- (f) reconveyance of the property or its release from the security,
- (g) delivery of possession by the mortgagee.

(2) In this Order, “mortgage” includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.

(3) An action to which this Order applies is referred to in this Order as a mortgage action.

(4) These Rules apply to mortgage actions subject to the following provisions by this Order.

Claim for possession; failure by a defendant to acknowledge service (O.88, r.2)

2.—(1) Where in a mortgage action begun by originating summons, being an action in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both, any defendant fails to acknowledge service of the originating summons, the following provisions of this rule shall apply, and references in those provisions to the defendant shall be construed as references to any such defendant.

This rule shall not be taken as affecting Order 28, rule 4, in so far as it requires any document to be served on, or notice given to, a defendant who has acknowledged service of the originating summons in the action.

(2) Not less than 4 clear days before the day fixed for the first hearing of the originating summons the plaintiff must serve on the defendant a copy of the notice of appointment for the hearing and a copy of the affidavit in support of the summons.

(3) Where the plaintiff claims delivery of possession there must be indorsed on the outside fold of the copy of the affidavit serviced on the defendant a notice informing the defendant that the plaintiff intends at the hearing to apply for an order to the defendant to deliver up to the plaintiff possession of the mortgaged property and for such other relief (if any) claimed by the originating summons as the plaintiff intends to apply for at the hearing.

(4) Where the hearing is adjourned, then, subject to any directions given by the Court, the plaintiff must serve notice of the appointment for the adjourned hearing, together with a copy of any further affidavit intended to be used at that hearing, on the defendant not less than 2 clear days before the day fixed for the hearing.

A copy of any affidavit served under this paragraph must be indorsed in accordance with paragraph (3).

(5) Service under paragraph (2) or (4), and the manner in which it was effected, may be proved by a certificate signed by the plaintiff, if he sues in person, and otherwise by his barrister and solicitor. The certificate may be indorsed on the affidavit in support of the summons or, as the case may be, on any further affidavit intended to be used at an adjourned hearing.

Action for possession or payment (O.88, r.3)

3.—(1) The affidavit in support of the originating summons by which an action to which this rule applies is begun must comply with the following provisions of this rule.

This rule applies to a mortgage action begun by originating summons in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both.

(2) The affidavit must exhibit a true copy of the mortgage and the original mortgage or, in the case of a registered charge, the charge certificate must be produced at the hearing of the summons.

(3) Where the plaintiff claims delivery of possession the affidavit must show the circumstances under which the right to possession arises and, except where the Court in any case or class otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of—

(6) A copy of any exhibit to an affidavit need not accompany the copy of the affidavit served under paragraph (2) or (4).

(7) Where the plaintiff gives notice to the defendant under Order 3, rule 5, of his intention to proceed, service of the notice, and the manner in which it was effected, may be proved by a certificate signed as mentioned in paragraph (5).

(a) the amount of the advance,

(b) the amount of the periodic payments required to be made,

(c) the amount of any interest or instalments in arrear at the date of issue of the originating summons and at the date of the affidavit, and

(d) the amount remaining due under the mortgage.

(4) Where the plaintiff claims delivery of possession, the affidavit

must give particulars of every person who to the best of the plaintiff's knowledge is in possession of the mortgaged property.

(5) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and mortgagee, the affidavit must show how and when the tenancy was determined and if by service of notice when the notice was duly served.

(6) Where the plaintiff claims payment of moneys secured by the mortgage, the affidavit must prove that the money is due and payable and give the particulars mentioned in paragraph (3).

(7) Where the plaintiff's claim includes a claim for interest to judgment, the affidavit must state the amount of a day's interest.

Action by writ: judgment in default (O.88, r.4)

4.—(1) Notwithstanding anything in Order 13 or Order 19, in a mortgage action begun by writ, judgment on failure to give notice of intention to defend or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this rule must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the defendant.

(3) Where a summons for leave under this rule is issued, rule 2(2) to (7) shall apply in relation to the action subject to the modification that for references therein to the originating summons, and for the reference in paragraph (2) to the notice of appointment, there shall be substituted references to the summons.

(4) Where a summons for leave under this rule is issued in an action to which rule 3 would apply had the action been begun by originating summons, the affidavit in support of the summons must contain the information required by that rule.

Foreclosure in redemption action (O.88, r.5)

5. Where foreclosure has taken place by reason of the failure of the plaintiff in a mortgage action for redemption to redeem, the defendant in whose favour that foreclosure has taken place may apply by motion or summons for an order for delivery to him of possession of the mortgaged property, and the Court may make such order thereon as it thinks fit.

ORDER 89
(Unallocated)

ORDER 90

PROCEEDINGS RELATING TO MINORS

Application to make minor a ward of court (O.90, r.1)

1.—(1) An application to make a minor a ward of court must be made by originating summons.

(2) Where there is no person other than the minor who is a suitable defendant, an application may be made ex parte to the Registrar for leave to issue either an ex parte originating summons or an originating summons with the minor as defendant thereto; and, except where such leave is granted, the minor shall not be made a defendant to an originating summons under this rule in the first instance.

Applications for Guardianship (O.90, r.2)

2. Where there is pending any proceeding by reason of which a minor is a ward of court, any application with respect to the guardianship or custody of that minor may be made by summons in that proceeding, but except in that case any such application must be made by originating summons.

Defendants to summons (O.90, r.3)

3.—(1) Where the minor with respect to whose guardianship or custody an application is made is not the plaintiff, he shall not, unless the Court otherwise directs, be made a defendant to the summons or, if the application is made by ordinary summons, be served with the summons, but subject to paragraph (2), any other person appearing to be interested in, or affected by, the application shall be made a defendant or be served with the summons as the case may be.

(2) The Court may dispense with service of the summons (whether originating or ordinary) on any person and may order it to be served on any person not originally served.

Interim order for custody and maintenance (O.90, r.4)

4. After entry of an appeal from any order of a magistrate's court with respect to the custody or maintenance of a minor under any enactment, the judge may, on an application made ex parte or otherwise, make such an order with respect to the custody or maintenance of the minor in question pending the appeal or otherwise as he thinks proper.

Application under the Infant Settlements Act, 1855 (O.90, r.5)

5.—(1) Every application under the Infants Settlements Act, 1855, to obtain the sanction of the Court for a settlement, or contract for a settlement, of the property of an infant must be made to a judge in chambers and must—

(a) if the infant is a ward of court and a party to a pending cause or matter, be made by summons in that cause or matter;

(b) in any other case, be made by originating summons.
 (2) A summons under this rule must be supported by evidence showing—

- (a) the age of the infant;
- (b) whether the infant has any parent living or any guardian and, if not, what near relation the infant has;
- (c) with whom the infant is living or under whose care he is;
- (d) the rank and position in life of the infant and his parents;
- (e) the nature and the amount of the infant's property and income;
- (f) the age, rank and position in life of the person to whom the infant is about to be married and the nature and the amount of that person's property and income;
- (g) the names of the proposed trustees, and that they are fit and willing to act as such.

Applications as to guardianship, maintenance, etc. (O.90, r.6)

6.—(1) Applications as to the guardianship, maintenance or advancement of minors may be disposed of in chambers.

(2) A guardian's account must be verified and passed in the same manner as that provided by Order 30 in relation to a receiver's account or in such other manner as the Court may direct.

ORDERS 91 to 98
(UNALLOCATED)

ORDER 99

THE INHERITANCE (FAMILY PROVISION) ACT

Application (O.99, r.1)

1. This Order applies to proceedings under the Inheritance (Family Provision) Act, in this Order referred to as "the Act".

Powers of Court as to parties (O.99, r.2)

2.—(1) Without prejudice to its powers under Order 15, the Court may at any stage of proceedings under the Act direct that any person be added as a party to the proceedings or that notice of the proceedings be served on any person.

(2) Order 15, rule 15, shall apply to proceedings under the Act as it applies to the proceedings mentioned in paragraph (1) of that rule.

Affidavit in support to be filed (O.99, r.3)

3. An affidavit in support of an originating summons by which an application under section 3 of the Act is made must be filed before the first hearing of the summons.

Disposal of application in chambers, etc. (O.99, r.4)

4. Any application under the Act in which it appears to the Court that the interests of an infant or other person under disability are affected may, if the Court thinks fit so to direct, be disposed of in chambers.

Application in proceedings under section 3 of the Act (O.99, r.5)

5. Where an order has been made on an application under section 3 of the Act, any subsequent application, whether made by a party to the proceedings in which such order was made, or by a person on whom notice of the application for the order was served or by or on behalf of such person as is mentioned in section 6(2) of the Act, must be made by summons in those proceedings.

Indorsement of memorandum on probate, etc., (O.99, r.6)

6.—(1) The personal representatives of the deceased to whose estate an application under the Act relates must produce in court at the hearing of the application the probate or letters of administration under which the estate is being administered; and if the Court makes an order under the Act or an order dismissing the application, the probate or letters of administration shall remain in the custody of the Court until Section 5(3) of the Act has been complied with.

(2) Immediately after any such order has been drawn up and entered the Registrar shall cause a memorandum of the order to be endorsed on or annexed to the probate or the letters of administration and cause an office copy of the order to be placed on the probate file in the Registry relating to the estate.

(3) The memorandum of the order required by Section 5(3) of the Act to be indorsed or annexed as therein mentioned must set out the title of the proceedings in question and the operative part of the order in full.

ORDER 100

THE TRADE MARKS ACT

Application (O.100, r.1)

1. This Order applies to proceedings in the High Court under the Trade Marks Act. *(Cap. 240)*

Appeals and applications (O.100, r.2)

2.—(1) Every appeal or application to the High Court under the Trade Marks Act, must be begun by originating motion.

(2) Notice of the motion must be served on the Administrator General.

(3) An appeal must be entered with 28 days after the date of the decision, order or other determination against which the appeal is brought.

(4) An application under Section 34 of the Trade Marks Act must be made within 28 days after the date of the decision of the Administrator—General in respect of which the application is made.

(5) An application under section 62 of the Trade Marks Act must be made within 28 days after the date of the certificate of registration issued under section 58 of the Act.

Proceedings for infringement of registered trade mark: validity of registration disputed (O.100, r.3)

3.—(1) Where in any proceedings a claim is made for relief for infringement of the right to the use of a registered trade mark, the party against whom the claim is made may in his defence put in issue the validity of the registration of that trade mark or may counterclaim for an order that the register of trade marks be rectified by cancelling or varying the relevant entry or may do both those things.

(2) A party to any such proceedings who in his pleading (whether a defence or counterclaim) disputes the validity of the registration of a registered trade mark must serve with the pleading particulars of the objections to the validity of the registration on which he relies in support of the allegation of invalidity.

(3) A party to any such proceedings who counterclaims for an order that the register of trade marks be rectified must serve on the Administrator—General a copy of the counterclaim together with a copy of the particulars mentioned in paragraph (2); and the Administrator—General shall be entitled to take such part in the proceedings as he may think fit but need not serve a defence or other pleading unless ordered to do so by the Court.

ORDERS 101—102

(Unallocated)

ORDER 103

THE PATENTS ACT: THE UNITED KINGDOM DESIGNS (PROTECTION) ACT

Application (O.103, r.1)

1. This Order applies to proceedings in the High Court under the Patents and the United Kingdom Designs (Protection) Act. *(Cap. 239)*
(Cap. 242)

Application for leave to amend specification under section 30 of the Act (O.103, r.2)

2.—(1) A patentee intending to apply for leave to amend his specification must give notice of his intention to the Administrator—General accompanied by a copy of an advertisement—

(a) identifying the proceedings pending before the Court in which it is intended to apply for such leave;

(b) giving particulars of the amendment sought;

(c) stating the applicant's address for service within Fiji; and

(d) stating that any person intending to oppose the amendment who is not a party to the proceedings must within 28 days after the appearance of the advertisement give written notice to his intention to the applicant;

and the Administrator—General shall insert the advertisement once in the Gazette.

A person who gives notice in accordance with the advertisement shall be entitled to be heard on the application subject to any direction of the Court as to costs.

(2) As soon as may be after the expiration of 35 days from the appearance of the advertisement the applicant must make his application by motion in the proceedings pending before the Court; and notice of the motion together with a copy of the specification certified by the Administrator—General and showing in coloured ink the amendment sought, must be served on the Administrator—General, the parties to the proceedings and any person who has given notice of his intention to oppose the amendment.

(3) On the hearing of the motion the Court shall give such directions for the further conduct of the proceedings on the motion as it thinks necessary or expedient and, in particular, directions—

(a) requiring the applicant and any party or person opposing the amendment sought to exchange statements of the grounds for allowing the amendment and of objections to the amendment;

(b) determining whether the motion shall be heard with the other proceedings relating to the patent in question or separately and, if separately, fixing the date of hearing thereof;

- (c) as to the manner in which the evidence shall be given and, if the evidence is to be given by affidavit, fixing the times within which the affidavits must be filed.

(4) Where the Court allows a specification to be amended, the applicant must forthwith lodge with the Administrator—General an office copy of the order made by the Court and, if so required by the Court or Administrator—General, leave at his office a new specification and drawings as amended, prepared in compliance with the Act, and the rules made thereunder.

The Administrator—General shall cause a copy of the order to be inserted at least once in the Gazette.

Revocation of patent, etc. (O.103, r.3)

3.—(1) Every application to the Court for—

- (a) the cancellation or revocation of any letters patent under section 5 of the Patents Act; or
(b) a declaration under section 28 of that Act; or
(c) a declaration under section 4 of the United Kingdom Designs (Protection) Act,

shall be made by petition.

(2) Any person presenting such a petition must state therein particulars of the grounds on which he intends to rely.

(3) The respondent to such a petition may serve an answer on the petitioner, within 21 days after service of the petition on him.

(4) On the hearing of such a petition the respondent shall be entitled to begin and to adduce evidence in support of the patent; and if the petitioner adduces evidence impeaching the validity of the patent, the respondent shall be entitled to reply.

Actions for infringement; particulars of pleading (O.103, r.4)

4.—(1) The plaintiff in an action for infringement of a patent must serve with his statement of claim particulars of the infringements relied thereon.

(2) If a defendant in such an action disputes the validity of a patent, he must serve with his defence particulars of the objections to the validity of the patent on which he relies in support of the allegation of invalidity.

(3) If a defendant in such an action alleges, as a defence to the action, that at the time of the infringement there was in force a contract relating to the patent made by or with the consent of the plaintiff and containing a condition void by virtue of any enactment, he must serve on the plaintiff particulars of the date of, and parties to, such contract and particulars of each such condition.

(4) A defendant to such an action who applies by counterclaim in the action for revocation of the patent must, with his counterclaim, serve particulars of the objections to the validity of the patent on which he relies in support of his counterclaim.

Particulars of infringement (O.103, r.5)

5. Particulars of infringement of a patent must specify which of the

claims in the specification of the patent are alleged to be infringed and must give at least one instance of each type of infringement alleged.

Particulars of objections (O.103, r.6)

6.—(1) Particulars of objections to the validity of a patent must state every ground on which the validity of the patent is disputed and must include such particulars as will clearly define every issue which it is intended to raise.

(2) If the grounds stated in the particulars of objections include want of novelty or want of any inventive step, the particulars must state the manner, time and place of every prior publication or user relied upon and, if prior user is alleged, must—

- (a) specify the name of every person alleged to have made such user,
 - (b) state whether such user is alleged to have continued until the priority date of the claim in question or of the invention, as may be appropriate, and, if not, the earliest and latest date on which such user is alleged to have taken place,
 - (c) contain a description accompanied by drawings, if necessary, sufficient to identify such user, and
 - (d) if such user relates to machinery or apparatus, state whether the machinery or apparatus is in existence and where it can be inspected.
- (3) If in the case of an existing patent—
- (a) one of the grounds stated in the particulars of objections is that the invention, so far as claimed in any claim of the complete specification, is not useful, and
 - (b) it is intended, in connection with that ground, to rely on the fact that an example of the invention which is the subject of any such claim cannot be made to work, either at all or as described in the specification,

the particulars must state that fact and identify each such claim and must include particulars of each such example, specifying the respect in which it is alleged that it does not work or does not work as described.

Amendment of Particulars (O.103, r.7)

7. Without prejudice to Order 20, rule 5, the Court may at any stage of the proceedings allow a party to amend any particulars served by him under the foregoing provisions of this Order on such terms as to costs or otherwise as may be just.

Further Particulars (O.103, r.8)

8. The Court may at any stage of the proceedings order a party to serve on any other party further or better particulars of infringements or of objections.

Restrictions on Admissions of Evidence (O.103, r.9)

9.—(1) Except with the leave of the judge hearing any action or other proceeding relating to a patent, no evidence shall be admissible in proof

of any alleged infringement, or of any objection to the validity, of the patent, if the infringement or objection was not raised in the particulars of infringements or objections, as the case may be.

(2) In any action or other proceeding relating to a patent, evidence which is not in accordance with a statement contained in particulars of objections to the validity of the patent shall not be admissible in support of such an objection unless the judge hearing the proceeding allows the evidence to be admitted.

(3) If any machinery or apparatus alleged to have been used before the priority date mentioned in rule 6(2)(b) is in existence at the date of service of the particulars of objections, no evidence of its user before that date shall be admissible unless it is proved that the party relying on such user offered, where the machinery or apparatus is in his possession, inspection of it to the other parties to the proceedings or, where it is not, used all reasonable endeavours to obtain inspection of it for those parties.

Proceedings for infringement or revocation: summons for directions
(O.103, r.10)

10.—(1) In an action for infringement of a patent (whether or not any other relief is claimed) and in proceedings by petition for the cancellation or revocation of any letters patent under section 5 of the Patents Act, or for a declaration under section 28 of that Act, the plaintiff or petitioner must, within one month after service of a reply or answer or after the expiration of the period fixed for service thereof, take out a summons for directions as to the place and mode of trial returnable in not less than 21 days, and if the plaintiff or petitioner does not take out such a summons in accordance with this paragraph, the defendant or respondent, as the case may be, may do so.

The summons may be heard in chambers or in court as the Court thinks fit.

(2) The Court hearing a summons under this rule may give such directions—

- (a) for the service of further pleadings or particulars,
- (b) for the discovery of documents,
- (c) for securing the making of admissions,
- (d) for the service of interrogatories and of answers thereto,
- (e) for the taking by affidavit of evidence relating to matters requiring expert knowledge, and for the filing of such affidavits and the service of copies thereof on the other parties,
- (f) for the service on the other parties, by any party desiring to submit experimental proof, of full and precise particulars of the experiments proposed and of the facts which he claims to be able to establish thereby,
- (g) for the making of experiments, tests, inspections or reports,
- (h) for the hearing, as a preliminary issue, of any question that may arise (including any question as to the construction of the specification or other documents),

and otherwise as the Court 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 any particular issue and otherwise securing that the case shall be disposed of, consistently with adequate hearing, in the most expeditious manner.

Where the evidence is directed to be given by affidavit, the deponents must attend at the trial for cross-examination unless, with the concurrence of the court, the parties otherwise agree.

(3) On the hearing of a summons under this rule the Court shall consider, if necessary of its own motion, whether an independent scientific adviser should be appointed under rule 11 to assist the Court.

(4) Order 24, rules 1 and 2, shall not apply in an action for infringement of patent.

(5) No action for infringement of a patent or petition for the revocation of a patent shall be set down for trial unless and until a summons under this rule in the action or proceedings has been taken out and the directions given on the summons have been carried out or the time fixed by the Court for carrying them out has expired.

Appointment of a scientific adviser (O.103, r.11)

11.—(1) In any proceedings under the Patents Act the Court may at any time, and on or without the application of any party, appoint an independent scientific adviser to assist the Court, either—

(a) by sitting with the judge at the trial or hearing of the proceedings, or

(b) by inquiring and reporting on any question of fact or of opinion not involving a question of law or construction, according as the Court may direct.

(2) The Court may nominate the scientific adviser and, where appropriate, settle any question or instructions to be submitted or given to him.

(3) Where the Court appoints a scientific adviser to inquire and report under paragraph (1)(b), Order 40, rules 2, 3, 4 and 6 shall apply in relation to his report as they apply in relation to a report made by a Court expert.

Counterclaim for rectification of register of design (O.103, r.12)

12.—(1) Where in any proceedings a claim is made for relief for infringement of the copyright in a registered design, the party against whom the claim is made may in his defence put in issue the validity of the registration of that design or may counterclaim for an order that the register of designs be rectified by cancelling or varying the registration or may do both those things.

(2) A party to any such proceedings who in his pleading (whether a defence or counterclaim) disputes the validity of the registration of a registered design must serve with the pleading particulars of the objections to the validity of the registration on which he relies in support of the allegation of invalidity.

THE PATENTS ACT: THE UNITED KINGDOM DESIGNS
(PROTECTION) ACT

O.103, r.12

(3) A party to any such proceedings who counterclaims for an order that the register of designs be rectified must serve on the Administrator-General a copy of the counterclaim together with a copy of the particulars mentioned in paragraph (2); and the Administrator-General shall be entitled to take such part in the proceedings as he thinks fit but need not serve a defence or other pleading unless ordered to do so by the Court.

ORDER 104

MAINTENANCE (PREVENTION OF DESERTION AND MISCELLANEOUS PROVISIONS) ACT ATTACHMENT OF EARNINGS

Application for attachment of earnings order by the person entitled to payments (O.104, r.1)

1.—(1) Where the person to whom payments are required to be made under a maintenance order desires to apply to the High Court under section 12 of the Maintenance (Prevention of Desertion and Miscellaneous Provisions) Act (in this Order referred to as “the Act”) for an attachment of earnings order to secure those payments, the application must be made by summons which shall be an ordinary summons. *(Cap. 53)*
The defendant or respondent to the summons (in this Part of this order referred to as “the defendant”) shall be the person liable to make payments under the maintenance order.

(2) The summons must be supported by an affidavit by the applicant stating—

- (a) particulars of the maintenance order;
- (b) the date of service of the maintenance order on the defendant or, if the order has not been served, the reason why service has not been effected;
- (c) the amount of any arrears due to the applicant under the maintenance order, the date to which those arrears have been calculated and the date on which the next payment under the order falls due;
- (d) particulars of any proceedings which have been taken for the enforcement of the maintenance order;
- (e) the name and address of any person believed to be the defendant’s employer;
- (f) such of the following particulars relating to the defendant as are known to the applicant, that is to say—
 - (i) his full name and address,
 - (ii) his place of work,
 - (iii) the nature of his work and his works number, if any;
- (g) such other facts relevant to the means of the defendant as are known to the applicant.

(3) Unless the Court otherwise directs, the summons, together with a copy of the affidavit in support, must be served on the defendant at least 14 days before the return day and the defendant may, within 10 days after service, file an affidavit in answer and in that case must serve a copy of his affidavit on the applicant within 24 hours after filing it.

ORDERS 105—107

(Unallocated)

ORDER 108

PROCEEDINGS RELATING TO CHARITIES : THE CHARITABLE TRUSTS ACT

1.—In this Order—

“the Act” means the Charitable Trusts Act;

“charity proceedings” means proceedings in the High Court brought under the Court’s jurisdiction with respect to charities or brought under the Court’s jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes.

2.—(1) Appeals to the High Court under the Act shall be begun by originating summons and the Registrar of Titles must be made a party to the proceedings.

(2) All other charity proceedings brought in the High Court shall be begun by originating summons, and the Attorney—General must be made a party to the proceedings.

ORDER 109

(Unallocated)

ORDER 110

ASSISTED PERSONS

Leave to appear in forma pauperis (O.110, r.1)

1. Any poor person, being a party or intending party to any cause or matter in his own right, may apply to the Court by petition for leave to sue or defend in *forma pauperis*.

Application for leave (O.110, r.2)

2. A petition for leave to sue or defend in *forma pauperis* shall be supported by an affidavit by the petitioner, and by such further evidence as the Court may require, that the petitioner is not possessed of property to the amount of two hundred dollars in value, excepting wearing apparel, and the matter or thing claimed by him if he be the plaintiff in the cause or matter, and thereupon the application shall be referred to a barrister and solicitor to consider the case.

When Court may grant leave (O.110, r.3)

3. Upon the petitioner producing a certificate signed by the barrister and solicitor to whom the application was referred under rule 2 that he has considered the case and believes the petitioner to have a good cause of action or defence, as the case may be, the Court may, subject to rule 4, admit the petitioner to sue or defend, as the case may be, in *forma pauperis*, and may appoint a barrister and solicitor to appear for him.

All facts to be disclosed (O.110, r.4)

4. No person shall be admitted to sue or defend in *forma pauperis* unless he shall have filed in the court an affidavit containing a full statement of all the material facts of the case to the best of his belief.

Duty of barrister and solicitor (O.110, r.5)

5. A barrister and solicitor to whom an application under rule 2 has been referred or who, under rule 3, has been appointed to appear for a person admitted to sue or defend in *forma pauperis*, may not refuse, or discontinue, his assistance, unless he satisfies the Court that he has some good reason for refusing or discontinuing.

No fee or fees payable (O.110, r.6)

6.—(1) No fee shall be taken by any barrister and solicitor assigned to assist or to appear for a person applying or admitted to sue or defend in *forma pauperis*.

(2) No fees of court shall be demanded by any officer from any person applying or admitted to sue or defend in *forma pauperis*: Provided that if a person admitted to sue or defend in *forma pauperis* shall succeed in the cause or matter and costs should be awarded to be paid by the other party, then, out of any costs subsequently recovered from the other party,

the barrister and solicitor so assigned shall be entitled to and shall receive all such costs as may be allowed to him on taxation, and such fees of court as would have been chargeable, shall be charged and paid to the Registry.

Removal of assisted person privileges (O.110, r.7)

7. Any person having been admitted to sue or defend in *forma pauperis*, who—

- (a) becomes of means during the progress of the cause or matter;
or
- (b) misbehaves himself in the proceedings by any vexatious or improper conduct; or
- (c) wilfully delays the cause or matter,

shall on the same being shown to the Court be deprived of all the privileges of an assisted person.

Legal aid may be made available (O.110, r.8)

8. In special circumstances, and subject to the availability of public funds for the purpose, legal aid may be granted to any party or intending party to any proceedings in the High Court but only upon the specific authority of the Chief Justice to be obtained in each case.

ORDER 111

ABSCONDING DEBTORS

Application for warrant (O.111, r.1)

1. An application under section 6 of the Debtors Act for an order for a warrant to issue for the arrest of a defendant who is about to abscond may be made by the plaintiff in the action *ex parte*, supported by an affidavit, to a judge in chambers.

Orders for warrant of arrest (O.111, r.2)

2. The Court may make the order upon such terms as it shall think fit and may make it subject to—

- (a) the giving by the plaintiff of an undertaking as to damages in like manner as in the case of an interlocutory injunction,
- (b) the payment by the plaintiff of a deposit in advance to cover the cost of the defendant's subsistence whilst in prison,
- (c) the giving of such recognisance or otherwise to secure the prosecution of the action by the plaintiff without delay, and
- (d) the release of the absconding defendant after his arrest upon him giving such security as may be ordered.

Subsistence costs, etc. (O.111, r.3)

3.—(1) If the warrant or order shall have been made conditional upon the payment of money to cover the cost of the defendant's subsistence, the amount expended for that purpose shall be added to the sum recoverable under the warrant or in the action, as the case may be, without further order unless the Court shall otherwise direct.

(2) The costs of and incidental to the order of arrest and its execution shall be costs in the cause unless otherwise ordered.

Release from custody (O.111, r.4)

4. When the Court orders that a warrant be issued it shall order that the absconding defendant shall be released from custody upon—

- (a) depositing in Court or with the Sheriff the amount mentioned in the order, or
 - (b) executing a bond in the sum mentioned in the order with such sureties for such sums as may be specified therein with or without surrendering his passport, or
 - (c) providing some other security satisfactory to the plaintiff,
- and the warrant shall be endorsed accordingly upon its issue.

Variation of security (O.111, r.5)

5. The plaintiff may at any time apply to a judge in chambers by summons supported by affidavit to vary the security ordered or given and the judge may make such order as he thinks fit.

Duty of Sheriff, etc. (O.111, r.6)

6.—(1) The Sheriff or other officer named in a warrant of arrest shall within two days after the arrest, indorse on the warrant the true date of such arrest and make a return accordingly to the Court.

(2) Upon payment to the Sheriff or into Court of the amount stated in the warrant or upon the security ordered being given, the Sheriff or other officer executing the warrant shall release the defendant from custody and shall make a return to the Court accordingly.

Form (O.111, r.7)

7. A warrant to arrest an absconding defendant shall be in Form No. 30 in Appendix A.

ORDER 112

(Unallocated)

ORDER 113

SUMMARY PROCEEDINGS FOR POSSESSION OF LAND

Proceedings to be brought by originating summons (O.113, r.1)

1. Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

Forms of originating summons (O.113, r.2)

2. The originating summons shall be in Form No. 3 in Appendix A and no acknowledgment of service shall be required.

Affidavit in support (O.113, r.3)

3. The plaintiff shall file in support of the originating summons an affidavit stating—

- (a) his interest in the land;
- (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and
- (c) that he does not know the name of any person occupying the land who is not named in the summons.

Service of originating summons (O.113, r.4)

4.—(1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit in support shall be served on him—

- (a) personally or in accordance with Order 10, rule 5; or
- (b) by leaving a copy of the summons and of the affidavit or sending them to him, at the premises; or
- (c) in such other manner as the Court may direct.

(2) The summons shall, in addition to being served on the named defendants, if any, in accordance with paragraph (1) be served, unless the Court otherwise directs, by—

- (a) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises, and
- (b) if practicable, inserting through the letter-box at the premises a copy of the summons and a copy of the affidavit enclosed in a sealed envelope addressed to “the occupiers.”

(3) Every copy of an originating summons for service under paragraph (1) or (2) shall be sealed with the seal of the High Court out of which the summons was issued.

(4) Order 28, rule 4 shall not apply to proceedings under this Order.

Application by occupier to be made a party (O.113, r.5)

5. Without prejudice to Order 15, rules 6 and 11, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.

Order for possession (O.113, r.6)

6.—(1) A final order shall not be made on the originating summons except by a judge in person and shall, except in case of urgency and by leave of the Court, not be made less than 5 clear days after the date of service.

(2) Nothing in this Order shall prevent the Court from ordering possession to be given on a specified date, in the exercise of any power which could have been exercised if possession had been claimed in an action begun by writ.

Writ of possession (O.113, r.7)

7.—(1) Order 45, rule 2(2), shall not apply in relation to an order for possession under this Order but no writ of possession to enforce such an order shall be issued after the expiry of three months from the date of the order without the leave of the Court.
An application for leave may be made *ex parte* unless the Court otherwise directs.

(2) The writ of possession shall be in Form No. in Appendix A.

Setting aside order (O.113, r.8)

8. The judge may, on such terms as he thinks just, set aside or vary any order made in proceedings under this Order.

Form 1

No. of 19
Plaintiff
Defendant

290

or his solicitor or agent within 8 days after service hereof (inclusive of the day of service), further proceedings will be stayed.

(1) *Delete where not applicable,*

INDORSEMENT OF SERVICE

THIS Writ was served by me at
on the Defendant
on the _____ day
of _____, 19 ____
Indorsed the _____ day of _____, 19 ____

.....
.....
.....

AFFIDAVIT OF SERVICE

I

make oath and say as follows:—

1. I did on the _____ day of _____, 19 ____
at _____
personally serve
the within-named defendant with a true copy of the within writ of summons which appeared to me to have been regularly issued out of High Court against the above-named defendant at the suit of the above-named plaintiff and which was dated the
day of _____, 19 ____

2. At the time of the said service the said writ and the copy thereof were subscribed in the manner and form prescribed by the Rules of the High Court.

3. I did on the _____ day of _____, 19 ____
indorse on the said writ the day of the month and the week of the said service on the said defendant.

Sworn at

this _____ day of _____, 19 ____ }

Before me

A Commissioner of the High
Court of Fiji.

IN THE HIGH COURT OF
FIJI

No. of 19

Between

Plaintiff

and

Defendant

Writ of Summons

The Plaintiff's claim is for

This Writ was issued by
of
Solicitors for the plaintiff.

Form 2

Acknowledgment of Service (O.6, r.6)

[Heading as in action, to be completed by plaintiff]

Acknowledgment of Service or Writ of Summons

1. Service of the Writ is hereby acknowledged by (here insert full name and residential address¹ of each defendant who acknowledges service)

2. The defendant does* intend to contest the proceedings.
does not*

3. The defendant does* intend to apply for a stay of execution
✓does not*
against any judgment entered by the plaintiff².

4. The defendant does* intend to apply for the transfer of the
does not*
action to the High Court at (here insert where transfer is to be applied for if applicable).

Dated the

day of

19

Signed

.....
Defendant or

.....
Barrister and Solicitor
for Defendant

* Delete whichever is inapplicable.

1. If this acknowledgment is given by a barrister and solicitor, his full name and address for service should be stated as well.

2. This is appropriate if—

- (a) the claim on the writ is for a debt or liquidated demand; and
- (b) the defendant does not intend to contest the claim.

Form 3

Originating Summons—General Form (O.7, r.2)

[Heading as in Form 1]

To C.D. of

Let the defendant, within days after service of this summons on him, counting the day of service, return the accompanying Acknowledgement of Service to the appropriate Court Office.

By this summons, which is issued on the application of the plaintiff A.B. of , the plaintiff claims against the defendant *lor* seeks the determination of the Court on the following questions, namely,

or as may be

If the defendant does not acknowledge service, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.

Dated the day of 19

Note—This summons may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

This summons was taken out by of barrister and solicitor for the said plaintiff whose address is as stated above *lor where the plaintiff sues in person*. This summons was taken out by the said plaintiff who resides at the above-named address *or as may be* and *(if the plaintiff does not reside within the jurisdiction)* whose address for service is

1.

Form 4

Originating Summons—Expedited Form (O.7, r.2; O.80, r.9)

[Heading as in Form 1]

Let C.D. of attend before the Judge in chambers, at , on day, the day of 19 , at o'clock, *lor, if no application has yet been made for a day to be fixed,* on a day to be fixed] on the hearing of an application by the plaintiff A.B. of that

And let the defendant within [days] after service of this summons on him counting the day of service, return the accompanying Acknowledgment of Service to the appropriate Court Office.

Dated the day of 19

Note—This summons may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

This summons was taken out by of barrister and solicitor for the said plaintiff whose address is as stated above *lor where the plaintiff sues in person*. This summons was taken out by the said plaintiff who resides at the above-named address *or as may be* and *(if the plaintiff does not reside within the jurisdiction)* whose address for service is

1.

Note—If a defendant does not attend personally or by his barrister and solicitor at the time and place above-mentioned such order will be made as the court may think just and expedient.

Form 5

Originating Summons—*Ex Parte* (O.7, r.2)

[Heading as in Form 1]

Let all parties concerned attend before a Judge in chambers at the High Court , on day, the day of 19 , at o'clock, on the hearing of an application by A.B. that

Dated the day of

This summons was taken out by of barrister and solicitor for the applicant whose address is.

Form 6

Notice of Originating Motion (O.8, r.3)

[Heading as in Form 1]

In the matter of

Take notice that the High Court at , will be moved at the expiration of days from the service upon you of this notice *lor on* day, the day of 19 , at the sitting of the Court *lor so soon thereafter as counsel can be heard, by counsel on behalf of A.B. for an order that* *lor for the following relief, namely*]

And that the costs of and incidental to this [application] [appeal] may be paid by

And further take notice that the grounds of this [application] [appeal] are:

Dated the day of 19

(Signed)
C.D. of agent for of I barrister and solicitor for the above-named [applicant] [appellant] A.B. whose address is or A.B. whose address for service is [applicant] [appellant] in person
To of

Form 7

Notice of Motion (O.8, r.3)

[Heading as in action]

Take notice that [pursuant to the leave of given on the day of 19] the Court for Mr Justice] will be moved on the day of 19 , at o'clock, or so soon thereafter as counsel can be heard, by [Mr of] counsel for the above-named plaintiff [or defendant] that and that the costs of the application be

Dated the day of 19

(Signed)
of
agent for

of
barrister and solicitor for the

To
Barrister and Solicitor for the

Form 8

Counterclaim Indorsement Notice (O.15, r.3(5))

[Heading as in action]

To X.Y.

Take notice that, within [14 days] after service of this defence and counterclaim on you, counting the day of service, you must acknowledge service and state in your acknowledgement whether you intend to contest the proceedings. If you fail to do so or if your acknowledgment does not state your intention to contest the proceedings, judgement may be given against you without further notice.

Form 9

Third Party Notice (O.16, r.1)

[Heading as in action]

Between: A.B. Plaintiff
And: C.D. Defendant
T.P. Third Party

Third Party Notice

Issued pursuant to the order of _____ dated the
day of _____ .1.

To T.P. 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 the nature of the plaintiff's claim*] as appears from the writ of summons [or originating summons] a copy whereof is served herewith [together with a copy of the statement of claim].

The defendant claims against you [*here state 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 the grounds of the claim)*].

And take notice that within [14 days] after service of this notice on you, counting the day of service, you must acknowledge service and state in your acknowledgment whether you intend to contest the proceedings. If you fail to do so, or if your acknowledgment does not state your intention to contest the proceedings, you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability [indemnify the defendant or to contribute to the extent claimed or to _____ stating the relief or remedy sought] and will be bound by any judgment or decision given in the action, and the judgment may be enforced against you.

Dated the _____ day of _____ 19 _____

(Signed)

Barrister and Solicitor for the defendant

Note—Where the third party notice is issued merely for the determination of a question or issue, the form should be amended as follows—

- (1) For paragraph 2 substitute the following—

The defendant requires that the following question or issue, viz., [*here state the question or issue required to be determined*] should be determined not only as between the plaintiff and the defendant but also as between either or both of them and yourself.

and

- (2) In the last paragraph, substitute the following for the words after “intention to content the proceedings”—

“you will be bound by any judgment or decision in the action so far as it is relevant to the said question or issue, and the judgment may be enforced against you.”

Form 11

Notice of Payment into Court (O.22, r.1)

[Heading as in action]

Take notice that—

The defendant has paid \$ into court.

The said \$ is in satisfaction of [the cause of action] [all the causes of action] in respect of which the plaintiff claims [and after taking into account and satisfying the above-named defendant's cause of action for in respect of which he counterclaims].

or

The said \$ is in satisfaction of the following causes of action in respect of which the plaintiff claims, namely, [and after taking into account *as above*].

or

Of the said \$, \$ is in satisfaction of the plaintiff's cause[s] of action for [and after taking into account *as above*] and \$ is in satisfaction of the plaintiff's cause[s] of action for [and after taking into account *as above*].

Dated the day of 19

Form 12

Notice of Acceptance of money paid into Court (O.22, r.3)

[Heading as in action]

Take notice that the plaintiff accepts the sum of \$ paid in by the defendant C.D. in satisfaction of the cause[s] of action in respect of which it was paid in and in respect of which the plaintiff claims [against that defendant] [and abandons the other causes of action in respect of which he claims in this action].

Dated the day of 19

Form 13

List of Documents (O.24, r.5)

[Heading as in action]

List of documents

The following is a list of the documents relating to the matters in question in this action which are or have been in the possession, custody or power of the above-named plaintiff *lor* defendant] A.B. and which is served in compliance with Order 24, rule 2 *lor* the order herein dated the day of 19 1.

1. The plaintiff *lor* defendant] has in his possession; custody or power the documents relating to the matters in question in this action enumerated in schedule 1 hereto.

2. The plaintiff *lor* defendant] objects to produce the documents enumerated in part 2 of the said schedule 1 on the ground that [stating the ground of objection].

3. The plaintiff *lor* defendant] has had, but has not now, in his possession, custody or power the documents relating to the matters in question in this action enumerated in schedule 2 hereto.

4. Of the documents in the said schedule 2, those numbered in the schedule were last in the plaintiff's *lor* defendant's] possession, custody or power on [stating when] and the remainder on [stating when].

[Here state what has become of the said documents and in whose possession they now are].

5. Neither the plaintiff *lor* defendant], nor his barrister and solicitor nor any other person on his behalf, has now, or ever had, in his possession, custody or power any document of any description whatever relating to any matter in question in this action, other than the documents enumerated in schedules 1 and 2 hereto.

Schedule 1

Part 1

[Here enumerate in a convenient order the documents (or bundles of documents, if of the same nature, such as invoices) in the possession, custody or power of the party in question which he does not object to produce, with a short description of each document or bundle sufficient to identify it].

Part 2

[Here enumerate as aforesaid the documents in the possession, custody or power of the party in question which he objects to produce].

Schedule 2

[Here enumerate as aforesaid the documents which have been, but at the date of service of the list are not, in the possession, custody or power of the party in question].

Dated the day of 19

Notice to inspect

Take notice that the documents in the above list, other than those listed in part 2 of schedule 1 [and schedule 2], may be inspected as [the office of the barrister and solicitor of the above-named [plaintiff] [defendant] (insert address) or as may be] on the day of 19 , between the hours of and

To the defendant *lor* plaintiff] C.D. and his barrister and solicitor.

Served the day of 19 , by of barrister and solicitor for [plaintiff] [defendant].

Form 14

Affidavit verifying list of Documents (O.24, r.5)

[Heading as in action]

I, the above-named plaintiff *lor* defendant] A.B., make oath and say as follows:—

1. The statements made by me in paragraphs 1, 3 and 4 of the list of documents now produced and shown to me marked are true.

2. The statements of fact made by me in paragraph 2 of the said list are true.

3. The statements made by me in paragraph 5 of the said list are true to the best of my knowledge, information and belief.

Sworn, etc.

This affidavit is filed on behalf of the plaintiff *lor* defendant].

Form 15

Notice of Appointment to hear Originating Summons

(O.28, r. 3)

[Heading as in action]

To [*name of defendant*] of

Take notice that the originating summons issued herein on the day of 19 , will be heard by a Judge at the High Court , on day, the day of 19 at o'clock. You may attend in person or by your barrister and solicitor. If you fail to attend, such order will be made as the Court may think just and expedient.

Dated the day of 19 .

(Signed)

Plaintiff or barrister and solicitor
for the plaintiff

Form 16

Writ of Subpoena (O.38, r.14)

[Heading as in action]

To [*names of witnesses*]

We command you to attend at the sittings* of the High Court at _____ on the day fixed for the trial of the above named cause, notice of which will be given to you, and from day to day thereafter until the end of the trial, to give evidence on behalf of the [plaintiff] or [defendant]**.

Issued by the High Court of Fiji the
day of _____ 19 _____.

Issued on the _____ day of _____ 19 _____ by _____ [agent
for] _____ barrister and solicitor for the etc.

NOTE: If this subpoena is served less than 7 clear days before the hearing you are not obliged to attend if, as a result of short notice, it is inconvenient for you to do so. In this event you should so inform the Court.

If the subpoena is to attend at chambers, amend accordingly. If the subpoena is to attend before a tribunal or other body pursuant to the provisions of an Act, amend accordingly.

***If duces tecum add:* And we also command you to bring with you and produce at the place aforesaid on the day notified to you [*here describe the documents or things to be produced*].

Form 17

Order for Examination before a Judge (O.39, r. 1)

[Heading as in action]

On hearing [the barristers and solicitors on both sides] and on reading the affidavit of _____ filed herein the _____ day of _____ 19 _____.

It is ordered that _____ a witness on behalf of the _____ be examined *viva voce* on oath or affirmation before one of the examiners of the Court [or _____ Esq., the examiner agreed upon or an examiner to be agreed upon, the plaintiff's [or defendant's] barrister and solicitor giving to the defendant's [or plaintiff's] barrister and solicitor _____ days' notice in writing of the time and place where the examination is to take place [*or state the time and place if fixed by the order*]. And it is ordered that the depositions taken at the examination be filed in the High Court), and that office copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the barrister and solicitor or agent of the party using the same, as to his belief, and that the costs of this application [and of the examination] be [costs in the cause].

Dated the _____ day of _____ 19 _____

Form 18

Order for Issue of Letter of Request to Judicial authority out of jurisdiction (O.39, r. 2)

[Heading as in action]

On hearing [*as in Form 17*]

It is ordered that a letter of request do issue directed to the proper judicial authority for the examination of the following witnesses, namely:

E.F. of
G.H. of

And it is ordered that the depositions taken pursuant thereto when received be filed in the High Court and that office copies thereof may be read and given in evidence on the trial of this action, saving all just exceptions, without any further proof of the absence of the said witnesses than the affidavit of the barrister and solicitor or agent of the party using the same as to his belief.

And it is ordered that [the trial of this action be stayed until the said depositions have been filed and that] the costs of and incidental to the application for this order and the said letter of request and examination be [costs in the cause].

Dated the day of 19 .

Form 19

Order for Appointment of Examiner to take Evidence of witness out of jurisdiction (O.39, r. 2)

[Heading as in action]

On hearing the barristers and solicitors on both sides and on reading the affidavit of filed the day of 19 ,

It is ordered that the Fiji Consul or his deputy at [or Esq.] 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 at in [*name of country*]. The examiner shall be at liberty to invite the attendance of the witnesses and the production of documents, but shall not exercise any compulsory powers. Otherwise such examination shall be taken in accordance with the Fiji procedure. The barristers and solicitors to give to the barristers and 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 barristers and solicitors for the plaintiff and defendant 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) before

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 taken, together with any documents referred to therein, or certified copies of such documents, or of extracts therefrom, be sent by the examiner, under seal, to the Chief Registrar of the High Court, 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 incidental to the application for this order and such examination be costs in the cause.

Dated the day of 19 .

Form 20

Letter of Request for Overseas Examination (O.39, r.3)

[Heading as in action]

To the Competent Judicial Authority of
in the of

Whereas an action is now pending in the High Court of Fiji, in which is plaintiff and is defendant and in which the plaintiff claims

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties that the following persons should be examined as witnesses upon oath touching such matters, namely of and of and it appears that such witnesses are resident within your jurisdiction.

Now I a judge of the High Court of Fiji hereby request that for the reasons aforesaid and for the assistance of the said Court you will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before you, or such other person as according to your procedure is competent to take the examination of witnesses, and that you will cause such witnesses to be examined *viva voce* [or upon the interrogatories which accompany this letter of request] 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 the examination.

And I further request that you will permit the agents of both the plaintiff and defendant or such of them as shall be present to examine [upon interrogatories and *viva voce* upon the subject-matter thereof or arising

And I further request that you will be pleased to cause the evidence of the said witnesses [or the answers of the said witnesses and all additional *viva voce* questions, whether on examination, cross-examination or re-examination] to be reduced into writing and all books, letters, papers and documents produced on 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 it together with [the interrogatories and cross-interrogatories and] a note of the charges and expenses payable in respect of the execution of this request through the Fiji Consul from whom the same was received for transmission to the High Court of Fiji.

Dated the day of 19

Notice of Judgment or Order (O.44, r.2)

Take notice that a judgment [or order] of this Court was given [or made] on the _____ day of _____ 19____ by which it was [state substance of judgment or order].

And also take notice that you ~~for~~ the said infant ~~or~~ patient] may within one month after the service of this notice apply to the Court to discharge, vary or add to the said judgment ~~for~~ order] and that after acknowledging service of this notice at the High Court at _____ you ~~for~~ the said infant ~~or~~ patient] may attend the proceedings under the said judgment ~~for~~ order].

303

Form 22

Writ of Fieri Facias (O.45, r. 11)

[Heading as in action]

To the sheriff of greeting:

Whereas in the above named action it was on the day of 19 adjudged [*or ordered*] that the defendant C.D. do pay the plaintiff A.B. \$ [and \$ costs *or* costs to be taxed, which costs have been taxed and allowed at \$ as appears by the certificate of the taxing officer dated the day of 19].

We command you that of the goods, chattels and other property of C.D. authorised by law to be seized in execution you cause to be made the sum [s] of \$ [and \$ for costs of execution] and also interest on \$ at the rate of \$ [*insert the appropriate rate of interest at date of entry of judgment*] per annum from the day of 19 until payment [together with sheriff's poundage, officers' fees, costs of levying and all other legal, incidental expenses] and that immediately after execution of this writ you pay A.B. in pursuance of the said judgment [*or order*] the amount levied in respect of the said sums and interest.

And we also command you that you indorse on this writ immediately after execution thereof a statement of the manner in which you have executed it and send a copy of the statement of A.B.

Issued by the High Court of Fiji, the
day of 19 .

This writ was issued by [agent for of] barrister and solicitor for the [*or* this writ was issued by A.B. [the plaintiff] in person] who resides at

The defendant resides (*or as the case may be*) at

Form 23

Writ of delievery (O.45, r. 11)

[Heading as in action]

To the sheriff of greeting:

Whereas in the above named action it was on the day of 19 adjudged [*or ordered*] that the defendant C.D. do deliver

to the plaintiff A.B. the following goods, namely [*describe the goods delivery of which has been adjudged or ordered*] or* do pay him \$ being the assessed value of the said goods, [and \$ damages] and \$ costs [*or costs to be taxed, which costs have been taxed and allowed at \$ as appears by the certificate of the taxing officer dated the day of 19*];

We command you that you cause the said goods to be delivered to A.B. and* that if possession of the said goods cannot be obtained by you you cause to be made of the goods, chattels and other property of C.D. in your country authorised by law to be seized in execution \$ the assessed value of the said goods to pay it to A.B.

And we also command you that of the said property of C.D. in your country you cause to be made the sum of \$ for [damages and] costs and \$ for costs of execution and also interest on \$ at the rate of \$ *insert the appropriate rate of interest at date of entry of judgment* per annum from the day of 19 until payment together with sheriff's poundage, officers' fees, costs of levying and all other legal incidental expenses and that immediately after execution of this writ you pay A.B. in pursuance of the said judgment [*or order*] the amount levied in respect of the said sums and interest.

And we also command you that you indorse [*remainder as in Form 22*]

* Delete this alternative if order is for delivery of goods alone without the alternative of recovery of their value.

Form 24

Writ of Possession (O.45, r. 11)

[Heading as in action]

To the sherriff of greeting:

Whereas in the above named action it was on the day of 19 adjudged [*or ordered*] that the defendant C.D. do give the plaintiff A.B. possession of [*describe the land delivery of which has been adjudged or ordered*] and do pay him [\$ and] \$ costs [*or costs to be taxed, which costs have been taxed and allowed at \$ as appears by the taxing officer's certificate dated the day of 19*];

We command you that you enter the said land and cause A.B. to have possession of it.

And we also command you that of the goods, chattels and other property [*remainder as in Form 22*].

Form 25

Writ of Sequestration (O.45, r. 11)

[Heading as in action]

To [*names of not less than four commissioners*] greeting:

Whereas in the above named action it was on the day of
19 adjudged [*or ordered*] that C.D. should [pay into Court
the sum of \$ *or as may be*]:

Know ye, therefore, that we, in confidence of your prudence and fidelity, do by this writ authorise and command you, or any two or three of you, to enter upon and take possession of all the real and personal estate of the said C.D. and to collect, receive and get into your hands the rents and profits of his real estate and all his personal estate and keep the same under sequestration in your hands until the said C.D. shall [pay into Court to the credit of the said action *or matter* the sum of \$
or as may be] and clear his contempt and our said Court make other order to the contrary.

Issued [*as in Form 22*]

This writ was issued [*as in Form 22*].

Form 26

Stop Notice and Affidavit (O.50, r. 11)

[Heading as in action]

In the High Court

In the matter of [*state the settlement or other document under which the deponent's interest arises giving the date and other particulars sufficient to identify the document*]

and

In the matter of Order 50, rule 11 of the Rules of the High Court.

I, A.B. [*or C.D. the barrister and solicitor of A.B.*] of make oath and say that according to the best of my knowledge, information and belief I am [*or the said A.B. is*] beneficially entitled under the above-mentioned settlement [*or as may be*] to an interest in the securities specified in the notice hereto annexed.

Sworn, etc.

This affidavit is filed on behalf of A.B. whose address is

To the General Manager,
National Bank of Fiji
[or as may be]

This notice is intended to stop the transfer of the said securities and not the payment of any dividend thereof or interest thereon [*or and also the payment of any dividend thereof or interest thereon*].

(Signed)
A.B. [or C.D. if affidavit sworn by him]

Order 53 Forms—Practice Direction

Form 28

[Heading as in action]

We command you that you have in the High Court [or before a judge in chambers] at _____, on the day and at the time specified in the notice served with this writ, the body of A.B. being taken and detained under your custody as is said, together with the day and cause of his being taken and detained by whatsoever name he may be called therein, that Our Court [or Judge] may then and there examine and determine whether such cause is legal, and have you there then this writ.

19 .

By order of court [*or of Mr. Justice* _____].

**NOTICE TO BE SERVED WITH WRIT OF HABEAS
CORPUS AD SUBJICIENDUM (O.54, r.6)**

[If in a cause already begun, here insert the title, not otherwise]

Take notice that you are required by the said writ to have the body of the said A.B. before this Court [*or before the judge aforesaid*] on the day of 19 at

Dated the day of 19 .

To _____ (Signed) _____
of _____
barrister and solicitor for _____

Form 29

Attachment of Earnings Order (O.104, r.3)

[Heading as in action]

In the High Court
at

In the Matter of the Maintenance (Prevention of Desertion and Miscellaneous Provisions) Act

Whereas of, who works at as a (hereinafter called the defendant) is required under a maintenance order made on the day of 19, by the High Court *for as the case may be* to make payments of a week *for as the case may be* to ;

And Whereas on the application of the said it appears that earnings fall to be paid by to the defendant:

It is hereby ordered that the said do make payments out of those earnings in accordance with the Maintenance (Prevention of Desertion and Miscellaneous Provisions) Act to the Magistrate of the High Court at for transmission to the said ;

And it is further ordered that for the purpose of calculating the said payments the normal deduction rate shall be a week *for as the case may be* and that the protected earnings rate shall be a week *for as the case may be*.

Dated the day of 19 .

To of , and to of .

Note—This order does not come into force until one week after its service on the said

Form 30

Warrant to arrest an Absconding Debtor (O.111, r.7)

[Heading as in action]

To the Sheriff of Fiji:

Whereas by an Order of the Court made this day it was ordered that the above-named defendant be arrested and committed to prison there to be kept until he shall have given bail or security for his appearance at any time when called upon while the above action is pending and until execution or satisfaction of any judgment that may be made against him in the action.

These are therefore to command you in the President's name to arrest the said and convey him to the prison and deliver

- (a) deposit the sum of \$ _____, or
(b) surrender his passport and give to the plaintiff a bond executed by him and _____ sufficient sureties each in the penalty of \$ _____ or some other security satisfactory to the plaintiff that he will not go out of Fiji without the leave of the court.

Dated this day of , 19 .

Chief Registrar

The Plaintiff's address for service is

Form 31

Originating Summons for Summary Possession of Land (O.113, r.2)

[Heading as in Form 1]

In the High Court of Fiji

19 No.

In the matter of

I A.B. Plaintiff

C.D.

Defendant (if any) whose name is known to

the plaintiff]

To [C.D. and] every [other] person in occupation of

Let all persons concerned attend before the High Court, at _____, on _____ day, the _____ day of _____ 19, at _____ o'clock, on the hearing of an application by A.B. for an order that he do recover possession of _____ on the ground that he is entitled to possession and that the person(s) in occupation is(are) in occupation without licence or consent.

Dated the day of 19 .

This summons was taken out by _____ of _____ barrister and solicitor for the said plaintiff whose address is _____ [or This summons was taken out by _____ of _____ agent for _____ of _____ barrister and solicitor for the said plaintiff whose address is _____] *or when the plaintiff acts in person*—this summons was taken out by the said plaintiff who resides at _____ and is *(state occupation)* and *(if the plaintiff does not reside within the jurisdiction)* whose address for service is _____].

Note—Any person occupying the premises who is not named as a defendant by this summons may apply to the court personally or by barrister and solicitor to be joined as a defendant. If a person occupying the premises does not attend personally or by barrister and solicitor at the time and place above mentioned, such order will be made as the Court may think just and expedient.

Appendix 2

FEES—REGISTRY

PART I—GENERAL FEES

NOTE— The fees prescribed in this Part shall be taken in all causes and matters save where different fees are prescribed for the same item in any other part of this Appendix or any Act or rule.

	\$
1. On filing or presenting and sealing any writ, petition, summons or notice of motion for the commencement of any action, cause, matter or proceedings other than an originating <i>ex parte</i> application . . .	15.00
(This fee covers the filing of whatever process requires to be filed, the sealing of whatever process requires to be sealed and the issue of whatever process requires to be issued in order to commence the action, cause, matter or proceedings.)	
2. On sealing a concurrent or renewed or amended writ, petition, summons or notice	3.00
3. On an originating <i>ex parte</i> application, whether made in Court or in chambers	8.00
4. On sealing or issuing any notice of motion, summons, writ, citation, notice, fiat, certificate or other document unless otherwise provided for	4.00
(This fee covers both sealing and issuing the same document where this is required).	
5. On issuing a summons under the Reciprocal Enforcement of Judgments Act or the Foreign Judgments (Reciprocal Enforcement) Act for leave to have a judgment registered	4.00
6. On entering an appearance	2.00
7. On amending an appearance	2.00
8. On filing in the High Court a notice of appeal or a special case or a scheme pursuant to an Act and setting down the appeal or special case or scheme for hearing, other than an appeal from a magistrates' court under the provisions of the Magistrates' Courts Act and the Magistrates' Courts Rules . . .	25.00
9. On sealing a notice of appeal from the Chief Registrar or a Deputy Registrar to a judge in chambers . . .	5.00
10. On sealing an order for entry for trial of any action, cause, matter or proceedings for hearing in Court	

(other than a matrimonial cause) and hearing ... (This fee is not payable in respect of an appeal from a magistrate's court.)	25.00
11. On adjourning an originating summons from chambers into Court	10.00
12. On setting down a point of law for hearing in Court..... (No additional fees will be payable under Item 10 if later entered for trial.)	15.00
13. On setting down a cause on summons or motion for judgment under Order 19 Rule 7	10.00
14. On sealing a commission or letter of request for the examination of witnesses abroad.....	10.00
15. On the examination of a witness before an officer of the Court or a special examiner (including the examination of a judgment debtor) or before trial by a judge:—	
(a) In any action, cause, matter or proceedings pending in the High Court.....	8.00
(b) In any other matter	25.00
16. On entering or sealing any order made in chambers	4.00
17. On entering or sealing a judgment, decree or order (other than a decree in a matrimonial cause) given, directed or made in Court..... (This includes the fee for settling the judgment, decree or order.)	10.00
18. On entering or sealing a judgment without an order or pursuant to an order made in chambers	5.00
19. On sealing a writ of subpoena (to include not more than three names).....	3.00
20. On sealing a writ of execution (including a writ of attachment)	3.00
21. On sealing a garnishee order <i>nisi</i> or a charging order <i>nisi</i>	5.00
22. On filing any document unless otherwise provided for	2.00
(This fee is not payable on filing a document already stamped with a fee prescribed in this Appendix or on filing a notice withdrawing a cause or an appeal.)	
23. On any one search	1.00
24. For any certificate unless otherwise provided for	2.00
25. (a) For supplying a typed, carbon or duplicated copy of any judgment, order, decree, docu- ment or proceedings—per page (with a minimum fee of \$0.50)	0.40

(Provided that the Chief Registrar may, for special reason, waive this fee in whole or in part.)

(b) For a copy, other than a photocopy, in a foreign language or for a copy of a plan, map, section, drawing, photograph or diagram...

The
reasonable
costs thereof
as certified
by the Chief
Registrar
\$

26. For supplying a transcript, or a duplicated or carbon copy thereof, of notes of proceedings—per page (with a minimum fee of \$1.00)	0.40
(Provided that the Chief Registrar may, for special reason waive this fee in whole or in part.)	
27. For supplying a photocopy of any document, per page	0.20
28. For certifying or marking any document as an office copy or a true copy—per page (with a minimum fee of \$1.00 and a maximum fee of \$10.00)	0.20
29. Upon an application for the production of records or documents to be given in evidence:—	
(a) where the records or documents are sent by post	2.00
(b) where an officer is required to attend whether on subpoena or not, his reasonable expenses and in addition for each day or part of a day he is necessarily absent from his office	10.00
30. (a) On administering any oath or declaration (except in Court) or taking an affidavit or an affirmation: for each deponent	1.00
(b) In addition for each exhibit required to be marked	0.50
31. On taking a recognizance or a bond or vacating the same	3.00
32. On filing a bill of costs and obtaining an appointment to tax:—	
For a bill not exceeding \$100	7.00
For a bill exceeding \$100 but not exceeding \$200 ...	10.00
For a bill exceeding \$200	16.00
(This fee is to be paid on the amount claimed in the bill. No additional fee is payable for the taxation.)	
33. On a certificate of allocatur	1.00
34. On sealing or issuing a commission to take oaths or affidavits in the High Court	25.00
35. Where the Chief Registrar or a Deputy Registrar is required to perform any duties away from his office:—	
For his travelling, lodging and subsistence:	reasonable expenses.

**PART 2—COURT FEES IN PROBATE ACTIONS, PROCEEDINGS
AND MATTERS**

(CONTENTIOUS AND NON-CONTENTIOUS BUSINESS)

38. On the issue of a grant of Probate or Letters of Administration with or without the Will annexed:
If the net real and personal estate is sworn to be under the value of:

\$	\$
2,000	3.00
4,000	6.00
6,000	8.00
8,000	10.00
10,000	12.00
12,000	14.00
14,000	16.00
16,000	18.00
18,000	20.00
20,000	22.00
24,000	24.00
28,000	26.00
32,000	28.00
36,000	30.00
40,000	34.00
50,000	40.00
60,000	46.00
70,000	50.00
80,000	54.00
90,000	58.00
100,000	66.00
120,000	72.00
140,000	78.00
160,000	84.00
180,000	90.00
200,000	96.00
240,000	102.00
280,000	108.00
320,000	114.00
360,000	120.00
400,000	128.00
500,000	136.00
600,000	144.00
750,000	152.00
800,000	162.00
1,000,000	172.00

	\$
For every additional \$200,000 or any fractional part or \$200,000 a further and additional fee of	30.00
39. On the issue of a duplicate or triplicate Probate or Letters of Administration with or without the Will annexed	4.00
40. On the issue of double or cessate Probate or Letters of Administration with or without the Will annexed, <i>de bonis non</i> or cessate	6.00
41. On the issue of a grant of Probate of a Codicil or Codicils, or Letters of Administration with a Codicil or Codicils annexed, being a Codicil or Codicils to a Will already proved	2.00
42. For re-sealing a grant or sealing an exemplification or copy under the British and Colonial Probates Act exclusive of the fees, if any, for every issuing and collating the will and other documents filed with the same but including sealing.	6.00
43. For giving notice of re-seal	1.00
44. For making alterations in grants of Probate or Letters of Administration in pursuance of the order of a judge	2.00
45. For revocation of a grant	2.00
46. For impounding a grant, or releasing an impounded grant (inclusive fee)	4.00
47. For noting a re-swearing of value and certificate or security (inclusive fee)	2.00
48. For noting on a grant and the record the addition of a personal representative (including filing and affidavit)	2.00
49. For noting on record of grant that an executor to whom power was reserved has renounced (inclusive fee)	2.00
50. For the entry or withdrawal of a caveat	1.00
51. On the issue of a warning to a caveat	1.00
52. For service by the Chief Registrar of a warning to a caveat	1.00
53. For settling the abstract of citation for advertisement, or other advertisement	1.00
54. For settling and sealing a citation (inclusive fee)	2.00

55. On sealing extra copies of the citation: for each such copy	2.00
56. On the issue of an exemplification, in addition to the fees for collating	2.00
57. For collating Wills and other documents, per page	1.00
58. For 3 photocopies of Will for engrossment on grant, copy grant and copy oath, including impressing the seal of the Court, per page	0.20
59. For noting renunciations, or any other necessary matter on the record of a grant	2.00
60. For perusing and settling oaths to lead to grant of Probate or Letters of Administration with or without Will or other instruments—per page	1.00
61. For perusing deeds and other documents when necessary—per page	0.50
62. On filing of an affidavit including renunciation, power of Attorney, novation and authority	2.00
63. For certifying a copy of a grant	1.00
64. For supply of forms for probate or letters of administration, per form	0.20
65. On filing of Oath of Executor or Administrator	2.00
66. On filing of Administration Bond	2.00
67. On filing of Justification of Sureties	2.00
68. On filing of Supplementary Affidavits	2.00

Appendix 3

SHERIFFS FEES SERVICE

	\$
1. For receiving and entering process for service	2.00
2. For service of any process:	
(a) within 3 km from the nearest Deputy Sheriff's office	3.00
(b) exceeding 3 km from the nearest Deputy Sheriff's office, for every additional km, in addition to (a)	0.25

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3. Receiving and entering Writ of Execution	2.00
4. Receiving and entering order of suspension of execution	2.00
5. On every enlargement of return	1.00
6. Poundage for every \$20 or part thereof	2.00
7. Precept to bailiff	2.00
8. Seizure or collection of the sum endorsed on the Writ of Execution without seizure:	
(a) within 3 km of nearest Deputy Sheriff's office	4.00
(b) exceeding 3 km from the nearest Deputy Sheriff's office, for every additional km, in addition to (a)	0.25
9. For man:	
(a) in actual physical possession, <i>per diem</i>	10.00
(b) in walking possession, <i>per diem</i>	2.00
10. In the event of a <i>nulla bona</i> return being rendered after due inquiries: for time spent making inquiries	5.00
11. Commission on sale (for every \$20 or part thereof)	2.00
12. Delivery of goods in replevin:	
(a) within 3 km of the nearest Deputy Sheriff's office	4.00
(b) exceeding 3 km from the nearest Deputy Sheriff's office, for every additional 3 km, in addition to (a)	0.25
13. For taking a replevin bond	6.00
14. For assignment of replevin bond	4.00
15. For taking a bond of indemnity	6.00
16. When goods or animals are removed, for warehousing and taking charge of the same (including feeding of animals) \$2.00 for each \$40 or part thereof of the value of the goods or animal removed or of the sum endorsed on the writ of execution, whichever is the less. No fee for keeping possession of the goods or animals is to be charged after they have been removed.	
17. For work done by Sheriff's officer in inquiring into any claim for rent or claim to the goods	5.00

18. Preparing notice to execution creditor to admit or dispute claim and sending same by post	2.00
19. For taking and handing over possession of property specified in writ of possession—	
(a) per man, <i>per diem</i>	10.00
and	
(b) travelling expenses, per km	0.30

ARREST

	\$
20. Receiving and entering a Writ or Warrant	2.00
21. Precept to bailiff	2.00
22. For every arrest or collection of the amount endorsed on the warrant by way of payment or deposit without arrest:	
(a) within 3 km of Deputy Sheriff's office	5.00
(b) exceeding 3 km from the nearest Deputy Sheriff's office for every additional km, in addition to (a)	0.25
23. For conveying to court or to prison from place of arrest, not exceeding <i>per diem</i> , in addition to reasonable travelling expenses actually incurred	5.00
24. On a release on bail or a bond, where authorised and filing bail bond	2.00
25. For assignment of bail bond	2.00

GENERAL

26. Receiving and entering any process not otherwise provided for	2.00
27. For executing a search warrant in bankruptcy or process for possession, attachment or committal or for collecting any sum entered on any process without execution:	
(a) within 3 km from the nearest Deputy Sheriff's office	4.00
(b) exceeding 3 km from the nearest Deputy Sheriff's office per 3 km, in addition to (a) ...	0.25
28. For any duty not herein provided for	Such sum as the Court may allow.

29. Reasonable expenses, additional or otherwise, necessarily incurred in all matters, including subsistence allowance payable to bailiff.	\$
30. For Sheriff or his Deputy attending court on the hearing of interpleader proceedings: per hour or part thereof	5.00

Appendix 4

Costs

PART 1—SCALE OF COSTS

(DISCRETION OF TAXING OFFICER)

	<i>Lower Scale \$</i>	<i>Higher Scale \$</i>
1. Instructions for and writing letter before action or defence	5.00	10.00
2. Instructions to sue inclusive of preparation, issue, service on one party and affidavit of service of a writ of summons (one defendant only)	20.00	25.00
3. For obtaining and filing any necessary authority or consent	5.00	6.00
4. For taking instructions to sue from each additional plaintiff	5.00	6.00
5. On judgment in default of appearance or defence where no application to the Court or a judge is required including entry of a consent judgment or a judgment after discontinuance	10.00	15.00
6. On any judgment whether in default of appearance or defence or under O.14 where application to the Court or a judge is required	10.00	20.00
7. (a) Instructions to defend inclusive of preparation, filing and service of appearance in respect of one defendant	16.00	20.00
(b) For each additional defendant represented	5.00	6.00
8. In addition to Item 7 for each defendant for whom a guardian <i>ad litem</i> is appointed	3.00	4.00

9. Instructions for Statement of Claim inclusive of preparation, filing and service	20.00	30.00
10. Instructions for Statement of Defence or Counterclaim or Defence and Counterclaim inclusive of preparation, filing and service	20.00	30.00
11. Instructions for Reply or subsequent pleading or Defence to Counterclaim or Reply and Defence to Counterclaim inclusive of preparation, filing and service	5.00	10.00
12. Instructions for Summons for Directions inclusive of preparation, filing, service, appearance and order, and also subsequent incidental notices such as a notice requiring discovery of documents: but not including a notice for further directions which if certified for it to be treated as a fresh summons for directions	10.00	15.00
13. (a) Instructions for and preparation of list of documents and service thereof	8.00	15.00
(b) Affidavit verifying list if required	3.00	5.00
	<i>Lower Scale</i>	<i>Higher Scale</i>
	\$	\$
14. (a) Instructions for interrogatories inclusive of preparation of application and proposed interrogatories, filing and service of same, attendance in support, preparing, filing and serving order and perusing answers	20.00	35.00
(b) Instructions to oppose application for interrogatories and attendance in chambers	10.00	25.00
15. If the interrogatories settled by the order exceed 2 pages then for each additional page or part thereof	1.00	2.00
16. Instructions for answers to interrogatories inclusive of preparation, swearing, filing and service of affidavit	10.00	15.00
17. If foregoing answers exceed 2 pages then for each additional page or part thereof	1.00	2.00
18. Instructions for notice to produce documents or admit facts or documents or any similar notice not otherwise provided for inclusive of preparation, filing and service	5.00	10.00

19. If any such notice shall exceed 2 pages then for each additional page or part thereof	1.00	2.00
20. Production or inspection of documents pursuant to notice inclusive of all services incidental thereto	5.00	10.00
21. Instructions for admission of facts pursuant to notice inclusive of preparation, filing and service	10.00	15.00
22. (a) Application for entry of action for trial and attendance thereat	15.00	20.00
(b) If pleadings exceed 5 pages for each page of pleadings in excess	0.50	1.00
23. Instructions for and preparing for trial inclusive of instructions for and preparation of brief	20.00	25.00
24. Attendance at trial of an action or proceeding	35.00	100.00
25. Brief fee to extra barrister and solicitor in respect of any proceeding if certified for per day	20.00	45.00
26. Refreshes to barrister and solicitor in respect of any proceeding per day	20.00	45.00
27. Originating Summonses or petitions inclusive of all services from instructions to completion as certified for an inclusive of barrister and solicitor's fee thereon for first day of hearing	50.00	100.00
28. Instructions to defend originating summons inclusive of all services from appearance to completion and inclusive also of barrister and solicitor's fee thereon for first day of hearing	40.00	100.00
29. (a) Instructions for and attendance on summonses, motions, and other applications inclusive of all services from instructions to completion not otherwise provided for in this scale	15.00	20.00
(b) In addition for each adjourned hearing (unless a refresher fee is allowed)	8.00	15.00
(c) In addition if necessary affidavits exceed 3 pages then for each additional page or part thereof	1.00	2.00
30. Preparing and settling a special case	20.00	30.00

31. Argument on special case or question of law as certified for	25.00	100.00
32. Taking accounts, making inquiries and other similar proceedings before the Chief Registrar or in chambers per hour	10.00	15.00
33. Matrimonial suits. In accordance with each step in action of this scale, <i>nutatis mutandis</i>		
34. Appeals from inferior courts or from Chief Registrar or Deputy Registrar or other persons or bodies not otherwise provided for inclusive of all services from instructions to completion (but excluding special applications such as for a stay of execution in an appeal).....	45.00	100.00
35. Payment into or out of Court	5.00	5.00
36. Instructions for taxation of costs as between party and party inclusive of all services from instructions to completion.....	10.00	15.00
37. Instructions for any form of execution authorised by any rule of Orders 45, 46 and 47 where no application to the Court or a judge is required inclusive of all services from instructions to completion	10.00	15.00
38. Instructions for execution where an application to the Court or a judge is required, inclusive of all services from instructions to completion	10.00	25.00
39. Instructions for attachment of debts under Order 49 inclusive of all services from instructions to completion but exclusive of execution under Rule 4 or of any trial under Rules 5 or 6 the costs of which execution or trial may be separately allowed.....	10.00	15.00
40. Subpoena <i>ad testificandum</i> and <i>duces tecum</i> including issue and service for each witness.....	8.00	8.00
41. For preparing and entering a caveat or preparing and issuing a warning thereto	10.00	10.00
42. Service fees: in addition to the above fees the following fees for service may be added in appropriate cases and where service by post is not authorised:		

- | | | |
|--|---------------------------------|---------------------------------|
| <p>(a) for service at a distance of more than 3 km from the nearest place of business of the serving barrister and solicitor; per km in excess of 3 km</p> <p>(b) If a baliff is employed—all necessary and reasonable charges properly incurred and paid</p> <p>(c) Where in consequence of the distance involved it is necessary to instruct another barrister and solicitor to arrange for service to be effected</p> | <p>0.25</p> <p></p> <p>5.00</p> | <p>0.25</p> <p></p> <p>5.00</p> |
|--|---------------------------------|---------------------------------|
43. In any case a judge of the High Court either at the trial or on notice of motion made within 14 days after judgment is pronounced may certify for an increase in any of the above charges, of such amount as he thinks fit having regard to all the circumstances of the case.
44. Fees which may be taken by Commissioners for Oaths shall be as in Item 30 of Appendix 2.
45. For preparation by the Chief Registrar of an apostille in pursuance of the Hague Convention, 1961 5.00
46. For any business not covered by the above scales such as instructions, letters, telephone calls attendances, etc. the charges in respect thereof shall be such as the Chief Registrar may determine.

PART II—FIXED COSTS

- A. Fixed costs are applicable only to the following cases:
- (1) where the claim is for a debt or liquidated sum in excess of \$600.00,
 - (2) where possession of land is claimed except in suits between landlord and tenant for possession of land or houses where the annual value or rent does not exceed \$800.00,
 - (3) in any other case where the Chief Registrar authorises the endorsement or recovery of such fixed costs, not exceeding those set out in this part, as he may think fit.
- B. Save where expressly otherwise provided the fixed costs allowed in this part include the Court fees and other disbursements recoverable from the other party.

EIGHT-DAY COSTS

1. The amount of costs indorsed on a writ of summons claiming a liquidated demand only, under Order 6, Rule 2(1) (b), whether indorsed with a statement of claim or not shall be:

	\$
If one defendant	40.00
For each extra defendant	5.00
2. In addition to the above the following may be added to provided for the contingency of substituted service 15.00
3. Where service out of the jurisdiction is ordered the following additional allowances shall be added 25.00

Appendix 4

JUDGMENT IN DEFAULT OF APPEARANCE OR OF DEFENCE FOR A DEBT OR LIQUIDATED AMOUNT ONLY OR FOR POSSESSION OF LAND

(The following sums apply whether or not the statement of claim is indorsed on the writ)

- | | \$ |
|--|-------|
| 4. On entering judgment for a debt or liquidated amount | 25.00 |
| For each extra defendant served | 5.00 |
| 5. On entering judgment for possession of land only or for possession of land and a liquidated sum | 25.00 |
| For each extra defendant served | 5.00 |
| 6. Additional allowances applicable, unless taxation is ordered: | |
| (1) Where substituted service ordered and effected | 15.00 |
| (2) Where service is ordered and effected out of the jurisdiction | 25.00 |
| (3) Moneylender's cases—
Application for leave to enter judgment under Order 83, Rule 4 | 15.00 |
| (4) If separate judgments against more than one defendant are necessarily entered, for each such additional judgment | 10.00 |

JUDGMENT UNDER ORDER 14

- | | |
|---|-------|
| 7. (a) Upon entering judgment after obtaining an order for judgment under Order 14 unless taxation is ordered | 45.00 |
| (b) For each extra defendant | 5.00 |
| 8. In addition, for each adjourned hearing unless taxation is ordered | 8.00 |

GARNISHEE PROCEEDINGS (Order 49)

JUDGMENT CREDITOR'S COSTS

- | | |
|--|-------|
| 9. The costs which may be endorsed on the Garnishee Order <i>Nisi</i> shall be | 25.00 |
|--|-------|

ON ISSUING A WRIT OF FIERI FACIAS, ORDER OF COMMITAL OR WARRANT

- | | |
|---|-------|
| 10. The costs which may be endorsed on the Writ, Order or Warrant in addition to Court fees endorsed thereon shall be | 10.00 |
|---|-------|