STATUTORY INSTRUMENTS

1962 No. 2145 (L. 19)

SUPREME COURT OF JUDICATURE, ENGLAND

PROCEDURE

The Rules of the Supreme Court (Revision) 1962

Made - - - -	*28th September* 1962
Laid before Parliament	*12th October* 1962
Coming into Operation	*1st January* 1964

We, the Rule Committee of the Supreme Court, being the authority having for the time being power under subsection (4) of 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 those powers and all other powers enabling us in that behalf as follows:—

1.—(1) In the Rules of the Supreme Court 1883(b), the first paragraph is hereby revoked and the Orders specified in column (1) of Part I of Schedule 1 hereto are hereby revoked to the extent specified in column (2) of that Part.

(2) The Rules specified in column (1) of Part II of the said Schedule 1 are hereby revoked to the extent specified in column (2) of that Part.

(3) The Rules of the Supreme Court May 1887(c) are hereby revoked.

(4) The Rules of the Supreme Court (Criminal Proceedings) 1938(d), except rule 17 and the Appendix, and the Rules of the Supreme Court (Criminal Proceedings) 1949(e) are hereby revoked.

2. In the Rules of the Supreme Court 1883, the Orders specified in column (1) of Schedule 2 hereto shall be renumbered with the numbers specified in relation to them in column (2) of that Schedule and shall be transferred to the places in the said Rules appropriate to them as so renumbered.

3. The Orders set out in Schedule 3 hereto shall have effect in place of the rules and Orders hereby revoked and shall be inserted in the Rules of the Supreme Court 1883 in the places appropriate to their numbers; and the arrangement of Orders set out at the beginning of that Schedule shall be inserted at the beginning of the Rules of the Supreme Court 1883.

4. The Rules of the Supreme Court 1883 shall have effect subject to the consequential amendments set out in Schedule 4 hereto.

5. The enactments specified in columns (1) and (2) of Schedule 5 hereto (being enactments relating to matters with respect to which the rules specified in column (4) of that Schedule have been made) are hereby repealed to the extent specified in column (3) of that Schedule.

(a) 15 & 16 Geo. 5. c. 49. (b) Rev. 1903, XII, p. 54. (c) Rev. 1889, VII, p. 333.
(d) S.R. & O. 1938/1576 (1938 II, p. 3154). (e) S.I. 1949/721 (1949 I, p. 4007).

6. The Rules of the Supreme Court 1883, as amended by this and by all other instruments, may be cited as the "Rules of the Supreme Court"

7. The Interpretation Act 1889(a) 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.

8. This instrument may be cited as the Rules of the Supreme Court (Revision) 1962 and shall come into operation on 1st January 1964.

Dated 28th September 1962.

Dilhorne, C.
Parker of Waddington, C.J.
Denning, M.R.
J. E. S. Simon, P.
B. Ormerod, L.J.
Colin H. Pearson, L.J.
Geoffrey Cross, J.
John Megaw, J.
Reginald W. Goff.
Douglas Lowe.
Charles Norton.
W. O. Carter.

SCHEDULE 1

RULES REVOKED

PART I

Rules of the Supreme Court 1883

(1) *Order*	(2) *Extent of Revocation*
I	The whole Order.
I A	The whole Order.
II	The whole Order.
III	The whole Order.
IV	The whole Order.
V	The whole Order.
VI	The whole Order.
VII	The whole Order.
VIII	The whole Order.
IX	The whole Order.
X	The whole Order.
XI	The whole Order.
XII	The whole Order.
XIII	The whole Order.
XIV	The whole Order.
XIV A	The whole Order.
XIV B	The whole Order.
XV	The whole Order.
XVI	The whole Order.
XVI A	The whole Order.
XVI B	The whole Order.
XVII	The whole Order.
XVIII	The whole Order.
XIX	The whole Order.

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

Order	*Extent of Revocation*
XX	The whole Order.
XXI	The whole Order.
XXII	The whole Order.
XXIII	The whole Order.
XXIV	The whole Order.
XXV	The whole Order.
XXVI	The whole Order.
XXVII	The whole Order.
XXVIII...	The whole Order.
XXIX	The whole Order.
XXX	The whole Order.
XXXI	The whole Order.
XXXII	The whole Order.
XXXIV...	In rule 3, the words " printed by the plaintiff and " and the word " printed " where last occurring; rules 9 to 12.
XXXV	In rule 5, paragraph (*f*); in rule 6B, the words from "and Order 54" to the end; rules 16 to 18, 23 and 24.
XXXVI...	Rules 3, 10, 37 and 43A.
XXXVII	Rules 1F, 25A, 27B, 33 and 61.
XLI	In rule 1, the words from " other than " to " written "; rule 5A.
XLI B	Rule 15.
XLI C	The whole Order.
XLII	In rule 19, in paragraph (4), the words from " or his solicitor " to the end; rule 31A.
XLVI	Rules 1A and 1B; in rule 9, the words " or by petition "; in rule 13, the words " presenting a petition or " and " petition or "; rule 14.
XLVIII A	The whole Order.
XLIX	The whole Order.
XLIX A	The whole Order.
L	Rules 10 and 22A.
LI	Rules 14, 15 and 16.
LI A	The whole Order.
LII	In rule 2, the words " or (*a*) to set aside, remit or enforce an award "; in rule 4, the words " to set aside, remit or enforce an award or "; in rule 8, the words " petition or "; rules 10, 16, 17 and 23.
LII A	The whole Order.
LIII	The whole Order.
LIIID	In rule 9, in paragraph (1) (*b*), the words " under rule 13 of Order V of these Rules ".
LIII G	The whole Order.

Order	*Extent of Revocation*
LIV	Rules 4B, 4C and 4D; in rule 4E, the words "to which an appearance is required to be entered; rules 4F, 9A and 11A; in rule 12A, the words "section 14 of the Bills of Sale Act 1878 or", the words "or the Arbitration Act 1889 or section 23 of the Partnership Act 1890 or" and the words "or section 12 (2) of the Arbitration Act 1934"; in rule 24, the words "interpleader or" wherever they occur.
LIV A	The whole Order.
LIV B	Rule 2; in rule 3, in paragraph (1) (*d*), the word "petition", in paragraph (2) (*b*), the words "petition or" (in both places where they occur), "answered or" and "petitioner or"; in rule 4, the words "petition or".
LIV K	In rule 1, in paragraph (1) (*e*), the word "petition"; in rule 3 (*b*) and (*c*), the words "petitioner or" and "petition or", wherever occurring.
LIV M	The whole Order.
LV	Rules 3, 4, 5, 6, 7, 8; in rule 9A, in paragraph (1), the words from "and the following" to "shall be just"; in rule 9C, paragraph (2); rules 10, 10A, 12 and 17A.
LV B	In rule 11, the word "registered".
LV G	The whole Order.
LV H	The whole Order.
LVI	The whole Order.
LVII	The whole Order.
LIX	In rule 38, in paragraph (3), the word "registered"; rules 39 and 40.
LX	The whole Order.
LXI	In rule 19, the word "petition" and the word "presented"; rules 25, 26 and 27; in rule 31, the words "and all submissions to arbitration made orders of the Court"; rules 32 and 33.
LXII	Rule 9; in rule 18, the words from the beginning to "being and".
LXIII	The whole Order.
LXIV	The whole Order.
LXV	The whole Order.
LXVI	The whole Order.
LXVI A	The whole Order.
LXVII	The whole Order.
LXVIII	The whole Order.
LXIX	In rules 1, 3 and 4, the words "or a Judge"; in rule 2, the words "as required by Order IV, rules 1 and 2".
LXX	The whole Order.
LXXI	The whole Order.
LXXII	The whole Order.

PART II

Rules of the Probate, Divorce and Admiralty Division

(1) *Rules*	(2) *Extent of revocation*
Rules and Orders for Her Majesty's Court of Probate made under the Court of Probate Acts 1857 and 1858(a) in respect of Contentious Business—	
Rules and Orders taking effect on the 1st September 1862(b).	All the rules and orders.
Additional Rules and Orders dated 29th December 1865(b).	All the rules and orders.
Additional Rules and Orders taking effect on the 2nd March 1874(b).	All the rules and orders.
Additional and amended Rules and Orders dated 1st March 1875(b).	All the rules and orders.

SCHEDULE 2

Orders renumbered

(1) *Order*	(2) *To be renumbered*	(1) *Order*	(2) *To be renumbered*
LIII A	95	LIV O	111
LIII B	96	LIV P	112
LIII D	97	LIV Q	113
LIII E	98	LIV R	114
LIII F	99	LV A	115
LIV B	100	LV B (1)	116
LIV C	101	LV B (3)	117
LIV D	102	LV B (4)	118
LIV E	103	LV B (6)	119
LIV F	104	LV B (7)	120
LIV G	105	LV C	121
LIV H	106	LV D	122
LIV J	107	LV E	123
LIV K	108	LV F	124
LIV L	109	LV J	125
LIV N	110		

SCHEDULE 3

ARRANGEMENT OF ORDERS

[*Note: In the Arrangement * indicates the Orders revised by the Rules of the Supreme Court (Revision) 1962.*]

PRELIMINARY

*1. Application, interpretation and forms.
*2. Effect of non-compliance.
*3. Time.

COMMENCEMENT AND PROGRESS OF PROCEEDINGS

*4. Assignment, transfer and consolidation of proceedings.
*5. Mode of beginning civil proceedings in High Court.
*6. General provisions with respect to writs of summons.

(a) 20 & 21 Vict. c. 77; 21 & 22 Vict. c. 95. (b) Rev. XXII, p. 118.

*7. General provisions with respect to originating summonses.
*8. General provisions with respect to originating notices of motion.
*9. General provisions with respect to petitions.
*10. Service of originating process: general provisions.
*11. Service of process, etc., out of the jurisdiction.
*12. Entry of appearance to writ or originating summons.
*13. Default of appearance to writ.
*14. Summary judgment.
*15. Causes of action, counterclaims and parties.
*16. Third party and similar proceedings.
*17. Interpleader.
*18. Pleadings.
*19. Default of pleadings.
*20. Amendment.
*21. Withdrawal and discontinuance.
*22. Payment into and out of court.
*23. Security for costs.
*24. Discovery and inspection of documents.
*25. Summons for directions.
*26. Interrogatories.
*27. Admissions.
*28. Originating summons procedure.
33. Issues, inquiries and accounts.
34. Special case.
35. Proceedings in district registries.

TRIAL

36. Trial.
36A. Official referees and special referees.
36B. Assessment of damages, etc.
37. Evidence.
37A. Court expert.
38. Affidavits and depositions.
38B. Exhibits.

JUDGMENTS

40. Motion for judgment.
41. Entry of judgment.
41A. Reciprocal enforcement of judgments.
41B. Reciprocal enforcement of foreign judgments.
41D. The Maintenance Orders Act 1958.

EXECUTION, PROTECTION OF PROPERTY, ETC.

42. Execution.
43. Writs of *fieri facias* and sequestration, and sales under execution.
44. Attachment and committal.
45. Attachment of debts.
46. Charging orders, distringas and stop orders.
47. Writ of possession.
48. Writ of delivery.

50. Interlocutory orders as to mandamus, injunctions, or interim preservation of property, etc.
51. Sales by the court.

MOTIONS, APPLICATIONS, PROCEEDINGS AT CHAMBERS, ETC.

52. Motions and other applications.
54. Applications and proceedings at chambers.
55. Special provisions as to the Chancery Division.

COURT OF APPEAL AND DIVISIONAL COURT

58. Appeals to the Court of Appeal.
58A. Appeals to Court of Appeal by case stated.
59. Divisional courts.
59A. Proceedings on appeal, etc., from certain tribunals and Ministers.
59B. References by Agricultural Land Tribunals.
59C. Cases stated by Mental Health Review Tribunals.

ADMINISTRATIVE AND INCIDENTAL PROVISIONS

61. Central office.
61A. Deposit of powers of attorney.
62. Registrars of the Chancery Division.
*62A. Change of solicitor.
*63. Sittings, vacations and office hours.
*66. Paper, printing, notices and copies.
*66A. Official shorthand note.
*67. Service of documents.
*68. Service of foreign process.
69. Arrest of defendant under section 6 of the Debtors Act 1869.

SPECIAL PROVISIONS AS TO PARTICULAR PROCEEDINGS

*75. Admiralty proceedings.
*76. Probate proceedings.
*77. Proceedings by and against the Crown.
*78. County court proceedings transferred or removed to High Court.
*79. Criminal proceedings.
*80. Disability.
*81. Partners.
*82. Defamation actions.
*83. Moneylenders' actions.
*84. Actions arising out of hire-purchase agreements.
*85. Administration and similar actions.
*86. Actions for specific performance, etc.: summary judgment.
*87. Debenture holders' actions: receiver's register.
*88. Arbitration proceedings.
*89. Bills of sale.
95. The Patents Act 1949.
96. The Companies Act 1948.
97. The Landlord and Tenant Acts 1927 and 1954.

98. The Trade Marks Act 1938.
99. The Registered Designs Act 1949.
100. The Trustee Act 1925.
101. The Life Assurance Companies (Payment into Court) Act 1896.
102. The Law of Property Acts 1922 and 1925; and the Land Registration Act 1925.
103. The Clergy Pensions Measure 1948.
104. The Inheritance (Family Provision) Act 1938.
105. The Coal (Registration of Ownership) Act 1937 and the Coal Act 1938.
106. The Public Order Act 1936, section 2 (3).
107. The Restrictive Trade Practices Act 1956.
108. The Trading with the Enemy Act 1939, section 4 (4).
109. Applications for leave to institute proceedings.
110. The Middlesex Deeds Act 1940.
111. The Railway and Canal Commission (Abolition) Act 1949.
112. The Law Reform (Miscellaneous Provisions) Act 1949, section 9.
113. Proceedings relating to charities.
114. Proceedings under First Schedule to Solicitors Act 1957.
115. The Guardianship of Infants Acts 1886 and 1925.
116. The National Insurance Act 1946 and the National Insurance (Industrial Injuries) Act 1946.
117. The Industrial Assurance Act 1923.
118. The Local Government Act 1933, Part X.
119. The Local Government Act 1933, section 162; the Housing Act 1936; the Forestry Act 1945; the Distribution of Industry Act 1945; the Water Act 1945; the Requisitioned Land and War Works Act 1945; the Acquisition of Land (Authorisation Procedure) Act 1946; the New Towns Act 1946; the Town and Country Planning Acts 1947 and 1959; the Road Traffic and Roads Improvement Act 1960.
120. The Town and Country Planning Act 1947, section 92.
121. The War Damage Act 1943; and the Acquisition of Land (Compensation for War Damaged Land) Rules 1945.
122. The Cinematograph Films Acts 1927 and 1938.
123. The Pensions Appeal Tribunals Act 1943.
124. Cases stated by the administrator of German enemy property.
125. Cases stated by Performing Rights Tribunal.

PRELIMINARY

ORDER 1

APPLICATION, INTERPRETATION AND FORMS

Application

1.—(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

Proceedings	*Enactments*
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, section 100.
4. Proceedings in the High Court when acting as a Prize Court.	Prize Courts Act 1894(c), section 3.
5. Proceedings before the judge within the meaning of Part VIII of the Mental Health Act 1959(d).	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(e) or the Matrimonial Causes Rules 1957(f) apply.

(4) These rules shall not have effect in relation to any criminal proceedings other than proceedings to which Order 58, Order 59 or Order 79 relates.

(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 or any provisions thereof are applied in relation to any of those proceedings.

Application of Interpretation Act

2. The Interpretation Act 1889 shall apply for the interpretation of these rules as it applies for the interpretation of an Act of Parliament.

Definitions

3.—(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;

"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;

"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

(a) 4 & 5 Geo. 5. c. 59.
(b) 11 & 12 Geo. 6. c. 38.
(c) 57 & 58 Vict. c. 39.
(d) 7 & 8 Eliz. 2. c. 72.
(e) S.I. 1952/2209 (1952 III, p. 3359).
(f) S.I. 1957/619 (1957 II, p. 2406).

Order 1]

"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 Orders 1 to 28 and 62A to 89, 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 this provision shall not be taken as affecting any provision of these rules and, in particular, Order 54, rules 12 and 12A, Order 55, rule 15, and Order 35, rule 6, 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.

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

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

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

Construction of references to action for recovery of land, etc.

5. Except where the context otherwise requires, references in these rules to an action for the recovery of land or for the recovery of 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, and references in these rules to actions for the recovery or delivery or specific delivery of property other than land or the possession of such property 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 property or to the possession thereof.

Construction of references to Lord Chancellor and Lord Chief Justice

6. 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.

(a) 10 & 11 Geo. 6. c. 14.

Forms

7. 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 or rule of practice

1. Subject to rule 2, non-compliance with any of these rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court so directs, but the proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with, in such manner and on such terms as the Court thinks fit.

Non-compliance with rules as to mode of beginning proceedings

2.—(1) No proceedings shall be void, or be rendered void or wholly set aside under rule 1 or otherwise, by reason only of the fact that the proceedings were begun by a means other than that required, in the case of the proceedings in question, by any provision of these rules.

(2) Where proceedings are begun as mentioned in paragraph (1), then, subject to the provisions of that paragraph, the Court may make any order which it has power to make under rule 1, and paragraph (1) shall not be taken as prejudicing the power of the Court to make any order it thinks fit with respect to the costs of those proceedings.

Application to set aside for irregularity

3.—(1) An application to set aside any proceedings for irregularity 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 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 judgement 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.

Order 3]

(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(a), or the Holidays Extension Act 1875(b), in England and Wales.

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 purposes 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

(a) 34 & 35 Vict. c. 17. (b) 38 & 39 Vict. c. 13.

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 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.

(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.

Order 4]

(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 to a master at the time of issue of 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 cease to apply to an action on its transfer to the commercial list or on its being referred to an official referee.

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 to a county court or some other court.

(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 a 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.

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

Order 4]

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, 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 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 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 petition or motion 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

GENERAL PROVISIONS WITH RESPECT TO WRITS OF SUMMONS

Form of writ

1. Every writ must be in Form No. 1, 2, 3, 4 or 5 in Appendix A, Part I, as 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;

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(*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. 3A in Appendix B) 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 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 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.

(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.

(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

Order 6]

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

GENERAL PROVISIONS WITH RESPECT TO ORIGINATING SUMMONSES

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, Part I, as 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 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.

(3) Order 18, rules 6 (2) and (3), 7, 11 and 12 (1) and (2), shall apply in relation to an originating summons as they apply in relation to a pleading.

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) Ex parte originating summonses may be issued only in the Chancery Division.

(2) Rules 2 (1), 3 (1) and 5 (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.

(3) 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

General Provisions with respect to Originating Notices of Motion

Application

1. Rules 2 and 3 apply in relation to motions by which civil proceedings in the High Court are begun subject, in the case of 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; and Order 52 shall, so far as applicable and subject to any such special provision as aforesaid, apply in relation to motions by which such proceedings are begun as it applies in relation to other motions.

Form of originating notice of motion

2. Every originating notice of motion must be in Form No. 13 in Appendix A, Part I.

Contents of originating notice of motion

3.—(1) Every originating notice of motion must include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun by the motion.

(2) Order 6, rule 5, shall, with the necessary modifications, apply in relation to an originating notice of motion as it applies in relation to a writ.

(3) Order 18, rules 6 (3), 7, 11 and 12 (1) and (2), shall apply in relation to an originating notice of motion as they apply in relation to a pleading.

Order 9

General Provisions with respect to Petitions

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.

Order 9]

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.

(4) Order 18, rules 6 (2) and (3), 7, 11 and 12 (1) and (2), shall apply in relation to a petition as they apply in relation to a pleading.

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.

(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

(*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. Where—

(*a*) the High Court has jurisdiction to hear and determine any action in respect of a contract (whether or not entered into within the jurisdiction); and

(*b*) the parties to the action have agreed that, in the event of any such action being begun in the High Court against any of them, the writ by which the action is begun may be served on the defendant in such manner, or on such other person on his behalf or at such place (whether within or out of the jurisdiction) as may be specified in the agreement; and

(*c*) the writ is served in accordance with the agreement;

then, notwithstanding anything in rule 1 (1) or in Order 11, the writ shall be deemed to have been duly served on the defendant.

Service of writ in certain actions for recovery, etc., of land

4. Where a writ is indorsed with a claim for the recovery, or delivery of 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.

Order 10]

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, an originating notice of motion and a petition as they apply in relation to a writ.

ORDER 11

SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION

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

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) ;

(*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).

(2) In this rule "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.

Service out of jurisdiction in certain actions of contract

2. Where it appears to the Court that a contract contains an express term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of the contract, then, in the absence of any such agreement between the parties to the contract as is mentioned in Order 10, rule 3, 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, Part I, as 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.

(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.

(a) 22 & 23 Geo. 5. c. 36.

Order 11]

(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 and must be in Form No. 20 in Appendix K.

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 67, rule 4, shall apply in relation to the service of a writ, or notice of a writ, notwithstanding that leave has been granted for the service of the writ or notice 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, in respect of which leave for service out of the jurisdiction has been granted—

(*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 a writ, or 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 writ, or 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 writ or 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 ;

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

(*a*) through the government of that country, where that government is willing to effect service; or

(*b*) through a 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 to whom leave has been granted to serve a writ out of the jurisdiction, wishes to have the writ served 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 (in Form No. 14 in Appendix A, Part I) for service of the writ by that method, together with a copy of the writ and an additional copy thereof for each person to be served.

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

Provided that this paragraph shall not apply in relation to a copy of a writ which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a 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.

(a) 11 & 12 Geo. 6. c. 56.

Order 11]

(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 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.

(8) The foregoing provisions of this rule shall apply in relation to the service of notice of a writ as they apply in relation to the service of a writ.

Service of notice of writ in certain actions under Carriage by Air Act 1932

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 the First Schedule 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) Rule 6 (6) shall apply in relation to a translation lodged under the foregoing paragraph as it applies in relation to a translation lodged under paragraph (5) of that rule.

(3) 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.

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 88, rule 6, 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 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 motion or petition, service out of the jurisdiction of the originating notice of motion or of the petition is permissible with the leave of the Court.

(4) Subject to Order 88, rule 6, 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 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 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 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.

Order 12]

(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 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. 1 or 2 in Appendix A, Part II, as 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 every case, a residential address of the defendant's within the jurisdiction or, if he has no such address within the jurisdiction, some other address within the jurisdiction ; 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 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 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, the 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 fixed by order of the Court under Order 10, rule 2 (2), 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 to 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 9 and the Court makes an order thereunder.

Recovery of land: appearance by defendant defending as to part only

8.—(1) Where a defendant to an action for the recovery of land intends to defend the action with respect to part only of the land, he must—

(*a*) include in his memorandum of appearance a statement to that effect, describing the part in question with reasonable certainty, and

(*b*) within 4 days after entering an appearance in the action serve on the plaintiff a notice in Form No. 3 in Appendix A, Part II signed by him or his solicitor.

(2) A defendant who enters an appearance in an action for the recovery of land and does not include in his memorandum of appearance such a statement as is mentioned in paragraph (1) shall be deemed to be defending the action with respect to all the land.

Order 12]

Application to set aside writ, etc.

9.—(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 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

10.—(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—

(*a*) under the Solicitors Act 1957(**a**), or for the delivery by a solicitor of papers or a cash account or security, or for payment by a solicitor of any money; or

(*b*) under section 17 of the Married Women's Property Act 1882(**b**); or

(*c*) relating to an election petition under Part III of the Representation of the People Act 1949(**c**); or

(*d*) under Order 59; or

(*e*) in any other 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.

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

(a) 5 & 6 Eliz. 2. c. 27. (b) 45 & 46 Vict. c. 75. (c) 12, 13 & 14 Geo. 6. c. 68.

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

(*a*) interlocutory judgment against that defendant for the return 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 recovery of land

4.—(1) Where a writ is indorsed with a claim against a defendant for the recovery of land only, then, if that defendant—

(*a*) fails to enter an appearance, or

(*b*) enters an appearance but includes in his memorandum of appearance a statement that he is defending the action with respect to a specified part only of the land,

the plaintiff may, after the time limited for appearing or, in the case mentioned in sub-paragraph (*b*), after entry of appearance, 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 55, rule 5A, enter judgment for possession of the land or, as the case may be, the part of the land not specified in the statement aforesaid, 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, 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

(*b*) the plaintiff produces the writ indorsed by the defendant's solicitor with a statement that he accepts service of the writ on the defendant's behalf.

(2) Where, in an action begun by writ, an application is made to the Court for an order affecting a party who has failed to 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 judgement

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) 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.

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.

(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) Notwithstanding anything in Order 42, rule 17, 17A or 18, 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.

Order 14]

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

(*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 the Supreme Court Costs Rules 1959(a), 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.

(a) S.I. 1959/1958 (Schedule 2) (1959 II, p. 2535).

(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 may order the party against whom judgment is given to deliver up the chattel without giving him an option to retain it on paying the assessed value thereof.

Relief against forfeiture

10. A tenant shall have the same right to apply for relief after judgment for the recovery 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.

Order 15]

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.

Counterclaim against additional parties

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. 2 in Appendix B, 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

(*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

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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.

(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) An order under this rule must, unless the Court otherwise directs, be served on each person who is a party to the cause or matter or who

becomes or ceases to be a party by virtue of the order, except that it need not be served on the person on whose application it was made.

(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 or 7, then, subject to paragraph (2), the writ by which the action in question was begun must be amended accordingly and must be indorsed with—

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

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

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

(2) Where an order is made under rule 7, only the title of the writ by which the action in question was begun shall be amended and the names of any persons formerly parties to the action shall not (unless the order otherwise directs) be struck out.

(3) Where by an order under rule 6 or 7 a person is to be made a defendant, the rules as to service of and entry of appearance to a writ shall apply accordingly to service of the amended writ on him and to entry of appearance by him, but before the writ is served on him the order must be entered in the cause book.

(4) Where by an order under rule 6 or 7 a person is to be made a party to an action in substitution for another party, that person shall not become a party until the writ has been amended in relation to him in accordance with this rule and (if he is a defendant) the writ has been served on him but he shall then become a party to the action and 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 to the action by the old party shall not dispense with entry of appearance by the new.

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

Failure to proceed after death of 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.

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(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 recovery of land

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

(2) An application by any person for an order under this rule may be made ex parte, supported by an affidavit showing that he is in possession of the land in question and if by a tenant, naming him.

(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.

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.

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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, 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 it appears to the Court that a deceased person was interested in any proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, order the proceedings to be carried on notwithstanding 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.

Service of notice of judgment or order on person not a party to action

16.—(1) Where in an action for—

(*a*) the administration of the estate of a deceased person, or

(*b*) the execution of a trust, or

(*c*) the sale of any property,

the Court gives a judgment or makes an order which affects the rights or interests of persons not parties to the action or directs an account to be taken or inquiry made, the Court may direct notice of the judgment or order 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 or order in accordance with this rule shall, subject to paragraph (4), be bound by the judgment or order to the same extent as he would have been if he had originally been made a party to the action.

(2) Unless the Court otherwise directs, notice of the judgment or order must be served personally on the person required to be served and, before it is served, the notice must be indorsed with a memorandum in Form No. 28 in Appendix G.

(3) A memorandum of the service on any person under this rule of notice of a judgment or order shall be entered in the district registry, if any, in which the action is proceeding and otherwise in the central office, on production of an affidavit proving the service.

(4) A person served with notice of a judgment or order under this rule 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 or order.

(5) A person served with a notice of a judgment or order under this rule may, after entering an appearance to the notice, attend the proceedings under the judgment or order.

(6) Where the action is proceeding in a district registry, the appropriate office for entering an appearance to the notice is that registry, but, subject to that, Order 12, rules 1 to 4, shall apply in relation to the entry of appearance to a notice of a judgment or order as if the notice 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 defendent.

Declaratory judgment

17. 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

18. 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. 1 or 1A in Appendix B, as is appropriate (in this Order referred to as a third party notice), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

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

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

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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) 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.

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 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

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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.

(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 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 (in Form No. 28 in Appendix B) to the execution creditor and the execution creditor must, within 4 days after receiving the notice,

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give notice (in Form No. 29 in Appendix B) 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,

(*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.

Jurisdiction of district registrars

4. Where an action is proceeding in a district registry, then, unless the Court otherwise orders, an application by summons in that action for relief under this Order must be made to the registrar of that registry and all interpleader proceedings arising out of the action must be taken in that registry.

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 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.

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Trial of interpleader issue

11.—(1) Order 36 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.

Appeal

12.—(1) Any decision, order or judgment of a judge made or given in summarily determining under rule 5 (2) any question at issue between claimants shall be final and conclusive against the claimants and all persons claiming under them unless leave to 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, without the leave of the judge or the Court of Appeal, from any decision, order or judgment made or given by the judge on the trial.

(3) An appeal shall lie from any decision, order or judgment of a master of the Queen's Bench Division or of a registrar of the Probate, Divorce and Admiralty Division made or given on the hearing or determination (whether by consent or otherwise) of any interpleader matter or issue and whether by way of summary decision or adjournment of the summons for interpleader relief or on the trial of any issue stated in the interpleader proceedings.

(4) An appeal under this rule shall be to the Court of Appeal and 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.

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.

(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.

(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

Order 18]

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 must 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 the recovery of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.

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 must not in any pleading make any allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading of his.

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

Points of law may be pleaded

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 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.

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

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

Defence of tender

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.

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. 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.

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.

(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 35 to 38, 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 1960 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.

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 return 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 recovery of land

5.—(1) Where the plaintiff's claim against a defendant is for the recovery 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 55, rule 5A, 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

(*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.

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(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.

(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. 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 and the Court, if satisfied that the justice of the case requires it, may order the amendment or any part thereof to be struck out or to stand on such terms as to costs or otherwise as may be just.

Amendment of writ or pleading with leave

5. Subject to Order 15, rules 6, 7 and 8, the Court may at any stage of the proceedings allow the plaintiff to amend the 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.

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 an originating notice of 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 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.

(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.

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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.

(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,

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 36, rule 5 (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.

(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. 3 in Appendix B 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—

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(*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(a) and a cause of action under the Law Reform (Miscellaneous Provisions) Act 1934(b) 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, 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 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. 4 in Appendix B to every defendant to the action.

(2) 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.

(a) 9 & 10 Vict. c. 93; 27 & 28 Vict. c. 95; 7 & 8 Eliz. 2. c. 65. (b) 24 & 25 Geo. 5. c. 41.

(3) 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.

(4) A plaintiff who has accepted any sum paid into court shall, subject to rules 4 and 10 and Order 80, rule 13, 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 13, 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,

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 sub-paragraph (*a*) of that paragraph, 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.

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 (3)), 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, the fact that money has been paid into court under the foregoing

provisions of this Order shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or counterclaim or of any question or issue as to the debt or damages until all questions of liability and of the amount of debt or damages have been decided.

Money paid into court under order

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

(*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, 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(a), 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.

(a) 12, 13 & 14 Geo. 6. c. 51.

(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 £100 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.

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.

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.

(a) 8 & 9 Eliz. 2. c. 16.

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

Manner of giving security

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.

(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. 8 in Appendix B, 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. 8A in Appendix B.

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 posession, custody or power when he parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 2 or rule 3.

(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

Discovery to be ordered only if necessary

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.

Marine insurance actions

9.—(1) Where in an action arising on a marine insurance policy an application for an order under 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 (in Form No. 19 in Appendix K) for the production of ship's papers.

(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.

Inspection of documents referred to in list

10. 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

11.—(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

12.—(1) If a party who is required by rule 10 to serve such a notice as is therein mentioned or who is served with a notice under rule 11(1)—

(*a*) fails to serve a notice under rule 10 or, as the case may be, rule 11 (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 rules 14 (1) and 15, 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.

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(2) Without prejudice to paragraph (1), but subject to rules 14 (1) and 15, 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.

(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

13. At any stage of the proceedings in any cause or matter the Court may, subject to rules 14 (1) and 15, 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.

14.—(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, then, subject to rule 15, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

Restriction on powers of Court under rr. 12, 13 *and* 14

15. The Court shall not—

(*a*) make an order under rule 12 or 13 in relation to a document, or

(*b*) inspect a document under rule 14 (2),

if a statement is duly made on behalf of the Crown that the production of that document to the Court or, as the case may be, for inspection would be injurious to the public interest.

Production of business books

16.—(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.

Failure to comply with requirement for discovery, etc.

17.—(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 12 (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.

(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 attachment.

(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 attachment 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 attachment.

Revocation and variation of orders

18. 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;

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(*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 an order for the taking of an account has been made under Order 33, rule 1A ;

(*e*) actions in which directions have been given under Order 50, rule 12A (which enables directions to be given on applications under that Order for orders of mandamus, for an injunction or for other relief under that Order) ;

(*f*) actions in which an application for transfer to the commercial list is pending or which have been ordered to be transferred to the commercial list ;

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

(*h*) actions for the infringement of a patent.

(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 sumons 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 36 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.

(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 36A, rule 5, to apply to the referee for directions may do so by notice without taking out a fresh summons.

(7) If, on the summons for directions, 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, the Court may, without giving any further directions, adjourn the summons so that it can be heard by the judge in charge of that list and treated by him as a summons to transfer the action to that list.

(8) 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*) Order 20, rule 5 (which relates to the amendment of writs and pleadings);

(*b*) 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);

(*c*) Order 37, rules 1A to 1G (which relate to the mode in which evidence may be given at the trial and the limitation of evidence in certain cases), and Order 75, rule 23 (4) (which enables the Court to limit the witnesses who may be called in an Admiralty action).

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

(a) 1 & 2 Geo. 6. c. 28.

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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 purposes of enabling it properly to deal with the summons.

The Court may, if it appears proper so to do in the circumstances, authorise any such information or documents to be given or produced to the Court without being disclosed to the other parties but, in the absence of such authority, any information or document given or produced under this paragraph shall be given or produced to all the parties present or represented on the hearing of the summons as well as to the Court.

(2) No leave shall be required by virtue of paragraph (1) for the use of an affidavit by any party on the hearing of the summons for directions in connection with any application thereat for any order if, under any of these rules, an application for such an order is required to be supported by an affidavit.

(3) If the Court on any hearing of the summons for directions requires a party to the action or his solicitor 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.

Commercial list

8. Where an application is made for the transfer of an action to the commercial list, 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.

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.

(2) A copy of the proposed interrogatories (in Form No. 6 in Appendix B) 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.

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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.—(1) Where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his affidavit in answer.

(2) An affidavit in answer to interrogatories must be in Form No. 7 in Appendix B.

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 attachment.

(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 attachment 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 attachment.

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.

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—

(*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.

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(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 54, rules 5 and 6, apply in relation to originating summonses as they apply in relation to other summonses.

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, Part I) 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.

(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 7, 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 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.

(4) 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 the foregoing provisions of this rule may be exercised at any resumed hearing.

(5) 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 2 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

5. 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

6.—(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 7.

(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

7.—(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

8.—(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 7 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) Rule 1 (2) and (3) of Order 36, and rules 4 to 9 of that Order, 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 1 and shall have effect accordingly with any necessary modifications and with the further modifications prescribed by paragraphs (5) and (6) of this rule.

(5) The said rules shall apply as aforesaid as if for references therein to the summons for directions there were substituted references to the first or any resumed hearing of the originating summons by the Court.

(6) Rule 5 (1) of the said Order shall apply as aforesaid as if for sub-paragraph (*a*) thereof there were substituted the following sub-paragraph:—

"(*a*) a bundle (which shall serve as the record) consisting of one copy of each of the following documents, that is to say, the originating summons, all orders made by the Court on any hearing of the originating summons and the requisite legal aid documents".

Failure to prosecute proceedings with despatch

9.—(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 6 as it applies in relation to a plaintiff.

(3) Where, by virtue of an order made under rule 7, 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.

ORDER 62A

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

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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

Nature of Cause or Matter	*Appropriate Office*
(*a*) An action or any other cause or matter entered in the Action Department of the Central Office.	Central Office (Action Department).
(*b*) A proceeding begun in the Queen's Remembrancer's Department.	Central Office (Queen's Remembrancer's Department).
(*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 and Associates' Department.	Central Office (Crown Office and Associates' Department).
(*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 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 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 may make an order accordingly.

(2) An application for an order under this rule must be made by summons which must, unless the Court 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

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cause or matter, and the Court 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 which must, unless the Court 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

(a) S.I. 1962/148 (1962 I, p. 117).

(*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.

In this paragraph "proper officer" has the meaning assigned to it by Order 36, rule 5 (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, the references 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.

Order 63

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 the 21st day of December;

(*b*) the Hilary sittings which shall begin on the 11th day of 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 the 31st day of 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 the 22nd day of December and end on the 10th day of 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 the 1st day of 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 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) The Lord Chancellor shall not be liable to serve as a vacation judge.

(5) Any other judge of the High Court may sit in vacation for a vacation judge.

Sittings and powers of vacation judges

3.—(1) The vacation judges shall sit in vacation as occasion may require and 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

6. 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.

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, or the Holidays Extension Act 1875, in England and Wales.

(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 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 1½ 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.

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(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 10, as may be specified in the request.

(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 66A

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, whether or not such aid was given thereunder to any party to the proceedings.

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.

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(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.

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 such as the Court of Appeal may from time to time direct, and that number, when bespoken by the appellant and paid for, shall be sent by the official shorthand writer direct to the proper officer within the meaning of Order 58, rule 5.

(2) If at any time an appellant is required by a direction given under this rule 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.

ORDER 67

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 lodging with the Court an affidavit stating the facts on which the application is founded.

(3) Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.

Ordinary service: how effected

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, 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

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(*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.

Effect of service after certain hours

6. 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 12 noon on a Saturday or after 4 in the afternoon on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Saturday or on the day following that other weekday, as the case may be.

Affidavit of service

7. 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

8. 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 68

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 2 copies of the process to be served and by 2 copies of a translation of the process in English.

(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

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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.

(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.

Special Provisions as to Particular Proceedings

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;

"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,

must 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 Q, as 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 in certain actions in personam

4.—(1) Subject to paragraphs (2) and (3), 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 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.

In this paragraph " inland waters " and " port " have the same meanings as in section 4 (1) of the Administration of Justice Act 1956(b).

(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

(a) 57 & 58 Vict. c. 60. (b) 4 & 5 Eliz. 2. c. 46.

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relation to an application for the grant of leave under rule 1 or 2 of that Order.

(3) This rule shall not apply to an action in rem.

Warrant of arrest

5.—(1) After a writ has been issued in an action in rem a warrant (in Form No. 3 in Appendix Q) 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 Q) 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.

(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 Q) 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

(*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).

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(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 Q; 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.

Attachment 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 attachment.

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.

(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 transshipped, 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 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 Q, 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.

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(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 Q) 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 Q, 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.

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 Q.

(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 Q; 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.

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,

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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.

(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.

Special provisions as to pleadings in collision actions

19.—(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

20.—(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 the 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 attachment 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.

(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 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.

Appraisement and sale of property

21.—(1) A commission for the appraisement 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 Q.

(2) Such a commission must, unless the Court otherwise orders, be executed by the marshal and must be in Form No. 13 in Appendix Q.

(3) A commission for appraisement 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 the Supreme Court Costs Rules 1959, and rules 33 to 35 of those rules shall apply accordingly with the necessary modifications.

Payment into and out of court

22.—(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 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—

(*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

23.—(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.

(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 in 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.

24.—(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 33, 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 shall 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 33, by the plaintiff.

(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 35, rule 19, 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*) 3 copies or, in the case of a trial with one or more assessors 4 copies (if with one assessor) and 5 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), and Order 36, rules 1 to 9, shall not apply to Admiralty actions.

Stay of proceedings in collision, etc. actions until security given

25. 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.

26. Without prejudice to its powers under Order 50, rule 3, 4 and 5, 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.

27.—(1) An official shorthand note shall, unless the Court otherwise directs, be taken of the proceedings in court of any cause or matter.

(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.

Examination of witnesses and other persons

28.—(1) The power conferred by Order 37, rule 5, 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 5 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 a 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 shall 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 37, rule 5, authorising any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

Admiralty examiners

29.—(1) The President of the Probate, Divorce and Admiralty Division may appoint such number of barristers at law 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 37, rules 40 to 53, shall not apply in relation to examiners of the Court appointed under this rule.

Issue of writ of subpoena

30. Order 37, rules 26, 27A and 28, 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.

Proceedings for apportionment of salvage

31.—(1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained must be assigned to the Probate, Divorce and Admiralty Division and be begun by motion.

(2) The originating notice of 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.

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Filing and service of notice of motion

32.—(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

33.—(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

34.—(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 24 (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 8, shall not apply to such a cause or matter.

Limitation action: parties

35.—(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 36, 37 and 38 "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

36.—(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.

(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.

Limitation action : proceedings under decree

37.—(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 38 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 3 newspapers specified in the decree, identifying the action, the casualty and the relation of the plaintiff 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

38.—(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 37 (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

39.—(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 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) 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.

(3) 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.

(4) 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.

(5) 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.

(6) If the claimant fails to comply with paragraph (1) or (5) (*b*), the Court may, on the application of any other party to the cause or matter, dismiss the claim.

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Hearing of reference

40.—(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, 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) of 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

41.—(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 40 (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 40 (4).

References to district registrar

42. Rules 39, 40 and 41 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.

Appeal from registrar and district registrar

43.—(1) Except in the cases provided for in Order 17, rule 12, Order 54, rule 24 (2) (*b*), and rule 41 of this Order, an appeal shall lie to a judge in chambers from any decision, order or decree of the registrar.

(2) The appeal shall be brought by serving on every other party to the proceedings in which the decision, order or decree in question was made a notice to attend before the judge on a day specified therein.

(3) Unless the Court otherwise orders, the notice must be served within 5 days after the decision, order or decree appealed against was made and at least one clear day 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.

(5) The foregoing provisions of this rule shall apply in relation to any decision, order or decree of a district registrar made in any Admiralty proceedings as it applies in relation to a decision, order or decree of the registrar, but subject to the modification that for the references therein to 5 days and one clear day there shall be substituted references to 7 days and 2 clear days respectively.

Drawing up orders

44. Every 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.

Registrar may administer oath, etc.

45. The registrar shall have authority to administer any oath, or take any affidavit, required for any purpose connected with his duties as registrar.

Powers of assistant registrar, etc.

46. 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

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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.

(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.

(3) Issue of a citation takes place upon its being sealed by an officer of the probate registry.

(4) Without prejudice to Order 67, 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 a writ.

Affidavit of testamentary scripts

9.—(1) 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

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(*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 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 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.

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(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 at a place outside London, 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

18. Order 37, rules 26, 27A and 28, 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.

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 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 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.

Administration pendente lite

23.—(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 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 rules 22, 23 and 26 of the Supreme Court Costs Rules 1959 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

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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.

(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.

(a) 10 & 11 Geo. 6. c. 44.

(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 67, rules 5 and 8, shall not apply, and Order 67, rule 6, 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.

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 motion or by 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 originating notice of motion under this rule—

(*a*) must be intituled 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.

(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 58, 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 must 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, the notice of 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 it 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.

(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.

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Evidence

14. 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.

Form of judgment in action for death duties or purchase tax

15. Every judgment or order entered or made in favour of the Crown for any sum payable in respect of death duties or purchase tax shall, unless the Court otherwise orders, be in the form of requiring the defendant to pay the sum due to the Crown forthwith.

Execution and satisfaction of orders

16.—(1) Nothing in Orders 42 to 48 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. 31 or 32 in Appendix F, as is appropriate.

Attachment of debts, etc.

17.—(1) No order—

(*a*) for the attachment of debts under Order 45, or

(*b*) for the appointment of a sequestrator under Order 43, or

(*c*) for the appointment of a receiver under Order 50,

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 45, rules 4 to 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 45, rule 1, for an order for the attachment of debts 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

18.—(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 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

19.—(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 or 66 of the County Courts Act 1959(a) for the transfer, or under section 20 of the Crown Proceedings Act 1947 for the removal, of proceedings from a county court to the High Court.

(2) Where under section 65 of the said Act of 1959 only the proceedings on a counterclaim or on a set-off and counterclaim are transferred, this Order shall apply as if the party setting up the counterclaim or the set-off and counterclaim, as the case may be, were the plaintiff and the party resisting it or them 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 XVI, rule 19, of the County Court Rules 1936(b), 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 in the Royal Courts of Justice and that the defendant is required to enter an appearance in the action.

Entry of appearance

3.—(1) 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, subject to paragraph (2), those rules shall apply as if the defendant were the defendant to an action begun by writ issued out of the central office.

(a) 7 & 8 Eliz. 2. c. 22. (b) S.R. & O. 1936/626 (1936 I, p. 282).

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(2) Where the proceedings transferred or removed are Admiralty proceedings, the defendant must enter an appearance in 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 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.

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

(a) 1 & 2 Geo. 6. c. 63.

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.

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 and Associates' Department.

(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.

(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 55.

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(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.

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 and Associates' Department 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 or the inhabitants of a local government or other area, a plea of guilty or not guilty may, on arraignment of the corporation or inhabitants before the Court, be entered in writing on their behalf by a solicitor or other representative, and if the corporation or inhabitants do not appear by

a representative or, though they do so appear, fail 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 or inhabitants 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.

(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. 84 in Appendix K) 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.

(3) Subject to paragraph (5), every application must be supported by affidavit and must be accompanied by an affidavit proving service of the summons, a certified copy of the commitment and, in the case of a person committed for trial, a copy verified by affidavit of any depositions taken in the proceedings:

Provided that the judge may, if he thinks fit, dispense with the requirement to furnish a copy of the commitment and depositions.

(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.

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(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

(*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 shall be in Form No. 84A in Appendix K.

(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. 84B in Appendix K) to the prosecutor at least 24 hours before he enter 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

(a) 11 & 12 Geo. 6. c. 58.

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.

Entry of motions, etc.

10.—(1) All motions to which this Order relates must be entered for hearing in the Crown Office and Associates' Department and entry shall be made by lodging a copy of the notice; and the party entering any motion for hearing must lodge in the said Department copies of the proceedings for the use of the judges.

(2) All summonses to which this Order relates must be issued at the said Department, and all affidavits used in proceedings to which this Order relates must be filed in the said Department.

(3) All orders made by a Divisional Court in proceedings to which this Order relates shall be drawn up at the said Department, and a copy of every order made by a judge in chambers in any such proceedings shall be filed in the said Department.

(4) The Master of the Crown Office shall have the care and custody of the records of or relating to any such proceedings.

ORDER 80

DISABILITY

Interpretation

1. In this Order—

" the Act " means the Mental Health Act 1959;

" 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 provisions of these rules, any thing 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.

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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 (5) 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

(*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.

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 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.

(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*).

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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.

Leave required to enter special case affecting person under disability

10.—(1) A special case stated in a cause or matter to which a person under disability is a party shall not be entered for argument without the leave of the Court.

(2) An application for an order under this rule must be made by summons supported by sufficient evidence that the statements of fact made in the special case, so far as they affect the interest of the person under disability, are true.

(3) A special case to which this rule applies shall not be entered for argument by the proper officer unless at the time when the memorandum of entry is delivered to him in accordance with Order 34, rule 5, there is produced to him a copy of the order required by this rule.

Compromise, etc., by person under disability

11. Where in any proceedings (other than a matrimonial cause, an application under section 23 of the Matrimonial Causes Act 1950(a) or a claim under section 30 of that Act) 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

12.—(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

(a) 14 Geo. 6. c. 25.

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, or rule 13, 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.

(3) Without prejudice to Order 7, rule 5, and Order 75, rule 34 (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 and certain widows

13.—(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—

(i) a person under disability, or

(ii) a widow in satisfaction of a claim made by her or on her behalf under the Fatal Accidents Acts 1846 to 1959, being the widow of the person whose death gave rise to the claim, or

(*b*) money paid into court is accepted by or on behalf of a plaintiff who is a person under disability or by on or behalf of such a widow, and in satisfaction of such a claim, as is mentioned in sub-paragraph (*a*),

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 widow on whose behalf the plaintiff sued, 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

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(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.

Provisions supplementary to r. 13

14.—(1) Where under section 174 of the County Courts Act 1959 money to which a person under disability or a widow 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.

(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 2 sealed copies of the judgment or order to the Accountant General and shall notify the registrar of the county court of the name and address of the plaintiff's next friend or of the widow, as the case may be, and of the plaintiff's solicitor (if any), 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 proper officer of the High Court shall (if he is not the district registrar) send 2 sealed copies of the judgment or order and a notification of the name and address of the plaintiff's next friend or of the widow, as the case may be, and of the plaintiff's solicitor (if any) to the district registrar, and the district registrar shall, on receiving the money to be transferred, send a sealed copy of the order to the registrar of the county court and, on receiving from him an application duly made to transmit the money, send a cheque for the amount to 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 and a notification of the name and address of the plaintiff's next friend or of the widow, as the case may be, and of the plaintiff's solicitor (if any) to the registrar of the county court.

(4) Where the money is ordered to be transferred to, or paid into, a county court the plaintiff's solicitor or, if the plaintiff has no solicitor, the next friend or widow, as the case may be, shall send to the registrar of the county court a copy of any document in the proceedings requested by the registrar.

Application of rr. 13 *and* 14 *to counterclaims, etc.*

15. Rules 13 and 14 shall apply in relation to—

(*a*) a counterclaim by or on behalf of a person under disability 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 under disability in an action by any other person for relief under section 504 of the Merchant Shipping

(a) S.R. & O. 1927/1184 (1927, p. 1638).

Act 1894, 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 and a next friend there were substituted references to a defendant and to a guardian ad litem respectively.

Proceedings under Fatal Accidents Acts: apportionment by Court

16.—(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, 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 13 (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 a 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.

Service of certain documents on person under disability

17.—(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 17 (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 attachment or committal

of any person, and a writ of subpœna 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.

(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 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.

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(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, 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 45, rule 1, in relation to debts owing or accruing 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 nisi 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 to the Court by a partner of the judgment debtor made in consequence of the first-mentioned application must be made by summons.

(2) Without prejudice to Order 54, rule 12, a master 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 that partnership, as the case may be.

(a) 53 & 54 Vict. c. 39.

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 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 upon 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 two or more causes of action for libel or slander are joined in an action and money is paid into court under Order 22, rule 1, then, unless the Court otherwise orders, and notwithstanding anything in rule 1 (4) of that Order, the notice of payment must specify—

(*a*) the cause or causes of action in respect of which the payment is made, and

(*b*) the sum paid in respect of each cause of action.

(2) 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 (2) of that Order, the action shall be stayed as against that defendant only, but the sum paid into court shall be set off against any damages awarded to the plaintiff against any other defendant against whom the action is continued.

(3) 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 takes out of court 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 and no money was paid into court in the action, 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.

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(b) to determine 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 the Queen's Bench Division to a judge in chambers.

(2) No appearance need be entered to an originating summons by which such an application is made.

ORDER 83

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(c);

(a) 6 & 7 Vict. c. 96. (b) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 66. (c) 63 & 64 Vict. c. 51.

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" 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 ;

(*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 Order 67, rule 8, 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.

(a) 17 & 18 Geo. 5. c. 21.

ORDER 84

ACTIONS ARISING OUT OF HIRE-PURCHASE 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 brought against the hirer 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 which is due and unpaid.

(3) In this Order "hire-purchase agreement" means an agreement to which the Hire-Purchase Act 1938(**a**) applies, or would apply if the limitation as to the hire-purchase price contained in section 1 thereof were omitted; and "goods", "guarantor", "hire-purchase price" and "hirer" have the meanings respectively assigned to them by section 21 of that Act:

Provided that "hire-purchase agreement" includes an agreement for the sale of goods under which the price is payable by instalments and the property in the goods remains in the seller, notwithstanding that the buyer is in possession of the goods, until such conditions as to the payment of instalments and otherwise as may be specified in the agreement are fulfilled, and the other expressions above referred to shall be construed accordingly.

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 Order 67, rule 8, 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 agreement to which the action relates.

(5) On the hearing of such application, whether the defendant appears or not, the Court—

(*a*) if it appears to it that the amount claimed by the plaintiff may be a penalty, shall dismiss the application;

(*b*) if it appears to it that part of that amount may be a penalty, shall dismiss the application with respect to that part but may give the plaintiff leave to enter judgment with respect to the remainder.

(a) 1 & 2 Geo. 6. c. 53.

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;

(*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 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 7, 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 or purchase of property, with or without an alternative claim for damages, or

(*b*) for rescission of such an agreement, or

(*c*) for the forfeiture or return of any deposit made under such an agreement,

the plaintiff may, on the ground that the defendant has no defence to the action, apply to the Court for judgment.

(2) An application may be made against a defendant under this rule whether or not he has 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.

Judgment for plaintiff

3. Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action, the Court may give judgment for the plaintiff in the action.

Leave to defend

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

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

(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

5. Where the Court orders that a defendant have leave to defend the action, the Court shall give directions as to the further conduct of the action, and Order 25, rules 2 to 7, shall, with the omission of so much of rule 7 (1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under rule 1 were a summons for directions.

Costs

6. If the plaintiff makes an application under rule 1 where the case is not within this Order, or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to the Supreme Court Costs Rules 1959, 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

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

ORDER 87

DEBENTURE HOLDERS' ACTIONS: RECEIVER'S REGISTER

Receiver's register

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.

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.

(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 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

ARBITRATION PROCEEDINGS

Arbitration proceedings not to be assigned to Chancery Division

1. 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.

This rule does 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 subsection (1) of section 23 of that Act; or

(*c*) to set aside an award under subsection (2) of the said section 23;

must be made by motion to a single judge sitting in court.

(a) 14 Geo. 6. c. 27.

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(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 must be heard by a single judge sitting in court.

(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 motion to a single judge sitting 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) 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 subsection (2) of section 23 of that Act;

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 originating notice of motion shall 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.

Service out of the jurisdiction of summons, notice, etc.

6.—(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 an originating notice of 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 a writ.

Registration in High Court of foreign awards

7. 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 41B 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 2 of the said Order may, in lieu of exhibiting a certified copy of the award as mentioned in paragraph (1) (*a*) of that rule, exhibit the award itself or a verified or otherwise duly authenticated copy thereof, and must state (in addition to the other matters required by that rule) that to the best of the information and 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;

and any form of affidavit, summons or writ of execution mentioned in the said Order shall be modified as circumstances may require.

ORDER 89

BILLS OF SALE

Rectification of register

1.—(1) Every application to the Court under section 14 of the Bills of Sale Act 1878(c) 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

(*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 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) 23 & 24 Geo. 5. c. 13. (b) 10 & 11 Geo. 5. c. 81. (c) 41 & 42 Vict. c. 31.

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(*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.

SCHEDULE 4

CONSEQUENTIAL AMENDMENTS

1. In Order 33, after rule 1, there shall be inserted the following rule:—

"1A.—(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 or a judge so directs, must be supported by affidavit or other evidence.

(3) On the hearing of the application, the Court or a judge 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 specified time."

2. In Order 34, rule 2, after the word "law", where first occurring, there shall be inserted the words "(including a question of law raised by any pleading in the cause or matter)", and at the end of that rule there shall be added the following paragraph:—

"If it appears to the Court or a judge that the decision of a question of law raised for the opinion of the Court under this rule substantially disposes of the cause or matter in which the question is raised, or of any particular claim or ground of defence made therein, the Court or judge may dismiss the cause or matter or make such other order therein as may be just."

3.—(1) In Order 35, rule 2, after the word "plaintiff", where secondly occurring, there shall be inserted the words "or defendant".

(a) 45 & 46 Vict. c. 43.

(2) In Order 35, after rule 6B, there shall be inserted the following rule:—

"6C. Any order on a petition presented in accordance with these rules in the district registry of Liverpool or the district registry of Manchester shall be drawn up, passed and entered by or under the direction of the registrar of that registry."

(3) In Order 35, rule 9, after the word "particular" there shall be inserted the words "rule 12 of Order 17", and at the end thereof, there shall be added the following paragraph:—

"This rule shall not apply in relation to a decision, order or judgment of a district registrar made or given in an Admiralty cause or matter but Order 75, rule 43 (5), shall apply in relation to such a decision, order or judgment instead."

(4) In Order 35, rule 20, after the word "writ" there shall be inserted the words "or originating summons", and after the word "Office" there shall be inserted the words "or to the Admiralty registry".

4.—(1) In Order 36, rule 1 (3), for the words "rules 2 and 3 of this Order" there shall be substituted the words "rule 2 of this Order and rule 13 of Order 77".

(2) In Order 36, after rule 9, there shall be inserted the following rule:—

"9A.—(1) Where after an action begun by writ 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 person having the conduct of the action must 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 cause book containing the list of actions set down for trial.

(2) Where in the cause book referred to in paragraph (1) an action stands for one year marked as abated or ordered to stand over generally, the action shall at the expiration of that year be struck out of the cause book 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 5 and, in relation to an Admiralty action, means the Admiralty registrar."

(3) In Order 36, after rule 39, there shall be inserted the following rule:—

"39A. Where a party to any action dies after the verdict or finding of the issues of fact and before judgment is entered, judgment may be entered 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 directions as to the judgment to be entered."

5. In Order 36A, rule 7 (2), for the words from "any person" to "Order XXI" there shall be substituted the words "any other person and Order 15, rule 5 (2), and Order 16".

6. In Order 36B, rule 2 (1), for the words from "shall be deemed" to the end there shall be substituted the words "must be served on him in accordance with Order 67, rule 5".

7.—(1) In Order 37, rule 1G, for the number "1F" there shall be substituted the number "1E".

(2) In Order 37, for rule 32 there shall be substituted the following rule:—

"32. A writ of subpoena must be served personally."

8.—(1) For the proviso to rule 3 of Order 38 there shall be substituted the following:—

"Provided that in interlocutory proceedings and, if any order or direction made or given under Order 57, rule 1B, so provides, an affidavit may contain statements of information or belief, with the sources and grounds thereof".

(2) In Order 38, rule 15, in the last sentence, for the word "delivered" where first occurring, there shall be substituted the word "served" and for the words "to whom it was delivered" there shall be substituted the words "on whom it was served".

9. In Order 41, rule 5, for the words "be served" there shall be substituted the words "unless Order 24, rule 17 (3), or Order 26, rule 6 (3), applies or the Court or a judge otherwise orders, be served personally".

10.—(1) In Order 41A, rule 4, for the words from "in the same" to "served" there shall be substituted the word "personally".

(2) In Order 41A, rule 9, for the words "must be served" there shall be substituted the words "must, unless the judge otherwise orders, be served personally"; and the words from "Such notice" to the end shall be omitted.

11. In Order 42, rule 30, for the words "a mandamus, granted in an action or otherwise" there shall be substituted the words "an order of mandamus".

12. In Order 45, rule 1, the words "or his solicitor", where last occurring, shall be omitted and for the last sentence there shall be substituted the following sentence: "The order nisi must be served personally on the garnishee".

13. In Order 46, rule 2, at the end of paragraph (5) there shall be added the words "and where the judgment debtor has not entered an appearance the copy must be served on him personally".

14. In Order 52, after rule 18, there shall be inserted the following rule:—

"19. An application under section 19 (3) of the Copyright Act 1956(a) by the owner or the exclusive licensee of any copyright for leave to proceed with an action brought by him without joining the other as a plaintiff or adding him as a defendant must be made by summons in the action."

15.—(1) The words "No appearance need be entered to a summons under this rule" shall be inserted at the end of—

(*a*) Order 54, rule 12C;

(*b*) Order 54, rule 12D, paragraph (i).

(2) At the end of Order 54, rule 20, there shall be added the following paragraph:—

"This rule applies in relation to registrars of the Probate, Divorce and Admiralty Division as it applies in relation to masters."

(3) In Order 54, rule 21, after the word "Division" there shall be inserted the words "(other than the Admiralty registrar)" and for the words from "except that" to the end there shall be substituted the words "and Order 75, rule 43, shall apply in relation to the Admiralty registrar instead".

(a) 4 & 5 Eliz. 2. c. 74.

16.—(1) The following rules shall be inserted in Order 55 in the places appropriate to their numbers:—

"5C. Every action in which there is a claim for payment of principal money or interest secured by any mortgage or charge upon real or leasehold property or a claim for possession of any such property forming a security for payment to the plaintiff of any principal money or interest shall, unless the action is assigned to the Probate, Divorce and Admiralty Division by section 56 (3) of the Act, be assigned to the Chancery Division.

5D. A writ of summons claiming any relief of the nature or kind specified in rule 5C may not issue out of a district registry (other than the district registry of Liverpool or Manchester) unless the mortgaged property is situated in the district of the registry.

5E. In any action in which the plaintiff is claiming any relief of the nature or kind specified in rule 5A—

(*a*) no judgment shall be entered in default of appearance or of defence without the leave of the Court or a Judge who may require the application for leave to be supported by such evidence as might be required if relief were being sought on originating summons under rule 5A and may require notice of such evidence to be given to the defendant and to such other person (if any) as the Court or a Judge may think proper.

(*b*) on any application for judgment under Order 19, rule 7, the Judge may require the application to be supported by such evidence as might be required if relief were being sought on originating summons under rule 5A and may require notice of such evidence to be given to the defendant and to such other person (if any) as the Court or a Judge may think proper.

8B. Where any mortgage security is foreclosed by reason of the failure to redeem by any plaintiff in a redemption action, the defendant in whose favour the foreclosure has taken place may apply by motion or summons to the Court or a Judge for an order for delivery to him of possession of the mortgaged property and the Court or a Judge may make such order thereon as the justice of the case may require."

(2) At the end of Order 55, rule 16, there shall be added the following paragraph:—

"A summons by a master under this rule must be served personally on the person against whom it is issued."

17. In Order 58, rule 4 (1) (*a*), after the words in brackets there shall be inserted the words "and in the case of an appeal from a judgment or order given or made under Order 14 or Order 86".

18.—(1) In Order 62, rule 11, for the words "rules 8 and 9" there shall be substituted the words "rule 8".

(2) At the end of Order 62 there shall be inserted the following rule:—

"19. In the Chancery Division an application under the Solicitors Act 1957 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 any deeds, documents and papers by a solicitor may, if the applicant is entitled as of right to the order, be made by petition."

19. In Order 95 (as renumbered in accordance with paragraph 2 of this instrument), rules 6, 7, 9, 10, 11, 13, 14, 20 (1) and 20 (2) (*a*) and (*b*), for the word "deliver", "delivered" and "delivery", wherever occurring, there shall be substituted the word "serve", "served" and "service" respectively, rule 20 (2) (*b*), for the word "to", where last occurring, there shall be substituted the word "on", and rule 20 (2) (*c*), for the words "delivery to" there shall be substituted the words "service on".

20. In Order 97 (as so renumbered), rule 3, for paragraph (3) thereof there shall be substituted the following paragraph :—

"(3) Order 7, rule 6, shall not apply to an originating summons under this rule and Order 6, rule 8 (which restricts the period of validity of a writ to 12 months in the first instance and provides for its validity to be extended from time to time for such period not exceeding 12 months at a time as the Court may order), 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."

21. In Order 98 (as so renumbered), rule 7, for the word "delivery" and "delivering" there shall be substituted the word "service" and "serving" respectively.

22. In Order 99 (as so renumbered), rule 3, for the word "delivery" and "deliver", wherever occurring, there shall be substituted the word "service" and serve" respectively.

23. In Order 108 (as so renumbered), rule 3 (*a*), for the words "whether by petition or summons shall be" there shall be substituted the words "shall be made by originating summons".

24. In each of the rules specified in column (1) of the following Table, for the words specified in relation to that rule in column (2) there shall be substituted the words specified in relation thereto in column (3):—

TABLE

(1) *Rule*	(2) *Words to be omitted*	(3) *Words to be substituted*
Order 35, rule 2 ...	Order XXVII	Order 19
Order 35, rule 5 (*a*) ...	Order XVIA, rr. 6 and 9	Order 16, rules 5 and 7
Order 36, rule 1 (4) ...	Order XXX	Order 25
Order 36, rule 1 (5) ...	Order LIIIA	Order 95
Order 36A, rule 5 (5) ...	Order XXX	Order 25
Order 36B, rule 5 ...	Order XXX	Order 25
Order 37, rule 1E ...	Order XXX	Order 25
Order 50, rule 12A (2) ...	Order XXX	Order 25
Order 54, rule 12 (*g*) ...	Order 54 L	Order 109
Order 55, rule 60 ...	Order 16, rule 40	Order 15, rule 16
Order 58, rule 14 ...	rule 7 of Order LXIV	Order 3, rule 5
Order 58, rule 20 (4) ...	Paragraphs (6) and (7) of rule 13 of the Rules of the Supreme Court (Criminal Proceedings) 1938	Paragraphs (6) and (8) of rule 9 of Order 79
Order 59, rule 36D (2) ...	Paragraphs (1) to (7) of rule 13 of the Rules of the Supreme Court (Criminal Proceedings) 1938	Paragraphs (1) to (6) and (8) of rule 9 of Order 79
Order 59A, rule 3 (*d*) ...	paragraph (2) of rule 1A of Order LXVII	Order 77, rule 4 (2)
Order 59A, rule 8 ...	Order LXVII, rule 1A (2)	Order 77, rule 4 (2)
Order 59C, rule 4 (2) ...	Order 16B	Order 80
Order 59C, rule 4 (3) ...	Order LXVII, Rule 1A (2)	Order 77, rule 4 (2)
Order 96, rule 2	Order V, r. 9	Order 4, rule 1 (2)
Order 97, rule 5 (4) ...	rule 16 of Order XXXV	Order 4, rule 6
Order 97, rule 9 (1) (*c*) ...	rule 9 of the said Order V	Order 4, rule 1 (2)
Order 113, rule 5 ...	Order LXVII, rule 1A (2)	Order 77, rule 4 (2)

Reference in column (1) of this Table to Orders 96, 97 and 113 are references to those Orders as renumbered in accordance with paragraph 2 of this instrument.

SCHEDULE 5

ENACTMENTS REPEALED

(1) Session and Chapter	(2) Short Title	(3) Extent of Repeal	(4) Relevant Rule
3 & 4 Vict. c. 65.	The Admiralty Court Act 1840.	In Section 7, the words from "and notes" to the end.	Order 75, rule 27.
		Section 9.	Order 75, rule 30.
24 & 25 Vict. c. 10.	The Admiralty Court Act 1861.	Section 18.	Order 75, rule 26.
		Section 25.	Order 54, rule 12, and Order 75, rule 46.
		Section 26.	Order 75, rule 45.
		Section 28.	Order 75, rule 29.
		Section 34	Order 4, rule 10, and Order 75, rule 25.
36 & 37 Vict. c. 66.	The Supreme Court of Judicature Act 1873.	Section 64.	Order 6, rule 7; Order 35, rule 1; Order 75, rule 5.

EXPLANATORY NOTE

(This Note is not part of the Rules but is intended to indicate their general purport.)

These Rules represent the first stage of the complete 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.) Orders I to XXXII and LXIII to LXXII (except LXIX), together with a few other Orders, are revoked and replaced by the new Orders set out in Schedule 3. The Orders which have not yet been rewritten continue in force (although in many cases re-numbered) subject to the amendments made by Schedule 4. The whole of the Orders have been rearranged in a more logical sequence and the new arrangement is set out at the beginning of Schedule 3. Special provisions relating to particular classes of proceedings are now brought together in the new Orders 75 to 89.

The following are the more important of the changes made by the new Rules—

(1) Order 5 re-defines the mode of beginning civil proceedings in the High Court. Rule 4 of this Order extends the class of cases in which proceedings may be begun by originating summons. The procedure to be followed in cases so begun is stated in Order 28, which is an entirely new Order. Proceedings begun by originating summons in the Queen's Bench or Probate, Divorce and Admiralty Division may be issued out of any district registry (Order 7, rule 5, and Order 75, rule 34).

(2) Where a writ issued out of a district registry is indorsed with a statement that the cause of action arose wholly or in part within the district, any appearance must be entered in the district registry (Order 12, rule 2 (2)).

(3) The scope of Order 14 is extended so as to enable an application for summary judgment to be made in respect of a particular claim or part of a claim included in the writ, and to enable a defendant to apply for summary judgment on a counterclaim.

(4) Order XIVB is not reproduced, but simpler provision for trial without pleadings is made by Order 18, rule 21.

(5) A defendant is given wider powers of paying money into court by Order 22, rule 1, in an action for debt or damages other than an action for libel or slander (in regard to which the present practice is preserved by Order 82, rule 4). A single sum may be paid into court in respect of two or more causes of action, but if such a payment embarrasses the plaintiff he may apply to the court for an order requiring the defendant to apportion the sum between the different causes of action except in the case of claims under the Fatal Accidents Acts 1846 to 1959 and the Law Reform (Miscellaneous Provisions) Act 1934: in such a case the money cannot be paid out without an order and it will be apportioned by the court under Order 80, rule 16. Under Order 22, rule 2, a defendant may take the value of any counterclaim made by him into account when paying money into court and may in effect set off his counterclaim or part of it against one or more of the plaintiff's claims.

(6) Important changes are made by Order 24 (following a recommendation made by the Committee on Supreme Court Practice and Procedure in its Final Report (Cmd. 8878)) with regard to discovery of documents in actions begun by writ. With certain exceptions the parties to an action are required to make mutual discovery by exchanging lists of documents within 14 days after the close of pleadings. In an action arising out of a road accident, however, the defendant must make discovery to the plaintiff only if the court so orders. The party to whom discovery is made may require a list of documents to be verified by affidavit. On the application of any party the court may restrict or exclude discovery and must do so to the extent that the court thinks discovery unnecessary either for disposing fairly of the action or for saving costs. The service of notice to admit the authenticity of documents described in a list of documents and of notice to produce those documents at the trial is made unnecessary by Order 27, rule 4 (1) and (3).

(7) Since in most actions begun by writ discovery will be made automatically shortly after the close of pleadings, the time for taking out the summons for directions under Order 25 is increased to one month after the pleadings are closed.

Among the less important of the changes which have been made are the following—

(i) The statement of claim may be indorsed on the writ of summons in any action (Order 6, rule 2) but no change has been made in the classes of action in which it is not possible to apply for summary judgment under Order 14.

(ii) All actions arising out of a collision between ships are assigned to the Probate, Divorce and Admiralty Division (Order 75, rule 2).

(iii) In Admiralty and Probate actions the writ of summons must be issued out of, and appearance entered in, the Admiralty Registry or the Principal Probate Registry, as the case may be, instead of the Central Office (Order 75, rule 3 ; Order 76, rules 2 and 6).

(iv) Where leave is given for service out of the jurisdiction otherwise than in Scotland, Northern Ireland, the Isle of Man or the Channel Islands, notice of the writ will be served irrespective of the nationality of the defendant (Order 11, rule 3).

(v) The rule enabling persons to sue or be sued on behalf of themselves and numerous other persons having the same interest in the proceedings has been rewritten (Order 15, rule 12).

(vi) A plaintiff may amend his writ once before close of pleadings without leave (Order 20, rule 1) and a defendant may issue a third party notice without leave if he does so before serving his defence on the plaintiff (Order 16, rule 1).

(vii) An application for the approval of a settlement of a claim made by or on behalf of a person under disability may be made by originating summons (Order 80, rule 12).

(viii) The periods allowed for service of the various pleadings are largely assimilated by Order 18, rules 1, 2 and 3 ; and in reckoning periods of time of 7 days or less, Saturdays and Bank Holidays are excluded (Order 3, rule 2 (5)).

(ix) Where the defendant to an action for the recovery of land fails to enter an appearance within the time limited for appearing, the plaintiff may enter judgment not only for possession but also for costs (Order 13, rule 4).

(x) A summons or other application in a cause or matter (as distinct from the cause or matter as a whole) may be transferred to London from a district registry or vice versa, or from one district registry to another (Order 4, rule 6 (4)) ; and where an originating summons in the Chancery Division has, contrary to the rules, been issued out of a district registry instead of the Central Office or out of the wrong district registry, the court must transfer the cause or matter to London or to the appropriate district registry (Order 4, rule 6 (6)).

(xi) Documents not required to be served personally may be served by ordinary post instead of registered post (Order 67, rule 5) ; and where the person to be served is in default as to entry of appearance or has no address for service, the document need not be filed and, except in certain cases, need not be served on him (Order 67, rule 8).

The following Table indicates which of the Rules of the Supreme Court 1883 have been wholly or partly revoked and shows, in relation to each such rule, the new rule (if any) in which it is reproduced:—

TABLE

R.S.C. 1883		Revised Rules	
Order	Rule	Order	Rule
I	1	—	
	2	—	
IA	1	77	1
	2	—	
II	1	6	2 (1)
	3	6	1
	4	6	7 (1)
	5	6	1
		11	4
	7	75	3
	8	—	
III	1	6	2 (1)
	2	—	
	3	—	
	3A	77	3
	4	6	3
	5	76	2 (2)
	6	—	
	7	6	2
	8	—	
	9	82	2
	10	83	2, 3
	11	84	1, 2
IV	1	6	5
	2	6	5
	3	—	
	4	7	3 (2)
		8	3 (2)
		9	2
V	1	6	7 (2)
		76	2 (1)
	1A	55	5D
	2	6	7 (2)
	3 }	—	
	4 }		
	4A	77	5
	5	—	
	5A	55	5C
	6	4	2
	7	4	7
	8	4	9
	9	4	1
	10	—	
	11	6	7 (3)
	12	6	7 (5)
	13	—	
	14	—	
	15	—	
	16	75	5
	17	75	5 (4)–(6)
VI	1	6	6, 7 (4), 8
	1A	7	4, 5

R.S.C. 1883		Revised Rules	
Order	Rule	Order	Rule
VI—*cont.*	2	6	6 (2)
	2A	7	4, 5
VII	1	6	5
	2	62A	1, 3, 4, 8
	3	62A	5
	4	62A	6, 7
	5	62A	9
VIII	1	6	8
	2	—	
IX	1	10	1 (2)
	2	10	1
		67	2, 4
	3	—	
	5A	77	4
	8	67	3
	8A	10	2
	9	10	4
	10	75	8
	11	75	10
	12	75	11
	13	75	11
	14	75	11
	14B	—	
	15	10	1 (4)
X		67	4 (2)
XI	1	11	1
	1A	75	4
	2	11	4
	2A	10	3
		11	2
	3	76	3
	4	11	4
	5	11	4 (4)
	6	11	3
	7	11	5, 6
	8	11	5, 6, 8
	8A	11	9
		88	6
	8B	11	5, 7, 8
	9	68	2, 4, 5
	10	68	2 (4)
	11	11	5, 6, 8
	12	—	
	12A	—	
	13	68	3, 4
	14	77	4 (1)
XII	1	12	2
	2	12	2
	3	—	
	4	12	2
	5	12	2
	5A	77	5

R.S.C. 1883		Revised Rules	
Order	Rule	Order	Rule
XII–*cont.*	6	4	6
	7	4	6
		77	2
	8	12	1 (3), 3 (2), 4
	10	12	3
	11	12	3 (3)
	12	12	3 (5)
	17	12	1 (4)
	18	75	9
	19	75	16
	20	75	16
	21	75	16
	22	12	6
		77	3
	23	76	4
	24	75	17
	25	15	10
	26	—	
	27	15	10
	28	12	8
	29	12	8
	30	12	7, 9
XIII	2	13	7
	3	13	1
		83	4
	4	13	1
	5	13	2
	6	13	3, 5
	7	13	5
	8	13	4
	9	13	5
	9A	13	6
	10	13	9
	11	13	8
	12	13	6
		76	10
	12A	75	20
	13	75	20
	15	28	2
	16	83	4
	17	55	5E
	18	77	9
	19	84	3
XIV	1	14	1, 2, 3, 8, 9
		77	7
	2	14	2
	3	14	4
	4	—	
	5	14	8
	6	14	4
	7	14	6
	8	14	3, 6
	9	14	7
	10	14	10
XIVA	1	86	1, 2, 3
		77	7
	2	86	2
	3	86	4

R.S.C. 1883		Revised Rules	
Order	Rule	Order	Rule
XIVA–*cont.*	4	86	4, 5
	5	86	6
XIVB		—	
XV	1	33	1A
	2	33	1A
XVI	1	15	4, 5
	2	15	6
	3	—	
	4	15	4
	5	—	
	6	—	
	7	—	
	8	15	6, 14
	9	15	12
	9A	15	13
	10	—	
	11	15	6, 8
	12	—	
	13	15	8
	14	—	
	20	15	11
	32	15	13
	33	85	3
	34	85	3
	35	85	3
	36	85	3
	37	—	
	38	85	3
	39	15	6, 18
	40	15	16
	41	15	16
	42	15	16
	43	15	16
	45	—	
	46	15	15
	47	85	3 (3)
	48	—	
	49	77	19
	50	77	18
	51	52	19
XVIA	1	16	1, 2
	1A	77	10
	2	16	1, 3
	3	16	1 (3)
	4	16	3
	5	16	5
		77	9
	6	16	5
		77	9
	7	16	4, 6
	8	16	4
	9	16	7
	11	16	9
	12	16	8
	12A	16	10
	13	16	11
XVIB	1	80	1

R.S.C. 1883		Revised Rules	
Order	Rule	Order	Rule
XVIB–*cont.*	2	80	2
	3	80	3
	4	80	4
	5	80	5
	6	80	6
	7	80	7
	8	80	8
	9	80	9
	10	80	10
	11	80	11
	12	80	13
	13	80	14
	14	80	15
	15	80	16 (2)
	16	80	17
XVII	1	15	7
		36	39A
	2	15	7
	3	15	7
	4	15	7
	5	15	7, 8
	6	15	7
	7B	—	
	8	15	9
	9	36	9A
	10	36	9A
XVIII	1	15	1, 5
	2	55	8B
	3	15	1
	4	—	
	5	15	1
	6	—	
	7	—	
	8	15	5
	9	15	5
XIX	1	—	
	2	18	1–3, 7, 15
	3	15	2
		18	17
	3A	77	6
	4	18	6, 7
	5	—	
	6	18	12
		82	3
	7	18	12
	7A	18	12
	7B	18	12
	8	—	
	9	—	
	10	—	
	11	18	6
	12	—	
	13	18	13
	14	18	7
	15	18	8
	16	18	10
	17	18	13, 14, 18
	18	18	14
	19	—	

R.S.C. 1883		Revised Rules	
Order	Rule	Order	Rule
XIX–*cont.*	20	—	
	21	18	7
	22	82	3
	22A	82	3
	23	—	
	24	—	
	25	18	7
	25A	18	12
	26	—	
	27	18	19
	28	75	18
XX	1	18	1
	2	76	11
	3	18	1
	4	18	15
	6	18	15, 18
	7	—	
	8	—	
	9	76	13 (1)
	10	83	3
	11	84	2
XXI	1	—	
	2	—	
	3	—	
	4	18	13 (4)
	5	—	
	6	18	2
	7	18	2
	10	15	2
	11	15	3
	12	15	3
	13	15	3
	14	15	3 (2)
	15	15	5
	16	15	2
	17	15	2
	19	—	
	20	—	
	21	—	
XXII	1	18	16
		22	1
		75	22
	2	22	3, 4, 10
		75	22
		82	5
	3	22	5
	4	22	1, 3, 4
		82	4
	5	22	6
	5A	22	12
	6	22	7
		82	4
	7	—	
	8	22	8
	9	—	
	10	—	
	11	—	
	12	—	
	13	—	

R.S.C. 1883		Revised Rules	
Order	Rule	Order	Rule
XXII–*cont.*	17	—	
	18	—	
	19	22	11
	21	75	14
	22	22	9
XXIII	1	18	3
	2	18	3, 18
		19	8
	3	75	19
XXIV	1	18	9
	2	—	
	3	—	
XXV	1	—	
	2	18	11
	3	34	2
	4	18	19
	5	15	17
	6	77	19
XXVI	1	21	2, 3, 4
	2	21	2
	4	21	5
XXVII	1	19	1
	2	19	2
		83	4
	3	19	2
	4	19	3
	5	19	4, 6
	6	19	6
	7	19	5
	8	19	6
	9	—	
	10	76	14
	10A	75	20
	11	19	7
	12	19	7
	13	18	14, 20
	14	16	5 (2)
	15	16	5
		19	9
		75	20
	16	83	4
	17	55	5E
	18	77	9
	19	84	3
XXVIII	1	20	5, 8
	2	20	3
	3	20	3
	4	20	4
	5	20	3
	6	20	5
	7	20	9
	8	20	10
	9	20	10
	10	20	1 (2), 3 (1)
	11	20	11
	12	20	8

R.S.C. 1883		Revised Rules	
Order	Rule	Order	Rule
XXIX	1	75	13
	3–6	—	
	8	75	14
	9	75	13
	10	75	14
	11	75	6
	12	75	6
	13	75	5
	14	75	8
	15	—	
	16	75	20
	17	75	20
	18	75	6, 7
XXX	1	25	1
	2	25	2
	3	25	3
	4	25	4
	5	25	5
	6	25	6
	7	25	7
	8	75	23
	9	25	7
XXXI	1	26	1, 3
	1A	82	6
	2	26	1
	4	26	1
	5	26	2
	5A	77	12
	5B	77	12
	6	26	4
	8	26	1
	9	26	4
	11	26	5
	12	24	3, 8
	12A	24	9
	13	24	5
	13A	24	3, 5
	13B	—	
	14	24	13
	15	24	11
	16	—	
	17	24	11
	18	24	12, 14
	19A	24	7, 14, 16
	20	24	4
	20A	24	3
	21, 22, 23	24	17
		26	6
	24	26	7
	28	—	
	28A	77	12
	30	77	12
	31	24	18
		26	8
XXXII	1	27	1
	2	27	5
	3	27	5
	4	27	2

R.S.C. 1883		Revised Rules	
Order	Rule	Order	Rule
XXXII–*cont.*	5	—	
	6	27	3
	7	—	
	8	27	5
XXXIV	3	—	
	9, 10, 11, 12	—	
XXXV	5	17	4
	6B	—	
	16	4	6
	17	4	6
		77	2
	18	—	
	23	—	
	24	1	7
XXXVI	3	77	13
	10	75	23, 24
	37	82	7
	43A	—	
XXXVII	1F	75	20, 23, 40
	25A	75	28
	27B	88	4
	33	67	7
	61	77	14
XLI	1	—	
	5A	77	15
XLIB	15	88	7
XLIC	1	77	1
	2	77	16
	3	77	16
	4	77	17
XLII	19	—	
	31A	—	
XLVI	1A	81	10
	1B	81	10
	9	—	
	13	—	
	14	—	
XLVIIIA	1	81	1, 2
	2	81	2
	3	81	3
	4	81	3
	5	81	4
	6	81	4
	7	81	4
	8	81	5
	9	81	7
	10	81	6
	11	81	9

R.S.C. 1883		Revised Rules	
Order	Rule	Order	Rule
XLIX	1	4	3
	1A	4	4
	4	4	8 (1)
	5	4	5
	5A	4	1 (7)
	7	4	3
	8	4	10
XLIXA	1	78	1
	2	78	2
	3	78	3
	5	78	3
	6	78	4
	7	78	5
	8	78	1 (3)
L	10	85	6
	22A	77	17 (1)
LI	14	75	21
	15	75	21
	16	75	21
LIA	1	87	1–3
	2	87	4
	3	87	5
	4	87	6
LII	2	—	
	4	88	5
	8	—	
	10	75	32
	16	9	2
	17	9	4
	23	75	33
LIIA	—	—	
LIII	—	—	
LIIID	9	—	
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LIVM	1–8	77	8
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	6	—	
	7	—	
	8	—	
	9A	—	
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	10	85	5
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LVB	11	—	
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	9	17	5
	10	17	5
		77	11
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LXIII	1	63	1
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LXVI	1	66	2 (5)
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LXVIA	1	—	
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	3	66A	2
	4	66A	4
	5	66A	6

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	4	—	
	5	67	2
	6	67	4
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	8	—	
	9	67	7
	10	—	
	11	75	10
	12	75	10
	13	75	8
	14	—	
LXVIII	1	1	1
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		12	10
	2	9	3, 4
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