
 STATUTORY INSTRUMENTS

1965 No. 1776 (L. 23)

SUPREME COURT OF JUDICATURE, ENGLAND**PROCEDURE****The Rules of the Supreme Court (Revision) 1965***Made - - - - 30th September 1965**Laid before Parliament 2nd November 1965**Coming into Operation 1st October 1966*

We, the Rule Committee of the Supreme Court, being the authority having for the time being power under section 99 of the Supreme Court of Judicature (Consolidation) Act 1925(a) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature, hereby exercise the powers conferred by that section and all other powers enabling us in that behalf as follows:—

1.—(1) The rules set out in Schedule 1 hereto are hereby made. .

(2) The enactments specified in columns 1 and 2 of Schedule 2 hereto (being enactments relating to matters with respect to which the rules specified in column 4 of that Schedule are hereby made) are hereby repealed to the extent specified in column 3 of that Schedule.

(3) The Rules and Orders specified in Schedule 3 hereto are hereby revoked, but subject to the provision in relation thereto made at the end of that Schedule.

2. The Interpretation Act 1889(b) applies in relation to this instrument and in relation to the revocations and repeals effected by it as if this instrument, the rules and orders revoked by it and any rules and orders revoked by the rules and orders so revoked were Acts of Parliament, and as if each revocation were a repeal.

3. This instrument may be cited as the Rules of the Supreme Court (Revision) 1965 and shall come into operation on 1st October 1966.

Dated 30th September 1965.

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SCHEDULE 1

THE RULES OF THE SUPREME COURT 1965

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PRELIMINARY

ORDER 1

CITATION, APPLICATION, INTERPRETATION AND FORMS

Citation

1. These rules may be cited as the Rules of the Supreme Court 1965.

Application

2.—(1) Subject to the following provisions of this rule, these rules shall have effect in relation to all proceedings in the Supreme Court.

(2) These rules shall not have effect in relation to proceedings of the kinds specified in the first column of the following Table (being proceedings in respect of which rules may be made under the enactments specified in the second column of that Table):—

TABLE

<i>Proceedings</i>	<i>Enactments</i>
1. Bankruptcy proceedings.	Bankruptcy Act 1914(a), section 132.
2. Proceedings relating to the winding-up of companies.	Companies Act 1948(b), section 365.
3. Non-contentious or common form probate proceedings.	Supreme Court of Judicature (Consolidation) Act 1925(c), section 100.
4. Proceedings in the High Court when acting as a Prize Court.	Prize Courts Act 1894(d), section 3.
5. Proceedings before the judge within the meaning of Part VIII of the Mental Health Act 1959(e).	Mental Health Act 1959, section 112.

(3) These rules shall not, except as expressly provided by these rules, have effect in relation to any proceedings to which the Matrimonial Causes (Judgment Summons) Rules 1952(f) or the Matrimonial Causes Rules 1957(g) apply.

(4) These rules shall not have effect in relation to any criminal proceedings other than any criminal proceedings to which Order 57, Order 59, Order 62 or Order 79 applies.

(5) In the case of the proceedings mentioned in paragraphs (2), (3) and (4), nothing in those paragraphs shall be taken as affecting any provision of any rules (whether made under the Act or any other Act) by virtue of which the Rules of the Supreme Court 1965 or any provisions thereof are applied in relation to any of those proceedings.

Application of Interpretation Act

3. The Interpretation Act 1889(h) shall apply for the interpretation of these rules as it applies for the interpretation of an Act of Parliament.

(a) 4 & 5 Geo. 5. c. 59.

(c) 15 & 16 Geo. 5. c. 49.

(e) 7 & 8 Eliz. 2. c. 72.

(g) S.I. 1957/619 (1957 II, p. 2406).

(b) 11 & 12 Geo. 6. c. 38.

(d) 57 & 58 Vict. c. 39.

(f) S.I. 1952/2209 (1952 III, p. 3359).

(h) 52 & 53 Vict. c. 63.

[Order 1**Definitions**

4.—(1) In these rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, namely—

“the Act” means the Supreme Court of Judicature (Consolidation) Act 1925 ;

“cause book” means the book kept in the Central Office, the Principal Probate Registry, the Admiralty Registry and every district registry in which the letter and number of, and other details relating to, a cause or matter are entered ;

“Central Office” means the central office of the Supreme Court ;

“chief master” means the chief master (Chancery Division);

“Crown Office” means the Crown Office and Associates’ Department of the Central Office ;

“folio” means 72 words, each figure being counted as one word ;

“master” means a master of the Supreme Court other than a master of the Supreme Court (Taxing Office) ;

“moneylender’s action” has the meaning assigned to it by Order 83 ;

“official solicitor” means the official solicitor to the Supreme Court ;

“officer” means an officer of the Supreme Court ;

“originating summons” means every summons other than a summons in a pending cause or matter ;

“pleading” does not include a petition, summons or preliminary act ;

“probate action” has the meaning assigned to it by Order 76 ;

“receiver” includes a manager or consignee ;

“the scheduled territories” has the meaning assigned to it by the Exchange Control Act 1947(a) ;

“senior master” means the senior master of the Supreme Court (Queen’s Bench Division) ;

“writ” means a writ of summons.

(2) In these rules, unless the context otherwise requires, “the Court” means the High Court or any one or more judges thereof, whether sitting in court or in chambers or any master, registrar of the Probate, Divorce and Admiralty Division, or registrar of a district registry ; but the foregoing provision shall not be taken as affecting any provision of these rules and, in particular, Order 32, rules 11, 14 and 23, by virtue of which the authority and jurisdiction of a master or any such registrar is defined and regulated.

Construction of references to Orders, rules, etc.

5.—(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.

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(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

6. 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 Crown for an order declaring that the plaintiff is entitled as against the Crown to the land or to the possession thereof.

Construction of references to Lord Chancellor and Lord Chief Justice

7. For references in these rules to the Lord Chancellor there shall, in relation to any period for which the office of Lord Chancellor is vacant, be substituted references to the Lord Chief Justice or, if the Great Seal is in commission, to the Lords Commissioners; and for references in these rules to the Lord Chief Justice there shall, in relation to any period for which the office of Lord Chief Justice is vacant, be substituted references to the Lord Chancellor.

Construction of certain references to the Treasury

8. Any reference in these rules to the Treasury shall, where the reference occurs in a provision relating to the giving of permission by the Treasury under the Exchange Control Act 1947 for the payment of money, be construed as including a reference to any person to whom the power of the Treasury to give such permission has been duly delegated.

Forms

9. The forms in the Appendices shall be used where applicable with such variations as the circumstances of the particular case require.

ORDER 2**EFFECT OF NON-COMPLIANCE*****Non-compliance with rules***

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 any thing 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

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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

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***

1. Without prejudice to section 3 of the Interpretation Act 1889(a) in its application to these rules, the word “month”, where it occurs in any judgment, order, direction or other document forming part of any proceedings in the Supreme Court, means a calendar month unless the context otherwise requires.

Reckoning periods of time

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 bank holiday, Christmas Day or Good Friday, that day shall be excluded.

In this paragraph “bank holiday” means a day which is, or is to be observed as, a bank holiday, or a holiday, under the Bank Holidays Act 1871(b), or the Holidays Extension Act 1875(c), in England and Wales.

(a) 52 & 53 Vict. c. 63.

(b) 34 & 35 Vict. c. 17.

(c) 38 & 39 Vict. c. 13.

Order 3]*Long Vacation excluded from time for service, etc., of pleadings*

3. Unless the Court otherwise directs, the period of the Long Vacation shall be excluded in reckoning any period prescribed by these rules or by any order or direction for serving, filing or amending any pleading.

Time expires on Sunday, etc.

4. Where the time prescribed by these rules, or by any judgment, order or direction, for doing any act at an office of the Supreme Court expires on a 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

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

(4) In this rule references to the Court shall be construed as including references to the Court of Appeal.

Notice of intention to proceed after year's delay

6. 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****ASSIGNMENT, TRANSFER AND CONSOLIDATION OF PROCEEDINGS***Assignment of causes and matters in Chancery Division*

1.—(1) Subject to any order or direction made or given by the Lord Chancellor, every cause or matter which is to be assigned to the Chancery Division shall be assigned in accordance with the provisions of this rule to a group of judges of that Division.

(2) Except where these rules otherwise provide, the group to which a cause or matter is to be assigned shall be determined by ballot conducted—

- (a) where the cause or matter is begun by writ, originating summons or originating motion, in the Action department of the Central Office, and
- (b) where the cause or matter is begun by petition, in the Chancery Registrars' Office.

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(3) A cause or matter begun in the district registry of Liverpool or the district registry of Manchester shall be assigned to the group of judges known as group B.

(4) Where in pursuance of any Act a judge has been selected by the Lord Chancellor to hear and determine a particular class of proceeding, a cause or matter in that class shall be assigned to the group of which the selected judge is a member or, if he is not a member of a group, to such group as may be provided (apart from this rule) by these rules or by an order or direction of the Lord Chancellor or, if no such provision is made, to such group as may be determined in accordance with paragraphs (2) and (3).

(5) Where a cause or matter is begun in pursuance of an authority or direction of a judge given in proceedings in the Chancery Division and the judge considers that the cause or matter ought not to be dealt with by the group of which he is a member, a certificate to that effect shall be given by a master attached to that group and, on the production by the plaintiff of the certificate at the Central Office or the Chancery Registrars' Office, as is appropriate having regard to paragraph (2), the cause or matter shall be assigned to a group of which the judge in question is not a member.

(6) Where proceedings in a cause or matter relating to a trust or the winding-up of a company have been or are being conducted in the Chancery Division and proceedings in another cause or matter are subsequently begun, being a cause or matter relating to the same trust or the winding-up of the same company or so connected with the earlier proceedings that it ought to be assigned to the group by which those proceedings were or are being conducted, it shall, if practicable, be assigned to that group.

When the later proceedings are begun the party beginning them must, if he or his solicitor is aware that there is such a relationship or connection with earlier proceedings as is referred to in this paragraph, produce at the district registry (if any) in which the later proceedings are begun and otherwise at the Central Office or the Chancery Registrars' Office, as is appropriate having regard to paragraph (2), a certificate, countersigned by a master attached to the group by which the earlier proceedings were or are being conducted, that there is such a relationship or connection as aforesaid.

(7) Where an order has been made by the Court for the winding-up of a company, all proceedings in chambers in any action against that company at the instance or on behalf of debenture holders shall be dealt with by an officer of the High Court who is a registrar within the meaning of any rules for the time being in force relating to the winding-up of companies.

(8) A cause or matter assigned to a group of judges in accordance with this rule shall be deemed to be assigned to the senior judge for the time being of that group.

(9) Every writ, summons, petition, notice, pleading, affidavit or other document relating to a cause or matter in the Chancery Division must specify the group of judges to which the cause or matter is assigned.

Assignment to masters of actions in Queen's Bench Division

2.—(1) Every action proceeding in the Queen's Bench Division, other than an action which is proceeding in a district registry, shall be assigned

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to a master at the time of issue or the first summons in the action, and after the action is assigned to a master by virtue of this paragraph—

- (a) all proceedings therein which by these rules are to be dealt with by a master shall, subject to rules 7 and 9, be dealt with by the master to whom the action is assigned, and
- (b) all summonses in the action shall be marked with his name.

(2) Paragraph (1) shall not apply to an action which is entered in the commercial list under Order 72, rule 4(1), unless and until it is ordered to be removed from that list, and shall cease to apply to an action on its transfer to that list or on its being referred to an official referee.

(3) Where an action in the commercial list is ordered to be removed from that list, paragraph (1) shall apply to that action subject to the modification that for the reference to the first summons in the action there shall be substituted a reference to the first summons in the action after the making of the order for removal of the action from the commercial list.

Transfer between Divisions

3.—(1) A cause or matter may, at any stage of the proceedings therein, be transferred from one Division to another by order of the Court made in the Division in which the cause or matter is proceeding.

(2) A cause or matter transferred to the Chancery Division by order made under this rule shall be assigned to a group of judges of that Division in accordance with rule 1.

Transfer between groups of judges of Chancery Division

4. A cause or matter assigned to one group of judges of the Chancery Division may be transferred to another group by order of the senior judge of the group to which it is assigned.

Transfer of proceedings after making of order for administration of estate

5. Where an order for the administration under the direction of the Court of the estate of a deceased person is made in the Chancery Division, then, notwithstanding anything in rule 3 or 4, a judge of the group to which the action in which the order for administration was made was assigned may by order transfer to that group any pending cause or matter brought by or against the executors or administrators of that person and assigned to some other Division or to another group of judges of the Chancery Division.

Transfer between district registries and between such registries and London

6.—(1) Where a writ or originating summons is issued out of the Central Office, the Principal Probate Registry or the Admiralty Registry, the cause or matter shall proceed in the Royal Courts of Justice, unless it is transferred to a district registry under this rule or to a county court or some other court.

(2) Where a writ or originating summons is issued out of a district registry, the cause or matter shall proceed in the district registry, unless—

- (a) it is required by paragraph (3) to proceed in the Royal Courts of Justice; or
- (b) it is transferred to the Royal Courts of Justice under this rule or any other rule or to a county court or some other court.

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(3) Where a sole defendant or one of the defendants to a cause or matter proceeding in a district registry enters an appearance in the Central Office or the Admiralty Registry (whether within or after the time limited for appearing), then, unless the Court transfers the cause or matter to a district registry under this rule, the cause or matter shall thereafter proceed in the Royal Courts of Justice.

(4) Where a cause or matter is proceeding in a district registry or in the Royal Courts of Justice, a party to the cause or matter may apply to the Court for an order transferring the cause or matter, or any summons or other application therein, from that registry to some other district registry or to the Royal Courts of Justice or, as the case may be, from the Royal Courts of Justice to a district registry, and the Court may make an order accordingly on such terms, if any, as may be just.

This paragraph shall not apply to a probate cause or matter.

(5) Where an originating summons by which a cause or matter assigned to the Chancery Division is begun is issued out of a district registry, then, if—

(a) the cause or matter is not one with respect to which specific provision is made by these rules for the issue of the summons out of any district registry, or

(b) the summons ought to have been issued out of some other district registry,

the Court shall, either of its own motion or on the application of a party to the cause or matter, by order transfer the cause or matter to the Royal Courts of Justice or, as the case may be, to that other district registry on such terms, if any, as to costs as it thinks just.

(6) An application for an order under this rule may not be made to a district registrar except where the application relates to a cause or matter which is proceeding in a district registry, in which case it must be made to the registrar of that registry.

Transfer between masters

7. The senior master may transfer an action in the Queen's Bench Division from the master to whom it has been assigned to some other master.

Exercise of one judge's jurisdiction by another

8.—(1) A judge who consents to do so may, if the Lord Chancellor so directs, hear and dispose of an application in a cause or matter which has been assigned to a Division of which he is not a judge or to some other judge.

(2) Where, by virtue of section 60 of the Act or of any of these rules, any application ought to be made to, or any jurisdiction exercised by, the judge by whom a cause or matter has been tried, then, if that judge dies or ceases to be a judge of the High Court, or if for any other reason it is impossible or inconvenient for that judge to act in the cause or matter, the President of the Division to which the cause or matter is assigned may, either by a special order in any cause or matter, or by a general order applicable to any class of causes or matters, nominate some other judge to whom the application may be made or by whom the jurisdiction may be exercised.

Order 4]*Exercise of one master's or registrar's jurisdiction by another*

9.—(1) A master may hear and dispose of an application in a cause or matter on behalf of any other master of the same Division by whom the application would otherwise have been heard, if that other master so requests or an application in that behalf is made by a party to that cause or matter; and where the circumstances require it, the master shall, without the need for any such request or application, hear and dispose of the application.

(2) Paragraph (1) shall apply in relation to registrars of the Probate, Divorce and Admiralty Division as it applies in relation to masters.

Consolidation, etc., of causes or matters

10. Where two or more causes or matters are pending in the same Division, 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 IN HIGH COURT***Mode of beginning civil proceedings*

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

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

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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 for damages for breach of promise of marriage ;
- (e) in which a claim is made by the plaintiff in respect of the infringement of a patent.

In this rule " personal injuries " includes any disease and any impairment of a person's physical or mental condition.

Proceedings which must be begun by originating summons

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

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 originating motion or 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

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

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 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 solicitor.

Order 6]

ORDER 6

WRITS OF SUMMONS: GENERAL PROVISIONS

Form of writ

1. Every writ must be in Form No. 1, 2, 3, 4 or 5 in Appendix A, whichever is appropriate.

Indorsement of claim

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—

(i) except in either of the cases mentioned in paragraph (2), pays the amount so claimed to the plaintiff, his solicitor or agent ;

(ii) in either of the said cases, pays that amount into court.

(2) The cases referred to in paragraph (1)(b) are—

(a) a case where the plaintiff (or, if there are more plaintiffs than one, any of them) is resident outside the scheduled territories or is acting by order or on behalf of a person so resident ;

(b) a case where the defendant is making the payment by order or on behalf of a person so resident.

(3) A defendant who pays money into court under this rule must give notice (in Form No. 25 in Appendix A) to the plaintiff, his solicitor or agent.

Indorsement as to capacity

3.—(1) 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.

(2) Before a writ is issued in an action brought by a plaintiff who in bringing it is acting by order or on behalf of a person resident outside the scheduled territories, it must be indorsed with a statement of that fact and with the address of the person so resident.

Indorsement as to place where cause of action arose

4. Where a writ is to be issued out of a district registry and any cause of action in respect of which relief is claimed by the writ wholly or in part arose in a place in the district of that registry, the writ may be indorsed with a statement to that effect before it is issued.

Indorsement as to solicitor and address

5.—(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

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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—

(i) 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

(ii) his occupation.

(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 entered an appearance to 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

6.—(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, or notice of which, is to be served out of the jurisdiction and a writ which, or notice of 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

7.—(1) No writ which, or notice of 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) Except where otherwise expressly provided by these rules, a writ may be issued either out of the Central Office or out of a district registry.

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(3) Issue of a writ takes place upon its being sealed by an officer of the office out of which it is issued.

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

(5) No writ shall be sealed unless at the time of the tender thereof for sealing the person tendering it leaves at the office at which it is tendered 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.

Duration and renewal of writ

8.—(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for 12 months beginning with the date of 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 12 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*

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.

2.—(1) Every originating summons must be in Form No. 8, 9, 10 or 11 in Appendix A, whichever is appropriate.

(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

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

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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 and 5, shall apply in relation to an originating summons as they apply in relation to a writ.

Concurrent summons

4. Order 6, rule 6, shall apply in relation to an originating summons as it applies in relation to a writ.

Issue of summons

5.—(1) An originating summons by which proceedings intended to be assigned to the Queen's Bench Division are begun may be issued either out of the Central Office or out of a district registry.

(2) An originating summons by which proceedings intended to be assigned to the Chancery Division are begun may be issued either out of the Central Office or, subject to any provision of these rules, out of the district registry of Liverpool or the district registry of Manchester, but may be issued out of any other district registry only in the cases specifically provided for by these rules.

(3) Order 6, rule 7 (except paragraph (2)), shall apply in relation to an originating summons as it applies in relation to a writ.

Duration and renewal of summons

6. Order 6, rule 8, shall apply in relation to an originating summons as it applies in relation to a writ.

Ex parte originating summonses

7.—(1) Rules 2(1), 3(1) and 5(1) and (2) 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 7(3) and (5), 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***

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

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 proceeding 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.

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(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

3.—(1) The notice of an originating motion must be in Form No. 13 in Appendix A and the notice of any other motion in Form No. 38 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 5, shall, with the necessary modifications, apply in relation to notice of an originating motion as it applies in relation to a writ.

(4) The notice of an originating motion by which proceedings assigned to the Queen's Bench Division or Chancery Division are begun must be issued out of the Central Office.

Issue of the notice takes place upon its being sealed by an officer of the Central Office.

Service of notice of motion with writ, etc.

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

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*

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

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 5, shall, with the necessary modifications, apply in relation to a petition as it applies in relation to a writ.

Presentation of petition

3.—(1) A petition may be presented in the district registry of Liverpool or the district registry of Manchester, but not in any other district registry.

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(2) Subject to paragraph (1), a petition must be presented by leaving it at the Chancery Registrars' Office.

Fixing time for hearing petition

4.—(1) A day and time for the hearing of a petition which is required to be heard shall be fixed—

- (a) in the case of a petition presented in a district registry, by the registrar of that registry, and
- (b) in any other case, by the chief registrar of the Chancery Division.

(2) Unless the Court otherwise directs, a petition which is required to be served on any person must be served on him not less than 7 days before the day fixed for the hearing of the petition.

Certain applications not to be made by petition

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

ORDER 10**SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS***General provisions*

1.—(1) Subject to the provisions of any Act and these rules, a writ must be served personally on each defendant by the plaintiff or his agent.

(2) 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.

(3) Where a writ is not duly served on a defendant but he enters an unconditional appearance in the action begun by the writ, the writ shall be deemed to have been duly served on him and to have been so served on the date on which he entered the appearance.

(4) Where a writ is duly served on a defendant otherwise than by virtue of paragraph (2) or (3), then, subject to Order 11, rule 5, unless within 3 days after service the person serving it indorses on it the following particulars, that is to say, the day of the week and date on which it was served, where it was served, the person on whom it was served, and, where he is not the defendant, the capacity in which he was served, the plaintiff in the action begun by the writ shall not be entitled to enter final or interlocutory judgment against that defendant in default of appearance or in default of defence.

Service of writ on agent of oversea principal

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

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(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 enter an appearance.

(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***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.

Service of writ in certain actions for possession of land

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, petition and notice of motion

5. The foregoing rules of this Order (except rule 1(4)) shall apply in relation to an originating summons to which an appearance is required to be entered as they apply in relation to a writ, and rule 1(1) and (2) shall, with any necessary modifications, apply in relation to an originating summons to which no appearance need be entered, a notice of an originating motion and a petition as they apply in relation to a writ.

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SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION

Principal cases in which service of writ out of jurisdiction is permissible

1.—(1) Subject to rule 3 and provided that the writ does not contain any such claim as is mentioned in Order 75, rule 2(1)(a), service of a writ, or notice of a writ, out of the jurisdiction is permissible with the leave of the Court in the following cases, that is to say—

- (a) if the whole subject-matter of the action begun by the writ is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate ;
- (b) if an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction is sought to be construed, rectified, set aside or enforced in the action begun by the writ ;
- (c) if in the action begun by the writ relief is sought against a person domiciled or ordinarily resident within the jurisdiction ;
- (d) if the action begun by the writ is for the administration of the estate of a person who died domiciled within the jurisdiction or if the action begun by the writ is for any relief or remedy which might be obtained in any such action as aforesaid ;
- (e) if the action begun by the writ is for the execution, as to property situate within the jurisdiction, of 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 if the action begun by the writ is for any relief or remedy which might be obtained in any such action as aforesaid ;
- (f) if the action begun by the writ is brought against a defendant not domiciled or ordinarily resident in Scotland 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 English law ;
- (g) if the action begun by the writ is brought against a defendant not domiciled or ordinarily resident in Scotland or Northern Ireland, 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 ;
- (h) if the action begun by the writ is founded on a tort committed within the jurisdiction ;
- (i) if in the action begun by the writ 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) ;

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- (j) if the action begun by the writ being properly brought against a person duly served within the jurisdiction, a person out of the jurisdiction is a necessary or proper party thereto ;
- (k) if the action begun by the writ is either by a mortgagee of property situate within the jurisdiction (other than land) and seeks the sale of the property, the foreclosure of the mortgage or delivery by the mortgagor of possession of the property but not an order for payment of any moneys due under the mortgage or by a mortgagor of property so situate (other than land) and seeks redemption of the mortgage, reconveyance of the property or delivery by the mortgagee of possession of the property but not a personal judgment ;
- (l) if the action begun by the writ is brought under the Carriage by Air Act 1932(a) or the Nuclear Installations Act 1965(b).

In this paragraph " mortgage " includes a charge or lien, " mortgagee " means a person entitled to, or interested in, a mortgage and " mortgagor " means a person entitled to, or interested in, property subject to a mortgage.

(2) Service of a writ in Scotland, Northern Ireland, the Isle of Man or the Channel Islands, and service of notice of a writ in any other place out of the jurisdiction, is permissible without the leave of the Court if every claim made in the action begun by the 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.

(3) Where a writ or notice of a writ is to be served out of the jurisdiction under paragraph (2), the time to be inserted in the writ or notice within which the defendant served therewith must enter an appearance shall be limited in accordance with the practice adopted under rule 4(4).

Service out of jurisdiction in certain actions of contract

2. Where it appears to the Court that a contract contains a term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of the contract, the Court may, subject to rule 3, grant leave for service out of the jurisdiction of the writ, or notice of the writ, by which an action in respect of the contract is begun.

Leave for service of notice of writ

3.—(1) Unless service is to be effected in Scotland, Northern Ireland, the Isle of Man or the Channel Islands, leave granted under rule 1 or 2 shall be leave for service out of the jurisdiction of notice of the writ and not the writ.

(2) Notice of a writ for service out of the jurisdiction must be in Form No. 6 or 7 in Appendix A, whichever is appropriate.

Application for, and grant of, leave to serve writ out of jurisdiction

4.—(1) An application for the grant of leave under rule 1 or 2 must be supported by an affidavit stating the grounds on which the application is made and that, in the deponent's belief, the plaintiff has a good cause of action, and showing in what place or country the defendant is, or probably may be found.

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(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) Where the application is for the grant of leave under rule 1 to serve a writ in Scotland or Northern Ireland, if it appears to the Court that there may be a concurrent remedy there, the Court, in deciding whether to grant leave, shall have regard to the comparative cost and convenience of proceeding there or in England, and (where that is relevant) to the powers and jurisdiction of the sheriff's or small debts courts in Scotland or the county courts or courts of summary jurisdiction in Northern Ireland.

(4) An order granting under rule 1 or 2 leave to serve a writ, or notice of a writ, out of the jurisdiction must limit a time within which the defendant to be served must enter an appearance.

Service of writ or notice of writ abroad : general

5.—(1) Subject to the following provisions of this rule, Order 10, rule 1, and Order 65, rule 4, shall apply in relation to the service of a writ, or notice of a writ, notwithstanding that the writ or notice is to be served out of the jurisdiction.

(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, or notice of 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 6 or rule 7.

(4) Where a certificate under the following provisions of this rule is produced in relation to the service of notice of a writ in accordance with rule 6 or rule 7, Order 10, rule 1(4), shall not apply in relation to that service.

(5) An official certificate stating that a notice of a writ, as regards which rule 6 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 British consular authority in that country, or

(b) by the government or judicial authorities of that country,
shall be evidence of the facts so stated.

(6) An official certificate by the Secretary of State stating that notice of a writ has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact.

(7) A document purporting to be such a certificate as is mentioned in paragraph (5) or (6) shall, until the contrary is proved, be deemed to be such a certificate.

Service of notice of writ abroad through foreign governments, judicial authorities and British consuls

6.—(1) This rule does not apply to service in—

(a) Scotland, Northern Ireland, the Isle of Man or the Channel Islands ;

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- (b) any Commonwealth country mentioned in subsection (3) of section 1 of the British Nationality Act 1948(a) ;
- (c) any colony, protectorate or protected state ;
- (d) any trust territory administered by Her Majesty's Government in the United Kingdom or by the government of any Commonwealth country mentioned in the said subsection (3) ;
- (e) the Republic of Ireland.

(2) Where in accordance with these rules notice of a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention providing for service in that country of process of the High Court, the notice may be served—

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

(3) Where in accordance with these rules notice of 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 notice may be served—

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

(4) Where a person wishes to serve notice of a writ in any country—

- (a) through the judicial authorities of that country under paragraph (2) ;
or
- (b) through a British consular authority under paragraph (2) or (3) ; or
- (c) through the government of that country under paragraph (3) ;

that person must lodge in the Central Office a request for service of notice of the writ by that method, together with a copy of the notice and an additional copy thereof for each person to be served.

(5) Every copy of a notice lodged under paragraph (4) must be accompanied by a translation of the notice 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 notice 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 British consular authority on a British 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.

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(7) Documents duly lodged under paragraph (4) shall be sent by the senior master to the Parliamentary Under-Secretary of State to the Foreign Office with a request that he arrange for notice of the writ to be served by the method indicated in the request lodged under paragraph (4) or, where alternative methods are so indicated, by such one of those methods as is most convenient.

Service of notice of writ in certain actions under certain Acts

7.—(1) Where a person to whom leave has been granted under rule 1 to serve notice of a writ on a High Contracting Party to the convention set out in Schedule 1 to the Carriage by Air Act 1932, being a writ beginning an action to enforce a claim in respect of carriage undertaken by that Party, wishes to have the notice served on that Party, he must lodge in the Central Office—

(a) a request for service to be arranged by the Secretary of State ; and

(b) a copy of the notice ; and

(c) except where the official language of the High Contracting Party is, or the official languages of that Party include, English, a translation of the notice in the official language or one of the official languages of the High Contracting Party.

(2) Where a person to whom leave has been granted under rule 1 to serve notice of a writ on the government of a country outside the United Kingdom, being a writ beginning an action to enforce a claim by virtue of section 10 of the Nuclear Installations Act 1965, wishes to have the notice served on that government, he must lodge in the Central Office the documents mentioned in sub-paragraphs (a), (b) and (c) of paragraph (1), and those sub-paragraphs shall apply accordingly with the substitution for references to the High Contracting Party of references to the country in question.

(3) Rule 6(6) shall apply in relation to a translation lodged under paragraph (1) or (2) of this rule as it applies in relation to a translation lodged under paragraph (5) of that rule.

(4) Documents duly lodged under this rule shall be sent by the senior master to the Secretary of State with a request that the Secretary of State arrange for the notice to be served on the High Contracting Party or the government in question, as the case may be.

Undertaking to pay expenses of service by Secretary of State

8. Every request lodged under rule 6(4) or rule 7 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Secretary of State in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Finance Officer of the office of the Secretary of State and to produce a receipt for the payment to the proper officer of the High Court.

Service of originating summons, petition, notice of motion, etc.

9.—(1) Subject to paragraph (2) and to Order 73, rule 7, service out of the jurisdiction of an originating summons is permissible with the leave of the Court.

(2) Where the proceedings begun by an originating summons might have been begun by writ, service out of the jurisdiction of the originating

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summons is permissible as aforesaid if, but only if, service of the writ, or notice of the writ, out of the jurisdiction would be permissible had the proceedings been begun by writ.

(3) Where any proceedings are authorised by these rules or (apart from these rules) by or under any Act to be begun by originating motion or petition, service out of the jurisdiction of the notice of motion or of the petition is permissible with the leave of the Court.

(4) Subject to Order 73, rule 7, 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.

(5) Rule 4 (1), (2) and (3) shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2.

(6) An order granting under this rule leave to serve out of the jurisdiction an originating summons to which an appearance is required to be entered must limit a time within which the defendant to be served with the summons must enter an appearance.

(7) Rules 5, 6 and 8 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 notice of a writ.

ORDER 12**ENTRY OF APPEARANCE TO WRIT OR ORIGINATING
SUMMONS***Mode of entering appearance*

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) enter an appearance in the action and defend it by a solicitor or in person.

(2) Except as expressly provided by any enactment, a defendant to such an action who is a body corporate may not enter an appearance in the action or defend it otherwise than by a solicitor.

(3) An appearance is entered by properly completing the requisite documents, that is to say, a memorandum of appearance, as defined by rule 3, and a copy thereof, and handing them in at, or sending them by post to, the appropriate office.

(4) If two or more defendants to an action enter an appearance by the same solicitor and at the same time, only one set of the requisite documents need be completed and delivered for those defendants.

Place for entering appearance

2.—(1) Where a writ is issued out of the Central Office, the appropriate office for entering an appearance is in all cases the Central Office.

(2) Where a writ is issued out of a district registry, and there is indorsed on the writ a statement that any cause of action in respect of which relief is claimed by the writ wholly or in part arose in a place in the district of that registry, the appropriate office for entering an appearance is in all cases the district registry.

(3) Where a writ is issued out of a district registry, the appropriate office for the entry of appearance by a defendant who is an individual residing or

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carrying on business, or a body corporate having a registered office or carrying on business, in the district of that registry is the district registry.

(4) Except as provided by paragraphs (2) and (3), the appropriate office for entering an appearance in an action begun by a writ issued out of a district registry is the Central Office or the district registry at the defendant's option.

(5) Where a writ is issued out of a district registry, a memorandum of appearance for a particular defendant shall not be accepted by the Central Office unless it states—

- (a) where the defendant is an individual, that he does not reside or carry on business in the district of that registry ;
- (b) where the defendant is a body corporate, that it does not have a registered office or carry on business in that district ; and
- (c) in either case, that the writ is not indorsed with a statement that a cause of action in respect of which relief is claimed by the writ wholly or in part arose in a place in that district.

Memorandum of appearance

3.—(1) A memorandum of appearance is a request to the appropriate office to enter an appearance for the defendant or defendants specified in the memorandum.

(2) A memorandum of appearance must be in Form No. 14 or 15 in Appendix A, whichever is appropriate, and both the memorandum of appearance and the copy thereof required for entering an appearance must be signed by the solicitor by whom the defendant appears or, if the defendant appears in person, by the defendant.

(3) A memorandum of appearance must specify—

(a) in the case of a defendant appearing 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 appearing by a solicitor, a business address of his solicitor's within the jurisdiction ;

and where the defendant enters an appearance 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.

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

(5) If the Court is satisfied on application by the plaintiff that any address specified in the memorandum of appearance is not genuine, the Court may set aside the appearance.

Procedure on receipt of requisite documents

4.—(1) On receiving the requisite documents an officer of the appropriate office must in all cases affix to the copy of the memorandum of

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appearance an official stamp showing the date on which he received those documents and enter the appearance in the cause book, and—

- (a) if the requisite documents were handed in at the appropriate office, hand back that copy of the memorandum, and
- (b) if they were sent by post, send that copy by post to the plaintiff or, as the case may be, his solicitor at the plaintiff's address for service and also send by post to the defendant or, as the case may be, his solicitor at the defendant's address for service a notice of appearance (stamped with an official stamp showing that date) stating that the defendant specified therein entered an appearance on that date.

(2) Where the defendant enters an appearance by handing in the requisite documents at the appropriate office, he must on the date on which he enters the appearance send by post to the plaintiff, if the plaintiff sues in person, but otherwise to the plaintiff's solicitor, at the plaintiff's address for service, a copy of the memorandum of appearance handed back to him under paragraph (1).

Time limited for appearing

5. References in these rules to the time limited for appearing are references—

- (a) in the case of a writ served within the jurisdiction, to 8 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, or notice of a writ, served out of the jurisdiction, to the time limited under Order 10, rule 2(2), Order 11, rule 1(3), or Order 11, rule 4(4), or, where that time has been extended as aforesaid, to that time as so extended.

Late appearance

6.—(1) A defendant may not enter an appearance in an action after judgment has been entered therein except with the leave of the Court.

(2) Except as provided by paragraph (1), nothing in these rules or any writ or order thereunder shall be construed as precluding a defendant from entering an appearance in an action after the time limited for appearing, but if a defendant enters an appearance after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other thing later than if he had appeared within that time.

Conditional appearance

7.—(1) A defendant to an action may with the leave of the Court enter a conditional appearance in the action.

(2) A conditional appearance, except by a person sued as a partner of a firm in the name of that firm and served as a partner, is to be treated for all purposes as an unconditional appearance unless the Court otherwise orders or the defendant applies to the Court, within the time limited for the purpose, for an order under rule 8 and the Court makes an order thereunder.

Application to set aside writ, etc.

8.—(1) A defendant to an action may at any time before entering an appearance therein, or, if he has entered a conditional appearance, within 14 days after entering the appearance, apply to the Court for an order

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setting aside the writ or service of the writ, or notice of the writ, on him, or declaring that the writ or notice has not been duly served on him or discharging any order giving leave to serve the writ or notice on him out of the jurisdiction.

(2) An application under this rule must be made—

(a) in the Queen's Bench Division, by summons ;

(b) in any other Division, by summons or motion.

Appearance to originating summons

9.—(1) Subject to paragraph (2), an appearance must be entered to every originating summons (other than an ex parte originating summons) by each defendant named in and served with the summons.

(2) No appearance need be entered to an originating summons in any case or class of case in relation to which special provision to that effect is made by these rules or by or under any Act.

(3) Where an originating summons in the Chancery Division to which an appearance is required to be entered is issued out of a district registry, the appropriate office for entering an appearance is in all cases the district registry.

(4) Subject to the foregoing provisions of this rule, the foregoing rules of this Order (except paragraphs (2) and (5)(c) of rule 2) shall apply in relation to an originating summons to which an appearance is required to be entered as they apply in relation to a writ except that for the reference in rule 5(b) to Order 11, rules 1(3) and 4(4), there shall be substituted a reference to Order 11, rule 9(6).

ORDER 13**DEFAULT OF APPEARANCE TO WRIT*****Claim for liquidated demand***

1.—(1) Where a writ is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, 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

2. Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, 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 in detinue

3. Where a writ is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant fails to enter an

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appearance, the plaintiff may, after the time limited for appearing, at his option enter either—

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

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

Claim for possession of land

4.—(1) Where a writ is indorsed with a claim against a defendant for possession of land only, then, if that defendant fails to enter an appearance the plaintiff may, after the time limited for appearing, 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

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 enter an appearance, the plaintiff may, after the time limited for appearing, 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

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 enter an appearance, the plaintiff may, after the time limited for appearing and upon filing an affidavit proving due service of the writ on that defendant 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 entered an appearance.

(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 enter an appearance, the plaintiff may, after the time limited for appearing, 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.

Proof of service of writ

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

- (a) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ or notice of the writ on the defendant ; or

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(b) the plaintiff produces the writ endorsed 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 enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

Action in district registry: time for entering judgment

8. Where by virtue of Order 12, rule 2 (4), a defendant may, at his option, enter an appearance in the Central Office or a district registry, judgment shall not be entered under this Order against that defendant until after such time as a letter addressed to the plaintiff would, in the ordinary course of post, have been delivered to him if it had been posted in London early enough on the day on which the time limited for appearing expires for delivery to him on the following morning.

Setting aside judgment

9. 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***

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 entered an appearance in 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 in the Queen's Bench Division or Chancery Division 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.

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

Manner in which application under rule 1 must be made

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.

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(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 4 clear days before the return day.

Judgment for plaintiff

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

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

5.—(1) Where a defendant to an action in the Queen's Bench Division or Chancery Division 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

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(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

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.

(2) In particular, and if the parties consent, the Court may direct that the claim in question and any other claim in the action be tried by a master under the provisions of these rules relating to the trial of causes or matters or questions or issues by masters.

Costs

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 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.

(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

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

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

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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

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

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.

ORDER 15**CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES***Joinder of causes of action*

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

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.

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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 a person on whom a copy of a counterclaim is served under this paragraph 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) The appropriate office for the entry of appearance to a counterclaim by a person who is not already a party to the action is the Central Office, except that, where the action is proceeding in a district registry, the appropriate office is that registry and that, where the counterclaim is made in an Admiralty action which is not proceeding in a district registry, the appropriate office is the Admiralty Registry.

(5) 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 (except rule 1(4)), Order 11 (except rule 3), Orders 12 and 13 and Order 75, rule 4, shall, subject to the last foregoing paragraph, 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.

(6) 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. 17 in Appendix A, addressed to that person—

(a) stating the effect of Order 12, rule 1, as applied by paragraph (5),

(b) specifying the appropriate office for the entry of appearance by that person to the counterclaim, and

(c) stating that he may obtain forms of the requisite documents from the appropriate office and explaining how he may do so.

Joinder of parties

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

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(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.

(3) Where relief is claimed in an action against a defendant who is jointly liable with some other person and also severally liable, that other person need not be made a defendant to the action; but where persons are jointly, but not severally, liable under a contract and relief is claimed against some but not all of those persons in an action in respect of that contract, the Court may, on the application of any defendant to the action, by order stay proceedings in the action until the other persons so liable are added as defendants.

Court may order separate trials, etc.

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

6.—(1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party; and the Court may in any cause or matter 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) 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 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 be added as a party;

but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

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(3) An application by any person for an order under paragraph (2) adding him as a defendant must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter.

Change of parties by reason of death, etc.

7.—(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 in the cause or matter 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.

(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 7

8.—(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.

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(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 7 a person is to be made a defendant, the rules as to entry of appearance shall apply accordingly to entry of appearance by him, subject, in the case of a person to be made a defendant by an order under rule 7, to the modification that the time limited for appearing shall begin with the date on which the order is served on him under rule 7(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.

(4) Where by an order under rule 6 or 7 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 7, the order has been served on him under rule 7(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 entry of appearance by the old party shall not dispense with entry of appearance by the new.

Failure to proceed after death of party

9.—(1) If after the death of a plaintiff or defendant in any action the cause of action survives, but no order under rule 7 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

10.—(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.

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(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.

(3) A person added as a defendant by an order under this rule must serve a copy of the order on the plaintiff and must enter an appearance in the action within such period, if any, as may be specified in the order or, if no period is so specified, within 7 days after the making of the order, and the rules as to entry of appearance shall apply accordingly to entry of appearance by him.

Relator actions

11. 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 Central Office, or, if the writ or originating summons is to issue out of a district registry, in that registry.

Representative proceedings

12.—(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, 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 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.

Order 15]*Representation of interested persons who cannot be ascertained, etc.*

13.—(1) In any proceedings concerning—

(a) the administration of 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.

14.—(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, as the case may be ; 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,

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as the case may be, 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 13.

Representation of deceased person interested in proceedings

15.—(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.

Declaratory judgment

16. 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

17. 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***

1.—(1) Where in any action a defendant who has entered an appearance—

- (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. 20 or 21 in Appendix A, whichever is appropriate (in this Order referred

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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

2.—(1) An 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 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 and service of, and entry of appearance to, third party notice

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.

(3) The appropriate office for entering an appearance to a third party notice is the Central Office, except that, where the notice is issued in an action which is proceeding in a district registry, the appropriate office is that registry and that, where the notice is issued in an Admiralty action which is not proceeding in a district registry, the appropriate office is the Admiralty Registry.

(4) Subject to the foregoing provisions of this rule, the following provisions of these rules, namely, Order 6, rule 7(3) and (5), Order 10 (except rule 1(4)), Order 11 (except rule 3), Order 12 and Order 75, rule 4, 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.

[Order 16***Third party directions***

4.—(1) If the third party enters an appearance, 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 entering an appearance, 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.

5.—(1) If a third party does not enter an appearance 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

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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.

(3) 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

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

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.

(2) Where in an action judgment is given against a defendant and judgment is given for the defendant against a third party, execution shall not issue against the third party without the leave of the Court until the judgment against the defendant has been satisfied.

Claims and issues between a defendant and some other party

8.—(1) Where in any action a defendant who has entered an appearance—

(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 appearance to such a notice shall be necessary if the person on whom it is served has entered an appearance 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 entered an appearance in the action or is a plaintiff) had entered an appearance to the notice.

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(4) Rule 4(2) shall have effect in relation to proceedings on a notice issued under this rule as if for the words "7 days after entering an appearance" there were substituted the words "14 days after service of the notice on him".

Claims by third and subsequent parties

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 appearing to the notice issued against him.

Offer of contribution

10. If, before the trial of an action, a party to the action who, either as a third party or as one of two or more tortfeasors liable in respect of the same damage, 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

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***

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

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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

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 4 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

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) No appearance need be entered to an originating summons under this rule.

(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,

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- (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 to do so.

To whom sheriff may apply for relief

4. An application to the Court for relief under this Order may, if the applicant is a sheriff, be made—

- (a) where the action in question is proceeding in the Royal Courts of Justice, to a master or, if the execution to which the application relates has been or is to be levied in the district of a district registry, either to a master or to the registrar of that registry ;
- (b) where the action in question is proceeding in a district registry, to the registrar of that registry or, if such execution has been or is to be levied in the district of some other district registry or outside the district of any district registry, either to the said registrar or to the registrar of that other registry or to a master, as the case may be.

Where the action in question is proceeding in the Probate, Divorce and Admiralty Division, references in this rule to a master shall be construed as references to a registrar of that Division.

Powers of Court hearing summons

5.—(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

6. 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

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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

7. 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

8. 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

9. Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several causes or matters pending in several Divisions, or before different judges of the same Division, 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

10. 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

11.—(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*

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, or notice of the writ, is served on that defendant or at any time after service of the writ or notice but before the expiration of 14 days after that defendant enters an appearance.

Service of defence

2.—(1) Subject to paragraph (2), a defendant who enters an appearance in, and intends 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 appearing or after the statement of claim is served on him, whichever is the later.

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(2) If a summons under Order 14, 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

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 8; and if no reply is served, rule 14(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

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

Service of pleadings in Long Vacation

5. Pleadings shall not be served during the Long Vacation except with the leave of the Court or with the consent of all the parties to the action.

Pleadings: formal requirements

6.—(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 letter and number of the action,

(b) the title of the action,

(c) the Division of the High Court to which the action is assigned and the name of the judge (if any) to whom it is assigned or, if it is assigned to the Chancery Division, the group of judges (if any) to which it is assigned,

(d) the description of the pleading, and

(e) 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.

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(5) Every pleading of a party must be signed by counsel, if settled by him, and, if not, by the party's solicitor or by the party, if he sues or defends in person.

Facts, not evidence, to be pleaded

7.—(1) Subject to the provisions of this rule, and rules 10, 11 and 12, 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

8.—(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 possession 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.

Matter may be pleaded whenever arising

9. Subject to rules 7(1), 10 and 15(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

10.—(1) A party shall not in any pleading make any 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.

[Order 18*Points of law may be pleaded*

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

Particulars of pleading

12.—(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.

Admissions and denials

13.—(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 14 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

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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

14.—(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 joinder 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

15.—(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 shall 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

16. 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

17. 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.

[Order 18***Counterclaim and defence to counterclaim***

18. 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 15(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff ;
- (b) rules 8(2), 16 and 17 shall, with the necessary modifications apply to a defence to counterclaim as they apply to a defence.

Striking out pleadings and indorsements

19.—(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

20.—(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

21.—(1) Where in an action to which this rule applies any defendant has entered an appearance 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.

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(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 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 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.

Saving for defence under Merchant Shipping Acts

22. Nothing in Order 75, rules 2 and 37 to 40, shall be taken as limiting the right of any shipowner or other person to rely by way of defence on any provision of the Merchant Shipping Acts 1894 to 1965 which limits the amount of his liability in connection with a ship or other property.

ORDER 19**DEFAULT OF PLEADINGS***Default in service of statement of claim*

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

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

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.

[Order 19***Default of defence : claim in detinue***

4. 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 service of the defence, enter either—

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

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

Default of defence : claim for possession of land

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 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

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

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

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(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

8. A defendant who counterclaims against a plaintiff shall be treated for the purposes of rules 2 to 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

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*

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.

Amendment of appearance

2. A defendant may not amend his memorandum of appearance without the leave of the Court.

Amendment of pleadings without leave

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.

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(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 14(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

4.—(1) Within 14 days after the service on a party 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 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

5.—(1) Subject to Order 15, rules 6, 7 and 8, 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 amend-

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ment 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 party 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 (whether as plaintiff or as defendant by counterclaim) may be allowed under paragraph (2) if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ or the making of the counterclaim, as the case may be, he might have sued.

(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 writ and pleadings in Long Vacation

6. A plaintiff may amend his writ or statement of claim under rule 1 or rule 3(1), as the case may be, during the Long Vacation but, except as aforesaid, a pleading shall not be amended during the Long Vacation unless the Court allows it under rule 5.

Amendment of other originating process

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

Amendment of certain other documents

8.—(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

9. 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.

10.—(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

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and subject to any direction given under rule 5 or 8, 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, master 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

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

ORDER 21**WITHDRAWAL AND DISCONTINUANCE***Withdrawal of appearance*

1. A party who has entered an appearance in an action may withdraw the appearance at any time with the leave of the Court.

Discontinuance of action, etc., without leave

2.—(1) 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.

(2) A defendant 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.

(3) Where there are two or more defendants to an action 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.

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(4) 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 producing—

(a) in a case where the action has been set down for trial, to the proper officer, and

(b) in any other case, to an officer of the Central Office or, if the action is proceeding in a district registry, to the registrar of that registry, a written consent to the action being withdrawn signed by all the parties.

In this paragraph "proper officer" has the meaning assigned to it by Order 34, rule 3(5), with the omission of sub-paragraph (f) thereof.

Discontinuance of action, etc., with leave

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

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

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

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***

1.—(1) In any action for a debt or damages any defendant may at any time after he has entered an appearance in the action 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.

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(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. 23 in Appendix A to the plaintiff and every other defendant (if any); and within 3 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 Fatal Accidents Acts 1846 to 1959 and a cause of action under the Law Reform (Miscellaneous Provisions) Act 1934(a) 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.

Payment in by defendant who has counterclaimed

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

3.—(1) Where money is paid into court under rule 1, then, subject to paragraph (2), within 14 days after receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within 14 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

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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. 24 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 or, if the trial is with a jury, before the judge begins his summing up.

(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 10 and Order 80, rule 12, 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

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 an action to which Order 80, rule 12, applies, or

(d) in satisfaction either of causes of action arising under the Fatal Accidents Acts 1846 to 1959 and the Law Reform (Miscellaneous Provisions) Act 1934, or of a cause of action arising under the first mentioned Acts where more than one person is entitled to the money,

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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 the 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

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

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

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 the debt or damages have been decided.

Money paid into court under order

8.—(1) Subject to paragraph (2), money paid into court under an order of the Court or a certificate of a master or associate 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

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(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.

Payment out of money paid into court under Exchange Control Act 1947

9.—(1) Where money has been paid into court in any cause or matter pursuant to the Exchange Control Act 1947(a), or an order of the Court made thereunder, any party to the cause or matter may apply for payment out of court of that money.

(2) An application for an order under this rule must be made by summons which must be served on all parties interested.

(3) If any person in whose favour an order for payment under this rule is sought is resident outside the scheduled territories or will receive payment by order or on behalf of a person so resident, that fact must be stated in the summons.

(4) If the permission of the Treasury authorising the proposed payment has been given unconditionally or on conditions which have been complied with, that fact must be stated in the summons and the permission must be attached to the summons.

Person to whom payment to be made

10.—(1) Where the party entitled to money in court is a person in respect of whom a certificate is or has been in force entitling him to legal aid under Part I of the Legal Aid and Advice Act 1949(b), payment shall be made only to that party's solicitor (or, if he is no longer represented by a solicitor, then, if the Court so orders, to the Law Society), without the need for any authority from the party.

(2) Subject to paragraph (1), payment shall be made to the party entitled or, on his written authority, to his solicitor or, if the Court so orders, to his solicitor without such authority.

(3) This rule applies whether the money in court has been paid into court under rule 1 or under an order of the Court or a certificate of a master or associate.

Payment out : small intestate estates

11. 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 £500 in value, including the value of the fund or share, it may order that the fund or share shall be paid, transferred or delivered 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.

[Order 22*Payment of hospital expenses*

12.—(1) This rule applies in relation to an action or counterclaim for bodily injury arising out of the use of a motor vehicle on a road or in a place to which the public have a right of access in which the claim for damages includes a sum for hospital expenses.

(2) Where the party against whom the claim is made, or an authorised insurer within the meaning of Part VI of the Road Traffic Act 1960(a) pays the amount for which that party or insurer, as the case may be, is or may be liable under section 212 of that Act in respect of the treatment afforded by a hospital to the person in respect of whom the claim is made, the party against whom the claim is made must, within 7 days after the payment is made, give notice of the payment to all the other parties to the action.

Investment of money in court

13. Cash under the control of or subject to the order of the Court may be invested in any manner specified in paragraphs 1 to 10 and 12 of Part II of Schedule 1 to the Trustee Investments Act 1961(b), as restricted in their operation by Part IV of that Schedule.

ORDER 23**SECURITY FOR COSTS***Security for costs of action, etc.*

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.

Order 23]*Manner of giving security*

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

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.

ORDER 24**DISCOVERY AND INSPECTION OF DOCUMENTS***Mutual discovery of documents*

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

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 or as requiring a defendant to an action to enforce a forfeiture to make discovery of any documents relating to the issue of forfeiture.

(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.

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(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 that 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

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

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.

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(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

5.—(1) A list of documents made in compliance with rule 2, or with an order under rule 3, must be in Form No. 26 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. 27 in Appendix A.

Defendant entitled to copy of co-defendant's list

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

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

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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

8. On the hearing of an application for an order under rule 3 or rule 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

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

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

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.

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(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

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.

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

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

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.

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), 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.

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(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 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 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

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***

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 21, 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, rule 1 ;

(f) actions in which an application for transfer to the commercial list is pending ;

(g) actions which have been referred for trial to an official referee ; and

(h) actions for the infringement of a patent.

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(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.

Duty to consider all matters .

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 paragraphs (5) and (6), 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 the county court or some other court, 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.

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(6) If, on the summons for directions, the action or any question or issue therein is ordered to be tried before an official referee, paragraph (4) shall not apply and the Court may, without giving any further directions, adjourn the summons so that it can be heard by the referee, and the party required by Order 36, rule 6, to apply to the referee for directions may do so by notice without taking out a fresh summons.

(7) 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

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 in the exercise of the powers conferred by any of the following provisions, that is to say—

(a) section 1 (2) of the Evidence Act 1938(a) (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, Order 38, rules 2 to 7, and Order 75, rule 25 (4).

Admissions and agreements to be made

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

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

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 purpose 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

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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 or counsel 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

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.

ORDER 26**INTERROGATORIES*****Discovery by interrogatories***

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.

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(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

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

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

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

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

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.

Order 26]*Use of answers to interrogatories at trial*

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

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*

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 facts

2.—(1) A party to a cause or matter may not later than 14 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, the facts 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 of facts

3. Where admissions of fact 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.

An application for an order under this rule may be made by motion or summons.

Admission and production of documents specified in list of documents

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—

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- (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 14 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

5.—(1) Except where rule 4 (1) applies, a party to a cause or matter may within 14 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 14 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***

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.

Order 28]*Fixing time for attendance of parties before Court*

2.—(1) Where, in the case of an originating summons to which appearance is required to be entered, any defendant served with the summons has entered, or has within the time limited for appearing failed to enter, an appearance, the plaintiff may 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. 12 in Appendix A) sealed with the seal of the district registry (if any) in which the cause or matter is proceeding and, where the cause or matter is not proceeding in such a registry, sealed with the seal—

- (a) of the Central Office, where the cause or matter is assigned to the Queen's Bench Division ;
- (b) of the chambers of a judge of the group to which the cause or matter is assigned, where the cause or matter is assigned to the Chancery Division.

(2) A day and time for the attendance of the parties before the Court for the hearing of an originating summons to which appearance is not required, 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.

(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 entered an appearance.

Notice of first hearing, etc.

3.—(1) Not less than 4 clear days before the day fixed under rule 2 for the attendance of the parties before the Court for the hearing of an originating summons to which appearance is required to be entered, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party who has entered an appearance 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 2 for the hearing of an originating summons to which appearance is not required, the plaintiff must serve the summons on every defendant.

(3) Where the plaintiff intends to adduce evidence in support of an originating summons at the first hearing thereof he must do so by affidavit and, not less than 4 clear days before the hearing, serve a copy thereof on every defendant who has entered an appearance or, if the summons is one to which appearance is not required, on every defendant who has been served with the summons.

(4) Not less than 4 clear days before the day fixed for the hearing of an *ex parte* originating summons the applicant must file an affidavit in support of the summons.

Directions, etc., by Court

4.—(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.

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(2) Unless on the first hearing of an originating summons the Court disposes of the summons altogether or orders the cause or matter begun by it to be transferred to a county court or some other court or makes an order under rule 8, 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

5.—(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 4 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 2 may restore it to the list on two days' notice to all the other parties (except a defendant who has failed to enter an appearance or, if the summons is one to which an appearance is not required, has not been served with the summons), and any of those parties may restore it with the leave of the Court.

Applications affecting party in default of appearance

6. 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 enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

Counterclaim by defendant

7.—(1) A defendant to an action begun by originating summons who has entered an appearance to 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 the first or any resumed hearing of the originating summons by the Court but, in any case, 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 4 or rule 8.

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(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

8.—(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) Any 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

9.—(1) Except where the Court disposes of a cause or matter begun by originating summons in chambers or orders it to be transferred to a county court or some other court or makes an order in relation to it under rule 8 or some other provision of these rules, the Court shall, on being satisfied that the cause or matter is ready for determination, make an order for the hearing or trial thereof in accordance with this rule.

(2) Where the cause or matter is proceeding in the Chancery Division, the Court shall make such order as to the hearing of the cause or matter in court as may be appropriate; and where it makes such an order, it shall, on being satisfied that the fee payable on adjourning an originating summons from chambers into court has been paid, cause the originating summons, a copy thereof and every other document that will be required by the judge to be sent to the cause clerk of the Chancery Registrars' Office, and that clerk shall set down the cause or matter for hearing.

(3) Where the cause or matter is proceeding in the Queen's Bench Division, the Court shall by order determine the place and mode of the trial, but any such order may be varied by a subsequent order of the Court made at or before the trial.

(4) Order 33, rule 4(2), and Order 34, rules 1 to 8, shall apply in relation to a cause or matter in the Queen's Bench Division begun by originating summons and to an order made therein under this rule as they apply in relation to an action in that Division begun by writ and to an order made therein under the said rule 4 and shall have effect accordingly with the necessary modifications and with the further modification that for references

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therein to the summons for directions there shall be substituted references to the first or any resumed hearing of the originating summons by the Court.

Failure to prosecute proceedings with despatch

10.—(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 7 as it applies in relation to a plaintiff.

(3) Where, by virtue of an order made under rule 8, 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

11. Order 34, rule 9, 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, ETC.*****Application for injunction***

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

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.

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(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 enters an appearance.

Power to order samples to be taken, etc.

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.

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

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.

6. Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific property (other than land) and the party from

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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, but subject to the provisions of the Exchange Control Act 1947(a).

Directions

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

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.

ORDER 30**RECEIVERS*****Application for receiver and injunction***

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.

Order 30]*Giving of security by receiver*

2.—(1) Where a judgment is given, or order made, directing the appointment of a receiver, then, unless the judgment or order otherwise directs, a person shall not be appointed receiver in accordance with the judgment or order until he has given security in accordance with this rule.

(2) Where by virtue of paragraph (1), or 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 or, if the amount for which the security is to be given does not exceed £1,000, by an undertaking.

(4) The guarantee or undertaking must be filed in the Central Office unless the cause or matter in which the receiver in question is appointed is an Admiralty cause or matter, a probate cause or matter or is proceeding in a district registry, in which case it must be filed in the Admiralty Registry, the Principal Probate Registry or that district registry, as the case may be, and it shall be kept as of record until duly vacated.

Remuneration of receiver

3. A person appointed receiver shall be allowed such proper remuneration, if any, as may be fixed by the Court.

Receiver's accounts

4.—(1) A receiver must submit accounts to the Court at such intervals or on such dates as the Court may direct in order that they may be passed.

(2) Unless the Court otherwise directs, each account submitted by a receiver must be accompanied by an affidavit verifying it.

(3) The receiver's account and affidavit (if any) must be left at the appropriate office, and the plaintiff or party having the conduct of the cause or matter must thereupon obtain an appointment for the purpose of passing such account.

(4) The passing of a receiver's account must be certified by a master, a registrar of the Probate, Divorce and Admiralty Division or a district registrar, as the case may be.

Payment of balance, etc., by receiver

5. The days on which a receiver must pay into court the amounts shown by his account as due from him, or such part thereof as the Court may certify as proper to be paid in by him, shall be fixed by the Court.

Default by receiver

6.—(1) Where a receiver fails to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to submit, make 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

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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 passing 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 shown by his account as due from him, 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 at the rate of £5 per cent. per annum on that sum while in his possession as receiver.

ORDER 31**SALES, ETC. OF LAND BY ORDER OF COURT: CONVEYANCING COUNSEL OF THE COURT****I. SALES, ETC. OF LAND BY ORDER OF COURT*****Power to order sale of land***

1. Where in any cause or matter in the Chancery Division 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

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 either by the order or under paragraph (4) 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 party entitled to prosecute the order must—

- (a) leave a copy of the order at the judge's chambers with a certificate that it is a true copy of the order, and
- (b) subject to paragraph (3), take out a summons to proceed with the order.

(3) Where an order for sale contains directions with regard to effecting the sale, the party entitled to prosecute the order shall not take out a summons under paragraph (2) unless and until he requires the further directions of the Court.

(4) On the hearing of the summons 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—

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- (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 ;
- (h) requiring an abstract of the title to be referred to conveyancing counsel of the Court or some other conveyancing counsel for his opinion thereon and to settle the particulars and conditions of sale.

Certifying result of sale

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 leave a copy of the certificate and affidavit (if any) at the judge's chambers and, not later than 2 days after doing so, file the certificate and any affidavit in the Central Office.

Mortgage, exchange or partition under order of the Court

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.

II. CONVEYANCING COUNSEL OF THE COURT*Reference of matters to conveyancing counsel of Court*

5. The Court may refer to the conveyancing counsel of the Court—

- (a) any matter relating to the investigation of the title to any property with a view to an investment of money in the purchase or on mortgage thereof, or with a view to the sale thereof,
- (b) any matter relating to the settlement of a draft of a conveyance, mortgage, settlement or other instrument, and
- (c) any other matter it thinks fit,

and may act upon his opinion in the matter referred.

[Order 31*Objection to conveyancing counsel's opinion*

6. Any party may object to the opinion given by any conveyancing counsel on a reference under rule 5, and if he does so the point in dispute shall be determined by the judge either in chambers or in court as he thinks fit.

Distribution of references among conveyancing counsel

7.—(1) The matters referred to conveyancing counsel of the Court shall, subject to paragraph (2), be distributed among them in rotation by such clerk in the Chancery Registrars' Office as the chief registrar may appoint.

(2) The Court may direct or transfer a reference to a particular conveyancing counsel of the Court.

Obtaining counsel's opinion on reference

8.—(1) When any matter is referred to conveyancing counsel of the Court a minute of the order of reference shall be prepared and signed by the registrar if made in court, or by the master if made in chambers, and the party prosecuting the order, having taken the minute to the clerk mentioned in rule 7 (1) for him to note on it the name of the counsel to whom the matter is to be referred, must leave the minute with that counsel's clerk.

(2) A minute signed as mentioned in paragraph (1) is sufficient authority for counsel to proceed with the reference.

ORDER 32**APPLICATIONS AND PROCEEDINGS IN CHAMBERS****I. GENERAL***Mode of making application*

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

2.—(1) Issue of a summons by which an application in chambers is to be made takes place on its being sealed by an officer of the appropriate office.

(2) A summons may not be amended after issue without the leave of the Court.

(3) In this rule "the appropriate office" means—

(a) in relation to a summons in a cause or matter proceeding in a district registry, that registry;

(b) in relation to a cause or matter in the Chancery Division which is not proceeding in a district registry, the judge's chambers;

(c) in relation to a summons in a probate cause or matter, the Principal Probate Registry;

(d) in relation to a summons in an Admiralty cause or matter which is not proceeding in a district registry, the Admiralty Registry;

(e) in relation to a summons in any other cause or matter, the Central Office.

Order 32]*Service of summons*

3. A summons asking only for the extension or abridgement 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 2 clear days before the day so specified.

Adjournment of hearing

4.—(1) The hearing of a summons may be adjourned from time to time, either generally or to a particular date, as may be appropriate.

(2) If the hearing is adjourned generally, the party by whom the summons was taken out may restore it to the list on '2 clear days' notice to all the other parties on whom the summons was served.

Proceeding in absence of party failing to attend

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

6. The Court may set aside an order made ex parte.

Subpoena for attendance of witness

7.—(1) 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 Central Office, the Principal Probate Registry, the Admiralty Registry or a district registry, as the case may be, if the party who desires the attendance of the witness produces a note from a judge or from a master or registrar, as the case may be, authorising the issue of the writ.

(2) In the Chancery Division and the Queen's Bench Division any master or district registrar, and in the Probate, Divorce and Admiralty Division any registrar, may give such a note or may direct that the application for it be made to the judge before whom the proceedings are to be heard.

Masters, registrars and certain clerks may administer oaths, etc.

8.—(1) The following officers, namely, masters, registrars of the Probate, Divorce and Admiralty Division, and any clerk in the Central Office, the

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judges' chambers and the Admiralty Registry of a grade not lower than that of second class clerk, shall have authority to administer oaths and take affidavits for the purpose of proceedings in the Supreme Court.

(2) Any officer employed in a district registry who is for the time being authorised in that behalf by the registrar of that registry shall have authority to administer oaths and take affidavits for the purpose of proceedings in the Supreme Court which are proceeding in that registry.

Application for leave to institute certain proceedings

9.—(1) The jurisdiction of the High Court—

(a) to grant leave for the purpose of section 1 of the Leasehold Property (Repairs) Act 1938(a), or

(b) to grant leave under section 141 of the Mental Health Act 1959(b) to bring proceedings against a person,

may be exercised in chambers but, in the case of the jurisdiction referred to in sub-paragraph (b), only by a judge.

(2) Notwithstanding anything in Order 7, rule 5, an originating summons by which an application for leave under the said section 1 is made may be issued out of a district registry only if the premises to which the application relates are situated in the district of that registry and, in that case, may be so issued notwithstanding that the proceedings are assigned to the Chancery Division.

(3) No appearance need be entered to an originating summons by which an application for leave under the said section 1 or the said section 141 is made.

(4) The application must be supported by an affidavit setting out the grounds on which such leave is sought and any facts necessary to substantiate those grounds.

Application to make order of House of Lords order of High Court

10. An application to make an order of the House of Lords an order of the High Court may be made ex parte by affidavit to a master or to a registrar of the Probate, Divorce and Admiralty Division or, if the cause or matter in which the order was made proceeded in the High Court in a district registry, to the registrar of that registry.

II. QUEEN'S BENCH DIVISION AND PROBATE, DIVORCE AND ADMIRALTY DIVISION

Jurisdiction of masters and registrars

11.—(1) The masters of the Queen's Bench Division and the registrars of the Probate, Divorce and Admiralty Division shall have power to transact all such business and exercise all such authority and jurisdiction as under the Act or these rules may be transacted and exercised by a judge in chambers except in respect of the following matters and proceedings, that is to say—

(a) matters relating to criminal proceedings, other than applications to which Order 79, rule 10(2), relates ;

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- (b) matters relating to the liberty of the subject ;
- (c) proceedings to which Order 57 applies and with respect to which a judge in chambers has jurisdiction ;
- (d) subject to paragraph (2), Order 50, rule 9, Order 51, rule 2, and Order 89, rule 1(3), proceedings for the grant of an injunction or other order under section 45 of the Act ;
- (e) appeals from district registrars ;
- (f) applications or review of a taxing officer's decision ;
- (g) applications under section 51 of the Act for leave to institute or continue legal proceedings ;
- (h) any other matter or proceeding which by any of these rules is required to be heard only by a judge.

(2) Any such master or registrar shall have power to grant an injunction in the terms agreed by the parties to the proceedings in which the injunction is sought.

Reference of matter to judge

12. Any master of the Queen's Bench Division or registrar of the Probate, Divorce and Admiralty Division 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 master or registrar, as the case may be, with such directions as he thinks fit.

Power to direct hearing in court

13.—(1) The judge in chambers may direct that any summons, application or appeal shall be heard in court or shall be adjourned into 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.

III. CHANCERY DIVISION*Jurisdiction of masters*

14.—(1) The masters of the Chancery Division shall, subject to the right of any party to have an adjournment to the judge in person without any fresh summons for the purpose, have power to transact all such business and exercise all such authority and jurisdiction as may be transacted and exercised by a judge in chambers, except such business, authority and jurisdiction as the judges of that Division may from time to time direct to be transacted or exercised by a judge in person or as may by any of these rules be expressly directed to be transacted or exercised by a judge in person.

(2) Where an originating summons raises for the determination of the Court a question as to the construction of a document or a question of law, nothing in paragraph (1) shall authorise a master to determine that question.

(3) Every order made in chambers which is not made by a judge in person shall bear upon it the name of the master responsible for the order.

Masters may summon parties, etc.

15.—(1) For the purpose of any proceedings before him, a master of the Chancery Division may—

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(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, and

(c) require the production of documents.

(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 master may make an order requiring that person to attend before him.

(4) A master of the Chancery Division shall, if directed to do so by the judge, examine any party or witness either orally or on interrogatories as the judge directs.

Obtaining assistance of experts

16. 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 specially qualified to advise on that matter and may act upon his opinion.

Notice of filing, etc. of affidavit

17. Any party—

(a) filing an affidavit intended to be used by him in any proceedings in chambers in the Chancery Division, or

(b) intending to use in any such proceedings any affidavit filed by him in previous proceedings,

must give notice to every other party of the filing or, as the case may be, of his intention to do so.

Adjournment into or from court

18. The hearing of any summons or other application in chambers may be adjourned from chambers into court and subsequently from court into chambers.

Disposal of matters in chambers

19. 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.

Matter adjourned into chambers, etc.: registrar's note

20. Where in any proceedings any matter is adjourned from court into chambers, or any directions are given in court to be acted upon in chambers, without an order being drawn up, the plaintiff in the proceedings must procure from the registrar who was in court a note signed by him stating for what purpose that matter was adjourned into chambers or, as the case may be, the directions given and leave it in the judge's chambers.

Papers for use of Court, etc.

21. 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.

Order 32]*Notes of proceedings in chambers*

22. 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 each hearing.

IV. DISTRICT REGISTRIES*Jurisdiction of district registrars*

23. Where a cause or matter is proceeding in any Division in a district registry, the registrar of that registry may exercise all such authority and jurisdiction in respect thereof as may be exercised by a master of that Division (or, in the case of the Probate, Divorce and Admiralty Division a registrar) subject—

(a) to the same limitations as are imposed by or by virtue of these rules on the authority and jurisdiction of a master or registrar of that Division; and

(b) in the case of a cause or matter in the Chancery Division, to any directions to the contrary given by the judges of that Division and to the right of any person to have an adjournment to the judge in person without any fresh summons for the purpose;

and references in these rules to a master or to a registrar of the Probate, Divorce and Admiralty Division shall (subject to any such directions) be construed accordingly.

Proceedings to be taken in district registry

24.—(1) Where a cause or matter is proceeding in a district registry, then, except where by these rules it is otherwise provided or the Court otherwise orders, all proceedings in that cause or matter shall be taken in that registry.

In this paragraph "Court" does not include a master or a registrar of the Probate, Divorce and Admiralty Division.

(2) Unless the context otherwise requires, any provision of these rules referring to a thing done, or requiring a thing to be done, in chambers shall, in relation to a cause or matter proceeding in a district registry, be construed as referring to a thing done, or as requiring the thing to be done, in that registry.

Adjournment to judge in Chancery cause or matter

25. Every adjournment by a district registrar to a judge in any cause or matter in the Chancery Division shall be to the appropriate judge of the group to which the cause or matter is assigned.

Chancery cause or matter proceeding in Liverpool or Manchester

26. Where a cause or matter assigned to the Chancery Division is proceeding in the district registry of Liverpool or in the district registry of Manchester, the registrar of that registry shall act in respect thereof, and throughout all the proceedings therein, including any proceedings during vacation, as if he were a master attached to group B and a registrar of the Chancery Division.

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TRIAL
ORDER 33

PLACE AND MODE OF TRIAL

Place of trial

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 and shall be either the Royal Courts of Justice or such of the places at which assizes are held as may be so determined.

Mode of trial

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 a jury, or
- (c) a judge with the assistance of assessors, or
- (d) an official referee with or without the assistance of assessors, or
- (e) a master, or
- (f) a special referee.

Time, etc. of trial of questions or issues

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

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.

(3) An action in the Chancery Division shall be tried at the Royal Courts of Justice unless a judge in person otherwise directs.

(4) The references in this Order to the summons for directions include references to any summons or application to which, under any of these rules, Order 25, rules 2 to 7, are to apply, with or without modifications.

(5) Nothing in this rule affects the provisions of Order 103, rule 26, as to actions for the infringement of a patent.

Trial with jury

5.—(1) The provisions of rule 4 (1) and (2) are, as respects any action to be tried in the Queen's Bench Division and as respects any question of fact arising in such an action, subject to the provisions of section 6 of

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the Administration of Justice (Miscellaneous Provisions) Act 1933(a), but an application for trial with a jury under that section (the time for making which is, under that section, to be limited by rules of court) must be made before the place and mode of the trial is fixed under rule 4.

(2) The powers conferred by the said section 6 on a judge may be exercised by a master.

Trial with assistance of assessors

6. A trial of a cause or matter with the assistance of assessors under section 98 of the Act shall take place in such manner and on such terms as the Court may direct.

Dismissal of action, etc. after decision of preliminary issue

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 ACTION BEGUN BY WRIT***Application and interpretation*

1.—(1) This Order applies to actions begun by writ and, accordingly, references in this Order to an action shall be construed as references to an action so begun.

(2) In this Order any reference to assizes includes a reference to adjourned assizes held after an interval of not less than 14 days and, in relation to such assizes, any reference to the commission day shall be construed as a reference to the day fixed for the commencement of the adjourned assizes.

Time for setting down action

2.—(1) Every order made in an action which provides for trial before a judge shall, whether the trial is to be with or without a jury and 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.

(3) Every order made in an action in the Queen's Bench Division which provides for trial before a judge (otherwise than in the commercial list or the special paper or any corresponding list which may be specified for the purposes of this paragraph by directions under rule 4) shall contain

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an estimate of the length of the trial and, if the action is to be tried at the Royal Courts of Justice, shall, subject to any such directions, specify the list in which the action is to be put.

Lodging documents when setting down

3.—(1) In order to set down for trial an action which is to be tried before a judge, the party setting it down must deliver to the proper officer, by post or otherwise, a request that the action may be set down for trial at the place specified in the order made on the summons for directions, together with two bundles (one of which shall serve as the record and the other be for the use of the judge) consisting of one copy of each of the following documents, that is to say—

- (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) all orders made on the summons for directions, and
- (d) the requisite legal aid documents, if any.

(2) Each of the said bundles must be bound up in the proper chronological order and the bundle which is to serve as the record must be stamped with the stamp denoting payment of the fee payable on setting down the action and have indorsed thereon the names, addresses and telephone numbers of the solicitors for the parties or, in the case of a party who has no solicitor, of the party himself.

(3) In this rule "the requisite legal aid documents" means any documents which are required by regulations under Part I of the Legal Aid and Advice Act 1949(a) to be included in the bundle for use at the trial.

(4) Where a new trial becomes necessary in the case of any action, the procedure for setting down the action for the new trial shall be that specified in the foregoing provisions except that—

- (a) the bundle which is to serve as the record must be bespoken from the person in whose custody it is and sent to the proper officer, and
- (b) there must be delivered, along with the request that the action may be set down, a backsheet with the title of the action thereon, and the names, addresses and telephone numbers of the solicitors for the parties or, in the case of a party who has no solicitor, of the party himself, stamped with the stamp denoting payment of the fee payable on setting down the action for the new trial.

(5) In this rule "the proper officer" means—

- (a) in relation to an action in the Queen's Bench Division which is to be tried at the Royal Courts of Justice, the head clerk of the Crown Office;
- (b) in relation to an action (in whatever Division) which is to be tried at Birmingham, Leeds, Liverpool or Manchester, the appropriate district registrar;
- (c) in relation to an action (in whatever Division) which is to be tried at Aylesbury, Chelmsford, Hertford or Kingston-upon-Thames, the associate of the circuit;
- (d) in relation to an action (in whatever Division) which is to be tried elsewhere than at a place mentioned in sub-paragraph (a), (b) or (c), the

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district registrar for the district comprising the town specified in the order made on the summons for directions as the place of trial or, where a county and not a town is so specified, the town in which there will be held the next assizes for the county after the setting down of the action ;

- (e) in relation to an action in the Chancery Division which is to be tried at the Royal Courts of Justice, the cause clerk of the Chancery Registrars' Office ;
- (f) in relation to a probate action which is to be tried at the Royal Courts of Justice, the chief clerk of the contentious department of the Principal Probate Registry.

Directions relating to lists

4. Nothing in this Order shall prejudice any powers of—

- (a) the Lord Chief Justice, as respects actions in the Queen's Bench Division,
- (b) the senior judge of the Chancery Division, as respects actions in that Division, or
- (c) the President of the Probate, Divorce and Admiralty Division, as respects probate actions,

to give directions—

- (i) specifying the lists in which actions, or actions of any class or description, are to be set down for trial and providing for the keeping and publication of the lists ;
- (ii) providing for the determination of a date for the trial of any action which has been set down or a date before which the trial thereof is not to take place ; and
- (iii) as to the making of applications (whether to a Court or a judge or an officer of a Court) to fix, vacate or alter any such date, and, in particular, requiring any such application to be supported by an estimate of the length of the trial and any other relevant information.

Lists at Birmingham, Leeds, Liverpool and Manchester

5.—(1) The towns to which this rule applies are Birmingham, Leeds, Liverpool and Manchester.

(2) Lists must be kept by the district registrars of the towns to which this rule applies of the actions to be tried before a judge at those towns respectively.

(3) Subject to the following provisions of this rule and to Order 35, rules 3 and 4, the actions set down for trial at a town to which this rule applies shall be included in the list of actions for trial in the order in which they were respectively set down and shall, unless a judge in person otherwise directs, come on for trial as nearly as may be in that order.

(4) Paragraph (3) shall have effect subject to any order of the Court made on the summons for directions or otherwise that a particular action shall come on for trial with or immediately after another named action.

(5) An action remitted for trial at a town to which this rule applies shall be treated for the purposes of this rule as having been set down for trial at that town on the date on which it was first set down for trial elsewhere.

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(6) Where any action is set down for trial before a judge at a town to which this rule applies, the district registrar must fix a date before which the action is not to be tried unless the judge going the circuit otherwise orders.

(7) Not less than 7 days before the commission day fixed for the assizes at a town to which this rule applies, the district registrar must publish a list of the actions likely to be tried during the first week of the assizes, and so far as practicable an action shall not be tried during that week unless included in that list.

(8) Except as provided by paragraph (9), any party to an action set down for trial at a town to which this rule applies may, after giving notice to all the other parties, apply to the district registrar for the postponement of the trial, and the district registrar may postpone or refuse to postpone the trial as seems just.

(9) An application made after the commencement of the assizes for the postponement of the trial of any action included in the list referred to in paragraph (7) or in any subsequent list of actions likely to be tried at those assizes must be made to the judge going the circuit.

Lists at home counties towns

6.—(1) Lists must be kept by the associate of the south-eastern circuit of the actions set down for trial before a judge at Chelmsford, Hertford and Kingston-upon-Thames and a list must be kept by the associate of the midland circuit of the actions set down for trial before a judge at Aylesbury.

In this rule "home counties town" means Aylesbury, Chelmsford, Hertford and Kingston-upon-Thames.

(2) Rule 5(3), (4) and (5) shall apply in relation to an action set down, or remitted, for trial at a home counties town as they apply in relation to an action set down, or remitted, for trial at a town to which rule 5 applies.

(3) Unless an action is set down for trial not less than 14 days before the commission day fixed for the assizes at a home counties town, it shall not come on for trial at those assizes unless it has been remitted for trial thereat from another assize town or a judge in person otherwise directs.

(4) An associate by whom a list is kept in pursuance of paragraph (1) must secure that a copy of the list is conspicuously displayed in his office and is available for inspection by the public during office hours.

(5) Where an action is remitted for trial from a home counties town to an assize town, other than a home counties town, or to a home counties town on another circuit, the associate must notify the district registrar for the district comprising that assize town or the associate of that other circuit, as the case may be, of the fact and date of the remission of the action.

Lists at other assize towns

7.—(1) The assize towns to which this rule applies are all assize towns other than a town to which rule 5 applies or a home counties town within the meaning of rule 6.

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(2) A list must be kept by the district registrar of each district comprising an assize town to which this rule applies of the actions set down for trial before a judge at that town, and a list must be kept by the district registrar of each district comprising an assize town in the county of Glamorgan, Suffolk, Somerset or Wilts of the actions set down for trial before a judge in that county.

(3) Subject to the following provisions of this rule and to Order 35, rules 3 and 4, the actions set down for trial at an assize town to which this rule applies or in a county mentioned in paragraph (2) shall be included in the list of actions for trial in the order in which they were respectively set down and shall, unless a judge in person otherwise directs, come on for trial as nearly as may be in that order; and an action set down for trial in any such county may be tried at any assize town in that county.

(4) Paragraph (3) shall have effect subject to any order of the Court made on the summons for directions or otherwise that a particular action shall come on for trial with or immediately after another named action.

(5) An action remitted for trial at an assize town to which this rule applies or in a county mentioned in paragraph (2) shall be treated for the purposes of this rule as having been set down for trial at that town or in that county on the date on which it was first set down for trial elsewhere.

(6) Unless an action is set down for trial not less than 14 days before the commission day fixed for the assizes at an assize town to which this rule applies, it shall not come on for trial at those assizes unless it has been remitted for trial thereat from another assize town or a judge in person otherwise directs.

(7) Not less than 14 days before the commission day fixed for the assizes at an assize town to which this rule applies, any party to an action included in the list of actions for trial at that town or, if that town is in a county mentioned in paragraph (2), in the list of actions for trial in that county, may, after giving notice to all the other parties, apply to the district registrar for a postponement of the trial, and the district registrar may postpone or refuse to postpone the trial as seems just.

(8) A district registrar by whom a list is kept in pursuance of paragraph (2) must—

- (a) secure that a copy of the list is conspicuously displayed in his registry and is available for inspection by the public during office hours, and
- (b) secure that the associate and any other district registrar by whom the same list is so kept are informed of the state of the list and that all the requisite documents in the list are duly sent to the associate.

(9) As soon as may be after the close of the assizes at an assize town to which this rule applies, the associate must notify the district registrar of the actions which have been respectively disposed of at those assizes, postponed or remitted for trial to another assize town and must send him all the documents in the actions which had been included in the list of actions for trial at those assizes but were not disposed of or remitted for trial as aforesaid.

Notification of setting down

8.—(1) A party to an action who sets it down for trial must, within 24 hours after doing so, notify the other parties to the action that he has

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done so and must also without delay notify them of any communication received by him from the officer who keeps the list as to the date fixed for the trial of the action or the date before which the action will not be tried, but, save as aforesaid, no notice of trial shall be necessary in any action.

(2) It shall be the duty of all parties to an action entered in any list to furnish without delay to the officer who keeps the list all available information as to the action being or being likely to be settled, or affecting the estimated length of the trial, and, if the action is settled or withdrawn, to notify that officer of the fact without delay and take such steps as may be necessary to withdraw the record.

Abatement, etc., of action

9.—(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 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 proper officer, and that officer 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.

(3) In this rule "proper officer", except in relation to an Admiralty action, has the same meaning as in rule 3 and, in relation to an Admiralty action, means the Admiralty registrar.

ORDER 35**PROCEEDINGS AT TRIAL***Failure to appear by both parties or one of them*

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 counterclaim in the absence of that party.

Judgment, etc. given in absence of party may be set aside

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

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.

Order 35]*Change of place of trial, etc.*

4. If the judge at any place on circuit is of opinion that any cause or matter in the list for trial at that place cannot, owing to the time allotted for the assize at that place or for any other sufficient reason, be conveniently tried at that place, he may, on or without an application for that purpose, change the place of trial to some other place at which assizes are held, whether on the same circuit or not, or to the Royal Courts of Justice or postpone the trial to another assize.

Women jurors

5.—(1) Upon every jury summons served on a woman there shall appear a notice that she may apply to the summoning officer for exemption from attendance as a juror on account of pregnancy or some other feminine condition or ailment provided that the application is received by the summoning officer within 3 days of the receipt of the summons by the applicant.

(2) The under-sheriff or other person upon whom is cast the duty of preparing the jury panels may in his discretion exempt from attendance any woman who has been summoned to serve as a juror if he is satisfied by a medical certificate or otherwise that on account of pregnancy or some other feminine condition or ailment she is or will be unfit to serve.

Selection of jurors

6. On every trial with a jury, the jurors shall be selected from the panel by ballot in the manner prescribed by section 26 of the Juries Act 1825(a).

Order of speeches

7.—(1) The judge before whom an action is tried (whether with or without a jury) 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 ;

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(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 or jury

8.—(1) 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.

(2) Where a cause or matter is tried with a jury and the judge inspects any place or thing under paragraph (1), he may authorise the jury to inspect it also.

Death of party before giving of judgment

9. 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.

Certificate of associate

10. At the conclusion of the trial of any action in the Queen's Bench Division, of any action in the Chancery Division tried at assizes and of any probate action so tried, the associate in attendance at the trial shall make a certificate in which he shall certify—

- (a) the time actually occupied by the trial,
- (b) any order made by the judge under Order 38, rule 5 or 6,
- (c) every finding of fact by the jury, where the trial was with a jury,
- (d) the judgment given by the judge, and
- (e) any order made by the judge as to costs.

List of exhibits

11.—(1) The associate 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.

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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 associate 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

12. It shall be the duty of every party to an action who has put in any exhibit to apply to the associate 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 House of Lords, 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 House of Lords to do so.

Impounded documents

13.—(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 or the Director of Public Prosecutions 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**TRIALS BEFORE, AND INQUIRIES BY, REFEREES AND MASTERS*****Power to order trial before official referee***

1. If, in any cause or matter in the Chancery Division or Queen's Bench Division other than a criminal proceeding by the Crown, the Court considers, upon application by any party, that having regard to the nature of the case it is desirable (whether on grounds of expedition, economy or convenience or otherwise) in the interests of one or more of the parties, the Court may, subject to any right to a trial with a jury, order that the cause or matter, or any question or issue of fact arising therein, shall be tried before an official referee, with or without assessors.

Reference to official referee of question of fact for inquiry, etc.

2. In any cause or matter in the Chancery Division or Queen's Bench Division other than a criminal proceeding by the Crown the Court may, subject to any right to a trial with a jury, refer to an official referee for inquiry and report any question or issue of fact arising therein; and, unless the Court otherwise orders, the further consideration of the cause or matter shall stand adjourned until the receipt of the official referee's report.

[Order 36***Report on reference under r.2***

3.—(1) The report made by an official referee in pursuance of a reference under rule 2 shall be made to the Court and notice thereof served on the parties to the reference.

(2) The official 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 official referee's report, 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 official 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 of the official referee 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 on a reference under rule 2 the Court orders that the further consideration of the cause or matter in question shall not stand adjourned until the receipt of the official referee's 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

4.—(1) Subject to any directions contained in the order referring any business to an official referee—

(a) the official referee shall for the purpose of disposing of any cause or 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) every trial and all other proceedings before an official referee shall, as nearly as circumstances admit, be conducted in the like manner as the like proceedings before a judge.

(2) Without prejudice to the generality of paragraph (1), but subject to any such directions as are mentioned therein, an official referee before whom any cause or matter is tried shall have the like powers as the Court with respect to claims relating to or connected with the original subject-matter of the cause or matter by any party thereto against any other person, and Order 15, rule 5(2) and Order 16 shall with any necessary modifications apply in relation to any such claim accordingly.

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(3) An official referee may hold any trial or any other 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.

Allocation of business to official referees

5.—(1) No order referring any business to an official referee under these rules shall specify any particular referee.

(2) Any application under section 11 of the Arbitration Act 1950(a) to an official referee shall be made to the referee to whom the reference has been allocated under paragraph (3) or any other official referee to whom the reference has been transferred under the following provisions of this Order.

(3) Before proceedings are taken before an official referee in pursuance of an order or arbitration agreement referring any business to an official referee, the order or agreement or a copy thereof shall be produced to the rota clerk to the senior official referee, who shall allocate the business to one of the official referees and shall indorse the name of the referee on the order, agreement or copy.

(4) Business shall be allocated by the clerk under this rule to the referees in rotation.

Entry of business and application for directions

6.—(1) Any business allocated under rule 5 to an official referee shall forthwith be entered with that referee's clerk.

(2) Within 14 days after the entry of any business under this rule, application for directions shall be made to the official referee in question by the party by whom the order or agreement referring the business was produced to the rota clerk in pursuance of rule 5.

(3) If that party does not make an application for directions to the official referee in accordance with paragraph (2), any other interested party may do so or may apply to the official referee—

(a) in the case of any cause or matter referred for trial, for an order to strike out the pleadings of the party in default or, where the party in default is the plaintiff or has made a counterclaim, an order to dismiss the action or counterclaim ;

(b) in the case of any question or issue referred for trial or inquiry and report, to have the matter referred back to the Court.

(4) Upon application by any party for an order under paragraph (3) (a), the official referee may make the order asked for on such terms as may be just or deal with the application as if it were an application for directions.

(5) 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 any application under this rule were a summons for directions under that Order.

Transfer of business from one official referee to another

7.—(1) If, in the opinion of the Lord Chancellor or the Lord Chief Justice, it is expedient so to do having regard to the state of the business pending

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before the official referees, he may order the transfer of any business from any official referee to any other official referee.

(2) Any official referee may order the transfer of any business from himself to any other official referee who consents to the transfer.

(3) In the absence, or with the consent, of the official referee to whom any business was allocated or has been transferred, any interlocutory application may be made to any other official referee and that other referee may deal with the application and make any order thereon which could have been made by the first-mentioned referee.

Trial before, and inquiry by, special referee

8.—(1) An order under rule 1 may, with the consent of the parties to the cause or matter, order that the cause or matter, or any question or issue of fact arising therein, be tried before a special referee instead of an official referee and that rule shall have effect accordingly with the omission of the reference to assessors.

(2) A reference under rule 2 may be made to a special referee instead of an official referee, and that rule and rule 3 shall have effect accordingly.

(3) Rule 4 shall apply in relation to a special referee, and the conduct of proceedings before a special referee, as it applies in relation to an official referee and the conduct of proceedings before an official referee, except that a special referee shall not have power to make orders of committal or the powers conferred on an official referee by rule 4 (2).

Trial before, and inquiry by, master

9.—(1) An order under rule 1 may, with the consent of the parties to the cause or matter, order that the cause or matter, or any question or issue of fact arising therein, be tried before a master instead of an official referee and that rule shall have effect accordingly with the omission of the reference to assessors.

(2) Without prejudice to Orders 43 and 44, and subject to the provisions of those Orders, a reference under rule 2 may be made by the judge to a master instead of an official referee and that rule and rule 3 shall have effect accordingly.

(3) Rule 4 shall apply in relation to a master, and the conduct of any proceedings before a master at a trial before, or reference to, him under this Order as it applies in relation to an official referee and the conduct of proceedings before an official referee, except that a master shall not have power to make orders of committal or the power conferred on an official referee by rule 4 (3).

Restriction of power to order trial before referee, etc.

10. Notwithstanding anything in this Order, no cause or matter to which Her Majesty or the Duke of Cornwall is a party or any question or issue therein shall be ordered to be tried before an official referee except with the consent of Her Majesty or the Duke of Cornwall, as the case may be, and no question or issue in such cause or matter shall be referred for inquiry and report to a referee or master except with such consent.

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ORDER 37

ASSESSMENT OF DAMAGES

Assessment of damages by Chancery or Queen's Bench master

1.—(1) Where judgment is given in the Chancery Division or the Queen's Bench Division 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 a master, and the party entitled to the benefit of the judgment may, after obtaining the necessary appointment from the master 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 a master of the Chancery Division under Order 32, rule 15, the attendance of witnesses and the production of documents before the master in 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

2. Where in pursuance of this Order or otherwise damages are assessed by a master, he shall certify the amount of the damages and—

(a) in the Chancery Division the provisions of Order 44, rules 21, 22 and 23, shall apply to the certificate ;

(b) in the Queen's Bench Division the certificate shall, when judgment is entered, be filed in the Central Office.

Default judgment against some but not all defendants

3. Where any such judgment as is mentioned in rule 1 is given in default of appearance 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.

Power to order assessment by referee or at trial

4. The Court may, in the case of any such judgment as is mentioned in rule 1, order either—

(a) that the assessment of the damages shall be referred to an official referee or to a special referee, or

(b) that the action shall proceed to trial before a judge (with or without a jury) as respects the damages ;

and 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

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

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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

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: GENERAL***General rule : witnesses to be examined orally*

1. Subject to the provisions of these rules and of the Evidence Act 1938(a) 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

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

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

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(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

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

5. Unless, at or before the trial, the Court for special reasons 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.

Expert evidence in action arising out of accident

6.—(1) In an action arising out of an accident on land due to a collision or apprehended collision, unless at or before the trial the Court otherwise orders, the oral expert evidence of an engineer sought to be called on account of his skill and knowledge as respects motor vehicles shall not be receivable unless a copy of a report from him containing the substance of his evidence has been made available to all parties for inspection before the hearing of the summons for directions and an order made on the summons for directions or an application thereunder authorises the admission of the evidence.

(2) The references in this rule to the summons for directions include references to any summons or application to which, under any of these rules, Order 25, rules 2 to 7, are to apply, whether with or without modifications.

Revocation or variation of orders under rr.2 to 6

7. Any order under rules 2 to 6 (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.

Application to trials of issues, references, etc.

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

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.

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(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

10.—(1) Office copies of writs, records, pleadings and documents filed in the High Court 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 Supreme Court 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

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

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

13.—(1) At any stage in a cause or matter the Court may order any person to attend any proceeding 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.

Form and issue of writ of subpoena

14.—(1) A writ of subpoena must be in Form No. 28, 29 or 30 in Appendix A, whichever is appropriate.

(2) Issue of a writ of subpoena takes place upon its being sealed by an officer of the office out of which it is issued.

(3) Where a writ of subpoena is to be issued in a cause or matter which is not proceeding in a district registry, the appropriate office for the issue of the writ is the Central Office or, if the cause or matter has been set down for trial at any assizes, either the Central Office or the registry for the district comprising the city or town at which the cause or matter has been set down for trial.

(4) Where a writ of subpoena is to be issued in a cause or matter which is proceeding in a district registry, the appropriate office for the issue of the writ is—

(a) that registry, or

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- (b) if the cause or matter has been set down for trial at a city or town not comprised in the district of that registry, either that registry or the registry for the district comprising that city or town, or
- (c) if the cause or matter has been set down for trial at the Royal Courts of Justice, either the Central Office or the registry in which the cause or matter is proceeding.

(5) 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 solicitor and also (if the solicitor is the agent of another) the name or firm and business address of his principal.

More than one name may be included in one writ of subpoena

15. The names of two or more persons may be included in one writ of subpoena ad testificandum.

Amendment of writ of subpoena

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(5) indorsed with the words "Amended and re-sealed".

Service of writ of subpoena

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.

Duration of writ of subpoena

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

19.—(1) The office of the Supreme 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 Crown Office, 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 4 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 may be heard by a master of the Queen's Bench Division.

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ORDER 39

EVIDENCE BY DEPOSITION: EXAMINERS OF THE COURT

Power to order depositions to be taken

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. 32 in Appendix A) for the examination on oath before a judge, an officer or examiner 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

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. 34 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. 37 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 British 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 Secretary of State.

Order for issue of letter of request

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 Central Office, and the letter must be in Form No. 35 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) Unless the official language, or one of the official languages, of the country in which the examination is to be taken is English, each document lodged under paragraph (2) or (3) must be accompanied by a translation of the document in the official language of that country 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.

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(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 Central Office 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 Secretary of State in respect of the letter of request and, on receiving due notification of the amount of those expenses, to pay that amount to the Finance Officer of the office of the Secretary of State and to produce a receipt for the payment to the proper officer of the High Court.

Enforcing attendance of witness at examination

4. Where an order has been made under rule 1—

(a) for the examination of any person before an officer or examiner 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.

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 district registry (if any) in which the cause or matter is proceeding and otherwise in the Central Office, 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.

Appointment of time and place for examination

6.—(1) The examiner must give the party on whose application the order for examination was made by a notice appointing the place and time at which, subject to any application by the parties, the examination shall be taken, and such time shall, having regard to the convenience of the persons to be examined and all the circumstances of the case, be as soon as practicable after the making of the order.

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(2) The party to whom a notice under paragraph (1) is given must, on receiving it, forthwith give notice of the appointment to all the other parties.

Examiner to have certain documents

7. The party on whose application the order for examination before the examiner was made must furnish the examiner with copies of such of the documents in the cause or matter as are necessary to inform the examiner of the questions at issue in the cause or matter.

Conduct of examination

8.—(1) Subject to any directions contained in the order for examination—

(a) any person ordered to be examined before the examiner may be cross-examined and re-examined, and

(b) the examination, cross-examination and re-examination of persons before the examiner shall be conducted in like manner as at the trial of a cause or matter.

(2) The examiner may put any question to any person examined before him as to the meaning of any answer made by that person or as to any matter arising in the course of the examination.

(3) The examiner may, if necessary, adjourn the examination from time to time.

Examination of additional witnesses

9. The examiner may, with the written consent of all the parties to the cause or matter, take the examination of any person in addition to those named or provided for in the order for examination, and must annex such consent to the original deposition of that person.

Objection to questions

10.—(1) If any person being examined before the examiner objects to answer any question put to him, or if objection is taken to any such question, that question, the ground for the objection and the answer to any such question to which objection is taken must be set out in the deposition of that person or in a statement annexed thereto.

(2) The validity of the ground for objecting to answer any such question or for objecting to any such question shall be decided by the Court and not by the examiner, but the examiner must state to the parties his opinion thereon, and the statement of his opinion must be set out in the deposition or in a statement annexed thereto.

(3) If the Court decides against the person taking the objection it may order him to pay the costs occasioned by his objection.

Taking of depositions

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.

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(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 district registry (if any) in which the cause or matter is proceeding and otherwise to the Central Office and shall be filed therein.

Time taken by examination to be indorsed on depositions

12. Before sending any deposition to a district registry or the Central Office 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

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

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 official solicitor 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

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 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.

Examiners of the Court

16. A sufficient number of barristers, of not less than three years' standing, shall be appointed by the Lord Chancellor to act as examiners of the Court for a period not exceeding five years at a time, but the Lord Chancellor may at any time revoke any such appointment.

[Order 39]*Assignment of examinations to examiners of the Court*

17.—(1) The examinations to be taken before examiners of the Court shall be assigned to them in rotation by such clerk in the Chancery Registrars' Office as the chief registrar may appoint.

(2) If an examiner is unable or declines to take an examination assigned to him, the examination shall be assigned to some other examiner under paragraph (1).

Obtaining assignment of examiner of the Court

18.—(1) The party prosecuting an order for examination before an examiner of the Court must take the order or a copy thereof to the clerk mentioned in rule 17 for him to note on it the name of the examiner to whom the examination is to be assigned and must leave a copy of the order with that examiner's clerk.

(2) A copy of the order for examination is sufficient authority for the examiner whose name is indorsed on it to proceed with the examination.

Fees and expenses of examiners of the Court

19.—(1) The examiners of the Court shall be entitled to charge the fees mentioned in the following Table:—

TABLE OF EXAMINERS' FEES

	£	s.	d.
1. Upon giving an appointment to take an examination ...	5	5	0
2. For the examiner's clerk		5	0
3. For each hour or part thereof (after the first hour) occupied in an examination within 3 miles from the principal entrance of the Royal Courts of Justice ...	1	11	6
4. For each day of 6 hours or part of a day occupied in an examination beyond 3 miles from the principal entrance of the Royal Courts of Justice	10	10	0
5. For the examiner's clerk, where an examination occupies more than 3 hours (in addition to fee No. 2) per day ...		5	0

(2) The party prosecuting the order must also pay all reasonable travelling and other expenses, including charges for the room (other than the examiner's chambers) where the examination is taken.

(3) In the case of every examination, and every adjournment thereof, a deposit of 3 guineas (or 5 guineas, where the examination is more than 3 miles from the principal entrance of the Royal Courts of Justice) must be made with the examiner's clerk, in respect of fees and expenses of the day, before the examination is begun or continued; and any balance remaining after the discharge of those fees and expenses shall be repaid by the clerk.

(4) An examiner shall not be obliged to send any deposition to the Central Office under rule 11(4) until all fees and expenses due to him in respect of the examination have been paid.

Order 40]**ORDER 40****COURT EXPERT***Appointment of expert to report on certain questions*

1.—(1) In any cause or matter which is to be tried without a jury and 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

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 proper officer must send copies of the report to the parties or their 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

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

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.

[Order 40***Remuneration of court expert***

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

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***

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 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.

(5) Every affidavit must be in book form, following continuously from page to page, both sides of the paper being used.

(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.

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(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

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 "above named" deponents.

Affidavit by illiterate or blind person

3. 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.

Use of defective affidavit

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

5.—(1) Subject to Order 14, rules 2(2) and 4(2), 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

6. The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.

Alterations in affidavits

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—

- (a) in the case of an erasure, rewritten in the margin of the affidavit the words or figures erased and signed or initialled them, and
- (b) in the case of any other alteration, initialled it.

(2) Where an affidavit is sworn at the Central Office or any other office of the Supreme 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 solicitor of party, etc.

8. Without prejudice to section 1(3) of the Commissioners for Oaths Act 1889(a), no affidavit shall be sufficient if sworn before the solicitor of the

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party on whose behalf the affidavit is to be used or before any agent, partner or clerk of that solicitor.

Filing of affidavits

9.—(1) Every affidavit used in a cause or matter proceeding in a district registry must be filed in that registry.

(2) Every affidavit used in an Admiralty cause or matter must, subject to paragraph (1), be filed in the Admiralty Registry.

(3) Every affidavit used in a probate cause or matter must be filed in the Principal Probate Registry.

(4) Except as otherwise provided by these rules, every affidavit must be filed in the Central Office.

(5) 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

10.—(1) Subject to paragraph (2), an original affidavit may be used in proceedings in the Chancery Division with the leave of the Court, and in any other proceedings without such leave, 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 judicature fee stamp.

(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

11.—(1) Any document to be used in conjunction with an affidavit must be exhibited, and not annexed, to the affidavit.

(2) Any exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn.

The certificate must be entitled in the same manner as the affidavit and rule 1 (1), (2) and (3) shall apply accordingly.

Affidavit taken in Commonwealth country admissible without proof of seal, etc.

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 England and Wales 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.

JUDGMENTS, ORDERS, ACCOUNTS AND INQUIRIES

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JUDGMENTS AND ORDERS

Form of judgment, etc.

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) An order must be marked with the name of the judge, referee or master by whom it was made and must be sealed.

Judgment, etc. requiring act to be done : time for doing it

2.—(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

3.—(1) A judgment or order of the Court or of an official or special referee 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 or referee, as the case may be, 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

4.—(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 ;

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- (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 solicitor.

Drawing up and entry of Queen's Bench judgments and orders

5.—(1) Where a judgment given in a cause or matter in the Queen's Bench Division is presented for entry in accordance with this rule at the appropriate office, it shall be entered by an officer of that office in the book kept for the purpose.

(2) The party seeking to have such a judgment entered must draw up the judgment and present it to the proper officer of the appropriate office for entry.

(3) A party presenting a judgment for entry must—

- (a) if he is the plaintiff, produce the original of the writ or other originating process by which the cause or matter in question was begun ;
- (b) produce any certificate, order or other document needed to satisfy the proper officer that he is entitled to have the judgment entered and lodge the pleadings (if any) with that officer.

(4) On entering any such judgment the proper officer shall file the judgment and return a duplicate thereof to the party who presented it for entry.

(5) Every order made in the Queen's Bench Division and required to be drawn up must be drawn up by the party having the custody of the summons, notice or other document on which the order is indorsed and if that party fails to draw up the order within 7 days after it is made any other party affected by the order may draw it up.

(6) The order referred to in paragraph (5) must, when drawn up, be produced at the appropriate office, together with a copy thereof, and when passed by the proper officer the order, sealed with the seal of that office, shall be returned to the party producing it and the copy shall be lodged in that office.

(7) The appropriate office for the purpose of this rule is the Central Office, except where the cause or matter is proceeding in a district registry in which case it is that registry unless the Court otherwise orders:

Provided that in the case of an order made on a summons or other application transferred under Order 4, rule 6(4), to a district registry or to the Royal Courts of Justice, the appropriate office shall be that registry or the Central Office, as the case may be, unless the Court otherwise orders.

(8) Where by virtue of paragraph (7) a judgment or order in a cause or matter proceeding in a district registry is entered in the Central Office, or an order in a cause or matter proceeding in the Royal Courts of Justice is entered in a district registry, the proper officer shall send an office copy of the judgment or order to the registry in which the cause or matter is proceeding or to the Central Office, as the case may be.

Filing, entry, etc. of Chancery judgments and orders

6.—(1) Every judgment given in a cause or matter in the Chancery division and every order made and drawn up in such a cause or matter shall be filed by an officer of the appropriate office and the filing thereof entered by him in the book kept for the purpose.

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(2) Every such judgment or order given or made in each calendar year shall be numbered consecutively in the order in which it is filed and the date of filing shall be deemed to be the date of entry.

(3) The appropriate office for the purpose of this rule is the Chancery Registrars' Office, except where the cause or matter is proceeding in the district registry of Liverpool or the district registry of Manchester in which case it is that registry unless the Court otherwise orders; and if the cause or matter is proceeding in any other district registry the Court may direct the judgment or order to be drawn up and filed in that registry.

(4) The chief registrar of the Chancery Division (hereinafter referred to as "the chief registrar") shall cause indexes to be made of the judgments and orders filed under this rule in the Chancery Registrars' Office and the originals of the judgments and orders given or made in each calendar year and so filed to be bound up in volumes.

(5) Such indexes and volumes shall from time to time be sent to the Central Office and kept there.

Drawing up of Chancery judgments and orders

7.—(1) Every judgment given in a cause or matter in the Chancery Division and, subject to paragraph (4), every order made in such a cause or matter and required to be drawn up shall be drawn up by or under the direction of a Chancery registrar or, if the judgment or order is by virtue of rule 6(3) to be filed in a district registry, by or under the direction of the registrar of that registry, and shall be settled with the parties affected before being entered:

Provided that any such registrar may, in any case in which he thinks it expedient to do so, settle a judgment or order without notice to the parties affected.

(2) A judgment or order required to be drawn up as mentioned in paragraph (1) must be bespoken within 7 days after the judgment was given or order made and such documents as the registrar may require in order to enable him to draw up the judgment or order must be left at the Chancery Registrars' Office or the district registry, as the case may be, within that period.

If the party having the carriage of the judgment or order does not bespeak it within the period aforesaid, any other party to the cause or matter may do so with the leave of a Chancery registrar or the district registrar, as the case may be.

(3) If a judgment or order is not bespoken within the period specified in paragraph (2), or if such documents as are therein mentioned are not left within that period, the registrar may decline to draw up the judgment or order without the leave of the Court.

(4) Such classes of orders procedural in nature made by a Chancery master or district registrar, not being orders to be acted upon by the Accountant General, as the chief master may direct shall, unless in any particular case the master or district registrar making the order otherwise directs, be drawn up by the party on whose application the order was made and shall be passed by the master or district registrar before being entered.

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(5) Where a judgment or order in a cause or matter proceeding in a district registry is entered in the Chancery Registrars' Office, the chief registrar shall cause a copy of the judgment or order to be sent to the district registry to be there filed with the proceedings in the cause or matter.

Default in connection with drawing up Chancery judgments, etc.

8.—(1) If any party fails to attend any appointment made by a registrar for settling or passing any judgment or order given or made in a cause or matter in the Chancery Division or fails to produce any documents required by the registrar in order to enable him to draw up the judgment or order, the registrar may settle or pass the judgment or order in the absence of that party or may require the matter to be mentioned to the Court.

If a registrar proceeds under this paragraph he may dispense with the production of counsel's briefs and may act upon such evidence as he thinks fit of the appearance by counsel of the party who has failed as aforesaid.

(2) Unless the registrar by or under whose direction any such judgment or order is required to be drawn up otherwise directs, the judgment or order must be drawn up within 21 days after the date on which it was given or made and if it is not drawn up within that period and the registrar is of opinion that the delay was caused by the conduct of any party or his solicitor he may make a written report to the Court of the reasons for the delay; and the Court may direct that as against the party responsible for the delay the time for appealing against the judgment or order shall begin with the date on which the judgment or order ought to have been drawn up in accordance with this paragraph.

Duplicates of Chancery judgments and orders

9.—(1) Not less than one clear day after a judgment has been filed under rule 6 a duplicate thereof shall be supplied without fee out of the Chancery Registrars' Office to the party having the carriage of the judgment.

In this rule "judgment" includes order.

(2) The duplicate of a judgment may be a carbon copy of the original except that, if a Chancery registrar so directs, the duplicate of a particular judgment, and, if the chief registrar so directs, the duplicate of every judgment of such class as he directs, shall be a photographic copy or a copy produced by type lithography or other similar process.

(3) Before a duplicate of a judgment is issued it must be sealed and there must be noted thereon the number of the judgment, the date of entry and the amount of any stamp on the original.

(4) Where by any of these rules or any order of the Court the original judgment is required to be produced or served it shall be sufficient to produce or serve the duplicate.

(5) A further duplicate of a judgment may, on payment of the prescribed fee, be issued if the chief registrar is satisfied that the duplicate has been lost and that the applicant for a further duplicate is entitled to it.

(6) A judgment shall not be amended except on production of the duplicate thereof last issued, and if the judgment is amended the duplicate so issued shall be similarly amended, and the amendment sealed, under the direction of the chief registrar.

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(7) The foregoing provisions of this rule shall have effect in relation to a judgment filed under rule 6 in a district registry as if for the reference to the Chancery Registrars' Office there were substituted a reference to that registry and as if for the reference to a Chancery registrar in paragraph (2) and for the references to the chief registrar in paragraphs (5) and (6) there were substituted a reference to the registrar of that registry.

ORDER 43**ACCOUNTS AND INQUIRIES***Summary order for account*

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 entered an appearance or after the time limited for appearing, apply for an order under this rule.

(2) An application under this rule must be made by summons and, if the Court so directs, must be supported by affidavit or other evidence.

(3) On the hearing of the application, the Court may, unless satisfied by the defendant by affidavit or otherwise 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.

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

3.—(1) Where the Court orders an account to be taken 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.

(2) Without prejudice to the generality of paragraph (1), the Court may direct that in taking the 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.

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

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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

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

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.

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 the official solicitor 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 the official solicitor's costs.

Distribution of fund before all persons entitled are ascertained

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.

ORDER 44**PROCEEDINGS UNDER JUDGMENTS AND ORDERS: CHANCERY DIVISION***Application to proceedings under an order*

1. This Order shall, with the necessary modifications, apply in relation to proceedings under an order as it applies in relation to proceedings under a judgment and, accordingly, references therein to a judgment shall be construed as including references to an order.

Documents to be left at chambers: summons to proceed

2.—(1) Where in order to carry out any directions contained in a judgment given in a cause or matter in the Chancery Division it is necessary to proceed in chambers under the judgment, the party entitled to prosecute the judgment must, within 10 days after entry of the judgment, leave a

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copy of it at the judge's chambers with a certificate that it is a true copy of the judgment as entered.

(2) If the party entitled to prosecute the judgment fails to comply with paragraph (1), any other party to the cause or matter may leave a copy of the judgment, with the certificate referred to in that paragraph, at the judge's chambers, and, unless the Court otherwise directs, he shall thereupon become entitled to prosecute the judgment.

(3) Upon leaving a copy of the judgment at the judge's chambers the party entitled to prosecute the judgment must take out a summons to proceed under the judgment.

Service of notice of judgment on person not a party

3.—(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 which affects the rights or interests of persons not parties to the action or directs any account to be taken or inquiry made, 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 person interested in the estate or under the trust or in the property, as the case may be; and any person duly served with notice of a judgment in accordance with this rule shall, subject to paragraph (5), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.

(2) The Court may direct a notice of judgment to be served personally or in such manner as it may specify on the person required to be served, or if it appears to the Court that it is impracticable for any reason to serve such notice on any such person it may dispense with service of the notice on that person.

Before notice of a judgment is served the notice must be indorsed with a memorandum in Form No. 52 in Appendix A.

(3) The party prosecuting the judgment must leave at the judge's chambers the stamped copy of the memorandum of appearance of any person served with notice of the judgment or, as the case may be, a certificate that no appearance has been entered by him.

(4) Where the Court dispenses with service of notice of a judgment on any person, it may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly except where the judgment has been obtained by fraud or non-disclosure of material facts.

(5) A person served with notice of a judgment may, within one month after service of the notice on him, and without entering an appearance, apply to the Court to discharge, vary or add to the judgment.

(6) A person served with notice of a judgment may, after entering an appearance to the notice, attend the proceedings under the judgment.

(7) Where the action is proceeding in a district registry, the appropriate office for entering an appearance to the notice in that registry, but,

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subject to that, Order 12, rules 1 to 4, shall apply in relation to the entry of appearance to a notice of judgment as if the judgment were a writ issued out of the Central Office, and the person by whom the notice is served were the plaintiff and the person on whom it is served a defendant.

Directions by Court

4.—(1) The Court hearing the summons to proceed shall give directions with respect to the proceedings to be taken under the judgment and the conduct thereof, 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 parties required to attend all or any part of the proceedings, and
 - (d) 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.

Court may require parties to be represented by same solicitor

5. Where on the hearing of the summons to proceed or at any stage of the proceedings under the judgment it appears to the Court that the interests of the parties can be classified, it may require the parties constituting each or any class to be represented by the same solicitor, and where the parties constituting any class cannot agree on the solicitor to represent them, the Court may nominate a solicitor to represent the class in the proceedings.

Court may require parties to be represented by different solicitors

6. Where on the hearing of the summons to proceed or at any stage of the proceedings under the judgment it appears to the Court that two or more of the parties who are represented by the same solicitor ought to be separately represented, it may require them to be so represented and may adjourn the proceedings until they are.

Leave to attend proceedings, etc.

7. Any party to the proceedings under the judgment who has not been directed to attend may apply to the Court for leave to attend any part of the proceedings at the cost of the estate or other property to which the proceedings relate and to have the conduct of that part either in addition to or in substitution for any other party.

Judgment requiring deed to be settled by Court: directions

8. Where the judgment directs any deed or other instrument to be settled by the judge in chambers, or to be settled by him if the parties to the deed fail to agree it, the Court hearing the summons to proceed under the judgment shall direct—

- (a) that within such period as it may specify the party entitled to prepare a draft of the deed must serve a copy of the draft on every other party who will be a party to the deed, and
- (b) that within 8 days, or such other period, if any, as it may specify, after service on any such other party of a copy of the draft that party must serve on the party by whom the draft was prepared a written statement of his objections (if any) to the draft.

Order 44]*Application of rr. 10 to 17***9. Rules 10 to 17 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 unascertained 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 any account of debts or other liabilities to be taken or any inquiry to be made.

Advertisements for creditors and other claimants

10.—(1) On the hearing of the summons to proceed the Court may direct the issue of advertisements for creditors or other claimants, and in deciding whether to do so shall have regard to any advertisement previously issued by the personal representatives or trustees concerned.

(2) Every such advertisement shall be prepared by the party prosecuting the judgment, and—

- (a) in the case of an advertisement for creditors, shall be signed by that party's solicitor or, if he has no solicitor, by the master, and
- (b) in the case of an advertisement for other claimants, shall be submitted to the master and if approved by the master shall be signed by him.
- (3) The Court shall fix the time within which, and the person to whom, any claimant is to send his name and address and particulars of his claim, and that time and the name and address of that person shall be stated in the advertisement.

Failure to claim within specified time

11. A claimant who fails to send full particulars of his claim to the person named in any advertisement directed by the Court within the time therein specified shall not be entitled to prove his claim except with the leave of the Court, and in granting leave the Court may impose such terms as to costs and otherwise as it thinks just.

Examination, etc. of claims

12.—(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 and determine, so far as he is able, to which of such claims the estate is liable, and
- (b) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit verifying lists of—
- (i) claims sent in pursuance of any advertisement,
- (ii) claims which have been received by any of the personal representatives otherwise than in pursuance of an advertisement, and

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(iii) debts of the deceased at the time of his death in respect of which no claim has been received but which are or may still be due and which have come to the knowledge of any of the personal representatives.

(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 and determine, so far as he is able, which of them are valid claims, and

(b) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit verifying lists of—

(i) claims sent in pursuance of any advertisement, and

(ii) claims received by any of the personal representatives or trustees concerned, otherwise than in pursuance of an advertisement, or which have come to his knowledge.

(3) The affidavit required by paragraph (1) or (2) must, as the circumstances of the case require, specify, in relation to the claims of creditors, the claims and debts which in the belief of the deponent are liabilities of the estate of the deceased and ought to be allowed, in whole or in part, and, in relation to the claims of persons other than creditors, the claims which in the belief of the deponent are valid claims, with, in either case, the reasons for such belief.

(4) 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

13.—(1) The Court adjudicating on the claims—

(a) may allow any such claim after or without proof thereof ;

(b) may direct any such claim to be investigated in such manner as it thinks fit ;

(c) may require any claimant to attend and prove his claim or to furnish further particulars or evidence of it.

(2) Where the Court exercises the power conferred by paragraph 1(c) in relation to any claimant, such party as the Court may direct must serve on that claimant a notice requiring him—

(a) to file an affidavit in support of his claim within such time, not being less than 7 days after service of the notice, as may be specified in the notice and to attend before the Court for adjudication on the claim at such time as may be so specified, or

(b) to produce to the Court at such time as may be so specified such documents in support of his claim as may be so specified or described.

(3) Where a claimant fails to comply with a notice served on him under paragraph (2) his claim may be disallowed.

(4) A claimant who files an affidavit in compliance with a notice served on him under paragraph (2) must serve notice of the filing on the party by whom the first-mentioned notice was served and, unless the Court otherwise directs, that party must produce an office copy of the affidavit at the adjudication of the claim.

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(5) No person claiming to be a creditor need make an affidavit or attend in support of his claim, except for the purpose of producing any documents which he is required to produce, unless served with a notice under paragraph (2)(a).

(6) If the Court so directs, a person claiming to be a secured creditor must produce his security at the judge's chambers.

(7) In this rule references to a claim include references to part of a claim.

Adjournment of adjudication

14. Where on the day appointed for adjudication of claims any claim is not then disposed of, the adjudication shall be adjourned to a day appointed by the Court, and the Court may fix the time within which any evidence in support of or in opposition to the claim is to be filed.

Service of notice of judgment on certain claimants

15.—(1) Where a claimant other than a creditor has established his claim, then, unless he is a party to the cause or matter or has previously been served with notice of the judgment or the Court otherwise directs, the party having the conduct of the cause or matter must serve notice of the judgment on him.

(2) A person duly served with notice of a judgment under this rule shall, subject to rule 3(5), as applied by paragraph (4), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.

(3) Where the Court directs under paragraph (1) that notice of a judgment shall not be served on a person, it may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly except where the judgment has been obtained by fraud or non-disclosure of material facts.

(4) Rule 3(5), (6) and (7) shall apply in relation to a person served with notice of a judgment under this rule as they apply in relation to a person served with notice of a judgment under that rule.

Notice, etc. of claims allowed

16.—(1) Such party as the Court may direct must serve 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.

(2) Such party, if any, as the Court may direct must make out a list of the creditors' claims, and a list of any other claims, allowed and leave it at the judge's chambers.

Service of notices

17. For the purpose of Order 65, rule 5, in its application to the service of any notice under this Order on a claimant, the proper address

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of a claimant shall be the address stated in his claim, or, if a solicitor is acting for him in connection with the claim, the business address of that solicitor.

Interest on debts

18.—(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, at the rate of £4 per cent. per annum from the date of the judgment.

(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 at the rate of £4 per cent. per annum from the date of the judgment 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.

Interest on legacies

19. 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 £4 per cent. per annum beginning at the expiration of one year after the testator's death.

Determination by judge of question arising before master

20.—(1) Any party may, before the proceedings before the master under any judgment are concluded, apply to the judge for the determination of any question arising in the course of the proceedings.

Unless the Court otherwise directs, a fresh summons shall not be issued for the purpose of an application under this paragraph.

(2) It shall not be necessary to draw up the order or directions made or given by the judge on the determination of such question, except in the event of an appeal to the Court of Appeal, but the master shall refer to such order or directions in his certificate under rule 21.

Master's certificate

21.—(1) The result of proceedings before the master under a judgment shall be stated in the form of a certificate signed by the master.

(2) Such certificate shall refer to so much of the judgment, to such documents or parts thereof and to such of the evidence as will make it clear upon what the result stated in the certificate is founded but shall not, unless the circumstances of the case render it necessary, set out the judgment or any documents, evidence or reasons.

(3) Where the judgment requires the taking of any account, the certificate must refer to the account verified by filed affidavit and must specify by reference to the numbered items in the account which, if any, of such items have been disallowed or varied and the additions, if any, which have been made by way of surcharge or otherwise.

(4) Where by reason of the alterations made in the account verified by filed affidavit the Court has directed a fresh account incorporating the

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alterations to be made, the reference in paragraph (3) to the account so verified shall be construed as a reference to the fresh account.

Settling and filing of master's certificate

22.—(1) A draft of the master's certificate shall be drawn up in chambers unless the master directs it to be drawn up by a party to the proceedings and the draft shall be settled by the parties before the master on such day as the master may appoint.

(2) The certificate signed by the master and any account referred to therein shall be sent by the master to the Central Office and there filed.

Discharge or variation of master's certificate

23.—(1) Any party to proceedings under a judgment may, not later than—

(a) 8 clear days after the filing of the master's certificate therein, or

(b) if the certificate is to be acted upon by the Accountant General without further order or is a certificate passing a receiver's account, 2 clear days after the filing thereof,

apply by summons for an order of the judge in person discharging or varying the certificate.

A copy of any summons to discharge or vary a certificate which is to be acted upon by the Accountant General without further order must be served on the Accountant General as soon as practicable after the issue thereof.

(2) Subject to paragraph (3), any such certificate shall, on the expiration of the period specified in relation to it in paragraph (1), become binding on the parties to the proceedings unless discharged or varied by order under paragraph (1).

(3) The judge in person may, in special circumstances, by order discharge or vary the certificate of a master notwithstanding that the certificate has become binding on the parties.

An application for an order under this paragraph may be by motion or summons.

Further consideration of cause or matter in chambers

24.—(1) Where a master's certificate has been filed in any cause or matter in the Chancery Division, then, if—

(a) the cause or matter in which it was filed is a debenture holders' action or the judgment to be made in the cause or matter in which it was filed is for the distribution of an insolvent estate or for the distribution of the estate of a person who died intestate, or

(b) the order on which the certificate was made was made in chambers and no direction has been given that the cause or matter be adjourned for further consideration in court, or

(c) an order has been made directing that the cause or matter be adjourned for further consideration in chambers,

a summons for the further consideration of the cause or matter may be issued—

(i) after the expiration of 8 clear days, and before the expiration of 14 days, from the filing of the master's certificate, by the plaintiff or party having the conduct of the proceedings, or

(ii) after the expiration of the said 14 days, by any party.

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(2) There shall be at least 6 days between the service of a summons under this rule and the day named therein for the further consideration of the cause or matter.

Further consideration of cause or matter in court

25.—(1) Where a master's certificate has been filed in any cause or matter in the Chancery Division, then, if—

(a) the judgment on which the certificate was made was given in court and the cause or matter is not such as is mentioned in rule 24(1)(a) and no direction has been given that it be adjourned for further consideration in chambers, or

(b) an order has been made directing that the cause or matter be adjourned for further consideration in court,

the cause or matter may be set down by the registrar in the cause book for further consideration—

(i) after the expiration of 8 clear days, and before the expiration of 14 days, from the filing of the master's certificate, on the written request of the plaintiff or party having the conduct of the proceedings, or

(ii) after the expiration of the said 14 days, on the written request of any party,

upon the production, in either case, of the judgment adjourning the cause or matter for further consideration, or an office copy thereof, and an office copy of the master's certificate or a memorandum of the date of filing of the certificate, indorsed on request by the proper officer on the judgment or office copy thereof.

When a cause or matter is so set down, a copy of the writ or other originating process by which the cause or matter was begun, a copy of the pleadings (if any) and two copies of minutes of the judgment sought must also be left with the proper officer.

(2) A cause or matter so set down shall not be put into the list for further consideration until after the expiration of 10 days from the day on which it was so set down, and shall be marked in the cause book accordingly, and notice of the setting down and of the day marked in the cause book as the day before which the cause or matter is not to be put in the list for further consideration must be given to the other parties to the cause or matter at least 6 days before that day.

ENFORCEMENT OF JUDGMENTS AND ORDERS**ORDER 45****ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL***Enforcement of judgment, etc., for payment of money*

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 fieri facias;

(b) garnishee proceedings;

(c) a charging order;

(d) the appointment of a receiver;

(e) in a case in which rule 5 applies, an order of committal;

(f) in such a case, writ of sequestration.

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(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 5 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 Acts 1869 and 1878(a) 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 section 139 of the County Courts Act 1959(b) to have the judgment or order enforced in a county 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.

Judgment, etc. for payment of money to person resident outside the scheduled territories

2.—(1) Where any person is directed by any judgment, order or award to pay any money to or for the credit of a person who is resident outside the scheduled territories, he must, unless the Treasury have given permission for the payment under the Exchange Control Act 1947(c) unconditionally or upon conditions which have been complied with, pay the money into court.

(2) Payment into court under paragraph (1) shall, to the extent of the amount paid in, be a good discharge to the person making the payment, and no steps may be taken to enforce the judgment, order or award to the extent of that amount.

(3) Notice of a payment into court under this rule must be given to the plaintiff, his solicitor or agent and to any other person required by the judgment, order or award to be given notice of such payment.

Enforcement of judgment for possession of land

3.—(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 5 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—

- (a) 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

(a) 32 & 33 Vict. c. 62; 41 & 42 Vict. c. 54. (b) 7 & 8 Eliz. 2. c. 22.
(c) 10 & 11 Geo. 6. c. 14.

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Court sufficient to enable him to apply to the Court for any relief to which he may be entitled, and

- (b) if the operation of the judgment or order is suspended by subsection (2) of section 16 of the Landlord and Tenant Act 1954(a), that the applicant has not received notice in writing from the tenant that he desires that the provisions of paragraphs (a) and (b) of that subsection shall have effect.

(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

4.—(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 5 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) with the leave of the Court, writ of specific delivery;
 (c) in a case in which rule 5 applies, writ of sequestration.

(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

5.—(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 5, 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;

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- (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 Acts 1869 and 1878, 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 6 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 6.

(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

6.—(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 5, 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 2(1), or by reason of Order 42, rule 2(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 r. 5

7.—(1) In this rule references to an order shall be construed as including references to a judgment.

(2) Subject to Order 24, rule 16(3), Order 26, rule 6(3), and paragraph (6) of this rule, an order shall not be enforced under rule 5 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 5(1)(ii) or (iii) unless—

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- (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 5, extending or abridging the time for doing the act and, where the first-mentioned order was made under rule 5(3) or 6 of this Order, a copy of the previous order requiring the act to be done.
- (6) 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

8. 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 under section 47 of the Act and 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

9.—(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

10. 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

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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.

11. 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

12.—(1) A writ of fieri facias must be in such of the Forms Nos. 53 to 63 in Appendix A as is appropriate in the particular case.

(2) A writ of delivery must be in Form No. 64 or 65 in Appendix A, whichever is appropriate.

(3) A writ of possession must be in Form No. 66 in Appendix A.

(4) A writ of sequestration must be in Form No. 67 in Appendix A.

Enforcement of judgments and orders for recovery of money, etc.

13.—(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 3 of this Order, with the omission of paragraph 1(b) and (c) thereof, and Order 47, rule 3(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 4 of this Order, with the omission of paragraphs 1(b) and (c) and (2)(c) thereof, and Order 47, rule 3(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 EXECUTION: GENERAL***Definition*

1. In this Order, unless the context otherwise requires, "writ of execution" includes a writ of fieri 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

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;

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- (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 section 2 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(a) or any other 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

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

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 had 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

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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

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 6, but, except in such a case, the application shall be heard in open court.

Issue of writ of execution

6.—(1) Issue of a writ of execution takes place on its being sealed by an officer of the appropriate office.

(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 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,

(iii) where rule 7(2) applies, the Treasury's written permission therein referred to; 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.

(6) In this rule "the appropriate office" means—

(a) where the cause or matter in which execution is to issue is proceeding in a district registry, that registry;

(b) where that cause or matter is a probate cause or matter, the Principal Probate Registry;

(c) where that cause or matter is an Admiralty cause or matter which is not proceeding in a district registry, the Admiralty Registry;

(d) in any other case, the Central Office.

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Writ and praecipe where Exchange Control Act 1947 applies

7.—(1) Where any party entitled to enforce a judgment or order for the payment of money is resident outside the scheduled territories, then, unless the Treasury have given permission under the Exchange Control Act 1947(a) for payment of the money to him unconditionally or on conditions which have been complied with, any writ of execution to enforce that judgment or order must direct the sheriff to pay the proceeds of execution into court.

Notice of a payment into court in compliance with such a direction must be given by the sheriff to the party by whom the writ of execution was issued or to his solicitor or agent.

(2) Where the Treasury have given such permission unconditionally or on conditions which have been complied with, the praecipe for the issue of a writ of execution to enforce the judgment or order in question must be indorsed with a certificate of that fact.

Duration and renewal of writ of execution

8.—(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 one 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.

(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 office out of which it was issued showing the date on which the order extending its validity was made or the applicant for the order must serve a notice (in Form No. 71 in Appendix A), 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

9.—(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.

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ORDER 47

WRITS OF FIERI FACIAS

Power to stay execution by writ of fieri facias

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 or 3, 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 enter an appearance in the action.

(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.

Two or more writs of fieri facias

2.—(1) A party entitled to enforce a judgment or order by writ of fieri facias may issue two or more such writs, directed to the sheriffs of different counties, at either the same time or different times, to enforce that judgment or order, but no more shall be levied under all those writs together than is authorised to be levied under one of them.

(2) Where a party issues two or more writs of fieri facias directed to the sheriffs of different counties to enforce the same judgment or order he must inform each sheriff of the issue of the other writ or writs.

Separate writs to enforce payment of costs, etc.

3.—(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 47***No expenses of execution in certain cases***

4. Where a judgment or order is for less than £40 and does not entitle the plaintiff to costs against the person against whom a writ of fieri facias to enforce the judgment or order is issued, the writ may not authorise the sheriff to whom it is directed to levy any fees, poundage or other costs of execution.

Writ of fieri facias de bonis ecclesiasticis, etc.

5.—(1) Where it appears upon the return of any writ of fieri facias that the person against whom the writ was issued has no goods or chattels in the county of the sheriff to whom the writ was directed but that he is the incumbent of a benefice named in the return, then, after the writ and return have been filed, the party by whom the writ of fieri facias was issued may issue a writ of fieri facias de bonis ecclesiasticis or a writ of sequestrari de bonis ecclesiasticis directed to the bishop of the diocese within which that benefice is.

(2) Any such writ must be delivered to the bishop to be executed by him.

(3) Only such fees for the execution of any such writ shall be taken by or allowed to the bishop or any diocesan officer as are for the time being authorised by or under any enactment, including any measure of the Church Assembly.

Order for sale otherwise than by auction

6.—(1) An order of the Court under section 145 of the Bankruptcy Act 1883(a) that a sale under an execution may be made otherwise than by public auction may be made on the application of the person at whose instance the writ of execution under which the sale is to be made was issued or the person against whom that writ was issued (in this rule referred to as "the judgment debtor") or the sheriff to whom it was issued.

(2) Such an application must be made by summons and the summons must contain a short statement of the grounds of the application.

(3) Where the applicant for an order under this rule is not the sheriff, the sheriff must, on the demand of the applicant, send to the applicant a list containing the name and address of every person at whose instance any other writ of execution against the goods of the judgment debtor was issued and delivered to the sheriff (in this rule referred to as "the sheriff's list"); and where the sheriff is the applicant, he must prepare such a list.

(4) Not less than 4 clear days before the return day the applicant must serve the summons on each of the other persons by whom the application might have been made and on every person named in the sheriff's list.

(5) Service of the summons on a person named in the sheriff's list is notice to him for the purpose of section 12 of the Bankruptcy Act 1890(b) (which provides that the Court shall not consider an application for leave to sell privately goods taken in execution until notice directed by rules of court has been given to any other execution creditor).

(6) The applicant must produce the sheriff's list to the Court on the hearing of the application.

(7) Every person on whom the summons was served may attend and be heard on the hearing of the application.

Order 48]**ORDER 48****EXAMINATION OF JUDGMENT DEBTOR, ETC.***Order for examination of judgment debtor*

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 such master, registrar or nominated officer 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.

(3) Any difficulty arising in the course of an examination under this rule before a nominated officer, including any dispute with respect to the obligation of the person being examined to answer any question put to him, may be referred to the senior master or practice master and he may determine it or give such directions for determining it as he thinks fit.

(4) In this rule “nominated officer” means such of the first class clerks in the Central Office as the senior master may nominate for the purposes of this rule.

Examination of party liable to satisfy other judgment

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

3. The officer 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 officer shall sign the statement.

ORDER 49**GARNISHEE PROCEEDINGS***Attachment of debt due to judgment debtor*

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

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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.

(3) Among the conditions mentioned in section 38 (1) of the Administration of Justice Act 1956(a) (which enables any sum standing to the credit of a person in a deposit account in a bank to be attached notwithstanding that certain conditions applicable to the account have not been satisfied) there shall be included any condition that a receipt for money deposited in the account must be produced before any money is withdrawn.

Application for order

2. An application for an order under rule 1 must be made *ex parte* supported by an affidavit—

- (a) identifying the judgment or order to be enforced and stating the amount remaining unpaid under it at the time of the application, and
- (b) 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.

Service and effect of order to show cause

3.—(1) An order under rule 1 to show cause must, at least 7 days before the time appointed thereby for the further consideration of the matter, be served—

- (a) on the garnishee personally, and
- (b) unless the Court otherwise directs, on the judgment debtor.

(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

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, subject to rule 7, 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

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

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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

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.

Judgment creditor resident outside scheduled territories

7.—(1) The Court shall not make an order under rule 1 requiring the garnishee to pay any sum to or for the credit of any judgment creditor resident outside the scheduled territories unless that creditor produces a certificate that the Treasury have given permission under the Exchange Control Act 1947(a) for the payment unconditionally or on conditions which have been complied with.

(2) If it appears to the Court that payment by the garnishee to the judgment creditor will contravene any provision of the said Act of 1947, it may order the garnishee to pay into court the amount due to the judgment creditor and the costs of the garnishee proceedings after deduction of his own costs, if the Court so orders.

Discharge of garnishee

8. 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

9.—(1) Where money is standing to the credit of the judgment debtor in court, the judgment creditor shall not be entitled to take garnishee proceedings 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) On issuing a summons under this rule the applicant must produce the summons at the office of the Accountant General and leave a copy at that office, and the money to which the application relates shall not be paid out of court until after the determination of the application.

If the application is dismissed, the applicant must give notice of that fact to the Accountant General.

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(3) 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.

(4) Subject to Order 75, rule 24, the Court hearing an application under this rule may make such order with respect to the money in court as it thinks just.

Costs

10. The costs of any application for an order under rule 1 or 9, 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.***

1.—(1) The power to make an order under section 35 of the Administration of Justice Act 1956(a) imposing a charge on land or interest in land of a judgment debtor shall be exercisable by the Court.

(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 under the said section 35 may be made *ex parte*.

(4) There may be joined with an application for an order under the said section 35 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 7 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.

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(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.

Order imposing charge on securities

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 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 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 general Act of Parliament, including any such stock standing in the name of the Accountant General, and

(b) any dividend of or interest payable on such stock.

(4) In this Order “government stock” means any stock issued by Her Majesty’s government in the United Kingdom or any funds of or annuity granted by that government, and “stock” includes shares, debentures and debenture stock.

Application for order under r. 2

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

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 Bank of England,

(b) where the order relates to other stock, on the company concerned,

(c) where the order relates to stock standing in the name of the Accountant General, on the Accountant General.

[Order 50*Effect of order to show cause*

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 Bank of England 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 Bank of England or a company the Bank or company permits any transfer or makes any payment prohibited by paragraph (2), it 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

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

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

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 in 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.

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(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 Accountant General.

(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.

Masters, etc. may grant injunction ancillary to charging order

9. Subject, in the Chancery Division, to any directions given by the judges of that Division under Order 32, rule 14, a master and a registrar of the Probate, Divorce and Admiralty Division shall have power to grant an injunction if, and only so far as, the injunction is ancillary or incidental to a charging order under rule 1, 2 or 8; and an application for an injunction ancillary or incidental to such an order may be joined with the application for such order.

Funds in court: stop order

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 Accountant General 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

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 Central Office or in a district 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. 80 in Appendix A, signed by the deponent to the affidavit, and annexed to it, addressed to the Bank of England or, as the case may be, the company concerned,

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and must serve an office copy of the affidavit, and a copy of the notice sealed with the seal of the Central Office or district registry, on the Bank 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(1) 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 for the purpose of rule 12 by serving on the Bank of England, or, as the case may be, the company concerned, a 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

12.—(1) Where a notice under rule 11 has been served on the Bank of England or a company, then, so long as the notice is in force, the Bank or company shall not register a transfer of any stock or make a payment of any dividend or interest, being a transfer or payment restrained by the notice, without serving on the person on whose behalf the notice was filed at his address for service a notice informing him of the request for such transfer or payment.

(2) Where the Bank of England or a company receive a request for such a transfer or payment as is mentioned in paragraph (1) made by or on behalf of the holder of the securities to which the notice under rule 11 relates, the Bank or company shall not by reason only of that notice refuse to register the transfer or make the payment for longer than 8 days after receipt of the request except under the authority of an order of the Court.

Amendment of stop notice

13. If any securities are incorrectly described in a notice filed under rule 11 the person on whose behalf the notice was filed may file in the office or registry in which the notice was filed an amended notice and serve on the Bank of England or, as the case may be, the company concerned a copy of that notice sealed with the seal of that office or registry, and where he does so the notice under rule 11 shall be deemed to have been served on that Bank or company on the day on which the copy of the amended notice was served on it.

Withdrawal, etc. of stop notice

14.—(1) The person on whose behalf a notice under rule 11 was filed may withdraw it by serving a request for its withdrawal on the Bank of England or, as the case may be, 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 notice under rule 11 relates, may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made in the Chancery Division by originating summons, and the summons must be served on the person on whose behalf the notice under rule 11 was filed.

No appearance need be entered to the summons.

Order 50]*Order prohibiting transfer, etc. of securities*

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 registered under any general Act of Parliament may by order prohibit the Bank of England or, as the case may be, that company from registering any transfer of such part of that stock 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 in the Chancery Division.

No appearance need be entered to an originating summons under this rule.

(3) The Court, on the application of any person claiming to be entitled to an interest in any stock to which an order under this rule relates, may vary or discharge the order on such terms (if any) as to costs as it thinks fit.

ORDER 51**RECEIVERS: EQUITABLE EXECUTION***Appointment of receiver by way of equitable execution*

1.—(1) Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.

(2) Where on an application for the appointment of a receiver by way of equitable execution it appears to the Court that the judgment creditor is resident outside the scheduled territories, or is acting by order or on behalf of a person so resident, then, unless the permission of the Treasury required by the Exchange Control Act 1947(a) has been given unconditionally or on conditions which have been complied with, any order for the appointment of a receiver shall direct that the receiver shall pay into court to the credit of the cause or matter in which he is appointed any balance due from him after deduction of his proper remuneration.

Masters and registrars may appoint receiver, etc.

2. Subject, in the Chancery Division, to any directions given by the judges of that Division under Order 32, rule 14, a master and a registrar of the Probate, Divorce and Admiralty Division shall have power to make an order for the appointment of a receiver by way of equitable execution and to grant an injunction if, and only so far as, the injunction is ancillary or incidental to such an order.

Application of rules as to appointment of receiver, etc.

3. An application for the appointment of a receiver by way of equitable execution may be made in accordance with Order 30, rule 1, and rules 2 to 6 of that Order shall apply in relation to a receiver appointed by way of equitable execution as they apply in relation to a receiver appointed for any other purpose.

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ORDER 52

COMMITTAL

Committal for contempt of court

1.—(1) The power of the High Court or Court of Appeal to punish for contempt of court may be exercised by an order of committal.

(2) Where contempt of court—

(a) is committed in connection with—

(i) any proceedings before a Divisional Court of the Queen's Bench Division, or

(ii) criminal proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court, or

(iii) proceedings in an inferior court, or

(b) is committed otherwise than in connection with any proceedings,

then, subject to paragraph (4), an order of committal may be made only by a Divisional Court of the Queen's Bench Division.

This paragraph shall not apply in relation to contempt of the Court of Appeal.

(3) Where contempt of court is committed in connection with any proceedings in the High Court, then, subject to paragraph (2), an order of committal may be made by a single judge of the Queen's Bench Division except where the proceedings were assigned or subsequently transferred to some other Division, in which case the order may be made only by a single judge of that other Division.

The reference in this paragraph to a single judge of the Queen's Bench Division shall, in relation to proceedings in any court the judge or judges of which are, when exercising the jurisdiction of that court, deemed by virtue of any enactment to constitute a court of the High Court, be construed as a reference to a judge of that court.

(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 of the Queen's Bench Division.

Application to Divisional Court

2.—(1) No application to a Divisional Court 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 Divisional Court, except in vacation when it may be made 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 Crown Office and must at the same time lodge in that Office copies of the statement and affidavit.

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(4) Where an application for leave under this rule is refused by a judge in chambers, the applicant may make a fresh application for such leave to a Divisional Court.

(5) An application made to a Divisional Court by virtue of paragraph (4) must be made within 8 days after the judge's refusal to give leave or, if a Divisional Court does not sit within that period, on the first day on which it sits thereafter.

Application for order after leave to apply granted

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 to a Divisional Court and, unless the Court or judge 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.

Application to Court other than Divisional Court

4.—(1) Where an application for an order of committal may be made to a Court other than a Divisional Court, the application must be made by motion and be supported by an affidavit.

(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 sought to be committed.

(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.

Saving for power to commit without application for purpose

5. 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

6.—(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 within the meaning of the Mental Health Act 1959(a);

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(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 or, as the case may be, in the notice of motion under rule 4.

The foregoing provision is without prejudice to the powers of the Court under Order 20, rule 8.

(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

7.—(1) The Court by whom an order of committal is made 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

8.—(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

9. 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.

Order 53]**DIVISIONAL COURTS, COURT OF APPEAL, ETC.****ORDER 53****APPLICATIONS FOR ORDER OF MANDAMUS, PROHIBITION, CERTIORARI, ETC.***No application for order of mandamus, etc. without leave*

1.—(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.

(2) An application for such leave must be made *ex parte* to a Divisional Court of the Queen's Bench Division, except in vacation when it may be made to a judge in chambers, and must be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by affidavits, 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 Crown Office and must at the same time lodge in that Office copies of the statement and affidavits.

(4) The Court or judge may, in granting leave, impose such terms as to costs and as to giving security as it or he thinks fit.

(5) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the Court or judge so directs, operate as a stay of the proceedings in question until the determination of the application or until the Court or judge otherwise orders.

(6) Where an application for leave under this rule is refused by a judge in chambers, the applicant may make a fresh application for such leave to a Divisional Court.

(7) An application made to a Divisional Court by virtue of paragraph (6) must be made within 8 days after the judge's refusal to give leave or, if a Divisional Court does not sit within that period, on the first day on which it sits thereafter.

Time for applying for leave limited in certain cases

2.—(1) Leave shall not be granted to apply for an order of mandamus requiring quarter sessions to enter and hear an appeal unless the application for leave is made within 2 months after the first day of the sessions at which the refusal to hear the appeal took place, or the delay is accounted for to the satisfaction of the Court or judge to whom the application for leave is made.

(2) Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made within 6 months after the date of the proceeding or such other period (if any) as may be prescribed by any enactment or, except where a period is so prescribed, the delay is accounted for to the satisfaction of the Court or judge to whom the application for leave is made; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the Court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

Mode of applying for order of mandamus, etc.

3.—(1) When leave has been granted to apply for an order of mandamus, prohibition or certiorari, the application for such order must be made by originating motion to a Divisional Court of the Queen's Bench Division, except in vacation when it may be made by originating summons to a

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judge in chambers, and, unless the Court or judge granting leave has otherwise directed, there must be at least 8 clear days between the service of the notice of motion or summons and the day named therein for the hearing.

(2) The motion must be entered for hearing within 14 days after such leave was granted.

(3) The notice 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 is either to compel the court or an officer thereof to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons must be served on the clerk or registrar of the court, the other parties to the proceedings and, where any objection to the conduct of the judge is to be made, on the judge.

(4) An affidavit giving the names and addresses of, and the place and date of service on, all persons who have been served with the notice or summons must be filed before the motion or summons is entered for hearing, and, if any person who ought to be served under paragraph (3) has not been served, the affidavit must state that fact and the reason why service has not been effected, and the affidavit shall be before the Court or judge on the hearing of the motion or summons.

(5) If on the hearing of the motion or summons the Court or judge is of opinion that any person who ought to have been served with the notice or summons has not been served, whether or not he is a person who ought to have been served under paragraph (3), the Court or judge may adjourn the hearing on such terms (if any) as it or he may direct in order that the notice or summons may be served on that person.

Statements and affidavits

4.—(1) Copies of the statement in support of the application for leave under rule 1 must be served with the notice of motion or summons under rule 3, and copies of the affidavits in support of such application must be supplied on demand and on payment of the proper charges; and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing of the motion or summons except the grounds and relief set out in the said statement.

(2) The Court or judge may on the hearing of the motion or summons allow the said statement to be amended, and may allow further affidavits to be used if they deal with new matter arising out of any affidavit of any other party to the application, and where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he must give notice of his intention and of any proposed amendment of his statement to every other party, and must supply on demand and on payment of the proper charges copies of such further affidavits.

(3) Every party to the application must supply to any other party on demand and on payment of the proper charges copies of the affidavits which he proposes to use at the hearing.

Right to be heard in opposition

5. On the hearing of any motion or summons under rule 3, any person who desires to be heard in opposition to the motion or summons and appears to the Court or judge to be a proper person to be heard shall be heard notwithstanding that he has not been served with the notice or summons.

Order 53]*Application for order of certiorari to quash proceedings*

6.—(1) In the case of an application for an order of certiorari to remove any proceedings for the purpose of their being quashed, 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 a copy thereof verified by affidavit in the Crown Office, or accounts for his failure to do so to the satisfaction of the Court or judge hearing the motion or summons.

(2) Where an order of certiorari is made in any such case the order shall direct that the proceedings shall be quashed forthwith on their removal into the Queen's Bench Division.

Modification in case of certiorari or prohibition to county court, etc.

7. The provisions of this Order relating to certiorari and prohibition shall, in the case of certiorari to remove proceedings from a county court or from any other inferior court of civil jurisdiction for trial in the High Court or in the case of prohibition to any such court, have effect subject to the following modifications:—

- (a) the application for leave may be made to a judge in chambers ;
- (b) the judge hearing the application for leave may in special circumstances make in the first instance an order of certiorari or prohibition, as the case may be ;
- (c) if leave is granted, the application for the order of certiorari or prohibition may be made by originating summons to a judge in chambers.

Saving for person acting in obedience to mandamus

8. No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

Application to restrain person from acting in an office in which he is not entitled to act

9.—(1) The procedure in applications under section 9 of the Administration of Justice (Miscellaneous Provisions) Act 1938(a) shall be the same as in applications for an order of mandamus and rules 1, 3, 4 and 5 shall apply so far as applicable to such applications.

(2) An application under the said section 9 shall not be granted if the respondent has acted in the office in question for the last six years before proceedings under that section are begun, but—

- (a) nothing in this rule shall restrict the power of the Divisional Court or judge to refuse such an application on the ground of undue delay ;
- (b) the applicant may, in answer to a plea under this rule, set up any forfeiture, surrender or avoidance of the office by the respondent within the said six years.

Proceedings in respect of qualification of member of local authority

10.—(1) An application under section 84 of the Local Government Act 1933(b) must be made by originating motion to a Divisional Court of the Queen's Bench Division, except in vacation when it may be made by originating summons to a judge in chambers, and, unless that Court or the judge otherwise directs, there must be at least 8 clear days between the service of the notice of motion or summons and the day named therein for the hearing.

(a) 1 & 2 Geo. 6. c. 63.

(b) 23 & 24 Geo. 5. c. 51.

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(2) Without prejudice to Order 7, rule 3, and Order 8, rule 3, the notice of motion or originating summons must set out the name and description of the applicant, the relief sought and the grounds on which it is sought, and must be supported by affidavits verifying the facts relied on.

(3) Copies of the supporting affidavits must be lodged in the Crown Office before the motion is entered for hearing or the summons issued and must be supplied on demand and on payment of the proper charges.

(4) The provisions of rules 3, 4 and 5 as to the persons on whom the notice or summons is to be served and as to the proceedings at the hearing shall apply, so far as applicable, to applications under the said section 84 as they apply to applications for an order of mandamus.

Consolidation of applications

11. Where several applications under the said section 9 or the said section 84 are pending against several persons in respect of the same office, and all on the same grounds, the applications may be consolidated by order of the Divisional Court or judge.

Order made by judge in chambers may be set aside, etc.

12.—(1) Subject to section 31(3) of the Act (which provides for appeals to the Court of Appeal in matters of practice and procedure), no appeal shall lie from an order made by a judge in chambers under this Order.

(2) An application may be made to a Divisional Court of the Queen's Bench Division to set aside or discharge any such order and to substitute such order as ought to have been made:

Provided that in the case of an order made with the consent of the parties or as to costs only which by law are left to the discretion of the judge, no such application shall be made without the leave of the judge making the order.

(3) An application to a Divisional Court under this rule must be made by motion within 8 days after the date on which a copy of the judge's order was filed in the Crown Office or, if a Divisional Court does not sit within that period, on the first day on which it sits thereafter.

ORDER 54**APPLICATIONS FOR WRIT OF HABEAS CORPUS*****Application for writ of habeas corpus ad subjiciendum***

1.—(1) An application for a writ of habeas corpus ad subjiciendum must be made to a Divisional Court of the Queen's Bench Division or, if no such Court is sitting, to a single judge in court, except that—

(a) in vacation or at any time when no judge is sitting in court, it may be made to a judge otherwise than in court, and

(b) in cases where the application is made on behalf of an infant, it 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.

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(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

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 to a Divisional Court or to a judge in court ;
- (b) where the application is made to a judge in court, adjourn the application so that notice thereof may be given, or direct that an application be made by originating motion to a Divisional Court ;
- (c) where the application is made to a Divisional 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

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

4.—(1) 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 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.

(2) Where such an application in a criminal cause or matter is heard by a judge and the judge does not order the release of the person restrained, he shall direct that the application be made by originating motion to a Divisional Court of the Queen's Bench Division.

Directions as to return to writ

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

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.

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(3) If the writ is directed to more than one person, the writ must be served in 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. 90 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

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

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 Crown, and then one counsel for the person restrained in reply.

Bringing up prisoner to give evidence, etc.

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 criminal, before any court, tribunal or justice must be made on affidavit to a judge in chambers.

Form of writ

10. A writ of habeas corpus must be in Form No. 89, 91 or 92 in Appendix A, whichever is appropriate.

ORDER 55**APPEALS TO HIGH COURT FROM COURT, TRIBUNAL OR PERSON: GENERAL*****Application***

1.—(1) Subject to paragraphs (2), (3) and (4), 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) an appeal by case stated, or

(b) an appeal under the Matrimonial Proceedings (Magistrates' Courts) Act 1960(a).

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(3) The following rules of this Order shall not apply to an appeal from a county court to a Divisional Court of the High Court under section 108(2) of the Bankruptcy Act 1914(a) but, subject to the Bankruptcy Rules 1952 as amended(b), Order 59 shall, with the necessary modifications, apply to such an appeal as it applies to an appeal from a county court to the Court of Appeal.

(4) The following rules of this Order shall, in relation to an appeal to which this Order applies, have effect subject to any provision made in relation to that appeal by any other provision of these rules or by or under any enactment.

(5) 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.

Court to hear appeal

2. An appeal to which this Order applies shall be heard and determined by a Divisional Court of the Queen's Bench Division except where by some other provision of these rules or by or under any enactment it is required to be heard and determined by a Divisional Court of another Division or by a single judge.

Bringing of appeal

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.

Service of notice of motion and entry of appeal

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 Crown, government department 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.

(a) 4 & 5 Geo. 5. c. 59.

(b) S.I. 1952/2113, 1956/117, 1197, 1961/317, 1962/295, 1963/2067 (1952 I, p. 213; 1956 I, pp. 369, 370; 1961 I, p. 510; 1962 I, p. 283; 1963 III, p. 4379).

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(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 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

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.

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 office in which the appeal is entered.

(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

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

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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 appeal shall not succeed 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 appear and be heard

8. Where an appeal to which this Order applies is against an order, determination or other decision of a Minister of the Crown 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, ETC. TO HIGH COURT BY CASE STATED: GENERAL***Appeals from quarter sessions by case stated*

1.—(1) All appeals from a court of quarter sessions by case stated shall be heard and determined by a Divisional Court of the Queen's Bench Division.

(2) Section 20(2) of the Criminal Justice Act 1925(a) (which provides that before a case is stated by a court of quarter sessions under that section the applicant for the case shall enter into a recognizance conditioned to prosecute the appeal and shall pay the fees therein mentioned) shall apply in relation to a case stated by such a court otherwise than under that section as it applies in relation to a case stated thereunder:

Provided that if the parties consent in writing to dispense with the recognizance required by the foregoing provision, that provision shall not apply.

(3) An appeal from a court of quarter sessions by case stated shall not be entered for hearing unless and until the case and a copy of the judgment, order or decision in respect of which the case has been stated and, if that judgment, order or decision was given or made on an appeal to quarter sessions, a copy of the judgment, order or decision appealed from, have been lodged in the Crown Office.

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(4) No such appeal shall be entered after the expiration of 6 months from the date of the judgment, order or decision in respect of which the case was stated unless the delay is accounted for to the satisfaction of the Divisional Court.

Notice of intention to apply for an extension of time for entry of the appeal must be served on the respondent at least 2 clear days before the day named in the notice for the hearing of the application.

(5) Where any such appeal has not been entered by reason of a default in complying with the provisions of this rule, the court of quarter sessions may proceed as if no case had been stated.

Form of case

2. Where the judgment, order or decision of a court of quarter sessions in respect of which a case is to be stated states all the relevant facts found by that court and the questions of law to be determined by the High Court, a copy of the judgment, order or decision signed by the person who presided over the court of quarter sessions must be annexed to the case, and the facts so found and the questions of law to be determined shall be sufficiently stated in that case by referring to the statement thereof in the judgment, order or decision.

Application for direction to clerk of the peace

3. Where in the case of an appeal from a court of quarter sessions by case stated the case has been stated by the court, the appellant may apply to the Court for a direction to be given to the clerk of the peace to send to the Crown Office the case and a copy of any judgment, order or decision required by rule 1 to be lodged, and on any such direction being given the clerk of the peace shall forthwith comply with it.

Notice of entry of appeal

4. Within 4 days after an appeal from a court of quarter sessions by case stated is entered for hearing, the appellant must serve notice of the entry of the appeal on the respondent.

Appeal from magistrates' court by case stated

5.—(1) Except as provided by paragraphs (2) and (3), all appeals from a magistrates' court by case stated shall be heard and determined by a Divisional Court of the Queen's Bench Division.

(2) An appeal by case stated against any order or determination of a magistrates' court with regard to the enforcement of—

- (a) an order for the payment of money made by virtue of the Matrimonial Proceedings (Magistrates' Courts) Act 1960(a), or
- (b) an order for the payment of money to a wife for her maintenance, or for her maintenance and that of any child or children of hers, registered in a court in England or Wales under Part II of the Maintenance Orders Act 1950(b) or the Maintenance Orders (Facilities for Enforcement) Act 1920(c) or confirmed by such a court under the last-mentioned Act, or
- (c) an order for alimony, maintenance or other payments made under any provision of sections 19 to 27 of the Matrimonial Causes Act 1950(d)

(a) 8 & 9 Eliz. 2. c. 48. (b) 14 Geo. 6. c. 37. (c) 10 & 11 Geo. 5. c. 33. (d) 14 Geo. 6. c. 25.

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registered in a magistrates' court under the Maintenance Orders Act 1958(a),

shall be heard and determined by a Divisional Court of the Probate, Divorce and Admiralty Division.

(3) If, before the hearing of any such appeal as is mentioned in paragraph (2), there is entered for hearing an appeal against an order or determination of a magistrates' court with regard to the enforcement of an order made under section 3 (2) of the Guardianship of Infants Act 1925(b), and the parties to that appeal are the same as the parties to the first-mentioned appeal, both appeals shall be heard and determined by a Divisional Court of the Probate, Divorce and Admiralty Division.

Case stated by magistrates' court: lodging case, etc.

6.—(1) Where a case has been stated by a magistrates' court the appellant must—

(a) within 10 days after receiving the case, lodge it in the Crown Office or, if the appeal falls to be heard by a Divisional Court of the Probate, Divorce and Admiralty Division, the Principal Probate 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 having jurisdiction to determine the appeal 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.

7.—(1) The jurisdiction of the High Court under any enactment to hear and determine a case stated by a Minister of the Crown, government department, tribunal or other person, or a question of law referred to that Court by such a Minister or department or a tribunal or other person by way of case stated, shall be exercised by a Divisional Court of the Queen's Bench Division except where by some other provision of these rules or by or under any enactment it is required to be exercised by a Divisional Court of another Division or by a single judge.

(2) The jurisdiction of the High Court under any enactment to hear and determine an application for an order directing such a Minister or department or a tribunal or other person to state a case for determination by the High Court, or to refer a question of law to that Court by way of case stated, shall be exercised by the Court or judge having jurisdiction to hear and determine that case or question except where by some other provision of these rules or by or under any enactment it is otherwise provided.

(3) The following rules of this Order shall apply to proceedings for the determination of such a case, question or application and, in relation to any such proceedings, shall have effect subject to any provision made in relation to those proceedings by any other provision of 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.

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(5) 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

8.—(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

9.—(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

10.—(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 9(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.

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(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) The documents required to be lodged in accordance with Order 57, rule 2, before entry of the motion include a copy of the case stated.

(7) 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

11. 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

12. 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**DIVISIONAL COURT PROCEEDINGS, ETC.: SUPPLEMENTARY PROVISIONS***Application*

1.—(1) Subject to paragraph (2), this Order shall apply to—

- (a) any proceedings before a Divisional Court,
- (b) any proceedings before a single judge under Order 52, rule 2, Order 53, Order 54 or Order 79,
- (c) 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.

(2) The following rules of this Order shall not apply to an appeal from a county court to a Divisional Court of the High Court under section 108(2) of the Bankruptcy Act 1914(a).

Entry of motions

2.—(1) Every motion in proceedings to which this Order applies must be entered for hearing in the appropriate office; 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 that office.

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(2) The party entering the motion for hearing must lodge in the appropriate office copies of the proceedings for the use of the judges.

(3) Every motion entered for hearing by a Divisional Court of the Queen's Bench Division shall be entered in the Divisional Court list.

(4) In this rule "the appropriate office" means—

(a) in relation to proceedings in the Queen's Bench Division, the Crown Office ;

(b) in relation to proceedings in the Chancery Division, the Chancery Registrars' Office ;

(c) in relation to proceedings in the Probate, Divorce and Admiralty Division, the Principal Probate Registry or the Admiralty Registry, as the circumstances of the case require.

Issue, etc., of originating summons

3. An originating summons by which any proceedings to which this Order applies are begun must be issued—

(a) in the case of proceedings in the Probate, Divorce and Admiralty Division, out of the Principal Probate Registry or the Admiralty Registry, as the circumstances of the case require, and

(b) in the case of any other proceedings, out of the Crown Office ;

and no appearance need be entered to such summons.

Filing of affidavits and drawing up of orders

4.—(1) Except as provided by Order 41, rule 9 (2) and (3), every affidavit used in proceedings to which this Order applies must be filed in the Crown Office.

(2) Every order made in proceedings to which this Order applies in the Queen's Bench Division shall be drawn up in the Crown Office, and a copy of any order made by a judge in chambers in any such proceedings must be filed in that office.

Issue of writs

5.—(1) Every writ issued in proceedings to which this Order applies shall be issued out of the Crown Office and must be prepared by the party seeking to issue it.

(2) Every such writ must be filed in the Crown Office together with the return thereto and a copy of any order made thereon.

Custody of records

6. The master of the Crown Office shall have the custody of the records of or relating to proceedings in the Queen's Bench Division to which this Order applies.

ORDER 58**APPEALS FROM MASTERS, REGISTRARS, REFEREES AND JUDGES***Appeals from certain decisions of masters, etc. to judge in chambers*

1.—(1) Except as provided by rule 2, an appeal shall lie to a judge in chambers from any judgment, order or decision of a master of the Queen's Bench Division or registrar of the Probate, Divorce and Admiralty Division.

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(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.

(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 served not less than 2 clear days before the day fixed for hearing the appeal.

(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.

Appeals from certain decisions of masters, etc. to Court of Appeal

2.—(1) An appeal shall lie to the Court of Appeal from any judgment, order or decision of a master of the Queen's Bench Division (other than an interlocutory judgment, order or decision) given or made—

- (a) on the hearing or determination of any cause, matter, question or issue tried before or referred to him, including applications made to him under section 17 of the Married Women's Property Act 1882(a); or
- (b) on an assessment of damages under Order 37 or otherwise; or
- (c) on the hearing or determination of any interpleader or garnishee proceedings; or
- (d) on the hearing or determination of an application under Order 84, rule 3.

(2) Subject to any provision made by the Matrimonial Causes Rules 1957(b) with respect to the Court to which an appeal shall lie from any judgment, order or decision of a registrar of the Probate, Divorce and Admiralty Division on the hearing of any application made to him under section 17 of the Married Women's Property Act 1882, an appeal shall lie to the Court of Appeal from any judgment, order or decision of any such registrar (other than an interlocutory judgment, order or decision) given or made—

- (a) on the hearing or determination of any application made to him under the said section 17; or
- (b) on the hearing or determination of any interpleader or garnishee proceedings.

(3) In the case of an appeal in interpleader or garnishee proceedings the time within which notice of appeal must be served shall be the same as in the case of an appeal from an interlocutory order.

Appeals from certain decisions of Chancery masters

3. An appeal shall lie to the Court of Appeal from any judgment, order or decision of a master of the Chancery Division given or made on the hearing or determination of any cause, matter, question or issue ordered to be tried before him under Order 36, rule 9.

Appeals from district registrars

4.—(1) An appeal shall lie from any judgment, order or decision of a district registrar in any cause or matter in any Division in the same circumstances and, except as provided by paragraph (2), subject to the same

(a) 45 & 46 Vict. c. 75.

(b) S.I. 1957/619 (1957 II, p. 2406).

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conditions as if the judgment, order or decision were given or made by a master or registrar in that cause or matter in that Division, and the provisions of these rules with respect to appeals shall apply accordingly.

(2) In relation to an appeal from a judgment, order or decision of a district registrar, rule 1 shall have effect subject to the modification that for the references therein to 5 days and 2 clear days there shall be substituted references to 7 days and 3 clear days respectively.

Appeals from official referees

5.—(1) An appeal shall lie to the Court of Appeal—

- (a) from a decision of an official referee on a point of law ; and
- (b) from a decision of an official referee on a question of fact relevant to a charge of fraud or breach of professional duty.

(2) Except as provided by paragraph (1), and section 13 of the Administration of Justice Act 1960 (which provides for an appeal in cases of contempt of court), no judgment, order or decision of an official referee in relation to any cause, matter, question or issue ordered to be tried before him shall be called in question by appeal or otherwise.

Appeals from special referees

6. An appeal shall lie to the Court of Appeal from any judgment, order or decision of a special referee given or made on the hearing or determination of any cause, matter, question or issue ordered to be tried before him under Order 36, rule 8.

Appeal from judge in chambers

7.—(1) Subject to section 31 of the Act and section 15(2) of the Administration of Justice Act 1960(a) (which restrict appeals) and to Order 53, rule 12, and without prejudice to section 13 of the said Act of 1960 (which provides for an appeal in cases of contempt of court), in the Queen's Bench Division an appeal shall lie to the Court of Appeal from any judgment, order or decision of a judge in chambers.

(2) Subject to the said sections 31 and 15(2), and without prejudice to the said section 13, in the Chancery Division and in the Probate, Divorce and Admiralty Division an appeal shall lie to the Court of Appeal from any judgment, order or decision of a judge in chambers either—

- (a) with the leave of the judge or the Court of Appeal, or
- (b) after an application to set aside or discharge the judgment, order or decision has been made to the judge sitting in court and has been refused,

and not otherwise.

Appeal from judgment, etc. of judge in interpleader proceedings

8.—(1) Any judgment, order or decision of a judge given or made in summarily determining under Order 17, rule 5 (2) (b) or (c), any question at issue between claimants in interpleader proceedings shall be final and conclusive against the claimants and all persons claiming under them unless leave to appeal to the Court of Appeal is given by the judge or the Court of Appeal.

(2) Where an interpleader issue is tried by a judge (with or without a jury), an appeal shall lie to the Court of Appeal, without the leave of the

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judge or that Court, from any judgment, order or decision given or made by the judge on the trial.

(3) The time within which notice of appeal under this rule must be served shall be the same as in the case of an appeal from an interlocutory order.

ORDER 59**APPEALS TO THE COURT OF APPEAL***Application of Order to appeals*

1. This Order applies, subject to the provisions of these rules with respect to particular appeals, to every appeal to the Court of Appeal (including, so far as it is applicable thereto, any appeal to that Court from an official referee, master or other officer of the Supreme Court or from any tribunal from which an appeal lies to that Court under or by virtue of any enactment) not being an appeal for which other provision is made by these rules.

Application of Order to applications for new trial

2. This Order (except so much of rule 3 (1) as provides that an appeal shall be by way of rehearing and except rule 11 (1)) applies to an application to the Court of Appeal for a new trial or to set aside a verdict, finding or judgment after trial with or without a jury, as it applies to an appeal to that Court, and references in this Order to an appeal and to an appellant shall be construed accordingly.

*General provisions as to appeals**Notice of appeal*

3.—(1) An appeal to the Court of Appeal shall be by way of rehearing and must be brought by motion, and the notice of the motion is referred to in this Order as “notice of appeal”.

(2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the court below; and every such notice must specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the Court of Appeal to make.

(3) Except with the leave of the Court of Appeal, the appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal, or to apply for any relief, not specified in the notice of appeal.

(4) Every notice of appeal must specify the list of appeals in which the appellant proposes that the appeal shall be set down.

(5) A notice of appeal must be served on all parties to the proceedings in the court below who are directly affected by the appeal; and, subject to rule 8, it shall not be necessary to serve the notice on parties not so affected.

Time for appealing

4.—(1) Subject to the provisions of this rule, every notice of appeal must be served under rule 3 (5) within the following period (calculated from the date on which the judgment or order of the court below was signed, entered or otherwise perfected), that is to say:—

- (a) in the case of an appeal from an interlocutory order (not being such an order as is mentioned in sub-paragraph (b)) and in the case of an appeal from a judgment or order given or made under Order 14 or Order 86, 14 days;

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(b) in the case of an appeal from an order or decision made or given in the matter of the winding up of a company, or in the matter of any bankruptcy, 21 days ;

(c) in any other case, 6 weeks.

(2) Where a summons to vary or discharge a certificate and the further consideration of an action are heard together, and an order is made on both, notice of appeal in respect of the order made on the summons may be served at any time before the expiration of the period within which notice of appeal could be served in respect of the order made on further consideration.

Setting down appeal

5.—(1) The appellant must, within 7 days after service of the notice of appeal or within such further time as may be allowed by the proper officer, produce to the proper officer or his deputy the judgment or order of the court below, or an office copy thereof, and leave with him—

(a) a copy of the said judgment or order, and

(b) two copies of the notice of appeal, one of which shall be impressed with the appropriate judicature fee stamp, or indorsed with the amount of the fee paid, and the other indorsed with a certificate of the date of service of the notice, and

(c) an office copy of any list of exhibits made under Order 35, rule 11.

(2) Upon the said documents being left, the proper officer shall file one copy of the notice of appeal and cause the appeal to be set down in the proper list of appeals ; and the appeal shall come on to be heard according to its order in that list unless the Court of Appeal or a judge of that Court otherwise orders.

(3) The proper list of appeals for the purpose of paragraph (2) shall be decided by the proper officer, without prejudice, however, to any decision of the Court of Appeal on the question whether the judgment or order appealed against is interlocutory or final.

(4) Within 2 days after an appeal has been set down, the appellant must give notice to that effect to all parties on whom the notice of appeal was served, specifying the list in which the appeal is set down.

(5) In this rule "the proper officer" means—

(a) in relation to an appeal in an Admiralty case, the Admiralty registrar ;

(b) in relation to an appeal in a bankruptcy case, the chief bankruptcy registrar ;

(c) in relation to an appeal in a probate cause or in a matrimonial cause proceeding in the Principal Probate Registry, the senior registrar of the Principal Probate Registry ;

(d) in relation to an appeal in a matrimonial cause proceeding in a district registry, the registrar of that registry ;

(e) in relation to an appeal in a revenue case, the chief master ; and

(f) in relation to any other appeal, the chief registrar of the Chancery Division.

Respondent's notice

6.—(1) A respondent who, not having appealed from the decision of the court below, desires to contend on the appeal that the decision of that court should be varied, either in any event or in the event of the appeal being allowed in whole or in part, must give notice to that effect, specifying the grounds of that contention and the precise form of the order which he

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proposes to ask the Court of Appeal to make, or to make in that event, as the case may be.

(2) A respondent who desires to contend on the appeal that the decision of the court below should be affirmed on grounds other than those relied upon by that court must give notice to that effect specifying the grounds of that contention.

(3) Except with the leave of the Court of Appeal, a respondent shall not be entitled on the hearing of the appeal to contend that the decision of the court below should be varied upon grounds not specified in a notice given under this rule, to apply for any relief not so specified, or to support the decision of the court below upon any grounds not relied upon by that court or specified in such a notice.

(4) Any notice given by a respondent under this rule (in this Order referred to as a "respondent's notice") must be served on the appellant, and on all parties to the proceedings in the court below who are directly affected by the contentions of the respondent, and must be served—

(a) in the case of an appeal against an interlocutory order, within 7 days, and

(b) in any other case, within 21 days, after the service of the notice of appeal on the respondent.

(5) A party by whom a respondent's notice is given must, within 2 days after service of the notice, furnish two copies of the notice to the proper officer as defined by rule 5 (5).

Amendment of notice of appeal and respondent's notice

7.—(1) A notice of appeal or respondent's notice may be amended—

(a) by or with the leave of the Court of Appeal, at any time ;

(b) without such leave, by supplementary notice served, before the expiration of one week after the date on which the appeal first appears in the daily cause list as one of the cases next to be heard, on each of the parties on whom the notice to be amended was served.

(2) A party by whom a supplementary notice is served under this rule must, within 2 days after service of the notice, furnish two copies of the notice to the proper officer as defined by rule 5 (5).

Directions of the Court as to service

8.—(1) The Court of Appeal may in any case direct that the notice of appeal be served on any party to the proceedings in the court below on whom it has not been served, or on any person not party to those proceedings.

(2) In any case in which the Court of Appeal directs the notice of appeal to be served on any party or person, the Court may also direct that any respondent's notice shall be served on him.

(3) The Court of Appeal may in any case where it gives a direction under this rule—

(a) postpone or adjourn the hearing of the appeal for such period and on such terms as may be just, and

(b) give such judgment and make such order on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.

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Documents to be lodged by appellant

9.—(1) Not less than 7 days before the appeal is likely to be listed for hearing the appellant must cause to be lodged with the clerks to the Lords Justices of Appeal the number of copies for which paragraph (2) provides of each of the following documents, namely—

- (a) the notice of appeal ;
- (b) the respondent's notice ;
- (c) any supplementary notice served under rule 7 ;
- (d) the judgment or order of the court below ;
- (e) the pleadings (including particulars), if any, and, in the case of an appeal in an Admiralty cause or matter, the preliminary acts, if any ;
- (f) the transcript of the official shorthand note, if any, of the judgment or order of the court below or, in the absence of such a note, the judge's note of his reasons for giving the judgment or making the order ;
- (g) such parts of the transcript of the official shorthand note, if any, of the evidence given in the court below as are relevant to any question at issue on the appeal or, in the absence of such a note, such parts of the judge's note of the evidence as are relevant to any such question ;
- (h) any list of exhibits made under Order 35, rule 11, or the schedule of evidence, as the case may be ;
- (i) such affidavits, exhibits, or parts of exhibits, as were in evidence in the court below and as are relevant to any question at issue on the appeal.

(2) The number of copies to be lodged in accordance with paragraph (1) is three copies except in the case of an appeal in an Admiralty cause or matter, in which case it is four copies or, if the Court of Appeal is to hear the appeal with assessors, six copies.

(3) In this rule "judge" includes an official referee.

General powers of the Court

10.—(1) In relation to an appeal the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court including, without prejudice to the generality of the foregoing words, the powers of the Court under Order 36 to refer any question or issue of fact for trial before, or inquiry and report by, an official referee.

In relation to a reference made to an official referee, any thing required or authorised under Order 36, rule 3, to be done by, to or before the Court shall be done by, to or before the Court of Appeal.

(2) The Court of Appeal shall have power to receive further evidence on questions of fact, either by oral examination in court, by affidavit, or by deposition taken before an examiner, but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.

(3) The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.

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(4) The powers of the Court of Appeal under the foregoing provisions of this rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the court below or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Court of Appeal may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(5) The Court of Appeal may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.

(6) The powers of the Court of Appeal in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

(7) Documents impounded by order of the Court of Appeal shall not be delivered out of the custody of that Court except in compliance with an order of that Court:

Provided that where a Law Officer or the Director of Public Prosecutions makes a written request in that behalf, documents so impounded shall be delivered into his custody.

(8) Documents impounded by order of the Court of Appeal, while in the custody of that Court, shall not be inspected except by a person authorised to do so by an order of that Court.

Powers of the Court as to new trials

11.—(1) On the hearing of any appeal the Court of Appeal may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below.

(2) A new trial shall not be ordered on the ground of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned.

(3) A new trial may be ordered on any question without interfering with the finding or decision on any other question; and if it appears to the Court of Appeal that any such wrong or miscarriage as is mentioned in paragraph (2) affects part only of the matter in controversy, or one or some only of the parties, the Court may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.

(4) In any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the Court may, in lieu of ordering a new trial—

(a) with the consent of all parties concerned, substitute for the sum awarded by the jury such sum as appears to the Court to be proper;

(b) with the consent of the party entitled to receive or liable to pay the damages, as the case may be, reduce or increase the sum awarded by the jury by such amount as appears to the Court to be proper in respect of any distinct head of damages erroneously included in or excluded from the sum so awarded;

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but except as aforesaid the Court of Appeal shall not have power to reduce or increase the damages awarded by a jury.

(5) A new trial shall not be ordered by reason of the ruling of any judge that a document is sufficiently stamped or does not require to be stamped.

Evidence on appeal

12. Where any question of fact is involved in an appeal, the evidence taken in the court below bearing on the question shall, subject to any direction of the Court of Appeal, be brought before that Court as follows :—

(a) in the case of evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed ;

(b) in the case of evidence given orally, by a copy of so much of the transcript of the official shorthand note as is relevant or by a copy of the judge's note, where he has intimated that in the event of an appeal his note will be sufficient, or by such other means as the Court of Appeal may direct.

Stay of execution, etc.

13.—(1) Except so far as the court below or the Court of Appeal may otherwise direct—

(a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below ;

(b) no intermediate act or proceeding shall be invalidated by an appeal.

(2) On an appeal from the High Court, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court otherwise orders.

Applications to Court of Appeal

14.—(1) Every application to the Court of Appeal shall be by motion, and the provisions of Order 8 shall apply thereto.

(2) Any application to the Court of Appeal for leave to appeal (other than an application made after the expiration of the time for appealing) must, if the appellant is acting in person, be made *ex parte* in the first instance ; but unless the application is then dismissed or it appears to that Court that undue hardship would be caused by an adjournment, the Court shall adjourn the application and give directions for the service of notice thereof on the party or parties affected.

(3) Where an *ex parte* application has been refused by the court below, an application for a similar purpose may be made to the Court of Appeal *ex parte* within 7 days after the date of the refusal.

(4) Wherever under these rules an application may be made either to the court below or to the Court of Appeal, it shall not be made in the first instance to the Court of Appeal, except where there are special circumstances which make it impossible or impracticable to apply to the court below.

Extension of time

15. Without prejudice to the power of the Court of Appeal under Order 3, rule 5, to extend the time prescribed by any provision of this Order, the period for serving notice of appeal under rule 4 or for making application *ex parte* under rule 14 (3) may be extended by the court below on application made before the expiration of that period.

Order 59]*Special provisions as to particular appeals**Appeal against decree nisi*

16.—(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal in a matrimonial cause against a decree nisi of divorce or nullity of marriage.

(2) The period of 6 weeks specified in rule 4 shall be calculated from the date on which the decree was pronounced and rule 15 shall not apply in relation to that period.

(3) The appellant must, within the said period and after service of the notice of appeal, leave with the appropriate registrar two copies of the notice of appeal (one of which shall be impressed with the appropriate judicature fee stamp or indorsed with the amount of the fee paid, and the other indorsed with a certificate of the date of service of the notice); and the appeal shall not be competent unless this paragraph has been complied with.

(4) One copy of the notice left with the appropriate registrar as aforesaid shall forthwith be filed by that registrar; and for the purposes of rule 5 the leaving of the said copies shall be sufficient for the setting down of the appeal and rule 5(1) shall not apply.

(5) A party who intends to apply ex parte to the Court of Appeal to extend the period referred to in paragraphs (2) and (3) must give notice of his intention to the clerk of the rules before the application is made; and where any order is made by the Court of Appeal extending the said period, it shall be the duty of the proper officer of that Court forthwith to give notice of the making of the order and of the terms thereof to the appropriate registrar.

(6) In this rule "the appropriate registrar" means, in relation to a cause proceeding in a district registry, the registrar of that registry, and, in relation to any other cause, the senior registrar of the Principal Probate Registry.

Appeal against order for revocation of patent

17.—(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal from an order for the revocation of a patent made on a petition under section 32 of the Patents Act 1949(a) or on a counterclaim under section 61 of that Act.

(2) The notice of appeal must be served on the Comptroller-General of Patents, Designs and Trade Marks (in this rule referred to as "the Comptroller") as well as on the party or parties required to be served under rule 3.

(3) If, at any time before the appeal comes on for hearing, the respondent decides not to appear on the appeal or not to oppose it, he must forthwith serve notice of his decision on the Comptroller and the appellant, and any such notice served on the Comptroller must be accompanied by a copy of the petition or of the pleadings in the action and the affidavits filed therein.

(4) The Comptroller must, within 14 days after receiving notice of the respondent's decision, serve on the appellant a notice stating whether or not he intends to appear on the appeal.

(5) The Comptroller may appear and be heard in opposition to the appeal—

(a) in any case where he has given notice under paragraph (4) of his intention to appear, and

(b) in any other case (including, in particular, a case where the respondent withdraws his opposition to the appeal during the hearing) if the Court of Appeal so directs or allows.

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(6) The Court of Appeal may make such orders for the postponement or adjournment of the hearing of the appeal as may appear to the Court necessary for the purpose of giving effect to the foregoing provisions of this rule.

Appeal from Patents Appeal Tribunal

18.—(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal from a decision of the Appeal Tribunal constituted under section 85 of the Patents Act 1949 (in this rule referred to as “the Tribunal”).

(2) The notice of appeal must be served within 14 days after the date of the decision or within such further time as the Tribunal may allow, and must be served on the Comptroller-General of Patents, Designs and Trade Marks as well as on the party or parties required to be served under rule 3; and the appellant must, within that period, file two copies of the notice with the registrar of the Tribunal.

(3) Rule 5 shall not apply to the appeal, but the registrar of the Tribunal shall make arrangements with the proper officer as defined by that rule to set down the appeal in the Patents Tribunal appeals list, and shall give to the appellant, and to all parties served with the notice of appeal, at least 7 days’ notice of the earliest date on which the appeal can come on to be heard.

(4) On receiving the notice given by the registrar under paragraph (3), the appellant must lodge with the registrar, for the use of the Court of Appeal, a signed copy of the decision of the Tribunal and two additional unsigned copies, together with three copies of the notice of appeal and of all the evidence used before the Tribunal.

(5) Any respondent to the appeal may apply to the Tribunal for an order requiring the appellant to give security for the costs of and occasioned by the appeal.

Appeal from county court

19.—(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal from a county court.

(2) The notice of appeal must be served on the registrar of the county court as well as on the party or parties required to be served under rule 3.

(3) In relation to the appeal—

(a) rule 4 (1) shall have effect as if for the words “the date on which the judgment or order of the court below was signed, entered or otherwise perfected” there were substituted the words “the date of the judgment or order of the court below”; and

(b) rule 5 (1) shall have effect as if for the words “an office copy”, where first occurring, there were substituted the words “a certificate”.

(4) It shall be the duty of the appellant to apply to the judge of the county court for a signed copy of any note made by him of the proceedings and of his decision, and to furnish that copy for the use of the Court of Appeal; and in default of production of such a note, or, if such note is incomplete, in addition to such note, the Court of Appeal may hear and determine the appeal on any other evidence or statement of what occurred before the judge of the county court which appears to the Court of Appeal to be sufficient.

Except where the Court of Appeal otherwise directs, an affidavit or note by a person present in the county court shall not be used in evidence under this paragraph unless it was previously submitted to the judge for his comments.

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(5) Rule 13 (1) (a) shall not apply, but the appeal shall not operate as a stay of proceedings in the county court unless the judge of that court so orders or unless, within 10 days after the date of the judgment or order appealed against, the appellant deposits a sum fixed by the judge not exceeding the amount of the money or the value of the property affected by the judgment or order, or gives such security for the said sum as the judge may direct.

(6) In the case of an appeal to the Court of Appeal from the decision of a county court on the hearing of an appeal from a registration officer under section 45 of the Representation of the People Act 1949(a), notice of the decision of the Court of Appeal shall be given by the proper officer of that Court to the registration officer, specifying every alteration to be made in pursuance of the decision in the register or list concerned, and a copy of every such notice shall be sent to the registrar of the county court.

Appeals in cases of contempt of court

20.—(1) In the case of an appeal to the Court of Appeal under section 13 of the Administration of Justice Act 1960(b), the notice of appeal must be served on the proper officer of the court from whose order or decision the appeal is brought as well as on the party or parties required to be served under rule 3.

This paragraph shall not apply in relation to an appeal to which rule 19 applies.

(2) Where, in the case of an appeal under the said section 13 to the Court of Appeal or to the House of Lords from the Court of Appeal, the appellant is in custody, the Court of Appeal may order his release on his giving security (whether by recognizance, with or without sureties, or otherwise and for such reasonable sum as that Court may fix) for his appearance within 10 days after the judgment of the Court of Appeal or, as the case may be, of the House of Lords on the appeal shall have been given, before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.

(3) An application for the release of a person under paragraph (2) pending an appeal to the Court of Appeal or House of Lords under the said section 13 must be made by motion, and the notice of the motion must, at least 24 hours before the day named therein for the hearing, be served on the proper officer of the court from whose order or decision the appeal is brought and on all parties to the proceedings in that court who are directly affected by the appeal.

(4) Order 79, rule 9 (6) and (8), shall apply in relation to the grant of bail under this rule by the Court of Appeal as they apply in relation to the grant of bail in criminal proceedings by the High Court, but with the substitution for references to a judge in chambers of references to the Court of Appeal and for references to the defendant of references to the appellant.

ORDER 60**APPEALS TO COURT OF APPEAL FROM THE RESTRICTIVE PRACTICES COURT***Appeal to be brought by motion*

1. An appeal to the Court of Appeal from the Restrictive Practices Court under the Restrictive Trade Practices Act 1956(c) must be brought by

(a) 12, 13 & 14 Geo. 6. c. 68.

(b) 8 & 9 Eliz. 2. c. 65.

(c) 4 & 5 Eliz. 2. c. 68.

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motion, and the notice of the motion must state the question of law on which the appeal is brought and the appellant's contentions thereon.

Service of notice of motion

2.—(1) Within 21 days after the appellant receives a copy of the judgment constituting the case stated by the Restrictive Practices Court he must serve the notice of motion and a copy of the judgment on every other party to the proceedings before that Court and must serve the notice of motion on the proper officer of that Court.

(2) Where the appellant applies to the said Court for the Court's judgment to be amplified or amended—

(a) he shall be deemed for the purpose of paragraph (1) to have received a copy of the judgment on the date on which he receives a copy of the order made on his application, and

(b) the judgment constituting the case stated shall be the judgment with such amplifications or amendments, if any, as may be specified in that order.

Entry, etc. of appeal

3.—(1) Within 2 days after service of the notice of motion, the appellant must lodge the judgment constituting the case and two copies of the notice with the proper officer (as defined by Order 59, rule 5 (5)) of the Court of Appeal who shall enter the appeal in the appropriate list; and the appeal shall not be heard until after the expiration of 21 days from the date of entry.

(2) The proper officer of the Court of Appeal shall notify the proper officer of the Restrictive Practices Court of the decision of the Court of Appeal on the appeal and of any directions given by the Court of Appeal thereon.

Powers of Court of Appeal

4. The Court of Appeal shall have power to draw inferences of fact from the facts set forth in the judgment of the Restrictive Practices Court constituting the case.

ORDER 61**APPEALS FROM TRIBUNALS TO COURT OF APPEAL BY CASE STATED***Statement of case by Lands Tribunal*

1.—(1) The time within which a person aggrieved by a decision of the Lands Tribunal as being erroneous in point of law may under section 3 (4) of the Lands Tribunal Act 1949(a) or any other enactment require the Tribunal to state a case for the decision of the Court of Appeal shall be 6 weeks from the date of the decision, and the application for the statement of the case must be made to the registrar of the Tribunal in writing.

(2) A case stated by the Tribunal must state the facts on which the decision was based and the decision of the Tribunal and must be signed by the member or members of the Tribunal by whom it was given.

(3) The case must be stated as soon as may be after the application therefor is made and must be sent by post to the applicant.

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(4) Where the decision of the Lands Tribunal in respect of which a case is stated states all the relevant facts found by the Tribunal and indicates the questions of law to be decided by the Court of Appeal, a copy of the decision signed by the person who presided at the hearing shall be annexed to the case, and the facts so found and the questions of law to be decided shall be sufficiently stated in the case by referring to the statement thereof in the decision.

Statement of case by other tribunals

2.—(1) Where any tribunal other than the Lands Tribunal is empowered or may be required to state a case on a question of law for determination by the Court of Appeal, any party to the proceedings who is aggrieved by the tribunal's refusal to state a case may apply to the Court of Appeal for an order requiring the tribunal to state a case.

(2) An application under this rule must be made by motion and the notice of the motion, stating in general terms the grounds of the application, together with the question of law on which it is desired that a case shall be stated and any reasons given by the tribunal for its refusal, must within 21 days after the refusal, be served on the clerk or registrar of the tribunal and on every other party to the proceedings before the tribunal.

(3) Within 2 days after service of the notice of motion, the applicant must lodge two copies of the notice with the proper officer (as defined by Order 59, rule 5(5)) of the Court of Appeal who shall enter the motion in the appropriate list.

(4) Where a tribunal is ordered under this rule to state a case, the tribunal must, within such period as may be specified in the order, state a case, stating the facts on which the decision of the tribunal was based and the decision, sign it and cause it to be sent by post to the applicant.

(5) Rule 1(4) shall apply in relation to a case stated by a tribunal other than the Lands Tribunal as it applies in relation to a case stated by that Tribunal.

Proceedings on case stated

3.—(1) The party at whose instance a case has been stated by any tribunal to which this Order applies must, within 21 days after receiving the case—

(a) serve on every other party to the proceedings before the tribunal a copy of the case, together with a notice setting out his contentions on the question of law, and

(b) serve a copy of the notice on the clerk or registrar of the tribunal.

(2) Within 2 days after service of the notice, the said party must lodge the case and two copies of the notice with the proper officer (as defined by Order 59, rule 5 (5)) of the Court of Appeal who shall enter the case in the appropriate list; and the case shall not be heard until after the expiration of 21 days from the date of entry.

(3) Where any enactment under which the case is stated provides that a Minister or government department shall have a right to be heard in the proceedings on the case, a copy of the case and of the notice served under paragraph (1) must be served on that Minister or department.

(4) On the hearing of the case, the Court of Appeal may amend the case or order it to be sent back to the tribunal for amendment.

(5) Order 59, rule 10, shall, so far as applicable, apply in relation to a case stated by a tribunal to which this Order applies.

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(6) The proper officer of the Court of Appeal shall notify the clerk or registrar of the tribunal of the decision of the Court of Appeal on the case and of any directions given by that Court thereon.

**COSTS
ORDER 62
COSTS
PRELIMINARY**

Interpretation**1.—(1) In this Order—**

“certificate” includes allocatur ;

“contentious business” and “non-contentious business” have the same meanings respectively as in the Solicitors Act 1957(a) ;

“costs” includes fees, charges, disbursements, expenses and remuneration ;

“the Court” means the Supreme Court or any one or more judges thereof, whether sitting in court or in chambers, or any master, registrar or registrar of a district registry ;

“proceedings in the Probate, Divorce and Admiralty Division” includes proceedings in the Court of Appeal on an application or appeal made in connection with proceedings in that Division or on an appeal from a judgment, direction, decision or order of a county court given or made in probate proceedings (as defined by the County Courts Act, 1959(b)) or Admiralty proceedings (as so defined) ;

“registrar” (except where the context otherwise requires) means a registrar of the Probate, Divorce and Admiralty Division ;

“taxed costs” means costs taxed in accordance with this Order ;

“taxing master” means a master of the Supreme Court (Taxing Office) ;

“taxing officer” (except where otherwise expressly provided) includes any person who by virtue of this Order has power to tax costs.

(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

2.—(1) This Order shall have effect in relation to all criminal proceedings in the Queen’s Bench Division or Court of Appeal other than proceedings to which section 15 of the Costs in Criminal Cases Act 1952(c) applies.

(2) 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 Supreme 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 14 to 16, rule 17(1), rule 18, rule 21 (except paragraph (3)), rules 22 to 26 and rules 33 to 35, shall have effect in relation to proceedings for taxation of those costs as they have effect

(a) 5 & 6 Eliz. 2. c. 27. (b) 7 & 8 Eliz. 2. c. 22. (c) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 48.

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in relation to proceedings for taxation of the costs of or arising out of proceedings in the Supreme Court, other than proceedings in the Probate, Divorce and Admiralty Division.

(3) This Order shall have effect subject to sections 47 and 60 of the County Courts Act 1959 (which limit the costs recoverable in relation to certain proceedings which could have been commenced in a county court), and to any other Act of Parliament.

(4) The powers and discretion of the Court as to costs under section 50 of the Act (which provides that the costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that the Court shall have full power to determine by whom and to what extent the costs are to be paid), and under the enactments relating to the costs of criminal proceedings to which this Order applies, shall be exercised subject to and in accordance with this Order.

ENTITLEMENT TO COSTS*When costs follow the event*

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.

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(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—

(a) seeks to establish his claim to a debt under any judgment or order in accordance with Order 44, or

(b) comes in to prove his title, debt or claim in relation to a company in pursuance of any such notice as is mentioned in Order 102, rule 13,

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 or 15 of that Order, he shall, if he enters an appearance, 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

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 28, 31 and 32 shall not apply in relation to those costs, but, except in relation to costs of proceedings transferred or removed from a county 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

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- (c) if the order is made on appeal from a county 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

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

6.—(1) Notwithstanding anything in this Order or in section 50 of the Act—

- (a) no order shall be made for costs to be paid by or to any local government elector who files an affidavit or appears in opposition to an application under section 230 of the Local Government Act 1933(a) ;
 (b) no order shall be made directing one party to pay to the other any costs of or incidental to an appeal or application for leave to appeal under section 6(2) of the Pensions Appeal Tribunals Act 1943(b) ;
 (c) no order shall be made for costs to be paid by or to any person (other than the registration officer) who is respondent to an appeal to the Court of Appeal from the decision of a county court on the hearing of an appeal from the registration officer under section 45 of the Representation of the People Act 1949(c), unless that person appears in support of the decision of the county court ;
 (d) 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 ;
 (e) 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 under section 23, 24 or 25 of the Patents Act 1949(d), 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.

(a) 23 & 24 Geo. 5. c. 51.

(c) 12, 13 & 14 Geo. 6. c. 68.

(b) 6 & 7 Geo. 6. c. 39.

(d) 12, 13 & 14 Geo. 6. c. 87.

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Costs arising from misconduct or neglect

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) 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.

(6) In this rule “taxing officer” means a taxing master, a registrar of the Principal Probate Registry, the Admiralty registrar or the registrar of a district registry.

Personal liability of solicitor for costs

8.—(1) Subject to the following provisions of 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 solicitor whom it considers to be responsible (whether personally or through a servant or agent) an order—

- (a) disallowing the costs as between the solicitor and his client ; and
- (b) directing the 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 solicitor personally to indemnify such other parties against costs payable by them.

(2) No order under this rule shall be made against a 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 solicitor to attend in person or by a proper representative ; or

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(b) because of the failure of the 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 responsible registrar or master has reported to the Court) to a taxing officer for inquiry and report and direct the solicitor in the first place to show cause before the taxing officer.

(4) The Court may, if it thinks fit, direct or authorise the official solicitor 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 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 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 solicitor to pay costs personally to any of the parties to those proceedings; and where any 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 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 before an official referee or master in which the party by whom the fees prescribed by the Orders as to Court fees are payable is represented by a solicitor, if the fees or any part of the fees payable under the said Orders are not paid as therein prescribed, the Court may, on the application of the official solicitor by summons, order the solicitor personally to pay that amount in the manner so prescribed and to pay the costs of the official solicitor of the application.

(9) In this rule "taxing officer" has the same meaning as in rule 7.

Fractional or gross sum in place of taxed costs

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 under section 45 of the Act in respect of his remuneration, disbursements or expenses; or

(b) are to be assessed or settled by a master;

but rules 28, 31 and 32 shall apply in relation to the assessment or settlement by a master 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.

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(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 accordance 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.

When a party may sign judgment for costs without an order

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

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*Powers of taxing masters and other officers to tax costs*

12.—(1) Subject to paragraphs (2) and (3), each of the following taxing officers, that is to say, a taxing master, a registrar of the Principal Probate

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Registry and the Admiralty registrar, shall have power to tax—

- (a) the costs of or arising out of any cause or matter in the Supreme 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 of the Court.

(2) Where by or under any Act any costs are directed to be taxed or settled by a master of the Supreme Court, only a taxing master shall have power to tax those costs.

(3) Where by or under any Act or an order of the Court any costs are directed to be taxed or settled by a taxing officer referred to in paragraph (1), only that officer shall have power to tax those costs.

(4) The registrar of a district registry shall have power to tax—

- (a) the costs of or arising out of any cause or matter in the High Court which is proceeding in that registry, and
- (b) the costs of a solicitor in respect of contentious business where an order for the taxation of those costs is made under the Solicitors Act 1957 in proceedings begun in that registry, and
- (c) the costs directed by an award made on a reference to arbitration under any Act or pursuant to an arbitration agreement to be paid.

(5) In addition to his powers under paragraph (4), the registrar of the district registry of Liverpool and the registrar of the district registry of Manchester shall have power to tax—

- (a) the costs of any application or appeal to the Court of Appeal in connection with any cause or matter, the proceedings in which were begun in that registry; and
- (b) the costs of a solicitor in respect of non-contentious business where an order for the taxation of those costs is made under the Solicitors Act 1957 in proceedings begun in that registry.

(6) Where the costs of or arising out of any cause or matter which is proceeding in a district registry are to be taxed, and the taxation thereof is within the powers of the registrar of that registry, those costs shall be taxed by him unless the Court otherwise directs.

(7) A principal clerk of the Principal Probate Registry authorised in that behalf by the President of the Probate, Divorce and Admiralty Division shall have power to tax the costs of or arising out of the following causes or matters in the High Court or Court of Appeal, that is to say—

- (a) a probate cause or matter, other than a cause or matter which is non-contentious or common form probate business,
- (b) a matrimonial cause or matter,
- (c) an appeal heard by a Divisional Court of the Probate, Divorce and Admiralty Division—
 - (i) against an order made by a magistrates' court under the Summary Jurisdiction (Separation and Maintenance) Acts 1895 to 1949, or the refusal by such a court to make an order thereunder;

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(ii) against an order or determination of a magistrates' court in connection with the enforcement of an order for the payment of money made under the said Acts or of an order for the payment of money which has been confirmed or registered under the Maintenance Orders (Facilities for Enforcement) Act 1920(a) or the Maintenance Orders Act 1950(b), or of an order made under section 3(2) of the Guardianship of Infants Act 1925(c); and

(d) an application or appeal to the Court of Appeal arising out of any such appeal as is referred to in sub-paragraph (c).

Powers of certain principal clerks to tax costs

13.—(1) Subject to rule 12(2) and (3) and to the provisions of this rule, and unless in any particular case or class of cases a taxing master otherwise directs, a principal clerk of the Supreme Court (Taxing Office) shall have power—

(a) to tax any costs, the taxation of which is within the powers of a taxing master, if the amount of the bill of costs or, as the case may be, the aggregate amount of all the bills of costs to be taxed in the taxation proceedings does not exceed £350; and

(b) to issue a certificate for any costs taxed by him, if the proceedings for taxation of those costs were entered in the list kept for the purposes of rule 24.

(2) Paragraph (1) shall not be taken as empowering a clerk to tax a solicitor's bill of costs in pursuance of an order made under the Solicitors Act 1957.

(3) Where any taxation proceedings are to be conducted by a principal clerk, a party to those proceedings may, before the taxation of any bill of costs to which those proceedings relate begins, object to the bill or any part of it being taxed by the clerk, and where any such objection is made that bill or part shall be taxed by a taxing master.

(4) In exercising the powers conferred on him by this Order a principal clerk shall comply with any directions given to him by a taxing master.

Supplementary powers of taxing officers

14. 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.

Disposal of business by one taxing officer for another

15.—(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.

(a) 10 & 11 Geo. 5. c. 33.

(b) 14 Geo. 6. c. 37.

(c) 15 & 16 Geo. 5. c. 45.

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(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

16.—(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) 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

17.—(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 solicitor's bill to his own client, it appears to the taxing officer that in any event the 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 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

18. 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

19.—(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 bills of costs, after taxation thereof, together with his report thereon to the Court.

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(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 to fix certain fees payable to conveyancing counsel, etc.

20.—(1) Where the Court refers any matter to the conveyancing counsel of the Court or obtains the assistance of any other person under Order 32, rule 16, the fees payable to counsel or that other person in respect of the work done by him in connection with the reference or, as the case may be, in assisting the Court shall 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 thereon shall be final.

PROCEDURE ON TAXATION*Mode of beginning proceedings for taxation*

21.—(1) A party entitled to require any costs to be taxed must begin proceedings for the taxation of those costs by producing at the appropriate office the requisite document and (except where the proceedings for taxation arise out of proceedings in the Probate, Divorce and Admiralty Division) a copy thereof.

(2) The requisite document for the purposes of this rule shall be ascertained in accordance with the provisions of Appendix 1 to this Order.

(3) 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 Supreme Court, other than proceedings in the Probate, Divorce and Admiralty Division, or

(b) rule 10,

he must begin proceedings for the taxation of those costs within 7 days after the judgment, direction or order was entered, signed or otherwise perfected or, as the case may be, within 7 days after service of the notice given to him under Order 21, rule 2 (where he is so entitled by virtue of rule 10 (1)) or given by him under Order 22, rule 3 (where he is so entitled by virtue of rule 10 (2) or (3)).

(4) The party by whom proceedings for taxation (other than proceedings which arise out of proceedings in the Probate, Divorce and Admiralty Division) have been begun must, unless those proceedings are entered for taxation in the list kept for the purposes of rule 24,—

(a) within the period (if any) within which he was required by paragraph (3) to begin those proceedings, or

(b) if he was not required by that paragraph to begin those proceedings within any particular period, within 7 days after beginning them,

hand in at, or send by post to, the appropriate office a statement containing the following particulars, that is to say—

(i) the name of every party, and the capacity in which he is a party, to the proceedings, his position on the record of the proceedings which gave rise to the taxation proceedings and, if any costs to which the taxation proceedings relate are to be paid out of a fund, the nature of his interest in the fund, and

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(ii) the address of any party to the proceedings who appears in person and the name or firm and business address of the solicitor of any party who does not so appear and also (if the solicitor is the agent of another) the name or firm and business address of his principal.

(5) For the purposes of this rule the appropriate office is—

(a) in a case where the costs in question are to be taxed by the Admiralty registrar, by any registrar or principal clerk of the Principal Probate Registry or by a registrar of a district registry, the Admiralty Registry, the Principal Probate Registry or that district registry respectively ;

(b) in any other case, the Supreme Court Taxing Office.

Notification of time appointed for taxation

22.—(1) Where proceedings for taxation have been duly begun in accordance with rule 21, then, subject to paragraphs (3) and (4) of this rule and rule 24, the proper officer shall give to the party beginning the proceedings and, except where the proceedings arise out of proceedings in the Probate, Divorce and Admiralty Division, to any other party entitled to be heard in the taxation proceedings, not less than 7 days' notice of the day and time appointed for taxation.

(2) Subject to paragraph (3), a party who has begun proceedings for taxation and who receives a notice under paragraph (1) must, where the proceedings arise out of proceedings in the Probate, Divorce and Admiralty Division, give to any other party entitled to be heard in the taxation proceeding to which the notice relates not less than 4 days' notice of the day and time appointed by the notice.

(3) A notice under this rule need not be given to any party who has not entered an appearance 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 solicitor's bill of costs made under section 69 of the Solicitors Act 1957 at the instance of the solicitor gave rise to the taxation proceedings.

(4) Where in proceedings for the taxation of the costs of or arising out of a matrimonial cause or matter—

(a) the amount of the bill of costs or, as the case may be, the aggregate amount of all the bills of costs to be taxed does not exceed £400, and

(b) no party other than the party who has begun the proceedings for taxation is entitled to be heard therein,

then, unless the taxing officer otherwise directs, the proper officer shall inform that party of the amount which the taxing officer proposes to allow in respect of the costs which are to be taxed and shall not give any notice under paragraph (1) unless, within 14 days after being informed of that amount, that party requires the appointment of a day and time for taxation in order that he may be heard in the proceedings.

Delivery of bills, etc.

23.—(1) Where proceedings for taxation have been duly begun in accordance with rule 21, then, subject to paragraph (4) of this rule and rule 24, the proper officer shall as soon as practicable give notice to any party whose costs are to be taxed in the proceedings of the period within which the bill of costs together with all necessary papers and vouchers are to be sent to the taxing officer by whom the bill is to be taxed.

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(2) Subject to paragraph (4), a party whose costs are to be taxed in any taxation proceedings, except a solicitor whose costs are to be taxed by virtue of an order made under section 69 of the Solicitors Act 1957, must within 4 days after receiving a notice under rule 22 (1) send a copy of his bill of costs to every other party entitled to be heard in the proceedings unless that party has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.

(3) A party who is required by rule 22 (2) to give notice to any other party of the day and time appointed for taxation proceedings must at the same time send a copy of his bill of costs to that other party, if he has not already done so.

(4) Paragraphs (1) and (2) shall not apply in relation to taxation proceedings which arise out of proceedings in the Probate, Divorce and Admiralty Division.

Short and urgent taxation proceedings

24.—(1) Where a party entitled to require taxation of any costs of or arising out of proceedings in the Supreme Court (other than proceedings in the Probate, Divorce and Admiralty Division) begins proceedings for the taxation of those costs in accordance with rule 21, then if, when he begins such proceedings, he satisfies the proper officer—

(a) that, in view of the amount of any bill of costs to be taxed, the time required for taxation is likely to be short, and

(b) that the speedy completion of the taxation is necessary in the interests of any person concerned in the taxation,

the proper officer shall enter the proceedings for taxation in a list kept for the purposes of this rule and shall forthwith give notice of the day and time appointed for taxation to the party whose costs are to be taxed.

(2) A party whose costs are to be taxed in proceedings entered for taxation in the list referred to in paragraph (1) must,—

(a) at the time when the proceedings are so entered, deliver to the proper officer any bill of costs to be taxed in the proceedings together with any necessary papers and vouchers, and

(b) subject to paragraph (3), not less than 2 days before the day appointed for taxation send a copy of his bill of costs to every other party entitled to be heard in the proceedings with a notice of the day and time appointed for taxation.

(3) A notice under paragraph (2) need not be given to any party who has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.

Provisions as to bills of costs

25.—(1) In any 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 bill of costs is left for taxation it must be indorsed with—

(a) the name or firm and business address of the solicitor whose bill it is, and

(b) if the solicitor is the agent of another, with the name or firm and business address of that other solicitor.

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26.—(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

27.—(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 solicitor's 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 solicitor 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*

28.—(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

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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 powers of the Court under section 47(3) of the County Courts Act 1959 (which empowers the Court in relation to an action begun in the High Court which could have been begun in the county court to make an order in certain circumstances allowing the costs on such one of the county court scales and under such one of the columns in the scale as the order may direct).

Costs payable to a solicitor by his own client

29.—(1) On the taxation of a solicitor's bill to his own client (except a bill to be paid out of the legal aid fund under the Legal Aid and Advice Act 1949(a), or 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 purposes 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 28(2) applies shall, unless the 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) the references to the client shall be construed—

(a) if the client was at the material time incapable by reason of mental disorder within the meaning of the Mental Health Act 1959(b) of managing and administering his property and affairs and represented by a person acting as guardian ad litem or next friend, as references to that person acting, where necessary, with the authority of the authority having jurisdiction under Part VIII of that Act;

(b) if the client was at the material time an infant and represented by a person acting as guardian ad litem or next friend, as references to that person.

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(5) Section 118(2) and (3) of the Mental Health Act 1959 shall have effect in relation to paragraph (4) as if that paragraph were an enactment, and the reference in that paragraph to the authority having jurisdiction under Part VIII of that Act shall be construed accordingly.

Costs payable to solicitor where money recovered by or on behalf of infant, etc.

30.—(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 within the meaning of the Mental Health Act 1959, of managing or administering his property and affairs or in which money paid into court is accepted by or on behalf of such a person, and

(b) any proceedings under the Fatal Accidents Acts 1846 to 1959 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 Acts 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) The costs payable to his 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 29; and no costs shall be payable to the 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 29 of the solicitor's bill to that plaintiff.

(3) On the taxation under rule 29 of a 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 29, 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 within the meaning of the Mental Health Act 1959, of managing and administering his property and affairs or the widow of the person 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.

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(5) Nothing in the foregoing provisions of this rule shall prejudice a solicitor's lien for costs.

(6) Where in any proceedings to which this rule applies directions given by the Court under Order 80, rule 12, provide for the transfer or payment of money to or into a county court and for the payment to the solicitor of any plaintiff in the proceedings of an amount in respect of costs out of the money so transferred or paid, the taxing officer by whom those costs are taxed shall send a copy of his certificate to the registrar of the county court.

(7) The foregoing provisions of this rule shall apply in relation to—

(a) a counterclaim by or on behalf of a person who is an infant or incapable, by reason of mental disorder within the meaning of the Mental Health Act 1959, of managing and administering his property and affairs and a counterclaim consisting of or including a claim under the Fatal Accidents Acts 1846 to 1959 by or on behalf of the widow of the person whose death gave rise to the claim, and

(b) a claim made by or on behalf of a person who is an infant or incapable as aforesaid in an action by any other person for relief under section 504 of the Merchant Shipping Act 1894(a), and a claim consisting of or including a claim under the Fatal Accidents Acts 1846 to 1959 made by or on behalf of that widow in such an action,

as if for references to a plaintiff there were substituted references to a defendant.

Costs payable to a trustee out of the trust fund, etc.

31.—(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

32.—(1) Subject to the foregoing rules and the following provisions of this rule, the scale of costs contained in Appendix 2 to this Order, together with the notes and general provisions contained in that Appendix, shall apply to the taxation of all costs incurred in relation to contentious business done on or after 1st January 1960.

(2) On a taxation in relation to which rule 29 or rule 31(2) has effect and in other special cases costs may at the discretion of the taxing officer be allowed—

(a) in relation to items not mentioned in the said scale; or

(b) of an amount higher than that prescribed by the said scale.

(3) Where the amount of a 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

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general orders for the time being in force under the Solicitors Act 1957, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scale contained in Appendix 2 to this Order.

(4) Notwithstanding paragraph (1), costs shall, unless the Court otherwise orders, be allowed in the cases to which Appendix 3 to this Order applies in accordance with the provisions of that Appendix.

REVIEW*Application to taxing officer for review*

33.—(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 shorter 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 17 to issue an interim certificate in respect of items his decision as to which is not objected to.

Review by taxing officer

34.—(1) Where an application is made under rule 33 for review of a decision of a principal clerk acting under rule 12(7) or under rule 13, the review shall be carried out by a registrar of the Principal Probate Registry or by a taxing master, as the case may be ; but save as aforesaid a review under rule 33 shall be carried out by the taxing officer to whom the taxation was originally assigned.

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(2) 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 33 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.

(5) In this rule "taxing officer" means a taxing master, a registrar of the Principal Probate Registry, the Admiralty registrar or the registrar of a district registry.

Review of taxing officer's certificate by a judge

35.—(1) Any party who is dissatisfied with the decision of a taxing officer to allow or disallow any item in whole or in part on review under rule 33 or 34, 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 34(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 must 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 under section 98 of the Act, the judge shall appoint not less than two assessors, of whom one shall be a taxing officer.

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(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.

(7) In this rule "judge" means a judge in person, and "taxing officer" means a taxing master, a registrar of the Principal Probate Registry, the Admiralty registrar or the registrar of a district registry.

APPENDIX 1

REQUISITE DOCUMENT FOR PURPOSES OF RULE 21

1. Where a party is entitled to require any costs to be taxed by virtue of a judgment, order or direction specified in the first column of the following Table, the requisite document for the purposes of rule 21 is the document specified in relation to that judgment, order or direction in the second column of that Table.

<i>Judgment, order or direction</i>	<i>Requisite document</i>
Judgment or order given or made in proceedings in the Probate, Divorce and Admiralty Division.	The bill of costs to be taxed.
Judgment or order given or made in any other proceedings in the Supreme Court.	The judgment or order, as the case may be.
Direction of the Court given under these rules.	The direction.

2. Where a party is entitled by virtue of rule 10 to require any costs to be taxed, the requisite document for the purposes of rule 21 is—

- (a) where he is so entitled by virtue of rule 10(1), the notice given to him under Order 21, rule 2;
 (b) where he is so entitled by virtue of rule 10(2) or (3), a certified copy of the notice given by him under Order 22, rule 3.

3. Where a party is entitled to require taxation by a taxing officer of the costs directed by an award made on an arbitration under any Act or pursuant to an arbitration agreement to be paid and no order of the Court for the enforcement of the award has been made, the requisite document for the purposes of rule 21 is the award.

4. Where apart from any order of the Court a party is entitled to require taxation by a taxing officer of the fees and charges payable to a sheriff or an officer of his under the Sheriffs Act 1887(a), the requisite document for the purposes of rule 21 is the sheriff's bill of fees and charges.

5. Where a party is entitled to require taxation by a taxing officer of any costs directed to be taxed or paid by an order, award or other determination of a tribunal or other body constituted by or under any Act, the requisite document for the purposes of rule 21 is the order, award or other determination, as the case may be.

APPENDIX 2

SCALE OF COSTS

PART I

INSTITUTION, ETC., OF PROCEEDINGS

Item	£	s.	d.
1. Drawing, issuing, filing and service on one party of writ of summons (including statement of claim indorsed thereon), originating summons, notice of originating motion, third party notice	2	10	0
		to	
	10	0	0
2. Issue and service on one party of concurrent writ of summons or originating summons	15	0	0

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Item

£ s. d.

Note to items 1 and 2

References in these items to service on one party of a writ of summons shall, in relation to a writ of summons issued in an Admiralty action in rem, be construed as references to service of the writ on a ship or on a registrar, as the circumstances of the case require.

3. Renewing writ of summons issued—	
(a) in Admiralty action	6 0 0
(b) in any other action	2 0 0
including drawing and filing affidavit, attending on application for renewal and obtaining order.	
4. Drawing, presenting, filing and service on one party of—	
(a) petition assigned to the Probate, Divorce and Admiralty Division	2 10 0
to	
10 0 0	
(b) any other petition	Discretionary
5. Drawing, issuing, filing and service on one party of notice of motion (other than an originating motion)	1 5 0
to	
5 0 0	
6. Drawing, filing and service on one party of—	
(a) case or special case stated by party or parties to any cause or matter	Discretionary
(b) case or special case stated by Restrictive Practices Court, inferior court of civil jurisdiction, statutory tribunal, Commissioners for the general or special purposes of the Income Tax Acts, Minister of the Crown, arbitrator or umpire	Discretionary
(c) notice of appeal (including notice of the grounds of the appeal) from decision given on an investigation or inquiry under Part VI of the Merchant Shipping Act 1894, or from an order or decision of a naval court under the said Part VI	Discretionary
<i>Note to item 6</i>	
This item includes service on one party of notice that the case referred to in paragraph (b) thereof has been entered for hearing.	
7. Drawing, filing and service on one party of statement of claim (if not indorsed on writ), or other pleading, answer to petition, claim in a reference under Order 75, rule 41	2 10 0
to	
10 0 0	
8. Drawing, filing and service on one party of particulars of pleading and drawing and service on one party of request for such particulars	1 5 0
to	
10 0 0	
9. Drawing and filing of Preliminary Act, drawing notice of filing and service on one party of such notice	Discretionary
10. Drawing amendment of document referred to in item 1, 4, 5 or 7, and service on one party of amended document	1 0 0
to	
3 0 0	
11. Drawing notice of writ of summons for service out of the jurisdiction	15 0
12. Drawing any document, attending on any application and doing any other work necessary to obtain—	
(a) order for substituted service of any document,	
(b) order giving leave to serve any document out of the jurisdiction,	
and obtaining order	Discretionary

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PART II

PROCEEDINGS IN CHAMBERS

Item	£ s. d.
13. Drawing, issuing, filing and service on one party of summons—	
(a) to proceed under a judgment or order	1 5 0
(b) for order in terms of annexed minutes	1 5 0
(c) to extend time	1 5 0
14. Drawing, issuing, filing and service on one party of summons for directions or notice under Order 25, rule 7—	
(a) in Admiralty action	Discretionary
(b) in any other action	1 5 0
	to
	3 0 0
15. Drawing, issuing, filing and service on one party of summons to attend at chambers (other than summons referred to in item 13 or 14)	1 5 0
	to
	3 0 0
16. Drawing brief on an interlocutory application or on further consideration thereof, including copy for counsel	1 0 0
	to
	7 10 0
17. Attending to obtain appointment for hearing before judge, master or registrar	15 0
18. Attending to deliver papers required for use of judge, master or registrar in chambers	15 0
19. Attending hearing of summons or application in chambers ...	1 10 0
	to
	12 0 0
	per day
20. Attending registrar of the Chancery Division—	
(a) to bespeak (where necessary) and to settle draft minutes of order—	
(i) if certified for special allowance by registrar under paragraph 6 of Part X of this Appendix	Discretionary not exceeding
	6 0 0
(ii) if not so certified	1 10 0
(b) to pass and enter order	1 10 0
21. Attending to draw up and enter any order, where item 20 does not apply	15 0

PART III

DISCOVERY AND INSPECTION

22. Drawing, filing and service of—	
(a) affidavit of documents or list of documents	3 0 0
(b) interrogatories for examination of a party	to
(c) affidavit in answer to interrogatories	12 10 0
including, when appropriate, attending deponent to be sworn and copy for service	
23. Attending to inspect, or produce for inspection, documents production of which for inspection is required by order of the Court or by virtue of any provision of Order 24—	
for the first hour or part of an hour	1 10 0
for every subsequent half hour or part thereof	15 0

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PART IV

PREPARATION FOR TRIAL, ETC.

Item	£	s.	d.
24. Drawing and issue of—			
(a) writ of subpoena ad testificandum or writ of habeas corpus ad testificandum for one, two or three witnesses,	15	0	
(b) writ of subpoena duces tecum, for each witness, including filing of praecipe, attending to obtain writ and copy for service.	15	0	
Where the writ mentioned in paragraph (a) is for more than one witness, copy for service on each additional witness ...	2	6	
25. Drawing and service of notice—			
(a) to produce for inspection document referred to in pleading or affidavit	15	0	
(b) to produce document at trial or hearing	15	0	
(c) to admit any document or fact including copy for service.	15	0	
26. Instructions for trial or hearing of any cause or matter, whatever the mode of trial or hearing			Discretionary
27. Instructions for appeal from an interlocutory or final order or judgment			Discretionary
<i>Note to items 26 and 27</i>			
These items are intended to cover the doing of any work, not otherwise provided for, necessarily or properly done in preparing for a trial, hearing or appeal, or before a settlement of the matters in dispute, including—			
(a) taking instructions to sue, defend, counterclaim or appeal, or for any pleading, particulars of pleading, affidavit, preliminary act or claim in a reference under Order 75, rule 41;			
(b) considering the facts and law;			
(c) attending on and corresponding with client;			
(d) interviewing and corresponding with witnesses and potential witnesses and taking proofs of their evidence;			
(e) arranging to obtain reports or advice from experts and plans, photographs and models;			
(f) making search in Public Record Office and elsewhere for relevant documents;			
(g) inspecting any property or place material to the proceedings;			
(h) perusing pleadings, affidavits and other relevant documents;			
(i) where the cause or matter does not proceed to trial or hearing, work done in connection with the negotiation of a settlement; and			
(j) the general care and conduct of the proceedings.			
28. Drawing instructions to counsel to advise in writing or in conference, including copy for counsel	1	0	0
		to	
	7	10	0
29. Attending counsel in conference	2	10	0
And for every half hour beyond the first	1	0	0
<i>Note to item 29</i>			
This item includes attending to make appointment for conference.			
30. Drawing brief with observations to counsel and proofs of evidence, per folio	2	0	

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Item	£	s.	d.
31. Attending counsel to procure certificate that cause is proper to be heard as a short cause and on registrar to mark same ...	1	0	0
32. Attending to obtain appointment to examine witness and on examination of witness before any commissioner, officer of the Court or other person appointed to examine him or under Order 75, rule 30	4	0	0
		to	
	12	0	0
			per day

PART V**TRIAL OR HEARING**

33. Attending at court for purpose of—			
(a) any application relating to or consequent on trial or hearing of a cause or matter	1	10	0
		to	
	5	0	0
(b) trial or hearing of a cause or matter for each day—			
(i) on which cause or matter is included in list of causes or matters to be tried or heard but on which trial or hearing is not begun	1	10	0
		to	
	8	0	0
(ii) of trial or hearing	3	0	0
		to	
	15	0	0
(c) hearing deferred judgment	3	0	0
		to	
	8	0	0

Note to item 33

Where the Court is not sitting at the Royal Courts of Justice, then, unless it is sitting in the town in which the solicitor practises, the solicitor shall also be allowed travelling and out of pocket expenses reasonably incurred by him, and where the Court is sitting at the Royal Courts of Justice and the costs of the attendance at court of a country solicitor are allowed, that solicitor shall also be allowed such expenses so incurred.

34. Attending to obtain certificate of associate or master, drawing, and attending to enter, judgment, other than judgment given in Admiralty cause or matter	1	10	0
35. Attending to obtain judgment in Admiralty cause or matter, decision on reference under Order 75, rule 41 and grounds of decision	15	0	

PART VI**TAXATION**

36. Drawing bill of costs (including copy for taxing officer), per folio	2	0	
37. Obtaining reference to taxing officer or appointment for taxation or (where the taxation proceedings arise out of proceedings in the Probate, Divorce and Admiralty Division) attending to lodge bill of costs	1	0	0

Note to item 37

This item includes drawing the statement referred to in rule 21(4) of this Order.

38. Attending taxation, completing bill of costs, producing vouchers for disbursements and attending to obtain taxing officer's certificate or order	3	0	0
		to	
	12	0	0
Or if bill of costs does not exceed £20 and is taxed at same time as some other bill in the same proceedings	2	0	0
39. Drawing objections to decision of taxing officer on taxation, or answers to objections, including copies for service and filing, delivery to one party of such objections or answers and attending hearing of review by taxing officer	3	0	0
		to	
	12	0	0

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PART VII

'EXECUTION

Item	£	s.	d.
40. Drawing, and attending to obtain issue of, writ of execution Necessary copies of any such writ shall be allowed.	1	0	0
41. Drawing notice of renewal of writ of execution required by Order 46, rule 8	15	0	
Procuring renewal of writ of execution in accordance with the said rule 8	15	0	

PART VIII

GENERAL AND MISCELLANEOUS

Attendances

42. To obtain—			
(a) consent of person to act as next friend or guardian ad litem and consent or approval of any other interested party	1	10	0
(b) any other consent	3	0	0
<i>Note to item 42</i> This item includes drawing the form of consent or approval.			
43. To give consent	15	0	
44. To enter appearance	1	5	0
If appearance entered for more than one person at the same time, for each additional person	2	6	
<i>Note to item 44</i> This item includes copy and service of notice of appearance.			
45. To search—			
(a) for appearance	15	0	
(b) for appearance and to obtain certificate of non- appearance	1	0	0
46. To register memorandum of a lis pendens... ..	1	0	0
<i>Note to item 46</i> This item shall not be allowed on a taxation of costs in accor- dance with rule 28(2).			
47. At Central Office or any registry to file any document	15	0	
48. At Central Office or any registry to bespeak or search for affidavit	15	0	
49. To enter order amending record by striking out or adding a party or consolidating causes or matters	15	0	
50. To—			
(a) set down action, summons or appeal for trial or hearing... ..	15	0	
(b) enter special case, or set down point of law, for argument	15	0	
(c) enter for hearing case or special case stated by Restrictive Practices Court, inferior court of civil jurisdiction, statu- tory tribunal, Commissioners for the general or special purposes of the Income Tax Acts, Minister of the Crown, arbitrator or umpire	15	0	
(d) enter for hearing reference to Admiralty registrar, district registrar or official referee	15	0	
51. On the appropriate officer to certify that cause or matter set down for trial or hearing is settled or is for any other reason not to be included in list for trial or hearing	15	0	
52. On a deponent swearing, or solicitor or clerk deposing to, any affidavit other than an affidavit of service	15	0	
53. To examine abstract of title with deeds in connection with any cause or matter, per hour	2	10	0

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Item	£ s. d.
54. To produce deeds for examination with abstract of title in connection with any cause or matter— for the first hour or part thereof	2 0 0
for each subsequent half hour or part thereof	1 0 0
55. To stamp document with inland revenue stamp	15 0
56. To search for and obtain certificates of birth, marriage or death, for every 3 certificates obtained at the same registry at the same time	15 0
57. To make a general search for certificates of birth, marriage or death, per hour	1 10 0
58. On printer to insert advertisement in London Gazette or other paper, for each publication	15 0
59. On counsel with brief, case for written opinion or instructions to settle any document	15 0
Or where counsel's fee is 20 guineas or more	1 10 0
60. Attendance not provided for or allowed under any other item ...	15 0
<i>Attendances, etc., at the Accountant General's office</i>	
61. To obtain directions for lodgment of money in court, and at Bank of England to pay in or deposit money and obtain receipt ...	3 0 0
62. To draw and lodge documents required to authorise payment out of money lodged in court and to receive payment ...	1 0 0
63. To bespeak power of attorney to receive money out of court, obtain execution of power, stamp and lodge it, receive money and send it to grantor	Discretionary
64. To identify person entitled to receive cheque	2 0 0
65. To lodge securities in court or procure transfer of securities into or out of court	Discretionary
<i>Note to item 65</i>	
This item includes all attendances required in connection with the lodgment or transfer and the preparation of any document so required.	
66. To procure certificate, or re-dating of certificate, of funds in court Or where more than one certificate is procured or re-dated at same time	1 0 0
	Discretionary
67. To procure transcript of account	1 0 0
68. Drawing request for payment by post, obtaining signature and lodging request	1 10 0
69. Preparing, where person entitled to receive interest or other periodical payments, evidence of life or of the fulfilment of any conditions affecting the payments	Discretionary
70. Drawing certificate required by the Accountant General under rule 89 of the Supreme Court Funds Rules 1927	Discretionary
71. Procuring certificate of Commissioners of Inland Revenue required by rule 66 of the Supreme Court Funds Rules 1927, and lodging it with the Accountant General	1 10 0
<i>Drawing documents</i>	
72. Case for opinion of counsel before institution of proceedings, including copy for counsel	1 0 0
	to
	10 0 0
73. Affidavit of service	2 0 0
<i>Note to item 73</i>	
This item includes engrossing affidavit, attending to have it sworn and file it.	
74. Affidavit, other than affidavit of service, per folio	2 0

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Item	£	s.	d.
75. Preparation for marking by commissioner of oaths of exhibit to affidavit, for each exhibit	3	0	
76. Advertisement to be signed by master	15	0	
<i>Note to item 76</i>			
This item includes attending chambers to obtain signature.			
77. Minutes of order, accounts, statements and other documents required for use in court or chambers, per folio	2	0	
78. Pedigree, for each completed ring	2	0	
79. Memorandum of a lis pendens, including copy thereof	15	0	
<i>Note to item 79</i>			
This item shall not be allowed on a taxation of costs in accordance with rule 28(2).			
<i>Notices, etc.</i>			
80. Drawing or filling up a notice to a creditor requiring him to prove his claim or informing him that cheque may be received from the Accountant General	1	6	
81. Drawing any notice not otherwise provided for for service or any request under Order 6, rule 5(3)	2	6	
<i>Copies, etc.</i>			
82. Copy of document not otherwise provided for—			
(a) typed copy, other than carbon copy, or written copy, per folio			10
(b) printed or carbon copy, per folio			5
(c) photographic copy			Discretionary
<i>Note to item 82</i>			
If the copy was made before 1st October 1964, the amounts to be allowed under paragraphs (a) and (b) shall be 8d. and 4d. respectively.			
83. Examining proof print, per folio			4
<i>Letters, etc.</i>			
84. Letter not included under any other item	7	0	
Or if long	10	0	
Or if similar	4	0	
Or if a circular letter	3	0	
85. Letters, messages and telephone calls not provided for or allowed under any other item			Discretionary
<i>Perusal</i>			
86. Perusing any document not provided for or allowed under any other item, per folio	1	0	
<i>Service</i>			
87. Where more than one attendance is necessary to effect service on, or delivery to, one party of document referred to in Part I of this Appendix or in item 13, 14, 15 or 39 thereof, or where service is effected within the jurisdiction otherwise than by personal attendance or by post or is effected out of the jurisdiction			Discretionary
88. Where document referred to in Part I of this Appendix or in item 13, 14, 15 or 39 thereof is required to be served on, or delivered to, more than one person, service on, or delivery to, each additional person—			
(a) if required to be served personally or delivered	10	0	
		to	
	1	10	0
(b) if service by post authorised			5 0

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Item	£ s. d.
89. Service or delivery of any document, not provided for or allowed under any other item,—	
(a) if required to be served personally or delivered	10 0
(b) if service by post authorised	5 0
In addition to the amount allowed under paragraph (a) hereof, a mileage allowance in respect of each mile after the first two miles between the place at which service or delivery is effected and the nearest place of business of the solicitor effecting it ...	2 0

PART IX**ADDITIONAL PROCEEDINGS ARISING ONLY IN CONNECTION WITH ADMIRALTY CAUSES AND MATTERS**

90. Procuring issue and service of warrant of arrest	6 0 0
<i>Note to item 90</i> This item includes procuring the warrant, affidavits and other documents required in connection with the issue and service of the warrant and any attendances required to procure its issue and service, the swearing of any such affidavit and the filing of any such document.	
91. Procuring issue of instrument of release under Order 75, rule 13	6 0 0
<i>Note to item 91</i> This item includes drawing the instrument and other documents required in connection with the issue of the instrument, obtaining any consent so required and any attendances required to procure the issue of the instrument and the filing of any such document.	
92. Procuring entry, renewal or withdrawal of caveat against the issue of a warrant, the release of property or the payment of money out of court	1 0 0
<i>Note to item 92</i> This item includes drawing and filing any document required to procure the entry, renewal or withdrawal and any attendances so required.	
93. Giving bail—	
(a) one surety	7 0 0
(b) two sureties	7 10 0
<i>Note to item 93</i> This item includes drawing the bail bond, affidavits and other documents required in connection with the giving of bail and any attendances required to procure the signing of the bond, the swearing of any such affidavit and the filing and service of any such document.	
94. Giving guarantee or undertaking in lieu of bail	4 0 0
<i>Note to item 94</i> This item includes preparing the guarantee or undertaking and any attendances required to procure the signing and stamping thereof.	
<i>Note to items 93 and 94</i> The commission or fee paid to a person becoming surety to a bail bond or giving a guarantee or undertaking in lieu of bail, not exceeding £1 per cent. of the amount for which the bond, guarantee or undertaking is given, shall be allowed on taxation.	
95. Obtaining bail... ..	3 10 0
<i>Note to item 95</i> This item includes perusing notice of bail and other relevant documents and any attendance to make enquiries as to sufficiency of sureties or to ensure that documents relating to bail have been filed.	

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Item		£ s. d.
96. Obtaining—		
(a) guarantee in lieu of bail		3 10 0
(b) undertaking in lieu of bail		2 0 0
<i>Note to item 96</i>		
This item includes perusing the guarantee or undertaking and other relevant documents.		
97. Procuring the issue and execution of commission of appraisalment or of appraisalment and sale		3 0 0
<i>Note to item 97</i>		
This item includes drawing and filing any document required in connection with the issue and execution of the commission and any attendances so required.		
98. Attending adverse solicitor to limit questions in dispute on reference under Order 75, rule 41		2 10 0
And for every half hour beyond the first		1 0 0
99. Negotiating agreement under Order 75, rule 35		1 10 0
		to
		5 0 0
<i>Note to item 99</i>		
This item includes taking instructions in connection with the agreement, drawing and filing the agreement and any attendances required in connection with the negotiation, making and filing of the agreement.		
100. Negotiating agreement with respect to amount of damages, interest or other sums payable by opposite party	Discretionary	
<i>Note to item 100</i>		
This item includes any attendances and other work done in connection with the calculation of, and in obtaining agreement as to, the amount payable.		

**PART X
GENERAL**

Discretionary costs

1.—(1) Where in the foregoing provisions of this Appendix there is entered in the second column against any item specified in the first column either an upper and a lower sum of money or the word "Discretionary", the amount of costs to be allowed in respect of that item shall (subject to any order of the Court fixing the costs to be allowed) be in the discretion of the taxing officer, within the limits of the sums so entered, if any.

(2) In exercising his discretion under this paragraph or under rule 32(2) in relation to any item, the taxing officer shall have regard to all relevant circumstances, and in particular to—

- (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
- (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;
- (c) the number and importance of the documents (however brief) prepared or perused;
- (d) the place and circumstances in which the business involved is transacted;
- (e) the importance of the cause or matter to the client;
- (f) where money or property is involved, its amount or value;
- (g) any other fees and allowances payable to the solicitor or counsel 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.

Order 62]*Fees to counsel*

2.—(1) Except in the case of taxations under the Legal Aid and Advice Act 1949, and taxations of fees payable by the Crown, no fee to counsel shall be allowed unless—

- (a) before taxation its amount has been agreed by the solicitor instructing counsel; and
 (b) before the taxing officer issues his certificate a receipt for the fees signed by counsel is produced to him.

(2) No retaining fee to counsel shall be allowed on any taxation of costs in relation to which rule 28(2) has effect.

(3) No costs shall be allowed in respect of counsel attending before a master or registrar in chambers or of more counsel than one attending before a judge in chambers unless the master, registrar or judge, as the case may be, has certified the attendance as being proper in the circumstances of the case.

(4) When a trial or hearing at which counsel appears lasts more than 5 hours there may be allowed a refresher fee or fees the amount of which shall be in the discretion of the taxing officer.

Fees to counsel's clerk

3. The following fees shall be allowed to counsel's clerk:—

On a fee of—	£	s.	d.
Under 5 guineas	2	6	
5 guineas and under 10 guineas	5	0	
10 guineas and under 20 guineas	10	0	
20 guineas and under 30 guineas	15	0	
30 guineas and under 50 guineas	1	0	0
50 guineas and over, per cent.	2	10	0
On consultation, senior's clerk	5	0	
On consultation, junior's clerk	2	6	
On conference	5	0	

Items to be authorised, certified, etc.

4.—(1) In an action arising out of an accident on land due to a collision or apprehended collision, the costs of preparing a plan (other than a sketch plan) of the place where the accident happened shall not be allowed unless—

- (a) before the trial the Court authorised the preparation of the plan, or
 (b) notwithstanding the absence of an authorisation under sub-paragraph (a), the taxing officer is satisfied that it was reasonable to prepare the plan for use at the trial.

(2) The costs of calling an expert witness with regard to any question as to which a Court expert is appointed under Order 40 or a scientific adviser is appointed under Order 103, rule 27, shall not be allowed on a taxation of costs in relation to which rule 28(2) or (3) has effect unless the Court at the trial has certified that the calling of the witness was reasonable.

(3) If any action or counterclaim for the infringement of a patent or any petition for revocation of a patent under section 32 of the Patents Act 1949, or any counterclaim for the revocation of a patent under section 61 of that Act, proceeds to trial, no costs shall be allowed to the parties serving any particulars of breaches or particulars of objection in respect of any issues raised in those particulars and relating to that patent except in so far as those issues or particulars have been certified by the Court to have been proven or to have been reasonable and proper.

Attendances in chambers in the Chancery Division

5.—(1) The following provisions of this paragraph apply in relation to every hearing in chambers in the Chancery Division.

(2) Subject to sub-paragraph (3), on a taxation of costs in relation to which rule 28(2) or (3) has effect, no costs shall be allowed for attending any such hearing

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as aforesaid except in so far as the costs (if any) to be allowed have been fixed by the Court at the hearing; and in fixing the costs to be allowed for attending any such hearing as aforesaid the Court shall have regard to all relevant circumstances, including in particular the matters mentioned in paragraph 1(2) of this Part of this Appendix, in so far as those circumstances affect the hearing, but not in so far as they may be taken into account in assessing any costs to be allowed in respect of preparation for the hearing.

(3) Where at any such hearing as aforesaid a solicitor acting as principal in the proceedings attends in addition to the solicitor acting as his agent, costs may be allowed in respect of the attendance of the principal if the Court at the hearing certifies that attendance to be reasonable.

(4) Where on any such hearing as aforesaid the Court certifies that the speedy and satisfactory disposal of the proceedings required and received from the solicitor engaged in them exceptional skill and labour in the preparation for the hearing, the taxing officer in taxing the costs to be allowed for instructions in relation to the summons or application shall take the certificate into account.

Attendances before a registrar of the Chancery Division

6. On any attendance before a registrar of the Chancery Division for the purpose of settling the terms of and passing any judgment or order, if it appears to the registrar that the attendance is of a special nature or of unusual length or special manner, or where requested to do so by any party, issue a certificate to that effect, and the taxing officer in fixing the costs to be allowed for the attendance shall take the certificate into account.

Copies of documents

7.—(1) There shall be allowed for printing copies of any document the amount properly paid to the printer; and where any part of a document is properly printed in a foreign language or as a facsimile or in any unusual or special manner, or where any alteration becomes necessary after the first proof of the document, there shall be allowed such an amount as the taxing officer thinks reasonable, such amount to include any attendances on the printer.

(2) The solicitor for a party entitled to take printed copies of any documents shall be allowed the amount he pays for such number of copies as he necessarily or properly takes.

(3) The allowance for printed copies of documents under item 82 of this Appendix shall be made in addition to the allowances under the foregoing provisions of this paragraph, and shall, subject to sub-paragraph (4), be made for such printed copies as may be necessary or proper—

- (a) of any pleading, for service on the opposite party;
- (b) of any special case, for filing;
- (c) of any pleading or special case, for the use of the Court;
- (d) of any affidavit, for attestation in print;
- (e) of any pleading, special case or evidence for the use of counsel in Court; or
- (f) of any other document necessarily and properly copied and not otherwise provided for.

(4) The allowance under item 82 of this Appendix shall not be made in relation to printed copies of documents for the use of the Court or of counsel where written copies have been made before printing, and shall not be made more than once in the same cause or matter.

(5) The allowances under this Appendix for drawing any writ, pleading, summons, affidavit or other document shall be taken to include an allowance for preparing any necessary copies made for the use of the solicitor, his agent and his client or for counsel to settle or, in the case of a writ, pleading or summons, for service.

(6) Where the solicitor is acting as agent for another, the costs of preparing copies of any documents necessary for the use of the principal shall be allowed under item 82.

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APPENDIX 3

FIXED COSTS

PART I

Costs on judgment without trial for a liquidated sum

1. The scale of costs set out in Part II of this Appendix (which includes the scale prescribed pursuant to subsection (4) of section 47 of the County Courts Act 1959) shall apply in relation to the following cases if the writ of summons therein was issued after the 31st December 1959, and was indorsed in accordance with Order 6, rule 2(1)(b), with a claim for a debt or liquidated demand only of £40 or upwards, that is to say—

- (a) cases in which the defendant pays the amount claimed or a sum of not less than £40 within the time and in the manner required by the indorsement of the writ;
- (b) cases in which the plaintiff obtains judgment in default of appearance under Order 13, rule 1, or under that rule by virtue of Order 83, rule 4, or Order 84, rule 3, or judgment in default of defence under Order 19, rule 2, or under that rule by virtue of Order 83, rule 4, or Order 84, rule 3, being in any case judgment for a sum of £40 or upwards;
- (c) cases in which the plaintiff obtains judgment under Order 14, for a sum of £40 or upwards, either unconditionally or unless that sum is paid into court or to the plaintiff's solicitors.

2. Notwithstanding anything in paragraph 1 of this Appendix or in the said scale, no costs shall be allowed in any case to which the said paragraph 1 applies in which less than £75 is recovered unless—

- (a) the Court orders costs to be allowed; or
- (b) in a case to which sub-paragraph (b) or (c) of the said paragraph 1 applies, judgment is obtained within 28 days after the service of the writ or within such further time as the Court may allow.

3. In every case to which the said scale applies there shall be added to the basic costs set out in the said scale the fee which would have been payable on the issue of a writ for the amount recovered.

4. For the purposes of the said scale—

- (a) "the central district" means in the case of an action in which the writ is issued out of the Central Office, the district within a radius of 5 miles from the General Post Office, and in the case of an action in which the writ is issued out of a district registry means the district within a radius of 5 miles from that registry; and
- (b) two defendants are to be treated as served in the same district if the places at which they are served are in the same county court district or within 5 miles of each other.

PART II

*Basic costs**Costs to be allowed in cases under the following sub-paragraphs of paragraph 1 of this Appendix*

	(a)		(b)		(c)	
	£	s. d.	£	s. d.	£	s. d.
If the amount recovered is—						
not less than £40 but less than £75 ...	2	8 0	3	2 6	6	12 6
not less than £75 but less than £300 ...	4	10 0	5	14 6	9	14 6
not less than £300	6	15 0	9	1 6	15	14 6

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<i>Additional costs</i>	<i>Costs to be allowed where the amount recovered is—</i>		
	(i) not less than £40 but less than £75 £ s. d.	(ii) not less than £75 but less than £300 £ s. d.	(iii) not less than £300 £ s. d.
(1) Where there is more than one defendant, in respect of each additional defendant served:—			
(a) if the additional defendant is served in the same district or represented by the same solicitor as any other defendant	8 0	10 0	15 0
(b) in any other case	8 0	1 0 0	1 7 6
(2) Where substituted service is ordered and effected, in respect of each defendant served	2 0 0	3 0 0	5 10 3
		<i>Costs to be allowed where the amount recovered is—</i>	
		(i) less than £300 £ s. d.	(ii) not less than £300 £ s. d.
(3) Where the plaintiff's solicitor has no place of business in the central district, or where he has a place of business in that district but any defendant is served outside that district:—			
(a) in the case of judgment in default of appearance or of defence		10 0	1 10 0
(b) in the case of judgment under Order 14		1 0 0	1 10 0
(c) in any other case		10 0	15 0
(4) Where service out of the jurisdiction is ordered and effected, in the case of service—			
(a) in Scotland, Northern Ireland, the Isle of Man or the Channel Islands		6 0 0	8 5 0
(b) in any other place out of the jurisdiction		9 0 0	12 15 0
(5) In the case of judgment in default of defence or judgment under Order 14, where notice of appearance is not given on the day on which appearance is entered, and the plaintiff makes an affidavit of service for the purpose of a judgment in default of appearance (the allowance to include the search fee)		1 1 6	1 6 6
(6) In the case of judgment under Order 14 where an affidavit of service of the summons is required		1 0 0	1 5 0
(7) In the case of judgment under Order 14, for each adjournment of the summons		1 0 0	1 10 0
(8) In the case of judgment in default of appearance or defence on an application by summons under Order 83, rule 4:—			
(a) where judgment is given for interest at a rate exceeding 48 per cent. per annum on production of an affidavit justifying that rate... ..		2 9 0	3 5 0
(b) in any other case		1 13 0	2 5 0
(c) where there is more than one defendant, in respect of each additional defendant		3 0	5 0
(9) In the case of judgment in default of appearance or defence on an application by summons under Order 84, rule 3		1 13 0	2 5 0
and, where there is more than one defendant, in respect of each additional defendant		3 0	5 0

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	<i>Costs to be allowed</i> £ s. d.
(10) Where the amount recovered is not less than £300 and there is no available solicitor carrying on business within 2 miles of the place where the defendant is served, a mileage allowance in respect of each mile after the first 2 miles between that place and the nearest place of business of an available solicitor	2 0

PART III

Costs on judgment without trial for possession of land

5.—(1) Where a writ of summons is indorsed with a claim for the possession of land and the plaintiff obtains judgment—

- (a) under Order 13, rule 4 or 5, in default of appearance, or
- (b) under Order 19, rule 5 or 6, in default of defence, or
- (c) under Order 14,

for possession of the land and costs, then, subject to sub-paragraph (2), there shall be allowed the costs prescribed by paragraph 6 of this Appendix.

(2) Where the plaintiff is also entitled under the judgment to damages to be assessed, or where the plaintiff claims any relief of the nature specified in Order 88, rule 1, this Part of this Appendix shall not apply.

6.—(1) Subject to sub-paragraphs (2) and (3), the costs to be allowed under this Part of this Appendix shall be the costs which would be allowed under Part I thereof if judgment had been obtained in the same circumstances, that is to say, in default of appearance or of defence or under Order 14, but the writ had been indorsed with a claim for a debt or liquidated demand only of £40 or upwards and judgment for not less than £75 but less than £300 had been obtained.

(2) Where the plaintiff obtains judgment not only for possession of the land and costs but also for a liquidated sum of not less than £100, sub-paragraph (1) shall apply as if the words “£75 but less than” were omitted.

(3) Paragraph 3 of this Appendix shall not apply to a case to which this Part of this Appendix applies but in every such case there shall be added to the costs allowed under the said Part the fee payable on the issue of the writ.

PART IV

Miscellaneous

7. Where a plaintiff or defendant signs judgment for costs under rule 10, there shall be allowed—

Costs of the judgment £1 5s. 0d.

8. Where a certificate of a judgment or decree is registered in the High Court in the Register for Irish Judgments or the Register for Scotch Judgments under the Judgments Extension Act 1868(a), within 12 months of the date of the judgment and without an order, there shall be allowed—

Costs of registration £6 12s. 0d.

9. Where the Court orders a judgment or order of an inferior court to be removed into the High Court under section 4 of the Inferior Courts Act 1779(b), section 22 of the Judgments Act 1838(c), or the Borough and Local Courts of Record Act 1872(d), there shall be allowed, in the case of a judgment or order—

(a) of the Mayor's and City of London Court £2 10s. 0d.

(b) of the Salford Hundred Court, the Liverpool Court of Passage or any other court £5 2s. 0d.

10. Where upon the application of any person who has obtained a judgment or order against a debtor for the recovery or payment of money a garnishee order is

(a) 31 & 32 Vict. c. 54.
(c) 1 & 2 Vict. c. 110.

(b) 19 Geo. 3. c. 70.
(d) 35 & 36 Vict. c. 86.

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made under Order 49, rule 1, against a garnishee attaching debts due or accruing due from him to the debtor, the following costs shall be allowed—

(a) to the garnishee, to be deducted by him from any debt due by him as aforesaid before payments to the applicant—

	<i>If no affidavit used</i>	<i>If affidavit used</i>
	£ s. d.	£ s. d.
(i) where the garnishee resides in the central district within the meaning of paragraph 4 of this Appendix	1 10 0	3 5 0
(ii) where the defendant does not so reside	2 7 0	4 10 0

(b) to the applicant, to be retained, unless the Court otherwise orders, out of the money recovered by him under the garnishee order and in priority to the amount of the debt owing to him under the judgment or order—

<i>Basic costs</i>	£ s. d.
If the amount recovered by the applicant from the garnishee is—	
less than £5	Nil
not less than £5 but not more than £10	2 5 0
more than £10	7 0 0

Additional costs

Where the garnishee fails to attend the hearing of the application and an affidavit of service is required	1 5 0
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11. Where a charging order is made—

(a) in respect of any securities, under Order 50, rule 2; or

(b) in respect of any partnership property or profits, under section 23 of the Partnership Act 1890(a); or

(c) in respect of land, under section 35 of the Administration of Justice Act 1956(b); there shall be allowed—

	£ s. d.
Basic costs	8 12 6
Additional costs where an affidavit of service is required	1 5 0

12. Where leave is given under Order 45, rule 3, to enforce a judgment or order for the giving of possession of land by writ of possession, if costs are allowed on the judgment or order there shall be allowed the following costs, which shall be added to the judgment or order—

	£ s. d.
Basic costs	2 10 0
Where notice of the proceedings has been given to more than one person, in respect of each additional person	8 0

13. Where a writ of execution within the meaning of Order 46, rule 1, is issued against any party, there shall be allowed—

	£ s. d.
Costs of issuing execution... ..	3 9 0

Order 63]**GENERAL AND ADMINISTRATIVE PROVISIONS****ORDER 63****CENTRAL OFFICE AND DISTRICT REGISTRIES***Distribution of business*

1. The Central Office shall be divided into such departments, and the business performed in the Central Office shall be distributed among the departments in such manner, as the Lord Chancellor may direct.

Practice master

2. One of the masters of the Queen's Bench Division shall be present at the Central Office on every day on which the office is open for the purpose of superintending the business performed there and giving any directions which may be required on questions of practice and procedure.

Date of filing to be marked, etc.

3.—(1) Any document filed in the Central Office in any proceedings must be sealed with a seal showing the date on which the document was filed.

(2) Particulars of the time of delivery at the Central Office of any document for filing, the date of the document and the title of the cause or matter of which the document forms part of the record shall be entered in books kept in the Central Office for the purpose.

Right to inspect, etc. certain documents filed in Central Office

4.—(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 Central Office, 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) Paragraph (1) shall apply to the judgments and orders filed in the Chancery Registrars' Office, and to the judgments and orders contained in the volumes of Chancery judgments and orders kept in the Central Office, as it applies to judgments and orders filed in the Central Office.

(3) 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 Central Office 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

5. Where the Court orders any documents to be lodged in court, then, unless the order directs that the documents be so lodged by being deposited at the Bank of England, the documents must be deposited in the Central Office.

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Filing of instruments creating powers of attorney

6.—(1) An instrument creating a power of attorney which is presented for filing or deposit in the Central Office under—

- (a) section 25 of the Trustee Act 1925(a),
- (b) section 125 of the Law of Property Act 1925(b), or
- (c) section 219 of the Act,

shall not be filed or deposited therein unless the execution of the instrument, and, in the case of an instrument presented for filing under the said section 25, the statutory declaration required by subsection (4) of that section, has been verified in accordance with rule 7, and the instrument is accompanied by the affidavit, declaration, certificate or other evidence by which the execution was verified, and, in the case aforesaid, by the said statutory declaration.

(2) A certified copy of an instrument creating a power of attorney, or of any portions thereof, which is presented for filing in the Central Office under the said section 125 shall not be filed therein unless—

- (a) the execution of the instrument has been verified in accordance with rule 7,
- (b) the signature of the person who certified the copy is sufficiently verified, and
- (c) subject to paragraph (3), the copy is accompanied by the affidavit, declaration, certificate or other evidence by which the execution was verified.

(3) If the affidavit, declaration, certificate or other evidence verifying the execution of the instrument is so bound up with or attached to the instrument that they cannot conveniently be separated, it shall be sufficient for the purpose of paragraph (2) to produce and show to the officer of the Central Office, the original affidavit, declaration, certificate or other evidence and to file a certified or office copy thereof.

Verification of execution of power of attorney

7. The execution of such an instrument or statutory declaration as is referred to in rule 6(1) may be verified—

- (a) by an affidavit or statutory declaration sworn or made by the attesting witness or some other person in whose presence the instrument was executed or, if no such person is available, by some impartial person who knows the signature of the donor of the power of attorney created by the instrument, or
- (b) if the instrument was executed abroad before a notary, by a notarial certificate annexed to the instrument and purporting to bear the signature and seal of the notary, or
- (c) by such other evidence as, in the opinion of a master of the Queen's Bench Division, is sufficient.

Inspection, etc. of powers of attorney

8.—(1) An index shall be kept in the Central Office of all instruments and certified copies to which rule 6 relates filed or deposited in the Central Office and of the names of the donors of the powers of attorney created by such instruments.

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(2) Without prejudice to section 219 of the Act, any person shall, on payment of the prescribed fee, be entitled—

(a) to search the index,

(b) to inspect any document filed or deposited in the Central Office in accordance with rule 6, and

(c) to be supplied with an office copy of any such document ;

and a copy of any such document may be presented at the Central Office to be marked as an office copy.

Restriction on removal of documents

9. No document filed in or in the custody of any office of the Supreme 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 county court.

Enrolment of instruments

10. Any deed which by virtue of any Act is required or authorised to be enrolled in the Supreme Court may be enrolled in the Central Office.

In this rule "deed" includes assurances and other instruments.

Practice in district registries

11. The practice of the Central Office shall be followed in the district registries.

Filing of documents in district registries

12.—(1) Where a cause or matter is proceeding in a district registry all documents in that cause or matter which are required to be filed must, subject to paragraph (2), be filed in that registry.

(2) Where a cause or matter in the Chancery Division is proceeding in a district registry, other than the district registry of Liverpool or Manchester, any document required to be filed which is used at the Royal Courts of Justice before the judge in chambers, a referee or taxing officer must, unless it has already been filed in the district registry, be filed in the Central Office, and, if the Court so directs, an office copy thereof must be sent to the district registry.

Inspection of documents filed in district registries, etc.

13. Rules 3 and 4 shall apply in relation to documents filed in a district registry as they apply in relation to documents filed in the Central Office.

Documents filed in district registry to be sent to Central Office, etc.

14. Where a defendant enters an appearance at the Royal Courts of Justice to a writ or originating summons issued out of a district registry, or where a cause or matter proceeding in a district registry is transferred to the Royal Courts of Justice or some other district registry, the district registrar shall send to the Central Office, the Admiralty Registry or that other district registry, as the circumstances of the case require, the original documents (if any) filed in the district registry and, if any proceedings have been taken in the registry beyond the issue of the writ or originating summons, a copy of every entry of the proceedings in the books kept in the registry.

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ORDER 64

SITTINGS, VACATIONS AND OFFICE HOURS

Sittings and vacations of Supreme Court

1.—(1) The sittings of the Court of Appeal and of the High Court shall be four in every year, that is to say—

- (a) the Michaelmas sittings which shall begin on the day appointed for that purpose by Order in Council made under section 53 of the Act and end on 21st December;
- (b) the Hilary sittings which shall begin on 11th January and end on the Wednesday before Easter Sunday;
- (c) the Easter sittings which shall begin on the second Tuesday after Easter Sunday and end on the Friday before Whit Sunday; and
- (d) the Trinity sittings which shall begin on the second Tuesday after Whit Sunday and end on 31st July.

(2) The vacations to be observed by the Court of Appeal and High Court shall be four in every year, that is to say—

- (a) the Christmas Vacation which shall begin on 22nd December and end on 10th January;
- (b) the Easter Vacation which shall begin on the Thursday before, and end on the second Monday after, Easter Sunday;
- (c) the Whitsun Vacation which shall begin on the Saturday before, and end on the second Monday after, Whit Sunday; and
- (d) the Long Vacation which shall begin on 1st August and end on the day appointed for that purpose by Order in Council under section 53 of the Act.

(3) Any day specified in paragraph (1) or (2) as the day on which a sitting or vacation is to begin or end shall be included in that sitting or vacation respectively.

Vacation judges

2.—(1) Two judges of the High Court, or such greater number as the Lord Chancellor may, with the concurrence of the Lord Chief Justice and the President of the Probate, Divorce and Admiralty Division, from time to time direct, selected each year in accordance with this rule shall be available during every vacation to act as vacation judges.

(2) The judges selected shall act as vacation judges for one year beginning with the 1st day of August next following the date of their selection.

(3) Unless the judges of the High Court otherwise arrange between themselves, the vacation judges shall be the two judges last appointed to be judges of the High Court who have not already served as vacation judges; and if at the relevant date there are not two judges who have not already so served, the vacation judges shall be the judge (if any) who has not so served and the senior judge or judges who has or have so served once only, according to seniority of appointment.

(4) If by virtue of a direction of the Lord Chancellor under paragraph (1) the number of judges required at any time to be available to act as vacation judges is greater than two, paragraph (3) shall have effect as if for the references therein to two judges there were substituted references to that greater number of judges.

(5) Any other judge of the High Court may sit in vacation for a vacation judge.

Order 64]*Sittings and powers of vacation judges*

3.—(1) The vacation judges shall sit in vacation as occasion may require and they, or if there are more vacation judges than two, any two of them, may together constitute a Divisional Court.

(2) The vacation judges, whether sitting separately or as a Divisional Court, may hear and dispose of any cause or matter, or any application made therein, to whichever Division it is assigned.

(3) No order made by a vacation judge acting as such shall be reversed or varied except by the judge who made the order, a Divisional Court or the Court of Appeal.

Hearing of applications, etc. in vacation

4.—(1) All such applications as require to be immediately or promptly heard shall be heard in vacation by the vacation judges.

(2) Any party to a cause or matter may at any time before the end of the Long Vacation in any year apply by summons to a judge for an order that the cause or matter shall be tried or heard during that vacation, and if the judge is satisfied that there is urgent need for the trial or hearing to take place in the Long Vacation he may make an order accordingly and fix a date for the trial or hearing.

Exclusion of courts of assize

5. The foregoing rules of this Order shall not affect the times of holding sessions of the Central Criminal Court or the days appointed for holding assizes and shall not apply in relation to the trial or hearing of causes, matters or applications by that Court or by commissioners acting under commissions issued under section 70 of the Act.

Sittings of official referees : applications in Long Vacation

6.—(1) The sittings of the official referees and the vacations to be observed by them shall be those specified in rule 1, but nothing in this rule shall prevent an official referee from sitting in vacation if he thinks it expedient so to do.

(2) Any interlocutory orders or directions required in connection with a cause or matter pending before an official referee may in the Long Vacation be made or given by a master of the Queen's Bench Division.

Supreme Court Offices : days on which open and office hours

7.—(1) The offices of the Supreme Court shall be open on every day of the year except—

(a) Saturdays and Sundays,

(b) Good Friday, the Tuesday after Easter Sunday and Christmas Day,

(c) bank holidays and such other days as the Lord Chancellor, with the concurrence of the Lord Chief Justice, the Master of the Rolls and the President of the Probate, Divorce and Admiralty Division, may direct.

In this paragraph "bank holiday" means a day which is, or is to be observed as, a bank holiday, or a holiday, under the Bank Holidays Act 1871(a), or the Holidays Extension Act 1875(b), in England and Wales.

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(2) The hours during which any office of the Supreme Court shall be open to the public shall be such as the Lord Chancellor, with the concurrence of any other President of a Division concerned with the business performed in that office, may from time to time direct.

District registries : office hours

8. Every district registry shall be open on such days and during such hours as the Lord Chancellor may from time to time direct and, in the absence of such a direction, shall be open on the days and during the hours when the offices of the county court of the place in which the district registry is situated are required to be open.

ORDER 65**SERVICE OF DOCUMENTS*****When personal service required***

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

2. Personal service of a document is effected by leaving a copy of the document with the person to be served and, if so requested by him at the time when it is left, showing him—

- (a) in the case where the document is a writ or other originating process, the original, and
- (b) in any other case, the original or an office copy.

Personal service on body corporate

3. 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, clerk, secretary, treasurer or other similar officer thereof.

Substituted service

4.—(1) If, in the case of any document which by virtue of any provision of these rules is required to be served personally on any person, it appears to the Court that it is impracticable for any reason to serve that document personally 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.

Order 65]*Ordinary service : how effected*

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, may be effected—

- (a) by leaving the document at the proper address of the person to be served, or
- (b) by post, or
- (c) in such other manner as the Court may direct.

(2) For the purposes of this rule, and of section 26 of the Interpretation Act 1889(a), in its application to 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 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 on Minister, etc. in proceedings which are not by or against the Crown

6. Where for the purpose of or in connection with any proceedings in the Supreme Court, not being civil proceedings by or against the Crown within the meaning of Part II of the Crown Proceedings Act 1947(b), any document is required by any Act or these rules to be served on the Minister of a government department which is an authorised department for the purposes of that Act, or on such a department or on the Attorney General, section 18 of the said Act of 1947 and Order 77, rule 4, shall apply in relation to the service of the document as they apply in relation to the service of documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown.

Effect of service after certain hours

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) after twelve noon on a Saturday or after four 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.

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Affidavit of service

8. 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

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, and at the time when service is to be effected that person is in default as to entry of appearance 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.

ORDER 66

PAPER, PRINTING, NOTICES AND COPIES

Quality and size of paper

1. Unless the nature of the document renders it impracticable, every document prepared by a party for use in the Supreme Court must be on paper of durable quality, approximately 13 inches long, by 8 inches wide, having a margin, not less than $1\frac{1}{2}$ inches wide, to be left blank on the left side of the face of the paper and on the right side of the reverse:

Provided that paper approximately 10 inches long by 8 inches wide may be used where the whole of the document can be produced on one side of the paper.

Regulations as to printing, etc.

2.—(1) Except where these rules otherwise provide, every document prepared by a party for use in the Supreme 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 purposes 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

3.—(1) Where a document prepared by a party for use in the Supreme 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 ten, as may be specified in the request.

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(2) Where a document prepared by a party for use in the Supreme 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

4.—(1) Every copy of a document, whether an office copy or a copy supplied to a party under these rules, must show on the indorsement the number of folios it contains.

(2) 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 solicitor by whom it was supplied.

(3) The party by whom a copy is supplied under rule 3, or, if he sues or appears by a solicitor, his 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 SOLICITOR***Notice of change of solicitor*

1.—(1) A party to any cause or matter who sues or defends by a solicitor may change his solicitor without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are lodged and served in accordance with this rule, the former solicitor shall, subject to rules 5 and 6, be considered the 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 a change of solicitor must be filed, and a copy thereof lodged, in the case where the cause or matter is proceeding in a district registry, in that registry and, in the case of any other cause or matter, in the appropriate office indicated in the following table:—

TABLE

<i>Nature of Cause or Matter</i>	<i>Appropriate Office</i>
(a) An action or any other cause or matter begun in the Action Department of the Central Office.	Central Office (Action Department).
(b) A revenue cause or matter which does not fall within paragraph (a).	Chief Master's Office.
(c) An appeal from an inferior court (other than a county court) or other proceeding begun (as regards the High Court) in the Crown Office.	Crown Office.

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(d) An appeal from a county court or a petition presented in the Chancery Division.

Chancery Registrars' Office.

(e) A proceeding begun in the Principal Probate (or Divorce) Registry.

Principal Probate (or Divorce) Registry.

(f) A proceeding begun in the Admiralty Registry.

Admiralty 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 entry of appearance) and on the former solicitor a copy of the notice indorsed with a memorandum stating that the notice has been duly filed in the appropriate office (naming it).

(4) The party giving the notice may perform the duties prescribed by this rule in person or by his new solicitor.

Notice of change of agent solicitor

2.—(1) Where a solicitor for whom some other solicitor is acting as agent in a cause or matter changes the 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 solicitor.

(2) The 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 entry of appearance) and on the solicitor formerly acting as agent a copy of the notice indorsed with a memorandum stating that the notice has been duly filed in the appropriate office (naming it).

Notice of appointment of solicitor

3. Where a party, after having sued or defended in person, appoints a 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 solicitor as they apply in relation to a notice of change of solicitor.

Notice of intention to act in person

4. Where a party, after having sued or defended by a 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 solicitor except that the notice of intention to act in person must contain an address for service of the party giving it.

Removal of solicitor from record at instance of another party

5.—(1) Where—

(a) a 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 solicitors or

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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 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, or if an appeal to the Court of Appeal is pending in the cause or matter, to the Court of Appeal, for an order declaring that the solicitor has ceased to be the solicitor acting for the first-mentioned party in the cause or matter, and the Court or Court of Appeal, as the case may be, may make an order accordingly.

(2) An application for an order under this rule must be made by summons or, in the case of an application to the Court of Appeal, by motion, and the summons or notice of the motion must, unless the Court or Court of Appeal, as the case may be, otherwise directs, be served on the party to whose 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 entry of appearance) a copy of the order, and
- (b) procure the order to be entered in the district registry or other appropriate office mentioned in rule 1 (2), and
- (c) leave at that office a copy of the order and a certificate signed by him or his solicitor that the order has been duly served as aforesaid.

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

Withdrawal of solicitor who has ceased to act for party

6.—(1) Where a solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with rule 1, or notice of intention to act in person in accordance with rule 4, the solicitor may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the cause or matter, and the Court or Court of Appeal, as the case may be, may make an order accordingly, but, unless and until the solicitor—

- (a) serves on every party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order, and
- (b) procures the order to be entered in the district registry or other appropriate office mentioned in rule 1 (2), 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 solicitor of the party till the final conclusion of the cause or matter, whether in the High Court or Court of Appeal.

(2) An application for an order under this rule must be made by summons or, in the case of an application to the Court of Appeal, by

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motion, and the summons or notice of the motion must, unless the Court or the Court of Appeal, as the case may be, otherwise directs, be served on the party for whom the 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 solicitor and the party for whom he acted as between themselves.

(4) Notwithstanding anything in paragraph (1), where the certificate of an assisted person within the meaning of the Legal Aid (General) Regulations 1962(a) is revoked or discharged, the solicitor who acted for the assisted person shall cease to be the solicitor acting in the cause or matter as soon as his retainer is determined under regulation 13 (2) of the said Regulations; and if the assisted person whose certificate has been revoked or discharged desires to proceed with the cause or matter without legal aid and appoints that solicitor or another 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 solicitor is removed, etc.

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) the certificate of an assisted person within the meaning of the Legal Aid (General) Regulations 1962 is revoked or discharged,

then, unless and until the party to whose solicitor or to whom, as the case may be, the order or certificate relates either appoints another 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.

Copy of notice or order to be sent to proper officer, etc.

8.—(1) Where the cause or matter in connection with which a notice is given under rule 1, 2, 3 or 4, or in which an order is made under rule 5 or 6—

- (a) is an action proceeding in the Queen's Bench Division which has been entered for trial before a judge, or
- (b) is entered in the Action Department and is proceeding in the Chancery Division, or
- (c) is a cause or matter which, or a question or issue of fact arising in which, has been ordered to be tried before a master of the Queen's Bench Division or an official referee,

an officer of the district registry or other office in which a copy of the notice or order is lodged in accordance with the foregoing provisions of this Order shall cause the copy to be sent to the proper officer, to the proper chambers or to the master or official referee, as the circumstances of the case require.

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In this paragraph "proper officer" has the meaning assigned to it by Order 34, rule 3(5), with the omission of sub-paragraphs (e) and (f) thereof.

(2) When a party or solicitor presents such a notice or order as is mentioned in paragraph (1) for filing or entry, he must—

- (a) if the cause or matter in connection with which the notice was given or in which the order was made is such an action as is referred to in paragraph (1)(a), state the place of trial, and
- (b) if that cause or matter is such a cause or matter as is referred to in paragraph (1)(c), state that fact.

Order to apply to matrimonial causes and matters

9. This Order shall have effect in relation to matrimonial causes and matters and, in its application to such a cause or matter, any reference in rules 4 and 7 to an address for service shall be construed as a reference to the address for service required by the Matrimonial Causes Rules 1957(a).

ORDER 68**OFFICIAL SHORTHAND NOTE***Official shorthand note of all evidence, etc.*

1.—(1) In every action or other proceeding in the Queen's Bench Division or Chancery Division which is tried or heard with witnesses (including any such proceeding tried or heard by a court of assize), an official shorthand note shall, unless the judge otherwise directs, be taken of any evidence given orally in court and of any summing up by the judge and of any judgment delivered by him, and, if any party so requires, the note so taken shall be transcribed and such number of transcripts as any party may demand shall be supplied to him at the charges authorised by any scheme in force providing for the taking of official shorthand notes of proceedings in the High Court.

(2) Nothing in this rule shall be construed as prohibiting the supply of transcripts to persons not parties to the proceedings.

Evidence when not to be transcribed

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.

Payment for transcripts out of public funds: excepted proceedings

3. Rules 4 and 5 shall not apply in relation to a transcript of an official shorthand note taken in proceedings in connection with which legal aid might have been given under Part I of the Legal Aid and Advice Act 1949(b), whether or not such aid was given thereunder to any party to the proceedings.

[Order 68***Payment for transcripts for Court of Appeal***

4.—(1) An appellant shall not be required to pay for the transcript to which a certificate given under this rule relates but, except as aforesaid, any transcript required for the Court of Appeal shall be paid for by the appellant in the first instance.

(2) Where the judge by whom any such proceeding as is referred to in rule 1 was tried or heard or the Court of Appeal is satisfied that an appellant in that proceeding is in such poor financial circumstances that the cost of a transcript would be an excessive burden on him, and, in the case of a transcript of evidence, that there is reasonable ground for the appeal, the judge or the Court of Appeal, as the case may be, may certify that the case is one in which it is proper that the said cost should be borne by public funds.

(3) An application for a certificate under this rule must be made in the first instance to the judge; if the application is refused, the application (if any) to the Court of Appeal must be made within 7 days after the refusal.

(4) Where an application is made to the Court of Appeal for a certificate under this rule, then, if the Court of Appeal is of opinion that for the purpose of determining the application it is necessary for that Court to see a transcript of the summing up and judgment, with or without a transcript of the evidence, the Court of Appeal may certify that both transcripts or, as the case may be, only a transcript of the summing up and judgment may properly be supplied for the use of that Court at the expense of public funds.

(5) No transcript supplied for the use of the Court of Appeal under a certificate given under paragraph (4) shall be handed to the appellant except by direction of the Court of Appeal.

(6) Where the judge or the Court of Appeal certifies under paragraph (2) that there is reasonable ground for the appeal, the appellant may be supplied with as many free copies of the transcript referred to in the certificate as will, together with any free copies already supplied under a certificate given under paragraph (4), make up a total of one for his own use and three for the use of the Court of Appeal.

(7) References in this rule to an appellant include references to an intending appellant.

Payment for transcript for poor respondent

5.—(1) Where the judge by whom any such proceeding as is referred to in rule 1 was tried or heard or the Court of Appeal is satisfied that the respondent to an appeal in that proceeding is in such poor financial circumstances that the cost of obtaining a transcript, or a specified part thereof, for the purpose of resisting the appeal would be an excessive burden on him, the judge or the Court of Appeal, as the case may be, may certify that the case is one in which it is proper that the cost of the transcript or that part thereof, as the case may be, should be borne by public funds, and where such a certificate is given the respondent shall not be required to pay the said cost.

(2) Rule 4(3) shall apply in relation to an application for a certificate under this rule as it applies in relation to an application for a certificate under that rule.

Order 68]*Supply of transcripts for Court of Appeal*

6.—(1) The number of transcripts to be supplied by the appellant for the use of the Court of Appeal shall be the number for which Order 59, rule 9(2), provides in relation to the appeal in question, and that number, when bespoken by the appellant and paid for, shall be sent by the official shorthand writer direct to the clerks to the Lord Justices of Appeal.

(2) If at any time an appellant is required by the said rule 9 to supply for the use of the Court of Appeal a number of copies of a transcript other than three, rule 4(6) shall have effect as if for the reference therein to three copies there were substituted a reference to that other number of copies.

Trial before official referee

7.—(1) If in a reference for trial before an official referee the referee certifies that it is desirable for an official shorthand note to be taken, such a note shall be taken of the evidence given orally in court and of any judgment delivered by the referee.

(2) Where such a note has been taken, the provisions of this Order relating to transcripts shall apply in relation to the reference as they apply in relation to proceedings before a judge.

Mechanical recording

8. 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 and, in relation to such a record, the reference in rule 6(1) to the official shorthand writer shall be construed as a reference to the person responsible for transcribing the record.

PROVISIONS AS TO FOREIGN PROCEEDINGS

ORDER 69

SERVICE OF FOREIGN PROCESS

Definitions

1. In this Order—

“ process ” includes a citation ;

“ taxing master ” means a taxing master of the Supreme Court.

Service of foreign legal process

2.—(1) This rule applies in relation to the service of any process required in connection with civil or commercial proceedings pending before a court or other tribunal of a foreign country where a letter of request from such a tribunal requesting service on a person in England or Wales of any such process sent with the letter is received by Her Majesty's Secretary of State for Foreign Affairs and is sent by him to the Supreme Court with an intimation that it is desirable that effect should be given to the request.

(2) In order that service of the process may be effected in accordance with this rule the letter of request must be accompanied by a translation thereof in English, by two copies of the process to be served and by two copies of a translation of the process in English.

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(3) Subject to paragraph (4) and to any enactment which provides for the manner in which documents may be served on bodies corporate, service of the process shall be effected by leaving a copy of it and of the translation with the person to be served.

Service shall be effected by the process server appointed under rule 5 or his authorised agent.

(4) Where an application in that behalf is made by the Treasury Solicitor with the consent of the Treasury, the Court may make an order for substituted service of the process, and, where such an order is made, service of the process shall be effected by taking such steps as the Court may direct to bring the process to the notice of the person to be served.

(5) After service of the process has been effected or (if such be the case) attempts to effect service of it have failed, the process server shall leave with the senior master a copy of the process, an affidavit made by the person who served, or attempted to serve, the process stating when, where and how he did or attempted to do so, a copy of that affidavit and a statement of the costs incurred in effecting, or attempting to effect, service.

(6) The senior master shall give a certificate—

(a) identifying the documents annexed thereto, that is to say, the letter of request for service, a copy of the process received with the letter and a copy of the affidavit referred to in paragraph (5);

(b) certifying that the method of service of the process and the proof of service are such as are required by the rules of the Supreme Court regulating the service of process of that Court in England and Wales or, if such be the case, that service of the process could not be effected for the reason specified in the certificate; and

(c) certifying that the cost of effecting, or attempting to effect, service, as certified by a taxing master, is the amount so specified.

(7) The certificate given under paragraph (6) shall be sealed with the seal of the Supreme Court for use out of the jurisdiction and shall be sent to Her Majesty's Secretary of State for Foreign Affairs.

Service of foreign legal process under Civil Procedure Convention

3.—(1) This rule applies in relation to the service of any process required in connection with civil or commercial proceedings pending before a court or other tribunal of a foreign country, being a country with which there subsists a Civil Procedure Convention providing for service in England and Wales of process of the tribunals of that country, where a letter of request from a consular or other authority of that country requesting service on a person in England or Wales of any such process sent with the letter is received by the senior master.

(2) In order that service of the process may be effected in accordance with this rule the letter of request must be accompanied by a copy of a translation of the process to be served in English.

(3) Subject to any enactment which provides for the manner in which documents may be served on bodies corporate and to any special provisions of the relevant Civil Procedure Convention, service of the process shall be effected by leaving the original process or a copy of it, as indicated in the letter of request, and a copy of the translation with the person to be served.

Service shall be effected by the process server appointed under rule 5 or his authorised agent.

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(4) After service of the process has been effected or (if such be the case) attempts to effect service of it have failed, the process server shall leave with the senior master an affidavit made by the person who served, or attempted to serve, the process stating when, where and how he did or attempted to do so, and a statement of the costs incurred in effecting, or attempting to effect, service.

(5) The senior master shall give a certificate certifying—

(a) that the process or a copy thereof, as the case may be, was served on the person, at the time, and in the manner, specified in the certificate or, if such be the case, that service of the process could not be effected for the reason so specified, and

(b) that the cost of effecting, or attempting to effect, service, as certified by a taxing master, is the amount so specified.

(6) The certificate given under paragraph (5) shall be sealed with the seal of the Supreme Court for use out of the jurisdiction and shall be sent to the consular or other authority by whom the request for service was made.

Costs of service, etc. to be certified by taxing master

4. A statement of the costs incurred in effecting, or attempting to effect, service under rule 2 or rule 3 shall be submitted to a taxing master who shall certify the amount properly payable in respect of those costs.

Appointment of process server

5. The Lord Chancellor may appoint a process server for the purposes of this Order.

ORDER 70**OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC.***Jurisdiction of master to make order*

1.—(1) Subject to paragraph (2), the power of the High Court or a judge thereof under the Foreign Tribunals Evidence Act 1856(a) or the Evidence by Commission Act 1859(b) to make, in relation to a matter pending before a court or tribunal in a place outside the jurisdiction, orders for the examination of witnesses and for attendance and for production of documents and to give directions may be exercised by a master of the Queen's Bench Division.

(2) A master may not make such an order if the matter in question is a criminal matter and accordingly may not make an order under the said Act of 1856 as extended by section 24 of the Extradition Act 1870(c).

Application for order

2.—(1) Subject to paragraph (3) and rule 3, an application for an order under the Foreign Tribunals Evidence Act 1856, or under that Act as extended by section 24 of the Extradition Act 1870 or under the Evidence by Commission Act 1859 must be made ex parte by a person duly authorised to make the application on behalf of the court or tribunal in question and must be supported by affidavit.

(a) 19 & 20 Vict. c. 113.

(b) 22 Vict. c. 20.

(c) 33 & 34 Vict. c. 52.

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(2) There must be exhibited to the affidavit in support the letter of request, certificate or other document evidencing the desire of the court or tribunal to obtain for the purpose of a matter pending before it the evidence of the witness to whom the application relates or the production of any documents and, if that document is not in the English language, a translation thereof in that language.

(3) After an application for such an order as is mentioned in paragraph (1) has been made in relation to a matter pending before a court or tribunal, an application for a further order or directions in relation to the same matter must be made by summons.

Application by Treasury Solicitor in certain cases

3. Where a letter of request, certificate or other document requesting that the evidence of a witness within the jurisdiction in relation to a matter pending before a court or tribunal in a foreign country be obtained—

(a) is received by the Secretary of State and sent by him to the senior master 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 England of any party to the matter pending before the court or tribunal, or

(b) is received by the senior master in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in England or Wales 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 senior master shall send the document to the Treasury Solicitor and the Treasury Solicitor may, with the consent of the Treasury, make an application for an order under the Foreign Tribunals Evidence Act 1856, and take such other steps as may be necessary, to give effect to the request.

Person to take and manner of taking examination

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 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.

(3) If the examination is directed to be taken before one of the examiners of the Court, Order 39, rules 17, 18 and 19, shall apply in relation to the examination.

Dealing with deposition

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 senior master, and the senior master shall—

(a) give a certificate sealed with the seal of the Supreme Court for use out of the jurisdiction identifying the documents annexed thereto, that

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is to say, the letter of request, certificate, or other document from the court or tribunal out of the jurisdiction requesting the examination, 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 Secretary of State, or, where the letter of request, certificate or other document was sent to the senior master 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***Powers under relevant Acts exercisable by judge or master*

1. The powers conferred on the High Court by Part II of the Administration of Justice Act 1920(a) (in this Order referred to as the "Act of 1920") or Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933(b) (in this Order referred to as the "Act of 1933") may be exercised by a judge in chambers and a master of the Queen's Bench Division.

Application for registration

2.—(1) An application—

(a) under section 9 of the Act of 1920, in respect of a judgment obtained in a superior court in any part of Her Majesty's dominions or other territory to which Part II of that Act applies, or

(b) under section 2 of the Act of 1933, in respect of a judgment to which Part I of that Act applies,

to have the judgment registered in the High Court may be made *ex parte*, but the Court hearing the application may direct a summons to be issued.

(2) If the Court directs a summons to be issued, the summons shall be an originating summons.

(3) No appearance need be entered to an originating summons under this rule.

Evidence in support of application

3.—(1) An application for registration must be supported by an affidavit—

(a) exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof and, where the judgment is not in the English language, a translation thereof in that language certified by a notary public or authenticated by affidavit ;

(b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent ;

(c) stating to the best of the information or belief of the deponent—

(i) that the judgment creditor is entitled to enforce the judgment ;

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- (ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or the amount in respect of which it remains unsatisfied ;
- (iii) where the application is made under the Act of 1920, that the judgment does not fall within any of the cases in which a judgment may not be ordered to be registered under section 9 of that Act ;
- (iv) where the application is made under the Act of 1933, that at the date of the application the judgment can be enforced by execution in the country of the original court and that, if it were registered, the registration would not be, or be liable to be, set aside under section 4 of that Act ;

(d) specifying, where the application is made under the Act of 1933, the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration.

(2) Where the sum payable under a judgment sought to be registered is expressed in a currency other than the currency of the United Kingdom, the affidavit must also state the amount which that sum represents in the currency of the United Kingdom calculated at the rate of exchange prevailing at the date of the judgment.

(3) Where a judgment sought to be registered under the Act of 1933 is in respect of different matters, and some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the affidavit must state the provisions in respect of which it is sought to register the judgment.

(4) In the case of an application under the Act of 1933, the affidavit must be accompanied by such other evidence with respect to the enforceability of the judgment by execution in the country of the original court, and of the law of that country under which any interest has become due under the judgment, as may be required having regard to the provisions of the Order in Council extending that Act to that country.

Security for costs

4. Save as otherwise provided by any relevant Order in Council, the Court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.

Order for registration

5.—(1) An order giving leave to register a judgment must be drawn up by, or on behalf of, the judgment creditor.

(2) Except where the order is made on summons, no such order need be served on the judgment debtor.

(3) Every such order shall state the period within which an application may be made to set aside the registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.

(4) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend

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the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.

Register of judgments

6.—(1) There shall be kept in the Central Office under the direction of the senior master a register of the judgments ordered to be registered under the Act of 1920 and a register of the judgments ordered to be registered under the Act of 1933.

(2) There shall be included in each such register particulars of any execution issued on a judgment ordered to be so registered.

Notice of registration

7.—(1) Notice of the registration of a judgment must be served on the judgment debtor and, subject to paragraph (2), must be served personally unless the Court otherwise orders.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8, shall apply in relation to such a notice as they apply in relation to notice of a writ.

(3) The notice of registration must state—

- (a) full particulars of the judgment registered and the order for registration,
- (b) the name and address of the judgment creditor or of his solicitor or agent on whom, and at which, any summons issued by the judgment debtor may be served,
- (c) the right of the judgment debtor to apply to have the registration set aside, and
- (d) the period within which an application to set aside the registration may be made.

Indorsement of service

8.—(1) Within 3 days after service of the notice of registration or within such longer period as the Court may, in special circumstances, allow, the notice or a copy thereof must be indorsed by the person who served it with the day of the week and date on which it was served; and, if the notice is not so indorsed within the period aforesaid, the judgment creditor may not issue execution on the judgment to which the notice relates without the leave of the Court.

(2) Every affidavit of service of any such notice must state the date on which the notice was indorsed under this rule.

Application to set aside registration

9.—(1) An application to set aside the registration of a judgment must be made by summons supported by affidavit.

(2) The Court hearing such application may order any issue between the judgment creditor and the judgment debtor to be tried in any manner in which an issue in an action may be ordered to be tried.

(3) Where the Court hearing an application to set aside the registration of a judgment registered under the Act of 1920 is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be

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registered under section 9 of that Act or that it is not just or convenient that the judgment should be enforced in England or Wales or that there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit.

Issue of execution

10.—(1) Execution shall not issue on a judgment registered under the Act of 1920 or the Act of 1933 until after the expiration of the period which, in accordance with rule 5(3), is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the Court, until after the expiration of that period as so extended.

(2) If an application is made to set aside the registration of a judgment, execution on the judgment shall not issue until after such application is finally determined.

(3) Any party wishing to issue execution on a judgment registered under the Act of 1920 or the Act of 1933 must produce to the proper officer an affidavit of service of the notice of registration of the judgment and any order made by the Court in relation to the judgment.

Determination of certain questions

11. If, in any case under the Act of 1933, any question arises whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, that question shall be determined in accordance with the provisions in that behalf contained in the Order in Council extending Part I of that Act to that country.

Rules to have effect subject to Orders in Council

12. The foregoing rules shall, in relation to any judgment registered or sought to be registered under the Act of 1933, have effect subject to any such provisions contained in the Order in Council extending Part I of that Act to the country of the original court as are declared by the Order to be necessary for giving effect to the agreement made between Her Majesty and that country in relation to matters with respect to which there is power to make those rules.

Certified copy of High Court judgment

13.—(1) An application under section 10 of the Act of 1920 or section 10 of the Act of 1933 for a certified copy of a judgment entered in the High Court must be made *ex parte* to a master on affidavit.

(2) An affidavit by which an application under section 10 of the Act of 1920 is made must give particulars of the judgment, show that the judgment debtor is resident in some (stating which) part of Her Majesty's dominions or other territory to which Part II of that Act extends and state the name, trade or business and the usual or last known place of abode of the judgment creditor and the judgment debtor respectively, so far as known to the deponent.

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(3) An affidavit by which an application under section 10 of the Act of 1933 is made must—

- (a) give particulars of the proceedings in which the judgment was obtained ;
- (b) have annexed to it a copy of the writ or originating summons by which the proceedings were begun, the evidence of service thereof on, or appearance by, the defendant, copies of the pleadings, if any, and a statement of the grounds on which the judgment was based ;
- (c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds ;
- (d) show that the judgment is not subject to any stay of execution ;
- (e) state that the time for appealing has expired or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been entered ; and
- (f) state the rate at which the judgment carries interest.

(4) The certified copy of the judgment shall be an office copy sealed with the seal of the Supreme Court and indorsed with a certificate signed by a master certifying that the copy is a true copy of a judgment obtained in the High Court of England and that it is issued in accordance with section 10 of the Act of 1920 or section 10 of the Act of 1933, as the case may be.

(5) Where the application is made under section 10 of the Act of 1933 there shall also be issued a certificate (signed by a master and sealed with the seal of the Supreme Court) having annexed to it a copy of the writ or originating summons by which the proceedings were begun, and stating—

- (a) the manner in which the writ or such summons was served on the defendant or that the defendant appeared thereto ;
- (b) what objections, if any, were made to the jurisdiction,
- (c) what pleadings, if any, were served,
- (d) the grounds on which the judgment was based,
- (e) that the time for appealing has expired or, as the case may be, the date on which it will expire,
- (f) whether notice of appeal against the judgment has been entered, and
- (g) such other particulars as it may be necessary to give to the court in the foreign country in which it is sought to obtain execution of the judgment,

and a certificate (signed and sealed as aforesaid) stating the rate at which the judgment carries interest.

Registration of certificates under Judgments Extension Act 1868

14.—(1) An application for registration in the High Court under section 1 of the Judgments Extension Act 1868(a) of a certificate of a judgment of the High Court of Justice in Northern Ireland, or under section 3 of that Act of a certificate of an extracted decret of the Court of Session, may be made by producing at the Central Office a certificate in the appropriate form prescribed by that Act together with a copy thereof certified by the applicant's solicitor to be a true copy.

(2) Such certificate must be filed in the Central Office and the certified copy thereof, sealed with the seal of the Central Office, shall be returned to the applicant's solicitor.

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(3) Where by virtue of the said section 1 or the said section 3 the leave of the High Court is required for the registration of a certificate of such a judgment or decret by reason of the fact that more than 12 months have elapsed since the date of the judgment or decret, the application for such leave may be made to a master of the Queen's Bench Division ex parte by affidavit stating the reason for the delay and showing that execution of the judgment in England or Wales is likely to be effective.

(4) A certificate of a judgment of the High Court which is to be registered under the Judgments Extension Act 1868 may be obtained by producing a certificate in the appropriate form at the office in which the judgment is entered, together with an affidavit made by the solicitor of the party entitled to enforce the judgment giving particulars of the judgment and stating to the best of the information or belief of the deponent the occupation or description and the usual or last known place of abode of the party entitled to enforce the judgment and of the party liable to execution on it.

SPECIAL PROVISIONS AS TO PARTICULAR PROCEEDINGS**ORDER 72****COMMERCIAL ACTIONS IN THE QUEEN'S BENCH DIVISION***Application and interpretation*

1.—(1) This Order applies to commercial actions in the Queen's Bench Division, and the other provisions of these rules apply to those actions subject to the provisions of this Order.

(2) In this Order "commercial action" includes any cause arising out of the ordinary transactions of merchants and traders and, without prejudice to the generality of the foregoing words, any cause relating to the construction of a mercantile document, the export or import of merchandise, affreightment, insurance, banking, mercantile agency and mercantile usage.

The Commercial List

2.—(1) There shall be a list, which shall be called "the commercial list", in which commercial actions in the Queen's Bench Division may be entered in accordance with the provisions of this Order, and a judge of the Queen's Bench Division shall be in charge of that list.

(2) In this Order references to the judge shall be construed as references to the judge for the time being in charge of the commercial list.

(3) The judge shall have control of the actions in the commercial list and, subject to the provisions of this Order and to any directions of the judge, the powers of a judge in chambers (including those exercisable by a master or registrar) shall, in relation to an action in the commercial list, be exercisable by the judge.

(4) Paragraph (3) shall not be construed as preventing the powers of the judge being exercised by some other judge.

Powers, etc. of Liverpool and Manchester district registrars

3.—(1) All interlocutory applications in an action in the commercial list proceeding in the district registry of Liverpool or the district registry of Manchester, other than an application under rule 6, must be made to

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the registrar of that registry notwithstanding that the action is in the commercial list, and the registrar may make such order on any such application as he thinks fit or may adjourn the application to be heard by the judge:

Provided that if any party to any such application requests the registrar to adjourn the application to the judge for hearing by him the registrar shall adjourn it accordingly.

(2) It shall be the duty of the registrar of each of the said registries to keep the judge's clerk informed of the progress of actions in the commercial list proceeding in that registry and, in particular, to inform him of the making of an order that such an action shall be tried at Liverpool or Manchester, as the case may be, and of the date fixed for the trial.

Entry of action in commercial list when action begun

4.—(1) Before a writ or originating summons by which a commercial action in the Queen's Bench Division is to be begun is issued out of the Central Office, the district registry of Liverpool or the district registry of Manchester, it may be marked in the top left hand corner with the words "Commercial List", and on the issue of a writ or summons so marked the action begun thereby shall be entered in the commercial list.

(2) If the plaintiff intends to issue the writ or originating summons by which a commercial action in the Queen's Bench Division is to be begun out of the Central Office and to mark it in accordance with paragraph (1), and the writ, notice of the writ or the originating summons, as the case may be, is to be served out of the jurisdiction, an application for leave to issue the writ or summons and to serve the writ, or notice of the writ, or the summons out of the jurisdiction may be made to the judge.

(3) The affidavit in support of an application made to the judge by virtue of paragraph (2) must, in addition to the matters required by Order 11, rule 4(1), to be stated, state that the plaintiff intends to mark the writ or originating summons in accordance with paragraph (1) of this rule.

(4) If the judge hearing an application made to him by virtue of paragraph (2) is of opinion that the action in question should not be entered in the commercial list, he may adjourn the application to be heard by a master.

Transfer of action to commercial list after action begun

5.—(1) At any stage of the proceedings in a commercial action in the Queen's Bench Division before trial any party to the action may apply by summons to the judge or, if the action is proceeding in the district registry of Liverpool or the district registry of Manchester, to the registrar of that registry to transfer the action to the commercial list.

(2) Where an application under paragraph (1) is made to the registrar of either of the said registries, the registrar may either order the action to be transferred to the commercial list or adjourn the summons to be heard by the judge.

(3) If, on the hearing of any summons in a commercial action in the Queen's Bench Division, it appears to the Court that the action may be one suitable for trial in the commercial list and any party wishes the action to be transferred to that list, then, subject to paragraph (4), the Court may adjourn

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the summons so that it can be heard by the judge and treated by him as a summons to transfer the action to that list.

(4) The registrar of the district registry of Liverpool or the district registry of Manchester may, instead of adjourning a summons under paragraph (3), order the action to be transferred to the commercial list; and if on the hearing of any summons in a commercial action in the Queen's Bench Division by the registrar of any district registry any party requests the registrar to adjourn the summons under paragraph (3) so that it can be heard by the judge, the registrar shall adjourn the summons accordingly, and the adjourned summons shall be treated by the judge as a summons to transfer the action to the commercial list.

(5) Where the judge orders a commercial action in the Queen's Bench Division proceeding in a district registry to be transferred to the commercial list he may also order the action to be transferred to the Royal Courts of Justice.

Removal of action from commercial list

6.—(1) The judge may, of his own motion or on the application of any party, order an action in the commercial list to be removed from that list.

(2) Where an action is in the commercial list by virtue of rule 4, an application by a defendant or third party for an order under this rule must be made within 7 days after entering an appearance in the action.

Pleadings in commercial list actions

7.—(1) The pleadings in an action in the commercial list must be in the form of points of claim, or of defence, counterclaim, defence to counterclaim or reply, as the case may be, and must be as brief as possible.

(2) Without prejudice to Order 18, rule 12(1), no particulars shall be applied for or ordered in an action in the commercial list except such particulars as are necessary to enable the party applying to be informed of the case he has to meet or as are for some other reason necessary to secure the just, expeditious and economical disposal of any question at issue in the action.

(3) The foregoing provisions are without prejudice to the power of the judge or of the district registrar of Liverpool or the district registrar of Manchester to order that an action in the commercial list shall be tried without pleadings or further pleadings, as the case may be.

Directions in commercial list actions

8.—(1) Notwithstanding anything in Order 25, rule 1(1), any party to an action in the commercial list may take out a summons for directions in the action before the pleadings in the action are deemed to be closed.

(2) Where an application is made to transfer an action to the commercial list, 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 were a summons for directions.

Trial with City of London special jury

9.—(1) If an action in, or ordered to be transferred to, the commercial list, is ordered to be tried at the Royal Courts of Justice with a jury, the

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Court may, at the same time or subsequently, order the action to be tried with a City of London special jury on such terms, if any, as to costs and otherwise as may be just.

(2) It shall be the duty of the Court to make an order under this rule if it is satisfied that it is a proper case for trial with a jury and an application for the order is made by any party to the action either at the time at which the mode of trial is fixed or, with the leave of the judge, at any later stage.

(3) In this rule "the Court" means the judge, the district registrar of Liverpool or the district registrar of Manchester, as the case may be.

Production of certain documents in marine insurance actions

10.—(1) Where in an action in the commercial list relating to a marine insurance policy an application for an order under Order 24, rule 3, is made by the insurer, then, without prejudice to its powers under that rule, the Court, if satisfied that the circumstances of the case are such that it is necessary or expedient to do so, may make an order, either in Form No. 94 in Appendix A or in such other form as it thinks fit, for the production of such documents as are therein specified or described.

(2) An order under this rule may be made on such terms, if any, as to staying proceedings in the action or otherwise, as the Court thinks fit.

(3) In this rule "the Court" means the judge, the district registrar of Liverpool or the district registrar of Manchester, as the case may be.

ORDER 73**ARBITRATION PROCEEDINGS***Arbitration proceedings not to be assigned to Chancery Division*

1. Subject to Order 93, rule 10(2)(h), a cause or matter consisting of an application to the High Court or a judge thereof under Part I of the Arbitration Act 1950(a) shall not be assigned to the Chancery Division.

The foregoing provision shall not apply in relation to an application under section 4 of the said Act made in proceedings assigned to the Chancery Division.

Matters for a judge in court

2.—(1) Every application to the Court—

- (a) to remit an award under section 22 of the Arbitration Act 1950, or
- (b) to remove an arbitrator or umpire under section 23(1) of that Act, or
- (c) to set aside an award under section 23(2) thereof,

must be made by originating motion to a single judge in court.

(2) A special case stated for the decision of the High Court by an arbitrator or umpire under section 21 of the Arbitration Act 1950 shall be heard and determined by a single judge.

(3) 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 single

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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.

Matters for judge in chambers or master

3.—(1) Subject to the foregoing provisions of this Order, the jurisdiction of the High Court or a judge thereof under the Arbitration Act 1950 may be exercised by a judge in chambers, a master or the Admiralty registrar.

(2) An application for an order under section 21 of the said Act of 1950 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 the other party to the reference.

(3) No appearance need be entered to an originating summons by which an application under the said Act of 1950 is made.

Applications in district registries

4. An application under section 12(4) of the Arbitration Act 1950 for an order that a writ of subpoena ad testificandum or of subpoena duces tecum shall issue to compel the attendance before an arbitrator or umpire of a witness may, if the attendance of the witness is required within the district of any district registry, be made at that registry, instead of at the Central Office, at the option of the applicant.

Special provisions as to applications to remit or set aside an award

5.—(1) An application to the Court—

(a) to remit an award under section 22 of the Arbitration Act 1950, or

(b) to set aside an award under section 23(2) of that Act or otherwise,

may be made at any time within 6 weeks after the award has been made and published to the parties.

(2) In the case of every such application, the notice of motion must state in general terms the grounds of the application; and, where the motion is founded on evidence by affidavit, a copy of every affidavit intended to be used must be served with that notice.

Transfer of certain applications, etc. to the commercial list

6.—(1) An application in proceedings in the Queen's Bench Division to transfer to the commercial list—

(a) a special case stated for the decision of the High Court by an arbitrator or umpire under section 21 of the Arbitration Act 1950, or

(b) any such application as is referred to in rule 5(1),

may be made to the judge in charge of the commercial list by summons, and if it appears to the judge that the subject-matter of the reference or award to which such case or application relates is of a commercial nature, he may make an order transferring the case or application to the commercial list.

(2) Order 72, rules 2(3) and (4) and 6(1) shall apply in relation to a special case or application transferred to the commercial list by order under this rule as they apply to actions in the commercial list.

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Service out of the jurisdiction of summons, notice, etc.

7.—(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 is to be, or has been, 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 service out of the jurisdiction under this rule.

(3) Order 11, rules 5, 6 and 8, shall apply in relation to any such summons, notice or order as is referred to in paragraph (1) as they apply in relation to notice of a writ.

Registration in High Court of foreign awards

8. Where an award is made in proceedings on an arbitration in any part of Her Majesty's dominions or other territory to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933(a) extends, being a part to which Part II of the Administration of Justice Act 1920(b) extended immediately before the said Part I was 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 a 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, however, to the following modifications:—

- (a) for references to the country of the original court there shall be substituted references to the place where the award was made; and
- (b) the affidavit required by rule 3 of the said Order must state (in addition to the other matters required by that rule) that to the best of the information or belief of the deponent the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

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**APPLICATIONS AND APPEALS UNDER THE MERCHANT SHIPPING ACTS
1894 TO 1965**

Assignment of proceedings

1.—(1) Subject to paragraph (2), proceedings by which any application is made to the High Court under the Merchant Shipping Acts 1894 to 1965 shall be assigned to the Probate, Divorce and Admiralty Division.

(a) 23 & 24 Geo. 5. c. 13.

(b) 10 & 11 Geo. 5. c. 81.

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(2) Proceedings by which an application under section 55 of the Merchant Shipping Act 1894(a) is made shall be assigned to the Chancery Division, and proceedings by which an application under section 28 or section 30 of that Act is made may be assigned to any Division.

Appeals

2.—(1) An appeal to the High Court under section 68 of the Merchant Shipping Act 1906(b) against an order or decision of a naval court and an appeal to that Court under section 28 of the Pilotage Act 1913(c) against a decision of a county court judge or a magistrate, shall be heard and determined by a Divisional Court of the Probate, Divorce and Admiralty Division.

(2) Order 55, rule 4(1)(a), shall apply in relation to an appeal under the said section 68 as if the words "the registrar or clerk of the court and" were omitted.

(3) Order 55, rule 4(2), shall apply in relation to an appeal under the said section 68 as if for the period of 28 days therein specified there were substituted a period of 3 months.

(4) A copy of the report of the proceedings before the naval court against whose order or decision an appeal is brought, being the report made to the Board of Trade under section 484 of the Merchant Shipping Act 1894, must be left at the Admiralty Registry when the appeal is set down for hearing.

(5) The proper officer shall notify the Board of Trade of the decision of the Court on an appeal under the said section 68.

Appeals to which other rules apply

3. Orders 55 and 57 shall not apply in relation to an appeal to the High Court which is to be subject to and conducted in accordance with conditions and regulations prescribed by rules made in relation thereto under the powers contained in Part VI of the Merchant Shipping Act 1894.

ORDER 75**ADMIRALTY PROCEEDINGS***Application and interpretation*

1.—(1) This Order applies to Admiralty causes and matters, and the other provisions of these rules apply to those causes and matters subject to the provisions of this Order.

(2) In this Order—

"action in rem" means an Admiralty action in rem;

"caveat against arrest" means a caveat entered in the caveat book under rule 6;

"caveat against release and payment" means a caveat entered in the caveat book under rule 14;

"caveat book" means the book kept in the registry in which caveats issued under this Order are entered;

(a) 57 & 58 Vict. c. 60.

(b) 6 Edw. 7. c. 48.

(c) 2 & 3 Geo. 5. c. 31.

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“limitation action” means an action by shipowners or other persons under the Merchant Shipping Acts 1894 to 1960 for the limitation of the amount of their liability in connection with a ship or other property ;

“marshal” means the Admiralty marshal ;

“registry” (except where the context otherwise requires) means the Admiralty Registry ;

“ship” includes any description of vessel used in navigation.

Certain actions to be assigned to Admiralty

2.—(1) Without prejudice to section 56(3) of the Act, or to any other enactment or rule providing for the assignment of causes and matters to the Probate, Divorce and Admiralty Division—

(a) every action to enforce a claim for damage, loss of life or personal injury arising out of—

(i) a collision between ships, or

(ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships, or

(iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations, and

(b) every limitation action,

shall be assigned to that Division.

(2) In this rule “collision regulations” means regulations under section 418 of the Merchant Shipping Act 1894(a), or any such rules as are mentioned in subsection (1) of section 421 of that Act or any rules made under subsection (2) of the said section 421.

Issue of writ and entry of appearance

3.—(1) An action in rem must be begun by writ ; and the writ must be in Form No. 1 or 2 in Appendix B, whichever is appropriate.

(2) Order 6, rule 7, shall apply in relation to a writ by which an Admiralty action is begun, and Order 12 shall apply in relation to such an action, as if for references therein to the Central Office there were substituted references to the registry.

Service of writ out of jurisdiction

4.—(1) Subject to the following provisions of this rule, service out of the jurisdiction of a writ, or notice of a writ, containing any such claim as is mentioned in rule 2(1)(a) is permissible with the leave of the Court if, but only if—

(a) the defendant has his habitual residence or a place of business within England and Wales, or

(b) the cause of action arose within inland waters of England and Wales or within the limits of a port of England and Wales, or

(c) an action arising out of the same incident or series of incidents is proceeding in the High Court or has been heard and determined in the High Court, or

(d) the defendant has submitted or agreed to submit to the jurisdiction of the High Court.

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In this paragraph "inland waters" and "port" have the same meanings as in section 4(1) of the Administration of Justice Act 1956(a).

(2) Order 11, rule 3 and rule 4(1), (2) and (4), shall apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.

(3) Paragraph (1) shall not apply to an action in rem.

(4) The proviso to rule 7(1) of Order 6 and Order 11, rule 1(2), shall not apply to a writ by which any Admiralty action is begun or to notice of any such writ.

Warrant of arrest

5.—(1) After a writ has been issued in an action in rem a warrant in Form No. 3 in Appendix B for the arrest of the property against which the action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the plaintiff or of the defendant, as the case may be.

(2) Where an action in rem is proceeding in a district registry, a warrant of arrest in the action may be issued out of that registry but, except as aforesaid, a warrant of arrest shall not be issued out of a district registry.

(3) A party applying for the issue out of the registry of a warrant to arrest any property shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property and, if the warrant is to issue out of a district registry, the registrar of that registry shall procure a search to be made in the said book for that purpose.

(4) A warrant of arrest shall not be issued until the party applying for it has filed a praecipe in Form No. 4 in Appendix B requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraphs (7), (8) and (9) so, however, that the Court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(5) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem against a foreign ship belonging to a port of a State having a consulate in London, being an action for possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.

(6) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the registrar or district registrar, as the case may be.

(7) Every affidavit must state—

- (a) the name, address and occupation of the applicant for the warrant ;
- (b) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied ; and
- (c) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs.

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(8) Every affidavit in an action in rem brought against a ship by virtue of section 3(4) of the Administration of Justice Act 1956 must state—

(a) whether the ship against which the action is brought is the ship in connection with which the claim in the action arose ;

(b) that in the belief of the deponent the person who would, apart from section 4 of that Act, be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer, or in possession or control, of the ship in connection with which the claim arose and was also, at the time of the issue of the writ, the beneficial owner of all the shares in the ship against which the action is brought ; and

(c) the grounds of the deponent's belief.

(9) Every affidavit in an action in rem for possession of a ship or for wages must state the nationality of the ship against which the action is brought and that the notice (if any) required by paragraph (5) has been sent.

A copy of any such notice must be annexed to the affidavit.

(10) An affidavit in such an action as is referred to in paragraph (6) must have annexed thereto a certified copy of the bottomry bond, or of the translation thereof.

Caveat against arrest

6.—(1) A person who desires to prevent the arrest of any property must file in the registry a praecipe, in Form No. 5 in Appendix B, signed by him or his solicitor undertaking—

(a) to enter an appearance in any action that may be begun against the property described in the praecipe, and

(b) within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the praecipe or to pay the amount so specified into court ; and on the filing of the praecipe a caveat against the issue of a warrant to arrest the property described in the praecipe shall be entered in the caveat book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

Remedy where property protected by caveat is arrested

7. Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

Service of writ in action in rem

8.—(1) Subject to paragraph (2), a writ by which an action in rem is begun must be served on the property against which the action is brought except—

(a) where that property is freight, in which case it must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried, or

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(b) where that property has been sold and the proceeds of sale paid into court, in which case it must be served on the registrar or, if the writ was issued out of a district registry, on the registrar of that registry.

(2) A writ need not be served on the property or registrar mentioned in paragraph (1) if the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(2) or (3).

(3) Where by virtue of this rule a writ is required to be served on any property, then, if the plaintiff wishes service of the writ to be effected by the marshal, he must leave the writ and a copy thereof at the registry or, where the action is proceeding in a district registry, that registry and file therein a praecipe in Form No. 6 in Appendix B; and where he does so the marshal or his substitute shall serve the writ on the property described in the praecipe.

The expenses incurred by the marshal or his substitute in effecting service shall be paid to the marshal on demand by him.

(4) Where the plaintiff in an action in rem, or his solicitor, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he must serve the writ forthwith on the person at whose instance the caveat was entered.

(5) Where a writ by which an action in rem is begun is amended under Order 20, rule 1, after service thereof, Order 20, rule 1(2), shall not apply and, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on any defendant who has entered an appearance in the action or, if no defendant has entered an appearance therein, on the property or registrar mentioned in paragraph (1) of this rule.

Committal of solicitor failing to comply with undertaking

9. Where the solicitor of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his solicitor to enter an appearance in the action, give bail or pay money into court in lieu of bail, he shall be liable to committal.

Execution, etc., of warrant of arrest

10.—(1) A warrant of arrest is valid for 12 months beginning with the date of its issue.

(2) A warrant of arrest may be executed only by the marshal or his substitute.

(3) A warrant of arrest shall not be executed until an undertaking in writing, satisfactory to the marshal or, where the action is proceeding in a district registry, to the registrar of that registry, to pay the fees and expenses of the marshal has been lodged in the marshal's office or that registry, as the case may be.

(4) A warrant of arrest shall not be executed if the party at whose instance it was issued lodges a written request to that effect with the marshal or, where the action is proceeding in a district registry, the registrar of that registry.

(5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

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(6) Subject to paragraph (5), a warrant of arrest must be served on the property against which it is issued.

(7) No instrument except a warrant of arrest shall be served on a Sunday.

(8) Within 7 days after the service of a warrant of arrest, the warrant must be filed—

(a) where it was issued out of the registry, in the registry by the marshal, and

(b) where it was issued out of a district registry, in that registry by the party who procured it to be issued.

Service on ships, etc.: how effected

11.—(1) Subject to paragraph (2), service of a warrant of arrest or writ in an action in rem against a ship, freight or cargo shall be effected by—

(a) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and

(b) on removing the warrant or writ, leaving a copy of it affixed (in the case of the warrant) in its place or (in the case of the writ) on a sheltered, conspicuous part of the ship.

(2) Service of a warrant of arrest or writ in an action in rem against freight or cargo or both shall, if the cargo has been landed or transhipped, be effected—

(a) by placing the warrant or writ for a short time on the cargo and, on removing the warrant or writ, leaving a copy of it on the cargo, or

(b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or writ with that person.

Applications with respect to property under arrest

12.—(1) The marshal may at any time apply to the Court for directions with respect to property under arrest in an action and may, or, if the Court so directs, shall, give notice of the application to any or all of the parties to every action against the property.

(2) The marshal shall send a copy of any order made under paragraph (1) to all the parties to every action against the property to which the order relates.

(3) Before any person other than the marshal makes an application in a district registry with respect to property under arrest in an action proceeding in that registry, the applicant must give notice to the marshal of the nature of the application, and the district registrar shall not make an order on the application unless and until he is satisfied that the marshal is aware of the nature of the application.

This paragraph shall not apply to applications for release of any property.

(4) The district registrar by whom any order under paragraph (3) is made shall cause a copy of the order to be sent to the marshal.

Release of property under arrest

13.—(1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so

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arrested shall only be released under the authority of an instrument of release (in this rule referred to as a "release"), in Form No. 7 in Appendix B, issued out of the registry or, where the action in which the warrant was issued is proceeding in a district registry, out of that registry.

(2) A party at whose instance any property was arrested may, before an appearance is entered in the action, file a notice withdrawing the warrant of arrest and, if he does so, a release shall, subject to paragraphs (3) and (6), be issued with respect to that property.

(3) Unless the Court otherwise orders, a release shall not be issued with respect to property as to which a caveat against release is in force.

(4) A release may be issued at the instance of a party interested in the property under arrest if the Court so orders, or, subject to paragraph (3), if all the other parties to the action in which the warrant of arrest was issued consent.

(5) Where a release is to issue out of a district registry the registrar of that registry shall, before issuing it, procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against release in force as to the property in question.

(6) Before a release is issued the party entitled to its issue must—

(a) if there is a caveat against release in force as to the property in question, give notice to the party at whose instance it was entered or his solicitor requiring the caveat to be withdrawn, and

(b) file a praecipe in Form No. 8 in Appendix B requesting issue of a release.

(7) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the marshal or, where the action is proceeding in a district registry, the registrar of that registry, either pay the costs, charges and expenses due in connection with the care and custody of the property while under arrest or give a written undertaking to do so.

(8) The Court, on the application of any party who objects to directions given to him by the marshal under paragraph (7), may vary or revoke the directions.

Caveat against release and payment

14.—(1) A person who desires to prevent the release of any property under arrest in an action in rem and the payment out of court of any money in court representing the proceeds of sale of that property must file in the registry a praecipe in Form No. 9 in Appendix B, and on the filing of the praecipe a caveat against the issue of a release with respect to that property and the payment out of court of that money shall be entered in the caveat book.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

Order 75]*Duration of caveats*

15.—(1) Every caveat entered in the caveat book is valid for 6 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe in Form No. 10 in Appendix B.

(2) The period of validity of a caveat may not be extended, but this provision shall not be taken as preventing the entry of successive caveats.

Bail

16.—(1) Bail on behalf of a party to an action in rem must be given by bond in Form No. 11 in Appendix B; and the sureties to the bond must enter into the bond before a commissioner to administer oaths, not being a commissioner who, or whose partner, is acting as solicitor or agent for the party on whose behalf the bail is to be given, or before the registrar or any district registrar.

(2) Subject to paragraph (3), a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.

(3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under paragraph (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the commissioner or registrar before whom the bail bond was entered into; and after the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) he may file the bond and must at the same time file the affidavits (if any) made under paragraph (2) and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

Interveners

17.—(1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.

(2) An application for the grant of leave under this rule must be made *ex parte* by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.

(3) A person to whom leave is granted to intervene in an action must enter an appearance therein in the registry or, if the action is proceeding in a district registry, that registry within the period specified in the order granting leave; and Order 12, rules 1 to 4, shall, with the necessary modifications, apply in relation to the entry of appearance by an intervener as if he were a defendant named in the writ.

(4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period as may be specified in the order, serve on every other party to the action such pleading as may be so specified.

[Order 75***Preliminary acts***

18.—(1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, unless the Court otherwise orders, the plaintiff must, within 2 months after issue of the writ, and the defendant must, within 2 months after entering an appearance in the action, and before any pleading is served, lodge in the registry or, if the action is proceeding in a district registry, that registry a document (in these rules referred to as a preliminary act) containing a statement of the following particulars:—

- (i) the names of the ships which came into collision and their ports of registry;
- (ii) the date and time of the collision;
- (iii) the place of the collision;
- (iv) the direction and force of the wind;
- (v) the state of the weather;
- (vi) the state, direction and force of the tidal or other current;
- (vii) the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
- (viii) the lights (if any) carried by the ship;
- (ix) (a) the distance and bearing of the other ship if and when her echo was first observed by radar;
(b) the distance, bearing and approximate heading of the other ship when first seen;
- (x) what light or combination of lights (if any) of the other ship was first seen;
- (xi) what other lights or combinations of lights (if any) of the other ship were subsequently seen before the collision, and when;
- (xii) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (vii) up to the time of the collision, and when, and what measures (if any), other than alterations of course or speed, were taken to avoid the collision, and when;
- (xiii) the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
- (xiv) what sound signals (if any) were given, and when;
- (xv) what sound signals (if any) were heard from the other ship, and when.

(2) Every preliminary act shall be sealed by the proper officer and shall be filed in a closed envelope (stamped with an official stamp showing the date of filing) and, unless the Court otherwise orders, no envelope shall be opened until the pleadings are closed and a consent signed by each of the parties or his solicitor to the opening of the preliminary acts is filed with the proper officer.

(3) Where the Court orders the preliminary acts to be opened, the Court may further order the action to be tried without pleadings but, where the Court orders the action to be so tried, any party who intends to rely on the defence of compulsory pilotage must give notice of his intention to do so to the other parties within 7 days after the opening of the preliminary acts.

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(4) Where the Court orders the action to be tried without pleadings, it may also order each party, within such period as may be specified in the order, to file a statement of the grounds on which he charges any other party with negligence in connection with the collision and to serve a copy thereof on that other party.

(5) Order 18, rule 1, shall not apply to an action in which preliminary acts are required but, unless the Court orders the action to be tried without pleadings, the plaintiff must serve a statement of claim on each defendant within 14 days after the latest date on which the preliminary act of any party to the action is filed.

Failure to lodge preliminary act: proceedings against party in default

19.—(1) Where in such an action as is referred to in rule 18(1) the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by summons 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.

(2) Where in such an action, being an action in personam, a defendant fails to lodge a preliminary act within the prescribed period, Order 19, rules 2 and 3, shall apply as if the defendant's failure to lodge the preliminary act within that period were a failure by him to serve a defence on the plaintiff within the period fixed by or under these rules for service thereof, and the plaintiff, if he has lodged a preliminary act may, subject to Order 77, rule 9, accordingly enter judgment against that defendant in accordance with the said rule 2 or the said rule 3, as the circumstances of the case require.

(3) Where in such an action, being an action in rem, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff, if he has lodged such an act, may apply to the Court by motion for judgment against that defendant, and it shall not be necessary for the plaintiff to file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of a motion under paragraph (3) the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgment should be given for the plaintiff provided he proves his case, it shall order the plaintiff's preliminary act to be opened and require the plaintiff to satisfy the Court that his claim is well founded.

The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(5) Where the plaintiff in accordance with a requirement under paragraph (4) satisfies the Court that his claim is well founded, the Court may give judgment for the claim with or without a reference to the registrar or district registrar and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into court or make such order as it thinks just.

(6) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this rule.

(7) In this rule references to the prescribed period shall be construed as references to the period within which by virtue of rule 18(1) or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

[Order 75*Special provisions as to pleadings in collision, etc. actions*

20.—(1) Notwithstanding anything in Order 18, rule 3, the plaintiff in any such action as is referred to in rule 2(1)(a) may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court.

(2) If in such an action there is a counterclaim and no defence to counterclaim by the plaintiff, then, notwithstanding Order 18, rule 14(3), but without prejudice to the other provisions of that rule, there is an implied joinder of issue on the counterclaim, and the joinder of issue operates as a denial of every material allegation of fact made in the counterclaim.

Judgment by default

21.—(1) Where a writ is served under rule 8(4) on a party at whose instance a caveat against arrest was issued, then if—

(a) the sum claimed in the action begun by the writ does not exceed the amount specified in the undertaking given by that party or his solicitor to procure the entry of that caveat, and

(b) that party or his solicitor does not within 14 days after service of the writ fulfil the undertaking given by him as aforesaid,

the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Judgment given under paragraph (1) may be enforced by the arrest of the property against which the action was brought and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to an action in rem fails to enter an appearance within the time limited for appearing, then, on the expiration of 14 days after service of the writ and upon filing an affidavit proving due service of the writ, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

Where the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(2), or was served on a registrar under rule 8 of this Order, an affidavit proving due service of the writ need not be filed under this paragraph, but the writ indorsed as mentioned in the said rule 1(2) or indorsed by the registrar with a statement that he accepts service of the writ must be lodged with the affidavit verifying the facts on which the action is based.

(4) Where a defendant to an action in rem fails to serve a defence on the plaintiff, then, after the expiration of the period fixed by or under these rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(5) Where a defendant to a counterclaim in an action in rem fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (6), after the expiration of the period fixed by or under these rules for service of the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was served on him by

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the first-mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgment by default.

(6) No application may be made under paragraph (5) against the plaintiff in any such action as is referred to in rule 2(1)(a).

(7) An application to the Court under this rule must be made by motion and if, on the hearing of the motion, the Court is satisfied that the applicant's claim is well founded it may give judgment for the claim with or without a reference to the registrar or district registrar and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into court or may make such other order as it thinks just.

(8) In default actions in rem evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

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

(10) Order 13 and Order 19 (except rule 1) shall not apply to actions in rem.

Order for sale of ship : determination of priority of claims

22.—(1) Where in an action in rem against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may—

(a) in a case where the order for sale contains the further order referred to in paragraph (2), after the expiration of the period specified in the order under paragraph (2)(a), or

(b) in any other case, after obtaining judgment,

apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(2) Where in an action in rem against a ship the Court orders the ship to be sold, it may further order—

(a) that the order of priority of the claims against the proceeds of sale of the ship shall not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into court ;

(b) that any party to the action or to any other action in rem against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is a party to extend the period specified in the order ;

(c) that within 7 days after the date of payment into court of the proceeds of sale the marshal shall send for publication in Lloyd's List and Shipping Gazette and such other newspaper, if any, as the Court may direct, a notice complying with paragraph (3).

(3) The notice referred to in paragraph (2)(c) must state—

(a) that the ship (naming her) has been sold by order of the High Court in an action in rem, identifying the action ;

(b) that the gross proceeds of the sale, specifying the amount thereof, have been paid into court ;

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(c) that the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale; and

(d) that any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment should do so before the expiration of that period.

(4) The marshal must lodge in the registry or, if the action is proceeding in a district registry, that registry, a copy of each newspaper in which the notice referred to in paragraph (2)(c) appeared.

(5) The expenses incurred by the marshal in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.

(6) An application to the Court to extend the period referred to in paragraph (2)(a) must be made by motion, and a copy of the notice of motion must, at least 3 days before the day fixed for the hearing thereof, be served on each party who has begun an action in rem against the ship or the proceeds of sale thereof.

(7) In this rule "the Court" means the judge in person.

Appraisalment and sale of property

23.—(1) A commission for the appraisalment and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a praecipe in Form No. 12 in Appendix B.

(2) Such a commission must, unless the Court otherwise orders, be executed by the marshal and must be in Form No. 13 in Appendix B.

(3) A commission for appraisalment and sale shall not be executed until an undertaking in writing satisfactory to the marshal to pay the fees and expenses of the marshal on demand has been lodged in the marshal's office.

(4) The marshal shall pay into court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into court the account relating to the sale (with vouchers in support) for taxation.

(5) On the taxation of the marshal's account relating to a sale any person interested in the proceeds of the sale shall be entitled to be heard, and any decision of a registrar made on the taxation to which objection is taken may be reviewed in the same manner and by the same persons as any decision of a registrar made in taxation proceedings under Order 62, and rules 33 to 35 of that Order shall apply accordingly with the necessary modifications.

Payment into and out of court

24.—(1) Order 22 (except rules 3, 4, 5 and 12) shall apply in relation to an Admiralty action as it applies to an action for a debt or damages.

(2) Subject to paragraph (3), money paid into court shall not be paid out except in pursuance of an order of the judge in person.

(3) The registrar or, in the case of an action which is proceeding in a district registry, the registrar of that registry may, with the consent of the parties interested in money paid into court, order the money to be paid out to the person entitled thereto in the following cases, that is to say—

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- (a) where a claim has been referred to the registrar for decision and all the parties to the reference have agreed to accept the registrar's decision and to the payment out of any money in court in accordance with that decision ;
- (b) where property has been sold and the proceeds of sale thereof paid into court, and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of those persons ;
- (c) where in any other case there is no dispute between the parties.

Summons for directions

25.—(1) Unless a judge in person otherwise directs, the summons for directions shall be heard by a judge in person but, subject to that, Order 25 shall apply to Admiralty actions (other than limitation actions) as it applies to other actions.

On the day on which any party serves on any other party a notice under Order 25, rule 7, he must lodge two copies of the notice in the registry or, if the action is proceeding in a district registry, that registry.

(2) An order made on the summons for directions shall determine whether the trial is to be without assessors or with one or more assessors, whether Elder Brethren of Trinity House, nautical assessors or other assessors.

(3) The trial shall be at the Royal Courts of Justice before a judge without a jury unless, on the ground that there are special reasons to the contrary, an order made on the summons for directions otherwise provides.

(4) An order may be made on the summons for directions, or a direction may be given at the trial, limiting the witnesses who may be called at the trial, whether they are expert witnesses or not.

(5) Any such order or direction as is referred to in paragraph (2), (3) or (4) (including an order made on appeal) may be varied or revoked by a subsequent order or direction made or given at or before the trial by the judge in person or, with the judge's consent, by the registrar or district registrar, as the case may be.

Fixing date for trial, etc.

26.—(1) The Court may at any stage of an action, either on an application made by summons by any party or by order made by virtue of rule 35, fix a date for the trial and vacate or alter any such date.

(2) Not later than 7 days after a date for the trial of the action has been fixed, the action must be set down for trial—

- (a) where the date was fixed on an application made under paragraph (1), by the applicant ;
- (b) where the date was fixed by order made by virtue of rule 35, by the plaintiff.

Where the applicant or plaintiff does not, within the period fixed by this paragraph, set the action down for trial, any other party may set it down or an application may be made 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 make such other order as it thinks just.

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(3) Not less than 7 days before the date fixed for the trial, or such other period before that date as may be specified in general directions given by the President of the Probate, Divorce and Admiralty Division, the party by whom the action was set down for trial must, notwithstanding anything in Order 63, rule 12(1), and unless the Court otherwise orders, file in the registry—

(a) if trial with one or more assessors has been ordered, a praecipe for his or their attendance, and

(b) three copies or, in the case of a trial with one or more assessors, four copies (if with one assessor) and five copies (if with two) of any pleadings, preliminary acts, notices given under rule 18(3) and statements filed under rule 18(4).

(4) If an action which has been set down for trial is settled or withdrawn it shall be the duty of all the parties to notify the registry of the fact without delay and take such steps as may be necessary to vacate the date fixed for the trial.

(5) Order 21, rule 2(4), Order 33, rule 4, and Order 34 (except rule 9) shall not apply to Admiralty actions.

Stay of proceedings in collision, etc. actions until security given

27. Where an action in rem, being an action to enforce any such claim as is referred to in rule 2(1)(a), is begun and a cross action in rem arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned action, then—

(a) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest, but

(b) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim,

the Court may stay proceedings in the first mentioned action until security is given to satisfy any judgment given in favour of that party.

Inspection of ship, etc.

28. Without prejudice to its powers under Order 29, rules 2 and 3, and Order 35, rule 8, the Court may, on the application of any party, make an order for the inspection by the assessors (if the action is tried with assessors), or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

Shorthand note of oral evidence, etc.

29.—(1) An official shorthand note shall, unless the Court otherwise directs, be taken of the proceedings in court of any cause or matter.

The reference in this paragraph to a shorthand note shall be construed as including a reference to a record of the proceedings made by mechanical means.

(2) An official Admiralty shorthand writer shall be appointed by the President of the Probate, Divorce and Admiralty Division, and the fees payable to the writer so appointed shall be fixed by the President.

Order 75]*Examination of witnesses and other persons*

30.—(1) The power conferred by Order 39, rule 1, shall extend to the making of an order authorising the examination of a witness or person on oath before a judge sitting in court as if for the trial of the cause or matter, without that cause or matter having been set down for trial or called on for trial.

(2) The power conferred by the said rule 1 shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.

(3) Where an order is made under paragraph (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect—

- (a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness ;
- (b) any representative, being counsel or solicitor, of either of the parties shall have authority to administer the oath to the witness ;
- (c) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the solicitor for the party whose witness was examined, and that solicitor must file it in the registry ;
- (d) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy thereof shall, before the transcript is filed, be made available to the counsel or other persons who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence he shall make a certificate specifying the corrections which in his opinion should be made therein, and that certificate must be filed with the transcript.

(4) In actions in which preliminary acts fall to be filed under rule 18, an order shall not be made under Order 39, rule 1, authorising any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

(5) Order 39 shall apply in relation to an Admiralty cause or matter as if for references therein to the Central Office (except the references in rule 3) there were substituted references to the registry.

Admiralty examiners

31.—(1) The President of the Probate, Divorce and Admiralty Division may appoint such number of barristers or solicitors as he thinks fit to act as examiners of the Court in connection with Admiralty causes and matters, and may revoke any such appointment.

(2) Order 39, rules 16 to 19, shall not apply in relation to examiners of the Court appointed under this rule.

Issue of writ of subpoena

32. Order 38, rule 14, shall apply in relation to the issue of a writ of subpoena ad testificandum or subpoena duces tecum in an Admiralty cause or matter as if for references therein to the Central Office there were substituted references to the registry.

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Proceedings for apportionment of salvage

33.—(1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be assigned to the Probate, Divorce and Admiralty Division and be begun by originating motion.

(2) The notice of such motion, together with the affidavits in support thereof, must be filed in the registry 7 days at least before the hearing of the motion, unless the Court gives leave to the contrary, and a copy of the notice and of the affidavits must be served on all the other parties to the proceedings before the originals are filed.

(3) On the hearing of the motion the judge may exercise any of the jurisdiction conferred by section 556 of the Merchant Shipping Act 1894.

Filing and service of notice of motion

34.—(1) Notice of a motion in any action, together with the affidavits (if any) in support thereof, must be filed in the registry 3 days at least before the hearing of the motion unless the Court gives leave to the contrary.

(2) A copy of the notice of motion and of the affidavits (if any) in support thereof must be served on all the other parties to the proceedings before the originals are filed.

Agreement between solicitors may be made order of court

35.—(1) Any agreement in writing between the solicitors of the parties to a cause or matter, dated and signed by those solicitors, may, if the registrar thinks it reasonable and such as the judge would under the circumstances allow, be filed in the registry, and the agreement shall thereupon become an order of court and have the same effect as if such order had been made by the judge in person.

(2) Paragraph (1) shall apply in relation to a cause or matter which is proceeding in a district registry as if for the references to the registrar and the registry there were substituted references to the district registrar and district registry respectively.

Originating summons procedure

36.—(1) An originating summons in Admiralty may be issued either out of the registry or out of a district registry.

(2) Order 12 shall apply in relation to an originating summons in Admiralty to which appearance is required to be entered as if for references therein to the Central Office there were substituted references to the registry.

(3) Order 28, rule 2, shall apply in relation to Admiralty proceedings begun by originating summons as it applies in relation to Queen's Bench proceedings so begun, but with the substitution, for the reference to the Central Office, of a reference to the registry.

(4) Rule 26 (except paragraph (3)) shall, with any necessary modifications, apply in relation to an Admiralty cause or matter begun by originating summons, and Order 28, rule 9, shall not apply to such a cause or matter.

Order 75]*Limitation action : parties*

37.—(1) In a limitation action the person seeking relief shall be the plaintiff and shall be named in the writ by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The plaintiff must make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.

(3) At least one of the defendants to the action must be named in the writ by his name but the other defendants may be described generally and not named by their names.

(4) The writ must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.

(5) In this rule and rules 38, 39 and 40 "name" includes a firm name or the name under which a person carries on his business, and where any person with a claim against the plaintiff in respect of the casualty to which the action relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the writ and, if so described, shall be deemed for the purposes of the rules aforesaid to have been named in the writ by his name.

Limitation action : summons for decree or directions

38.—(1) Within 7 days after the entry of appearance by one of the defendants named by their names in the writ, or, if none of them enters an appearance, within 7 days after the time limited for appearing, the plaintiff, without serving a statement of claim, must take out a summons returnable in chambers before the registrar or district registrar, as the case may be, asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the action.

(2) The summons must be supported by an affidavit or affidavits proving—

(a) the plaintiff's case in the action, and

(b) if none of the defendants named in the writ by their names has entered an appearance, service of the writ on at least one of the defendants so named.

(3) The affidavit in support of the summons must state—

(a) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the writ by their names, and

(b) the address of each of those persons, if known to the plaintiff.

(4) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on any defendant who has entered an appearance.

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(5) On the hearing of the summons the registrar, if it appears to him that it is not disputed that the plaintiff has a right to limit his liability, shall make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.

(6) On the hearing of the summons the registrar, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the plaintiff has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.

(7) If on the hearing or resumed hearing of the summons the registrar does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 25.

(8) Any defendant who, after the registrar has given directions under paragraph (7), ceases to dispute the plaintiff's right to limit his liability must forthwith file a notice to that effect in the registry or district registry, as the case may be, and serve a copy on the plaintiff and on any other defendant who has entered an appearance.

(9) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under paragraph (8), the plaintiff may take out a summons returnable in chambers before the registrar or district registrar, as the case may be, asking for a decree limiting his liability; and paragraphs (4) and (5) shall apply to a summons under this paragraph as they apply to a summons under paragraph (1).

Limitation action: proceedings under decree

39.—(1) Where the only defendants in a limitation action are those named in the writ by their names and all the persons so named have either been served with the writ or entered an appearance, any decree in the action limiting the plaintiff's liability (whether made by a registrar or on the trial of the action)—

(a) need not be advertised, but

(b) shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within paragraph (1), any decree in the action limiting the plaintiff's liability (whether made by a registrar or on the trial of the action)—

(a) shall be advertised by the plaintiff in such manner and within such time as may be provided by the decree;

(b) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the action relates may enter an appearance in the action (if they have not already done so) and file their claims, and, in cases to which rule 40 applies, take out a summons, if they think fit, to set the order aside.

(3) The advertisement to be required under paragraph (2)(a) shall, unless for special reasons the registrar or judge thinks fit otherwise to provide, be a single advertisement in each of three newspapers specified in the decree, identifying the action, the casualty and the relation of the plaintiff

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thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the decree has been made and specifying the amounts fixed thereby as the limits of the plaintiff's liability and the time allowed thereby for the entering of appearances, the filing of claims and the taking out of summonses to set the decree aside.

The plaintiff must within the time fixed under paragraph (2) (b) file in the registry or district registry, as the case may be, a copy of each newspaper in which the advertisement required under paragraph (2)(a) appears.

(4) The time to be allowed under paragraph (2)(b) shall, unless for special reasons the registrar or judge thinks fit otherwise to provide, be not less than 2 months from the latest date allowed for the appearance of the advertisements; and after the expiration of the time so allowed, no appearance may be entered, claim filed or summons taken out to set aside the decree except with the leave of the registrar or, on an appeal, of the judge.

(5) Save as aforesaid, any decree limiting the plaintiff's liability (whether made by a registrar or on the trial of the action) may make any such provision as is authorised by section 504 of the Merchant Shipping Act 1894.

Limitation action: proceedings to set aside decree

40.—(1) Where a decree limiting the plaintiff's liability (whether made by a registrar or on the trial of the action) fixes a time in accordance with rule 39(2), any person with a claim against the plaintiff in respect of the casualty to which the action relates, who—

- (a) was not named by his name in the writ as a defendant to the action, or
- (b) if so named, neither was served with the writ nor entered an appearance,

may, within that time, after entering an appearance, take out a summons returnable in chambers before the registrar or district registrar, as the case may be, asking that the decree be set aside.

(2) The summons must be supported by an affidavit or affidavits showing that the defendant in question has a bona fide claim against the plaintiff in respect of the casualty in question and that he has sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.

(3) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on the plaintiff and any defendant who has entered an appearance.

(4) On the hearing of the summons the registrar, if he is satisfied that the defendant in question has a bona fide claim against the plaintiff and sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 25.

References to registrar

41.—(1) Any party (hereafter in this rule referred to as the "claimant") making a claim which is referred to the registrar for decision must, within

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2 months after the order is made, or, in a limitation action, within such other period as the Court may direct, file his claim and, unless the reference is in such an action, serve a copy of the claim on every other party.

(2) At any time after the claimant's claim has been filed or, where the reference is in a limitation action, after the expiration of the time limited by the Court for the filing of claims but, in any case, not less than 28 days before the day appointed for the hearing of the reference, any party to the cause or matter may apply to the registrar by summons for directions as to the proceedings on the reference, and the registrar shall give such directions, if any, as he thinks fit including, without prejudice to the generality of the foregoing words, a direction requiring any party to serve on any claimant, within such period as the registrar may specify, a defence to that claimant's claim.

(3) The reference shall be heard on a day appointed by the registrar and, unless the reference is in a limitation action or the parties to the reference consent to the appointment of a particular day, the appointment must be made by order on an application by summons made by any party to the cause or matter.

(4) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim or, where the reference is in a limitation action, until after the expiration of the time limited by the Court for the filing of claims.

(5) Not later than 7 days after an appointment for the hearing of a reference has been made the claimant or, where the reference is in a limitation action, the plaintiff must enter the reference for hearing by lodging in the registry a praecipe requesting the entry of the reference in the list for hearing on the day appointed.

(6) Not less than 14 days before the day appointed for the hearing of the reference the claimant must file—

(a) a list, signed by him and every other party, of the items (if any) of his claim which are not disputed, stating the amount (if any) which he and the other parties agree should be allowed in respect of each such item, and

(b) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed;

and, unless the reference is in a limitation action, he must at the same time serve on every other party a copy of every document filed under this paragraph.

(7) If the claimant fails to comply with paragraph (1) or (6)(b), the Court may, on the application of any other party to the cause or matter, dismiss the claim.

Hearing of reference

42.—(1) The registrar may adjourn the hearing of a reference from time to time as he thinks fit.

(2) At or before the hearing of a reference, the registrar may give a direction limiting the witnesses who may be called, whether expert witnesses or not, but any such direction may, on sufficient cause being shown, be revoked or varied by a subsequent direction given at or before the hearing.

(3) Subject to paragraph (2), evidence may be given orally or by affidavit or in such other manner as may be agreed upon, and the evidence may,

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on the application of either party, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by the official Admiralty shorthand writer, and in such case a transcript of the shorthand writer's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the registrar's decision.

(4) When the hearing of the reference has been concluded, the registrar shall—

- (a) reduce to writing his decision on the questions arising in the reference (including any order as to costs) and cause it to be filed ;
- (b) cause to be filed either with his decision or subsequently such statement (if any) on the grounds of the decision as he thinks fit ; and
- (c) send to the parties to the reference notice that he has done so.

(5) Where no statement of the grounds of the registrar's decision is filed with his decision and no intimation has been given by the registrar that he intends to file such a statement later, any party to the reference may, within 14 days after the filing of the decision, make a written request to the registrar to file such a statement.

Objection to decision on reference

43.—(1) Any party to a reference to the registrar may, by motion in objection, apply to a judge in court to set aside or vary the decision of the registrar on the reference, but notice of the motion, specifying the points of objection to the decision, must be filed within 14 days after the date on which notice of the filing of the decision was sent to that party under rule 42(4) or, if a notice of the filing of a statement of the grounds of the decision was subsequently sent to him thereunder, within 14 days after the date on which that notice was sent.

(2) The decision of the registrar shall be deemed to be given on the date on which it is filed, but, unless he or the judge otherwise directs, the decision shall not be acted upon until the time has elapsed for filing notice of a motion in objection thereto, or while such a motion is pending or remains undisposed of.

(3) A direction shall not be given under paragraph (2) without the parties being given an opportunity of being heard, but may, if the registrar announces his intended decision at the conclusion of the hearing of the reference, be incorporated in his decision as reduced to writing under rule 42(4).

References to district registrar

44. Rules 41, 42 and 43 shall, with the necessary modifications, apply in relation to a claim referred to a district registrar as they apply in relation to a claim referred to the registrar.

Drawing up and entry of judgments and orders

45. Every judgment given or order made in an Admiralty cause or matter shall be drawn up in the registry or, where the cause or matter is proceeding in a district registry, in that registry and shall be entered by an officer of the registry or district registry, as the case may be, in the book kept for the purpose.

Inspection of documents filed in registry

46.—(1) Order 63, rule 4(1) and (3), shall apply in relation to documents filed in the registry as they apply in relation to documents filed in the Central Office.

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(2) For the purpose of the said rule 4, as applied by paragraph (1), a decree made in chambers in a limitation action shall be deemed to have been made in court.

Powers of assistant registrar, etc.

47. Without prejudice to section 116 of the Act, the powers and duties conferred and imposed on the registrar by or under any Act or by these rules may be exercised and performed by any person appointed as assistant registrar or deputy registrar.

ORDER 76**PROBATE PROCEEDINGS*****Application and interpretation***

1.—(1) This Order applies to probate causes and matters, and the other provisions of these rules apply to those causes and matters 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—

“probate registry” means the Principal Probate Registry;

“registrar” means a registrar of the probate registry;

“will” includes a codicil.

Requirements in connection with issue of writ

2.—(1) A probate action must be begun by writ, and the writ must be issued out of the probate registry.

(2) Before a writ beginning a probate action is issued it must be indorsed with 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.

(3) A writ beginning an action for the revocation of the grant of probate of the will, or letters of administration of the estate, of a deceased person shall not be issued unless a citation under rule 7 has been issued or the probate or letters of administration, as the case may be, has or have been lodged in the probate registry.

Service of writ out of the jurisdiction

3.—(1) Subject to paragraph (2), service out of the jurisdiction of a writ, or notice of a writ, by which a probate action is begun is permissible with the leave of the Court.

(2) Order 11, rule 3 and rule 4(1), (2) and (4), shall apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.

Intervener in probate action

4.—(1) A person not a party to a probate action may apply to the Court for leave to intervene in a probate action.

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(2) An application under this rule must be made by summons supported by an affidavit showing the interest of the applicant in the estate of the deceased.

(3) An applicant who obtains leave to intervene in a probate action shall not be entitled to be heard in the action unless he enters an appearance therein.

(4) Where the Court grants leave under this rule, it may give such directions as to the service of pleadings, the filing of an affidavit of testamentary scripts or other matters as it thinks necessary.

Citation to see proceedings

5.—(1) On the application of the plaintiff, or of any other party who has pleaded in a probate action, a citation may be issued against any person not a party to the action who has an adverse interest to the applicant notifying him that if he does not enter an appearance in the action judgment may be given therein without further notice to him.

(2) Where a person on whom a citation under this rule is served fails to enter an appearance in the action, the party on whose application the citation was issued shall not be entitled to be heard at the trial of the action without the leave of the Court unless he has filed an affidavit proving due service of the citation on that person.

Entry of appearance

6.—(1) The appropriate office for the entry of appearance in a probate action is in all cases the probate registry and Order 12, in its application to such an action, shall have effect accordingly.

(2) Without prejudice to paragraph (1), Order 12, rules 1, 3 and 4, shall apply to the entry of appearance by a person authorised to intervene in a probate action, and by a person cited under rule 5, as if—

(a) that person were a defendant, and

(b) the parties to the action (in the case of an intervener) or the party at whose instance the citation was issued (in the case of a person cited) were the plaintiff.

Citation to bring in grant

7. In an action for the revocation of the grant of probate of the will, or letters of administration of the estate, of a deceased person, a citation against the person to whom the probate or letters of administration, as the case may be, was or were granted requiring him to bring into and leave at the probate registry the probate or letters of administration, as the case may be, may be issued on the application of the plaintiff.

Citations

8.—(1) A citation under rule 5 or 7 must be issued out of the probate registry and must be settled by the Court before it is issued.

(2) Before such a citation is issued an affidavit verifying the statements of fact to be made in the citation must be sworn by the person applying for it to be issued:

Provided that the Court may in special circumstances allow the affidavit to be sworn by that person's solicitor.

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(3) Issue of a citation takes place upon its being sealed by an officer of the probate registry.

(4) Without prejudice to Order 65, rule 4, a citation under rule 5 or 7 must be served personally on the person cited.

(5) Service out of the jurisdiction of a citation under rule 5 or 7 is permissible but, in the case of a citation under rule 7, only with the leave of the Court.

(6) Order 11, rule 4(1) and (2), shall apply in relation to an application for the grant of leave under paragraph (5) as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.

(7) An order granting leave to serve a citation under rule 7 out of the jurisdiction must limit a time within which the person to be served with the citation must comply with it.

(8) Order 11, rules 5, 6 and 8, shall apply in relation to a citation under rule 7 as they apply in relation to notice of a writ.

Affidavit of testamentary scripts

9.—(1) Unless the Court otherwise directs, the plaintiff and every defendant who has entered an appearance 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 ;

and any such script which is in the possession or under the control of the deponent must be annexed to his affidavit.

(2) An affidavit required by this rule (together with any testamentary script annexed thereto) must be filed within 14 days after the entry of appearance by a defendant to the action or, if no defendant enters an appearance therein and the Court does not otherwise direct, before the action is set down for trial.

(3) Where any testamentary script required by this rule to be filed 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 filed 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 under this rule by any other party to the action, or any testamentary script annexed thereto, 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

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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.

Default of appearance

10.—(1) Order 13 shall not apply in relation to a probate action.

(2) Where any of several defendants to a probate action fails to enter an appearance, the plaintiff, upon filing an affidavit proving due service of the writ, or notice of the writ, on that defendant may, after the time limited for appearing, proceed with the action as if that defendant had entered an appearance.

(3) Where the defendant, or all the defendants, to a probate action, fails or fail to enter an appearance, and none of the persons (if any) cited under rule 5 has entered an appearance, then, unless on the application of the plaintiff the Court orders the action to be discontinued, the plaintiff may after the time limited for appearing by the defendant apply to the Court for leave to set down the action for trial as a short cause.

(4) Before making an application for the grant of leave under paragraph (3) the plaintiff must file an affidavit proving due service of the writ, or notice of the writ, on the defendant and of the citation, if any.

(5) Where the Court grants leave under paragraph (3), it may order the plaintiff to file an affidavit of testamentary scripts under rule 9.

Service of statement of claim

11. The plaintiff in a probate action must, unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, serve a statement of claim on every defendant who enters an appearance in the action and must do so before the expiration of 6 weeks after entry of appearance by that defendant or of 8 days after the filing by him of an affidavit under rule 9, whichever is the later.

Counterclaim

12. 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.

Contents of pleadings

13.—(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 7, 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

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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

14.—(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, 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 leave to set down the action for trial as a short cause.

Discontinuance

15.—(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 an appearance therein, order the action to be discontinued 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 summons or by notice under Order 25, rule 7.

Compromise of action: trial as short cause

16. Where whether before or after service of the defence in a probate action the parties to the action agree to a compromise, the action may, with the leave of the Court, be set down for trial as a short cause.

Trial outside London: documents to be procured from registry

17. Where by an order made on the summons for directions a probate action is ordered to be tried before a judge elsewhere than at the Royal Courts of Justice, the party who sets down the action for trial must—

- (a) as soon as practicable after setting it down, lodge a request at the probate registry for the documents filed in that registry relating to the action to be sent to the appropriate district probate registry, and
- (b) arrange with an officer of that district registry for the documents to be produced at the trial.

Issue of writ of subpoena and evidence by deposition

18.—(1) Order 38, rule 14, shall apply in relation to the issue of a writ of subpoena ad testificandum or subpoena duces tecum in a probate action as if for references therein to the Central Office there were substituted references to the probate registry.

(2) Order 39 shall apply in relation to a probate cause or matter as if for references therein to the Central Office (except the references in rule 3) there were substituted references to the probate registry.

Order 76]*Application for order to bring in will, etc.*

19.—(1) An application in a probate action for an order under section 26 of the Court of Probate Act 1857(a) requiring a person to bring into the probate registry a will or other testamentary paper or to attend in court for examination may be made to a judge by summons, and the summons must be served on the person against whom the order is required.

(2) An application in a probate action for the issue by a registrar of a subpoena under section 23 of the Court of Probate Act 1858(b) requiring a person to bring into the probate registry a will or other testamentary paper must be supported by an affidavit setting out the grounds of the application.

(3) 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.

Case for motion

20.—(1) Where an application in a probate cause or matter is to be made to the Court by motion, the applicant must—

(a) not less than 7 clear days before the day on which the motion is to be heard, file a case for motion in the probate registry, together with an affidavit verifying the statements of fact made in the case, and

(b) not less than 5 clear days before that day, serve a copy of the case and of every affidavit in support of the motion on any person entitled to be heard in opposition to the motion.

(2) A case for motion must—

(a) set out the proceedings already had in the cause or matter with the dates thereof ;

(b) set out the relevant facts in a summary form ; and

(c) state the relief or remedy sought by the motion.

Application to Court by summons

21.—(1) Except where these rules otherwise provide, any application to the Court in a probate cause or matter may be made by summons.

(2) Issue of a summons in such a cause or matter takes place on its being sealed by an officer of the probate registry.

(3) The summons must be prepared by the applicant and when tendering it for sealing he must leave a copy of it for filing in the probate registry.

Form of judgments and orders

22.—(1) Every judgment of the Court in a probate cause or matter shall be signed by a registrar.

(2) Every order made in such a cause or matter shall be drawn up in the probate registry.

Inspection of documents filed in probate registry

23. Order 63, rule 4(1) and (3), shall apply in relation to documents filed in the probate registry as they apply in relation to documents filed in the Central Office.

[Order 76*Administration pendente lite*

24.—(1) An application under section 163 of the Act for the grant of administration may be made to a registrar by summons.

(2) An administrator to whom a grant is made under the said section 163 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 probate 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 a registrar for examination and Order 62, rules 22, 23 and 26, 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 a 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 in accordance with the said section 163.

ORDER 77**PROCEEDINGS BY AND AGAINST THE CROWN***Application and interpretation*

1.—(1) These rules apply to civil proceedings to which the Crown is a party subject to the following rules of this Order.

(2) In this Order—

“civil proceedings by the Crown”, “civil proceedings against the Crown” and “civil proceedings by or against the Crown” have the same respective meanings as in Part II of the Crown Proceedings Act 1947^(a) and do not include any of the proceedings specified in section 23(3) of that Act;

“civil proceedings to which the Crown is a party” has the same meaning as it has for the purposes of Part IV of the Crown Proceedings Act 1947, by virtue of section 38(4) of that Act;

“order against the Crown” means any order (including an order for costs) made in any civil proceedings by or against the Crown or in any proceedings on the Crown side of the Queen's Bench Division, or in connection with any arbitration to which the Crown is a party, in favour of any person against the Crown or against a government department or against an officer of the Crown as such;

“order” includes a judgment, decree, rule, award or declaration.

Transfer of proceedings

2.—(1) Subject to paragraph (2), in civil proceedings by or against the Crown no order shall be made under Order 4, rule 6, for the transfer of the proceedings, or of any summons or other application therein, from the Royal Courts of Justice to a district registry, except with the consent of the Crown.

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(2) Where in any civil proceedings against the Crown begun by the issue of a writ out of a district registry the Crown enters an appearance in the Central Office or the Admiralty Registry, no order shall be made under Order 4, rule 6, for the transfer of any proceedings before the trial from the Royal Courts of Justice to a district registry.

Particulars to be included in indorsement of claim

3.—(1) In the case of a writ which begins civil proceedings against the Crown the indorsement of claim required by Order 6, rule 2, shall include a statement of the circumstances in which the Crown's liability is alleged to have arisen and as to the government department and officers of the Crown concerned.

(2) If in civil proceedings against the Crown 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 appearing, 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 appearing 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

4.—(1) Order 10, Order 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 Crown are begun.

(2) Personal service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings is not requisite; but where the proceedings are by or against the Crown service on the Crown must be effected—

(a) by leaving the document at the office of the person who is in accordance with section 18 of the Crown Proceedings Act 1947 to be served, or of any agent whom that person has nominated for the purpose, but in either case with a member of the staff of that person or agent, or

(b) by posting it in a prepaid envelope addressed to the person who is to be served as aforesaid or to any such agent as aforesaid.

(3) In relation to the service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown, 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.

Appearance

5.—(1) Order 12, rule 2(2), (3) and (5), shall not apply in relation to the entry of appearance by the defendant in civil proceedings against the Crown.

(2) The reference in paragraph (1) to Order 12, rule 2(2), (3) and (5), includes a reference to that rule as applied by any other provision of these rules.

[Order 77***Counterclaim and set-off***

6.—(1) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, a person may not in any proceedings by the Crown 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 17 and 18, no counterclaim may be made, or set-off pleaded, without the leave of the Court, by the Crown in proceedings against the Crown, or by any person in proceedings by the Crown—

(a) if the Crown 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 Crown 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

7.—(1) No application against the Crown shall be made under Order 14, rule 1, or Order 86, rule 1, in any proceedings against the Crown nor under Order 14, rule 5, in any proceedings by the Crown.

(2) Where an application is made by the Crown 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 Crown, or

(b) an officer duly authorised by the solicitor so acting or by the department concerned ;

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.

Summary applications to the Court in certain revenue matters

8.—(1) This rule applies to applications under section 14 of the Crown Proceedings Act 1947.

(2) An application to which this rule applies may be made by originating motion or originating summons.

(3) The person from whom any account or information or payment is claimed or by whom any books are required to be produced must be made respondent or, where the application is made by originating summons, defendant to the application.

(4) An originating summons or notice of originating motion under this rule—

(a) must be entitled in the matter or matters out of which the need for the application arises and in the matter of the Crown Proceedings Act 1947 ; and

(b) must refer to the enactment under which the account or information or payment or the production of books is claimed and, where information is claimed, must show (by appropriate questions or otherwise) what information is required.

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(5) Upon any application to which this rule applies an affidavit by a duly authorised officer of the government department concerned setting out the state of facts upon which the application is based and stating that he has reason to think that those facts exist shall be evidence of those facts ; and if evidence is filed disputing any of those facts, further evidence may be filed, and the Court may either decide the matter upon the affidavits (after any cross-examination that may have been ordered) or may direct that it be decided by oral evidence in court.

(6) An order in favour of the Crown on an application to which this rule applies shall, unless the Court otherwise determines, name a time within which each of its terms is to be complied with.

(7) For the purpose of Order 59, rule 4, all orders made on applications to which this rule applies shall be deemed to be interlocutory.

(8) Nothing in this rule shall, in relation to any case in which the only relief claimed by the Crown is the payment of money, be construed as requiring the Crown to proceed by way of an application to which this rule applies or as preventing the Crown from availing itself of any other procedure which is open to it under these rules.

Judgment in default

9.—(1) Except with the leave of the Court, no judgment in default of appearance or of pleading shall be entered against the Crown in civil proceedings against the Crown or in third party proceedings against the Crown.

(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 Crown.

(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

10.—(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 Crown 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 Crown.

(2) Leave to issue such a notice for service on the Crown shall not be granted unless the Court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

Interpleader : application for order against Crown

11. No order shall be made against the Crown under Order 17, rule 5(3), except upon an application by summons served not less than 7 days before the return day.

Discovery and interrogatories

12.—(1) Order 24, rules 1 and 2, shall not apply in civil proceedings to which the Crown is a party.

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(2) In any civil proceedings to which the Crown is a party any order of the Court made under the powers conferred by section 28(1) of the Crown Proceedings Act 1947 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 Crown, 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 Crown shall be verified by affidavit, the affidavit shall be made by such officer of the Crown as the Court may direct.

(4) Where in any such proceedings an order is made under the said section 28 for interrogatories to be answered by the Crown, the Court shall direct by what officer of the Crown the interrogatories are to be answered.

(5) In any proceedings by the Crown for the enforcement of any right for the enforcement of which proceedings by way of English information might have been taken if the Crown Proceedings Act 1947 had not passed the Crown may serve interrogatories or further interrogatories (except any third or subsequent set of interrogatories) under Order 26 without the leave of the Court.

Place of trial

13.—(1) Civil proceedings by or against the Crown shall not, except with the consent of the Crown, be directed to be tried elsewhere than at the Royal Courts of Justice.

(2) Nothing in any of these rules shall prejudice the right of the Crown to demand a local venue for the trial of any proceedings in which the Attorney General has waived his right to a trial at bar.

Evidence

14.—(1) Civil proceedings against the Crown may be instituted under Order 39, rule 15, in any case in which the Crown 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 Crown as they are exercisable in proceedings between subjects.

Execution and satisfaction of orders

15.—(1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Crown.

(2) An application under the proviso to subsection (1) of section 25 of the Crown Proceedings Act 1947 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.

(3) Any such certificate must be in Form No. 95 or 96 in Appendix A, whichever is appropriate.

Order 77]*Attachment of debts, etc.*

16.—(1) No order—

(a) for the attachment of debts under Order 49, or

(b) for the appointment of a sequestrator under Order 45, or

(c) for the appointment of a receiver under Order 30 or 51,

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 Crown.

(2) Every application to the Court for an order under section 27(1) of the Crown Proceedings Act 1947 restraining any person from receiving money payable to him by the Crown 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 Crown and, unless the Court otherwise orders, on the person to be restrained or his 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 Crown 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 Crown 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 Crown.

Proceedings relating to postal packets

17.—(1) An application by any person under section 9(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 in the Queen's Bench Division.

(2) The Crown and the person in whose name the applicant seeks to bring proceedings must be made defendants to a summons under this rule.

(3) No appearance need be entered to a summons under this rule.

Applications under ss. 17 and 29 of Crown Proceedings Act

18.—(1) Every application to the Court under section 17(4) of the Crown Proceedings Act 1947 must be made by summons.

(2) An application such as is referred to in section 29(2) of the Crown Proceedings Act 1947 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**COUNTY COURT PROCEEDINGS TRANSFERRED OR REMOVED TO HIGH COURT***Application and interpretation*

1.—(1) This Order applies where an order has been made under section 43, 44, 49, 58, 65, 66 or 85 of the County Courts Act 1959(a) for the transfer, or under section 20 of the Crown Proceedings Act 1947(b) for the removal, of proceedings from a county court to the High Court.

(a) 7 & 8 Eliz. 2. c. 22.

(b) 10 & 11 Geo. 6. c. 44.

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(2) Where under section 65 of the said Act of 1959 only the proceedings on a counterclaim are transferred, this Order shall apply as if the party setting up the counterclaim were the plaintiff and the party resisting it the defendant, and references in this Order to the plaintiff and the defendant shall be construed accordingly.

(3) References in the following provisions of this Order to the plaintiff and the defendant shall, in relation to proceedings begun in the county court otherwise than by plaint, be construed as references to the applicant and the respondent respectively.

Duties of officer

2. On receipt by the proper officer of the documents referred to in Order 16, rule 19, of the County Court Rules 1936(a), that officer must forthwith—

- (a) file the said documents and make an entry of the filing thereof in the cause book,
- (b) mark the action with the name of the Division to which it should be assigned, and
- (c) give notice to all parties to the proceedings in the county court that the action is proceeding in the High Court at the Royal Courts of Justice or, as the case may be, in the district registry (naming it), if any, specified in the order for transfer as the registry in which the proceedings are to proceed and that the defendant is required to enter an appearance in the action.

Entry of appearance

3. The defendant must, within 7 days after receipt of the notice referred to in rule 2, enter an appearance in accordance with Order 12, rules 1 to 4, and Order 12, rules 1, 2 and 4, shall apply as if the proceedings transferred or removed were an action begun by writ and as if the appropriate office for the purpose of those rules were—

- (a) where the order transferring the proceedings provides that they shall proceed in a district registry, that registry ;
- (b) where such order does not so provide, and where the proceedings have been ordered to be removed into the High Court under section 20 of the Crown Proceedings Act 1947, the Central Office or, if the proceedings are Admiralty proceedings, the Admiralty Registry.

Judgment in default of appearance

4.—(1) If the defendant fails, or all the defendants (if more than one) fail, to enter an appearance 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 county court.

Order 78]*Summons for directions or summary judgment*

5.—(1) Where a defendant enters an appearance in the action the plaintiff must, within 7 days after the appearance is entered, 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 Crown, 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**CRIMINAL PROCEEDINGS***Applications for trial of indictments at bar, change of venue, etc.*

1.—(1) An application for an order—

- (a) under subsection (1) of section 11 of the Administration of Justice (Miscellaneous Provisions) Act 1938(a) directing the trial of an indictment or inquisition at bar in the Queen's Bench Division,
- (b) under subsection (2) of that section directing the trial of an indictment or inquisition at the Central Criminal Court before three judges of the Queen's Bench Division, or
- (c) under subsection (3) of that section directing the trial at any court of assize or quarter sessions of an indictment which would otherwise be tried at a different court of assize or quarter sessions,

must be made by motion to a Divisional Court of the Queen's Bench Division, except in vacation when it may be made by summons to a judge in chambers, and must be supported by an affidavit showing on what grounds the application is made.

(2) Any such application with respect to an indictment may be made either before or after the indictment is preferred and signed.

(3) The notice of motion or summons together with a copy of the affidavit must, at least 8 clear days before the day named in the notice or summons for the hearing, be served, if the applicant is the prosecutor, on the defendants, and, if the applicant is a defendant, on the prosecutor, on the Director of Public Prosecutions, if the prosecution is being conducted by him, and on all the other defendants, if any.

[Order 79*Transmission and amendment of recognizances and other documents*

2.—(1) Where, by virtue of an order made on such an application as aforesaid, an indictment or inquisition, which would otherwise be tried at a court of assize or quarter sessions, is to be tried in the Queen's Bench Division or at a different court of assize or quarter sessions, the master of the Crown Office shall transmit an office copy of the order to the clerk of the court at which the indictment or inquisition would otherwise be tried, and the clerk shall thereupon transmit the indictment (if it has been preferred) or inquisition and any recognizances, depositions, exhibits or other relevant documents to the clerk of the court where the indictment or inquisition is to be tried, or if it is to be tried in the Queen's Bench Division, to the Crown Office.

(2) Where, by virtue of an order made on such an application as aforesaid, any indictment or inquisition, which would otherwise be tried in the Queen's Bench Division, is to be tried at the Central Criminal Court, the master of the Crown Office shall transmit the indictment (if it has been preferred) or inquisition and any recognizances, depositions, exhibits or other relevant documents to the clerk of the Central Criminal Court.

(3) All recognizances transmitted as aforesaid shall have effect with the substitution, for any references to the court at which the trial would be held but for the order, of references to the court at which the trial is to be held, and the clerk of the last mentioned court shall amend the recognizances accordingly and shall, subject to any directions given by that court, make such amendments of any other of the said documents as appear to be necessary in consequence of the change of the court of trial.

Appeal against decision of magistrates' court with respect to venue

3.—(1) An appeal under section 9(2) of the Magistrates' Courts Act 1952(a) against the decision of a magistrates' court to refuse the application of an accused person not to commit him for trial before the court of assize or quarter sessions therein referred to must be made by motion to a Divisional Court of the Queen's Bench Division, except in vacation when it may be made by summons to a judge in chambers, and must be supported by an affidavit showing on what grounds the application is made.

(2) The notice of motion or summons together with a copy of the affidavit must, within 6 days after the decision of the magistrates' court was given and at least 8 clear days before the day named in the notice or summons for hearing, be served on the clerk of that court, on the prosecutor, on the Director of Public Prosecutions, if the prosecution is being conducted by him, and on all the other defendants, if any.

(3) The appeal must be entered for hearing within 4 days after service of the notice of motion or summons.

(4) The evidence at the hearing of the appeal shall be by affidavit, and the accused person (if in custody) shall not attend the hearing, unless, in either case, the Divisional Court or judge otherwise directs.

(5) The Divisional Court or judge shall cause notice of its or his decision to be communicated to the magistrates' court.

(6) Order 55 shall not apply to an appeal to which this rule applies.

Order 79]*Arrest of defendant to indictment, etc., to be tried in Queen's Bench Division*

4.—(1) Where the defendant to any indictment, inquisition or criminal information pending in the Queen's Bench Division is not in custody, the prosecutor may obtain from the Crown Office a certificate that the indictment, inquisition or information is so pending.

(2) Upon production of such a certificate to a judge, the judge may issue a warrant to arrest the defendant and cause him to be brought before him or some other judge or a justice of the peace to be committed to prison or admitted to bail:

Provided that, where the indictment or inquisition has been removed into the Queen's Bench Division for the purpose of a trial at bar, and the defendant has previously been held to bail, the judge shall not issue his warrant unless special circumstances are shown on affidavit such as the intention of the defendant to abscond.

(3) If it be proved upon oath to the judge or justice of the peace before whom the defendant is brought that he is the person charged in the indictment, inquisition or information, the judge or justice of the peace shall commit him to prison by warrant or admit him to bail in such amount as he may direct.

(4) Nothing in this rule shall affect the jurisdiction of a judge to admit any defendant to bail at any time after committal and before conviction.

No entry of appearance to indictment, etc.

5. No appearance in writing need be entered to an indictment, inquisition or criminal information in the Queen's Bench Division.

Fixing of date of trial of indictment, etc.

6. An indictment, inquisition or criminal information in the Queen's Bench Division shall be entered by the master of the Crown Office, subject to any directions given by the Court, for trial on such day as may be fixed by him, and he shall cause notice of the day so fixed to be given to the parties.

Trial of indictment, etc., in Queen's Bench Division

7.—(1) Subject to paragraph (2), the defendant to an indictment, inquisition or criminal information in the Queen's Bench Division shall plead to it orally on arraignment before the Court.

(2) Where the defendant to such an indictment, inquisition or information is a body corporate, a plea of guilty or not guilty may, on arraignment of the corporation before the Court, be entered in writing on its behalf by a solicitor or other representative, and if the corporation does not appear by a representative or, though it does so appear, fails to enter a plea as aforesaid, the Court shall order a plea of not guilty to be entered and the trial shall proceed as though the corporation had duly entered a plea of not guilty.

(3) The procedure on the trial of any indictment, inquisition or criminal information in the Queen's Bench Division shall be the same as on the trial of an indictment by a court of assize; and the trial may be continued from day to day or be adjourned to a subsequent day, in the discretion of the Court, without reference to the sittings of the High Court for other business.

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(4) The jury for any such trial as aforesaid shall be taken from the list of persons summoned for the sittings of the High Court.

Estreat of recognizances

8.—(1) No recognizance acknowledged in or removed into the Queen's Bench Division shall be estreated without the order of a judge.

(2) Every application to estreat a recognizance in the Queen's Bench Division must be made by summons to a judge in chambers and must be supported by an affidavit showing in what manner the breach has been committed and proving that the summons was duly served.

(3) A summons under this rule must be served at least 2 clear days before the day named therein for the hearing.

(4) On the hearing of the application the judge may, and if requested by any party shall, direct any issue of fact in dispute to be tried by a jury.

(5) If it appears to the judge that a default has been made in performing the conditions of the recognizance, the judge may order the recognizance to be estreated.

Bail

9.—(1) Subject to the provisions of this rule, every application to the High Court for bail in any criminal proceeding where the defendant is in custody must be made by summons before a judge in chambers to show cause why the defendant should not be admitted to bail.

(2) Subject to paragraph (5), the summons (in Form No. 97 in Appendix A) must, at least 24 hours before the day named therein for the hearing, be served on the prosecutor and on the Director of Public Prosecutions, if the prosecution is being carried on by him, and Order 32, rule 5, shall apply in relation to the summons.

(3) Subject to paragraph (5), every application must be supported by affidavit.

(4) Where a defendant in custody who desires to apply for bail is unable through lack of means to instruct a solicitor, he may give notice in writing to the judge in chambers stating his desire to apply for bail and requesting that the official solicitor shall act for him in the application, and the judge may, if he thinks fit, assign the official solicitor to act for the applicant accordingly.

(5) Where the official solicitor has been so assigned the judge may, if he thinks fit, dispense with the requirements of paragraphs (1) to (3) and deal with the application in a summary manner.

(6) Without prejudice to section 37 of the Criminal Justice Act 1948(a), the judge in chambers by whom an application for bail in criminal proceedings (other than an application made under the said section 37) is heard may order that the defendant shall be released from custody on entering into a recognizance, with or without sureties, or giving other security before—

(a) a justice of the peace, or

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- (b) any other person authorised by virtue of section 95 (1) of the Magistrates' Courts Act 1952 to take a recognizance where a magistrates' court having power to take it has, instead of taking it, fixed the amount in which the principal and his sureties, if any, are to be bound.

An order such as is referred to in this paragraph must be in Form No. 98 in Appendix A.

(7) A person who in pursuance of an order made by a judge under this rule proposes to enter into a recognizance or give other security before a justice of the peace or other person must, unless the judge otherwise directs, give notice (in Form No. 100 in Appendix A) to the prosecutor at least 24 hours before he enters into the recognizance or gives security as aforesaid.

(8) Where in pursuance of an order of a judge in chambers a recognizance is entered into or other security given before a justice of the peace or other person, it shall be the duty of that person to cause the recognizance of the defendant and any surety or, as the case may be, a statement of the other security given, to be transmitted forthwith—

(a) in the case of a committal for trial, to the clerk of the court to which the defendant stands committed ;

(b) in any other case, to the clerk of the court which committed the defendant ;

and, unless the recognizance is entered into at a prison, a copy of such recognizance or statement shall at the same time be sent to the governor of the prison in which the defendant is detained.

(9) Where in pursuance of such an order as aforesaid a person is released from custody on entering into a recognizance or giving other security for his appearance before a magistrates' court, and in breach of his undertaking fails to appear, the recognizance or, as the case may be, payment of any sum due in respect of the security may be enforced by that court—

(a) in the case of a recognizance, in manner provided by section 96 of the Magistrates' Courts Act 1952, and

(b) in the case of other security, in the same manner as payment of the sum due in respect of the security would have been enforceable if the person giving the security had instead entered into a recognizance, and the said section 96 shall in that case apply accordingly with the necessary modifications.

(10) Where in pursuance of an order of a judge in chambers or of a court of quarter sessions a person is released on bail in any criminal proceeding pending the determination of an appeal to the High Court or House of Lords or an application for an order of certiorari, then, upon the abandonment of the appeal or application, or upon the decision of the High Court or House of Lords being given, any justice (being a justice acting for the same petty sessions area as the magistrates' court by which that person was convicted or sentenced) may issue process for enforcing the decision in respect of which such appeal or application was brought or, as the case may be, the decision of the High Court or House of Lords.

(11) If an applicant to the High Court in any criminal proceedings is refused bail by a judge in chambers, the applicant shall not be entitled to make a fresh application for bail to any other judge or to a Divisional Court.

[Order 79*Issue of witness summonses, etc.*

10.—(1) A witness summons under section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965(a) may be issued out of the Crown Office or a district registry.

A witness summons under the said section 2 must be in Form No. 101, 102 or 103 in Appendix A, whichever is appropriate.

(2) No appearance need be entered to an originating summons by which an application is made under section 2(2) of the said Act for a direction that a witness summons shall be of no effect, and the application shall be heard and determined in chambers.

Application for warrant to arrest witness

11.—(1) An application to a judge of the High Court under section 4 of the Criminal Procedure (Attendance of Witnesses) Act 1965 for the issue of a warrant to arrest a witness and bring him before the court before which he is required to attend must be made by originating summons, supported by affidavit, and the application may be heard and determined either in court or in chambers.

(2) No appearance need be entered to an originating summons by which such an application is made and, unless the judge otherwise directs, the summons need not be served on the person sought to be arrested.

ORDER 80**DISABILITY***Interpretation.***1. In this Order—**

“the Act” means the Mental Health Act 1959(b);

“patient” means a person who, by reason of mental disorder within the meaning of the Act, 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

2.—(1) A person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not 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 provision 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.

(3) A next friend or guardian ad litem of a person under disability must act by a solicitor.

Order 80]*Appointment of next friend or guardian ad litem*

3.—(1) This rule shall not apply in relation to a probate action.

(2) Except as provided by paragraph (4) or (5) or by rule 6, an order appointing a person next friend or guardian ad litem of a person under disability is not necessary.

(3) Where a person is authorised under Part VIII of the Act 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 (4) or (6) 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.

(4) 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.

(5) 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.

(6) 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) an appearance shall not be entered 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 (8) have been filed in the appropriate office.

(7) Where a writ or other process by which the cause or matter is to be begun is to issue out of a district registry or the Admiralty Registry, or the appearance is to be entered in a district registry or the Admiralty Registry or the cause or matter in question is proceeding in a district registry, the appropriate office for the purpose of paragraph (6) is that registry and in any other case it is the Central Office.

(8) The documents referred to in paragraph (6) 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 Part VIII of the Act 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 official seal of the Court of Protection, of the order or other authorisation made or given under the said Part VIII by virtue of which he is so authorised ; and

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(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 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) except where the person named in the certificate as next friend or guardian ad litem, as the case may be, is the official solicitor, that the person so named has no interest in the cause or matter in question adverse to that of the person under disability.

Probate action : appointment of next friend or guardian ad litem

4.—(1) This rule applies in relation to a probate action to which a person under disability is a party or in which he intervenes or is cited under Order 76, rule 5.

(2) Where the person under disability is a patient and a person is authorised under Part VIII of the Act to conduct legal proceedings in the name of the patient or on his behalf, the person so authorised shall be entitled to be next friend of the patient in any probate action to which his authority extends.

(3) Where the person under disability is an infant who is not a patient and he has a statutory guardian or a testamentary guardian who is qualified to be his next friend by virtue of paragraph (8), that guardian shall be entitled to be next friend of the infant in a probate action.

(4) Where the person under disability is an infant who has attained the age of 16 years and is not a patient, and there is no person qualified by virtue of paragraph (3) to be his next friend, the infant may appoint as his next friend a person who is qualified to be such friend by virtue of paragraph (8) and who is one of his next of kin or, where the infant is a married woman, one of her next of kin or her husband.

(5) Where an infant appoints a person under paragraph (4) to be his next friend in a probate action, the person so appointed may be next friend of any other infant in that action provided that the other infant is under 16 years of age, is not a patient and his interest in the action is the same as that of the infant making the appointment.

(6) Where there is no person qualified by virtue of paragraph (2) or (3), as the case may be, to be next friend of a person under disability in a probate action and that person is either not entitled under paragraph (4) to appoint a person to be his next friend or, being so entitled, makes no appointment thereunder, the next friend of the person under disability in the action shall be such one of his next of kin or other person as the Court may appoint.

(7) An application under paragraph (6) for the appointment of a next friend of a person under disability may be made ex parte and must be supported by an affidavit showing—

- (a) that there is no person entitled to be such friend by virtue of paragraph (2) or (3), or appointed as such under paragraph (4), as the circumstances require, and

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(b) if such be the case, that the person proposed as next friend is a next of kin of the person under disability, and

(c) that the person proposed as next friend is willing and a proper person to act as such and has no interest in the action adverse to that of the person under disability.

(8) A person is qualified to be next friend of a person under disability if he is competent and willing to act as such and has no interest in the action in question adverse to that of the person under disability.

(9) Paragraphs (2) to (8) shall apply for the purpose of determining who shall be guardian ad litem of a person under disability in a probate action as they apply for the purpose of determining who shall be next friend of such a person and references in those paragraphs to a next friend shall be construed accordingly:

Provided that a person authorised as mentioned in paragraph (2) shall not be entitled by virtue of that paragraph to be guardian ad litem of a patient in a probate action if in a case to which rule 6 applies some other person is appointed by the Court under that rule to be guardian ad litem of the patient in that action.

Probate action : further provisions

5.—(1) Where a party to a probate action is a person under disability, then, unless the next friend or guardian ad litem, as the case may be, of that person has been appointed such friend or guardian by the Court, the writ beginning the action (where that person is a plaintiff) shall not be issued, and an appearance shall not be entered for him in the action (where he is a defendant, intervener, or person cited under Order 76, rule 5) without the consent of a registrar of the Principal Probate Registry.

(2) On the making of an application for a consent under paragraph (1) in relation to an infant who is not a patient, there must be produced to the registrar—

(a) where the next friend or guardian ad litem of the infant is his statutory guardian or testamentary guardian, an affidavit deposing to the guardianship and age of the infant and showing that the guardian has no interest in the action adverse to that of the infant ;

(b) where the next friend or guardian ad litem of the infant is a person appointed under rule 4(4), or under rule 4(4) as applied by rule 4(9)—

(i) the appointment, and

(ii) a written consent to act as next friend or guardian ad litem, as the case may be, given by the person so appointed, and

(iii) an affidavit deposing to the age of the infant and containing the evidence which would be required by rule 4(7), or by rule 4(7) as so applied, to be contained in an affidavit in support of an application for the appointment of that person as next friend or guardian ad litem, as the case may be, by the Court.

(3) On the making of an application for a consent under paragraph (1) in relation to a patient, there must be produced to the registrar an office copy, sealed with the official seal of the Court of Protection, of the order or other authorisation made or given under Part VIII of the Act by virtue of which the next friend or guardian ad litem of the patient, as the case may be, is authorised to conduct legal proceedings in the probate action in question in the name of the patient or on his behalf.

[Order 80***Appointment of guardian where person under disability does not appear*****6.—(1) Where—**

- (a) in an action against a person under disability begun by writ, or by originating summons to which an appearance is required to be entered, no appearance is entered 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 appearance is entered 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 appearing 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 appearance is entered 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 appearing and before proceeding further with the third party proceedings.

(3) Where in any proceedings against a person under disability begun by petition or originating motion, or by originating summons to which no appearance need be entered, that person does not appear by a guardian ad litem at the hearing of the petition, motion or summons, 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 in the Chancery Division under any judgment or order, notice of which has been served on a person under disability, the Court may, if no appearance is entered 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 appearing 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.

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(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

7. An application to the Court on behalf of a person under disability served with an order made ex parte under Order 15, rule 7, 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

8. Notwithstanding anything in Order 18, rule 13(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

9. 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

10. 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

11.—(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 under section 174 of the County Courts Act 1959(a), or rule 12, or
- (b) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this rule a claim is made under the Fatal Accidents Acts 1846 to 1959, the originating summons must include the particulars mentioned in section 4 of the Fatal Accidents Act 1846(b).

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(3) Without prejudice to Order 7, rule 5, and Order 75, rule 36(1), an originating summons under this rule may be issued out of any district registry notwithstanding that the proceedings are assigned to the Chancery Division.

(4) No appearance need be entered to an originating summons under this rule.

(5) In this rule "settlement" includes a compromise.

Control of money recovered by person under disability

12.—(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, whether under section 174 of the County Courts Act 1959, or this rule, or under both that section and this rule 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 High 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 county 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 solicitor in respect of costs.

(4) Where in pursuance of directions given under this rule money is paid into the High 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 in an action by any other person for relief under section 504 of the Merchant Shipping Act 1894(a), 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.

Provisions supplementary to r. 12

13.—(1) Where under section 174 of the County Courts Act 1959 money to which a person under disability is entitled is ordered to be transferred from the High Court to a county court or to be paid into a county court, the following provisions of this rule shall apply.

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(2) Where the money is ordered to be transferred to a county court, then—

(a) in the case of any cause or matter which is proceeding in the Royal Courts of Justice or in the district registry of Manchester and of a cause or matter in the Chancery Division which is proceeding in the district registry of Liverpool, the proper officer of the High Court shall send two sealed copies of the judgment or order to the Accountant General and the Accountant General shall proceed in accordance with rule 46 of the Supreme Court Funds Rules 1927(a) ;

(b) in the case of any cause or matter which is proceeding in any other district registry or of a cause or matter in the Queen's Bench Division or the Probate, Divorce and Admiralty Division which is proceeding in the district registry of Liverpool, the district registrar shall, on receiving the money to be transferred, send a sealed copy of the judgment or order and a cheque for the amount to the registrar of the county court.

(3) Where the money is ordered to be paid into a county court, the proper officer of the High Court shall send a sealed copy of the judgment or order to the registrar of the county court.

Application of rr. 12 and 13 to money recovered by certain widows

14. Rules 12 and 13 shall apply, with the necessary modifications, to money which is subject to be dealt with as provided by section 19(1) of the Administration of Justice Act 1965(b) (which provides for control by the Court, in certain cases, of money recovered by or on behalf of a widow under the Fatal Accidents Acts) as they apply to money recovered by a person under disability, and directions under rule 12 may include directions as to any payment to be made to the widow on whose behalf the claim in question was made.

Proceedings under Fatal Accidents Acts : apportionment by Court

15.—(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 Fatal Accidents Acts 1846 to 1959 and the Law Reform (Miscellaneous Provisions) Act 1934(c), 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 12 (if that rule applies) or when authorising its payment out of court.

(2) Where, in an action in which a claim under the Fatal Accidents Acts 1846 to 1959 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 Acts, then, unless the sum has been apportioned between the persons entitled thereto by the jury, 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 Acts.

(a) S.R. & O. 1927/1184 (1927, p. 1638).
(c) 24 & 25 Geo. 5. c. 41.

(b) 1965 c. 2.

[Order 80*Service of certain documents on person under disability*

16.—(1) Where in any proceedings a document is required to be served personally 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 Part VIII of the Act 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*

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

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.

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(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 ensued 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

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 (2), 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 ;

and 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 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.

(3) Every person on whom a writ is served under paragraph (1) 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.

Entry of appearance in an action against firm

4.—(1) Where persons are sued as partners in the name of their firm, appearance may not be entered 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 enter an appearance in the action and state in his memorandum of appearance 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 appearance entered in accordance with this paragraph shall, unless and until it is set aside, be treated as an appearance for the defendant firm.

(3) Where an appearance has been entered for 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

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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 entered an appearance 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 enter an appearance in the action unless he is a member of the firm sued.

Enforcing judgment or order against firm

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) entered an appearance in the action as a partner, or
- (b) having been served as a partner with the writ of summons, failed to enter an appearance 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) entered an appearance 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, or notice of 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,

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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.

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

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

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

9. An individual carrying on business within the jurisdiction in a name or style other than his own name, may 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.

10.—(1) Every application to the Court by a judgment creditor of a partner for an order under section 23 of the Partnership Act 1890(a) (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

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to the Court by a partner of the judgment debtor made in consequence of the first-mentioned application, must be made by summons.

(2) A master or district registrar may exercise the powers conferred on a judge by the said section 23.

(3) 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.

(4) 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.

(5) 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 the partnership, as the case may be.

ORDER 82**DEFAMATION ACTIONS***Application*

1. These rules apply to actions for libel or slander subject to the following rules of this Order.

Indorsement of claim in libel action

2. Before a writ in an action for libel is issued it must be indorsed with a statement giving sufficient particulars of the publications in respect of which the action is brought to enable them to be identified.

Obligation to give particulars

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

(2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

(3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he

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need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published on a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.

Provisions as to payment into court

4.—(1) Where in an action for libel or slander against several defendants sued jointly the plaintiff, in accordance with Order 22, rule 3(1), accepts money paid into court by any of those defendants in satisfaction of his cause of action against that defendant, then, notwithstanding anything in rule 3(4) of that Order, the action shall be stayed as against that defendant only, but—

(a) the sum recoverable under any judgment given in the plaintiff's favour against any other defendant in the action by way of damages shall not exceed the amount (if any) by which the amount of the damages exceeds the amount paid into court by the defendant as against whom the action has been stayed, and

(b) the plaintiff shall not be entitled to his costs of the action against the other defendant after the date of the payment into court unless either the amount of the damages awarded to him is greater than the amount paid into court and accepted by him or the judge is of opinion that there was reasonable ground for him to proceed with the action against the other defendant.

(2) Where in an action for libel a party pleads the defence for which section 2 of the Libel Act 1843(a) provides, Order 22, rule 7, shall not apply in relation to that pleading.

Statement in open court

5.—(1) Where a party accepts money paid into court in satisfaction of a cause of action for libel or slander, the plaintiff or defendant, as the case may be, may apply to a judge in chambers by summons for leave to make in open court a statement in terms approved by the judge.

(2) Where a party to an action for libel or slander which is settled before trial desires to make a statement in open court, an application must be made to the Court for an order that the action be set down for trial, and before the date fixed for the trial the statement must be submitted for the approval of the judge before whom it is to be made.

Interrogatories not allowed in certain cases

6. In an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief shall be allowed.

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Evidence in mitigation of damages

7. In an action for libel or slander in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless 7 days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

Fulfilment of offer of amends under s. 4 of Defamation Act 1952

8.—(1) An application to the Court under section 4 of the Defamation Act 1952(a) to determine any question as to the steps to be taken in fulfilment of an offer of amends made under that section must, unless the application is made in the course of proceedings for libel or slander in respect of the publication to which the offer relates, be made in chambers in the Queen's Bench Division, but only a judge may determine such question.

(2) No appearance need be entered to an originating summons by which such an application is made.

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MONEYLENDERS' ACTIONS

Application and interpretation

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 6 of the Moneylenders Act 1900(b);

“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

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

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;

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- (e) the fact that a note or memorandum of the contract was made and was signed by the borrower ;
- (f) the date when a copy of the note or memorandum was delivered or sent to the borrower ;
- (g) the amount repaid ;
- (h) the amount due but unpaid ;
- (i) the date upon which such unpaid sum or sums became due ; and
- (j) the amount of interest accrued due and unpaid on every such sum.

Judgment in default of appearance or of defence

4.—(1) In a moneylender's action judgment in default of appearance 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 of appearance, the summons shall not be issued until after the time limited for appearing.

(4) On the hearing of such an application, whether the defendant appears or not, the Court—

(a) may exercise the powers of the court under section 1(1) of the Moneylenders Act 1900, as extended by section 10 of the Moneylenders Act 1927(a) ;

(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

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**ACTIONS ARISING OUT OF HIRE-PURCHASE OR CONDITIONAL SALE AGREEMENTS***Application and interpretation*

1.—(1) These rules apply to actions to which this Order applies subject to the following rules of this Order.

(2) This Order applies to any action arising out of a hire-purchase agreement or a conditional sale agreement brought against the hirer or buyer of the goods to which the agreement relates or a guarantor, if the writ beginning the action is indorsed with a claim for money, not being—

(a) a claim for unliquidated damages, or

(b) a claim for no more than the amount of any instalment or instalments of the hire-purchase price or total purchase price, as the case may be, which is due and unpaid.

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(3) In this Order "hire-purchase agreement" and "conditional sale agreement" have the meanings respectively assigned to them by section 1 of the Hire-Purchase Act 1965(a) and "buyer", "goods", "guarantor", "hire-purchase price", "hirer" and "total purchase price" have the meanings respectively assigned to them by section 58 of that Act.

Particulars to be included in statement of claim

2. Every statement of claim in an action to which this Order applies (whether indorsed on the writ or not) must state the circumstances in which the claim mentioned in rule 1(2) arises.

Judgment in default of appearance or of defence

3.—(1) In an action to which this Order applies judgment in default of appearance 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 of appearance, the summons shall not be issued until after the time limited for appearing.

(4) The plaintiff must produce to the Court hearing an application for the grant of leave under this rule the hire-purchase or conditional sale agreement to which the action relates.

(5) Unless the Court hearing such application grants leave to enter judgment for the amount claimed or, having power to do so, transfers the action to a county court, it shall (whether or not the defendant appears on the hearing) try the action.

ORDER 85**ADMINISTRATION AND SIMILAR ACTIONS*****Interpretation***

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

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;

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(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

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

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

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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 8, in relation to the action.

Judgments and orders in administration actions

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

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*

1.—(1) In any action in the Chancery Division begun by writ indorsed with a claim—

- (a) for specific performance of an agreement (whether in writing or not) for the sale, purchase or exchange 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.

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(2) An application may be made against a defendant under this rule whether or not he has entered an appearance in the action.

Manner in which application under rule 1 must be made

2.—(1) An application under rule 1 must be made by summons supported by an affidavit made by some person who can swear positively to the facts verifying the cause of action and stating that in his belief there is no defence to the action.

(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.

Action proceeding in district registry to be transferred to London

3. Where a summons under rule 1 is issued in an action which is proceeding in a district registry, other than the district registry of Liverpool or the district registry of Manchester, the registrar of that registry shall of his own motion by order transfer the action to the Royal Courts of Justice.

Judgment for plaintiff

4. 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

5.—(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.

(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

6. 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.

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Costs

7. 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

8. 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

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.

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.

Order 87]*Application for rectification of receiver's register*

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.

(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.

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 purpose 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.

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 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.

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(4) The 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

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, the Accountant General shall not 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 other 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, and send the certificate to the Accountant General.

ORDER 88**MORTGAGE ACTIONS*****Application and interpretation***

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 of this Order.

Order 88]*Assignment of certain actions to Chancery Division*

2. Without prejudice to section 56(1) of the Act (which provides for the assignment to the Chancery Division of causes or matters for the purposes, among others, of the redemption or foreclosure of mortgages and the sale and distribution of the proceeds of property subject to any lien or charge), any action in which there is a claim for—

(a) payment of moneys secured by a mortgage of any real or leasehold property, or

(b) delivery of possession (whether before or after foreclosure) to the mortgagee of any such property by the mortgagor or by any other person who is or is alleged to be in possession of the property,

shall be assigned to the Chancery Division.

Commencement of action in district registry

3.—(1) A writ by which a mortgage action is begun may not be issued out of a district registry, except the district registry of Liverpool or the district registry of Manchester, unless the mortgaged property is situated in the district of the registry.

(2) Without prejudice to Order 7, rule 5, in so far as it authorises an originating summons to be issued out of the district registry of Liverpool or the district registry of Manchester, an originating summons by which a mortgage action is begun may be issued out of any other district registry if, but only if, the property to which the action relates is situated in the district of that other registry.

Documents to be lodged on taking appointment for hearing

4.—(1) The plaintiff in a mortgage action in the Chancery Division begun by originating summons, on applying for an appointment under Order 28, rule 2(1), must produce the originating summons and, except where the action is proceeding in a district registry, leave in chambers—

(a) a copy of the originating summons, and

(b) the copy memorandum of appearance, stamped in accordance with Order 12, rule 4, of any defendant to the action or, if any defendant has failed to enter an appearance, a certificate of his non-appearance.

(2) Not less than 2 clear days before the day fixed for the first or any adjourned hearing of the originating summons the plaintiff must leave in chambers the original or an office copy of any affidavit intended to be used by him at the hearing with the exhibits thereto.

Claim for possession : non-appearance by a defendant

5.—(1) Where in a mortgage action in the Chancery Division 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 enter an appearance, 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 3, or rule 5(2), in so far as it requires any document to be served on, or notice given to, a defendant who has entered an appearance in the action.

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(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 served 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 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.

(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 6, 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).

Action in Chancery Division for possession or payment : evidence

6.—(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 in the Chancery Division 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 of case otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of—

- (a) the amount of the advance,
- (b) the amount of the repayments,
- (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.

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(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

7.—(1) Notwithstanding anything in Order 13 or Order 19, in a mortgage action begun by writ judgment in default of appearance 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 in an action in the Chancery Division, rule 5(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 6 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

8. 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 the 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**PROCEEDINGS BETWEEN HUSBAND AND WIFE***Determination of questions as to property*

1.—(1) Proceedings under section 17 of the Married Women's Property Act 1882(a) may be assigned to the Probate, Divorce and Admiralty Division, and accordingly where any proceedings under that section are to be assigned to that Division the originating summons by which they are begun may be issued either out of the Principal Probate Registry or out of a district registry as defined by the Matrimonial Causes Rules 1957(b).

(a) 45 & 46 Vict. c. 75.

(b) S.I. 1957/619 (1957 II, p. 2406).

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(2) Subject, in the Chancery Division, to any directions given by the judges of that Division under Order 32, rule 14 or 23, a master, a registrar of the Probate, Divorce and Admiralty Division and a district registrar may exercise the jurisdiction conferred on a judge of the High Court by the said section 17.

(3) Subject as aforesaid, a master and any such registrar may grant an injunction in proceedings under the said section 17 if, but only so far as, the injunction is ancillary or incidental to any relief sought in those proceedings.

(4) No appearance need be entered to an originating summons by which an application under the said section 17 is made.

Provisions as to actions in tort

2.—(1) This rule applies to any action in tort brought by one of the parties to a marriage against the other during the subsistence of the marriage.

(2) On the first application by summons or motion in an action to which this rule applies, the Court shall consider, if necessary of its own motion, whether the power to stay the action under section 1(2) of the Law Reform (Husband and Wife) Act 1962(a) should or should not be exercised.

(3) Notwithstanding anything in Order 13 or Order 19, judgment in default of appearance or of defence shall not be entered in an action to which this rule applies except with the leave of the Court.

(4) An application for the grant of leave under paragraph (3) must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the defendant.

(5) If the summons is for leave to enter judgment in default of appearance, the summons shall not be issued until after the time limited for appearing.

ORDER 90**REVENUE PROCEEDINGS IN CHANCERY DIVISION***Assignment to Chancery Division, etc.*

1.—(1) Without prejudice to any order made by the Lord Chancellor under section 57 of the Act, the following proceedings, namely—

(a) any appeal to the High Court under section 10 of the Finance Act 1894(b) and any application under subsection (4) of that section for leave to appeal thereunder, and

(b) any application to the High Court under section 14(2) of the Finance Act 1894 or section 3 of the Administration of Justice (Miscellaneous Provisions) Act 1933(c),

shall be assigned to the Chancery Division.

(2) The following proceedings, namely—

(a) the proceedings mentioned in paragraph (1),

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(b) any case stated for the opinion of the High Court under section 13 of the Stamp Act 1891(a), or section 64 of the Income Tax Act 1952(b), and

(c) any appeal to the High Court under section 56 or 59 of the Finance Act 1960(c) or paragraph 9 of Schedule 7 to that Act,

shall be heard and determined by a single judge.

Appeal under s. 10 of Finance Act 1894

2.—(1) Order 55 shall not apply in relation to an appeal to the High Court under section 10 of the Finance Act 1894.

(2) Such an appeal must be brought by originating summons and, without prejudice to Order 7, rule 3, the summons must state the grounds on which the appellant contends that the decision or claim of the Commissioners of Inland Revenue is erroneous and, if he alleges that the value put by the Commissioners on any property is excessive, must specify that property and state the value which he contends should be put on it.

(3) The originating summons must be issued and served on the Commissioners within one month after the notification to the appellant of the decision or claim.

(4) Within one month after service of the summons on them, the Commissioners must notify the appellant of their determination either to withdraw their decision or claim or to maintain it in whole or in part.

Directions, etc., by master

3.—(1) Not less than one month nor more than 2 months after service of an originating summons under rule 2, or within such further time as the parties may in writing agree or the Court may allow, the appellant must take an appointment before the master for the purpose of obtaining directions as to the procedure to be followed before the appeal is set down for hearing and at the same time leave with him a copy of the notification sent to the appellant under rule 2(4).

(2) Not less than 4 clear days before the day appointed under paragraph (1), the appellant must serve notice of the appointment on the Commissioners of Inland Revenue.

(3) At the hearing for directions the master may, if so requested by the parties, dispose of the appeal on such terms, if any, as to the variation of the decision or claim or otherwise as may be agreed upon by the parties.

(4) Unless the appeal is disposed of as aforesaid, the master shall, after giving such directions (if any) as he thinks fit, adjourn the summons for hearing by the judge.

Evidence at hearing of appeal

4. Unless the parties otherwise agree or the Court otherwise orders, the evidence at the hearing of an appeal under section 10 of the Finance Act 1894 shall be given orally, and Order 38, rule 2(3), shall not apply.

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Application under s. 10(4) of the Finance Act 1894

5.—(1) No appearance need be entered to an originating summons by which an application under section 10(4) of the Finance Act 1894 for leave to appeal is made.

(2) Notwithstanding anything in Order 28, rule 3(3), the plaintiff must serve on the Commissioners of Inland Revenue with the summons a copy of any affidavit which he intends to use at the hearing.

Setting down case stated under Income Tax Act

6.—(1) At any time after a case stated under section 64 of the Income Tax Act 1952 has been filed in the office of the chief master either party may set down the case for hearing.

(2) On setting down the case the party who sets it down must give notice to the other party that he has done so.

Case stated : notice to be given of certain matters

7. Not less than 10 days before the hearing of such a case as is mentioned in rule 1(2)(b) either party must give notice to the other of any point which he intends to take at the hearing and which might take the other party by surprise and leave at the office of the chief master two copies of the notice for the use of the Court.

Appeals under ss. 56, 59, etc. of Finance Act 1960

8.—(1) The notice of an originating motion by which an appeal under section 56 or 59 of the Finance Act 1960 or paragraph 9 of Schedule 7 to that Act is brought must be issued out of the office of the chief master.

(2) Order 55, rule 3(2), shall apply in relation to the notice of such motion as if the decision or award appealed against were the decision of a court.

(3) The persons to be served with the notice are the General or Special Commissioners against whose decision or award the appeal is brought and—

(a) in the case of an appeal brought under section 56 of the Finance Act 1960 or paragraph 9 of Schedule 7 to that Act by any party other than the defendant in the proceedings before the Commissioners, that defendant ;

(b) in any other case, the Commissioners of Inland Revenue.

(4) Order 55, rules 4(2) and 5, shall apply in relation to any such appeal as if for the period of 28 days and 21 days therein specified there were substituted a period of 30 days and 35 days respectively.

(5) Within 30 days after the service on them of notice of the originating motion by which any such appeal is brought, the General or Special Commissioners, as the case may be, must lodge in the office of the chief master two copies of a note of their findings and of the reasons for their decision or award and must serve a copy of the note on every other party to the appeal.

(6) Any document required or authorised to be served on the General or Special Commissioners in proceedings to which this rule relates may be served by delivering or sending it to their clerk.

(7) Order 57 shall not apply to proceedings to which this rule applies.

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ORDER 91

PROCEEDINGS RELATING TO INFANTS: CHANCERY DIVISION

Application to make infant a ward of court

1.—(1) Where an action to which an infant is a party is proceeding in the Chancery Division, an application to make that infant a ward of court may be made by summons in the action ; but except in that case an application to make an infant a ward of court must be made by originating summons assigned to the Chancery Division.

(2) Where there is no person other than the infant who is a suitable defendant, an application may be made *ex parte* to the chief master, or to a master designated by him, for leave to issue either an *ex parte* originating summons or an originating summons with the infant as defendant thereto ; and, except where such leave is granted, the infant shall not be made a defendant to an originating summons under this rule in the first instance.

(3) Immediately after the issue of any summons under this rule the applicant must produce the summons at the office of the chief master for recording in the register of wards, and the officer recording the summons shall mark it as having been so produced and recorded.

(4) Paragraph (3) shall not apply in relation to a summons under this rule issued in the district registry of Liverpool or the district registry of Manchester but particulars of any such summons shall be sent by the district registrar to the chief master for recording in the register of wards.

When infant ceases to be ward of court

2.—(1) An infant who, by virtue of section 9(2) of the Law Reform (Miscellaneous Provisions) Act 1949(a), becomes a ward of court on the issue of a summons under rule 1 shall cease to be a ward of court—

(a) if an application for an appointment for the hearing of the summons is not made within the period of 21 days after the issue of the summons, at the expiration of that period ;

(b) if an application for such an appointment is made within that period, on the determination of the application made by the summons unless the Court hearing it orders that the infant be made a ward of court.

(2) Nothing in paragraph (1) shall be taken as affecting the power of the Court under section 9(3) of the said Act to order that any infant who is for the time being a ward of court shall cease to be a ward of court.

(3) If no application for an appointment for the hearing of a summons under rule 1 is made within the period of 21 days after the issue of the summons, a notice stating whether the applicant intends to proceed with the application made by the summons must be left at the office of the chief master immediately after the expiration of that period.

Applications under Guardianship of Infants Acts

3. Where there is pending any action or other proceeding by reason of which an infant is a ward of court, any application under the Guardianship of Infants Act 1886(b) (hereafter in this Order referred to as " the Act of 1886 ") or the Guardianship of Infants Act 1925(c) (hereafter in this Order

(a) 12, 13 & 14 Geo. 6. c. 100.

(b) 49 & 50 Vict. c. 27.

(c) 15 & 16 Geo. 5. c. 45.

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referred to as " the Act of 1925 ") with respect to that infant may be made by summons in the proceeding, but except in that case any such application must be made by originating summons.

Defendants to summons

4.—(1) Where the infant with respect to whom an application under the Act of 1886 or the Act of 1925 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) and rule 6(1), 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, including, where the application is made under section 4(2A) of the Act of 1925 with respect to an infant who has been received into the care of a local authority under s. 1 of the Children Act 1948(a), that authority.

(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.

Nominated judge to hear certain applications and appeals

5. Such judge of the Chancery Division as may be nominated for the purpose by the Lord Chancellor shall hear—

- (a) any application under section 10 of the Act of 1886 for the removal to the High Court of an application to a county court and the application ordered to be removed ;
- (b) any appeal to the High Court under the Act of 1886 or the Act of 1925 from a county court or a magistrates' court ; and
- (c) any appeal under section 10 of the Adoption Act 1958(b) from a magistrates' court.

Removal of proceedings from a county court

6.—(1) No appearance need be entered to an originating summons by which an application for an order under section 10 of the Act of 1886 is made, and, unless the Court otherwise directs, the summons need not be served on any person.

(2) Where an order is made under the said section 10 for the removal to the High Court of an application to a county court, the plaintiff must send a copy of the order to the registrar of the county court.

(3) On receipt by the proper officer of the documents referred to in Order 16, rule 19, of the County Court Rules 1936(e), that officer must forthwith—

- (a) file the said documents and make an entry of the filing thereof in the cause book,
- (b) mark the proceedings as assigned to the Chancery Division and with the group of judges of which the judge nominated as mentioned in rule 5 is a member, and
- (c) give notice to all parties that the application removed is proceeding in the High Court at the Royal Courts of Justice.

(a) 11 & 12 Geo. 6. c. 43.

(b) 7 & 8 Eliz. 2. c. 5.

(c) S.R. & O. 1936/626 (1936 I, p. 282).

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(4) The application so removed shall proceed in the High Court as if it had been made by originating summons issued out of the Central Office.

Special provisions as to appeals

7.—(1) Order 55, rule 4(2), shall apply in relation to any such appeal as is mentioned in rule 5 as if for the period of 28 days therein specified there were substituted a period of 21 days.

(2) Within 10 days after entry of the appeal the appellant must obtain an appointment for the purpose of obtaining the judge's directions as to the hearing of the appeal and must serve notice of the appointment on the respondent.

Interim order for custody or maintenance

8. After entry of an appeal from the order of a county court or magistrates' court under the Act of 1886 or the Act of 1925, the judge may, on an application made *ex parte* or otherwise, make such an order with respect to the custody or maintenance of the infant in question pending the appeal or otherwise as he thinks proper.

Application under the Infant Settlements Act 1855

9.—(1) Every application under the Infant Settlements Act 1855(a) to obtain the sanction of the Court for a settlement, or contract for a settlement, of the property of an infant must be made in the Chancery Division 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 relations 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 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 amount of his 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.

10.—(1) Applications as to the guardianship, maintenance or advancement of infants 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.

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ORDER 92

LODGMET, INVESTMENT, ETC. OF FUNDS IN COURT: CHANCERY DIVISION
Payment into court by life assurance company

1.—(1) A company wishing to make a payment into court under the Life Assurance Companies (Payment into Court) Act 1896(a) (hereinafter referred to as “the Act of 1896”) must file an affidavit, made by its secretary or other authorised officer, setting out—

- (a) a short description of the policy in question and a statement of the persons entitled thereunder with their names and addresses so far as known to the company,
- (b) a short statement of the notices received by the company claiming an interest in or title to the money assured, or withdrawing any such claim, with the dates of receipt thereof and the names and addresses of the persons by whom they were given,
- (c) a statement that, in the opinion of the board of directors of the company, no sufficient discharge can be obtained otherwise than by payment into court under the Act of 1896,
- (d) the submission by the company to pay into court such further sum, if any, as the Court may direct and to pay any costs ordered by the Court to be paid by the company,
- (e) an undertaking by the company forthwith to send to the Accountant General any notice of claim received by the company after the making of the affidavit with a letter referring to the title of the affidavit, and
- (f) an address where the company may be served with any summons or order, or notice of any proceeding, relating to the money paid into court.

(2) The company shall not deduct from the money payable by them under the policy any costs of or incidental to the payment into court.

(3) No payment shall be made into court under the Act of 1896 where any action to which the company is a party is pending in relation to the policy or moneys thereby assured except with the leave of the Court to be obtained by summons in the action.

(4) Unless the Court otherwise directs, a summons by which a claim with respect to money paid into court under the Act of 1896 is made shall not, except where the summons includes an application for payment of a further sum of costs by the company who made the payment, be served on that company, but it must be served on every person who appears by the affidavit on which the payment into court was made to be entitled to, or interested in, the money in court or to have a claim upon it or who has given a notice of claim which has been sent to the Accountant General in accordance with the undertaking referred to in rule 1(1)(e).

Payment into court under Trustee Act 1925

2.—(1) Subject to paragraph (2), any trustee wishing to make a payment into court under section 63 of the Trustee Act 1925(b) must make and file an affidavit setting out—

- (a) a short description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose,

(a) 59 & 60 Vict. c. 8.

(b) 15 & 16 Geo. 5. c. 19.

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- (b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him,
- (c) his submission to answer all such inquiries relating to the application of such money or securities as the Court may make or direct, and
- (d) an address where he may be served with any summons or order, or notice of any proceedings, relating to the money or securities paid into court.

(2) Where the money or securities represents a legacy, or residue or any share thereof, to which an infant or a person resident outside the United Kingdom is absolutely entitled, no affidavit need be filed under paragraph (1) and the money or securities may be paid into court in the manner prescribed by the Supreme Court Funds Rules for the time being in force.

Payment into court under War Damage Act 1943

3. Where the Commissioners of Inland Revenue wish to make a payment into court under section 33(1) of the War Damage Act 1943(a) in respect of war damage to a hereditament, they shall cause an affidavit to be made and filed setting out—

- (a) short particulars of the hereditament ;
- (b) the name and address of any person who has claimed a payment in respect of war damage to the hereditament or a share of such payment, and
- (c) the grounds on which the Commissioners wish to make the payment into court.

Notice of lodgment

4. Any person who has lodged money or securities in court in accordance with rule 1, 2 or 3 must forthwith send notice of the lodgment to every person appearing from the affidavit on which the lodgment was made to be entitled to, or to have an interest in, the money or securities lodged.

Applications with respect to funds in court

5.—(1) Where an application to the High Court—

- (a) for the payment or transfer to any person of any funds in court standing to the credit of any cause or matter or for the transfer of any such funds to a separate account or for the payment to any person of any dividend of or interest on any securities or money comprised in such funds ;
- (b) for the investment, or change of investment, of any funds in court ;
- (c) for payment of the dividends of or interest on any funds in court representing or comprising money or securities lodged in court under any enactment ; or
- (d) for the payment or transfer out of court of any such funds as are mentioned in sub-paragraph (c) ;

is made in the Chancery Division the application may be disposed of in chambers.

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(2) Subject to paragraph (3), any such application made in the Chancery Division must be made by summons and, unless the application is made in a pending cause or matter or an application for the same purpose has previously been made by petition or originating summons, the summons must be an originating summons.

(3) Where an application under paragraph 1(d) is required to be made by originating summons, then, if the funds to which the application relates do not exceed £200 in value, and subject to paragraph (4), the application may be made *ex parte* by affidavit to the chief master, or to such master as he may designate, and the master may dispose of the application or may direct it to be made by originating summons.

(4) Where the application to which paragraph (3) applies relates to funds lodged in court in the district registry of Liverpool or the district registry of Manchester, the application may be made to, and the power conferred by paragraph (3) on a master may be exercised by, the registrar of that registry.

(5) This rule does not apply to any application for an order under Order 22.

ORDER 93**APPLICATIONS AND APPEALS TO HIGH COURT UNDER VARIOUS ACTS:
CHANCERY DIVISION***Notice of petition under s. 55 of National Debt Act 1870*

1. Where a petition is presented under section 55 of the National Debt Act 1870(a), the petitioner must, before the petition is heard, apply to a judge of the Chancery Division in chambers for directions with respect to giving notice of the claim to which the petition relates, and the judge may direct that notice thereof be given by advertisement or in such other manner as he may direct or may dispense with the giving of such notice.

Application under Public Trustee Act 1906

2. Without prejudice to sections 10(2) and 13(7) of the Public Trustee Act 1906(b), the jurisdiction of the High Court under that Act shall be exercised by a judge of the Chancery Division in chambers.

Reference of question, etc. under Electricity (Supply) Act 1919

3. Proceedings for the determination of any question or difference referred to the High Court under section 22(2) of the Electricity (Supply) Act 1919(c) by virtue of section 1 of the Railway and Canal Commission (Abolition) Act 1949(d) shall be assigned to the Chancery Division and be begun by originating summons.

Proceedings under Trustee Act 1925

4. All proceedings brought in the High Court under the Trustee Act 1925(e) shall be assigned to the Chancery Division.

Application under s. 2(3) of Public Order Act 1936

5.—(1) Proceedings by which an application is made to the High Court under section 2(3) of the Public Order Act 1936(f) shall be assigned to the Chancery Division.

(a) 33 & 34 Vict. c. 71.

(c) 9 & 10 Geo. 5. c. 100.

(e) 15 & 16 Geo. 5. c. 19.

(b) 6 Edw. 7. c. 55.

(d) 12, 13 & 14 Geo. 6. c. 11.

(f) 1 Edw. 8 & 1 Geo. 6. c. 6.

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(2) The persons to be made defendants to the originating summons by which such an application is made shall be such persons as the Attorney General may determine.

(3) In the absence of other sufficient representation the Court may appoint the official solicitor to represent any interests which in the opinion of the Court ought to be represented on any inquiry directed by the Court under the said section 2(3).

Application under Variation of Trusts Act 1958

6.—(1) Proceedings by which an application is made to the High Court under section 1 of the Variation of Trusts Act 1958(a) shall be assigned to the Chancery Division.

(2) In addition to any other persons who are necessary and proper defendants to the originating summons by which an application under the said section 1 is made, the settlor and any other person who provided property for the purposes of the trusts to which the application relates must, if still alive and not the plaintiff, be made a defendant unless the Court for some special reason otherwise directs.

Application under s. 15 of Films Act 1960

7.—(1) Proceedings by which an application is made to the High Court under section 15 of the Films Act 1960(b) shall be assigned to the Chancery Division.

(2) The originating summons by which such an application is made must be issued within one month after the date of the decision of the Board of Trade to which the application relates, and the Board and such other persons (if any) as the Court may direct must be made defendants to the summons.

Applications under Building Societies Act 1962

8. Proceedings by which an application is made to the High Court under section 28(4) or 85(5) of the Building Societies Act 1962(c) shall be assigned to the Chancery Division.

Right of appeal under Law of Property Acts

9. An appeal shall lie to the High Court against a decision of the Minister of Agriculture, Fisheries and Food under paragraph 16 of Schedule 15 to the Law of Property Act 1922(d) or section 191 of the Law of Property Act 1925(e).

Determination of appeal or case stated under various Acts

10.—(1) An appeal to the High Court against an order of a county court made under the Land Registration Act 1925(f) shall be heard and determined by a Divisional Court of the Chancery Division.

(a) 6 & 7 Eliz. 2. c. 53.
(c) 10 & 11 Eliz. 2. c. 37.
(e) 15 & 16 Geo. 5. c. 20.

(b) 8 & 9 Eliz. 2. c. 57.
(d) 12 & 13 Geo. 5. c. 16.
(f) 15 & 16 Geo. 5. c. 21.

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(2) Subject to paragraph (1), any appeal to the High Court, and any case stated or question referred for the opinion of that Court, under any of the following enactments, that is to say—

- (a) the Friendly Societies Act 1896(a),
- (b) the Trade Union Act 1913(b),
- (c) paragraph 16 of Schedule 15 to the Law of Property Act 1922,
- (d) the Industrial Assurance Act 1923(c),
- (e) section 191 of the Law of Property Act 1925,
- (f) the Land Registration Act 1925,
- (g) section 7(6) of the Water Act 1945(d),
- (h) section 21 of the Arbitration Act 1950(e) by the chief registrar of friendly societies or the central office of the registry of friendly societies,
- (i) section 30 of the Copyright Act 1956(f),
- (j) section 38(3) of the Clergy Pensions Measure 1961(g),
- (k) the Building Societies Act 1962(h),
- (l) section 4(8) of the Trade Union (Amalgamations, etc.) Act 1964(i),
- (m) the Industrial and Provident Societies Act 1965(j),

shall be heard and determined by a single judge of the Chancery Division.

(3) No appeal shall lie from the decision of the Court on an appeal under any of the enactments mentioned in paragraph (2)(c), (e) or (f) except with the leave of the Court or the Court of Appeal.

Appeal under s. 7 or 17 of Industrial Assurance Act 1923

11.—(1) An application to the judge for leave to appeal to the High Court under section 7(2) of the Industrial Assurance Act 1923 against a refusal of the Industrial Assurance Commissioner to allow further time for making a deposit under subsection (1)(c) of that section or against a direction of the Commissioner under section 17(3) of that Act must be made within 21 days after the date of the Commissioner's refusal or direction.

(2) An application for the grant of such leave must be made in chambers *ex parte* by an affidavit stating the material facts, the effect of the Commissioner's refusal or direction, the grounds on which the application is made and that the deponent is advised and believes that the applicant has good grounds for appealing.

(3) No order under this rule granting leave to appeal shall be drawn up but a Chancery registrar shall indorse on the notice of originating motion by which the appeal is brought a note signed by him stating that leave to appeal was granted by the Court and the date on which it was granted.

A copy of such note shall appear on any copy of such notice served on a respondent to the appeal.

(4) Order 55, rule 4(2), shall not apply in relation to an appeal with respect to which leave has been granted under this rule, but the notice of originating motion by which the appeal is brought must be served, and the appeal entered, within 28 days after leave to appeal was granted.

(a) 59 & 60 Vict. c. 25.
 (c) 13 & 14 Geo. 5. c. 8.
 (e) 14 Geo. 6. c. 27.
 (g) 9 & 10 Eliz. 2. No. 3.
 (i) 1964 c. 24.

(b) 2 & 3 Geo. 5. c. 30.
 (d) 8 & 9 Geo. 6. c. 42.
 (f) 4 & 5 Eliz. 2. c. 74.
 (h) 10 & 11 Eliz. 2. c. 37.
 (j) 1965 c. 12.

Order 93]*Appeals, etc. affecting industrial and provident societies, etc.*

12.—(1) At any stage of the proceedings on an appeal under—

- (a) the Friendly Societies Act 1896,
- (b) the Trade Union Act 1913,
- (c) the Industrial Assurance Act 1923,
- (d) the Building Societies Act 1962, or
- (e) the Industrial and Provident Societies Act 1965,

the Court may direct that notice of the originating motion by which the appeal is brought be served on any person or may direct that notice be given by advertisement or otherwise of the bringing of the appeal, the nature thereof and the time when it will or is likely to be heard or may give such other directions as it thinks proper for enabling any person interested in the society, trade union, alleged trade union or industrial assurance company concerned or in the subject-matter of the appeal to appear and be heard on the appeal.

(2) An application for directions under paragraph (1) may be made by either party to the appeal by summons returnable at the chambers of the judge.

Proceedings and appeals under War Damage Act 1943

13.—(1) Proceedings in the High Court for the enforcement of any right conferred by the War Damage Act 1943(a) shall be assigned to the Chancery Division and shall, unless the Court otherwise orders, be heard and determined by a judge nominated by the Lord Chancellor for the purposes of that Act.

(2) An appeal to the High Court under section 32(3), 69(7) or 74(4) of the said Act against a determination of the Commissioners of Inland Revenue (hereafter in this rule referred to as "the Commissioners") shall be heard and determined by a single judge.

(3) The notice of originating motion by which such an appeal is brought must state the question of law on which it is desired to appeal and the date on which the Commissioners' determination was received as well as the grounds of the appeal.

(4) Order 55, rule 4(1), shall not apply in relation to such an appeal, but the notice of motion must in the first instance be served on the Commissioners.

(5) Order 55, rules 4(2) and 5, shall apply in relation to such an appeal as if for the period of 28 days and 21 days therein specified there were substituted a period of 2 months and 6 weeks respectively.

(6) Unless the Court on the application of the Commissioners otherwise directs, the Commissioners must within 28 days after service of the notice of motion on them state a case setting out the facts on which their determination was based, file the case in the Chancery Registrars' Office and serve a copy thereof on the appellant.

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(7) The notice of motion and a copy of the case must be served by the appellant on such of the persons interested in the subject-matter of the appeal as the Court may direct, and, unless the Court otherwise directs, the appellant must within 7 days after service of a copy of the case on him issue a summons for directions under this paragraph.

(8) Any party (including any person served with the notice of motion and copy of the case under paragraph (7)) may issue a summons returnable at the chambers of the judge for an order or direction on any matter of procedure.

(9) The judge hearing any such appeal may order the case to be returned to the Commissioners for amendment or, with the consent of the Commissioners, amend it.

(10) A copy of the order made on the determination of any such appeal shall be sent to the Commissioners by the proper officer.

Case stated under s. 30 of the Copyright Act 1956

14.—(1) Where the Court makes an order directing the Performing Right Tribunal to refer a question of law to the Court under section 30 of the Copyright Act 1956 by way of case stated it may by the order suspend the operation of any order made by the Tribunal in the proceedings in which the question arose.

(2) The proper officer shall notify the secretary of the Tribunal of the Court's decision on any application for an order directing the Tribunal to refer a question of law to the Court under the said section 30 and on any case stated by the Tribunal thereunder, and of any directions given by the Court thereon.

ORDER 94**APPLICATIONS AND APPEALS TO HIGH COURT UNDER VARIOUS ACTS:
QUEEN'S BENCH DIVISION*****Jurisdiction of High Court to quash certain orders, schemes, etc.***

1.—(1) Where by virtue of any enactment the High Court has jurisdiction, on the application of any person, to quash any order, scheme, certificate or plan, any amendment or approval of a plan, any decision of a Minister or government department or any action on the part of a Minister or government department, the jurisdiction shall be exercisable by a single judge of the Queen's Bench Division.

(2) The application must be made by originating motion and, without prejudice to Order 8, rule 3(2), the notice of such motion must state the grounds of the application.

Entry and service of notice of motion

2.—(1) Notice of a motion under rule 1 must be entered at the Crown Office, and served, within the time limited by the relevant enactment for making the application made by the motion.

(2) Notice of the motion must be served on the appropriate Minister or government department, and—

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- (a) if the application relates to a compulsory purchase order made by an authority other than the appropriate Minister or government department, or to a clearance order under the Housing Act 1957(a), on the authority by whom the order was made ;
- (b) if the application relates to a scheme or order to which Schedule 2 to the Highways Act 1959(b) applies made by an authority other than the Minister of Transport, on that authority ;
- (c) if the application relates to a designation order within the meaning of section 85 of the Road Traffic Act 1960(c) made on the application of a local authority, on that authority ;
- (d) if the application relates to a development plan within the meaning of the Town and Country Planning Act 1962(d), on the local planning authority to whose area the plan relates ;
- (e) if the application relates to any decision or order, or any action on the part, of the Minister of Housing and Local Government to which section 21 of the Land Compensation Act 1961(e) or section 179 of the Town and Country Planning Act 1962 applies, on the authority directly concerned with such decision, order or action or, if that authority is the applicant, on every person who would, if he were aggrieved by the decision, order or action, be entitled to apply to the High Court under the said section 21 or the said section 179, as the case may be.

(3) In this rule "the appropriate Minister or government department" means the Minister of the Crown or government department by whom the order, scheme, certificate, plan, amendment, approval or decision in question was made, confirmed, approved or given or on whose part the action in question was taken.

Filing of affidavits, etc.

3.—(1) Without prejudice to the powers of the Court under Order 38, rule 2(3), evidence at the hearing of a motion under rule 1 shall be by affidavit.

(2) Any affidavit in support of the application made by such motion must be filed by the applicant in the Crown Office within 14 days after service of the notice of motion and the applicant must, at the time of filing, serve a copy of the affidavit and of any exhibit thereto on the respondent.

(3) Any affidavit in opposition to the application must be filed by the respondent in the Crown Office within 21 days after the service on him under paragraph (2) of the applicant's affidavit and the respondent must, at the time of filing, serve a copy of his affidavit and of any exhibit thereto on the applicant.

(4) When filing an affidavit under this rule a party must leave a copy thereof and of any exhibit thereto at the Crown Office for the use of the Court.

(5) Unless the Court otherwise orders, a motion under rule 1 shall not be heard earlier than 14 days after the time for filing an affidavit by the respondent has expired.

(a) 5 & 6 Eliz. 2. c. 56.

(b) 7 & 8 Eliz. 2. c. 25.

(c) 8 & 9 Eliz. 2. c. 16.

(d) 10 & 11 Eliz. 2. c. 38.

(e) 9 & 10 Eliz. 2. c. 33.

[Order 94***Rectification of register of deeds of arrangement***

4.—(1) Every application to the Court under section 7 of the Deeds of Arrangement Act 1914(a) for an order—

- (a) that any omission to register a deed of arrangement within the time prescribed by that Act be rectified by extending the time for such registration, or
- (b) that any omission or mis-statement of the name, residence or description of any person be rectified by the insertion in the register of his true name, residence or description,

must be made by affidavit *ex parte* to a master of the Queen's Bench Division.

(2) The affidavit must set out particulars of the deed of arrangements and of the omission or mis-statement in question and must state the grounds on which the application is made.

Exercise of jurisdiction under Representation of the People Acts

5.—(1) Proceedings in the High Court under the Representation of the People Acts shall be assigned to the Queen's Bench Division.

(2) Subject to paragraphs (3) and (4), the jurisdiction of the High Court under the said Acts in matters relating to parliamentary and local government elections shall be exercised by a Divisional Court.

(3) Paragraph (2) shall not be construed as taking away from a single judge or a master any jurisdiction under the said Acts which, but for that paragraph, would be exercisable by a single judge or, as the case may be, by a master.

(4) Where the jurisdiction of the High Court under the said Acts is by a provision of any of those Acts made exercisable in matters relating to parliamentary elections by a single judge, that jurisdiction in matters relating to local government elections shall also be exercisable by a single judge.

(5) No appearance need be entered to an originating summons by which any application relating to parliamentary or local government elections is made.

Appeal to High Court where Court's decision is final

6.—(1) This rule applies to an appeal to the High Court under any of the following enactments, namely—

- (a) section 9 of the Architects (Registration) Act 1931(b) ;
- (b) section 14(3) of the Pharmacy and Poisons Act 1933(c) ;
- (c) section 6(5) or 18 of the Veterinary Surgeons Act 1948(d) ;
- (d) section 6(3) of the Legal Aid and Advice Act 1949(e) ;
- (e) section 3(6) of the Midwives Act 1951(f) ;
- (f) section 10 of the Pharmacy Act 1954(g) ;
- (g) section 2(4) of the Therapeutic Substances Act 1956(h) ;
- (h) section 7(4) of the Nurses Act 1957(i).

(a) 4 & 5 Geo. 5. c. 47.

(c) 23 & 24 Geo. 5. c. 25.

(e) 12, 13 & 14 Geo. 6. 51.

(g) 2 & 3 Eliz. 2. c. 61.

(b) 21 & 22 Geo. 5. c. 33.

(d) 11 & 12 Geo. 6. c. 52.

(f) 14 & 15 Geo. 6. c. 53.

(h) 4 & 5 Eliz. 2. c. 25.

(i) 5 & 6 Eliz. 2. c. 15.

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(2) Every appeal to which this rule applies must be supported by affidavit and, if the Court so directs, by evidence given orally.

(3) Order 55, rule 4(2), shall apply in relation to an appeal under the enactments mentioned in paragraph (1)(c) and (g) as if for the period of 28 days therein mentioned there were substituted a period of 3 months.

(4) Order 55, rule 4(2), shall apply in relation to an appeal under section 6(3) of the Legal Aid and Advice Act 1949 as if for the period of 28 days therein specified there were substituted a period of 21 days.

(5) In the case of an appeal under an enactment specified in column (1) of the following Table, the persons to be made respondents are the persons specified in relation to that enactment in column (2) of that Table and the person to be served with notice of the originating motion by which the appeal is brought is the person so specified in column (3) thereof:—

TABLE

(1) <i>Enactment</i>	(2) <i>Respondents</i>	(3) <i>Person to be served</i>
Architects (Registration) Act 1931 s. 9	The Architects' Registration Council of the United Kingdom	The registrar of the Council
Pharmacy and Poisons Act 1933 s. 14 (3)	The Pharmaceutical Society of Great Britain	The registrar of the Society
Veterinary Surgeons Act 1948 ss. 6 (5) and 18	The Council of the Royal College of Veterinary Surgeons (appeal under s. 6 (5)) or the Disciplinary Committee (appeal under s. 18)	The registrar of the College
Legal Aid and Advice Act 1949 s. 6 (3)	The appropriate Panel (Complaints) Tribunal set up under para. 29 of the Legal Aid Scheme 1950	The clerk of the appropriate tribunal
Midwives Act 1951 s. 3 (6) ...	The Central Midwives Board	The secretary of the Board
Pharmacy Act 1954 s. 10 ...	The Pharmaceutical Society of Great Britain	The registrar of the Society
Therapeutic Substances Act 1956 s. 2 (4)	The Minister of Health	The solicitor to the Ministry of Health
Nurses Act 1957 s. 7 (4) ...	The General Nursing Council	The registrar of the Council

Reference of question of law by Agricultural Land Tribunal

7.—(1) Any question of law referred to the High Court by an Agricultural Land Tribunal under section 6 of the Agriculture (Miscellaneous Provisions) Act 1954(a) shall be referred by way of case stated by the Tribunal.

(2) The notice of the originating motion by which an application is made to the Court for an order under the said section 6 directing such a Tribunal to refer a question of law to the Court, and the notice of the originating motion by which an application is made to the Court to determine a question of law so referred, must, where the proceedings before the Tribunal arose on an application under section 4 of the Agriculture Act 1958(b), be served on the authority having power to enforce the statutory requirement specified in the application as well as on every other party to those proceedings and on the secretary of the Tribunal.

(a) 2 & 3 Eliz. 2. c. 39.

(b) 6 & 7 Eliz. 2. c. 71.

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(3) Where in accordance with the provisions of this rule notice of an originating motion is served on the authority mentioned in paragraph (2), that authority shall be entitled to appear and be heard in the proceedings on the motion.

Tribunals and Inquiries Act 1958 : appeal from tribunal

8.—(1) A person who was a party to proceedings before any such tribunal as is mentioned in section 9(1) of the Tribunals and Inquiries Act 1958(a) and is dissatisfied in point of law with the decision of the tribunal may appeal to the High Court.

(2) Order 55, rule 4(1)(b), shall apply in relation to such an appeal as if for the reference to the chairman of a tribunal there were substituted—

- (a) in the case of a tribunal which has no chairman or member who acts as a chairman, a reference to the member or members of the tribunal, and
- (b) in the case of any such tribunal as is specified in paragraph 3 of Schedule 1 to the said Act of 1958, a reference to the secretary of the tribunal.

(3) Where such an appeal is against a decision of the tribunal constituted under section 42 of the National Health Service Act 1946(b), Order 55, rule 4(2), shall apply in relation to the appeal as if for the period of 28 days therein specified there were substituted a period of 14 days.

Tribunals and Inquiries Act 1958 : case stated by tribunal

9.—(1) Any such tribunal as is mentioned in section 9(1) of the Tribunal and Inquiries Act 1958 may, of its own motion or at the request of any party to proceedings before it, state in the course of proceedings before it in the form of a special case for the decision of the High Court any question of law arising in the proceedings.

(2) Any party to proceedings before any such tribunal who is aggrieved by the tribunal's refusal to state such a case may apply to the High Court for an order directing the tribunal to do so.

(3) A case stated by any such tribunal which has no chairman or member who acts as a chairman must be signed by the member or members of the tribunal.

Tribunals and Inquiries Act 1958 : appeal from Minister of Transport

10.—(1) A person who is dissatisfied in point of law with a decision of the Minister of Transport on such an appeal as is mentioned in section 9(5) of the Tribunals and Inquiries Act 1958 and had, or if aggrieved would have had, a right to appeal to that Minister, whether or not he exercised that right, may appeal to the High Court.

(2) The persons to be served with notice of the originating motion by which such an appeal is brought are the Minister of Transport and every person who had, or if aggrieved would have had, a right to appeal to the Minister.

(3) The Court hearing the appeal may remit the matter to the Minister to the extent necessary to enable him to provide the Court with such further information in connection with the matter as the Court may direct.

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(4) If the Court is of opinion that the decision appealed against was erroneous in point of law, it shall not set aside or vary that decision but shall remit the matter to the Minister with the opinion of the Court for rehearing and determination by him.

(5) Order 55, rule 7(5), shall not apply in relation to the appeal.

Case stated by Mental Health Review Tribunal

11.—(1) A party to proceedings before a Mental Health Review Tribunal shall not be entitled to apply to the High Court for an order under section 124(5) of the Mental Health Act 1959(a) directing the Tribunal to state a case for determination by the Court unless—

(a) within 21 days after the Tribunal's decision in the proceedings was communicated to him or after the Tribunal complied or refused to comply with a request duly made by him for the reasons for their decision, whichever is the later, he made a written request to the Tribunal to state a case, and

(b) either the Tribunal failed to comply with the last-mentioned request within 21 days after it was made or the Tribunal refused to comply with it.

(2) The period for entry of the originating motion by which an application to the Court for such an order as is mentioned in paragraph (1) is made, and for service of notice thereof, shall be—

(a) where the Tribunal refused the applicant's request to state a case, 14 days after receipt by the applicant of notice of the refusal of his request ;

(b) where the Tribunal failed to comply with that request within the period mentioned in paragraph (1)(b), 14 days after the expiration of that period.

(3) The reference in paragraph (1) to a party to proceedings before a Mental Health Review Tribunal, and the references in Order 56, rules 9(2) and 10, to a party to proceedings in which the question of law arose, shall be construed—

(a) in the case of proceedings before a Mental Health Review Tribunal begun by an application to the Tribunal, as references to the applicant and to any person to whom, in accordance with rules made under section 124 of the Mental Health Act 1959, the Tribunal sent a copy of the application ;

(b) in the case of proceedings before such a Tribunal begun by a reference to the Tribunal made by the Minister of Health, as references to that Minister and to any person to whom, in accordance with the said rules, the Tribunal sent a notification of the reference.

(4) A Mental Health Review Tribunal by whom a case is stated shall be entitled to appear and be heard in the proceedings for the determination of the case.

(5) If the Court is of opinion that any decision of such a Tribunal on the question of law raised by the case was erroneous, the Court may give any direction which the Tribunal ought to have given under section 123 of the Mental Health Act 1959.

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(6) For the purposes of Order 80 in its application to proceedings to which this rule relates, a party to proceedings before a Mental Health Review Tribunal who by reason of mental disorder within the meaning of the Mental Health Act 1959 is incapable of managing and administering his property and affairs shall be deemed not to be a person under disability within the meaning of that Order unless he is also an infant.

Appeal under section 180 or 181 of Town and Country Planning Act 1962

12.—(1) The appellant in such proceedings on an appeal to the Minister of Housing and Local Government as are mentioned in section 180(1) of the Town and Country Planning Act 1962, the local planning authority and any person (other than the said appellant) on whom the notice to which those proceedings related was served may appeal to the High Court on a point of law against the decision of the said Minister on that appeal.

(2) The person who made the application to which such decision of the said Minister as is mentioned in section 181 of the said Act relates, or the local planning authority, if dissatisfied with the decision in point of law, may appeal against the decision to the High Court.

(3) The persons to be served with notice of the originating motion by which an appeal to the High Court is brought by virtue of the said section 180(1) or the said section 181 or under section 180(2) of the said Act are—

- (a) the Minister of Housing and Local Government, and
- (b) the local planning authority or, where the appeal is brought by that authority, the appellant or applicant in the proceedings in which the decision appealed against was given, and
- (c) in the case of an appeal brought by virtue of or under the said section 180(1) or (2), any other person on whom the notice to which those proceedings related was served.

(4) The Court hearing any such appeal may remit the matter to the Minister to the extent necessary to enable him to provide the Court with such further information in connection with the matter as the Court may direct.

(5) If the Court is of opinion that the decision appealed against was erroneous in point of law, it shall not set aside or vary that decision but shall remit the matter to the Minister with the opinion of the Court for rehearing and determination by him.

(6) Order 55, rule 7(5), shall not apply in relation to any such appeal.

THE BILLS OF SALE ACTS 1878 AND 1882*Rectification of register*

1.—(1) Every application to the Court under section 14 of the Bills of Sale Act 1878(a) for an order—

- (a) that any omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by that Act be rectified by extending the time for such registration, or

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(b) that any omission or mis-statement of the name, residence or occupation of any person be rectified by the insertion in the register of his true name, residence or occupation,

must be made by affidavit *ex parte* to a master of the Queen's Bench Division.

(2) Every application for such an order as is described in paragraph (1) shall be supported by an affidavit setting out particulars of the bill of sale and of the omission or mis-statement in question and stating the grounds on which the application is made.

Entry of satisfaction

2.—(1) Every application under section 15 of the Bills of Sale Act 1878 to a master of the Queen's Bench Division for an order that a memorandum of satisfaction be written on a registered copy of a bill of sale must—

(a) if a consent to the satisfaction signed by the person entitled to the benefit of the bill of sale can be obtained, be made *ex parte* ;

(b) in all other cases, be made by originating summons.

(2) An *ex parte* application under paragraph (1) (a) must be supported by—

(a) particulars of the consent referred to in that paragraph ; and

(b) an affidavit by a witness who attested the consent verifying the signature on it.

(3) An originating summons under paragraph (1) (b) must be served on the person entitled to the benefit of the bill of sale and must be supported by evidence that the debt (if any) for which the bill of sale was made has been satisfied or discharged.

(4) No appearance need be entered to an originating summons under paragraph (1) (b).

Restraining removal on sale of goods seized

3. No appearance need be entered to an originating summons by which an application to the Court under the proviso to section 7 of the Bills of Sale Act (1878) Amendment Act 1882(a) must be made.

Search of register

4. Any master of the Queen's Bench Division shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the register of bills of sale and issue a certificate of the result of the search.

ORDER 96**THE MINES (WORKING FACILITIES AND SUPPORT) ACT 1923, ETC.***Assignment to Chancery Division*

1. Any proceedings in which the jurisdiction conferred on the High Court—

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(a) by section 1 of the Railway and Canal Commission (Abolition) Act 1949(a), other than the jurisdiction under section 22(2) of the Electricity (Supply) Act 1919(b) or section 7(6) of the Water Act 1945(c), or

(b) by regulations made for the purposes of section 198 of the Town and Country Planning Act 1962(d),

is invoked shall be assigned to the Chancery Division and be begun by *ex parte* originating summons.

Reference by Minister of Power of certain applications

2. Where under any provision of Part I of the Mines (Working Facilities and Support) Act 1923(e) the Minister of Power refers any application to the High Court, he shall—

(a) lodge the reference, signed by him or by an officer authorised by him for the purpose, in the office of the chief master, together with all documents and plans deposited with him by the applicant, and

(b) within 3 days after doing so give notice to the applicant of the lodging of the reference.

Issue of summons

3. Within 10 days after receipt of the notice mentioned in rule 2(b), the applicant must issue an *ex parte* originating summons which must state the application of the applicant under the said Act of 1923 and any other relief sought.

Appointment for directions

4.—(1) Within 7 days after issue of the summons the applicant, having applied at the office of the chief master for the name of the master assigned to hear the summons, must take an appointment before that master for the hearing of the summons and must forthwith serve notice of the appointment on the Minister of Power.

(2) Not less than 2 clear days before the day appointed for the first hearing of the summons, the applicant must leave with the master—

(a) an affidavit of facts in support of the summons, giving particulars of all persons known to the applicant to be interested in or affected by the application, and

(b) a draft of any proposed advertisement or notice of the application.

(3) On the appointment the master shall—

(a) fix a time within which any notice of objection under rule 5 must be given,

(b) fix a date for the further hearing of the summons, and

(c) direct what, if any, advertisements and notices of the application and of the date fixed for the further hearing of the summons are to be inserted and given, and what persons, if any, are to be served with a copy of the application and of any other document in the proceedings.

(4) Any such advertisement or notice must include a statement of the effect of rule 5.

(a) 12, 13 & 14 Geo. 6. c. 11.

(b) 9 & 10 Geo. 5. c. 100.

(c) 8 & 9 Geo. 6. c. 42.

(d) 10 & 11 Eliz. 2. c. 38.

(e) 13 & 14 Geo. 5. c. 20.

Order 96]*Objections to application*

5.—(1) Any person wishing to oppose the application must, within the time fixed by the master under rule 4(3), serve on the applicant a notice of objection stating—

- (a) his name and address and the name and address of his solicitor, if any,
- (b) the grounds of his objection and any alternative methods of effecting the objects of the application which he alleges may be used, and
- (c) the facts on which he relies.

(2) Any notice required to be served on a person who has given notice of objection (hereafter in this Order referred to as "the objector") may be served by delivering it or sending it by prepaid post—

- (a) where the name and address of a solicitor is stated in the notice of objection, to the solicitor at that address, and
- (b) in any other case, to the objector at his address stated in the notice of objection.

(3) An objector shall be entitled, without entering an appearance, to appear in person or by solicitor or counsel at the further hearing of the originating summons and to take such part in the proceedings as the master or judge thinks fit; but if he does not so appear his notice of objection shall be of no effect and he shall not be entitled to take any part in the proceedings unless the master or judge otherwise orders.

List of objectors

6. Not less than 2 clear days before the day fixed for the further hearing of the summons, the applicant must leave with the master any notices of objection served on the applicant together with a list arranged in 3 columns stating—

- (a) in column 1, the names and addresses of the objectors,
- (b) in column 2, the names and addresses of their respective solicitors, if any, and
- (c) in column 3, short summaries of their respective grounds of objection.

Directions on further hearing

7. At the further hearing of the summons the master shall—

(a) give directions as to the procedure to be followed before the summons is set down for hearing, including, if he thinks fit, a direction—

- (i) that further particulars be given of any of the grounds or facts relied on in support of or in opposition to the application made by the summons,
- (ii) that the applicant may serve a reply to any notice of objection,
- (iii) that any particular fact be proved by affidavit,
- (iv) that pleadings or points of claim or defence be served, and

(b) adjourn the summons for hearing before the judge in such manner, that is to say—

- (i) in court or in chambers, and
- (ii) on oral evidence or on affidavit evidence, with or without cross examination of any of the deponents, or partly in one way and partly in the other,

as he shall think best adapted to secure the just, expeditious and economical disposal of the proceedings.

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Other applications

8. Rules 2 to 7 shall, so far as applicable and with the necessary adaptations, apply in relation to any other application to the High Court falling within rule 1 as they apply in relation to an application under Part I of the Mines (Working Facilities and Support) Act 1923.

ORDER 97

THE LANDLORD AND TENANT ACTS 1927 AND 1954

Interpretation

1.—(1) In this Order, “the Act of 1927” means the Landlord and Tenant Act 1927(a) and “the Act of 1954” means the Landlord and Tenant Act 1954(b).

(2) In relation to any proceedings under Part II of the Act of 1954, any reference in this Order to a landlord shall, if the interest of the landlord in question is subject to a mortgage and the mortgagee is in possession or a receiver appointed by the mortgagee or by the court is in receipt of the rents and profits, be construed as a reference to the mortgagee.

Assignment of proceedings to Chancery Division, etc.

2. All proceedings in the High Court under Part I of the Act of 1927 or Part II of the Act of 1954 shall be assigned to the Chancery Division and, subject to rule 12, be begun by originating summons.

Issue, etc. of originating summons

3.—(1) Any originating summons by which a claim or application under Part I of the Act of 1927 or Part II of the Act of 1954 is made may be issued out of the district registry for the district in which the premises to which the claim or application relates are situated instead of the Central Office.

(2) No appearance need be entered to any such summons.

(3) The day fixed under Order 28, rule 2(2), for the hearing of such a summons shall be a day which will allow an interval of at least 14 days between the date of service of the summons and the day so fixed.

Claim for compensation in respect of improvement

4.—(1) A claim under section 1 of the Act of 1927 for compensation in respect of any improvement, and a claim by a mesne landlord under section 8 of that Act, must be a written claim, signed by the claimant or his solicitor or agent, containing—

- (a) a statement of the name and address of the claimant and of the landlord against whom the claim is made,
- (b) a description of the holding in respect of which the claim is made and of the trade or business carried on there,
- (c) a concise statement of the nature of the claim,
- (d) particulars of the improvement, including the date when it was completed and the cost thereof, and
- (e) a statement of the amount claimed.

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(2) Where any document relating to any proposed improvement, or to any claim, is sent to or served on a mesne landlord in pursuance of Part I of the Act of 1927, he must forthwith serve on his immediate superior landlord a copy of the document, together with a notice in writing stating the date on which he received the document, and if the last-mentioned landlord is himself a mesne landlord he must accordingly comply with this paragraph.

Proceedings under Part I of Act of 1927

5.—(1) Without prejudice to Order 7, rule 3, the originating summons by which any claim or application under Part I of the Act of 1927 is made must state—

- (a) the nature of the claim or application or the matter to be determined,
- (b) the holding in respect of which the claim or application is made and the trade or business carried on there,
- (c) particulars of the improvement or proposed improvement to which the claim or application relates, and
- (d) if the claim is for payment of compensation, the amount claimed.

(2) The plaintiff's immediate landlord shall be made defendant to the summons.

(3) Without prejudice to the powers of the Court under Order 28, rule 4(4), no affidavit shall be filed in the first instance in support of or in answer to any such summons.

(4) Any certificate of the Court under section 3 of the Act of 1927 that an improvement is a proper improvement or has been duly executed shall be embodied in an order.

Application for new tenancy under s. 24 of Act of 1954

6.—(1) Without prejudice to Order 7, rule 3, the originating summons by which an application under section 24 of the Act of 1954 for a new tenancy is made must state—

- (a) the premises to which the application relates and the business carried on there,
- (b) particulars of the plaintiff's current tenancy of the premises and of every notice or request given or made in respect of that tenancy under section 25 or 26 of that Act, and
- (c) the plaintiff's proposals as to the terms of the new tenancy applied for including, in particular, terms as to the duration thereof and as to the rent payable thereunder.

(2) The person who, in relation to the plaintiff's current tenancy, is the landlord as defined by section 44 of the Act of 1954 shall be made defendant to the summons.

(3) Order 7, rule 6, shall not apply to an originating summons under this rule, and Order 6, rule 8, shall apply to such a summons as it applies to a writ but with the substitution for the references to 12 months of references to one month.

Evidence on application under s. 24 of Act of 1954

7.—(1) On issuing the originating summons by which an application under section 24 of the Act of 1954 for a new tenancy is made the plaintiff must file an affidavit verifying the statements of fact made in the summons.

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(2) Not less than 4 days before the day fixed for the first hearing of the summons the defendant must file an affidavit stating—

- (a) whether he opposes the grant of a new tenancy and, if he does, on what grounds ;
- (b) whether, if a new tenancy is granted, he objects to any of the plaintiff's proposals as to the terms thereof and, if he does, the terms to which he objects and the terms he proposes in so far as they differ from the terms proposed by the plaintiff ;
- (c) whether he is a tenant under a lease having less than 14 years unexpired at the date of the termination of the plaintiff's current tenancy and, if he is, the name and address of his immediate landlord.

Parties to certain proceedings

8.—(1) Any person affected by any proceedings on an originating summons under rule 5 or 6 may apply in chambers to be made a party to the proceedings and the Court may give such directions on the application as appear necessary.

(2) An application under paragraph (1) must in the first instance be made *ex parte* but the Court may require notice thereof to be given to the parties to the proceedings before making any order.

(3) The foregoing provisions are without prejudice to the power of the Court, either with or without an application by any party, to order notice of the proceedings to be given to any person or any person to be made a party to the proceedings, but nothing in this rule shall be construed as requiring the Court to make any such order and, if it appears that any person though he is affected by the proceedings is not sufficiently affected for it to be necessary for him to be made a party to the proceedings or given notice thereof, the Court may refuse to make him a party or, as the case may be, to require him to be given notice of the proceedings.

Order dismissing application under s. 24 which is successfully opposed

9. Where the Court hearing an application under section 24 of the Act of 1954 is precluded by section 31 of that Act from making an order for the grant of a new tenancy by reason of any of the grounds specified in section 30(1) of that Act, the order dismissing the application shall state all the grounds by reason of which the Court is so precluded.

Other applications under Part II of Act of 1954

10.—(1) An application for an order under section 31(2)(b) of the Act of 1954 and, unless made at the hearing of the application under section 24 thereof, an application for a certificate under section 37(4) of that Act must be made *ex parte* in chambers.

(2) The mesne landlord to whose consent an application for the determination of any question arising under paragraph 4(3) of Schedule 6 to the Act of 1954 relates shall be made defendant to the originating summons by which the application is made.

Transfer of proceedings from county court

11.—(1) Where, under section 63(3) or (4) of the Act of 1954, proceedings in a county court under Part I of the Act of 1927 or Part II of the Act of 1954 are transferred to the High Court, Order 78, rule 2, shall apply subject to the modification that the words in paragraph (c) thereof from "and that" to the end shall be omitted.

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(2) Any such proceedings so transferred shall proceed in the High Court as if they had been begun by originating summons issued out of the Central Office, and within 7 days after receipt of the notice referred to in Order 78, rule 2(c), the plaintiff must apply in chambers for the appointment of a day and time for the attendance of the parties before the Court.

(3) If the plaintiff fails to apply for an appointment within the period prescribed by paragraph (2), the defendant may do so.

Application for relief under s. 16, etc. of Act of 1954

12. In any such proceedings as are mentioned in section 16(1) of the Act of 1954, paragraph 9(1) of Schedule 5 to that Act or paragraph 10(1) of that Schedule, an application for relief under that section or paragraph, as the case may be, may be made—

- (a) in the applicant's pleading, or
- (b) by summons at any time before the trial, or
- (c) at the trial.

Evidence of rateable value

13. Where any dispute as to the rateable value of any holding has been referred under section 37(5) of the Act of 1954 to the Commissioners of Inland Revenue for decision by a valuation officer, whether for the purposes of section 37(2) or of section 63 of that Act, any document purporting to be a statement by the valuation officer of his decision shall be admissible as evidence of the matters contained therein.

ORDER 98**THE LOCAL GOVERNMENT ACT 1933, PART X***Appeal under s. 229: persons to be served*

1. The persons to be served with notice of the originating motion by which an appeal under section 229 of the Local Government Act 1933(a) (in this Order referred to as "the Act") is brought are—

- (a) the district auditor for the time being in charge of the audit district in which the matter under appeal arose, and
- (b) unless it is the appellant, the local authority in relation to whose accounts or the accounts of whose officer the decision appealed against was given.

Entry, etc. of appeal

2.—(1) Order 55, rules 4(2) and 5, shall apply in relation to an appeal under the said section 229 as if for the period of 28 days and 21 days therein specified there were substituted a period of 6 weeks and 28 days respectively.

(2) Not later than 7 days after lodging notice of the originating motion in the Crown Office in accordance with Order 57, rule 2, the appellant must file therein an affidavit or affidavits stating the reasons stated by the auditor for his decision and the facts on which the appellant intends to rely at the hearing of the appeal.

[Order 98***Hearing of appeal***

3.—(1) Except in so far as the Divisional Court directs that the evidence on an appeal under the said section 229 shall be given orally, it shall be given by affidavit.

(2) The appellant must forthwith after filing any affidavit under rule 2(2) serve on the local authority and district auditor mentioned in rule 1 a copy of the affidavit, and any person intending to oppose the appeal must, not less than 4 days before the hearing, serve on the appellant a copy of any affidavit filed by him in opposition to the motion.

(3) Except by leave of the Court, no affidavit may be used at the hearing unless a copy thereof was served in accordance with paragraph (2).

(4) Where in accordance with rule 1 notice of the motion is served on a district auditor other than the auditor who gave the decision appealed against, that auditor may appear in opposition to the motion in all respects as if he were the auditor by whom the decision was given, and any relevant provision of the Act with respect to costs and other matters shall apply accordingly.

Application under s. 230

4.—(1) The jurisdiction of the High Court under section 230(1) of the Act to make a declaration to the effect therein mentioned shall be exercised by a Divisional Court of the Queen's Bench Division on an application made by originating motion.

(2) Notice of such motion must be served on the same persons and within the same period after the date of the auditor's decision to which the motion relates as notice of the motion by which an appeal under section 229 of the Act against that decision is brought must be served.

(3) A motion under this rule must be entered for hearing within 6 weeks after the date of the auditor's decision to which it relates, and not later than 7 days after lodging the notice of the motion in the Crown Office in accordance with Order 57, rule 2, the applicant must file therein an affidavit or affidavits stating the reasons stated by the auditor for his decision and the facts on which the applicant intends to rely at the hearing of the application.

(4) Unless the Court having jurisdiction to hear an application under the said section 230(1) otherwise directs, the application shall not be heard sooner than 28 days after service of notice of the motion by which the application is made.

Public notice of application under s. 230

5.—(1) The applicant for a declaration under section 230 of the Act must cause notice of his intended application to be published once at least in each of two successive weeks in a newspaper circulating in the area of the local authority whose accounts were the subject of the audit in question, and at least one such notice must be so published before the motion by which the application is made is entered for hearing.

(2) The notice must describe the application intended to be made and must state that any local government elector for the area may—

(a) upon payment of the proper charges, obtain at an address to be specified in the notice copies of the notice of motion and of any affidavit intended to be used in support thereof,

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(b) appear at the hearing of the application, and

(c) file an affidavit in opposition to the application, whether he appears at the hearing or not.

(3) The Court shall not make a declaration under the said section 230 unless satisfied by affidavit that paragraphs (1) and (2) have been complied with.

Hearing of application under s. 230

6.—(1) Any local government elector for the area of the authority whose accounts were the subject of the audit to which an application under section 230 of the Act relates may appear on the hearing of the application and be heard in opposition to the application or, instead of appearing, may, not less than 4 days before the hearing, send by post to the Crown Office, for filing therein, an unstamped affidavit stating the grounds of his opposition to the application and any facts which he considers to have a material bearing on the application.

A fee of 5s. must be sent with the affidavit.

(2) Except in so far as the Divisional Court directs that the evidence on an application under the said section 230 shall be given orally, it shall be given by affidavit.

(3) The applicant must forthwith after filing any affidavit under rule 4(3) serve on the local authority whose accounts were the subject of the audit in question and the district auditor mentioned in rule 1 a copy of the affidavit.

(4) Any person intending to appear and oppose the application, and any local government elector who opposes the application but does not intend to appear, must, not less than 4 days before the hearing, serve on the applicant a copy of any affidavit filed by him in opposition to the application.

(5) Except by leave of the Court, no affidavit may be used at the hearing unless a copy thereof was served in accordance with paragraph (3) or (4), as the case may be.

(6) The Court shall take into consideration an affidavit filed by a local government elector who does not appear at the hearing if a copy thereof was served on the applicant in accordance with paragraph (4), and may take such an affidavit into consideration notwithstanding that a copy thereof was not so served, if it thinks it just to do so.

Appeal under s. 229 and application under s. 230 may be combined

7. An appeal under section 229(1) of the Act against a decision making a surcharge and an application under section 230 of the Act relating to the same surcharge may be brought and made by the same motion.

Application for special case under s. 229(3)

8.—(1) An application for an order under section 229(3) of the Act directing the Minister of Housing and Local Government to state in the form of a special case for the opinion of the High Court any question of law arising in the course of an appeal to him under that section may not be made except with the leave of a Divisional Court of the Queen's Bench Division granted on an application made *ex parte* supported by affidavit.

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(2) The Court shall not grant such leave unless—

- (a) an application to the said Minister to state the special case was made before his decision on the appeal to him was communicated to the applicant, and
- (b) the application for leave is made on one of the first three days on which the Court sits for hearing *ex parte* motions after the date on which the Minister's refusal to state a case was communicated to the applicant.

ORDER 99

THE INHERITANCE (FAMILY PROVISION) ACT 1938

Assignment to Chancery Division

1. Proceedings in the High Court under the Inheritance (Family Provision) Act 1938(a) (in this Order referred to as "the Act") shall be assigned to the Chancery Division.

Powers of Court as to parties

2.—(1) Without prejudice to its powers under Order 15, the Court may at any stage of proceedings under the Act by order 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 13, 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

3. An affidavit in support of an originating summons by which an application under section 1 of the Act is made must be filed before the first hearing of the summons and Order 28, rule 3(3), shall apply accordingly.

Disposal of application in chambers, etc.

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, but any order under section 1 or 4 of the Act shall be made by the judge in person.

Applications in proceedings under s. 1 of Act

5. Where an order has been made on an application under section 1 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 4(2) of the Act, must be made by summons in those proceedings.

Indorsement of memorandum on probate, etc.

6.—(1) The personal representatives of the deceased to whose estate an application under section 1 or 4 of the Act relates must produce in court at the hearing of the application the probate or letters of administration under

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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 3(3) of the Act has been complied with.

(2) Immediately after any such order has been drawn up and entered, the chief registrar of the Chancery Division shall send an office copy of the order, together with the probate or letters of administration, to the Principal Probate Registry.

(3) The memorandum of the order required by section 3(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 1938***Assignment to Chancery Division*

1. Proceedings in the High Court under the Trade Marks Act 1938(a) shall be assigned to the Chancery Division.

Appeals and applications under the Trade Marks Act 1938

2.—(1) Every appeal to the High Court under the Trade Marks Act 1938 shall be heard and determined by a single judge.

(2) Subject to rule 3, every application to the High Court under the said Act of 1938 must be begun by originating motion.

(3) Notice of the motion by which any such application is made must be served on the Comptroller-General of Patents, Designs and Trade Marks (in this Order referred to as "the Comptroller").

(4) Where the Comptroller refers to the High Court an application under the said Act of 1938 made to him, and where the Board of Trade refer to that Court an appeal to the Board under that Act, then, unless within one month after receiving notification of the decision to refer, the applicant or the appellant, as the case may be, makes to that Court the application or appeal referred, he shall be deemed to have abandoned it.

(5) The period prescribed by paragraph (4) may be extended by the Comptroller on the application of any party interested and may be so extended although the application is not made until after the expiration of that period, but the foregoing provision shall not be taken to affect the power of the Court under Order 3, rule 5, to extend that period.

(6) Where under subsection (6) of section 17, or subsection (9) of section 18, of the said Act of 1938 an appellant becomes entitled and intends to withdraw his application which is the subject matter of the appeal he must give notice of his intention to the Comptroller and to any other party to the appeal within one month after the Court has given leave under the said subsection (6) or the said subsection (9), as the case may be, for further grounds of objection to be taken.

Proceedings for infringement of registered trade mark: validity of registration disputed

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

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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 Comptroller a copy of the counterclaim together with a copy of the particulars mentioned in paragraph (2); and the Comptroller 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.

ORDER 101**THE PENSIONS APPEAL TRIBUNALS ACT 1943***Assignment to Queen's Bench Division*

1. Proceedings in the High Court under the Pensions Appeal Tribunals Act 1943(a) shall be assigned to the Queen's Bench Division.

Construction of references to judge

2. In this Order references to the judge shall be construed as references to the judge nominated by the Lord Chancellor under section 6(2) of the Pensions Appeals Tribunals Act 1943.

Application for leave to appeal

3.—(1) An application to the judge for leave to appeal against the decision of a Pensions Appeal Tribunal may not be made unless an application for such leave was made to the Tribunal and was refused and must be made within 28 days after the date of the Tribunal's refusal.

(2) The application to the judge, which may be made *ex parte*, must be made by filing in the Crown Office a written statement of—

(a) the name and description of the applicant,

(b) the point of law as respects which the applicant alleges that the Tribunal's decision was erroneous, and

(c) the date of the Tribunal's decision refusing leave to appeal.

(3) If the application is made with the consent of the other party to the proceedings before the Tribunal, that fact shall be included in the statement.

(4) On the making of the application the proper officer shall request the chairman of the Tribunal to give the judge a written statement of the reasons for the Tribunal's decision to refuse leave to appeal, and within 7 days after receiving the request the chairman shall give the judge such a statement.

(5) The judge may determine the application without a hearing or may direct that the application be set down for hearing in chambers.

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(6) Where the application is determined without a hearing, a copy of the judge's order shall be sent from the Crown Office to the applicant and to the other party to the proceedings before the Tribunal; and where the application is to be set down for hearing, notice of the day and time fixed for the hearing shall be sent from that Office to the applicant.

Appeal

4.—(1) Without prejudice to Order 55, rule 3(2), the notice of the originating motion by which an appeal against the decision of a Pensions Appeal Tribunal is brought must state the question of law on which the appeal is brought, the date on which leave to appeal was granted and whether such leave was granted by the judge or the Tribunal.

(2) Order 55, rules 3(3) and 4(2), shall not apply in relation to such an appeal, but the notice must be served and the appeal entered within 28 days after leave to appeal was granted.

(3) Within 28 days after service of the notice of motion on him, the chairman of the Tribunal must state a case setting out the facts on which the decision appealed against was based and must file the case in the Crown Office and serve a copy thereof on the appellant and on the respondent.

(4) Order 55, rule 5, shall apply in relation to such an appeal as if for the period of 21 days therein mentioned there were substituted a period of 6 weeks.

(5) At the hearing of the appeal the judge may order the case to be returned to the chairman for amendment.

(6) Order 55, rule 7(2), shall not apply in relation to the appeal.

(7) A copy of the judge's order on the appeal must be sent by the proper officer to the appellant, the respondent and the chairman of the Tribunal.

ORDER 102**THE COMPANIES ACT 1948***Definitions***1. In this Order—**

“the Act” means the Companies Act 1948(a);

“the companies court registrar” means any officer of the High Court who is a registrar within the meaning of any rules for the time being in force relating to the winding up of companies;

“the Court”, without prejudice to Order 1, rule 4(2), includes the companies court registrar.

Applications to be made by originating summons

2.—(1) Except in the case of the applications mentioned in rules 3, 4 and 5 and applications made in proceedings relating to the winding up of companies, every application under the Act must, in accordance with Order 5, rule 3, be made by originating summons.

(2) No appearance need be entered to an originating summons under this rule unless the application made by the summons is—

(a) an application under section 208 of the Act for an order to make provision for all or any of the matters mentioned in subsection (1)

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of that section where an order sanctioning the compromise or arrangement to which the application relates has previously been made, or

- (b) an application under section 375 of the Act for an order directing a receiver or manager of a company to make good any such default as is mentioned in subsection (1) of that section, or
- (c) an application under section 428 of the Act for an order directing a company and any officer thereof to make good any such default as is mentioned in that section.

(3) An application under section 167(4) or 441 of the Act may be made by *ex parte* originating summons.

(4) An originating summons under this rule and rule 3 may be issued out of the office of the companies court registrar, the district registry of Liverpool or the district registry of Manchester, and Order 7, rule 5(2), shall not apply in relation to such a summons.

Application to be made by originating summons or motion

3.—(1) An application under section 116 of the Act for rectification of the register of members of a company may be made by originating summons or originating motion.

(2) No appearance need be entered to an originating summons under this rule.

(3) The notice of the motion by which such an application is made may be issued out of the office of the companies court registrar, the district registry of Liverpool or the district registry of Manchester.

Applications to be made by originating motion

4.—(1) The following applications under the Act must be made by originating motion, namely, applications—

- (a) under section 29 for an order that a company be relieved from the consequences of default in complying with conditions constituting the company a private company,
- (b) under section 52(3) for an order extending the time for delivery to the registrar of companies of any document required by that section to be delivered,
- (c) under section 165 for an order declaring that the affairs of a company ought to be investigated by an inspector appointed by the Board of Trade,
- (d) under section 167(3) for an inquiry into any such case as is therein mentioned,
- (e) under section 174(3) for an order directing that any shares in or debentures of a company shall cease to be subject to restrictions imposed by that section, and
- (f) under section 352 for an order declaring a dissolution of a company which has not been wound up to have been void.

(2) The notice of the motion by which any such application is made may be issued out of the office of the companies court registrar, the district registry of Liverpool or the district registry of Manchester.

Order 102]*Applications to be made by petition*

5.—(1) The following applications under the Act must be made by petition, namely, applications—

- (a) under section 5 to cancel the alteration of a company's objects,
- (b) under section 23 to cancel the alteration of a condition contained in a company's memorandum,
- (c) under section 56 to confirm a reduction of the share premium account of a company,
- (d) under section 57 to sanction the issue by a company of shares at a discount,
- (e) under section 58 to confirm a reduction of the capital redemption reserve fund of a company,
- (f) under section 67 to confirm a reduction of the share capital of a company,
- (g) under section 72 to cancel any variation or abrogation of the rights attached to any class of shares in a company,
- (h) under section 206 to sanction a compromise or arrangement between a company and its creditors or any class of them or between a company and its members or any class of them,
- (i) under section 353(6) for an order restoring the name of a company to the register,
- (j) under section 395 to cancel the alteration of the form of a company's constitution, and
- (k) under section 448(2) for relief from liability of an officer of a company or a person employed by a company as auditor.

(2) A petition by which any such application is made may be presented in the office of the companies court registrar, the district registry of Liverpool or the district registry of Manchester, and Order 9, rule 3, shall not apply in relation to such a petition.

Assignment and entitlement of proceedings

6.—(1) All proceedings to which this Order relates shall be assigned to the Chancery Division.

(2) Every originating summons, notice of originating motion and petition by which any such proceedings are begun and all affidavits, notices and other documents in those proceedings must be entitled in the matter of the company in question and in the matter of the Act.

(3) The originating summons by which an application for leave under section 188(1) of the Act is made must be entitled in the matter of the company in relation to which the plaintiff was convicted or was guilty of such an offence or of such conduct as is mentioned in the said section 188(1) and in the matter of the Act.

Summons for directions

7.—(1) After presentation of a petition by which any such application as is mentioned in rule 5 is made, the petitioner, except where his application is one of those mentioned in paragraph (2), must take out a summons for directions under this rule.

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(2) The applications referred to in paragraph (1) are—

- (a) an application under section 57 of the Act to sanction the issue by a company of shares at a discount,
- (b) an application under section 206 of the Act to sanction a compromise or arrangement unless there is included in the petition for such sanction an application for an order under section 208 of the Act, and
- (c) an application under section 353(6) of the Act for an order restoring the name of a company to the register.

(3) On the hearing of the summons the Court may by order give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit including, in particular, directions for the publication of notices and the making of any inquiry.

(4) Where the application made by the petition is to confirm a reduction of the share capital, the share premium account, or the capital redemption reserve fund, of a company, then, without prejudice to the generality of paragraph (3), the Court may give directions—

- (a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims ;
- (b) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to which the list is to be made ;

and the power of the Court under section 67(3) of the Act to direct that section 67(2) thereof shall not apply as regards any class or classes of creditors may be exercised on any hearing of the summons.

(5) Rules 8 to 13 shall have effect subject to any directions given by the Court under this rule.

Inquiry as to debts : company to make list of creditors

8.—(1) Where under rule 7 the Court orders such an inquiry as is mentioned in paragraph (4) thereof, the company in question must, within 7 days after the making of the order, file in the office of the companies court registrar an affidavit made by an officer of the company competent to make it verifying a list containing—

- (a) the name and address of every creditor entitled to any debt or claim to which the inquiry extends,
- (b) the amount due to each creditor in respect of such debt or claim or, in the case of a debt or claim which is subject to any contingency or sounds only in damages or for some other reason does not bear a certain value, a just estimate of the value thereof, and
- (c) the total of those amounts and values.

(2) The deponent must state in the affidavit his belief that at the date fixed by the Court as the date by reference to which the list is to be made there is no debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, other than the debts or claims set out in the list and any debts or claims to which the inquiry does not extend, and must also state his means of knowledge of the matters deposed to.

(3) The list must be left at the office mentioned in paragraph (1) not later than one day after the affidavit is filed.

Order 102]*Inspection of list of creditors*

9.—(1) Copies of the list made under rule 8 with the omission, unless the Court otherwise directs, of the amount due to each creditor and the estimated value of any debt or claim to which any creditor is entitled, shall be kept at the registered office of the company and at the office of that company's solicitor and of that solicitor's London agent, if any.

(2) Any person shall be entitled during ordinary business hours, on payment of a fee of one shilling, to inspect the said list at any such office and to take extracts therefrom.

Notice to creditors

10. Within 7 days after filing the affidavit required by rule 8 the company must send by post to each creditor named in the list exhibited to the affidavit, at his last known address, a notice stating—

- (a) the amount of the reduction sought to be confirmed,
- (b) the effect of the order directing an inquiry as to debts and claims,
- (c) the amount or value specified in the list as due or estimated to be due to that creditor, and
- (d) the time fixed by the Court within which, if he claims to be entitled to a larger amount, he must send particulars of his debt or claim and the name and address of his solicitor, if any, to the company's solicitor.

Advertisement of petition and list of creditors

11. After filing the affidavit required by rule 8 the company must insert, in such newspapers and at such times as the Court directs, a notice stating—

- (a) the date of presentation of the petition and the amount of the reduction thereby sought to be confirmed,
- (b) the inquiry ordered by the Court under rule 7,
- (c) the places where the list of creditors may be inspected in accordance with rule 9, and
- (d) the time within which any creditor not named in the list who claims to be entitled to any debt or claim to which the inquiry extends must send his name and address, the name and address of his solicitor, if any, and particulars of his debt or claim to the company's solicitor.

Affidavit as to claims made by creditors

12. Within such time as the Court directs the company must file in the office of the companies court registrar an affidavit made by the company's solicitor and an officer of the company competent to make it—

- (a) proving service of the notices mentioned in rule 10 and advertisement of the notice mentioned in rule 11,
- (b) verifying a list containing the names and addresses of the persons (if any) who in pursuance of such notices sent in particulars of debts or claims, specifying the amount of each debt or claim,
- (c) distinguishing in such list those debts or claims which are wholly, or as to any and what part thereof, admitted by the company, disputed by the company or alleged by the company to be outside the scope of the inquiry, and

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- (d) stating which of the persons named in the list made under rule 8, and which of the persons named in the list made under this rule, have been paid or consent to the reduction sought to be confirmed.

Adjudication of disputed claims

13. If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim or in respect of the full amount claimed by him in respect of any debt or claim, then, unless the company is willing to secure payment of that debt or claim by appropriating the full amount of the debt or claim, the company must, if the Court so directs, send to that person by post at his last known address a notice requiring him—

- (a) within such time as may be specified in the notice, being not less than 4 clear days after service thereof, to file an affidavit proving his debt or claim or, as the case may be, so much thereof as is not admitted by the company, and
- (b) to attend the adjudication of his debt or claim at the place and time specified in the notice, being the time appointed by the Court for the adjudication of debts and claims.

Certifying lists of creditors entitled to object to reduction

14. The list of creditors entitled to object to such reduction as is mentioned in rule 7(4), as settled by the Court under section 67(2) of the Act, shall be certified and filed by the companies court registrar and his certificate shall—

- (a) specify the debts or claims (if any) disallowed by the Court,
- (b) distinguish the debts or claims (if any) the full amount of which is admitted by the company, the debts or claims (if any) the full amount of which, though not admitted by the company, the company is willing to appropriate, the debts or claims (if any) the amount of which has been fixed by adjudication of the Court under section 67(2) of the Act and other debts or claims;
- (c) specify the total amount of the debts or claims payment of which has been secured by appropriation under the said section 67(2);
- (d) show which creditors consent to the reduction and the total amount of their debts or claims;
- (e) specify the creditors who sought to prove their debts or claims under rule 13 and state which of such debts or claims were allowed.

Evidence of consent of creditor

15. The consent of a creditor to such reduction as is mentioned in rule 7(4) may be proved in such manner as the Court thinks sufficient.

Time, etc. of hearing of petition for confirmation of reduction

16.—(1) A petition for the confirmation of any such reduction as is mentioned in rule 7(4) shall not, where the Court has directed an inquiry pursuant to that rule, be heard before the expiration of at least 8 clear days after the filing of the certificate mentioned in rule 14.

(2) Before the hearing of such a petition, a notice specifying the day appointed for the hearing must be published at such times and in such newspapers as the Court may direct.

Order 102]*Restriction on taking effect of order under s. 57*

17. Unless the Court otherwise directs, an order under section 57 of the Act sanctioning the issue of shares at a discount shall direct that an office copy of the order be delivered to the registrar of companies within 10 days after the making of the order or such extended time as the Court may allow and that the order shall not take effect until such copy has been so delivered.

Affidavits to be filed in district registry

18. Where an application to which this Order relates is proceeding in the district registry of Liverpool or the district registry of Manchester, all affidavits made in connection with the application must be filed in that registry.

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THE PATENTS ACTS 1949 TO 1961 ; THE REGISTERED DESIGNS ACTS 1949 TO 1961 ; THE DEFENCE CONTRACTS ACT 1958

Definitions

1. In this Order—

“ the Act ” means the Patents Act 1949(a) ;

“ the Comptroller ” means the Comptroller-General of Patents, Designs and Trade Marks ;

“ the Journal ” means the Official Journal (Patents).

Assignment of proceedings

2. Subject to any order or direction made or given by the Lord Chancellor, all proceedings in the High Court under the Patents Acts 1949 to 1961, the Registered Designs Acts 1949 to 1961 and the Defence Contracts Act 1958(b) shall be assigned to the Chancery Division.

Advertisement of petition for extension of patent under s. 23 of the Act

3.—(1) A person intending to apply for an order under section 23 of the Act extending the term of a patent must insert an advertisement giving notice of his intention once in an appropriate trade paper, once in a newspaper circulating throughout the United Kingdom and once in the London Gazette.

(2) When the applicant sends the advertisement to an appropriate trade paper for insertion therein, he must send a copy of the advertisement to the Comptroller who shall thereupon cause the advertisement to be inserted in the two next following issues of the Journal.

(3) The advertisement must state—

(a) the object of the petition ;

(b) the day, being a day fixed for the purpose and not earlier than 8 weeks after the publication of the advertisement for the second time in the Journal, on which the applicant intends to apply to the Court for directions fixing the date of hearing of the petition and other directions ;

(c) that notices of opposition to the petition must be lodged at the Chancery Registrars' Office not less than 14 days before the day on which the applicant intends to apply to the Court as aforesaid ;

(d) the applicant's address for service within the United Kingdom.

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(4) In this rule "appropriate trade paper" means a newspaper or other periodical published in the United Kingdom which is appropriate to the art to which the patent in question relates.

Presentation of petition, etc.

4.—(1) A petition under section 23 of the Act must be presented within one week after the publication in the Journal for the second time of the advertisement required by rule 3, and a copy of the petition must at the same time be served on the solicitor to the Board of Trade.

(2) Order 9, rule 3(1), shall not apply in relation to such a petition.

(3) The Comptroller shall be made respondent to the petition.

(4) The petition shall be assigned to Group A and made returnable for the day stated in the advertisement as that on which the petitioner intends to apply to the Court for directions.

(5) The petition must be accompanied by an affidavit or affidavits proving compliance with rule 3.

(6) Not less than 4 weeks before the day referred to in paragraph (4), the petitioner must lodge in the Chancery Registrars' Office two printed copies of the specification of the patent.

(7) A petition under section 23 of the Act may be presented in the Long Vacation without the leave of the Court.

Notice of intention to oppose petition under s. 23

5.—(1) Any person who intends to oppose the making of an order under section 23 of the Act, or to claim the inclusion therein of any restrictions, conditions or provisions, must lodge notice of his intention in the Chancery Registrars' Office not less than 14 days before the day named in the petitioner's advertisements as that on which he intends to apply to the Court for directions and at the same time serve a copy of the notice on the petitioner and the solicitor to the Board of Trade.

The notice must state an address for service within the United Kingdom of the person giving the notice.

(2) A petitioner on whom a notice under paragraph (1) is served must forthwith serve a copy of the petition on the person by whom the notice was served.

(3) A person who has under paragraph (1) served notice of his intention to oppose a petition under the said section 23 shall be entitled to be heard on the petitioner's application for directions.

Directions by Court in proceedings by petition under s. 23

6.—(1) On the hearing, on the date fixed for the purpose, of the petitioner's application for directions in proceedings for an order under section 23 of the Act, or a subsequent hearing, the Court shall give such directions for the conduct of the proceedings as it thinks necessary or expedient and, without prejudice to the generality of the foregoing provision, it shall—

(a) specify the period within which the petitioner must lodge in the Chancery Registrars' Office two copies of the accounts of expenditure and receipts relating to his petition, being the accounts which are to be proved at the hearing of the petition ;

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- (b) specify the period within which each person by whom notice has been served under rule 5(1) must lodge in the said Office two copies of particulars of the objections on which he intends to rely;
- (c) give directions as to the manner in which the evidence shall be given at the hearing of the petition and, if the evidence to be given by affidavit, specify the period within which the affidavits must be filed;
- (d) fix the date of hearing of the petition.

(2) Where the petition includes an application for extension of the time allowed by subsection (2) of the said section 23, the Court may, on the application of the petitioner made on the hearing of his application for directions under this rule, and on such terms as to costs or otherwise as it thinks just, give directions for the determination before the hearing of the petition of the application for such leave, and where it does so, it shall give directions as to the manner in which the evidence shall be given at the hearing of the application and fix the date of the hearing.

Lodging of accounts, particulars of objections, etc.

7.—(1) At the time when the petitioner for an order under section 23 of the Act lodges copies of the accounts referred to in rule 6(1)(a) in compliance with directions given under that rule he must send two copies of those accounts to the solicitor to the Board of Trade, and, on receiving notice in that behalf, the petitioner must give to the said solicitor or a person deputed by him for that purpose reasonable facilities for inspecting and taking extracts from the books of account by which the petitioner proposes to verify those accounts or from which those accounts have been derived.

(2) At the time when any person opposing a petition for an order under the said section 23 lodges copies of particulars of objections in compliance with directions given under rule 6(1)(b) he must serve one copy of those particulars on the petitioner and three copies on the solicitor to the Board of Trade.

(3) Subject to rule 14, a person who fails to comply with paragraph (2) or the directions referred to therein shall be deemed to have abandoned his opposition to the petition.

(4) A person opposing a petition under the said section 23 shall not be entitled on the hearing of the petition to rely on any ground of objection not specified in his particulars of objection.

(5) A person who served particulars of objection on the petitioner shall be entitled, at his own expense, to obtain from the petitioner a copy of the accounts lodged by the petitioner in compliance with directions under rule 6(1)(a).

Setting down petition under s. 23

8.—(1) A petition under section 23 of the Act shall be set down for hearing not less than 14 days before the date fixed for the hearing but before it is set down a certificate signed by the petitioner or his solicitor certifying that copies of the petition and notice of the said date have been served on every person opposing the petition and on the solicitor to the Board of Trade must be lodged in the Chancery Registrars' Office.

(2) Unless the Court otherwise directs, the petition shall be set down in the same manner as a witness action and shall be set down in the patents list.

[Order 103]*Application by petition for extension of patent under s. 24 of the Act*

9.—(1) Rules 3 to 8 shall, with the necessary modifications, apply in relation to an application to the High Court by petition for an order under section 24 of the Act extending the term of a patent and to such an application made by virtue of section 25 of the Act.

(2) If any person wishes to apply both for an order under section 23 of the Act and for an order under section 24 thereof, he may apply for both orders by the same petition, and rules 3 to 8 shall, with the necessary modifications, apply in relation to the application.

Application by summons for extension of patent under s. 24

10.—(1) Where an application to the High Court for an order under section 24 of the Act extending the term of a patent, or such an application made by virtue of section 25 of the Act, is made by originating summons, the Comptroller shall be made defendant to the summons and the summons must be served on the solicitor to the Board of Trade.

The summons shall be assigned to Group A.

(2) Not less than 7 days before the day fixed under Order 28, rule 2, for the hearing of the summons the plaintiff must file and serve on the solicitor to the Board of Trade an affidavit of the facts on which the plaintiff relies.

Advertisement of application for extension of patent under s. 24

11.—(1) On the first or any adjourned hearing of an originating summons for extension of the term of a patent, the Court shall give directions for advertisement of the application for extension and shall adjourn the hearing to a specified day (in this rule and rules 12 and 13 referred to as "the appointed day") fixed in accordance with paragraph (5).

(2) The advertisement required by this rule shall, unless the Court otherwise directs, be inserted at least twice in the Journal, and before insertion its contents shall be approved by the Court.

(3) Subject to any directions given by the Court, the advertisement must state—

(a) the object of the originating summons ;

(b) the appointed day ;

(c) that notices of objections to the summons must be lodged in the judge's chambers not less than 7 days before the appointed day ;

(d) the plaintiff's address for service within the United Kingdom.

(4) Within 3 days after the advertisement has been approved by the Court, the plaintiff must serve a copy thereof on the Comptroller, and, subject to any directions of the Court under paragraph (2), the Comptroller shall thereupon cause the advertisement to be inserted in the two next following issues of the Journal.

(5) The appointed day shall be a day not less than 4 weeks after the estimated date of publication of the advertisement for the first time in the Journal.

(6) Except with the leave of the Court, no affidavit shall be filed by the plaintiff between the publication of the advertisement for the first time in the Journal and the appointed day.

Order 103]*Opposition to summons under s. 24*

12.—(1) Any person who intends to oppose the making (on application by originating summons) of an order under section 24 of the Act, or to claim the inclusion therein of any restrictions, conditions or provisions, must not less than 7 days before the appointed day lodge notice of his intention in the judge's chambers and at the same time serve a copy of the notice on the plaintiff and the solicitor to the Board of Trade.

The notice must state an address for service within the United Kingdom of the person giving the notice.

(2) A plaintiff on whom a notice under paragraph (1) is served must forthwith serve a copy of the originating summons and of any supporting affidavit filed by him on the person by whom the notice was served.

Directions by Court

13. On the hearing on the appointed day or a subsequent hearing the Court shall give directions for the service of particulars of objections by any person who has lodged a notice under rule 12(1) and for the filing of any affidavits and as to the further conduct of the proceedings.

Power to dispense with procedural requirements

14. The Court may, on sufficient reason being shown for doing so, excuse an applicant for an order under section 23 or 24 of the Act and any person opposing the application from compliance with any obligation imposed on him by rule 3, 4, 5, 7, 8, 10, 11 or 12.

Provisions where Comptroller appears on hearing

15. Where the Comptroller elects, or is required by the Court, to appear on the hearing of an application under section 23 or 24 of the Act, he shall not be required to give notice of the grounds of any objection he may think fit to take or of any evidence he may think fit to submit to the Court, but he may give the applicant written notice before the hearing of any observations on the applicant's petition or originating summons, as the case may be, and on the applicant's evidence and accounts which he may think fit to make at the hearing.

Reference to Court of application to Comptroller under s. 24

16.—(1) Where an application for an order under section 24 of the Act, or an application for such an order made by virtue of section 25 thereof, is made to the Comptroller and the Comptroller decides to refer the application for decision by the Court, he shall give notice of his decision to the applicant and to any person opposing the making of the order or claiming the inclusion therein of any restrictions, conditions or provisions.

(2) Within 28 days after receipt of such notice the applicant may apply by originating motion for an order under the said section 24 and notice of the motion must be served on the solicitor to the Board of Trade and on any such person as is referred to in paragraph (1).

The applicant must also serve on the said solicitor two copies of any evidence filed in support of or in opposition to the application.

(3) Unless the Court for some special reason otherwise orders, the motion shall be heard by the judge selected by the Lord Chancellor under section 84 of the Act.

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(4) An applicant who fails to serve notice of the motion in accordance with paragraph (2) shall be deemed to have abandoned his application.

(5) Within 14 days after service of notice of the motion on the solicitor to the Board of Trade the Comptroller shall send his file of the proceedings in the matter to the chief registrar of the Chancery Division together with a statement to the Court of his reasons for referring the application to the Court.

(6) Subject to any directions given by the Court, the procedure on an application for an order under the said section 24 referred to the Court by the Comptroller shall be the same as on an application for such an order made to the Court by originating summons and rules 11 to 15 shall, so far as applicable, apply with the necessary adaptations.

Application for leave to amend specification under s. 30 of the Act

17.—(1) A patentee intending to apply under section 30 of the Act for leave to amend his specification must give notice of his intention to the Comptroller 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 the United Kingdom, and

(d) stating that any person intending to oppose the amendment who is not a party to the proceedings must within 14 days after the appearance of the advertisement give written notice of his intention to the applicant ; and the Comptroller shall insert the advertisement once in the Journal.

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 21 days from the appearance of the advertisement the applicant must make his application under the said section 30 by motion in the proceedings pending before the Court ; and notice of the motion, together with a copy of the specification certified by the Comptroller and showing in coloured ink the amendment sought, must be served on the Comptroller, 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 Comptroller an office copy of the order made by

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the Court and, if so required by the Court or Comptroller, leave at the Patent Office a new specification and drawings as amended prepared in compliance with the Act and rules made thereunder.

The Comptroller shall cause a copy of the order to be inserted once at least in the Journal.

Revocation of patent under s. 32 of the Act

18.—(1) Any person presenting a petition under section 32 of the Act for the revocation of a patent must serve with his petition particulars of the objections to the validity of the patent on which he intends to rely.

(2) The respondent to such a petition must serve an answer on the petitioner within 21 days after service of the petition on him.

(3) On the hearing of such 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

19.—(1) The plaintiff in an action for infringement of a patent must serve with his statement of claim particulars of the infringements relied on.

(2) If a defendant in such an action disputes the validity of the 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 or contracts relating to the patent made by or with the consent of the plaintiff and containing a condition void by virtue of section 57 of the Act, he must serve on the plaintiff particulars of the date of, and parties to, each such contract and particulars of each such condition.

(4) A defendant to such an action who in pursuance of section 61 of the Act 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 infringements

20. Particulars of infringements 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

21.—(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,

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- (b) state whether such user is alleged to have continued until the priority date of the claim in question of the complete specification 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—

- (a) one of the grounds stated in the particulars of objection 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 respects in which it is alleged that it does not work or does not work as described.

Amendment of particulars

22. 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

23. 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 admission of evidence

24.—(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 date first mentioned in rule 21(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, did his best to obtain inspection of it for those parties.

Order 103]*Proceedings for infringement or revocation : admissions must be requested*

25.—(1) In an action for infringement of a patent (whether or not any other relief is claimed) and in proceedings by petition for the revocation of a patent, each party must, within 14 days after service of a reply or answer or after the expiration of the period fixed for service thereof, write to each other party from whom he requires an admission for the purpose of the action or proceedings requesting him to make the admission, and the party receiving the request must within 14 days after the receipt thereof reply in writing making the admission or stating that he refuses to make it.

(2) No order shall be made authorising a party to any such action or proceedings to serve any interrogatory on any other party unless the first-mentioned party requested that other party in accordance with paragraph (1) to admit the facts sought to be proved by the answer to the interrogatory and the other party refused or failed to comply with the request.

Proceedings for infringement or revocation : summons for directions

26.—(1) In such an action, and in such proceedings, as are referred to in rule 25(1), the plaintiff or petitioner must—

(a) within one month after the date on which the last reply to a request made under rule 25(1) is received or after the date on which the period fixed for making such a reply expires, whichever first occurs, or

(b) if no request for an admission is made by any party to the action or proceedings, 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) (subject to rule 25(2)) for the service of interrogatories and of answers thereto,

(d) 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,

(e) 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,

(f) for the making of experiments, tests, inspections or reports,

(g) 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

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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 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) Order 24, rules 1 and 2, shall not apply in an action for infringement of a patent.

(4) 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.

(5) A petition for the revocation of a patent shall not be tried sooner than 21 days after the petition has been set down for trial.

Appointment of scientific adviser

27.—(1) In an action for infringement of a patent and in any proceedings under the 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 or to inquire and report on any question of fact or of opinion not involving questions of law or construction.

(2) The Court may nominate the scientific adviser and shall settle the question or instructions to be submitted or given to him.

(3) The remuneration of any adviser appointed under this rule shall be fixed by the Court and shall include the costs of making any report and a proper daily fee for any day on which he is required to attend before the Court.

(4) Order 40, rules 2, 3, 4 and 6, shall apply in relation to an adviser appointed under this rule and any report made by him as they apply in relation to a Court expert and a report made by him.

Proceedings for determination of certain disputes

28.—(1) Proceedings for the determination of any dispute referred to the Court under—

(a) section 48 of the Act,

(b) paragraph 3 of Schedule 1 to the Registered Designs Act 1949(a), or

(c) section 4 of the Defence Contracts Act 1958,

must be begun by originating motion assigned to Group A.

(2) Unless the Court for some special reason otherwise orders, the motion shall be heard by the judge selected by the Lord Chancellor under section 84 of the Act or section 27 of the Registered Designs Act 1949, as the circumstances of the case require.

(3) There must be at least 10 clear days between the service of notice of a motion under this rule and the day named in the notice for hearing the motion.

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(4) On the hearing of a motion under this rule the Court shall give such directions for the further conduct of the proceedings as it thinks necessary or expedient and, in particular, directions for the service of particulars and as to the manner in which the evidence shall be given and as to the date of the hearing.

Application for rectification of register of patents or designs

29. An application to the Court for an order that the register of patents or the register of designs be rectified must be made by originating motion, except where it is made in a petition for the revocation of a patent or by way of counterclaim in proceedings for infringement or by originating summons in proceedings for an order under section 51 of the Trustee Act 1925(a).

Counterclaim for rectification of register of designs

30.—(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.

(3) A party to any such proceedings who counterclaims for an order that the register of designs be rectified must serve on the Comptroller a copy of the counterclaim together with a copy of the particulars mentioned in paragraph (2); and the Comptroller 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**THE MAINTENANCE ORDERS ACT 1950; THE MAINTENANCE ORDERS ACT 1958****I. INTERPRETATION***Definitions***1. In this Order—**

“ the Act of 1925 ” means the Guardianship of Infants Act 1925(b) ;

“ the Act of 1950 ” means the Maintenance Orders Act 1950(c) ;

“ the Act of 1958 ” means the Maintenance Orders Act 1958(d) ;

“ the chief registrar ” means the chief registrar of the Chancery Division ;

“ the senior registrar ” means the senior registrar of the Principal Probate Registry.

(a) 15 & 16 Geo. 5. c. 19.
(c) 14 Geo. 6. c. 37.

(b) 15 & 16 Geo. 5. c. 45.
(d) 6 & 7 Eliz. 2. c. 39.

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II. REGISTRATION OF CERTAIN ORDERS UNDER PART II OF THE ACT OF 1950

Application for registration

2.—(1) An application for the registration under Part II of the Act of 1950 of an order for the payment of periodical sums made by the High Court under section 3(2) or 5(4) of the Act of 1925 (in this Part of this Order referred to as a "maintenance order") must be made to the chief registrar by lodging in the Chancery Registrars' Office the duplicate and two plain copies of the maintenance order and an affidavit by the applicant (together with a copy thereof) stating—

- (a) the address in the United Kingdom, and the occupation, of the person liable to make payments under the maintenance order,
- (b) the date of service of the maintenance order on the person liable to make payments thereunder or, if the order has not been served, the reason why service has not been effected,
- (c) the reason why it is convenient that the maintenance order should be enforceable in Scotland or Northern Ireland, as the case may be,
- (d) the amount of any arrears due to the applicant under the maintenance order, and
- (e) that the maintenance order is not already registered under Part II of the Act of 1950.

(2) If it appears to the chief registrar that the person liable to make payments under the maintenance order resides in Scotland or Northern Ireland and that it is convenient that the order should be enforceable there, he shall send a certified copy of the maintenance order and the applicant's affidavit to the deputy principal clerk in charge of the petition department of the Court of Session (in this Part of this Order referred to as "the clerk of the Court of Session") or to the chief registrar of the Queen's Bench Division (Matrimonial) of the High Court of Justice in Northern Ireland (in this Part of this Order referred to as "the registrar in Northern Ireland"), as the case may be.

(3) The chief registrar shall, in relation to maintenance orders, be the prescribed officer for the purpose of section 17(4) of the Act of 1950, and on receipt of notice of the registration of the maintenance order in the Court of Session or the Supreme Court of Judicature of Northern Ireland, as the case may be, he shall cause particulars of the notice to be entered in Part I of the register kept for the purposes of the Act of 1950 (in this Part of this Order referred to as "the register").

(4) The fact that the maintenance order has been registered in the Court of Session or the Supreme Court of Judicature of Northern Ireland shall be noted on the original of the maintenance order and on the duplicate thereof which shall thereupon be returned to the applicant.

Discharge, variation, etc. of registered order

3.—(1) Where a maintenance order which is registered in the Court of Session or the Supreme Court of Judicature of Northern Ireland is discharged or varied, the chief registrar shall give notice of the discharge or variation to the clerk of the Court of Session or to the registrar in Northern Ireland, as the case may be, by sending to him a certified copy of the order discharging or varying the maintenance order.

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(2) Where the registration of a maintenance order registered in the Court of Session or the Supreme Court of Judicature in Northern Ireland is cancelled under section 24(1) of the Act of 1950, the chief registrar shall be the prescribed officer to whom under section 24(3) of that Act notice of the cancellation shall be sent; and on receipt of such notice he shall cause particulars of the notice to be entered in Part I of the register and on the original maintenance order.

The chief registrar shall also cause particulars of the notice to be entered on the duplicate of the maintenance order on its being produced for that purpose by the person entitled to payments under the maintenance order.

Registration, etc. of Scottish orders

4.—(1) The chief registrar shall, in relation to an order made by the Court of Session under section 3(2) or 5(4) of the Act of 1925 (in this Part of this Order referred to as a "Scottish order"), be the prescribed officer for the purpose of section 17(2) of the Act of 1950, and on receipt of a certified copy of a Scottish order for registration under Part II of that Act he shall—

- (a) cause the order to be registered in Part II of the register and notify the clerk of the Court of Session that this has been done;
- (b) file the certified copy and any statutory declaration or affidavit as to the amount of any arrears due under the Scottish order.

(2) The chief registrar shall be the prescribed officer to whom under section 23(2) of the Act of 1950 notice shall be given of the discharge or variation of a Scottish order registered in the High Court and on receipt of notice of the discharge or variation of such an order he shall cause particulars of the notice to be entered in Part II of the register.

(3) An application under section 24(1) of the Act of 1950 for the cancellation of the registration of a Scottish order registered in the High Court shall be made to the chief registrar *ex parte* either in person or in writing and shall be supported by an affidavit by the applicant.

(4) Where the chief registrar cancels the registration of a Scottish order so registered, he shall note the cancellation in Part II of the register and send notice of the cancellation to the clerk of the Court of Session.

Adducing of evidence in connection with Scottish order

5.—(1) An application under section 21(2) of the Act of 1950 by a person liable to make payments under a Scottish order registered in the High Court to adduce before that Court such evidence as is mentioned in the said section 21(2) must be made by lodging a request for an appointment before the chief master stating the last known address of the person entitled to payments under the Scottish order.

(2) Notice of the day and time fixed for the hearing shall be sent by post to the applicant and to the person entitled as aforesaid.

(3) The evidence adduced by the applicant shall be affidavit evidence, and a summary or transcript of any oral examination of the deponents to the affidavits shall be sent to the chief registrar for transmission by him to the clerk of the Court of Session.

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Inspection of register, etc.

6. Any person who satisfies the chief registrar that he is entitled or liable to make payments under a maintenance order or a Scottish order, a solicitor acting on behalf of any such person and, with the leave of the chief registrar, any other person may inspect the register and bespeak copies of any such order which is registered in the High Court under Part II of the Act of 1950 and of any statutory declaration or affidavit filed therewith.

III. REGISTRATION, ETC. OF CERTAIN ORDERS UNDER THE ACT OF 1958

Interpretation of Parts III and IV

7.—(1) Section 21 of the Act of 1958 shall apply to the interpretation of this Part of this Order and Part IV thereof as it applies to the interpretation of that Act.

(2) In this Part of this Order and in Part IV thereof—

“appropriate county court registrar”, in relation to a maintenance order made by or registered in the High Court, means—

(a) the registrar of a county court who has given notice to the proper officer of proceedings taken in that court for the enforcement of the order, and

(b) the registrar of a county court to whom any payment is to be made under an attachment of earnings order made by the High Court for the enforcement of the maintenance order ;

“cause book ” includes cause card ;

“proper officer ” means—

(a) in the case of an order made by the High Court under section 3(2), 5(4) or 6 of the Act of 1925, the chief registrar ;

(b) in the case of an order made under any provision of sections 19 to 27 of the Matrimonial Causes Act 1950(a), the senior registrar or, where the order was made in a cause or matter proceeding in a district registry, the registrar of that registry ;

(c) in the case of an order registered in the High Court under the Maintenance Orders (Facilities for Enforcement) Act 1920(b) or Part II of the Act of 1950, the officer, that is to say, the senior registrar or the chief registrar, who caused the order to be registered ;

(d) in the case of an order made by a magistrates' court which is to be or has been registered in the High Court under Part I of the Act of 1958, the officer, that is to say, the senior master, the senior registrar or a district registrar, to whom a certified copy of the order has been sent pursuant to section 2(4)(c) of that Act ;

“the register ” means any register kept for the purposes of the Act of 1958.

Order 104]*Application for registration*

8.—(1) An application under section 2(1) of the Act of 1958 for the registration in a magistrates' court of a maintenance order made by the High Court may be made—

- (a) on the making of the maintenance order or an order varying the maintenance order, or
- (b) at any other time by lodging with the proper officer a certified copy of the maintenance order (and, in the case of an order made under section 3(2), 5(4) or 6 of the Act of 1925, the duplicate order) and an affidavit by the applicant, together with a copy thereof, stating—
 - (i) the address and occupation of the person liable to make payments under the order,
 - (ii) the date of service of the order on the person liable to make payments thereunder or, if the order has not been served, the reason why service has not been effected,
 - (iii) the reason why registration of the order in a magistrates' court is desired,
 - (iv) the amount of any arrears due to the applicant under the order, the date to which those arrears have been calculated and the date on which the next payment under the order falls due,
 - (v) the date of birth of each child named in the order,
 - (vi) that the order is not already registered under the Act of 1958, and
 - (vii) whether any proceedings are pending, or any writ, warrant or other process is in force, for the enforcement of the order.

(2) Where such application is granted, the applicant must, if he has not already done so, lodge with the proper officer a certified copy of the maintenance order and, in the case of an order made under section 3(2), 5(4) or 6 of the Act of 1925, the duplicate order together with, where the application was granted on the making of the maintenance order or an order varying the maintenance order, a statement signed by the applicant or his solicitor, and a copy thereof, giving the address of the person entitled to receive payments under the maintenance order and the particulars mentioned in paragraph 1(b)(i), (ii) and (v).

(3) The period required to be prescribed by rules of court for the purpose of section 2(2) of the Act of 1958 shall be 14 days.

(4) The proper officer shall cause the certified copy of an order required by the said section 2(2) to be sent to the clerk of a magistrates' court to be indorsed with a note that the application for registration of the order has been granted and to be accompanied by a copy of the affidavit or statement lodged under paragraph (1) or (2), as the case may be.

(5) On receipt of notice that a maintenance order made by the High Court has been registered in a magistrates' court in accordance with section 2(5) of the Act of 1958, the proper officer shall—

- (a) if he is the chief registrar, enter particulars of the registration on the original maintenance order and on the duplicate thereof;
- (b) if he is the senior registrar or a district registrar, enter particulars of the registration in the court minutes.

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Registration of magistrates' court order

9. On receipt of a certified copy of a magistrates' court order sent to him pursuant to section 2(4)(c) of the Act of 1958, the proper officer shall cause the order to be registered in the High Court by filing the copy and making an entry in the register or, where the proper officer is a district registrar, in the cause book and shall send notice to the clerk of the magistrates' court that the order has been duly registered.

Variation or discharge of registered order

10.—(1) Where the High Court makes an order varying or discharging an order registered in a magistrates' court under Part I of the Act of 1958, the proper officer shall send a certified copy of the first-mentioned order to the clerk of the magistrates' court.

(2) Where a certified copy of an order varying an order made by the High Court and registered in a magistrates' court under Part I of the Act of 1958 is received from the clerk of the magistrates' court, the proper officer shall file the copy and enter particulars of the variation on the same documents or in the same minutes as particulars of registration are required by rule 8(5) to be entered.

(3) Where a certified copy of an order varying or discharging an order made by a magistrates' court and registered in the High Court under Part I of the Act of 1958 is received from the clerk of the magistrates' court, the proper officer shall—

- (a) file the copy,
- (b) enter particulars of the variation or discharge in the register or, where the proper officer is a district registrar, in the cause book, and
- (c) send notice of the variation or discharge to the appropriate county court registrar, if any.

Appeal from variation, etc. of order by magistrates' court

11.—(1) Where an appeal lies to the High Court under section 4(7) of the Act of 1958, the appeal shall be heard and determined—

(a) if the registered order to which the appeal relates was made under section 3(2), 5(4) or 6 of the Act of 1925, by a single judge of the Chancery Division, and

(b) if such order was made under any provision of sections 19 to 27 of the Matrimonial Causes Act 1950, by a single judge of the Probate, Divorce and Admiralty Division,

and shall be heard in chambers or in court as the judge may direct.

(2) Order 91, rules 5, 7 and 8, shall apply in relation to an appeal under the said section 4(7) relating to an order made under the Act of 1925 as they apply in relation to an appeal from a magistrates' court under that Act.

(3) An appeal under the said section 4(7) relating to such an order as is mentioned in paragraph (1)(b) shall be brought by summons in the matrimonial cause in which the order to which the appeal relates was made.

The summons must be issued within 14 days after the date of the order of the magistrates' court appealed against and must state the terms of that order, the terms of the order sought and the grounds of the appeal.

Cancellation of registration

12.—(1) A notice under section 5 of the Act of 1958 by a person entitled to receive payments under an order registered in the High Court must be given to the proper officer.

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(2) Where the High Court gives notice under the said section 5, the proper officer shall indorse the notice on the certified copy mentioned in rule 10(1).

(3) Where notice under the said section 5 is given in respect of an order registered in the High Court, the proper officer, on being satisfied by an affidavit by the person entitled to receive payments under the order that no process for the enforcement of the order issued before the giving of the notice remains in force, shall—

(a) cancel the registration by entering particulars of the notice in the register or, where the proper officer is a district registrar, in the cause book, and

(b) send notice of the cancellation to the clerk of the magistrates' court by which the order was made, stating, if such be the case, that the cancellation is in consequence of a notice given under subsection (1) of the said section 5.

(4) On receipt of notice from the clerk of a magistrates' court that the registration in that court under the Act of 1958 of an order made by the High Court has been cancelled, the proper officer shall enter particulars of the cancellation on the same documents or in the same minutes as particulars of registration are required by rule 8(5) to be entered.

IV. ATTACHMENT OF EARNINGS ORDERS UNDER PART II OF THE ACT OF 1958*Application for attachment of earnings order*

13.—(1) An application to the High Court under section 6 of the Act of 1958 for an attachment of earnings order must be made by summons which shall if the maintenance order in connection with which the application is made is registered in the High Court under Part I of that Act, be an ordinary summons.

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 age,

(iii) his national insurance number,

(iv) his place of work,

(v) the nature of his work and his works number, if any,

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(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.

Particulars of defendant

14. The particulars of the defendant for the purpose of enabling him to be identified which, so far as they are known to the Court, are required by section 6(3)(d) of the Act of 1958 to be contained in an attachment of earnings order, and which under section 11(1)(a) of that Act the defendant may be ordered to give to the Court, are the particulars specified in rule 13(2)(f).

Form and service of order

15.—(1) An attachment of earnings order must be in Form No. 104 in Appendix A.

(2) The Court shall cause a copy of an attachment of earnings order and of any order varying or discharging such an order to be served on the defendant and on the person to whom the attachment of earnings order is directed.

(3) Notwithstanding anything in Order 65, service under this rule of a copy of an order on a person other than a corporation shall be effected by sending the copy to him at his last known place of residence or, where he is the person to whom the attachment of earnings order is directed, at his place of business.

(4) Notwithstanding anything in Order 65, service under this rule of a copy of an order on a corporation shall be effected by sending the copy to it at—

(a) such address, if any, as the corporation may in a written request to the Court have specified for the purpose of this rule in relation to the defendant or to the class or description of persons to which he belongs,
or

(b) the registered office of the corporation or, if the corporation has no registered office, any place where it resides or carries on business.

(5) The Court shall cause a certified copy of an attachment of earnings order and of any order varying or discharging such an order to be sent to the appropriate county court registrar, if any.

There shall be indorsed on such copy of an attachment of earnings order a statement of the amount of the arrears due and unpaid under the related maintenance order at the time when the application for the attachment of earnings order was made.

Notice of cessation of order

16.—(1) Where an attachment of earnings order ceases to have effect by virtue of section 9(2) of the Act of 1958, the notice of the cessation required by the said section 9(2) to be given to the person to whom the

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order was directed shall be given by the proper officer of the High Court if the related maintenance order—

- (a) was made by the High Court and is not registered in a magistrates' court under Part I of the Act of 1958, or
- (b) was made by a magistrates' court and is registered in the High Court under the said Part I, or
- (c) has ceased to be registered in the High Court under Part II of the Act of 1950.

(2) The proper officer shall also give notice of the cessation—

- (a) if the attachment of earnings order was made by the High Court, to the registrar of any county court to whom any payment was directed to be made under the order ;
- (b) if the attachment of earnings order was made by a county court and has ceased to have effect otherwise than upon the making of an order of commitment in that court for the enforcement of the related maintenance order, to the registrar of that court.

Discharge, variation, etc. of order

17.—(1) Where the Court discharges an attachment of earnings order under section 9(3) of the Act of 1958, it shall cause notice of the discharge to be sent to the person in whose favour the order was made.

(2) A notice required by section 9(4) of the Act of 1958 to be given by an officer designated in pursuance of section 6(3)(c) thereof by an attachment of earnings order made by the High Court shall be in Form No. 105 in Appendix A ; and where that officer is the registrar of a county court he shall when giving the notice under the said section 9(4) send a copy thereof, if the related maintenance order was made under section 3(2), 5(4) or 6 of the Act of 1925, to the chief master and in any other case to the proper officer of the High Court.

(3) The period before the expiration of which a defendant may make a request to the High Court under the said section 9(4) shall be 14 days after notice is given to him thereunder and the manner in which he must make the request shall be by summons returnable not less than 4 days after service thereof on the person in whose favour the attachment of earnings order to which the request relates was made.

Notice under s. 10(4) of Act of 1958

18. A notice required by section 10(4) of the Act of 1958 to be given to the court which made an attachment of earnings order shall, if that court is the High Court, be in Form No. 106 in Appendix A and be given, if the related maintenance order was made under section 3(2), 5(4) or 6 of the Act of 1925, to the chief master and, in any other case, to the proper officer.

Application to determine whether payments are earnings

19. An application to the High Court under section 12(1) of the Act of 1958 must be made by summons returnable not less than 4 days after service thereof on the persons (other than the applicant) who are also entitled to make the application.

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ORDER 105

THE RESTRICTIVE TRADE PRACTICES ACT 1956

*Definitions***1. In this Order—**

“ the Act ” means the Restrictive Trade Practices Act 1956(a) ;

“ the Registrar ” means the Registrar of Restrictive Trading Agreements.

Assignment

2.—(1) All proceedings in the High Court under Part I of the Act shall be assigned to the Chancery Division.

(2) No such proceedings shall be begun in any district registry.

Title, etc. of summons or notice of motion

3.—(1) Every originating summons under this Order, and every notice of an originating motion thereunder, must be entitled in the matter of the Act and include a heading specifying the agreement to which the application relates or otherwise identifying the subject-matter of the application.

(2) Every such summons or notice must specify the provision of the Act under which the application in question is made.

(3) Every such summons or notice must be served not less than 7 days before the day fixed for the hearing of the summons or motion.

(4) No appearance need be entered to an originating summons under this Order.

Application for rectification of register, etc.

4.—(1) The originating summons by which an application under section 13 of the Act is made must specify—

(a) in the case of an application under subsection (1) thereof, particulars of the rectification sought, and

(b) in the case of an application under subsection (2) thereof, the declaration or declarations claimed.

(2) Where an application under the said section 13 is made by a person other than the Registrar, the Registrar must be made defendant to the summons.

(3) Where an application under the said section 13 is made by the Registrar, one or more of the parties to the agreement to which the application relates may be made defendant to the summons, and if that is done the party or parties made defendant shall, except in so far as the Court may otherwise direct, be treated as representing all the other parties to the agreement.

Application for order for examination on oath

5.—(1) Where an application is made for an order under section 15 of the Act for the attendance and examination of any person in the capacity of director, manager, secretary or other officer of a body corporate to which notice under section 14 of the Act has been given, the body corporate, as well as that person, must be made defendant to the originating summons.

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(2) An order under the said section 15 for the attendance and examination of any person shall be an order for his attendance and examination before the Court.

(3) If any person who attends for examination in pursuance of such an order before a judge sitting otherwise than in open court refuses to be sworn or to answer any question which the judge may put or allow to be put to him, or to produce any particulars, documents or information which the judge has required him to produce, the judge may adjourn the examination into open court.

(4) The notes of the examination of any person in pursuance of such an order must be filed in the Central Office.

Application for authorisation or order under s. 18

6.—(1) An application for an authorisation or order under section 18 of the Act may be made either by originating summons or by originating motion.

(2) In the case of an application for an authorisation under section 18(1)(a) of the Act one or more of the persons alleged to be parties to the agreement to which the application relates must be made defendant to the summons, or respondent to the motion, by which the application is made, and, except in so far as the Court may otherwise direct, shall be treated as representing all the other parties to the agreement.

(3) In the case of any other application under the said section 18, all persons against whom an order is sought must be made defendants to the summons, or respondents to the motion, by which the application is made.

ORDER 106**PROCEEDINGS RELATING TO SOLICITORS: THE SOLICITORS ACT 1957***Definitions***1. In this Order—**

“the Act” means the Solicitors Act 1957(a);

“appeal” means an appeal against any order made by the disciplinary committee on an application or complaint under the Act;

“the Council” means the Council of the Law Society;

“the disciplinary committee” means the committee appointed under section 46 of the Act or a division thereof.

Jurisdiction under Part III of Act exercisable by judge in chambers, etc.

2.—(1) Subject to rule 4, any application to the High Court under Part III of the Act made in the Chancery Division may be disposed of in chambers.

(2) In the Queen's Bench Division and the Probate, Divorce and Admiralty Division, the jurisdiction of the High Court under Part III of the Act may be exercised by a judge in chambers and, subject to the following provisions of this rule, by a master, a registrar of the last mentioned Division and a district registrar.

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(3) A district registrar, other than the registrar of the district registry of Liverpool or the district registry of Manchester, shall not have power to make an order for taxation of a bill of costs for non-contentious business.

(4) A district registrar shall not have power to make an order for taxation of a bill of costs for contentious business unless the business was done in a cause or matter which proceeded in the registry of which he is registrar.

(5) An originating summons for an order under any provision of Part III of the Act for the taxation of a bill of costs may be issued out of a district registry if, but only if, the registrar of that registry has power under this rule to make the order sought by the summons.

(6) In this rule "contentious business" and "non-contentious business" have the same meanings respectively as in the Act.

Power to order solicitor to deliver cash account, etc.

3.—(1) Where the relationship of solicitor and client exists or has existed, the Court may, on the application of the client or his personal representatives, make an order for—

- (a) the delivery by the solicitor of a cash account ;
- (b) the payment or delivery up by the solicitor of money or securities ;
- (c) the delivery to the plaintiff of a list of the moneys or securities which the solicitor has in his possession or control on behalf of the plaintiff ;
- (d) the payment into or lodging in court of any such moneys or securities.

(2) An application for an order under this rule must be made by originating summons.

(3) If the defendant alleges that he has a claim for costs, the Court may make such order for the taxation and payment, or securing the payment, thereof and the protection of the defendant's lien, if any, as the Court thinks fit.

Petition for taxation of costs, etc.

4. In the Chancery Division an application under the Act for an order for taxation of a solicitor's bill of costs or for the delivery of such a bill or for the delivery up of, or otherwise in relation to, any deeds, documents and papers in the possession, custody or power of a solicitor may, if the applicant is entitled as of right to the order, be made by petition.

The foregoing provision shall not be taken as preventing any such application being made by originating summons.

Appearance to originating summons unnecessary

5. No appearance need be entered to an originating summons by which any application under the Act, or any application for an order under rule 3, is made.

Applications under Schedule 1 to Act

6.—(1) Proceedings in the High Court under Schedule 1 to the Act shall be assigned to the Chancery Division.

Order 106]

(2) The originating summons by which an application for an order under the said Schedule is made must be entitled in the matter of a solicitor (without naming him) and in the matter of the Act.

(3) Where an order has been made under paragraph 2 of the said Schedule directing a person to comply with a requirement made by the Council under paragraph 1 thereof to produce or deliver any documents to a person appointed by the Council, an application under paragraph 5 of that Schedule for an order directing the Council to return those documents may be made by summons in the proceedings in which the first mentioned order was made.

(4) Where an application for an order under paragraph 7 of the said Schedule is in respect of any money of which the solicitor is a trustee, whether alone or jointly with any other person, there may be included in the originating summons by which the application is made an application for the appointment of new trustees of that money and for an order vesting it in those trustees.

Defendants to applications under Schedule 1 to Act

7. The defendant to an originating summons by which an application for an order under Schedule 1 to the Act is made shall be—

- (a) if the application is for an order under paragraph 2 thereof, the solicitor or other person having possession or control of the documents in respect of which the order is sought and, if those documents relate to any trust of which the solicitor is co-trustee only with one or more of his partners, clerks or servants, the other trustee or trustees ;
- (b) if the application is for an order under paragraph 5 thereof, the Council ;
- (c) if the application is for an order under paragraph 7 thereof, the solicitor, or, as the case may be, every member of the firm, in whose name the banking account in respect of which the order is sought stands.

Interim order restricting payment out of banking account

8. At any time after the issue of an originating summons by which an application for an order under paragraph 7 of Schedule 1 to the Act is made, the Court may, on the ex parte application of the plaintiff, make an interim order under that paragraph to have effect until the hearing of the summons and include therein a further order requiring the defendant to show cause at the hearing why an order under that paragraph should not be made.

Adding parties, etc.

9. Without prejudice to its powers under Order 15, the Court may, at any stage of proceedings under Schedule 1 to the Act, order any person to be added as a party to the proceedings or to be given notice thereof.

Service of documents

10.—(1) Any document required to be served on the Council or the Law Society in proceedings under this Order shall be served by sending it by prepaid post to the secretary of the Law Society.

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(2) Subject to paragraph (1), an originating summons by which an application under Schedule 1 to the Act is made, an order under paragraph 1 of that Schedule or rule 8 and any other document not required to be served personally which is to be served on a defendant to proceedings under the said Schedule shall, unless the Court otherwise directs, be deemed to be properly served by sending it by prepaid post to the defendant at his last known address.

Constitution of Divisional Court to hear appeals

11. Every appeal shall be heard by a Divisional Court of the Queen's Bench Division consisting, unless the Lord Chief Justice otherwise directs, of not less than three judges.

Title, service, etc. of notice of motion

12.—(1) The notice of the originating motion by which an appeal is brought must be entitled in the matter of a solicitor, or, as the case may be, a solicitors' clerk, without naming him, and in the matter of the Act.

(2) Unless the Court otherwise orders, the persons to be served with such notice are every party to the proceedings before the disciplinary committee and the Law Society.

(3) Order 55, rule 4(2), shall apply in relation to the appeal as if for the period of 28 days therein specified there were substituted a period of 14 days.

(4) Order 55, rule 4(4), shall not apply and the said period of 14 days shall begin with the day on which the order appealed against was pronounced, except that, in the case of an order made on an application under section 38 of the Act, it shall begin with the date of service of a copy of the order on the person with respect to whom the application was made.

Law Society to produce certain documents

13.—(1) Within 7 days after being served with notice of the originating motion by which an appeal is brought the Law Society must lodge in the Crown Office three copies of each of the following documents:—

- (a) the order appealed against, prefaced by the statement of the disciplinary committee's findings required by section 49 of the Act,
- (b) any document lodged by a party with the disciplinary committee which is relevant to a matter in issue on the appeal, and
- (c) the transcript of the shorthand note, or, as the case may be, the note taken by the chairman of the disciplinary committee, of the evidence in the proceedings before the committee.

(2) At the hearing of the appeal the Court shall direct by whom the costs incurred in complying with paragraph (1) are to be borne and may order them to be paid to the Law Society by one of the parties notwithstanding that the Society does not appear at the hearing.

Restriction on requiring security for costs

14. No person other than an appellant who was the applicant in the proceedings before the disciplinary committee or, in the case of an application to that committee by a solicitor to procure his name to be removed from the roll, was an objector, shall be ordered to give security for the costs of an appeal.

Order 106]*Disciplinary committee's opinion may be required*

15. The Court may direct the disciplinary committee to furnish the Court with a written statement of their opinion on the case which is the subject-matter of an appeal or on any question arising therein, and where such a direction is given, the clerk to the disciplinary committee must as soon as may be lodge three copies of such statement in the Crown Office and at the same time send a copy to each of the parties to the appeal.

Persons entitled to be heard on appeal

16. A person who has not been served with notice of the originating motion by which an appeal is brought but who desires to be heard in opposition to the appeal shall, if he appears to the Court to be a proper person to be so heard, be entitled to be so heard.

Discontinuance of appeal

17.—(1) An appellant may at any time discontinue his appeal by serving notice of discontinuance on the clerk to the disciplinary committee and every other party to the appeal and, if the appeal has been entered, by lodging a copy of the notice in the Crown Office.

(2) Where an appeal has been discontinued in accordance with paragraph (1), it shall be treated as having been dismissed with an order for payment by the appellant of the costs of and incidental to the appeal, including any costs incurred by the Law Society in complying with rule 13(1).

ORDER 107**THE COUNTY COURTS ACT 1959***Jurisdiction of master, etc. under Act*

1.—(1) Subject to paragraphs (2) and (3), a master, registrar of the Probate, Divorce and Admiralty Division or district registrar may exercise the jurisdiction and powers conferred on a judge of the High Court by the County Courts Act 1959(a) except the power to make an order of certiorari or prohibition or an order removing into the High Court any proceedings commenced in a county court for the purpose of quashing any judgment or order given or made in those proceedings.

(2) A district registrar shall have power by virtue of paragraph (1) to make an order in relation to any proceedings in the High Court if, but only if, the proceedings are proceeding in the registry of which he is registrar.

(3) A district registrar shall have power by virtue of paragraph (1) to transfer any proceedings in a county court to the High Court if, but only if, the district for which the county court is held is comprised in the district of the registry of which he is registrar.

(4) Where the Court makes an order transferring any proceedings in a county court to the High Court, it may, on the application of a party to the proceedings, also order that the proceedings shall proceed in the High Court in such district registry as may be specified in the order.

(a) 7 & 8 Eliz. 2. c. 22.

[Order 107]

Time for making application under s. 65

2.—(1) An application under section 65 of the said Act of 1959 for an order that the whole proceedings in any action or matter commenced in a county court, or the proceedings on a counterclaim or set-off and counterclaim in the action or matter, be transferred to the High Court must be made within 8 days after the receipt of the counterclaim by the plaintiff or, where the application is made by the defendant, within 8 days after the delivery of the counterclaim by him at the court office.

(2) The Court hearing such application may order the proceedings in the county court to be stayed until after the final determination of the application.

Issue of commission, etc. under s. 85

3.—(1) A master of the Queen's Bench Division may exercise the power conferred on the High Court by section 85 of the said Act of 1959 to issue a commission, request or order to examine witnesses abroad for the purpose of proceedings in a county court and to order that the proceedings be transferred to the High Court.

(2) No appearance need be entered to an originating summons by which an application under the said section 85 is made.

Application under s. 100 for leave to set-off cross judgments

4.—(1) The jurisdiction of the High Court under section 100 of the said Act of 1959 to allow set-off of any sums payable under several judgments or orders where one judgment or order was obtained in a county court and the other in the High Court may be exercised by a master or, if the judgment or order obtained in the High Court was obtained in a cause or matter proceeding in a district registry, the registrar of that registry, on an application made by summons.

(2) The applicant must give notice of his intended application to the registrar of the county court in which the judgment or order to which the application relates was obtained.

(3) The registrar of the county court shall, on receipt of notice of the application, stay execution on the judgment or order to which the application relates, and retain any money paid into that court in either of the actions or matters affected until after the final determination of the application.

(4) Where the Court hearing the application orders any sums to be set-off, it shall by the order direct how any money paid into either court in the actions or matters in question is to be dealt with.

(5) Where any sums payable under the judgment or order obtained in the county court are ordered to be set-off against any sums payable under the judgment or order obtained in the High Court, the last mentioned judgment or order shall be entered as satisfied to the extent of the amount ordered to be set-off, and that judgment or order shall be enforced only as respects the balance (if any) of the amount payable thereunder.

(6) The proper officer of the High Court for the purposes of the said section 100 is the head clerk of the summons and order department of the Central Office or, if the cause or matter in the High Court is proceeding in a district registry, the registrar of that registry.

Order 108]**ORDER 108****PROCEEDINGS RELATING TO CHARITIES: THE CHARITIES ACT 1960***Interpretation*

1.—(1) In this Order—

“the Act” means the Charities Act 1960(a);

“certificate” means a certificate that a case is a proper one for an appeal;

“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;

“the Commissioners” means the Charity Commissioners for England and Wales.

(2) References in this Order to the Commissioners shall, in relation to any matter in which the Minister of Education has acted under or by virtue of the Act, be construed as references to that Minister.

Assignment to Chancery Division

2. Charity proceedings and proceedings brought in the High Court by virtue of the Act shall be assigned to the Chancery Division and, subject to rule 3, be begun by originating summons.

Application for leave to appeal or to take charity proceedings

3.—(1) An application shall not be made under section 18 (11) of the Act for leave to appeal against an order of the Commissioners unless the applicant has requested the Commissioners to grant a certificate and they have refused to do so.

(2) An application under the said section 18(11) or under section 28(5) of the Act for leave to take charity proceedings must be made within 21 days after the refusal by the Commissioners of a certificate or, as the case may be, of an order authorising the taking of proceedings.

(3) The application must be made by lodging in the Chancery Registrars’ Office a statement showing—

(a) the name, address and description of the applicant;

(b) particulars of the order against which it is desired to appeal or of the proceedings which it is desired to take;

(c) the date of the Commissioners’ refusal to grant a certificate or an order authorising the taking of proceedings;

(d) the grounds on which the applicant alleges that it is a proper case for an appeal or for taking proceedings.

(4) The application may be made *ex parte* in the first instance and if it is made with the consent of any other party to the proposed appeal or proposed proceedings that fact shall be mentioned in the statement.

(5) If the judge on considering the application so directs, the Commissioners shall furnish him with a written statement of their reasons for refusing a certificate or, as the case may be, an order authorising the taking of proceedings, and a copy of any such statement shall be sent from the Chancery Registrars’ Office to the applicant.

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(6) Unless, after considering the applicant's statement and the statement (if any) of the Commissioners, the judge decides to grant the leave applied for without a hearing, the application shall be set down for hearing, and the hearing may be in chambers if the judge so directs.

(7) Where the application is determined without a hearing, a copy of the judge's order shall be sent from the Chancery Registrars' Office to the applicant and the Commissioners; and where the application is to be set down for hearing, notice of the day and time fixed for the hearing shall be sent from that Office to the applicant.

Appeal against order, etc. of Commissioners

4.—(1) An appeal against an order or decision of the Commissioners shall be heard and determined by a single judge.

(2) Such an appeal must be brought by originating summons to which the Attorney General, unless he is the appellant, shall be made a defendant in addition to any other person who is a proper defendant thereto.

(3) An originating summons under this rule must state the grounds of the appeal and, except with the leave of the judge hearing the appeal, the appellant shall not be entitled to rely on any ground not so stated.

Service on Commissioners

5. Any document required or authorised to be served on the Commissioners in proceedings to which this Order relates must be served on the Treasury Solicitor in accordance with Order 77, rule 4(2).

ORDER 109**THE ADMINISTRATION OF JUSTICE ACT 1960***Applications under Act*

1.—(1) Any of the following applications, that is to say—

(a) an application under section 2 of the Administration of Justice Act 1960(a), or under that section as applied by section 13 of that Act, to extend the time within which an application may be made to a Divisional Court for leave to appeal to the House of Lords under section 1 of that Act, or section 13 thereof, from an order or decision of that Court, and

(b) an application by a defendant under section 9(3) of that Act to a Divisional Court for leave to be present on the hearing of any proceedings preliminary or incidental to an appeal to the House of Lords under section 1 of that Act from a decision of that Court,

must be made to a Divisional Court except in vacation when it may be made to a judge in chambers.

(2) Any such application to a Divisional Court, if not made in the proceedings before the Divisional Court from whose order or decision the appeal in question is brought, must be made by originating motion in open court.

(3) Any such application to a judge in chambers must, in the case of such an application as is referred to in paragraph (1)(a), be made by summons and, in the case of such an application as is referred to in paragraph (1)(b), be made *ex parte* unless, in the latter case, the judge otherwise directs.

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(4) Notwithstanding anything in Order 8, rule 2(1), no notice of a motion by which such an application as is referred to in paragraph (1)(b) is made need be given to any party affected thereby unless the Divisional Court otherwise directs.

(5) Where any application to which this rule applies is made in vacation to a single judge and the judge refuses the application, the applicant shall be entitled to have the application determined by a Divisional Court.

Appeals under s. 13 of Act

2.—(1) Except as provided by paragraph (2), an appeal to a Divisional Court of the High Court under section 13 of the Administration of Justice Act 1960 shall be heard and determined by a Divisional Court of the Queen's Bench Division.

(2) An appeal under the said section 13 from an order or decision of a magistrates' court under section 54(3) of the Magistrates' Courts Act 1952(a) shall be heard and determined—

(a) where the order or decision was made to enforce an order of such a court under the Matrimonial Proceedings (Magistrates' Courts) Act 1960(b), by a Divisional Court of the Probate, Divorce and Admiralty Division;

(b) where the order or decision was made to enforce an order of such a court under the Guardianship of Infants Acts 1886 and 1925(c), by a Divisional Court of the Chancery Division.

(3) Order 55, rules 4(2) and 5, shall not apply in relation to an appeal to a Divisional Court under the said section 13.

(4) Unless the Court gives leave to the contrary, there shall be not more than 4 clear days between the date on which the order or decision appealed against was made and the day named in the notice of the originating motion for the hearing of the appeal.

(5) The notice must be served, and the appeal entered, not less than one clear day before the day named in the notice for the hearing of the appeal.

Release of appellant on bail

3.—(1) Where, in the case of an appeal under section 13 of the Administration of Justice Act 1960 to a Divisional Court or to the House of Lords from a Divisional Court, the appellant is in custody, the High Court may order his release on his giving security (whether by recognizance, with or without sureties, or otherwise and for such reasonable sum as the Court may fix) for his appearance, within 10 days after the judgment of the Divisional Court or, as the case may be, of the House of Lords, on the appeal shall have been given, before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.

(2) Order 79, rule 9(1) to (6) and (8) shall apply in relation to an application to the High Court for bail pending an appeal under the said section 13 to which this rule applies, and to the admission of a person to bail in pursuance of an order made on the application, as they apply in relation to an application to that Court for bail in criminal proceedings, and to the admission of a person to bail in pursuance of an order made on the application, but with the substitution, for references to the defendant, of references

(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 55. | (b) 8 & 9. Eliz. 2. c. 48.
(c) 49 & 50 Vict. c. 27; 15 & 16 Geo. 5. c. 45.

[Order 109

to the appellant, and, for references to the prosecutor, of references to the proper officer of the court from whose order or decision the appeal is brought and to the parties to the proceedings in that court who are directly affected by the appeal.

ORDER 110

THE LIMITATION ACT 1963

Judge in person to exercise jurisdiction

1.—(1) Subject to paragraph (2), the jurisdiction of the High Court to grant leave for the purposes of section 1 of the Limitation Act 1963(a) shall be exercised by a judge in chambers in person.

(2) Paragraph (1) shall not apply in relation to an application for the grant of leave for the purposes of the said section 1 made during the trial of the relevant action.

(3) In this Order “relevant action” has the same meaning as in section 2 of the Limitation Act 1963.

Application for leave

2.—(1) An application for the grant of leave for the purposes of the said section 1 made before the trial of the relevant action must be made by *ex parte* summons which shall, if the application is made before the commencement of the relevant action, be an *ex parte* originating summons.

(2) The summons by which any such application is made must specify the cause of action to which the application relates and must be supported by an affidavit to which, in the case of an application made before the commencement of the relevant action, the statement of claim proposed to be served in that action must be exhibited.

(3) The requirement in section 2(1) of the Limitation Act 1963 that an application for the leave of the Court for the purposes of section 1 thereof shall be made *ex parte* shall not apply if the application is made during the trial of the relevant action.

Copy of order granting leave to be served

3. Where the judge makes an order granting leave for the purposes of the said section 1 on an application made before the trial of the relevant action, a copy of the order must be served—

- (a) if the application was made before the commencement of that action, with the writ of summons by which that action was begun, and
- (b) if the application was made after the commencement of that action, on each defendant to that action, whether or not he has entered an appearance therein.

ORDER 111

THE NATIONAL INSURANCE ACT 1965 ; THE NATIONAL
INSURANCE (INDUSTRIAL INJURIES) ACT 1965*Judge by whom appeals and references to be heard*

1. Any appeal to the High Court against a decision of the Minister of Pensions and National Insurance (in this Order referred to as “the Minister”)

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on a question of law under the National Insurance Act 1965(a) or the National Insurance (Industrial Injuries) Act 1965(b), and any question of law referred to the High Court by the Minister under either of those Acts, shall be heard and determined by a single judge of the Queen's Bench Division.

Appeal: preliminary statement of facts by Minister

2. Any person who by virtue of section 65 or 73(4) of the National Insurance Act 1965 or section 35 of the National Insurance (Industrial Injuries) Act 1965 is entitled and wishes to appeal against a decision of the Minister on a question of law must within the prescribed period or within such further time as the Minister may allow serve on the Minister a notice requiring him to state a case setting out the facts on which his decision was based and his decision.

If within 21 days after receipt of notice of the decision a request is made to the Minister in accordance with regulations made under the Act in question to furnish a statement of the grounds of the decision, the prescribed period for the purpose of this rule shall be 21 days after receipt of that statement, and if no such request is made within 21 days after receipt of notice of the decision the prescribed period for that purpose shall be 21 days after receipt of that notice.

Special provisions as to appeals

3. Order 55 shall not apply in relation to an appeal under the said section 65, 73(4) or 35, but Order 56, rules 9 to 12, shall apply in relation to the case stated by the Minister for the purpose of any such appeal as they apply in relation to any other case stated by a Minister except that Order 56, rule 10(5) and (7), as so applied, shall have effect as if for the period of 14 days and 7 days therein specified there were substituted a period of 21 days.

Reference of question of law

4.—(1) Where under the said section 65, 73(4) or 35 the Minister refers to the High Court for decision any question of law, he must state that question together with the facts relating thereto in a case.

(2) Order 56, rules 9(1), 10(1), 11 and 12, shall apply in relation to a case stated under paragraph (1) of this rule as they apply in relation to any other case stated by a Minister.

(3) Notice of the originating motion by which proceedings for the determination of the question of law stated in the case are begun, together with a copy of the case, must be served by the Minister on every person as between whom and the Minister the question has arisen.

(4) Unless the Court having jurisdiction to determine the question of law otherwise directs, the motion shall not be heard sooner than 21 days after service of notice of the motion.

Powers of Court hearing appeal or reference

5.—(1) Without prejudice to Order 56, rule 11, as applied by rules 3 and 4 of this Order, the Court hearing an appeal or reference under the said section 65, 73(4) or 35 may order the case stated by the Minister to be returned to the Minister for him to hear further evidence.

(2) The Court hearing such an appeal or reference shall determine all questions arising thereon, and in the case of any such appeal may reverse, affirm or amend the decision appealed against or make such other order as it thinks fit.

APPENDIX A

FORMS

No. 1

General form of writ of summons for issue out of Central Office

(O. 6 r. 1)

In the High Court of Justice
Division

19 , No.

Between A.B. Plaintiff
and
C.D. Defendant

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other realms and territories Queen, Head of the Commonwealth, Defender of the Faith:

To C.D. of in the of

We command you that within 8 days after the service of this writ on you, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of A.B.; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness , Lord High Chancellor of Great Britain, the day of
19 .

Note:—This writ may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

DIRECTIONS FOR ENTERING APPEARANCE

The defendant may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Central Office, Royal Courts of Justice, Strand, London, W.C.2, or (2) by sending them to that Office by post. The appropriate forms may be obtained by sending a postal order for 11d. with an addressed envelope, foolscap size, to the Controller of Stamps, Royal Courts of Justice, Strand, London, W.C.2.

Indorsements to be made on writ before issue
Indorsement of claim

The plaintiff's claim is for

[If the plaintiff's claim is for a debt or liquidated demand only, the following indorsement must be added at the foot of that claim:]

And £ (or such sum as may be allowed on taxation) for costs, and also, if the plaintiff obtains an order for substituted service, the further sum of £ (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the plaintiff, his solicitor or agent within 8 days after service hereof (inclusive of the day of service), further proceedings will be stayed, but if it appears from the indorsement on the writ that the plaintiff is resident outside the scheduled territories, as defined by the Exchange Control Act 1947, or is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed and costs is paid into court within the said time and notice of such payment in is given to the plaintiff, his solicitor or agent.

[If the plaintiff sues, or the defendant is sued, in a representative capacity, this must be stated in the indorsement of claim.]

Indorsement as to solicitor and address

This writ was issued by _____ of
 solicitor for the said plaintiff whose address is _____
 [or This writ was issued by _____ of
 agent for _____ of
 solicitor for the said plaintiff whose address is _____]
 [or where the plaintiff sues in person This writ was issued 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 _____].

Indorsement as to service

This writ was served by me at _____ on the _____ day of _____ 19 ____ on the
 defendant C.D. on _____ the _____ day of _____ 19 ____
 Indorsed the _____ day of _____ 19 ____
 (Signed)
 (Address)

No. 2

General form of writ of summons for issue out of district registry
 (O. 6 r. 1)

In the High Court of Justice _____ 19 __, No.
 Division _____

DISTRICT REGISTRY

Between A.B.

Plaintiff

and

C.D.

Defendant

ELIZABETH THE SECOND, etc [as in No. 1].

To C.D. of _____ in the _____ of _____

We command you etc. [as in No. 1].

Witness [as in No. 1].

Note :—This writ etc. [as in No. 1].

DIRECTIONS FOR ENTERING APPEARANCE

If the defendant resides or carries on business, or (in the case of a limited company) has a registered office, within the district of the above-named district registry or the writ is indorsed with a statement that any cause of action in respect of which the plaintiff claims relief wholly or in part arose in that district, the defendant must enter an appearance in person or by a solicitor in the district registry and may do so either (1) by handing in the appropriate forms, duly completed, at the office of the District Registrar, [insert address of office], or (2) by sending them to that office by post.

If the defendant neither resides nor carries on business, nor (in the case of a limited company) has a registered office, within the district of the above-named district registry and the writ is not indorsed with a statement that any cause of action in respect of which the plaintiff claims relief wholly or in part arose in that district, the defendant may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the office of the District Registrar, or by sending them to that office by post, or (2) by handing in the said forms, duly completed, at the Central Office, Royal Courts of Justice, Strand, London, W.C.2, or by sending them to that office by post.

The appropriate forms may be obtained by sending a postal order for 11d. with an addressed envelope, foolscap size, to (1) The District Registrar, High Court of Justice, [insert address of District Registry], if the appearance is to be entered in the District Registry, or (2) The Controller of Stamps, Royal Courts of Justice, Strand, London, W.C.2, if the appearance is to be entered in London.

Indorsements to be made on writ before issue**Indorsement of claim****[As in No. 1]****Indorsement as to place where cause of action arose**

[The cause of action] [One of the causes of action] in respect of which the plaintiff claims relief in this action wholly or in part arose in (*insert here name of place*) in the district of the above-named district registry.

Other indorsements**[As in No. 1]****No. 3**

Writ of summons indorsed with statement of claim
(O. 6 r. 1)

[As in No. 1 or 2 except that the following note shall be inserted after the directions for entering an appearance and that a statement of claim in the following form shall be substituted for the indorsement of claim.]

Note :—If the defendant enters an appearance, then, unless a summons for judgment is served on him in the meantime, he must also serve a defence on the solicitor for the plaintiff within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

Statement of claim

The plaintiff's claim is

Particulars:—

(Signed)

[If the plaintiff's claim is for a debt or liquidated demand only, the indorsement in Form No. 1 beginning "And £" must be added.]

No. 4

General form of writ of summons for use in probate action
(O. 6 r. 1)

In the High Court of Justice
Probate, Divorce and
Admiralty Division
(Probate)

19 , (P), No.

In the estate of E.F.

deceased

Between A.B.

Plaintiff

and

C.D.

Defendant

ELIZABETH THE SECOND, etc. [as in No. 1].

To C.D. of in the of

We command you etc. [as in No. 1].

Witness [as in No. 1].

Note :—This writ etc. [as in No. 1].

DIRECTIONS FOR ENTERING APPEARANCE

The defendant may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Principal Probate Registry, Somerset House, Strand, London, W.C.2, or (2) by sending them to that office by post. The appropriate forms may be obtained by sending a postal order for 11d. with an addressed envelope, foolscap size, to the Principal Probate Registry, Somerset House, Strand, London, W.C.2.

Indorsements to be made on writ before issue
Indorsement of claim

The plaintiff claims [to be executor of the last will dated the _____ day of _____, deceased, or as may be] of E.F., late of _____, day of _____ and to have [the said will established or as may be].‡

This writ is issued against you as [the lawful brother and one of the persons entitled to share in the estate of the said deceased in the event of an intestacy and because you have entered a caveat or as may be].

Indorsement as to solicitor and address
[As in No. 1]

Indorsement as to service

‡[NOTE. The plaintiff's statement of claim may be indorsed on the writ. If this is done it should be clearly indicated because the time for service of the defendant's defence is affected. It is sufficient to add below the statement of the nature of the plaintiff's interest in the indorsement of claim either (1) the words "The above is the plaintiff's statement of claim" or (2) the heading "Plaintiff's statement of claim" followed by the statement, whichever is appropriate.]

No. 5

Writ of summons which, or notice of which,
is to be served out of jurisdiction

(O. 6 r. 1)

[Heading as in No. 1, 2 or 4]

ELIZABETH THE SECOND, etc. [as in No. 1].

To C.D. of

We command you, C.D., that within [insert here the number of days fixed by the order of the Court giving leave for service out of the jurisdiction] days after service of this writ [or notice of this writ] on you, inclusive of the day of service, you do cause an appearance to be entered for you in our High Court of Justice in an action at the suit of A.B., and take notice that in default of your so doing the plaintiff may proceed therein and judgment may be given in your absence.

Witness [as in No. 1].

Note :—This writ may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

DIRECTIONS FOR ENTERING APPEARANCE

[As in No. 1, 2 or 4, whichever is appropriate]

Indorsements to be made on writ before issue

‡ *Indorsement of claim*

The plaintiff's claim is for

[If the plaintiff's claim is for a debt or liquidated demand only, the following indorsement must be added at the foot of that claim:]

And £ _____ (or such sum as may be allowed on taxation) for costs, and also, if the plaintiff obtains an order for substituted service, the further sum of £ _____ (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the plaintiff, his solicitor or agent within [insert here the number of days limited for appearing] days after service [of notice] hereof (inclusive of the day of service), further proceedings will be stayed,

but if it appears from the indorsement on the writ that the plaintiff is resident outside the scheduled territories, as defined by the Exchange Control Act 1947, or is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed and costs is paid into court within the said time and notice of such payment is given to the plaintiff, his solicitor or agent.

[If the plaintiff sues, or the defendant is sued, in a representative capacity, this must be stated in the indorsement of claim.]

Indorsement as to solicitor and address

[As in No. 1]

Indorsement as to service

This writ [or notice of this writ] was served by me at
on the defendant C.D. on the day of 19

Indorsed the day of 19 .
(Signed)
(Address)

‡ *[If writ is indorsed with a statement of claim, the form should be modified to comply with the directions given in No. 3 or 4, whichever is appropriate.]*

No. 6

Notice of writ of summons to be served
out of jurisdiction
(O. 11 r. 3)

[Heading as in action]

To C.D. of

Take notice that A.B. of has begun an action against you, C.D., in Her Majesty's High Court of Justice in England by writ of summons dated the day of 19 ; which writ is indorsed as follows [*copy the indorsements*] and you are required within days after receipt of this notice, inclusive of the day of receipt, to cause an appearance to be entered for you in the said Court to the said action, and in default of your so doing the said A.B. may proceed therein and judgment may be given in your absence.

You may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Central Office [*or the Admiralty Registry*], Royal Courts of Justice, Strand, London, W.C.2. [*or the Principal Probate Registry, Somerset House, Strand, London, W.C.2*], or (2) by sending them to that office by post.

[If writ is indorsed with a statement of claim, add :

If you enter an appearance, then, unless a summons for judgment is served on you in the meantime, you must also serve a defence on [the solicitor for] the plaintiff within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against you without notice.]

(Signed) A.B.

or X.Y. of

Solicitor for A. B.

This notice was served by me at
on the defendant C.D. on the day of 19

Indorsed the day of 19 .
(Signed)
(Address)

This summons was taken out by
of solicitor for the said plaintiff whose address
is [or This summons was taken out
by of agent for
of solicitor for the said plaintiff whose
address is] [or 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 is (state occupation) and (if the plaintiff does not reside
within the jurisdiction) whose address for service is].

DIRECTIONS FOR ENTERING APPEARANCE

The defendant may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Central Office, Royal Courts of Justice, Strand, London, W.C.2, or (2) by sending them to that office by post. The appropriate forms may be obtained by sending a postal order for 11d. with an addressed envelope, foolscap size, to the Controller of Stamps, Royal Courts of Justice, Strand, London, W.C.2.

No. 9

Originating summons issued out of district registry—appearance required
(O. 7 r. 2)

In the High Court of Justice 19 , No.
Division
[Group]

DISTRICT REGISTRY

[In the matter of]
Between A.B. Plaintiff
and
C.D. Defendant
To C.D. of in the of
[As in No. 8]

DIRECTIONS FOR ENTERING APPEARANCE

A defendant who resides or carries on business, or (in the case of a limited company) has a registered office, within the district of the above-named district registry must enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the office of the District Registrar, [insert address of office], or (2) by sending them to that office by post.

A defendant who neither resides nor carries on business, nor (in the case of a limited company) has a registered office, within the district of the above-named district registry may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the office of the District Registrar, or by sending them to that office by post, or (2) by handing in the said forms, duly completed, at the Central Office, Royal Courts of Justice, Strand, London, W.C.2, or by sending them to that office by post.

The appropriate forms may be obtained by sending a postal order for 11d. with an addressed envelope, foolscap size, to (1) The District Registrar, High Court of Justice, [insert address of District Registry], if the appearance is to be entered in the District Registry, or (2) The Controller of Stamps, Royal Courts of Justice, Strand, London, W.C.2, if the appearance is to be entered in London.

No. 10

Originating summons—appearance not required

(O. 7 r. 2)

In the High Court of Justice 19 , No.

Division

[Group]

[In the matter of]

Between A.B.

Plaintiff

and

C.D.

Defendant

Let C.D. of attend before the Master [or Judge] in chambers, Central Office [or in the case of proceedings in the Chancery Division before Master at the chambers of the Judge, Room No.] [or in the case of Admiralty proceedings before the Admiralty Registrar [or Judge] in chambers], Royal Courts of Justice, Strand, London, W.C.2, on day, the day of 19 , at o'clock, on the hearing of an application by the plaintiff that

Dated the day of 19 .

Note :—This summons may not be served more than 12 calendar months [or if the plaintiff is applying for a new tenancy under section 24 of the Landlord and Tenant Act 1954 one calendar month] after the above date unless renewed by order of the Court.

This summons was taken out by of solicitor for the said plaintiff whose address is [or This summons was taken out by of agent for of solicitor for the said plaintiff whose address is] [or where the plaintiff sues 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 :—If a defendant does not attend personally or by his counsel or solicitor at the time and place above mentioned such order will be made as the Court may think just and expedient.

No. 11

Ex parte originating summons

(O. 7 r. 2)

In the High Court of Justice 19 , No.

Division

[Group]

In the matter of

Let all parties concerned attend before Master at the chambers of the Judge, Room No. , [or in the case of proceedings in the Queen's Bench Division before the Master [or Judge] in chambers, Central Office] Royal Courts of Justice, Strand, London, W.C.2, on day, the day of 19 , at o'clock, on the hearing of an application by A.B. that

Dated the day of 19 .

This summons was taken out by of [agent for of] solicitor for the applicant whose address is

No. 12

Notice of appointment to hear originating summons
(O. 28 r. 2)

[Heading as in summons]

To [name of defendant] of

Take notice that the originating summons issued herein on the day of 19 , will be heard by the Judge [or Master or Admiralty Registrar or District Registrar] at Room No. , Royal Courts of Justice, Strand, London, W.C.2 [or the District Registry of the High Court of Justice, at], on day, the day of 19 , at o'clock. You may attend in person or by your solicitor or counsel. If you fail to attend, such order will be made as the Court may think just and expedient.

Dated the day of 19 .

(Signed)

[Agent for]
Solicitor for the plaintiff

No. 13

Notice of originating motion
(O. 8 r. 3)

In the High Court of Justice 19 , No.

Division

[Group]

In the matter of and

In the matter of

Take notice that the High Court of Justice, Division, at the Royal Courts of Justice, Strand, London, W.C.2, will be moved [before his Lordship Mr. Justice] at the expiration of days from the service upon you of this notice [or on day, the day of 19 , at the sitting of the Court] or so soon thereafter as counsel can be heard, by counsel on behalf of A.B. for an order that [or 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] 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

No. 14

Memorandum of Appearance

(O. 12 r. 3)

This form should be used only where the writ was issued in London. There is a special form for use in District Registry actions.

To be completed in duplicate and delivered or sent to the Writ, Appearance and Judgment Department, Central Office, Royal Courts of Justice, Strand, London, W.C.2 or (probate action) to the Principal Probate Registry, Somerset House, Strand, London, W.C.2 or (Admiralty action) to the Admiralty Registry, Royal Courts of Justice, Strand, London, W.C.2.

¹ Copy year, letter and number from writ.

In the High Court of Justice

19 . . . , No. ¹

² Enter name of Division as shown in writ.

²Division

Between

³ Copy name(s) of plaintiff(s) from writ.

and

³ Plaintiff(s)

⁴ Copy name(s) of defendant(s) from writ.

Please enter an Appearance for

⁴ Defendant(s)

⁵ Give full name of defendant wishing to appear (see Note 1 on back).

;

⁶ Give name by which defendant is described in writ if this differs from defendant's full name, otherwise delete words in square brackets.

[sued as⁶

]

in this Action

Dated the . . . day of . . . , 19 . . .

⁷ To be signed by the defendant or solicitor entering the appearance.

Signed⁷

⁸ A defendant appearing in person must give his residence and, if he does not reside in England or Wales, some other place in England or Wales to which communications for him should be sent. Where the defendant appears by solicitor, the solicitor's place of business in England or Wales should be given and, if he is the agent of another solicitor, the name or firm and place of business of the solicitor for whom he is acting.

Whose address for service is⁸

[and who is agent for

]

N.B.—Additional notes for the guidance of defendants seeking to enter an appearance are given on the back. Please read them carefully. The form may have to be returned if any of the information required is omitted or given incorrectly. The delay may result in judgment being entered against the defendant. If judgment is entered, the defendant or his solicitor may have to pay the costs of applying to set it aside.

(Back)

ADDITIONAL NOTES

1. The defendant must give his or her full name and a female defendant must add her description, such as spinster, married woman, widow or divorced.

2. Where the defendant is a firm, the appearance must be entered by the individual partners by name with the description "Partner in the firm of . . .".

3. Where the defendant is an individual trading in a name other than his own, the appearance must be entered by him in his own name with the addition of the description "Trading as . . .".

4. Where the defendant is a limited liability company, or an infant or other person under disability, the appearance must be entered by a solicitor.

5. If the defendant has no defence or admits the plaintiff's claim, the entry of appearance will delay judgment and may increase the costs payable by the defendant. Any proposal for the payment of a debt by instalments or otherwise must be made direct to the plaintiff or his solicitor and not to the court.

6. A defendant who wishes to appear in person may obtain help in completing this form from the Central Office of the Royal Courts of Justice, Strand, London, W.C.2, or from any District Registry of the High Court.

7. Where the defendant is unable to give the number of the action or any other information required to identify it, the writ served on the defendant should be produced for the court's inspection when the appearance is entered.

8. Where the appearance is being entered by leave of the court, a copy of the order granting leave must accompany this form.

9. These notes deal only with the more usual cases. In cases of any difficulty it is advisable to attend at the court office for the purpose of entering an appearance.

No. 15

Memorandum of Appearance for use in District Registry Action
(O. 12 r. 3)

*To be completed in duplicate and delivered or sent to the appropriate office
(see note 1 on the back)*

¹ Copy year, letter and number from writ.	In the High Court of Justice	19 . . . , No. ¹
² Enter name of Division as shown in writ.		² Division
³ Enter name of District Registry as shown in writ.		³ District Registry
	Between	
⁴ Copy name(s) of plaintiff(s) from writ.		⁴ Plaintiff(s)
	and	
⁵ Copy name(s) of defendant(s) from writ.		⁵ Defendant(s)
	Please enter an Appearance for	
⁶ Give full name of defendant wishing to appear (see Note 2 on back).	⁶	
⁷ Give name by which defendant is described in writ if this differs from defendant's full name, otherwise delete words in square brackets.	[sued as ⁷	
	in this Action	

⁸The words in square brackets should be left in only where applicable and where the appearance is entered in London, otherwise they should be struck out.

8[The defendant neither resides nor carries on business nor has a registered office within the district of the above named District Registry and the writ is not indorsed with a statement that a cause of action in respect of which relief is claimed by the writ wholly or in part arose in that district. The name of the plaintiff, or his solicitor, and his address for service is⁹

⁹ Copy particulars from writ.

Dated the _____ day of _____, 19 ____]

¹⁰ To be signed by the defendant or solicitor entering the appearance.

Signed¹⁰

¹¹ A defendant appearing in person must give his residence and, if he does not reside in England or Wales, some other place in England or Wales to which communications for him should be sent. Where the defendant appears by solicitor, the solicitor's place of business in England or Wales should be given and, if he is the agent of another solicitor, the name or firm and place of business of the solicitor for whom he is acting.

Whose address for service is¹¹

[and who is agent for _____]

N.B.—Additional notes for the guidance of defendants seeking to enter an appearance are given on the back. Please read them carefully. The form may have to be returned if any of the information required is omitted or given incorrectly. The delay may result in judgment being entered against the defendant. If judgment is entered, the defendant or his solicitor may have to pay the costs of applying to set it aside.

(Back)

ADDITIONAL NOTES

1. Where the writ was issued in a district registry and either (A) the defendant resides, or carries on business, or (in the case of a body corporate) has a registered office, in the district of the above-named district registry, or (B) it is stated on the writ that a cause of action in respect of which relief is claimed by the writ wholly or in part arose in that district, an appearance may be entered by delivering or sending this form in duplicate to the District Registrar, High Court of Justice, at the district registry mentioned in the writ. If the defendant does not reside, carry on business or have a registered office in the district of the above-named district registry and the writ does not state that a cause of action in respect of which relief is claimed by the writ wholly or in part arose in that district, an appearance may be entered by delivering or sending the form in duplicate to the District Registrar, or to the Writ, Appearance and Judgment Department, Central Office, Royal Courts of Justice, Strand, London, W.C.2, or, in the case of an Admiralty action, to the Admiralty Registry, Royal Courts of Justice, Strand, London, W.C.2.

2. The defendant must give his or her full name and a female defendant must add her description, such as spinster, married woman, widow or divorced.

3. Where the defendant is a firm, the appearance must be entered by the individual partners by name with the description "Partner in the firm of . . .".

4. Where the defendant is an individual trading in a name other than his own, the appearance must be entered by him in his own name with the addition of the description "Trading as . . .".

5. Where the defendant is a limited liability company, the appearance must be entered by a solicitor.

6. If the defendant has no defence or admits the plaintiff's claim, the entry of appearance will delay judgment and may increase the costs payable by the defendant. Any proposal for the payment of a debt by instalments or otherwise must be made direct to the plaintiff or his solicitor and not to the court.

7. A defendant who wishes to appear in person may obtain help in completing this form from the Central Office of the Royal Courts of Justice, Strand, London, W.C.2, or from any District Registry of the High Court.

8. Where the defendant is unable to give the number of the action or any other information required to identify it, the writ served on the defendant should be produced for the court's inspection when the appearance is entered.

9. Where the appearance is being entered by leave of the court, a copy of the order granting leave must accompany this form.

10. These notes deal only with the more usual cases. In cases of any difficulty it is advisable to attend at the court office for the purpose of entering an appearance.

No. 16

Memorandum of appearance in action begun in county court and transferred to High Court

(O. 78 r. 3)

[As in No. 14 or, if action has been ordered to proceed in district registry, No. 15 but substituting for the request to enter appearance the following:—]

Please enter an appearance for [full name of defendant wishing to appear] in this action which was begun in the county court of _____ and was transferred to the High Court by order dated _____

19 .

No. 17

Notice to be indorsed on copy of counterclaim

(O. 15 r. 3 (6))

To X.Y.

Take notice that, if you intend to defend this counterclaim, an appearance must be entered to the counterclaim on your behalf within 8 days [or if the counterclaim is to be served out of the jurisdiction insert here the time fixed by the order giving leave to serve the counterclaim out of the jurisdiction] after the service of this defence and counterclaim on you, inclusive of the day of service, otherwise judgment may be given against you without further notice.

DIRECTIONS FOR ENTERING APPEARANCE

The person served with this counterclaim may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at [here insert the name and address of the appropriate office specified in O. 15 r. 3(4)], or (2) by sending them to that office by post. The appropriate forms may be obtained by sending a postal order for 11d. with an addressed envelope, foolscap size, to the [Controller of Stamps, Royal Courts of Justice, Strand, London, W.C.2] [District Registrar, High Court of Justice, _____].

No 18

Memorandum of appearance to counterclaim

(O. 15 r. 3)

[As in No. 14 or 15 but substituting for the title of the action the following:—]

Between

Plaintiff(s)
and
Defendant(s)

(by original action)

And between
the said

Plaintiff(s)
and
Defendant(s)

(by counterclaim)

[and substituting for the request to enter appearance the following:—]

Please enter an appearance for *[full name of defendant to counterclaim wishing to appear]* to the counterclaim of the above-named defendant in this action.

No. 19

Memorandum of appearance of person added as defendant

(O. 15 r. 8)

[As in No. 14 or 15 but substituting for the title of the action the following:—]

Between

Plaintiff(s)
and
Defendant(s)

And between

Plaintiff(s)
and
Defendant(s)

(By original writ and by order)

[and substituting for the request to enter appearance the following:—]

Please enter an appearance for *[full name of added defendant]* who has been served with an order dated the day of 19 making him a defendant to the action.

No. 20

Third party notice claiming contribution or indemnity or other relief or remedy

(O. 16)

In the High Court of Justice

19 , No.

Division

[DISTRICT REGISTRY]

Between A.B.

Plaintiff

and
C.D.

Defendant

and
T.P.

Third Party

THIRD PARTY NOTICE

[Issued pursuant to the order of [Master] dated the
day of .]

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 if you wish to dispute the plaintiff's claim against the defendant, or the defendant's claim against you, an appearance must be entered on your behalf within 8 days [*or if the notice is to be served out of the jurisdiction insert here the time for appearance fixed by the order giving leave to issue the notice and serve it out of the jurisdiction*] after the service of this notice on you, inclusive of the day of service, otherwise you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability to [*indemnify the defendant or to contribute to the extent claimed or to stating the relief or remedy sought*] and will be bound by any judgment or decision given in the action, and the judgment may be enforced against you in accordance with Order 16 of the Rules of the Supreme Court 1965.

Dated the day of 19 .

(Signed)

Solicitor for the defendant.

DIRECTIONS FOR ENTERING APPEARANCE

The person served with this notice may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the [*here insert the name and address of the appropriate office specified in O. 16 r. 3 (3)*], or (2) by sending them to that office by post. The appropriate forms may be obtained by sending a postal order for 11d. with an addressed envelope, foolscap size, to the [Controller of Stamps, Royal Courts of Justice, Strand, London, W.C.2] [District Registrar, High Court of Justice,].

No. 21

Third party notice where question or issue to be determined

(O. 16)

[*Title etc. as in No. 20 down to end of first paragraph*]

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 take notice that if you wish to be heard on the said question or issue or to dispute the defendant's liability to the plaintiff or your liability to the defendant, an appearance must be entered on your behalf within 8 days [or if the notice is to be served out of the jurisdiction, insert here the time for appearance fixed by the order giving leave to issue the notice and serve it out of the jurisdiction] after the service of this notice on you, inclusive of the day of service, otherwise you will be bound by any judgment or decision given in the action in so far as it is relevant to the said question or issue, and the judgment may be enforced against you in accordance with Order 16 of the Rules of the Supreme Court 1965.

Dated the day of 19 .

(Signed)

Solicitor for the defendant.

DIRECTIONS FOR ENTERING APPEARANCE

[As in No. 20]

No. 22

Memorandum of appearance of third party

(O. 16 r. 3)

[As in No. 14 or 15 but substituting for the title of the action, the title on the third party notice and substituting for the request to enter appearance the following :—]

Please enter an appearance for [full name of third party] to the third party notice issued in this action on 19 by the defendant and served on the said on 19 .

No. 23

Notice of payment into court

(O. 22 rr. 1, 2)

[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 .

4. Of the documents in the said schedule 2, those numbered in that schedule were last in the plaintiff's [or 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 [or defendant], nor his 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 at [the office of the 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 [or plaintiff] C.D. and his solicitor.

Served the day of 19 , by of solicitor for the [plaintiff] [defendant].

No. 27

Affidavit verifying list of documents

(O. 24 r. 5)

[Heading as in cause or matter]

I, the above-named plaintiff [or 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 [or defendant].

No. 28

Writ of subpoena

(O. 38 r. 14)

[Heading as in cause or matter]

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other realms and territories Queen, Head of the Commonwealth, Defender of the Faith:

To *[names of witnesses]*

We command you to attend [at the Royal Courts of Justice, Strand, London at the sittings of the Division of our High Court of Justice] or [at name of assize town and address of court before our justices assigned to take the assizes in and for the county of] 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]‡.

Witness the day of Lord High Chancellor of Great Britain 19 .

Issued on the day of 19 by [agent for] solicitor for the .

‡ *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]*.

[Note: If the writ is to be served in Scotland or Northern Ireland in pursuance of an order of the Court insert after We command you the words wherever you shall be within the United Kingdom and add at the foot of the writ the following:—Take notice that this writ is issued by the special order of the High Court of Justice in England dated the day of 19 , pursuant to section 49 of the Supreme Court of Judicature (Consolidation) Act 1925.]

No. 29

Writ of subpoena: proceedings in chambers

(O. 38 r. 14)

*[Heading as in cause or matter]*ELIZABETH THE SECOND *[as in No. 28]*.To *[names of witnesses]*

We command you to attend before [Mr. Justice] in chambers, Royal Courts of Justice, Strand, London on day the day of 19 at and so from day to day until your evidence shall have been taken, to give evidence on behalf of the [plaintiff] or [defendant] in the above-named cause [and we also command you to bring with you and produce at the time and place aforesaid *describe the documents or things to be produced*].

Witness *[as in No. 28]*.Issued *[as in No. 28]*.

No. 30

Writ of subpoena issued under enactment

(O. 38 r. 14)

In the matter of C.D. a [solicitor]

and

In the matter of the Act

ELIZABETH THE SECOND [*as in No. 28*].To [*name of witness*].

We command you to attend before the Disciplinary Committee constituted under the [Medical Act 1956, Solicitors Act 1957, Dentists Act 1957, *or as may be*] at [*address where Committee will be sitting*] on the day of 19 at o'clock and so from day to day until the application in the above matter is heard, to give evidence on behalf of [And we also command you to bring with you and produce at the time and place aforesaid *describe documents or things to be produced*].

Witness [*as in No. 28*].Issued [*as in No. 28*].[*Note: See the note to No. 28*].

No. 31

Summons for examination within jurisdiction
of witness before trial

(O. 39 r. 1)

[*Heading as in cause or matter*]

Let all parties concerned attend the Master in chambers at the Central Office, Royal Courts of Justice, Strand, London on the day of 19 at o'clock on the hearing of an application on the part of that A.B. a witness on behalf of the be examined forthwith before one of the examiners of the Court [*or an examiner to be agreed upon or a master*] upon the usual terms, and that the costs of this application be [*costs in the cause*].

Dated the day of 19 .

This summons was taken out by of
solicitor for theTo the above named [and
his solicitor.]

No. 32

Order for examination within jurisdiction
of witness before trial

(O. 39 r. 1)

[Heading as in cause or matter]

On hearing [the 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 or a master], the plaintiff's [or defendant's] solicitor
giving to the defendant's [or plaintiff's] 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 Central Office of the Supreme 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 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 .

No. 33

Summons for issue of letter of request to judicial
authority out of jurisdiction

(O. 39 r. 2)

[Heading as in cause or matter]

Let all parties [as in No. 31] on the hearing of an application on the part
of for an order that a letter of request shall issue
to the proper judicial authority of for the examination of
E.F. and G.H. and other witnesses on the plaintiff's [or the defendant's] behalf
at in [name of country], and that the action be stayed
until the return of the said letter of request and examination, and that the
costs of and incidental to this application and the said letter of request and
examination be costs in the cause.

Dated, etc. [conclude as in No. 31].

No. 34

Order for issue of letter of request to judicial
authority out of jurisdiction

(O. 39 r. 2)

[Heading as in cause or matter]

On hearing [as in No. 32].

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 Central Office of the Supreme 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 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 applica-
tion for this order and the said letter of request and examination be [costs in
the cause].

Dated the day of 19 .

No. 35

Letter of request for examination of witness out of jurisdiction

(O. 39 r. 3)

To the Competent Judicial Authority of
in the _____ of _____ .

Whereas an action is now pending in the _____ Division of the High
Court of Justice in England, 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 _____ the Senior Master of the Supreme Court
of Judicature in England 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 inter-
rogatories and *viva voce* upon the subject-matter thereof or arising out of the
answers thereto] such witnesses as may, after due notice in writing, be produced
on their behalf, and the other party to cross-examine the said witnesses [upon
cross-interrogatories and *viva voce*] and the party producing the witness for
examination to re-examine him *viva voce*.

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 British Consul from whom the same was received [or Her Majesty's
Secretary of State for Foreign Affairs or for Commonwealth Relations or for
the Colonies] for transmission to the Supreme Court of Judicature.

And I further request that you will cause me, or the agents of the parties
if appointed, to be informed of the date and place where the examination is to
take place.

Dated the _____ day of _____ 19 .

No. 36

Summons for appointment of examiner to take
evidence of witness out of jurisdiction
(O. 39 r. 2)

[*Heading as in cause or matter*]

Let all parties [*as in No. 31*] on the hearing of an application on the part of _____ for an order that [the British Consul at _____ in (*name of country*) or his deputy] [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 _____ and _____, witnesses on behalf of the _____, at _____ in [*name of country*] on the usual terms and that the costs of and incidental to this application and the said examination be costs in the cause.

Dated, etc. [*conclude as in No. 31*].

No. 37

Order for appointment of examiner to take evidence
of witness out of jurisdiction
(O. 39 r. 2)

[*Heading as in cause or matter*]

On hearing the solicitors on both sides and on reading the affidavit of _____ filed the _____ day of _____

19 .

It is ordered that the British 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 English procedure. The _____ solicitors to give to the _____ days' notice in writing of the date on which they propose to send out this order to _____ for execution, and that _____ days after the service of such notice the solicitors for the 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 Senior Master of the Supreme Court of Judicature [or the Admiralty Registrar], Royal Courts of Justice, London. [or the Registrar of the District Registry of the High Court at (*insert address*) or the Senior Registrar, Principal Probate Registry, Somerset House, Strand, London], 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 .

No. 41

Default judgment in action relating to detention of goods

(O. 13 r. 3 ; O. 19 r. 4 ; O. 42 r. 1)

[Heading as in action]

The day of 19 .

No appearance having been entered [*or no defence having been served*] by the defendant herein,

It is this day adjudged that the defendant do deliver to the plaintiff the goods described in the writ of summons [*or statement of claim*] as [*description of goods*] or pay the plaintiff the value of the said goods to be assessed [and also damages for their detention to be assessed].

or

It is this day adjudged that the defendant do pay the plaintiff the value of the goods described in the writ of summons [*or statement of claim*] to be assessed [and also damages for their detention to be assessed].

The value of the said goods having been assessed at £ [and damages at £] as appears by the [official referee's *or* master's certificate *or as may be*] filed the day of 19 ,

It is adjudged that the defendant do pay the plaintiff £ and costs to be taxed.

The above costs, etc. [*as in No. 39*].

[*Note :—See the note to No. 40.*]

No. 42

Default judgment in action for possession of land

(O. 13 r. 4 ; O. 19 r. 5 ; O. 42 r. 1)

[Heading as in action]

The day of 19 .

No appearance having been entered [*or no defence having been served*] by the defendant herein, it is this day adjudged that the defendant do give the plaintiff possession of the land described in the writ of summons [*or statement of claim*] as and pay the plaintiff £ costs [*or costs to be taxed*].

The above costs, etc. [*as in No. 39*].

No. 43

Final judgment after assessment of damages, etc.

(O. 42 r. 1)

[Heading as in action]

The day of 19 .

The plaintiff having on the day of 19 obtained interlocutory judgment herein against the defendant for damages [*or as may be*] to be assessed, and the amount found due to the plaintiff having been certified at £ as appears by the [official referee's *or* master's certificate *or as may be*] filed the day of 19

It is this day adjudged that the defendant do pay the plaintiff £ and costs to be taxed.

The above costs, etc. [*as in No. 39*].

No. 44

Judgment under Order 14

(O. 14 r. 3 ; O. 42 r. 1)

[Heading as in action]

The day of 19 .

The defendant having entered appearance herein and the Court having under Order 14, rule 3 ordered that judgment as hereinafter provided be entered for the plaintiff against the defendant.

It is this day adjudged that the defendant do pay the plaintiff £ and £ costs *[or costs to be taxed]*

or

pay the plaintiff damages to be assessed and costs to be taxed

or

deliver to the plaintiff the goods described in the writ of summons *[or statement of claim]* as *[or pay the plaintiff the value of the said goods to be assessed]* *[and also damages for their detention to be assessed]* and costs to be taxed

or

give the plaintiff possession of the land described in the writ of summons *[or statement of claim]* as and costs to be taxed.

The above costs, etc. *[as in No. 39]*.

No. 45

Judgment after trial before judge without jury

(O. 42 r. 1)

[Heading as in action]

Dated and entered the day of 19 .

This action having been tried before the Honourable Mr. Justice without a jury, at the Royal Courts of Justice *[or as may be]*, and the said Mr. Justice having on the day of 19 ordered that judgment as hereinafter provided be entered for the plaintiff *[or defendant]* *[and directed that execution be stayed for the period and on the terms hereinafter provided]*

It is adjudged that the defendant do pay the plaintiff £ and his costs of action to be taxed *[or that the plaintiff do pay the defendant his costs of defence to be taxed or as may be according to the judge's order]*.

[It is further adjudged that execution be stayed for days and if within that time the gives notice of appeal and sets down the appeal, execution be further stayed until the determination of the appeal or as may be according to the judge's direction].

The above costs, etc. *[as in No. 39]*.

No. 46

Judgment after trial before judge with jury

(O. 42 r. 1)

[Heading as in action]

Dated and entered the day of 19 .

This action having been tried before the Honourable Mr. Justice with a jury of the county of and the jury having found *[state findings as in officer's certificate]* and the said Mr. Justice having on the day of 19 ordered that judgment as hereinafter provided be entered for *[etc. as in No. 45]*

No. 47

Judgment after trial before master or referee

(O. 42 r. 1)

[Heading as in action]

Dated and entered the _____ day of _____ 19 .

This action by an order dated the _____ day of _____ 19 having been ordered to be tried before _____ Esq., one of the masters [or official referees] of the Supreme Court and the said master [or official referee] having tried the said action and having by his certificate dated the _____ day of _____ 19 directed that judgment as hereinafter provided be entered for the plaintiff [or defendant]

It is adjudged that [*as in No. 45 according to the master's or official referee's certificate*].

No. 48

Judgment after decision of preliminary issue

(O. 33 r. 7 ; O. 42 r. 1)

[Heading as in cause or matter]

Dated and entered the _____ day of _____ 19 .

The issue [or question] arising in this cause [or matter] by the order dated the _____ day of _____ 19 ordered to be tried before _____ having on the _____ day of _____ 19 been tried before the said _____ and the said _____ having found _____ and having ordered that judgment as hereinafter provided be entered for the _____ [*or having dismissed the cause or matter*]

It is adjudged that [the defendant do pay the plaintiff £ _____ and his costs of action to be taxed] [the plaintiff do pay the defendant his cost of defence to be taxed] *or as may be according to the order made.*

No. 49

Judgment for liquidated sum against personal representative

(O. 42 r. 1)

[Heading as in action]

Dated and entered the _____ day of _____ 19 .

[Recital as in No. 39, 43-48 according to the circumstances in which judgment was obtained.]

It is adjudged that the defendant as executor [or administrator] of the above named _____ deceased do pay the plaintiff £ _____ and costs to be taxed, the said sum and costs to be levied of the real and personal estate within the meaning of the Administration of Estates Act 1925 of the deceased at the time of his death come to the hands of the defendant as such executor [or administrator] to be administered, if he has or shall hereafter have so much thereof in his hands to be administered, and if he has not so much thereof in his hands to be administered, then, as to the costs aforesaid, to be levied of the goods, chattels and other property of the defendant authorised by law to be seized in execution [*or as may be according to the order made*].

The above costs, etc. [*as in No. 39*].

No. 53

Writ of fieri facias
(O. 45 r. 12)*[Heading as in action]*

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other realms and territories Queen, Head of the Commonwealth, Defender of the Faith.

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. in your county authorised by law to be seized in execution you cause to be made the sums of £ _____ and £ _____ for costs of execution and also interest on £ _____ at the rate of £4 per cent. 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 to A.B.

Witness _____ Lord High Chancellor of Great Britain,
the _____ day of _____ 19 _____ .

This writ was issued by _____ of _____ [*agent for _____*] solicitor for _____ the _____ [*or this writ was issued by A.B. the [plaintiff] in person who resides at _____*].

† *The words in this set of square brackets are to be omitted where the judgment or order is for less than £40 and does not entitle the plaintiff to costs against the person against whom the writ is issued.*

No. 54

Writ of fieri facias on order for costs.
(O. 45 r. 12)*[Heading as in cause or matter]*

ELIZABETH THE SECOND [*as in No. 53*].

To the sheriff of _____ greeting:

Whereas in the above named cause [*or matter*] it was on the _____ day of _____ 19 _____ ordered that the _____ C.D. do pay the _____ A.B. 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 of the goods, chattels and other property of C.D. in your county authorised by law to be seized in execution you cause to be made the sum of £ _____ and £ _____ for costs of execution, and also interest on £ _____ at the rate of £4 per cent. 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 order the amount levied in respect of the said sum and interest.

And we also [*as in No. 53*].

Witness [*as in No. 53*].

This writ [*as in No. 53*].

We command you that of the real and personal estate within the meaning of the Administration of Justice Act 1925 of E.F. deceased, at the time of his death, which is in your county and in the hands of C.D. as his executor [or administrator] to be administered you cause to be made the sums of £ and £ for costs of execution and also interest on £ at the rate of £4 per cent. per annum from the day of 19 until payment [together with sheriff's poundage, officers' fees, cost of levying and all other legal incidental expenses] [and if the said C.D. has not so much thereof in his hands to be administered that you cause to be made of the goods, chattels and other property of C.D. in your county authorised by law to be seized in execution the sum of £ for costs] 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 [*remainder as in No. 53*].

No. 58

Writ of fieri facias de bonis ecclesiasticis

(O. 45 r. 12)

[*Heading as in action*]

ELIZABETH THE SECOND [*as in No. 53*].

To the Right Reverend Father in God by Divine permission Lord Bishop 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]:

And whereas our sheriff of on a day now past informed the said A.B. that the said C.D. had not any property whereof he could cause to be made the said sums of £ and £ or any part thereof and that the said C.D. was a beneficed clerk, namely, rector of the rectory [or vicar of the vicarage] and parish church of in the said sheriff's county and within your diocese:

We command you that of the ecclesiastical property of C.D. in your diocese you cause to be made the sums of £ and £ for costs of execution and also interest on £ at the rate of £4 per cent. per annum from the day of 19 until payment 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 [*remainder as in No. 53*].

No. 59

Writ of sequestrari facias de bonis ecclesiasticis

(O. 45 r. 12)

[*Heading as in action*]

[*Formal opening and recitals as in No. 58*]

We command you that you enter into the said rectory [or vicarage] and parish church of and take and sequester them into your possession and that you hold them in your possession until of the rents, tithes, rentcharges in lieu of tithes, oblations, obventions, fruits, issues and profits thereof and other ecclesiastical property in your diocese of and belonging to the said rectory [or vicarage] and parish church of and to the said C.D. as rector [or vicar] thereof you shall have made the sums of £ and £ for costs of execution and also interest on £ at the rate of £4 per cent. per annum from the day of 19 until payment, and that immediately after execution of this writ you pay the said 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 [*remainder as in No. 53*].

No. 60

Writ of fieri facias on order of quarter sessions
removed into Queen's Bench Division

(O. 45 r. 12)

*[Heading as in matter]*ELIZABETH THE SECOND *[as in No. 53]*.

To the sheriff of greeting.

Whereas by an order of a court of quarter sessions for the [county] of
made on the day of 19 in an appeal wherein
A.B. was appelland and C.D. was respondent the sum of £ for certain
costs was adjudged to be paid by the said C.D. to the said A.B.

And whereas the said order of the court of quarter sessions was on the
day of 19 removed into the Queen's Bench Division
of our High Court of Justice by virtue of an order of the Honourable Mr.
Justice made the day of 19 , and the costs
attendant upon the application for the last-mentioned order and upon the said
removal were on the day of 19 taxed and allowed at
the sum of £ 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.
in your county authorised by law to be seized in execution you cause to be
made the sum of £ and £ for costs of execution together
with interest on £ at the rate of £4 per cent. per annum from the
said day of 19 *[date of removal order]* 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 orders the amount levied in respect of the said
sums and interest.

And we also command you *[remainder as in No. 53]*.

No. 61

Writ of fieri facias on judgment of Mayor's and City of London Court

(O. 45 r. 12)

In the High Court of Justice

Queen's Bench Division

Between A.B.

Plaintiff

and

C.D.

Defendant

ELIZABETH THE SECOND *[as in No. 53]*.

To the sheriff of greeting:

Whereas by a judgment of the Mayor's and City of London Court signed
on the day of 19 it was adjudged that the above-
named A. B. recover against the above-named C. D. £ and
£ costs:

And whereas in pursuance of section 48 of the Mayor's Court of London
Procedure Act 1857 this writ to enforce the said judgment has been directed
to be sealed in our High Court of Justice and the costs attendant upon such
sealing have been allowed at £

We command you that of the goods, chattels and other property of the said C. D. in your county authorised by law to be seized in execution you cause to be made the sum of £ and £ for costs of execution together with interest on £ at the rate of £4 per cent. per annum from the day of 19 until payment and also the said sum of £ [cost of sealing] with interest thereon at the rate of £4 per cent. per annum from the date hereof 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 the amount levied in respect of the said sums and interest.

And we also command you [*remainder as in No. 53*].

No. 62

Writ of fieri facias to enforce Northern Irish or Scottish judgment

(O. 71 r. 14)

In the High Court of Justice

Queen's Bench Division

[*Title of action*]

ELIZABETH THE SECOND [*as in No. 53*].

To the Sheriff of greeting:

Whereas by a judgment [*or decree*] dated the day of 19 given in our High Court of Justice in Northern Ireland [*or our Court of Session in Scotland or as may be*] it was adjudged [*or decreed*] that C.D. do pay A.B. £ , as appears by a certificate registered on the day of 19 in the register for Irish Judgments [*or the Register for Scotch Judgments*] in our High Court of Justice in England pursuant to the Judgments Extension Act 1868 [*or the Inferior Courts Extension Act 1882*]:

We command you that of the goods, chattels and other property of C.D. in your county authorised by law to be seized in execution you cause to be made the sums of £ , and £ , the costs allowed for obtaining and registering the said certificate, and £ for costs of execution and also interest on £ at the rate of £4 per cent. per annum from [*date of registration of certificate*] until payment together with sheriff's poundage [*remainder as in No. 53*].

No. 63

Writ of fieri facias to enforce foreign registered judgment

(O. 71)

In the High Court of Justice

Queen's Bench Division

In the matter of the Administration of Justice Act 1920, Part II [*or the Foreign Judgments (Reciprocal Enforcement) Act 1933, Part I*]

and

In the matter of a judgment of [*describe the court*] obtained in [*describe the cause or matter*] and dated the day of 19

ELIZABETH THE SECOND [*as in No. 53*].

To the Sheriff of greeting:

Whereas by a judgment dated the day of 19 of [*describe the court*] registered in our High Court of Justice pursuant to Part II of the Administration of Justice Act 1920 [*or Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933*] it was adjudged that C.D. do pay A.B. francs [*or as may be*] and the amount now due and owing under the said judgment is equivalent to the sum of £

We command you that of the goods, chattels and other property of C.D. in your county authorised by law to be seized in execution you cause to be made the sums of £ and £ for costs of execution together with sheriff's poundage [*remainder as in No. 53*].

No. 69

Writ of assistance

(O. 46 r. 1)

*[Heading as in action]*ELIZABETH THE SECOND *[as in No. 53]*.

To the present and any future sheriff of _____ greeting:

Whereas by an order dated the _____ day of _____ 19____ made in an action in the _____ Division of our High Court of Justice between A.B., plaintiff, and C.D., defendant, the said C.D. was ordered to give to the said A.B. possession of the land [*or goods*] therein described, namely [*describe the land or goods*], but he the said C.D. and other persons have refused to obey the order and keep the possession of the land [*or goods*] in contempt of us and our said Court:

And whereas by an order made in the said action dated the _____ day of _____ 19____ it was ordered that a writ of assistance should issue to give the said A.B. possession of the said land [*or goods*]:

We command you that you [enter the said land and eject the said C.D., his tenants, servants and accomplices, each and every of them, from the said land and every part thereof and put the said A.B. and his assigns into full, peaceable and quiet possession thereof] [*or put the said A.B. and his assigns into full peaceable and quiet possession of the said goods*] and defend and keep him and his assigns in such peaceable and quiet possession, when and as often as any interruption thereof is at any time effected, according to the intent of the said orders. And herein you are not in any wise to fail.

Witness *[as in No. 53]*.This writ *[as in No. 53]*.

No. 70

Certificate of Treasury's permission under Exchange Control Act 1947

(O. 46 r. 7(2); O. 49 r. 7(1))

I certify that the Treasury's permission under the provisions of the Exchange Control Act 1947 for the payment to [*name of judgment creditor*] of the proceeds of execution has been given unconditionally [*or upon conditions which have been complied with*].

Dated the _____ day of _____ 19____
(signed) _____
solicitor for

No. 71

Notice of renewal of writ of execution

(O. 46 r. 8)

[Heading as in cause or matter]

Take notice that the writ of _____ issued in this cause [*or matter*] directed to [the sheriff of _____] and bearing date the _____ day of _____ 19____ has by order dated the _____ day of _____ 19____ been renewed for one year beginning with the date of the said order.

To [the sheriff of _____].
(signed) _____
solicitor for

No. 72

Garnishee order to show cause

(O. 49 r. 1)

In the High Court of Justice

19 , No.

Division

[Master master in chambers].

Between A.B. Judgment creditor

and

C.D. Judgment debtor

F.G. Garnishee

Upon reading the affidavit of filed the day of
19 :

It is ordered by [Master] that all debts due or accruing due from the above-mentioned garnishee to the above-mentioned judgment debtor [in the sum of £] be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of 19 for the sum [or to answer an order made in the High Court of Justice on the day of 19 ordering payment by the said judgment debtor to the above-named judgment creditor of the sum] of £ [debt and £ costs] (together with the costs of the garnishee proceedings) on which judgment [or order] the sum of £ remains due and unpaid.

And it is ordered that the said garnishee attend Master in Chambers, Royal Courts of Justice, Strand, London on the day of 19 at o'clock, on an application by the said judgment creditor that the said garnishee do pay to the said judgment creditor the debt due from the said garnishee to the said judgment debtor, or so much thereof as may be sufficient to satisfy the said judgment [or order], together with the costs of the garnishee proceedings.

Dated the day of 19 .

To the above-named garnishee
and judgment debtor.

No. 73

Garnishee order absolute where garnishee owes more than judgment debt

(O. 49 rr. 1, 4)

[Heading as in No. 72]

Upon hearing the solicitors for the judgment creditor and the garnishee, and upon reading the affidavit of filed herein, and the order to show cause made herein dated the day of 19 , whereby it was ordered that all debts due or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of 19 for the sum [or to answer an order made in the High Court of Justice dated the day of 19 ordering payment by the said judgment debtor to the above-named judgment creditor of the sum] of £ [debt and £ costs] (together with the costs of the garnishee proceedings) on which judgment [or order] the sum of £ remained due and unpaid:

It is ordered that the said garnishee do forthwith pay to the said judgment creditor [or into court if the judgment creditor is resident outside the scheduled territories as defined by the Exchange Control Act 1947, or would receive payment of the said sum on behalf of a person so resident, unless the Treasury's permission under the said Act has been given unconditionally or upon conditions which have been complied with] £ being so much of the debt due from the said garnishee to the said judgment debtor as is sufficient to satisfy the said judgment debt and costs, together with £ the costs of the garnishee proceedings, and that the said garnishee be at liberty to retain £ for his costs of this application out of the balance of the debt due from him to the judgment debtor.

Dated the day of 19 .

No. 74

Garnishee order absolute where garnishee owes less than judgment debt

(O. 49 rr. 1, 4)

[Heading as in No. 72]

Upon hearing [as in No. 73].

It is ordered that the said garnishee (after deducting therefrom £ for his costs of this application) do forthwith pay to the said judgment creditor [or into court if the judgment creditor is resident outside the scheduled territories as defined by the Exchange Control Act 1947, or would receive payment of the said sum on behalf of a person so resident, unless the Treasury's permission under the said Act has been given unconditionally or upon conditions which have been complied with] £ the debt due from the said garnishee to the said judgment debtor. And that the sum of £ the costs of the judgment creditor of this application be added to the judgment debt and be retained out of the money recovered by the said judgment creditor under this order and in priority to the amount of the judgment debt.

Dated the day of 19 .

No. 75

Order imposing charge on land: order to show cause

(O. 50 r. 1)

[Heading as in cause or matter]

Upon hearing the and upon reading the affidavit of filed herein the day of 19 whereby it appears that by a judgment [or order] made in the High Court of Justice on the day of 19 the defendant was ordered to pay to the plaintiff the sum of £ and £ costs [or as may be] on which judgment [or order] the sum of £ remains due and unpaid and that the defendant is entitled to the following land or interest in land, namely [describe the land or interest in land on which a charge is sought, describing it in a schedule to the order if more convenient]:

It is ordered by [Master] that unless sufficient cause to the contrary be shown before [Master in Chambers, Royal Courts of Justice, Strand, London] on the day of 19 at o'clock the said land or interest in land of the defendant shall, and it is ordered that in the meantime it do, stand charged with the payment of £ due on the said judgment [or order] together with the costs of this application.

Dated the day of 19 .

No. 76

Order absolute imposing charge on land
(O. 50 r. 1)*[Heading as in cause or matter]*

Upon hearing the _____ and upon reading the affidavits of
and _____ filed herein the _____ day of
19 _____ and the order to show cause made herein on the _____ day of
19 _____ :

It is ordered that the following land or interest in land of the defendant C.D., namely *[describe the land or interest]* *[or the land or interest in land of the defendant specified in the schedule hereto]* stand charged with the payment of £ _____, the amount due from the said defendant to the plaintiff A.B. on a judgment *[or order]* of the High Court of Justice dated the _____ day of _____ 19 _____ *[and interest thereon at the rate of £4 per cent. per annum from the said date until payment]* together with £ _____ the costs of this application, the said costs to be added to the judgment debt.

Dated the _____ day of _____ 19 _____ .

[Schedule]

No. 77

Order imposing charge on securities: order to show cause
(O. 50 r. 2)*[Heading as in cause or matter]*

Upon hearing _____ and upon reading the affidavit of
filed herein the _____ day of _____ 19 _____ whereby it appears
that by a judgment *[or order]* made in the High Court of Justice on the
day of _____ 19 _____ the defendant was ordered to pay to the
plaintiff the sum of £ _____ and £ _____ costs *[or as may be]*, on
which judgment *[or order]* the sum of £ _____ remains due and unpaid
and that there is standing in the books of the Governor and Company of the
Bank of England in the *[said defendant's name in his own right or as may be]*
the sum of £ _____ *[describing the stock, etc. on which the charge is
sought]* *[or there are _____ ordinary or as may be shares in the
_____ Co. Ltd., a public company registered in England, now
standing in the said defendant's name in his own right or as may be]*:

It is ordered by [Master _____] that unless sufficient cause to the
contrary be shown before [Master _____ in Chambers, Royal Courts
of Justice, Strand, London,] on the _____ day of _____ 19 _____
at _____ o'clock, the defendant's interest in the said stock *[or shares]* so
standing as aforesaid shall, and it is ordered that in the meantime it do, stand
charged with the payment of £ _____ due on the said judgment *[or order]*
together with the costs of this application.

Dated the _____ day of _____ 19 _____ .

No. 78

Order absolute imposing charge on securities
(O. 50 r. 2)*[Heading as in cause or matter]*

Upon hearing _____ and upon reading the affidavits of
filed herein the _____ day of _____ 19 _____ and the order to show
cause made herein on the _____ day of _____ 19 _____ :

It is ordered that the interest of the defendant C.D. in the sum of £ stock [or shares in the Co. Ltd., or as may be] now standing in the name of the said defendant [or as may be] stand charged with the payment of £ , the amount due from the said defendant to the plaintiff on the judgment [or order] of the High Court of Justice dated the day of 19 [and interest thereon at the rate of £4 per cent. per annum from the said date until payment] together with £ the costs of this application, the said costs to be added to the judgment debt.

Dated the day of 19 .

No. 79

Stop order on capital and income of funds in court

(O. 50 r. 10)

[Heading as in cause or matter]

Upon hearing for the plaintiff A.B. and for the defendant C.D. and upon reading the affidavit of filed herein the day of 19 :

It is ordered that no part of the capital of [describe funds] in court to the credit of this action [or matter] [state title of action or matter], the account of C.D., and of the sum of £ cash (being income) in court to the same credit, and of any interest or dividends to accrue due on the said funds in court, to which the said C.D. is [or may become] entitled, be transferred, sold, paid or otherwise dealt with without notice to the said A.B.

Dated the day of 19 .

No. 80

Affidavit and notice under O. 50 r. 11

(O. 50 r. 11)

In the High Court of Justice
Chancery Division

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 Supreme Court 1965

I A.B. [or C.D. the 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

Notice to be annexed to affidavit

To the Governor and Company

of the Bank of England

[or as may be]

Take notice that the securities comprised in and subject to the trusts of the settlement [or as may be] referred to in the affidavit to which this notice is annexed consist of the following, namely [specify the stock, shares, etc. stating the names in which it stands].

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]

terms, to receive the rents, profits and moneys receivable in respect of the said defendant's interest in the following property, namely [*describe the property*] in or towards satisfaction of the sum of £ debt and £ costs, and interest on the said sums at the rate of £4 per cent. per annum from the day of 19 due under the judgment [*or order*] in this action dated the day of 19 .

And the plaintiff [by his solicitor] hereby undertaking to abide by any order the Court may hereafter make should it decide that the said defendant has sustained damage by reason of this order and is entitled to damages which the plaintiff ought to pay, it is ordered that the said defendant by himself, his agents or servants, or otherwise, be restrained, and an injunction is hereby granted restraining him, until after the hearing of the above application, from assigning, charging or otherwise dealing with the said property.

Dated the day of 19

No. 84

Order appointing receiver by way of equitable execution

(Judicature Act s. 45 ; O. 51)

[*Heading as in action*]

Upon hearing and upon reading the affidavit of
filed the day of 19 :

[*If security ordered*] It is ordered that P.R. of on first giving security to the satisfaction of a Master of the Supreme Court [*or a district registrar*], be and is hereby appointed to receive the rents, profits and moneys receivable in respect of the above-named defendant's interest in the following property, namely [*describe the property*].

[*If no security ordered and receiver is not the plaintiff*] The plaintiff being answerable for the acts and defaults of the receiver, it is ordered that P.R. of be and is hereby appointed to receive [*continue as above*] but he shall not receive more than the amount of the judgment debt and allowed costs of obtaining this order without leave of the Court or first giving (at the plaintiff's cost unless otherwise ordered) the usual security to the satisfaction of a Master of the Supreme Court [*or a district registrar*].

[*If no security ordered and receiver is the plaintiff: as above omitting "The plaintiff being answerable for the acts and defaults of the receiver" and the words after "the Court".*]

[*In all cases continue as follows:—*]

That this appointment shall be without prejudice to the rights of any prior incumbrancers upon the said property who may think proper to take possession of or receive the same by virtue of their respective securities or, if any prior incumbrancer is in possession, then without prejudice to such possession.

And that the tenants of premises comprised in the said property do attorn and pay their rents in arrear and growing rents to the receiver.

And that the receiver have liberty, if he shall think proper (but not otherwise), out of the rents, profits and moneys to be received by him to keep down the interest upon the prior incumbrances, according to their priorities, and be allowed such payments, if any, in passing his accounts.

And that the receiver shall on the day of [*3 months after the date of order*], and at such further and other times as may be ordered by the Master [*or district registrar*] leave and pass his accounts, and shall on the day of [*4 months after the date of order*], and at such further and other times as may be hereafter ordered by the Master [*or district registrar*] pay the balance or balances appearing due on the accounts so left, or such part thereof as shall be certified as proper to be so paid, such

sums to be paid in or towards satisfaction of what shall for the time being be due in respect of the judgment signed on the _____ day of _____ for the sum of £ _____ debt and £ _____ costs, making together the sum of £ _____

And that the costs of the receiver (including his remuneration), the costs of obtaining his appointment, of completing his security (if any), of passing his accounts and of obtaining his discharge shall not exceed ten per cent. of the amount due under the said judgment or the amount recovered by the receiver, whichever is the less, provided that not less than five pounds be allowed unless otherwise ordered. Such costs shall be taxed unless assessed by the Master [or district registrar] and shall be primarily payable out of the sums received by the receiver, but if there shall be no sums received or the amount shall be insufficient, then upon the certificate of the Master [or district registrar] being given stating the amount of the deficiency, such certificate to be given after passing the final account, the amount of the deficiency so certified shall be paid by the defendant to the plaintiff.

It is also ordered that the balance (if any) remaining in the hands of the receiver, after making the several payments aforesaid, shall unless otherwise directed by the Master [or district registrar] forthwith be paid by the receiver into court to the credit of this action, subject to further order.

And that any of the parties be at liberty to apply to the [Master] in chambers as there may be occasion.

Dated the _____ day of _____ 19 _____ .

No. 85

Order of committal

(O. 52)

[Heading as in action]

Upon motion this day made unto this Court by counsel for the plaintiff and upon reading [an affidavit of _____ filed the _____ day of _____ 19 _____ of service on the defendant C.D. of a copy of the order of the Court dated the _____ day of _____ 19 _____ and of notice of this motion]:

And it appearing to the satisfaction of the Court that the defendant C.D. has been guilty of contempt of court in [state the contempt]:

It is ordered that for his said contempt the defendant do stand committed to [Brixton] Prison to be there imprisoned [until further order].

[It is further ordered that this order shall not be executed if the defendant C.D. complies with the following terms, namely,

Dated the _____ day of _____ 19 _____ .

No. 86

Notice of motion for an order of mandamus, prohibition or certiorari

(O. 53 r. 3)

In the High Court of Justice _____ 19 _____ No. _____

Queen's Bench Division.

In the matter of an application by
for an order of mandamus [or prohibition or certiorari]
and

In the matter of [particulars of decision of inferior court]

Take notice that pursuant to the leave of a Divisional Court of the Queen's Bench Division [or the Honourable Mr. Justice _____] given on the _____ day of _____ 19 _____, the Queen's Bench Division of the

No. 88

Notice directed by Court of adjourned application for writ of habeas corpus

(O. 54 r. 2)

[Heading as in No. 87]

Take notice that an application for the above writ was made to a Divisional Court of the Queen's Bench Division [or to the Honourable Mr. Justice] in the above matter on the day of 19 when the said application was adjourned so that notice could be given to you.

Notice is hereby given to you that the said application will be made to a Divisional Court of the said Division [or to the Honourable Mr. Justice] on the day of 19 at o'clock.

Dated the day of 19 .

(Signed)

To of
solicitor for

No. 89

Writ of habeas corpus ad subjiciendum

(O. 54 r. 10)

ELIZABETH THE SECOND *[as in No. 53]*

To the Governor of Our prison at greeting :

We command you that you have in the Queen's Bench Division of our High Court of Justice [or before a judge in chambers] at the Royal Courts of Justice, Strand, London, 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.

Witness Lord High Chancellor of Great Britain the
day of 19 .

Indorsement

By order of court [or of Mr. Justice] .

This writ was issued by of solicitor for .

No. 90

Notice to be served with writ of habeas corpus ad subjiciendum

(O. 54 r. 6)

In the High Court of Justice
Queen's Bench Division.

[If in a cause already begun, here insert the title, not otherwise]

Whereas this Court [or the Honourable Mr. Justice] has granted a writ of habeas corpus directed to [or other person having the custody of if so] commanding him to have the body of A.B. before the said Court [or before a judge in chambers] at the Royal Courts of Justice, Strand, London on the day and at the time specified in the notice together with the day and cause of his being taken and detained.

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 o'clock and to make a

return to the said writ. In default thereof the said Court will then, or so soon thereafter as counsel can be heard, be moved to commit you to prison for your contempt in not obeying the said writ [or if in vacation application will then be made to one of the judges of the said Court for a warrant for your arrest in order that you may be held to bail to answer for your contempt in not obeying the said writ].

Dated the _____ day of _____ 19 .

(Signed)

of

solicitor for

To

No. 91

Writ of habeas corpus ad testificandum

(O. 54 r. 10)

ELIZABETH THE SECOND [as in No. 53]

To the Governor of Our prison at _____ greeting :

We command you that you have before [description of court] on the _____ day of _____ 19 , at _____ the body of _____, being committed and detained in Our prison under your custody, as is said, then and there to testify the truth and give evidence [on Our behalf against A.B. for (describe the offence) or otherwise describing the proceedings], and so from day to day until the said _____ shall have given his evidence as aforesaid. And when he shall have given his evidence, then you take him back without delay to Our said prison under your custody, and cause him to be detained therein under safe custody, until he shall be from thence discharged by due course of law.

Witness [as in No. 89]

Indorsement

By order of Mr. Justice _____

This writ was issued by _____ of _____ solicitor for _____

No. 92

Writ of habeas corpus ad respondendum

(O. 54 r. 10)

ELIZABETH THE SECOND [as in No. 53]

To the Governor of Our prison at _____ greeting :

We command you that you have before [description of court] on the _____ day of _____ 19 , at _____ the body of _____ being committed and detained in Our prison 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, then and there to answer to a charge of _____ to be then and there made against him, and so from day to day until he shall have answered the said charge, and to be dealt with according to law. And have you then and there this writ.

Witness [as in No. 89]

Indorsement

[As in No. 91]

No. 93

Order under the Foreign Tribunals Evidence Act 1856 or the
Evidence by Commission Act 1859

(O. 70 r. 1)

In the High Court of Justice

Queen's Bench Division

[Name of Master], master in chambers.

In the matter of the Foreign Tribunals Evidence Act 1856 [or the Evidence
by Commission Act 1859]

and

In the matter of a civil [or commercial or criminal proceeding] now pending
before [description of court] entitled as follows:—

Between plaintiff and defendant.

Upon reading the affidavit of filed the day of
19 and the certificate [or order or commission or letter of
request as may be] exhibited thereto that proceedings are pending in the
[description of foreign or Commonwealth court] in [name of country] and that
such court wishes to obtain the testimony of [name of witness]:

It is ordered that the said witness do attend before
[name and address of examiner], who is hereby appointed examiner herein, at
[place appointed for examination] on the day of
19 at o'clock, or such other day and time as the
said examiner may appoint, and do there submit to be examined, upon oath
or affirmation, touching the testimony so required as aforesaid, and do then and
there produce [description of documents, if any, required to be produced].

It is also ordered that the said examiner do take down or cause to be taken
down in writing the evidence of the said witness according to the rules and
practice of Her Majesty's High Court of Justice pertaining to the examination
and cross-examination of witnesses [or as may be otherwise directed], and do
request the said witness [or each and every witness] to sign his deposition in the
said examiner's presence, and do sign the depositions taken in pursuance of
this order and when so completed do send them, together with this order and
the letter of request [or commission] to the [Senior Master, Royal Courts of
Justice, Strand, London] for transmission to the president of the court desiring
the evidence of the said witness.

Dated the day of 19 .

No. 94

Order for production of documents in marine insurance action

(O. 72 r. 10)

[Heading as in action]

Upon hearing [and upon reading the affidavit of
filed the day of 19]:

It is ordered that the plaintiff and all other persons interested in this action,
and in the insurance the subject of this action, do produce and show to the
defendant, his solicitors or agents on oath [or by oath of their proper officer]
all insurance slips, policies, letters of instruction or other orders for effecting such
slips or policies, or relating to the insurance or the subject-matter of the insur-
ance on the ship , or the cargo on board thereof, or the freight
thereby, and also all documents relating to the sailing or alleged loss of the said
ship, cargo or freight, and all correspondence with any person relating in any
manner to the effecting of the insurance on the said ship, cargo or freight, or
any other insurance whatsoever effected on the said ship, cargo or freight, on the
voyage insured by the policy sued on in this action, or any other policy whatso-

ever effected on the said ship, or the cargo on board thereof, or the freight thereby on the same voyage. Also all correspondence between the captain or agent of the ship and any other person with the owner or any person before the commencement of or during the voyage on which the alleged loss happened. Also all books and documents, whatever their nature and whether originals, duplicates or copies, which in any way relate or refer to any matter in question in this action and which are now in the custody, possession or power of the plaintiff or any other person on his behalf, his or their, or any of their brokers, solicitors or agents, with liberty for the defendant, his solicitors or agents to inspect and take copies of, or extracts from, any of those books or documents. And that in the like manner the plaintiff and every other person interested as aforesaid do account for all other books and documents relating or referring to any matter in question in this action which were once but are not now in his custody, possession and power.

And that [in the meantime all further proceedings be stayed and that] the costs of and occasioned by this application be costs in the action.

Dated the day of 19 .

No. 95

Certificate of order against the Crown

(O. 77 r. 15)

[Heading as in cause or matter]

By a judgment [*or order*] of this Court dated the day of 19 it was adjudged [*or ordered*] that [*give particulars of the judgment or order*].

I hereby certify that the amount payable to by in pursuance of the said judgment [*or order*] is £ [together with interest thereon at the rate of £ per cent. per annum until payment and together with costs which have been taxed and certified by the taxing officer at £ . Interest is payable on the said costs at the rate of £ per cent. per annum from the day of 19 until payment.]

[This certificate does not include the amount payable under the said judgment *or order* in respect of costs.]

Dated the day of 19 .
(Signed)

[NOTE:—*The final paragraph is to be included where a separate certificate with respect to costs has been directed to be issued.*]

No. 96

Certificate of order for costs against the Crown

(O. 77 r. 15)

[Heading as in cause or matter]

By a judgment [*or order*] of this Court dated the day of 19 it was adjudged [*or ordered*] that [*give particulars of the judgment or order*].

I hereby certify that the costs payable to by in pursuance of the said judgment [*or order*] have been taxed and certified by the taxing officer at £ [and interest is payable thereon at the rate of £ per cent. per annum from the day of 19 until payment.]

Dated the day of 19 .
(Signed)

No. 97

Summons to admit to bail

(O. 79 r. 9)

In the High Court of Justice.

Queen's Bench Division.

Let all parties concerned attend the judge in chambers on the day of 19 at o'clock on the hearing of an application on behalf of A.B. to be admitted to bail as to his commitment on the day of by a magistrates' court sitting at [or by the coroner for the district of] [or by the court of quarter sessions for the county or borough of] [or by the High Court].

Dated the day of 19 .

This summons was taken out by of [agent for of] solicitor for the said A.B.

No. 98

Order of judge in chambers to admit prisoner to bail

(O. 79 r. 9)

In the High Court of Justice.

Queen's Bench Division.

The Honourable Mr. Justice

Judge in chambers.

Whereas on the day of 19 A.B. [state the circumstances in which the applicant was committed as, for example, was committed in custody by a magistrates' court sitting at to the next quarter sessions for the county of to take his trial on a charge of or was convicted by a magistrates' court sitting at of and sentenced to and the said A.B. has given notice of appeal to quarter sessions against such conviction or sentence]:

And whereas the said A.B. has applied to the judge in chambers to be admitted to bail:

Upon hearing counsel [or the solicitor] for the said A.B. and upon reading the affidavit of filed the day of 19 :

It is ordered that upon the said A.B. giving security [by his own recognizances] in the sum of £ with [two] sufficient sureties in the sum of £ each before a justice of the peace [or as may be] for the personal appearance of the said A.B. [at the next quarter sessions for the county of to stand trial upon any indictment brought against him in respect of the said charge or on such date and at such time and place as may be notified to him by the clerk of the peace, at the hearing of his said appeal to the court of quarter sessions for the county of or as may be in accordance with the order made] he, the said A.B. be discharged out of the custody of the Governor of Her Majesty's prison at in respect of his commitment as aforesaid.

Dated the day of 19 .

No. 99

Order of Court of Appeal to admit prisoner to bail

(O. 59 r. 20)

In the Court of Appeal

Dated the on appeal from the court. day of 19

Whereas on the _____ day of _____ 19 ____ A.B. was ordered by [*description of court*] to be imprisoned for _____ for contempt of court and the said A.B. has appealed to this Honourable Court [*or to the House of Lords*] against the said order:—

And whereas the said A.B. has applied to this Honourable Court to be admitted to bail:

Upon reading the notice of motion on behalf of the said A.B. and upon hearing Mr. _____ of counsel for the said A.B.

It is ordered that upon the said A.B. giving security [by his own recognizance] in the sum of £ _____ with [two] sufficient sureties in the sum of £ _____ each before a justice of the peace [*or as may be*] for the personal appearance of the said A.B. before the _____ court within ten days after the judgment of this Honourable Court [*or of the House of Lords*] on his said appeal shall have been given unless the order of the said court is reversed by that judgment, he, the said A.B. be discharged out of the custody of the Governor of Her Majesty's prison at _____ in respect of his commitment as aforesaid.

By the Court.

No. 100

Notice of bail

(O. 79 r. 9)

Whereas on the _____ day of _____ 19 ____ A.B. was [*state circumstances in which A.B. was committed as in No. 98 or 99*]:

And whereas the Honourable Mr. Justice _____ [*or the Court of Appeal*] has made an order dated the _____ day of _____ 19 ____ that [*recite order for bail*]:

Take notice that in pursuance of the said order the said A.B. and [two] sufficient sureties will enter into such recognizance [*or give such security*] as aforesaid before _____ at _____ on the _____ day of _____ 19 ____ at _____ o'clock in the _____ noon. And that the names and descriptions of such sureties are

Dated the _____ day of _____ 19 ____ .

To

(Signed)

Solicitor for the said A.B.

No. 101

Witness summons

Central Criminal Court or Assizes (Crown Court)

(O. 79 r. 10)

To _____ of _____

You are hereby summoned to attend before the Central Criminal Court in the Old Bailey, Newgate Street, London, E.C.4 [*or at (name of assize town and address of court)*] before the Justices assigned to take the assize in and for the county of _____] on _____ the _____ day of _____ 19 ____ at _____ o'clock to give evidence against [*or on behalf of*] A.B. on an indictment for [*describe the offence*] [*and to produce (specify the documents or things to be produced)*] and to attend from day to day until the said indictment is tried.

Issued on the _____ day of _____ 19 ____ by _____ .
[agent for _____] solicitor for the _____ .

No. 102

Witness summons
Court of quarter sessions

(O. 79 r. 10)

To _____ of _____

You are hereby summoned to attend before the court of quarter sessions for the [county] [borough] of _____ at [address of court] on the _____ day of _____ 19 _____ at _____ o'clock to give evidence [*remainder as in No. 101*].

No. 103

Witness summons
Court of quarter sessions: appeal

(O. 79 r. 10)

To _____ of _____

You are hereby summoned to attend before the court of quarter sessions for the [county] [borough] of _____ at [address of court] on the _____ day of _____ 19 _____ at _____ o'clock to give evidence on an appeal between _____ Appellant and _____ Respondent with respect to [*state nature of the appeal*] on behalf of the Appellant [*or Respondent*] [and to produce (*specify the documents or things to be produced*)] and to attend from day to day until the said appeal is heard.

Issued [*as in No. 101*].

No. 104

Attachment of earnings order under the Maintenance Orders Act 1958

(O. 104 r. 15)

In the High Court of Justice, _____ 19 . [*Here put the letter and number, if any*]
Division _____
[_____ District Registry]

In the matter of the Maintenance Orders Act 1958[*Full title*]

Whereas _____ of _____, aged _____ years, whose national insurance number is _____ and who works at _____ as a _____ (Works no. _____) (hereinafter called the defendant) is required under a maintenance order made on the _____ day of _____ 19 _____, by the High Court of Justice [*or as the case may be*] to make payments of _____ a week [*or as the case may be*] to _____;

And Whereas on the application of the said _____ it appears that at the time the application was made there was due under the maintenance order and unpaid an amount equal to not less than four of the weekly payments required by the order [*or if the maintenance order is not for weekly payments, not less than two of the payments required by the order*] and 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 Orders Act, 1958, to the Accountant General of the Supreme Court [*or to the District Registrar of the High Court of Justice at _____*] [*or to the Registrar of the County Court*] 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 [or as the case may be] and that the protected earnings rate shall be _____ a week [or 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 _____ .

No. 105

Notice under section 9(4) of the Maintenance Orders Act 1958

(O. 104 r. 17)

[Heading as in No. 104]

Whereas by an attachment of earnings order dated the _____ day of _____ , 19 , _____ was required, out of earnings falling to be paid by him to _____ , to make payments to me in or towards satisfaction of the payments due to _____ under a maintenance order made by the High Court of Justice [or as the case may be] on the day of _____ , 19 ;

And Whereas it appears that—

- (a) the aggregate of the payments made for the purposes of the maintenance order exceeds the aggregate of the payments required by that order; and
- (b) the normal deduction rate specified by the attachment of earnings order exceeds the rate of payments required by the maintenance order; and
- (c) no proceedings for the variation or discharge of the attachment of earnings order are pending:

Take notice that unless the said _____ applies to the High Court of Justice, within 14 days after the date of this notice, for an order discharging the attachment of earnings order or varying it in some other manner, the court will make an order varying the attachment of earnings order by reducing the normal deduction rate to the rate of payments required by the maintenance order or to such lower rate as the court thinks fit having regard to the amount of the excess mentioned in paragraph (a) of this notice.

Dated the _____ day of _____ , 19 .

Signed [to be signed by the officer of the High Court or the county court registrar to whom payments under the attachment of earnings order are directed to be made.]

To _____ of _____ and to _____ of _____ .

No. 106

Notice under section 10(4) of the Maintenance Orders Act 1958

(O. 104 r. 18)

[Heading as in No. 104]

Whereas by an attachment of earnings order made by the above-named court on the _____ day of _____ , 19 , I was directed to make payments to the Accountant General of the Supreme Court [or to the District Registrar of the High Court of Justice at _____] [or to the Registrar of the _____ County Court] out of earnings falling to be paid by me to the defendant, _____ :

I hereby give notice under section 10(4) of the Maintenance Orders Act, 1958, that on no occasion during the period of four weeks immediately preceding the _____ day of _____, 19____, [insert date of service of attachment of earnings order or such later date as may be appropriate] was I the defendant's employer within the meaning of that Act.

Signed [to be signed by the person to whom the attachment of earnings order was directed].

To the Chief Chancery Master [or the Senior Master, Queen's Bench Division] [or the Senior Registrar of the Principal Probate Registry] [or the District Registrar of the High Court at _____].

APPENDIX B

SPECIAL ADMIRALTY FORMS

No. 1

Writ of summons in action in rem issued out
of Admiralty Registry
(O. 75 r. 3)

In the High Court of Justice
Probate, Divorce and Admiralty Division
Admiralty action in rem against:

19____, Folio

[The ship "X" or as may be describing the res]
[The owners of the ship "Y" or as may be] Plaintiffs
and

[The owners of the ship "X" or as may be describing the res] Defendants

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other realms and territories Queen, Head of the Commonwealth, Defender of the Faith:

To the [owners of and other] persons interested in the ship _____ of the port of _____ [or cargo, etc., as may be].

We command you that within 8 days after the service of this writ, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of _____; and take notice that in default of your so doing the plaintiffs may proceed therein, and judgment may be given in your absence, and if the res described in this writ is then under arrest of the Court it may be sold by order of the Court.

Witness _____, Lord High Chancellor of Great Britain, the _____ day of 19____.

Note:—This writ may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

DIRECTIONS FOR ENTERING APPEARANCE

The defendants may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms duly completed, at the Admiralty Registry, Royal Courts of Justice, Strand, London, W.C.2, or (2) by sending them to that office by post. The appropriate forms may be obtained by sending a postal order for 11d. with an addressed envelope, foolscap size, to the Controller of Stamps, Royal Courts of Justice, Strand, London, W.C.2.

Indorsements to be made on writ before issue Indorsement of claim

The plaintiffs' claim is for

[If the plaintiffs sue, or the defendants are sued, in a representative capacity, this must be stated in the indorsement of claim.]

Indorsement as to solicitor and address

This writ was issued by _____ of _____ solicitor for the said plaintiffs whose address is _____ [or This writ was issued by _____ agent for _____ of _____ solicitor for the said plaintiffs whose address is _____]
 [or This writ was issued by the said plaintiffs who reside at _____ and (if the plaintiffs do not reside within the jurisdiction) whose address for service is _____].

Indorsement as to service

This writ was served by me at _____ the _____ day of _____ on _____ on _____ the _____
 19 _____ by [stating manner of service].

(Signed)

(Address)

No. 2

Writ of summons in action in rem issued out of district registry

(O. 75 r. 3)

In the High Court of Justice

19 _____, No.

Probate, Divorce and Admiralty Division.

[LIVERPOOL] DISTRICT REGISTRY

Admiralty action in rem against:

[The ship "X" or as may be describing the res]

[The owners of the ship "Y" or as may be] Plaintiffs
and

[The owners of the ship "X" or as may be describing the res] Defendants
 [As in Form No. 1 except that the following shall be substituted for the directions for entering appearance.]

DIRECTIONS FOR ENTERING APPEARANCE

If the defendants reside or carry on business, or (in the case of a limited company) have a registered office, within the district of the above-named district registry or the writ is indorsed with a statement that any cause of action in respect of which the plaintiffs claim relief wholly or in part arose in that district, the defendants must enter an appearance in person or by a solicitor in the district registry and may do so either (1) by handing in the appropriate forms, duly completed, at the office of the District Registrar, [insert address of office], or (2) by sending them to that office by post.

If the defendants neither reside nor carry on business nor (in the case of a limited company) have a registered office within the district of the above-named district registry and the writ is not indorsed with a statement that any cause of action in respect of which the plaintiffs claim relief wholly or in part arose in that district, the defendants may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the office of the District Registrar, or by sending them to that office by post, or (2) by handing in the said forms, duly completed, at the Admiralty Registry, Royal Courts of Justice, Strand, London, W.C.2, or by sending them to that office by post.

The appropriate forms may be obtained by sending a postal order for 11d. with an addressed envelope, foolscap size, to (1) The District Registrar, High Court of Justice, [insert address of District Registry], if the appearance is to be entered in the District Registry, or (2) The Controller of Stamps, Royal Courts of Justice, Strand, London, W.C.2, if the appearance is to be entered in London.

Writ of summons in
Admiralty action in personam

Note :—Form No. 1, 2, 3 or 5 in Appendix A, as is appropriate, should be used substituting for the words "Central Office", wherever occurring, the words "Admiralty Registry".

No. 3

Warrant of arrest

(O. 75 r. 5 (1))

[*Heading as in action*]

ELIZABETH THE SECOND, etc. [*as in Form No. 1*].

To the Admiralty Marshal of Our High Court of Justice and to all and singular his substitutes, Greeting. We hereby command you to arrest the ship of the port of [and the cargo now or lately laden therein, together with the freight due for the transportation thereof,] or [and the freight due for the transportation of the cargo now or lately laden therein,] and to keep the same under safe arrest until you shall receive further orders from Us.

Witness [*as in Form No. 1*].

The plaintiff's claim is for [*copy from the writ*]

Taken out by [solicitors for] the

Marshal's indorsement as to service

No. 4

Præcipe for warrant of arrest

(O. 75 r. 5 (4))

[*Heading as in action*]

We of [solicitors for] the plaintiffs request a warrant to arrest [*description of property giving name, if a ship*].

Dated the day of 19 .

(Signed)

No. 5

Præcipe for caveat against arrest

(O. 75 r. 6)

[*Description of property giving name, if a ship*]

We of [solicitors for] of [] request a caveat against the arrest of [*description of property giving name, if a ship*] and hereby undertake to enter an appearance in any action that may be begun in the High Court of Justice against the said and, within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding pounds or to pay that sum into court. We consent that the writ of summons and any other document in the action may be left for us at

Dated the day of 19 .

(Signed)

No. 6

Præcipe for service of writ in rem by Marshal

(O. 75 r. 8 (3))

[Heading as in action]

We of [solicitors for]
the plaintiffs request that the writ of summons left herewith be duly served
on

Dated the day of 19 .
(Signed)

No. 7

Release

(O. 75 r. 13 (1))

*[Heading as in action]*ELIZABETH THE SECOND, etc. *[as in Form No. 1]*.

To the Admiralty Marshal of Our High Court of Justice, and to all and
singular his substitutes, Greeting.

Whereas in this action We did command you to arrest the
and to keep the same under safe arrest until you should receive further orders
from Us. Now We do hereby command you to release the said
from the arrest effected by virtue of Our warrant in this action.

Witness *[as in Form No. 1]*

Taken out by [solicitors for] the
Marshal's indorsement

On the day of 19 ,
the was released from arrest pursuant
to this Instrument.

(Signed)

Admiralty Marshal's Substitute.

No. 8

Præcipe for issue of release

(O. 75 r. 13 (6))

[Heading as in action]

We of [solicitors for]
the plaintiffs [*or defendants*] in this action against [*description of property giving
name, if a ship*], now under arrest by virtue of a warrant issued out of the
Admiralty Registry [*or the* District Registry *as may be*],
request the issue of a release with respect to the said

Dated the day of 19 .
(Signed)

No. 9

Præcipe for caveat against release and payment

(O. 75 r. 14)

[Description of property giving name, if a ship]

We of [solicitors for]
of request a caveat against the issue of a
release with respect to [*description of property giving name, if a ship*] now under
arrest and, should the said property be sold by order of the Court, a caveat
against payment out of court of the proceeds of sale.

Dated the day of 19 .
(Signed)

No. 10

Præcipe for withdrawal of caveat

(O. 75 r. 15)

[Description of property giving name, if a ship]

We _____ of _____ [solicitors for]
 [state nature of caveat] entered on the _____ request that the caveat
 on behalf of _____ day of _____ 19
 be withdrawn.

Dated the _____ day of _____ 19 .
 (Signed)

No. 11

Bail bond

(O. 75 r. 16)

[Heading as in action]

WHEREAS this Admiralty action in rem against the above mentioned property is pending in the High Court of Justice and the parties to the said action are the above mentioned plaintiffs and defendants:

NOW, THEREFORE, WE, A.B. of _____ and C.D. of _____, hereby jointly and severally submit ourselves to the jurisdiction of the said Court and consent that if they, the above mentioned defendants [or plaintiffs, in the case of a counter-claim] do not pay what may be adjudged against them in this action, with costs, or do not pay any sum due to be paid by them in consequence of any admission of liability therein or under any agreement by which this action is settled before judgment and which is filed in the said Court, execution may issue against us, our executors or administrators, goods and chattels, for the amount unpaid or an amount of _____ pounds whichever is the less.
 (Signed)

This bail bond was signed by the said A.B. and C.D., the sureties, the day of _____ 19 .

Before me
 a Commissioner for Oaths.

No. 12

Præcipe for commission for appraisement and sale

(O. 75 r. 23)

[Heading as in action]

We _____ of _____ [solicitors for]
 the plaintiffs [or defendants] request a commission for the appraisement and
 sale of [description of property giving name, if a ship] which was ordered by
 the Court on the _____ day of _____ 19 .

Dated the _____ day of _____ 19 .
 (Signed)

No. 13

Commission for Appraisement and Sale

(O. 75 r. 23)

*[Heading as in action]*ELIZABETH THE SECOND, etc. *[as in Form No. 1].*

To the Admiralty Marshal of Our High Court of Justice, and to all and singular his substitutes, Greeting.

WHEREAS in this action the Court has ordered *[description of property giving name, if a ship]* to be appraised and sold,

WE hereby authorise and command you to choose one or more experienced persons and to swear him or them to appraise the said according to the true value thereof, and such value having been certified in writing by him or them to cause the said to be sold by *[private treaty]* *[public auction]* for the highest price that can be obtained for it, but not for less than the appraised value unless the Court on your application allows it to be sold for less.

AND WE further command you, immediately upon the sale being completed, to pay the proceeds thereof into court and to file the certificate of appraisement signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

Witness *[as in Form No. 1]*

Taken out by

[solicitors for] the

No. 14

Release and Warrant of Possession

(O. 75)

*[Heading as in action]*ELIZABETH THE SECOND, etc. *[as in Form No. 1].*

To the Admiralty Marshal of Our High Court of Justice, and to all and singular his substitutes, Greeting:

WHEREAS in this action the Court has ordered possession of the ship *[name to be stated]*, her tackle, apparel and furniture to be delivered up to or to his solicitor for his use,

WE hereby command you to release the said ship, her tackle, apparel and furniture from the arrest made by virtue of Our warrant in that behalf and to deliver possession thereof to the said or to his solicitor for his use.

Witness *[as in Form No. 1]*

Taken out by

[solicitors for] the

Marshal's Indorsement

On the _____ day of _____ 19____, the ship _____ was released from arrest pursuant to this warrant.

(Signed)

Admiralty Marshal's Substitute

Receipt

Received from the Admiralty Marshal's Substitute on the _____ day of _____ 19____, the ship _____ and everything on board belonging to her.

(Signed)

SCHEDULE 2

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal	Relevant Rule
11 Geo. 4 & 1 Will. 4. c. 36	The Contempt of Court Act 1830	Section 15 Section 21	Order 52, rule 8(2). Order 1, rule 3.
2 & 3 Will. 4. c. 58	The Contempt of Court Act 1832	The whole Act	Order 52, rule 8(1).
1 & 2 Vict. c. 110	The Judgments Act 1838	Section 14 Section 15	Order 50, rules and 6. Order 50, rules 2, 5 and 7.
3 & 4 Vict. c. 65	The Admiralty Court Act 1840	Section 7 Section 8	Order 38, rule 1; Order 39, rule 1. Order 39, rules 1, 8, 11 and 13; Order 75, rules 30 and 31.
3 & 4 Vict. c. 82	The Judgments Act 1840	The whole Act	Order 50, rules 2 and 6.
5 Vict. c. 5	The Court of Chancery Act 1841	Section 4	Order 50, rule 15.
20 & 21 Vict. c. 43	The Summary Jurisdiction Act 1857	Section 8	Order 56, rule 5.
20 & 21 Vict. c. 77.	The Court of Probate Act 1857	Section 31	Order 38, rules 1 and 2.
36 & 37 Vict. c. 66	The Supreme Court of Judicature Act 1873	Section 66	Order 32, rules 22 and 23; Order 36, rule 9(2); Order 43, rule 2.

SCHEDULE 3

RULES AND ORDERS REVOKED

Column 1 Rules and Orders revoked	Column 2 References
The Rules, Orders and Scales of Fees dated 14th November 1868 made under the Judgments Extension Act 1868 (31 & 32 Vict. c. 54)	—
The Rules of the Supreme Court dated 24th October 1883	Rev. 1903, XII, pp. 54-417
The Rules of the Supreme Court dated 4th February 1884	Rev. 1889, VII, p. 313
The Rules of the Supreme Court, October 1884	Rev. 1889, VII, p. 314
The Rules of the Supreme Court, December 1885	Rev. 1889, VII, p. 320
The Rules of the Supreme Court, December 1886	Rev. 1889, VII, p. 332
The Rules of the Supreme Court, August 1888	Rev. 1889, VII, p. 335

Column 1 Rules and Orders revoked	Column 2 References
The Rules of the Supreme Court, December 1888	Rev. 1889, VII, p. 336
The Rule of the Supreme Court dated 5th June 1889 made under section 89(3) of the Local Government Act 1888 (51 & 52 Vict. c. 41)	Rev. XXII, p. 104
The Rules of the Supreme Court, December 1889	Rev. 1889, VII, p. 343
The Rules of the Supreme Court (Sales under Executions) dated 17th December 1890	1890, p. 959
The Rules of the Supreme Court, June 1891	1891, p. 670
The Rules of the Supreme Court, February 1892	1892, p. 904
The Rule of the Supreme Court, June 1892	1892, p. 905
The Rule of the Supreme Court dated 10th August 1892 made under section 29 of the Local Government Act 1888	Rev. XXII, p. 105
The Rules of the Supreme Court, November 1893	1893, p. 542
The Rules of the Supreme Court (Trustee Act) 1893	1893, p. 558
The Rules of the Supreme Court, August 1894	S.R. & O. 1894/72 (1894, p. 419)
The Rule of the Supreme Court dated 10th December 1894 made under section 70 of the Local Government Act 1894 (56 & 57 Vict. c. 73)	S.R. & O. 1894/557 (Rev. XXII, p. 106)
The Rules of the Supreme Court (Merchant Shipping) 1894	Rev. XXII, p. 108
The Rule of the Supreme Court dated 6th April 1895 made under section 70 of the Local Government Act 1894	S.R. & O. 1895/181 (Rev. XXII, p. 106)
The Rules of the Supreme Court 1895 consolidating the Chancery Funds Order and as to Costs of Originating Summons	S.R. & O. 1895/431 (1895, p. 719)
The Rules of the Supreme Court, November 1895	S.R. & O. 1895/603 (1895, p. 725)
The Rules of the Supreme Court, March 1896	S.R. & O. 1896/361 (1896, p. 580)
The Rules of the Supreme Court 1896	S.R. & O. 1896/895 (1896, p. 582)
The Rules of the Supreme Court, November 1900	S.R. & O. 1901/1 (1901, p. 438)
The Rules of the Supreme Court dated 4th July 1901 made under section 29 of the London Government Act 1899 (62 & 63 Vict. c. 14)	S.R. & O. 1901/543 (Rev. XXII, p. 107)
The Rules of the Supreme Court, July 1902	S.R. & O. 1902/539 (1902, p. 450)
The Rule of the Supreme Court dated 15th January 1903 made under section 89(3) of the Local Government Act 1888	S.R. & O. 1903/34 (Rev. XXII, p. 104)
The Rules of the Supreme Court, July 1903	S.R. & O. 1903/567 (1903 II, p. 1334)
The Rules of the Supreme Court (July) 1905	S.R. & O. 1905/865 (1905 I, p. 475)

Column 1 Rules and Orders revoked	Column 2 References
The Rules of the Supreme Court (August 1907)	S.R. & O. 1907/587 (1907, p. 1034)
The Rules of the Supreme Court (June) 1908	S.R. & O. 1908/444 (1908, p. 932)
The Merchant Shipping Rules, 1908	S.R. & O. 1908/446 (Rev. XXII, p. 109)
The Rules of the Supreme Court (May) 1909	S.R. & O. 1909/506 (1909, p. 750)
The Rules of the Supreme Court (July) 1910	S.R. & O. 1910/978 (1910, p. 704)
The Rules of the Supreme Court (July) 1911	S.R. & O. 1911/661 (1911, p. 409)
The Trade Union Act Rules 1913	S.R. & O. 1913/1274 (Rev. XXII, p. 116)
The Industrial and Provident Societies Acts Rules 1916	S.R. & O. 1916/325 (Rev. XXII, p. 102)
The Friendly Societies Act Rules 1916	S.R. & O. 1916/326 (Rev. XXII, p. 101)
The Rules of the Supreme Court (Revision) 1917	S.R. & O. 1917/319 (1917, p. 971)
The Rules of the Supreme Court (No. 2) 1918	S.R. & O. 1918/1112 (1918 II, p. 859)
The Rules of the Supreme Court (March) 1919	S.R. & O. 1919/376 (1919 II, p. 471)
The Rules of the Supreme Court (No. 1) 1920	S.R. & O. 1920/631 (1920 II, p. 700)
The Rules of the Supreme Court (County Courts Act) 1920	S.R. & O. 1920/714 (1920 II, p. 706)
The Rules of the Supreme Court (No. 3) 1920	S.R. & O. 1920/1296 (1920 II, p. 707)
The Rules of the Supreme Court 1921	S.R. & O. 1921/1058 (1921, p. 1264)
The Rules of the Supreme Court (No. 1) 1922	S.R. & O. 1922/212 (1922, p. 1043)
The Rules of the Supreme Court (Administration of Justice Act, Part II) 1922	S.R. & O. 1922/824 (1922, p. 1051)
The Rules of the Supreme Court (Foreign Conventions) 1922	S.R. & O. 1922/1246 (1922, p. 1066)
The Rules of the Supreme Court (No. 2) 1923	S.R. & O. 1923/703 (1923, p. 996)
The Rules of the Supreme Court (No. 1) 1924	S.R. & O. 1924/364 (1924, p. 1688)
The Rules of the Supreme Court (No. 1) 1925	S.R. & O. 1925/651 (1925, p. 1479)
The Rules of the Supreme Court (No. 2) 1925	S.R. & O. 1925/699 (1925, p. 1485)
The Rules of the Supreme Court (No. 3) 1925	S.R. & O. 1925/776 (1925, p. 1498)
The Rules of the Supreme Court (Law of Property and other Acts) 1925	S.R. & O. 1925/935 (1925, p. 1522)
The Rules of the Supreme Court (No. 5) 1925	S.R. & O. 1925/1237 (1925, p. 1529)
The Rules of the Supreme Court (No. 3) 1926	S.R. & O. 1926/892 (1926, p. 1237)
The Rules of the Supreme Court (No. 4) 1926	S.R. & O. 1926/956 (1926, p. 1240)

Column 1 Rules and Orders revoked	Column 2 References
The Rules of the Supreme Court (No. 1) 1927	S.R. & O. 1927/657 (1927, p. 1633)
The Rules of the Supreme Court (No. 2) 1927	S.R. & O. 1927/1157 (1927, p. 1634)
The Rules of the Supreme Court (No. 1) 1928	S.R. & O. 1928/198 (1928, p. 1216)
The Rules of the Supreme Court (No. 1) 1933	S.R. & O. 1933/534 (1933, p. 1804)
The Rules of the Supreme Court (No. 2) 1933	S.R. & O. 1933/645 (1933, p. 1812)
The Rules of the Supreme Court (No. 1) 1934	S.R. & O. 1934/352 (1934 II, p. 588)
The Rules of the Supreme Court (No. 2) 1934	S.R. & O. 1934/522 (1934 II, p. 593)
The Rules of the Supreme Court (No. 3) 1934	S.R. & O. 1934/747 (1934 II, p. 595)
The Rules of the Supreme Court (No. 5) 1934	S.R. & O. 1934/1355 (1934 II, p. 599)
The Rules of the Supreme Court (No. 1) 1935	S.R. & O. 1935/511 (1935, p. 1643)
The Rules of the Supreme Court (No. 1) 1936	S.R. & O. 1936/256 (1936 II, p. 2537)
The Rules of the Supreme Court (No. 2) 1936	S.R. & O. 1936/329 (1936 II, p. 2538)
The Rules of the Supreme Court (No. 4) 1936	S.R. & O. 1936/1011 (1936 II, p. 2545)
The Rules of the Supreme Court (No. 1) 1937	S.R. & O. 1937/240 (1937, p. 2180)
The Rules of the Supreme Court (No. 3) 1937	S.R. & O. 1937/1150 (1937, p. 2185)
The Rules of the Supreme Court (No. 1) 1938	S.R. & O. 1938/732 (1938 II, p. 3148)
The Rules of the Supreme Court (No. 2) 1938	S.R. & O. 1938/1575 (1938 II, p. 3150)
The Rules of the Supreme Court (Divisional Courts) 1938	S.R. & O. 1938/1577 (1938 II, p. 3161)
The Rules of the Supreme Court (No. 1) 1939	S.R. & O. 1939/804 (1939 II, p. 3115)
The Rules of the Supreme Court (No. 2) 1940	S.R. & O. 1940/924 (1940 I, p. 990)
The Rules of the Supreme Court (No. 3) 1940	S.R. & O. 1940/1058 (1940 I, p. 992)
The Rules of the Supreme Court (No. 4) 1940	S.R. & O. 1940/1321 (1940 I, p. 993)
The Rules of the Supreme Court (No. 6) 1940	S.R. & O. 1940/1772 (1940 I, p. 999)
The Rules of the Supreme Court (No. 1) 1941	S.R. & O. 1941/497 (1941 I, p. 1105)
The Rules of the Supreme Court (No. 3) 1941	S.R. & O. 1941/1046 (1941 I, p. 1110)
The Rules of the Supreme Court (No. 6) 1941	S.R. & O. 1941/1719 (1941 I, p. 1114)
The Rules of the Supreme Court (No. 3) 1943	S.R. & O. 1943/1023 (1943 I, p. 920)

Column 1 Rules and Orders revoked	Column 2 References
The Rules of the Supreme Court (No. 4) 1943	S.R. & O. 1943/1594 (1943 I, p. 924)
The Rules of the Supreme Court (No. 3) 1944	S.R. & O. 1944/894 (1944 I, p. 929)
The Rules of the Supreme Court (No. 1) 1945	S.R. & O. 1945/256 (1945 I, p. 1117)
The Rules of the Supreme Court (No. 2) 1946	S.R. & O. 1946/607 (1946 I, p. 1570)
The Rules of the Supreme Court (No. 3) 1946	S.R. & O. 1946/1033 (1946 I, p. 1573)
The Rules of the Supreme Court (No. 1) 1947	S.R. & O. 1947/248 (1947 I, p. 2010)
The Rules of the Supreme Court (No. 2) 1947	S.R. & O. 1947/486 (1947 I, p. 2011)
The Rules of the Supreme Court (No. 3) 1947	S.R. & O. 1947/988 (1947 I, p. 2013)
The Rules of the Supreme Court (Exchange Control) 1947	S.R. & O. 1947/1920 (1947 I, p. 2016)
The Rules of the Supreme Court (Crown Proceedings) 1947	S.R. & O. 1947/2530 (1947 I, p. 2024)
The Rules of the Supreme Court (No. 1) 1948	S.I. 1948/939 (1948 I, p. 4025)
The Rules of the Supreme Court (No. 2) 1948	S.I. 1948/1439 (1948 I, p. 4028)
The Rules of the Supreme Court (Companies) (No. 2) 1948	S.I. 1948/1880 (1948 I, p. 4038)
The Rules of the Supreme Court (No. 1) 1949	S.I. 1949/761 (1949 I, p. 4000)
The Rules of the Supreme Court (No. 2) 1949	S.I. 1949/1414 (1949 I, p. 4003)
The Rules of the Supreme Court (No. 3) 1949	S.I. 1949/2399 (1949 I, p. 4006)
The Rules of the Supreme Court (No. 1) 1950	S.I. 1950/572 (1950 II, p. 911)
The Rules of the Supreme Court (No. 2) 1950	S.I. 1950/1941 (1950 II, p. 925)
The Rules of the Supreme Court (No. 1) 1951	S.I. 1951/839 (1951 II, p. 685)
The Rules of the Supreme Court (No. 1) 1952	S.I. 1952/1062 (1952 III, p. 3367)
The Rules of the Supreme Court (No. 2) 1952	S.I. 1952/2122 (1952 III, p. 3368)
The Rules of the Supreme Court (No. 1) 1953	S.I. 1953/985 (1953 II, p. 2251)
The Rules of the Supreme Court (Admiralty) 1953	S.I. 1953/986 (1953 II, p. 2253)
The Rules of the Supreme Court (Summons for Directions, etc.) 1954	S.I. 1954/761 (1954 II, p. 2250)
The Rules of the Supreme Court (No. 2) 1954	S.I. 1954/1027 (1954 II, p. 2234)
The Rules of the Supreme Court (Landlord and Tenant) 1954	S.I. 1954/1585 (1954 II, p. 2242)
The Rules of the Supreme Court (No. 3) 1954	S.I. 1954/1726 (1954 II, p. 2236)

Column 1 Rules and Orders revoked	Column 2 References
The Rules of the Supreme Court (Chancery Provisions) 1954	S.I. 1954/1728 (1954 II, p. 2238)
The Rules of the Supreme Court (No. 3) 1955	S.I. 1955/1884 (1955 II, p. 2554)
The Rules of the Supreme Court (Appeals) 1955	S.I. 1955/1885 (1955 II, p. 2556)
The Rules of the Supreme Court (No. 1) 1956	S.I. 1956/551 (1956 II, p. 2336)
The Rules of the Supreme Court (No. 2) 1956	S.I. 1956/1191 (1956 II, p. 2337)
The Rules of the Supreme Court (No. 3) 1956	S.I. 1956/2001 (1956 II, p. 2340)
The Rules of the Supreme Court (No. 1) 1957	S.I. 1957/1178 (1957 II, p. 2394)
The Rules of the Supreme Court (No. 1) 1958	S.I. 1958/650 (1958 II, p. 2274)
The Rules of the Supreme Court (No. 2) 1958	S.I. 1958/1246 (1958 II, p. 2275)
The Rules of the Supreme Court (No. 3) 1958	S.I. 1958/2094 (1958 II, p. 2284)
The Rules of the Supreme Court (No. 1) 1959	S.I. 1959/450 (1959 II, p. 2531)
The Rules of the Supreme Court (No. 2) 1959	S.I. 1959/1947 (1959 II, p. 2534)
The Rules of the Supreme Court (No. 3) 1959	S.I. 1959/1958 (1959 II, p. 2535)
The Rules of the Supreme Court (No. 1) 1960	S.I. 1960/545 (1960 III, p. 3129)
The Rules of the Supreme Court (No. 2) 1960	S.I. 1960/1262 (1960 III, p. 3135)
The Rules of the Supreme Court (No. 3) 1960	S.I. 1960/1263 (1960 III, p. 3138)
The Rules of the Supreme Court (No. 4) 1960	S.I. 1960/2327 (1960 III, p. 3151)
The Rules of the Supreme Court (No. 5) 1960	S.I. 1960/2328 (1960 III, p. 3157)
The Rules of the Supreme Court (No. 1) 1961	S.I. 1961/1084 (1961 II, p. 2063)
The Rules of the Supreme Court (No. 2) 1961	S.I. 1961/2365 (1961 III, p. 4362)
The Rules of the Supreme Court (No. 1) 1962	S.I. 1962/838 (1962 I, p. 928)
The Rules of the Supreme Court (Revision) 1962	S.I. 1962/2145 (1962 III, p. 2529)
The Rules of the Supreme Court (Forms) 1962	S.I. 1962/2146 (1962 III, p. 2701)
The Rules of the Supreme Court (Costs) 1962	S.I. 1962/2147 (1962 III, p. 2727)
The Rules of the Supreme Court (No. 2) 1962	S.I. 1962/2704 (1962 III, p. 3655)
The Rules of the Supreme Court (No. 1) 1963	S.I. 1963/682 (1963 I, p. 843)
The Rules of the Supreme Court (No. 2) 1963	S.I. 1963/1989 (1963 III, p. 4188)
The Rules of the Supreme Court 1964	S.I. 1964/1213 (1964 II, p. 2804)

Column 1 Rules and Orders revoked	Column 2 References
The Rules of the Supreme Court (No. 2) 1964	S.I. 1964/1944 (1964 III, p. 4245)
The Rules of the Supreme Court 1965	S.I. 1965/828 (1965 I, p. 2301)
The Rules of the Supreme Court (No. 2) 1965	S.I. 1965/1229 (1965 II, p. 3465)
The Rules of the Supreme Court (No. 3) 1965	S.I. 1965/1567 (1965 II, p. 4569)

The revocations in this Schedule shall not affect rules 8, 9, 10 and 10A of Order 65 of the Rules of the Supreme Court 1883 or Appendix N thereto in their application to costs incurred in relation to business done before 1st January 1960.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules complete the revision of the Rules of the Supreme Court 1883 which was recommended by the Committee on Supreme Court Practice and Procedure in its Second Interim Report (Cmd. 8176). The Orders set out in Schedule 1 replace all the existing rules mentioned in Schedule 3.

The new Rules include, with some minor amendments, the Orders which were rewritten in 1962. The following are the more important of the changes made—

(1) Order 22, rule 3, has been amended to enable a payment into court to be made or increased after the trial of an action has begun. The plaintiff has two days in which to accept the payment except that he cannot accept it after the judge begins to deliver judgment, or, if the trial is with a jury, after the judge begins his summing up.

(2) A new rule has been substituted for Order 24, rule 15, so as to state in a more neutral form than the previous rule the position in regard to the withholding of any document on the ground that its disclosure would be injurious to the public interest.

(3) Paragraph (3) of Order 28, rule 4, requires the Court to consider, at an early stage of the proceedings on an originating summons whether, owing to a dispute as to fact, the summons can best be disposed of on oral evidence.

(4) Order 45 clarifies the general provisions with respect to the enforcement of judgments and orders and, taken together with alterations in the forms of money judgments and judgments for possession of land or delivery of goods (Forms 39-51 in Appendix A), makes a number of changes. All such judgments will in future be similar in form and will be judgments to

do an act; they will accordingly be enforceable, subject to certain conditions, not only by the usual methods of enforcement but also by writ of sequestration and, in certain cases, by order of committal. Another change is that an order for the issue of a writ of delivery will not be necessary unless the person entitled to enforce the judgment wishes to obtain delivery of the goods without giving the person liable to satisfy the judgment the option of paying the assessed value.

(5) Attachment is abolished and the power to commit a person to prison for contempt of court will be exercisable only by order of committal, thus avoiding the complications to which two alternative procedures gave rise. (Order 52, rule 1.) Where a person is committed to prison for a fixed term for contempt, it will be possible for the Court, under Order 52, rule 8, to discharge him before the expiration of that term.

(6) Orders 55 and 56 prescribe codes of procedure which, subject to any special provisions made in particular cases by other Orders or by any enactment, will apply where an appeal, including an appeal by case stated, lies to the High Court under any enactment from the decision of a Minister, government department, inferior court, tribunal or other person.

(7) New provision is made by Order 63, rules 4 and 12, Order 75, rule 46, and Order 76, rule 23, with respect to the inspection of documents filed in the various offices and registries of the High Court.

(8) Order 103, rules 3 to 8, make some changes in connection with applications for extension of the term of a patent. The main changes relate to the advertisement of the intended application and to the first hearing of the petition by the Court. Other changes made by this Order include a new rule (rule 25) in regard to proceedings for infringement or revocation of a patent.

Among the less important changes are the following—

(i) By virtue of Order 34, rules 5(5), 6(2) and 7(5), an action remitted for trial at an assize town from another assize town will be treated as having been set down for trial on the date on which it was originally set down instead of the date on which it was remitted.

(ii) Masters and registrars are authorised to grant injunctions in terms agreed by the parties to proceedings (Order 32, rules 11(2) and 23) and to grant injunctions in proceedings under s. 17 of the Married Women's Property Act 1882 so far as the injunction is ancillary to any relief sought in those proceedings (Order 89, rule 1(3)).

(iii) The rule which makes provision as to the party to begin, and the order of speeches, at a trial has been rewritten (Order 35, rule 7).

(iv) Detailed provision with respect to writs of subpoena issued out of the Crown Office is made by Order 38, rule 19.

(v) A judgment creditor is enabled to apply for payment out of court of money in court standing to the credit of the judgment debtor (Order 49, rule 9) and to apply for an order imposing a charge on any interest to which the judgment debtor is beneficially entitled in any money in court (Order 50, rule 8).

(vi) An appeal from the decision of a judge in chambers on a civil application for a writ of habeas corpus will lie to the Court of Appeal instead of to a Divisional Court (Order 58, rule 7).

(vii) An application to the Court of Appeal for leave to appeal will not be made *ex parte* in the first instance unless the appellant is acting in person (Order 59, rule 14(2)).

(viii) The costs of preparing a plan (other than a sketch plan) of the place where an accident on land happened will not be allowed unless the Court authorised the preparation of a plan before the trial or the taxing officer is satisfied that it was reasonable to prepare the plan for use at the trial (Order 62, Appendix 2, Part X, para. 4(1)).

(ix) Order 75, rule 19, contains provisions for enforcing compliance with the requirements of rule 18 about the filing of preliminary acts in certain actions arising out of a collision between ships. Rule 22 of that Order, which is also new, deals with the case where the Court has ordered the sale of a ship against which there are a number of judgments or claims, not all of which can be satisfied out of the proceeds of sale; the main object of the rule is to ensure that the fact that the ship has been sold is brought to the notice of those with claims against the proceeds. Rule 41(2) enables an application to be made for directions as to the conduct of proceedings on a reference.

(x) Order 79, rule 9(11), makes it clear that an applicant for bail may make only one application.

(xi) Order 82, rule 4(1), dealing with payment into court in defamation actions, has been rewritten.

(xii) Order 86, which prescribes a summary procedure in actions for specific performance or rescission of agreements relating to land, is extended to cover agreements for the exchange of property and for the grant or assignment of a lease. If a summons is issued in an action proceeding in a district registry, except the registries at Liverpool and Manchester, the action will be transferred to London.

(xiii) Order 94, rule 5, authorises the jurisdiction of the High Court under the Representation of the People Acts in certain matters relating to local government elections to be exercised by a single judge instead of a Divisional Court.

(xiv) Not less than four days before the day fixed for the hearing of an application for a new tenancy under s. 24 of the Landlord and Tenant Act 1954 the defendant must file an affidavit containing certain information (Order 97, rule 7(2)).

(xv) The plaintiff in proceedings under s. 1 of the Inheritance (Family Provision) Act 1938 will no longer have to apply to the Court for directions as to the persons to be added as defendants (Order 99).

(xvi) Certain powers of a judge of the High Court under the County Courts Act 1959 are made exercisable by a district registrar (Order 107, rules 1 and 4). Where the Court makes an order transferring any county court proceedings to the High Court it may at the same time order that they shall proceed in a district registry (Order 107, rule 1(4)).

(xvii) The provision in the existing Rules (Order 34, rule 1) whereby the parties may concur in stating the questions of law arising in any cause or matter in the form of a special case for the opinion of the Court has been omitted.

The following Table shows, in relation to each of the Rules of the Supreme Court, the new rule, if any, in which it is reproduced:—

TABLE

R.S.C.		Revised Rules		R.S.C.		Revised Rules	
Order	Rule	Order	Rule	Order	Rule	Order	Rule
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2	1-2	2	1-2		7	43	2(2)
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4	1-10	4	1-10		8A	—	—
5	1-6	5	1-6		9	43	7
6	1-8	6	1-8		10	43	8
7	1-7	7	1-7	34	1	—	—
8	1	8	1		2	33	2, 3, 7
	2	8	3(1)		3-7	—	—
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9	1-5	9	1-5			42	5
10	1-5	10	1-5		2	42	5
11	1-9	11	1-9		3	42	5(8)
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14	1-11	14	1-11		11	63	11
15	1-15	15	1-15		12	32	25
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	17	15	16		20	63	14
	18	15	17		21	63	12(2)
16	1-11	16	1-11		22	63	9
17	1-11	17	1-11	36	1	33	4
	12	58	8			34	1
18	1-22	18	1-22		2	33	5
19	1-9	19	1-9		4	34	2
20	1-11	20	1-11		5	34	3
21	1-6	21	1-6		6	34	4
22	1-13	22	1-13		7	34	5
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27	1-5	27	1-5		31	35	1
28	1-9	28	1-10		32	35	1
33	1	—	—		33	35	2
	1A	43	1		34	35	3
	2	43	2(1)		34A	35	4
	3	43	3		35	—	—
	4	43	4		36	35	7
	4A	—	—		38	—	—
	5	43	5		39	—	—

R.S.C.		Revised Rules		R.S.C.		Revised Rules			
Order	Rule	Order	Rule	Order	Rule	Order	Rule		
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	40	—	—		21	—	—	—	
	41	35	10		22	39	8(1)	8(1)	
	42	—	—		23	39	8(1)	9(2)	
	43	33	6		24	38	9(2)	—	
	44	—	—		25	—	—	—	
	36A	1	36		1	26	38	14(5)	—
		2	36		2	27	38	14(1)	—
		3	59		9(1)	27A	38	14(3), (4)	—
		4	36		5	28	32	7	—
		5	36		6	29	38	15	—
		6	36		7	30	38	15	—
7		36	4	31	38	16	—		
8		58	5	32	38	17	—		
9		36	3	34	38	17	—		
		59	9(1)	34A	38	18	—		
	10	36	8, 9	35	39	15	—		
	11	36	8	36	77	14	—		
	12	36	10	37	39	15	—		
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	2	37	1	39	39	1	—		
	3	37	2	40	39	16	—		
	4	37	3	41	39	17	—		
	5	37	4	42	—	—	—		
	6	37	5	43	39	18	—		
	7	37	6	44	39	6	—		
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	1D	38	5	49	—	—	—		
	1E	38	6	50	39	14	—		
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				52	39	12	—		
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	3	32	17	55	—	—	—		
	4	38	10(1)	56	70	4	—		
	5	39	1	57	70	5	—		
	6	—	—	58	70	4	—		
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6C	—	—	37A	40	1	—			
7	38	13	2	40	2	—			
8	39	5(4)	3	40	4	—			
9	—	—	4	40	1	—			
10	39	7	5	40	3	—			
11	—	—	6	40	2(2)	—			
12	39	10, 11	7	40	5	—			
13	39	5	8	40	6	—			
14	39	10	9	40	1	—			
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16	39	11(4)	12	103	27	—			
17	39	13	38	1	38	2(3)	—		
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19	—	—	3	3	41	5	—		

R.S.C.		Revised Rules		R.S.C.		Revised Rules		
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	7	41	1		18	71	13	
	8	41	1		19	71	1	
	9	41	2		41B	1	71	1, 2
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	11	41	6			3	71	4
	12	41	7			4	—	
	13	41	3			5	71	5
	14	41	4	6	71	6		
	15	41	10	7	71	7		
	16	41	8	8	71	8		
	17	41	8	9	71	9		
	18	—		10	71	10		
	19	—		11	—			
	19A	38	11	12	71	11		
	20	32	17	13	71	13		
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	22	—		41D	1	104	7	
23	41	11	2		104	8, 9		
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	4	35	11	8	104	16		
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	4	42	3		6	45	4, 13	
	5	42	2		7	45	5	
		45	7		8	46	1	
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7	42	5(3)	11		46	6(4)		
8	42	5(3)	12	46	6, 7(2)			
9	—		13	—				
10	—		14	45	12			
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	3	—			16	—		
	4	71	2		17	45		
	5	71	5			46		
	6	71	5		17A	47		
	7	71	6		18	47		
	8	71	6		19	47		
	9	71	7		20	46		
	10	71	7		21	46		
	11	71	8		22	—		
	12	71	9		23	46		
	13	71	9		24	45		
	14	71	10		26	45		

R.S.C.		Revised Rules		R.S.C.		Revised Rules		
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	29	—			9	29	8	
	30	45	8		11	—		
	31	45	5		12	29	1	
	32	48	1		12A	29	7	
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		59	9(7), (8)		16	30	2, 3	
		48	1		16A	30	2	
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		2	—			17A	51	1
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		4	47		5	19	—	
5		—		20	30	4		
6		45	1, 5	21	30	6		
7		—		22	30	4(4)		
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14		—		24	91	10		
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	5	49	6	4	—			
	6	49	6	5	—			
	7	49	8	6	31	3		
	8	—		6A	31	3		
	9	49	10	7	31	5		
	10	49	1(3)	8	31	6		
46	1	50	2-7	9	31	7		
	2	50	1	10	—			
	3	50	11	11	31	8		
	4	50	11	12	—			
	5	50	11	13	31	7		
	6	50	11(3)	1	—			
	7	50	11(4)	2	—			
	8	50	12	3	8	2		
	9	50	14	4	8	3		
	10	50	12	5	8	2(2)		
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	12	50	10	7	8	5		
	13	50	10	8	8	4		
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R.S.C.		Revised Rules		R.S.C.		Revised Rules		
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	8	32	4		35	44	3(2)	
	9	32	18		35A	44	3(4)	
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		50	9		41	44	6	
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		107	1		45	44	10	
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		92	5	64	44	19		
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5C		88	2	66A	44	22		
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9		—	—	71	44	23		
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17		32	15	19	59	1-19		
18		—	—	20	59	19(6)		
19		32	16	58A	1-3	20		
24		—	—	58B	1-5	1-3		
25		—	—	6	—	—		
26		91	9	7	60	3		
28		44	2	59	1	52-54		
29		32	20			56		
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	7	53	5		8	56	7-12	
	8	53	6		8	65	6	
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	11	53	9			3	56	7, 8
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	13	53	11			3	94	7
	14	54	1			1	56	7
	15	54	1		2	2	56	8
	16	54	2		61	3	94	11
	17	54	2			4	56	9, 11
	18	54	3			1	94	11
	19	54	4		2	65	6	
	20	54	5		3	94	11	
	21	54	6		4	1	63	1
	22	54	7		1B	2	—	2
	23	54	8		2	4	63	2
	24	54	9		4	5	32	8
	25	54	9		5	6	—	8
	26	52	1-3		6	7	38	10
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	27	—	—		8	8A	30	2(4)
	28	—	—		8A	9	63	10
	29	56	1, 5		9	10-15	—	10
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	31	56	3		17	17	63	4
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	36	55	7		29	—	9	
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	41	33	2		5	63	7	
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	42	—	—		7	63	7	
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	44	57	2-4			1A	—	8
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47	—	—	5	42	7(2)			
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	19	106	4	96	1	102	1
62A	1-9	67	1-9		2	102	2-5
63	1-8	64	1-8		3	—	—
66	1-4	66	1-4		4	102	6
66A	1-7	68	1-7		5	102	5
67	1-5	65	1-5		6	102	3
	6-8	65	7-9		7	102	4
68	1-5	69	1-5		8	102	2
69	—	—	—		9	102	2
72	1-10	72	1-10		10	102	7
75	1-42	75	1-44		11	102	8-16
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	46	75	47	97	1	97	4
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77	1-14	77	1-14		4	97	2, 10
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78	1-5	78	1-5		7	97	9, 10
79	1-9	79	1-9		8	97	5(4)
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80	1-9	80	1-9		10	97	12
	10	—	—		11	97	13
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81	1-10	81	1-10	98	1	—	—
82	1-8	82	1-8		2	100	1
83	1-5	83	1-5		3	55	3, 4
84	1-3	84	1-3		4	100	2(3)
85	1-6	85	1-6		5	100	2(4)
86	1-7	86	1-7		6	100	2(6)
87	1-6	87	1-6		7	100	3
88	1-7	73	1-8		8	100	2(5)
89	1-3	95	1-3	99	1	103	2
90	1-3	89	2		2	103	28
95	1	103	1		3	103	30
	2	103	2	100	1	93	4
	3	103	3-8, 14, 15		3	92	2, 4
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	6	103	19(3), 22		4	92	4
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	8	103	18(3)		6	—	—
	9	103	19(1)	102	7	92	1
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104	1	5	3		2	106	11
		99	1		3	106	12
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	8	99	2		5	106	13
	9	—	—		6	106	14
	10	99	5		7	106	15
	11	—	—		8	55	3(1)
	12	99	4		9	106	16
	13	99	6	115	10	106	17
	14	—	—		1	—	—
105	1	5	3		2	91	3
	2-4	—	—		3	91	4
106	1-3	5	3		4	91	5
		93	5		5	91	6
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	6	105	6		2	55	3
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109	1-3	32	9		5	111	4
110	1-5	—	—		6	111	4
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	7	96	4, 5		49	55	3
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	9	96	7			55	3, 6
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		66	98	7		3	56	10
		67	98	3		4	93	14
		68	98	8	126	1	90	1
		69	56	7, 9, 10		2	90	2
			57	2		3	90	2
	70	—			4	90	2	
119	71	94	1		5	90	3	
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	74	94	2, 3		8	90	4	
	75	—			9	5	3	
120		—				90	1, 5	
121	1	93	13		10	65	6	
	2	93	13	127	1	90	1	
	4	92	3, 4		2	55	3	
	5	—				90	8	
	6	65	6		3	90	8	
122	1	93	7		4	90	8	
	2	—			5	90	8	
	3	93	7		6	90	8	
	4	—			7	55	7	
	5	93	7		8	90	8(6)	
	6	—			9	65	6	
123	7	65	6	128	1-3	110	1-3	
	1	101	1					
	2	101	3					
	3	101	4					
	4	65	6					
	6	—						