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1972, No. 12.

An Act to make provision for the practice and procedure of the High Court of the Cook Islands in its Civil jurisdiction

(16 February 1973

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and commencement - (1) This Act may be cited as the Code of Civil Procedure of the High Court Act 1972.

(2) This Act shall come into force with regard to any island on the date to be appointed by the High Commissioner by Order in Executive Council and different dates may be so appointed in respect of different islands.

2. Interpretation - In this Act, unless the context otherwise requires, -

"The Act" means the Cook Islands Act 1915:

"Address for service" means the address of a place where any document may be left for the party giving the address:

"Affidavit" includes an affirmation:

"Civil proceedings", in relation to the Crown, has the same meaning as in the Crown Proceeding Act, 1950:

"Copy", in relation to any document issued out of the office of the Court, means a duplicate of the original signed by the person who signed the original, and, if the original is required to be sealed, means a sealed duplicate of the original signed as aforesaid; and includes a copy certified as such by the Registrar under the seal of the Court:

"Court", in relation to any act, jurisdiction, or discretion which may under these rules be done or exercised by the Registrar, includes the Registrar:

"The Crown" has the same meaning as in the Crown Proceedings Act, 1950:

"Defendant" includes every party served with any summons or process, or served with the notice of or entitled to attend any proceedings otherwise than as a plaintiff:

"Foreign Court" means the Court to which any process is sent by another Court:

"Goods" includes all chattels personal:

"Home Court" means the Court from which any process is originally issued:

"Mentally defective person" means a person who, owing to his mental condition, requires oversight, care or control for his own good or in the public interest:

"Minister of Justice" means the Minister charged with the responsibility of the Department of Justice under Article 16 of the Constitution:

"Oath" includes affirmation; and to "swear" has a corresponding meaning:

"Order" means the final decision of the Court in a matter; and includes any decision of the Court, not being a judgment or other final decision, in any proceedings:

"Originating process" means -

(a) The summons in an action or in garnishee or interpleader proceedings; or

(b) An originating application:

"Plaintiff" includes every person asking any relief against any other person by any form of proceeding:

"Rule" means section of this Act and "these rules" means this Act:

Expressions defined in the Act have the meanings so defined:

A reference to a numbered form is a reference to the form so numbered in the Second Schedule to these rules:

References to actions or proceedings for the recovery of land or chattels shall be construed as including actions or proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the land or chattels or to the possession thereof.

PART I - PRELIMINARY

3. Construction - This Act shall be so construed as to secure the just, speedy, and inexpensive determination of any proceeding.

4. Procedure and practice of Court - (1) Subject to the provisions of this Part, no practice which is inconsistent with these rules shall prevail in the High Court.

(2) If any case arises for which no form of procedure has been provided by the Act or these rules, the Court shall dispose of the case as nearly as may be practicable in accordance with the provisions of the Act or the rules affecting any similar case, or in accordance with the provisions of the Code of Civil Procedure of the Supreme Court of New Zealand affecting any similar case, and if there is no such provision, then in such manner as the Court deems best calculated to promote the ends of justice.

(3) Every Judge may from time to time make such rules, not inconsistent with the Act or these rules, as he thinks proper for regulating the conduct of business in the Court over which he presides, and in the office of the Court.

5. Non-compliance with rules - Non-compliance with any of these rules shall not render void the proceedings in which the non-compliance has occurred, unless it is expressly so provided in these rules; but the proceedings may be set aside, either wholly or in part, as irregular, or amended or otherwise dealt with on such terms as to costs and otherwise as the Court thinks fit.

6. Forms - (1) Where any form in the Second Schedule hereto is prescribed or authorized to be used, such variations may be made therein as the circumstances of any particular case may require.

(2) Every summons, order, writ, warrant, notice or other document issued out of the Court under the hand of a Judge shall be sealed with the seal of the Court.

7. Intituling of forms - (1) In any plaint note or other originating document, or in any statement of claim, summons to defendant or sub-debtor, third party notice, judgment, or order, the proceedings shall be properly intituled showing the Court in which the action or matter is proceeding, and the distinguishing number, and the names, addresses, and occupations of the parties. The form No.1 may be used.

(2) Subsection (1) of this rule shall apply to every other document, including any affidavit, filed, issued, or served by any party:

Provided that in the case of any such document -

(a) Surnames of individuals, where required to be inserted, shall be set out at length, but first or Christian names may, unless necessary to distinguish two or more persons required to be named, be indicated by initials only:

(b) Where more persons than one are joined in the same interest, it shall be sufficient to set out the name of the person first named in the originating document filed in the proceedings, followed by the words "and another" or "and others", as the case may require:

(c) Addresses and descriptions of persons, unless necessary to distinguish two or more persons required to be named, and indications of the interest in which a person is a party to the proceedings may be omitted:

(d) The names of bodies corporate shall be set out without abbreviation, but the document need not state the fact of incorporation, or describe the mode of incorporation, or refer to the registered office of the body corporate, or make any other addition:

(e) The intituling of a document in a matter need not state the Act by which the Court is given power to deal with the matter:

(f) Where proceedings are intituled in the matter of an estate or settlement or other instrument, the matter may be described with corresponding brevity.

PART II - OFFICES AND SITTINGS

8. Court offices - (1) There shall be offices of the Court for the transaction of business relating to proceedings in Court.

(2) Such offices shall be situated at such places as the Minister of Justice directs, and shall be in the charge of a Registrar.

9. Office hours - (1) The office of the Court shall be open from 8.30 a.m. to 12 noon and from 1 p.m. to 3 p.m. on every day not being a Saturday, a Sunday, or a Court holiday:

Provided that the Minister of Justice may from time to time authorise the closing of the office of any Court for one hour in each such day between specified times.

(2) In any special circumstances any office of the Court shall be open on such days and at such times as the Minister of Justice may from time to time direct.

(3) A notice of the office hours shall be posted in some convenient place accessible to the public.

10. Court holidays - (1) The days for the time being appointed to be observed as holidays in the Public Service shall be holidays on which the office of the Court shall be closed.

(2) The Minister of Justice may by general or special order direct that any office be closed on any days specified in the order.

11. Closing or opening by special order - Any office of the Court may from time to time be closed or opened by special order of the Judge.

PART III - RECORDS AND ACCOUNTS

12. Registrar to keep records and accounts - (1) The Registrar shall -

(a) Keep a record of all applications, summonses, warrants, writs, and other processes filed in or issued out of the Court, and of all returns thereto, and of all judgments and writs and other proceedings of the Court, whether done in or out of Court:

(b) Keep account of all moneys paid into or out of Court.

(2) The record and account required by this rule shall be kept by entries, in books belonging to the Court, in accordance with this Part of these rules or in accordance with directions given under the authority of the Minister of Justice.

13. Books to be kept - The following books shall be kept by the Registrar and shall be records of the Court:-

(a) Plaint-book:
(b) Originating-applications book:
(c) Minute-book:
(d) Civil-record book:
(e) Warrant-book:
(f) Foreign-process book:
(g) Search-book:
(h) Trust Account.

14. Plaint-book - The plaint-book shall be in the form No.2.

15. Originating-applications book - The originating-applications book shall be in the form No.3. There shall be entered in it all originating applications except those required by any Act or rule to be entered in a special register.

16. Minute-book - (1) There shall be entered in the minute-book a record of all orders of an interlocutory nature and all orders made on originating applications.

(2) Where proceedings have been commenced by plaint the minute shall be headed with the plaint number. Where proceedings have been commenced by originating application the minute shall be headed with the originating application number. A memorandum shall be made on or attached to the plaint-note or originating application showing the nature of the minute-book entry.

(3) Every minute shall be signed by the Judge or Registrar who makes the order.

17. Civil-record book - (1) The civil-record book shall be in the form No.4. There shall be entered in it particulars of all judgments given or entered in ordinary or default actions or in interpleader proceedings.

(2) Before every sitting of the Court the Registrar shall cause to be entered in the book in numerical order every action which is fixed for hearing on that day. A memorandum of the decision shall be entered opposite each case and shall be signed by the Judge or Registrar who gives the judgment or makes the order.

(3) Whenever judgment is entered otherwise than at a sitting of the Court an entry shall be made in the civil-record book and signed by the Judge or Registrar.

18. Warrant-book - (1) The warrant-book shall be in the form No.5. There shall be entered in it particulars of all warrants issued out of the Court under civil process. Every warrant shall be entered in numerical order in each year.

(2) Whenever a warrant is required to be sent to a foreign Court there shall be entered in the warrant-book the date on which and the name of the Court to which it is sent, and the date of the return.

19. Foreign-process book - The foreign-process book shall be in the form No.6. There shall be entered in it the particulars therein prescribed of all processes from foreign Courts for service or execution.

20. Search-book - The search-book shall be in the form No.7.

21. Trust account - The trust account shall be kept in the manner prescribed by the Treasury Regulations for the time being in force, and the law trust cash-book shall be in the form prescribed by those regulations.

22. Indexing - The Registrar shall keep an alphabetical index to the names of defendants in the plaint-book, and to the names of all parties affected in the originating-applications book, and shall make the necessary entries daily.

23. Searches - (1) Subject to any special provisions of any Act or rule, no person shall be entitled to search any book or document, other than the civil-record book or the documents in an action, without the leave of the Registrar. Any person aggrieved by the refusal of the Registrar to grant leave to search may apply to the Judge, who may in his discretion grant or refuse such leave.

(2) Every application for a search entered in the search-book shall be signed by the applicant; and if leave to search is granted the prescribed fee shall be paid.

(3) Nothing in this rule shall be construed to prevent any party to any proceedings from inspecting any entry in the Court books, or any document, relating to those proceedings.

PART IV - WHERE PROCEEDINGS MAY BE COMMENCED

24. Actions generally - (1) Except where by any Act or rule it is otherwise provided, an action may be commenced -

(a) In the office of the Court nearest to the place where the defendant or one of the defendants resides or carries on business; or

(b) Subject to the succeeding provisions of this rule, in the office of the Court nearest to the place where the cause of action or a material part thereof arose.

(2) Where an action is founded on a contract for the sale or hire of goods and payment is to be made by instalments, subsection (1) (b) of this rule shall not apply unless the claim is for a sum of money exceeding $100:

Provided that in any such case the action may be commenced in the office of the Court nearest to the place where the defendant entered into the contract, notwithstanding that the amount of the claim does not exceed $100.

(3) Where a plaintiff desires to commence an action by virtue of subsection (1) (b) of this rule he shall include in or endorse on the statement of claim a statement or certificate that the office of the Court is the nearest office of the Court to the place where the cause of action or a material part thereof arose.

(4) Where the plaintiff sues as assignee of a debt or other cause of action the action may be commenced in any office of the Court in which, but for the assignment, the assignor might have commenced the action, and not elsewhere.

(5) The foregoing provisions of this rule shall not apply to any action against the Crown (whether alone or with any other person); and any such action as aforesaid shall, except whereby any Act or rule it is otherwise provided, be commenced in the office of the Court nearest to the place where the cause of action or some material part thereof arose:

Provided that if there is any reasonable doubt as to the office of the Court in which any action should be commenced under this subsection, the action may be commenced in the office of the Court nearest to the place where the plaintiff or one of the plaintiffs resides or carries on business.

(6) Notwithstanding anything hereinbefore contained the Registrar may having regard to the residence of the parties to the action, the place where the cause of action arose and any other relevant circumstances direct that the place of trial be at such place as he thinks fit. Any party to the action aggrieved by such direction as aforesaid may apply to a Judge who may in his discretion uphold or vary such direction.

25. Recovery of land - Proceedings for the recovery of land shall be commenced in the office of the Court nearest to the place where the land or any part thereof is situated.

26. Partnership proceedings - Proceedings for the dissolution or winding up of a partnership shall be commenced in the office of the Court nearest to the place where the partnership business was, or is, principally carried on.

27. Proceedings by or against Registrar - (1) A Registrar may sue or be sued in accordance with these rules:
Provided that if the office of the Court in which the action would, but for this rule, be commenced is at the place where he is Registrar, the action shall be commenced in the nearest office of the Court at the place where he is not the Registrar, and not otherwise.
(2) Nothing in this rule shall affect any alternative right to commence the action in some other office of the Court at a place where the Registrar suing or being sued is not the Registrar.

28. Originating applications - (1) Subject to the provisions of any Act or rule, an originating application may be commenced -

(a) In the office of the Court nearest to the place where the respondent or one of the respondents resides or carries on business; or
(b) In the office of the Court nearest to the place where the subject-matter of the application arose wholly or in part; or
(c) If no respondent is named in the application, in the office of the Court nearest to the place where the applicant or one of the applicants resides or carries on business.

(2) Paragraphs (a) and (c) of subsection (1) of this rule shall not apply in the case of an originating application to which the Crown (whether alone or with any other person) is respondent. If there is any reasonable doubt as to the office of the Court in which any originating application should be commenced under paragraph (b) of the said subsection (1) the application may be commenced in the office of the Court nearest to the place where the applicant or one of the applicants resides or carries on business.
(3) Notwithstanding anything hereinbefore contained the Registrar may, having regard to the residence of the parties, the place where the subject-matter of the application arose, and any other relevant circumstances, direct that the place of hearing be at such place as he thinks fit. Any party to the application aggrieved by such direction as aforesaid may apply to a Judge who may in his discretion uphold or vary such direction.

29. Other matters - Where proceedings are required to be commenced in any manner not provided for by the foregoing provisions of this Part, and no provision is made by any Act or rule as to the Court in which the proceedings are to be commenced, the last preceding rules shall apply with the necessary modifications.

30. Interlocutory applications - Any application in the course of proceedings shall be filed in the Court in which the proceedings were commenced or to which they have been removed.

31. Proceedings in wrong Court - (1) The Registrar may refuse to file any proceedings which in his opinion are tendered for filing in the wrong Court:

Provided that the applicant may on such refusal apply to the Judge of that Court for a direction that he is entitled to file the proceedings in that Court.

(2) Subject to Rule 160 hereof, no objection shall be taken at the hearing or at any subsequent proceeding, on the ground that the proceedings were filed in the wrong Court.

32. Filing by consent - Notwithstanding anything contained in the foregoing provisions of this Part, any proceedings may be commenced in any Court with the written consent of the defendant filed with the proceedings.

33. Definition of nearest Court - For the purposes of this Part the Court where the place of sitting is nearest by the most practicable route shall be deemed to be the nearest Court.

PART V - JOINDER OF CAUSES OF ACTION

34. Generally - Except as otherwise provided in this Part, the plaintiff, or any defendant counter-claiming, may unite in the same action and in the same statement of claim or counter-claim several causes of action, and -

(a) Claims by or against husband and wife may be joined with claims by or against either of them separately; and

(b) Claims by or against an executor or administrator as such may be joined with claims by or against him personally, if they are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator; and

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

35. Recovery of land - Except by leave of the Court, no cause of action shall be joined with an action for the recovery of land except claims for mesne profits or arrears of rent or any part thereof or for damages for breach of any contract under which it is held or for any injury to it, or for payment of any principal money or interest secured by a mortgage or charge or for possession of chattels let therewith.

36. Order for separate hearings - If at any time it appears to the Judge that any causes of action united in one action cannot conveniently be heard together, he may order separate hearings, or may exclude any cause of action and order any consequential amendments to be made, or may make such other order as may be necessary for the separate disposal thereof.

PART VI - PARTIES

37. Plaintiff not resident in the Cook Islands - (1) If the plaintiff in any proceedings is resident out of the Cook Islands, the Court, on the application of the defendant, may order security to be given for the costs

of the proceedings to the satisfaction of the Registrar, and may order the proceedings to be stayed until such security has been given. The defendant shall apply promptly after the fact of such residence out of the Cook Islands has come to his knowledge.

(2) A person ordinarily resident out of the Cook Islands may be ordered to give security though he may be temporarily resident in the Cook Islands.

38. Who may be joined as plaintiffs - (1) All persons may be joined as plaintiffs in one action in whom any right to relief in respect of or arising out of the same transaction or event or series of transactions or events is alleged to exist, whether jointly, severally, or in the alternative, where, if they brought separate actions, any common question of law or fact would arise:

Provided that if on the application of any defendant it appears that any joinder may embarrass or delay the hearing, the Judge may order separate hearings, or make such other order as he thinks fit.

(2) Judgement may be given for any plaintiff for the relief to which he is entitled, without any amendment, but any defendant, though unsuccessful, may be awarded any extra costs caused by joining any person who is not found entitled to relief.

39. Action in name of wrong plaintiff - Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court may at any time, if satisfied that it has been so commenced through a mistake made in good faith, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff, upon such terms as may seem just.

40. Who may be joined as defendants - (1) All persons may be joined as defendants in one action against whom the right to any relief in respect of or arising out of the same transaction or event or series of transactions or events is alleged to exist, whether jointly, severally, or in the alternative, where if separate actions were brought any common question of law or fact would arise.

(2) Judgement may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities without any amendment.

(3) The Court may make such order as to costs as in the event shall appear to it to be just, and in particular may order an unsuccessful defendant or unsuccessful defendants to pay the costs of the successful defendant or defendants, or if the costs of the successful defendant or defendants are awarded against the plaintiff or plaintiffs, may order such costs to be paid by the unsuccessful defendant to the plaintiff or plaintiffs.

(4) Where two or more persons are made defendants, whether as jointly or as severally liable, the plaintiff may have judgement against any one or more of the defendants and may issue execution thereon, without prejudice to his right to proceed with the action against any other defendant.

41. Defendant interested in part of claim - It shall not be necessary that every defendant to an action shall be interested as to all the relief claimed, or as to every cause of action, but the Court may make any order that may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he has no interest.

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

43. Where plaintiff in doubt as to whom to sue - Where the plaintiff is in doubt as to the person from whom he is entitled to redress he may join two or more defendants so that the question as to which is liable, and to what extent, may be determined as between all parties.

44. Misjoinder or non-joinder - No action or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every action or matter deal with the question in controversy so far as regards the rights and interests of the parties actually before it.

45. Representative proceedings - (1) Where there are numerous persons having the same interest in one action or matter, one or more of them may sue or be sued, or may be authorized by the Court, before or at the hearing, to defend, on behalf of all parties so interested.

(2) An order that the defendant may so defend the action or matter may be subject to such terms and conditions as the Court thinks fit.

Persons under Disability

46. Infant - An infant may sue by his next friend, and may defend by his guardian ad litem.

47. Next friend - (1) Where an infant desires to commence proceedings or is a claimant in interpleader proceedings, the proceedings or claim shall be in the name of the infant by his next friend.

(2) The next friend shall -

(a) At the time the proceedings are commenced; or

(b) In the case of interpleader proceedings, before the claimant's statement of claim is accepted by the Registrar, -

deliver at the Court office an undertaking in the form No.8, witnessed by a Judge, Registrar, or Justice of the Peace.

(3) On giving the undertaking the next friend shall be liable for costs in the same manner and to the same extent as if he were himself a plaintiff; and, if the proceedings fail or are discontinued, an order for payment of costs may be made against the next friend whether an order for costs is or is not made against the infant, and proceedings may be taken on the order for the recovery of the costs as for the recovery of any amount payable under a judgment.

48. Where Court may appoint next friend - (1) Where proceedings in which a next friend is required are commenced without a next friend, the Court may -

(a) On the application of any party, appoint as next friend any person who consents to act and gives an undertaking in the form No.8; or

(b) Order that the proceedings be struck out.

(2) Where a next friend is appointed under this rule the provisions of Rule 47 (3) hereof shall apply.

49. Guardian ad litem - Where it appears on the face of proceedings that any defendant is an infant the following provisions shall apply:-

(a) Within five days after the service of the summons a guardian ad litem to the infant may be appointed by the Registrar, on application being made in form No.9, together with a written consent of the proposed guardian to act:

(b) The guardian ad litem shall forthwith notify the plaintiff in writing of his appointment and of his address for service:

(c) If no application for the appointment of a guardian ad litem is made on behalf of the infant within the time hereinbefore limited, the plaintiff shall, before taking any further steps, apply to the Judge for the appointment of some proper person as guardian ad litem to the defendant:

(d) On the hearing of the last-mentioned application the Judge may appoint the person proposed by the plaintiff, or, if not satisfied that the person proposed is a proper person to be appointed, may appoint any other person willing to act, or, in default of any such person, may appoint the Registrar; and thence forth the proceedings shall continue as if a guardian had been appointed on an application made on behalf of the defendant.

50. Appointment of guardian ad litem in the course of proceedings - Where it does not appear on the face of the proceedings that any defendant is an infant, but that fact appears in the course of the proceedings, the following provisions shall apply:-

(a) If on any defendant appearing at the hearing it appears that he is an infant, and he names as his guardian a person who consents to act, that person shall be appointed guardian. If in such case the defendant does not name a guardian, the Judge may

appoint as guardian any person in Court who is willing to act, or, in default of any such person, the Registrar:

(b) In any other case where it appears that any defendant is an infant, a guardian ad litem may be appointed by the Registrar at any time within five days of its appearing that he is an infant, on application made on his behalf in the form No.9 together with a written consent of the proposed guardian to act; and if no application is made within the said five days the plaintiff shall, before taking any further steps in the proceedings against the defendant, apply to the Judge for the appointment of some proper person as guardian ad litem to the defendant.

51. Guardian's liability for costs - A guardian ad litem appointed on the application of the plaintiff shall not be personally liable for any costs. Any other guardian ad litem shall not be personally liable for costs unless they are occasioned by his personal negligence or misconduct.

52. Substitution of guardian - In case of the death, retirement, or removal of a guardian ad litem another person shall be appointed in his place in the same manner as the original guardian:

Provided that a guardian ad litem shall not be permitted to retire without leave of the Court.

53. Infant plaintiff coming of age - Where an action is commenced in the name of an infant, and upon coming of age he elects to go on with it, all subsequent proceedings shall be carried on in his own name, and in such case he shall be liable for all the costs of the action in the same manner as if he had commenced it after coming of age.

54. Power to set aside judgment or order where no guardian - Where a judgment has been obtained or an order made against a defendant who was at the time an infant, without a guardian ad litem having been appointed, the Judge may set aside the judgment or order and order a new hearing, or make such order as he thinks just.

55. Proceedings under judgment or order - At any time during the proceedings under any judgment or order the Judge may, if he thinks fit, require a guardian ad litem to be appointed for any infant.

56. Compromise or payment out in case of infants - (1) In any action in which moneys or damages are claimed by or on behalf of or for the benefit of an infant -

(a) No settlement or compromise or acceptance of moneys paid into Court, whether before or after the hearing, shall be valid without the sanction of the Judge:

(b) No moneys or damages received or awarded in any such action, whether by settlement, compromise, payment into Court or otherwise before or at or after the hearing shall be paid to the next friend, guardian ad litem, or committee of any party, or to any party's solicitor, unless the Judge so orders.

(2) All moneys or damages so received or awarded shall, unless the Judge otherwise orders, be paid into Court.

(3) An application to the Court as to the mode of dealing with the moneys may be made by or on behalf of any person interested. No fee shall be payable in respect of any such application.

(4) If no such application is made within a reasonable time after the payment into Court, the Registrar shall bring the matter to the attention of the Judge, who may give such directions as he thinks fit.

(5) Nothing in this rule shall prejudice the lien of a solicitor for costs.

57. Mentally defective persons - Any mentally defective person may sue by his next friend and defend by his guardian ad litem; and in any such case the foregoing provisions of this Part shall, so far as applicable and with the necessary modifications, apply as if references therein to an infant were references to a mentally defective person.

Partners

58. Partners may sue and be sued in name of firm - (1) Two or more persons claiming or alleged to be liable as partners and carrying on business within Cook Islands may sue or be sued in the name of the firm in which they were partners when the cause of action arose.

(2) Where partners sue or are sued in the name of their firm in accordance with this rule, a statement that the plaintiffs are suing, or that the defendants are sued, as a firm shall be included in the plaint-note and in the title of the action.

(3) Where partners sue or are sued in the name of their firm the partners shall, on demand made in writing by or on behalf of any other party, forthwith deliver to the party making the demand, and file in the Court office, a statement of the names and places of residence of all the persons constituting the firm.

(4) If the partners fail to comply with the demand, the Court may, on application by any other party, order them to furnish and verify, by oath or otherwise, a statement of the names and places of residence of the persons who were partners in the firm when the cause of action arose.

(5) If the partners fail to comply with the order, the Court may -

(a) If the partners are plaintiffs, direct all proceedings to be stayed until the order is obeyed:

(b) If the partners are defendants, order that they be debarred from defending the action.

(6) When the names and places of residence of the partners have been stated, the proceedings shall continue in the name of the firm.

59. Action not in firm's name - Nothing in the last preceding rule shall be construed to prevent partners from suing or being sued otherwise than in the firm's name.

60. Action between a firm and its members - The provisions of these rules as to actions by or against firms shall apply to actions between a firm and one or more of its members, and between firms having one or more members in common, if the firm carries on business within the Cook Islands; but no execution shall be issued without leave of the Judge, and on an application for leave to issue execution all such accounts and inquiries may be directed to be taken and made and all such directions may be given, as may be just.

61. Business in another name - A person carrying on business in a name other than his own may be sued in that name as if it were the name of a firm, and, so far as the nature of the case will permit, all the provisions of these rules relating to actions against firms shall apply.

Change of Parties

62. When proceedings not to abate - (1) An action or matter shall not abate by reason of the death or bankruptcy of any party if the cause of action survives or continues, and shall not become defective by the assignment, creation, change, transmission, or devolution of any interest, estate, or title during proceedings.

(2) Whether the cause of action survives or not, an action or matter shall not abate by reason of the death of any party between the hearing and the judgment, but judgment may be entered notwithstanding the death.

(3) The Court may from time to time make such orders as may be necessary to give effect to the provisions of this rule.

63. Failure to proceed on death of party - Where a plaintiff or defendant in an action or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the proceedings may be continued) may apply to the Court for an order directing the plaintiff (or person entitled to proceed) to proceed within such time as may be ordered. If the person entitled to proceed does not comply with the order, the action or matter may be struck out; and in a case where it is the plaintiff who has died, execution may issue for any costs awarded to the defendant as if Rule 226 hereof applied.

64. Order changing parties - (1) An order changing parties may be made by the Judge or the Registrar.

(2) Before service of the proceedings an order changing parties may be made ex parte, and after service, on notice.

(3) Where an order changing parties is made, a memorandum shall be made on the plaint-note as well as in the minute-book and all subsequent proceedings shall be carried on under the altered title.

65. Claim to money in Court where change in parties after judgment - (1) Where after judgment any change has taken place, by death, assignment, or otherwise, in the parties to any proceedings, and there is money standing in Court to the credit of the proceedings, any person claiming to be entitled to the money may give notice in writing to the Registrar of his claim, accompanied by an affidavit of the truth of the facts stated in the notice.

(2) The Registrar may, if satisfied as to the right of the person so claiming, pay the money to him, or may refer the matter to the Judge, and may require notice of the application to be given by the claimant to any other person or persons.

PART VII - COMMENCEMENT OF PROCEEDINGS

ACTIONS

66. What proceedings are by action - Subject to the provisions of any Act or rule, all proceedings authorised to be brought in the Court, where the object of the proceedings is to obtain relief against any person or to compel any person to do or abstain from doing any act, shall be brought by action and shall be commenced by plaint.

67. Commencement of actions - (1) In an action the plaintiff shall file in the Court office -

(a) A plaint-note in form No. 10 which shall be signed by the plaintiff or by his agent duly authorised in writing or by his solicitor; and

(b) The statement of claim and one copy for each defendant in the action.

(2) On the filing of the documents prescribed by the last preceding subsection the Registrar shall, subject to the provisions of these rules as to giving security when required -

(a) Enter the plaint in the book of the Court and, in the case of an ordinary action, fix a day for the hearing; and

(b) Issue a summons in such one of the forms 11 to 14 as is applicable to the case; and

(c) Annex to the summons and to every copy thereof to be served a copy of the statement of claim; and

(d) Where the plaint has been filed by post, send to the plaintiff or his solicitor or agent a notice of the day fixed for the hearing of the case.

Matters

68. Originating Applications - (1) Any proceedings authorised to be commenced in the High Court or before any Judge for which no other mode of commencement is prescribed or authorised by any act or rule may be commenced by originating application.

(2) In so far as no other form of procedure is prescribed by any Act or rule, originating applications shall be made in accordance with this rule.

(3) If made exparte, the application shall be in the form No. 15. If made on notice, it shall be in the form No. 16.

(4) The application shall state the order applied for and sufficient particulars to show the grounds on which the applicant claims to be entitled to the order, and, if made on notice, the names and addresses of the persons intended to be served (in this rule referred to as respondents), and the applicant's address for service.

(5) The applicant shall file the application in the Court office, together with as many copies as there are respondents.

(6) On the filing of the application the Registrar shall -

(a) Enter the application in the books of the Court and fix a day for the hearing of the application; and

(b) Where the application has been filed by post, send to the applicant a notice of the day fixed for the hearing of the application.

(7) The first document filed by a respondent shall have endorsed thereon his address for service.

(8) An order may be made on an ex parte application where such an application is authorized by any Act or any rules thereunder, or where the Court or Judge is satisfied -

(a) That the delay that would be caused by proceeding on notice would or might entail irreparable injury; or

(b) That the application affects the party moving only, or is in respect of a matter of routine, or is of so unimportant a nature that the interests of any other party to the proceedings cannot be affected thereby; or

(c) That the party in respect of whom the order is sought cannot be found.

(9) Any party or person against whom an order has been made ex parte under this rule may at any time move to rescind the order.

General

69. Proceedings commenced in wrong form - (1) Where proceedings are brought by action which ought to have been brought by originating application, the Judge may allow the proceedings to be continued in accordance with the procedure prescribed for an action, or may order that the proceedings shall be continued in accordance with the procedure prescribed for an originating application, and that any amendments which he thinks necessary or desirable for the purpose shall be made.

(2) Where proceedings are brought by originating application which ought to have been brought by action, subsection (1) of this rule shall apply with the necessary modifications.

PART VIII - STATEMENT OF CLAIM

70. Particulars - (1) A statement of claim shall specify particulars of the claim which the plaintiff seeks to establish, including such particulars of time, place, names of persons, dates of instruments, and other circumstances as may suffice to ensure that the Court and the opposite party are fully and fairly informed of the cause of action. Forms similar to those in the Third Schedule may be used.

(2) Where the action is against the Crown and is instituted against the Advocate-General, the statement of claim shall give, in addition to the particulars required by the foregoing provisions of this rule, particulars of the Government Departments and officers of the Crown concerned.

(3) If the plaintiff sues, or the defendant is sued, in a representative capacity, the statement of claim shall state that capacity.

(4) If the plaintiff claims to recover special damages, the statement of claim shall specify particulars thereof.

(5) The plaintiff shall at the foot of the statement of claim state his address for service.

71. In case of Account - Where a plaintiff desires in the first instance to have an account taken, the statement of claim shall contain a claim for an account, and shall state the amount which the plaintiff claims subject to it.

72. Hire-purchase - Where the plaintiff claims the recovery of goods let under a hire-purchase or conditional-purchase agreement, he shall in his statement of claim state -

(a) The date of the agreement and the parties thereto:
(b) The goods claimed:
(c) The amount of the hire-purchase or conditional-purchase price:
(d) The amount paid by or on behalf of the hirer or conditional purchaser:
(e) The date when the right to recover possession of goods accrued:
(f) The grounds of the claim.

73. Where more than one cause of action - Where a plaintiff seeks to obtain payment or relief upon more than one cause of action he shall in his statement of claim, state the grounds of each cause of action separately, and shall also state separately the payment or relief which he claims in respect of each.

74. Further particulars - (1) If a defendant requires further particulars he may:

(a) Within fourteen days after service of the summons on him in cases where Rule 98 (2) (a) or (b) applies; or
(b) Within five days in all other cases such times to be inclusive of the day of service;

within such further time as may be allowed by the Court, give notice to the plaintiff specifying what further particulars he requires, and the plaintiff shall, within five days after service of the notice, file such further particulars and within the same time deliver a copy thereof to the defendant.

(2) If the notice is not complied with, the Court, before or at the hearing, if satisfied that the defendant is thereby prejudiced in his defence, may -

(a) Order further particulars to be filed and delivered:
(b) Stay all proceedings until the order has been obeyed, and order the action to be dismissed unless the order is obeyed within such further time as the Court may allow.

(3) This rule shall, with the necessary modifications, apply to a counterclaim as it applies to a statement of claim.

PART IX - SERVICE

Generally

75. Registrar to cause service - Except as otherwise provided by these rules, the Registrar shall serve, or cause to be served, all processes issued by him or sent to him for service from another Court.

76. Service on the Advocate-General in proceedings against the Crown - In any civil proceedings against the Crown that are instituted against the Advocate-General, and in any civil proceedings to which the Crown is joined by joining the Advocate-General as a party or third party, all documents required to be served on the Advocate-General shall be served in accordance with section 16 of the Crown Proceedings Act, 1950.

77. Personal service - (1) Subject to the provisions of these rules, where by any Act or rule personal service of any document is required for the purposes of any proceedings in the High Court, or before any Judge, the provisions of this rule shall apply.

(2) Service shall be effected -

(a) By delivering the document to the person to be served or by bringing it to his notice if he refuses to accept it; or

(b) By sending the document to be served by registered letter addressed to the person to be served at his last known or usual place of abode.

(3) Where service is to be effected by registered letter under this rule, the document shall be served by an officer of the Court.

(4) In any other case, the document may be served -

(a) By an officer of the Court or constable; or

(b) By a party to the proceedings or some person in his employment; or

(c) By a solicitor to a party or a solicitor acting as an agent for that solicitor, or by some person employed by either solicitor to serve the document.

(5) Notwithstanding anything contained in ~~subclause~~ (3) or subsection (4) of this rule, any Judge or the Registrar may, if he thinks fit, require any particular document to be served by an officer of the Court or a constable.

78. When process may not be served or executed - No process shall be served or executed on any public holiday as prescribed in the Public Holidays Ordinance 1949. If any process is so served or executed, the service or execution shall be void and have no effect.

79. Substituted service - (1) Where for any sufficient reason personal service of any document cannot be effected in the manner prescribed by these rules, the Court may, on such terms and conditions as it thinks fit, make an order giving leave for steps to be taken to bring the document to the knowledge of the person to be served by advertisement or in some other manner.

(2) Where any such order has been carried out, the steps taken may be called substituted service, and such service shall have the same effect as personal service.

80. Service at a distance - (1) Where, having regard to the place where a document is required to be served, the Registrar considers that service may be more conveniently effected by an officer of another Court or by some constable, he shall send the document to the Registrar of the foreign Court or to the constable for service.

(2) The Registrar of the foreign Court shall forthwith -

(a) Either serve the document or deliver to the officer of his Court for service or, where necessary, send it to a constable for service; or

(b) Serve the document by registered letter in accordance with Rule 77 (2) (b) hereof.

(3) Any Court officer or constable required to serve the document shall return a copy to the Registrar from whom he received it together with proof of service or with a note of the fact that it has not been served and from what cause.

(4) When a summons is sent by a Registrar to a foreign Court for service the Registrar shall enter on the plaint-note the date on which it is sent, the name of the foreign Court, and the date of return.

81. Notice of service - Where a summons has been served by a Court officer or a constable or by registered letter, the Registrar of the Court in which the summons was issued shall send notice to the plaintiff in the form No.17.

82. Notice of non-service - (1) Where a summons to be served cannot be served or cannot be served in time, the Court officer or constable required to serve it shall return it to the Registrar of his Court with a notice in the form No.18.

(2) Where a summons is returned not served by a Court officer or constable or through the Post Office, the Registrar of the Court of issue shall send to the plaintiff a notice in the form No.19.

83. Enlargement of summons - Whenever a summons or other process has not been served within the prescribed time the Registrar, on request, may enlarge the hearing by striking out the original date of hearing, inserting the new date, and placing his initials in the margin opposite the alteration, or may issue a new summons or process bearing the same date as the original.

84. Proof of service - (1) The service of any process or other document may be proved by an affidavit (in these rules referred to as an affidavit of service) in the form No.20, or upon oath at the hearing.

(2) Where personal service is effected by registered letter the production of a receipt for the registered letter, given to a Post officer and signed or purporting to be signed by the person to whom the registered letter was addressed, shall be sufficient proof of such service.

Mode of Service in Particular Cases

85. Solicitor accepting service - Where a solicitor represents that he is authorized to accept service of any document on behalf of any party it shall be sufficient to deliver the document to him if he signs a memorandum stating that he accepts service thereof on behalf of that party.

86. Service on infant - Where an infant is a defendant, personal service on his father, mother, or guardian, or, if none, then upon the person with whom the infant resides or under whose care he is, shall, unless the Court otherwise orders, be deemed good service on the infant:

Provided that the Court may, on application, order that service made or to be made on the infant shall be deemed good service.

87. Mentally defective person- Where a mentally defective person is a defendant, service on the person with whom the defendant resides or under whose care he is, shall, unless the Court otherwise orders, be deemed good service on the mentally defective person.

88. Husband and wife - Where a husband and wife are defendants, service shall be effected on each of them, unless the Court otherwise orders.

89. Service on members of a firm - (1) Where the persons to be served are sued as partners in the name of their firm, service may be effected -

(a) Upon any one or more of the partners; or

(b) At the principal place of the partnership business, or at the place of the partnership business nearest to the Court from which the process issued or in which the document to be served is to be filed, upon any person having, or appearing to have at the time of service, the control or management of the business there.

(2) Service in accordance with the last preceding subsection shall be good service on the firm, whether any of the members are out of the Cook Islands or not:

Provided that if to the knowledge of the party effecting service the partnership has been dissolved before the commencement of the action, service shall be effected upon every person within the Cook Islands sought to be made liable.

90. Person sued in firm's name - Where a person carrying on a business in a name other than his own is a party to any action under that name, any document may be served either on him or at his principal place of business or the place of business nearest to the Court from which the document was issued on any person having, or appearing to have, at the time of service, the control or management of the business there.

91. Affidavit of service on partner or person sued as a firm - Where any document is served under the provisions of Rule 89 or Rule 90 hereof, the affidavit of service shall state whether the person was served -

(a) As a partner; or
(b) As a person carrying on business in a name other than his own; or
(c) As a person having, or appearing to have the control or management of the business; or
(d) As a person having more than one of those capacities.

92. Defendant on board ship - Where a defendant is living or serving on board any vessel (including any vessel belonging to any of Her Majesty's Naval Forces), it shall be sufficient service to deliver the document to be served to the person on board who at the time of service is apparently in charge of the vessel.

93. Soldier or airman - Where a person to be served is in any barracks, camp, or station while serving as a member of any of Her Majesty's Military or Air Forces, it shall be sufficient service to deliver the document to be served at the barracks, camp, or station to the Adjutant or to the officer for the time being in command of the unit or detachment to which the defendant belongs.

94. Defendant in prison - Where a defendant is a prisoner it shall be sufficient service to deliver the document to be served to the Superintendent or other officer apparently in charge of the institution in which he is confined, who shall deal therewith in accordance with the prison regulations.

95. Corporations - In the absence of any statutory provision regulating service, service of any process or other document on any corporate body may be effected by delivering the process or document -

(a) To the president, chairman, or other principal officer of the corporate body, or to the secretary, clerk, or treasurer, or to any person performing the duties incidental to any of those offices; or
(b) To any person purporting to have charge of the affairs or business of the corporate body at its principal office or principal place of business or at the office or place of business nearest to the Court from which the process issued or in which the document is to be filed.

96. Person out of the Cook Islands - Where the person to be served is beyond the limits of the Cook Islands, if he has an agent in the Cook Islands authorized to sue and be sued on his behalf the document may, by leave of the Court, be served on the agent, subject to such terms and conditions as the Court thinks fit.

97. Summons for recovery of land - If in an action for the recovery of land the defendant cannot be found, or if his place of residence is not known or admission thereto cannot be obtained for the purpose of serving the summons, or if from any cause it is impracticable to serve the summons, the summons may be posted on some conspicuous part of the premises sought to be recovered not less than twenty-eight clear days before the day fixed for the hearing and such posting shall be deemed good service on the defendant.

Service of Particular Documents

98. Ordinary summonses - (1) Subject to the provisions of any Act and of these rules, service of a summons shall be personal service in accordance with Rule 77 hereof.

(2) Service shall be effected -

(a) In the case of an action against the Crown, not less than thirty-five clear days before the day of hearing:

(b) In the case where the plaintiff commences an action by virtue of Rule 24 (1) (b) and the defendant or one of the defendant resides or carries on business at an island other than the Island where such action is commenced, not less than twenty-eight days before the day of hearing:

(c) In any other case, not less than ten clear days before the day of hearing:

Provided that service maybe effected at any time before the day of hearing with the consent of the defendant or his solicitor, or if the plaintiff satisfies the Registrar by affidavit that the defendant is about to remove from the Cook Islands; but in every such case the Court may, in its discretion, and on such terms as it thinks fit, adjourn the hearing.

99. Originating applications - Subject to the provisions of any Act, and of these rules, service of an originating application shall be personal service in accordance with Rule 77 hereof. Service shall be effected not less than five clear days before the day of hearing in the case where all parties reside in the same Island and in all other cases not less than fourteen clear days before the day of hearing.

100. Other documents - Where in any proceedings in the High Court any document other than a summons or originating application is to be served on any person, and no other mode of service is prescribed by any Act or rule, service may be effected -

(a) In manner prescribed by these rules; or
(b) By leaving the document at or sending it by prepaid registered post to the address for service.

101. Renewal of summons - (1) The time within which a summons in an ordinary action may be served shall, unless extended under the provisions of the next succeeding sub-section, be limited to a period of twelve months from the issue of the summons.

(2) Where reasonable efforts have been made to serve the summons within the said period and service has not been effected, the Registrar may, on the request of the plaintiff, extend the time for a further period not exceeding twelve months or for successive periods not exceeding twelve months in each case, and shall in each such case mark the summons with the word "Renewed" and the date of the renewal, or he may issue a new summons:

Provided that no summons shall, without the leave of the Court, be extended for periods exceeding in the aggregate five years from the date of the issue of the summons.

(3) A request under subsection (2) of this rule may be made either within or after the expiration of any such period of twelve months as aforesaid.

PART X - ORDINARY ACTIONS

Confession, Defence, and Counter-claim

102. Confession - (1) A defendant in an action who admits his liability for the whole or any part of any claim may serve on the plaintiff and file in the Court office a confession in the form No.20 or No.21, whichever may be appropriate.

(2) Where the defendant files a confession for the whole of the claim the Registrar may, on the written request of the plaintiff, enter judgment accordingly. If in the case of a confession of part of the claim the plaintiff elects to accept the confession in satisfaction of his claim, the Registrar may, on the written request of the plaintiff made within forty-eight hours after the service on him of the confession, enter judgment accordingly. The plaintiff shall, forthwith after electing as aforesaid, notify the defendant that he has so accepted the confession.

(3) If the plaintiff does not so elect to accept the confession, he may proceed with his action, but it shall not be necessary for the plaintiff to prove any portion of the claim so confessed. Where in such case the plaintiff does not obtain judgment for more than the confession, he shall not be entitled to any costs of the action incurred after the service on him of the confession, and the Court may award to the defendant any costs incurred after his confession.

103. Defence - (1) A defendant in an action who disputes his liability for the whole or part of any claim shall serve on the plaintiff and file in the Court office a notice of intention to defend in the form No.22. The notice shall be served and filed -

(a) Where the action is against the Crown, within twenty-eight days after the service of the summons on the Crown, inclusive of the day of service:

(b) Where the action is against a defendant residing on an Island other than that of the Court of hearing within twenty-one days after service of the summons on the defendant inclusive of the day of service:

(c) In any other case, within seven days after the service of the summons on the defendant, inclusive of the day of service.

(2) If a defendant fails to serve and file a notice of intention to defend within the time limited by subsection (1) of this rule, he may nevertheless serve and file a notice of intention to defend at any time before the hearing, or, without serving or filing a notice of intention to defend, appear on the day of hearing and dispute the plaintiff's claim. In any such case the Court may order him to pay any costs properly incurred in consequence of his delay or failure, and may adjourn the action on such terms as it thinks fit.

(3) Where the defence is tender before action the defendant shall pay into Court at the time of filing the tendered and if he fails to do so the tender shall not be available as a defence until the payment into Court has been made.

(4) Where the defendant intends to set up a defence of infancy, the Statute of Limitations, or a discharge in bankruptcy, he shall give notice of such intention either in the form of notice of intention to defend or by separate notice served and filed in the manner and within the time aforesaid, and if he fails so to do he shall not be permitted without the leave of the Court granted on special grounds, and on such terms as to costs and otherwise as the Court thinks fit, to set up that defence.

(5) Notwithstanding anything contained in the foregoing provisions of this rule, the defendant may, whether or not he has filed a notice of intention to defend, file and serve a statement of defence at any time before the hearing. In any such case the provisions of this rule shall apply to the statement of defence as if it were the notice of intention to defend:

Provided that if the defendant files a notice of intention to defend within the time prescribed by subsection (1) of this rule, and files a statement of defence after the expiration of that time but before the hearing, he shall not be ordered to pay costs under subsection (2) of this rule by reason of the delay in filing the statement of defence.

(6) Notwithstanding anything contained in the foregoing provisions of this rule, a Judge may at any time order the defendant to file and serve a full and explicit statement of the particulars of his defence, including such particulars of time, place, names of persons, and dates of instruments, as may suffice to ensure that the Court and the opposite party are fully and fairly informed of the nature of the defence.

(7) A Judge may at any time order a party to file and serve a fuller or more explicit statement of defence.

(8) If a defendant makes default in complying with any such order, the Court may, on the application of the plaintiff, enter judgment.

104. Set-off by way of defence - Every defendant may set off, by way of defence, any claim or demand whatsoever that he may have in the capacity in which he is sued against the plaintiff in the capacity in which he sues.

105. Defence where plaintiff sues on behalf of others - Where a plaintiff sues on behalf of or for the benefit of others having the same interest a defendant may avail himself of any defence in respect of each person on whose behalf or for whose benefit the plaintiff sues which he would have had against that person if he had been a plaintiff.

106. Where all persons liable not joined - Where a plaintiff does not proceed against all of several persons jointly liable, every defendant sued may set up any defence or counter-claim which he would have been entitled to set up if all the persons liable had been made defendants.

107. Defence not a waiver - The filing of a notice of intention to defend or a statement of defence shall not operate as a waiver of -

(a) The defendant's right to demand further and better particulars of the plaintiff's claim; or

(b) Any irregularity in the process; or

(c) The defendant's right to rely on a counter-claim; or

(d) The defendant's right to object to the jurisdiction of the Court; or

(e) The defendant's right to apply for a change of venue, -

but in any such case the Court may make such order as to costs or otherwise as may be necessary to prevent the plaintiff from being prejudiced.

108. No fees payable on filing confession or defence - No fee shall be payable for filing any confession, notice of intention to defend, notice of special defence, or statement of defence.

109. Counter-claim - (1) A defendant in an action who intends to set up a counter-claim shall serve on the plaintiff and file in the Court office a statement of his counter-claim, giving such particulars thereof as would be necessary in the case of a claim. The statement shall be headed with the word "Counter-claim" and shall in all other respects conform to the rules as to statements of claim.

(2) The counter-claim shall be served and filed -

(a) Where the action is against the Crown, within twenty-eight days after the service of the summons on the Crown, inclusive of the day of service:

(b) Where the action is against a plaintiff residing on an Island other than that of the Court of hearing within twenty-one days after service of the counter-claim on the plaintiff exclusive of the the day of service:

(c) In any other case, within seven days after the service of the summons on the defendant, inclusive of the day of service.

(3) Any such counter-claim may be combined with a statement of defence.

(4) The provisions of subsections (5) to (8) of Rule 103 hereof (which relate to statements of defence to an action) shall, with the necessary modifications apply with respect to a counter-claim as if references therein to a statement of defence were references to a statement of defence to a counter-claim.

110. Counter-claim against plaintiff and another person - A defendant may set up a counter-claim against a plaintiff and some other person. In any such case he shall serve a copy of the counter-claim on that other person within the time prescribed by Rule 109 (1) hereof; and the Court may, on the application of the plaintiff or that other person, make such orders and give all such directions as may be necessary to enable and questions at issue between all the parties to be determined at the hearing of the action.

111. Set-off or counter-claim in Crown Proceedings - In any action by the Crown, Rules 104 to 110 hereof shall have effect subject to the following modifications:-

(a) If the action is for the recovery of taxes, duties, or penalties, the defendant shall not be entitled to avail himself of any set-off or counter-claim:

(b) If the action is of any other nature, the defendant shall not be entitled to avail himself of any set-off or counter-claim arising out of a right or claim to repayment in respect of any taxes, duties, or penalties:

(c) In any case, the defendant shall not be entitled without the leave of a Judge, to be obtained on application of which not less than seven clear days' notice has been given to the Crown, to avail himself of any set-off or counter-claim if either the subject matter of the set-off or counter-claim does not relate to the Government Department or officer of the Crown in whose name the proceedings are brought, or the proceedings are brought in the name of the Advocate-General.

112. Ground of defence after action commenced - Where any ground of defence to an action or counter-claim arises after the commencement of the action or the filing of the counter-claim the defendant or, as the case may require, the plaintiff may, within seven days after the ground of defence has arisen, file a notice of intention to defend or a statement of defence; and in any such case subsection (2) and subsections (6) to (8) of Rule 103 hereof shall, with the necessary modifications, apply thereto.

113. Address for service - A notice of intention to defend, statement of defence, or counter-claim shall state the address for service of the defendant or his solicitor.

114. Interpretation - In this Part, unless the context otherwise requires, the expression "notice of intention to defend" shall be deemed to include any document which shows that the defendant desires to dispute the whole or any part of the claim, notwithstanding that the document is not in the prescribed form.

PART XI - PAYMENT INTO COURT, AND DELIVERY OF POSSESSION OF LAND OR CHATTELS

115. Payment of claim and costs in undefended action for moneys - (1) In any action where the only relief claimed is the payment of moneys a defendant who has not served and filed a notice of intention to defend or a statement of defence may before the trial of the action, pay into Court a sum of money by way of satisfaction, and give notice of such payment in the form No.23 to the plaintiff.

(2) Except in a case to which Rule 56 hereof applies, the plaintiff or his duly authorised agent shall be entitled to have the amount in Court paid out to him without any order of the Court.

(3) Where the amount paid into Court is in satisfaction of part of the claim only, receipt thereof by the plaintiff shall not affect his right to proceed with the action for the recovery of any further sum claimed and not so paid into Court.

(4) If the defendant pays into Court the whole of the amount claimed without the costs, the plaintiff may have judgment entered by the Judge for the amount unpaid together with the costs of entering judgment.

116. Delivery of land or chattels - (1) In an action where the relief claimed is the recovery of land or the possession of chattels the defendant may at any time within seven days after service of the summons, inclusive of the day of service, deliver possession of the land or of the chattels claimed, or any part thereof, to the plaintiff, and pay into Court a sum of money by way of compensation for the detention thereof or damage thereto, together with the costs incurred by the plaintiff up to the time of the payment.

(2) If the plaintiff accepts the money so paid, the action shall be deemed to be struck out.

117. Tender - Where a payment is made in pursuance of Rule 103 (3) hereof the notice shall state that it is made with a defence of tender.

118. Where no payment out without order - Where payment into Court is made -

(a) By one or more of several defendants sued jointly or in the alternative; or

(b) With a defence of tender before action, -

the money in Court shall not be paid out without an order of the Judge.

119. Counter-claim - A plaintiff or other person made defendant to a counter-claim may pay money into Court as if he were defendent to an action, and thereupon the foregoing provisions of this Part shall apply with the necessary modifications.

PART XII - THIRD-PARTY PROCEDURE

120. Third-party Notice - (1) Where a defendant claims as against any person not already a party to the action (in this Part called the third party) -

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

(b) That he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) That any question or issue in the action should properly be determined not only as between the plaintiff and the defendant, but also as between the plaintiff, the defendant, and the third party, or as between any or either of them; or

(d) That any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the plaintiff and the defendant, and should properly be determined as aforesaid, -

the defendant may apply to the Court on notice for leave to issue and serve a third-party notice, and shall attach a copy of the proposed third-party notice to the application.

(2) Notice of the application shall be served on the plaintiff and filed in the Court office within seven days after the service of the summons, inclusive of the day of service, and the provisions of Rule 126 hereof shall apply, and on receipt of the notice by the Registrar all other proceedings in the action shall be stayed until the day fixed for the hearing of the application.

(3) On the hearing of the application the Judge may grant or refuse leave, and, if leave is granted, shall give directions as to the time for service of the third-party notice and as to the date of hearing.

(4) The notice shall be in the form No.24 and shall state the nature and grounds of the claim or the nature of the question or issue sought to be determined, and the nature and extent of any relief or remedy claimed.

(5) The notice shall be served on the third party in accordance with the rules relating to personal service, and shall be accompanied by a copy of the summons in the action and of the statement of claim annexed thereto.

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

121. Third-party proceedings against the Crown - Where a defendant applies for leave to issue a third-party notice for service on the Crown -

(a) A copy of the notice served on the plaintiff in accordance with Rule 120 (2) hereof shall be served on the Crown not less than seven clear days before the hearing of the application, and the Crown shall be entitled to appear at the hearing:

(b) Such leave shall not be granted unless the Judge is satisfied that the Crown has had notice in writing giving reasonable particulars of the circumstances in which it is alleged that the liability of the Crown has arisen and of the Government Departments and officers of the Crown concerned.

122. Default by third party - (1) If a third party disputes the plaintiff's claim as against the defendant by whom the notice has been given, or his own liability to the defendant -

(a) He shall within seven days after the service of the third-party notice on him, inclusive of the day of service, serve on the plaintiff and the defendant and file in the Court office a notice of intention to defend, and Rules 103 and 113 hereof shall apply with the necessary modifications; and

(b) He shall appear at the Court on the day fixed for hearing of the action.

(2) If the third party does not file a notice of intention to defend, he shall be deemed to admit the validity of and be bound by any judgment given in the action, whether by consent, upon confession, or otherwise, and by any decision herein on any question specified in the notice; and when contribution or indemnity or some other relief or remedy is claimed against him in the notice he shall be deemed to admit his liability in respect thereof.

(3) If the third party does not file a notice of intention to defend, and the defendant by whom the notice has been given suffers judgment in the action whether by consent, upon confession, or otherwise, that defendant shall be entitled, at any time after satisfaction of the judgment against him, or before such satisfaction by leave of the Judge, to enter judgment against the third party to the extent of any contribution or indemnity claimed in the third-party notice or, by leave of the Judge, to enter such judgment in respect of any other relief or remedy claimed as the Judge may direct:

Provided that it shall be lawful for the Judge to set aside or vary any such judgment against the third party upon such terms as he thinks just.

123. Procedure at the hearing - (1) Subject to any directions which may have been given by the Court before the hearing, the Judge shall have full power at the hearing to direct what part the third party shall take in the hearing and generally how the hearing shall be conducted.

(2) As between the defendant by whom the third-party notice has been given and the third party, the Judge may grant to either party any relief or remedy which might properly have been granted if the claim against the third party had been made in a separate action, and may give such judgment for either party against the other as may be just:

Provided that except with the leave of the Judge execution against the third party shall not be issued until the defendant has satisfied the judgment in the same action given against him.

124. Fourth and subsequent parties - (1) Where a third party makes as against any person not already a party to the action such a claim as is defined in Rule 120 (1) hereof, the provisions of this Part regulating the rights and procedure as between the defendant and the third party shall apply as between the third party and that other person, and for that purpose the expressions "third party" and "third-party notice" shall apply to and include every fourth or subsequent party and every notice issued in respect of a claim so made.

(2) Where a person served with a notice under this rule by a third party in turn makes such a claim as is defined in Rule 120 (1) hereof against another person not already a party to the action, this Part, as applied by this rule, shall have effect as regards that further person and any other further person or persons so served, and so on successively.

125. Co-defendants - Where a defendant makes against any other defendant in the same action such a claim as is defined in Rule 120 (1) hereof, he may without any leave issue and serve on that other defendant a notice making the claim, and the same procedure shall be adopted for the determination of the claim as would be appropriate under this Part if that other defendant were a third party:

Provided that nothing contained in this rule shall prejudice the rights of the plaintiff against any defendant.

PART XIII - APPLICATIONS AND DIRECTIONS IN THE COURSE OF PROCEEDINGS

126. General procedure - (1) Where by any Act or rule any application in the course of any proceedings, whether before or after judgment, is expressly or by implication authorized to be made to the Court or to the Judge or to the Registrar, then subject to the provisions of the particular Act or rule applicable thereto and so far as not inconsistent therewith, the following provisions shall apply:-

(a) The application may be made either in Court or in Chambers, and either ex parte or on notice, and the provisions of subsections (8) and (9) of Rule 68 hereof shall apply with the necessary modifications:

(b) If made ex parte, the application shall be in the form No.15:

(c) If made on notice, the application shall be in the form No.16, and shall be served on the opposite party and filed in the Court office not later than three days before the time appointed for the hearing of the application unless the Judge or Registrar dispenses with the notice or gives leave for shorter notice:

(d) No affidavit shall be necessary in the first instance, but the Judge or Registrar may direct evidence to be adduced in such manner as he thinks fit:

(e) Upon the hearing of the application the Judge or Registrar may make such order as may be just:

(f) If the Registrar has power to hear and determine the application, the applicant shall, unless the Judge otherwise orders, make the application to the Registrar in the first instance:

(g) Where the application is made to the Registrar, the Registrar may, if in doubt as to the proper order to be made, refer the application to the Judge forthwith or at the next convenient opportunity, and the Judge may hear the application and make such order as may be just:

(h) The costs of interlocutory applications shall be in the discretion of the Court, and if allowed shall be costs in the proceedings unless the Judge or Registrar otherwise orders:

(i) Where the Registrar has made an order to which this rule applies any party who is dissatisfied therewith may apply to the Judge on notice to vary or rescind the order, and on hearing the application the Judge may vary or rescind the order and may make such order as may be just.

(2) The jurisdiction of the Court to hear and determine any application in the course of any proceedings, whether before or after judgment, may be exercised by the Registrar, unless there is a provision to the contrary in any Act or rule.

127. Power to impose terms - The Court may, as a condition of granting any interlocutory application, impose such terms and conditions as it thinks fit, and, without prejudice to the generality of the foregoing provisions, may make orders requiring any party -

(a) To give security; or
(b) To give an undertaking; or
(c) To pay money into Court: or
(d) To pay all or any part of the costs of the proceedings.

128. Directions - (1) In any proceedings the Judge may at any time, on the application on notice of any party, or of his own motion, give such directions as he thinks proper.

(2) Without prejudice to the generality of the last preceding subsection, the Judge may at any time, on the application on notice of any party, or of his own motion, direct any party to file or deliver any particulars which the Judge thinks necessary for defining the issues in the proceedings.

129. Adjournment - (1) The Judge or Registrar may at any time and from time to time upon application, or of his own motion, adjourn the hearing of any proceedings on such conditions as he thinks fit.

(2) If the hearing of the proceedings is adjourned sine die, the Registrar shall, on the request of either party, fix a day for hearing, and the party making the request shall give notice to all other parties of the day and time so fixed.

130. Enlargement or abridgment of time - (1) Subject to the provisions of these rules, any of the times fixed by these rules for -

(a) Taking any steps in any proceedings; or
(b) Filing any document; or
(c) Giving any notice, -

may be enlarged or abridged by consent of all parties or by the Court on the application of any party.

(2) An order enlarging time may be made although the application therefor is not made until after the expiration of the time allowed or appointed.

131. No reasonable cause of action - Where in any proceedings no reasonable cause of action is disclosed the Judge may, on the application of the defendant on not less than forty-eight hours' notice, order the proceedings to be struck out.

132. Application for interim injunction, etc. - Where any party desires, before the hearing, an immediate order -

(a) In the nature of an injunction; or
(b) For the appointment of a receiver; or
(c) For taking any accounts (whether the statement for claim pursuant to Rule 71 hereof claims an account, or involves taking an account, or not); or
(d) For making any inquiries, -

he may apply to the Judge, who may, in proof of the facts rendering the order immediately necessary, make such order as he thinks fit.

133. Recovery of goods where lien claimed - (1) Where in any action the plaintiff claims the recovery of specific property other than land, and the defendant admits the title of the plaintiff but claims to retain the property by virtue of a lien, or otherwise as security for the payment of a sum of money, the Court may order that the plaintiff be at liberty to pay into Court, to abide the event of the action, the sum of money in respect of which the defendant claims to retain the property, and such further sum (if any) for costs as the Court may think fit, and that upon such payment into Court being made the defendant shall return the property to the plaintiff.

(2) This rule shall, with the necessary modifications, apply to a counter-claim as it applies to a claim.

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

135. Order for detention, etc., of property - (1) The Judge, on the application of any party to any proceedings, may make any order for the detention, preservation inspection, surveying, measuring, or weighing of any property or thing, being the subject of the proceedings or as to which any question may arise therein, and may authorise any person to enter upon or into any land or building in the possession of any party to the proceedings, and authorise any samples to be taken, or any observation, plan, or model to be made, or any experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

(2) Where an order is made for the inspection, surveying, measuring, or weighing of any property, or the making of any experiment, or the taking of any sample, or the making of any plan or model, by any person named in the order, the order may authorise any Registrar to examine upon oath and take the deposition of the person so named as to the result, accuracy, or fairness of what he has done in pursuance of the order, and may also empower any party to give in evidence the deposition so taken.

136. Order for sale of perishables, etc. - The Judge, on the application of any party to any proceedings, may order the sale, by any person to be named in the order, of any subject-matter of the proceedings which -

(a) Is of a perishable nature; or
(b) Incurs charges for food or keep; or
(c) Should for any other sufficient reason be sold at once.

137. Order need not be prepared and filed - (1) Except where otherwise provided in any Act or rule, it shall not be necessary, unless the Court otherwise directs, to prepare and file an order made under the provisions of this Part.

(2) Where an order is required to be filed it shall be prepared by the party obtaining the order, signed by the Judge or Registrar, and filed in the Court, and a copy thereof shall be served on every other party affected thereby.

138. Stay of proceedings - Where there is filed an application relating to a step in an action which the party applying has a limited time for taking, the Court or a Judge may, on the ex parte application of that party, direct that the application shall operate as a stay of proceedings from the time at which it is set down for hearing until it is disposed of.

PART XIV - DISCOVERY, INSPECTION, AND PRODUCTION OF DOCUMENTS

139. Discovery of documents - (1) In any action where a notice of intention to defend, statement of defence, or counter-

claim has been filed, any party may issue as of course against any other party, without any application to the Court, an order for discovery on oath of the documents which are or have been in his possession or power relating to any matter in question in the proceedings.

(2) The order shall be in form No.25, and shall be served by the applicant on the party against whom it is issued.

(3) The affidavit of documents to be made by a party against whom an order for discovery is issued shall be in the form No.26, and shall be filed in the Court; and a copy thereof shall be served on the party issuing the order within seven days after the service of the order, in the case where all parties reside on the same Island and in all other cases twenty-one days, but the Court or a Judge thereof may extend the time for serving such an affidavit on the application of the party against whom such orders have been made.

140. Inspection of documents - (1) Any party to any proceedings may at any time give to any other party notice, in the form No.27 to produce any document for the inspection of the party giving the notice, and to permit him to take copies thereof.

(2) Any party not complying with such a notice shall not afterwards be at liberty to put any such document in evidence unless he satisfies the Court that it relates only to his own title, he being a defendant in the proceedings, or that he had some other cause or excuse which the Court deems sufficient for not complying with the notice, in which case the Court may allow the document to be put in evidence on such terms as to costs and otherwise as it thinks fit.

(3) The party to whom the notice is given shall, within two days after the receipt thereof, produce the documents for inspection, or deliver to the party giving it a notice stating a time, being a time within three days from the delivery thereof, and the place at which the documents, or such of them as he does not object to producing, may be inspected, and stating which, if any, of the documents he objects to producing and on what grounds.

(4) The inspection shall be given at the address for service, or at the place of residence or business of the party giving the inspection, or at his solicitor's office, whichever is most convenient:

Provided that inspection of books of account or books in constant use for the purposes of any trade or business may be given at their usual place of custody.

(5) If any party served with a notice under subsection (1) of this rule fails to produce or to give notice of a time and place for inspection in accordance with subsections (3) and (4) of this rule, the Court may on application make an order for inspection at such time and place as the Court thinks fit:

Provided that the Court shall not make an order for inspection of documents if and so far as the Court is of opinion that it is not necessary either for disposing fairly of the proceedings or for saving costs.

(6) An application for an order for the inspection of documents shall be supported by an affidavit showing -

(a) Of what documents inspection is sought:

(b) The grounds on which inspection of them is claimed:

(c) That they are in the possession or power of the other party.

141. Business books - Where inspection of any business books is applied for the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has compared the copy with the original entries. Every such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations:

Provided that the Court may, notwithstanding that such a copy has been supplied, order inspection of the book from which the copy was made.

142. Parts of books may be sealed - Where it is shown to the satisfaction of the Court that certain parts of books or documents do not relate to the matters in dispute, the person producing them may be allowed to close up those parts.

143. Privilege - Where, on an application for an order for inspection, privilege is claimed for any document, the Court may inspect the document for the purpose of deciding whether the claim of privilege is valid.

144. Possession of specified documents - (1) The Court may at any time, on the application of any party to proceedings, make an order requiring any other party to state by affidavit whether any particular document or class of documents specified or indicated in the application is or has at any time been in his possession, custody, or power, and if not then in his possession, custody, or power, when he parted with it and what has become of it.

(2) The application shall be supported by affidavit stating that in the belief of the deponent the party against whom the application is made has or at some time has had in his possession, custody, or power the particular document or class of documents specified or indicated in the application, and that it relates to a matter in question in the proceedings.

145. Order for production of documents - The Court may at any stage of the proceedings order the production by any party thereto of any documents in his possession, custody or power relating to any question in the proceedings and the Court may deal with the documents when produced in such manner as may be just.

146. Non-compliance with order - If any party fails to comply with an order for discovery of documents, or for inspection, or any order made under Rule 144 or Rule 145 hereof, the following provisions shall apply:-

(a) If the party failing to comply with the order is a plaintiff, the Court may order the action to be dismissed for want of prosecution or stayed until the order is complied with:

(b) If the party failing to comply with the order is a defendant the Court may order that he debarred from defending the action altogether, or allowed to defend only on such terms as the Court thinks fit.

147. Application of this Part to Crown Proceedings - In any civil proceedings to which the Crown is a party or third party, the provisions of this Part of these rules shall have effect subject to the following modifications:-

(a) An order against the Crown under this Part may be made only by a Judge:

(b) An order for discovery against the Crown under Rule 139 hereof shall not be issued without the leave of a Judge obtained upon an application of which not less than seven clear days' notice has been given to the Crown:

(c) An order for inspection under Rule 140 (5) or Rule 141 hereof, or an order under Rule 144 or Rule 145 hereof, shall not be made against the Crown except on an application of which not less than seven clear days' notice has been given to the Crown:

(d) Any affidavit to be made in answer to any order made against the Crown under this Part shall be made by such officer of the Crown as the Judge shall direct:

(e) Nothing in this Part, or in any order thereunder, shall be construed as requiring disclosure, whether to the Court or to any person, of the existence of any document if, in the opinion of a Minister of the Crown, it would be injurious to the public interest to disclose the existence of the document.

148. This Part to apply to infants and to mentally defective persons - (1) This Part of these rules shall apply to parties who are infants or mentally defective persons.

(2) The Court may at any time give directions as to compliance with this Part by the infant or mentally defective person, if capable, or by the guardian, next friend, committee, or administrator, as the case may require.

PART XV - AMENDMENT

149. Amendment before service - The Registrar may, on the request in writing of the plaintiff at any time before the service of the summons or application, amend any plaint-note, summons, statement of claim, or originating or other application:

Provided that in any case where the amendment increases the plaintiff's claim the plaintiff shall first pay the difference between the fees paid and the fees payable on the amended proceedings.

150. Amending proceedings, and adding, striking out, or substituting parties - The Court may, either upon or without the application of either party and at any stage of the proceedings, -

(a) Amend any defect or error in any proceedings, whether the defect or error is that of the party applying to amend or not; or

(b) Amend the name, address, or description of either of the parties as set out in any document in the proceedings; or

(c) Add, strike out, or substitute the name of any person either as plaintiff or defendant, -

and all such amendments as may be necessary for the purpose of determining the real question in controversy between the parties may be made upon such terms as to costs and otherwise as the Court thinks fit, and, subject to Rule 151 hereof, the proceedings shall continue in all respects as if they had been commenced in the form in which they appear after the amendment has been made:

Provided that no person shall be added as a plaintiff without his consent in writing or, in the case of a person under disability, the consent in writing of the next friend or committee or other person acting on behalf of the person under disability.

151. Costs and terms of Amendment - All such amendments shall be made with or without costs and on such terms as the Court thinks fit.

152. Service on added defendant - Where any person is ordered to be added or substituted as defendant, except under Rule 157 hereof, a notice in the form No.28, together with a copy of the originating process and statement of claim, if any, shall be served on him according to the rules applicable to the service of the originating process, and the proceedings as against him shall be deemed to have begun only on the service of the notice.

153. Amendment of statement of claim, etc. - (1) Subject to the provisions of this rule, a plaintiff may file and serve an amended statement of claim, and a defendant may file and serve an amended statement of defence or an amended counter-claim, at any time before the day of hearing without any order; and any party may increase the amount of his claim or counter-claim on payment of the difference between the fees paid and those payable on the larger amount:

Provided that at the hearing the Court may for any sufficient cause disallow the amendment or give effect thereto on such terms as may be just.

(2) In an amended statement of claim or counter-claim a new cause of action may be added or substituted with the leave of the Court and on such terms as the Court thinks fit, but not otherwise.

(3) Where a statement of claim or counter-claim is amended the Court may, at the hearing, adjourn the hearing for such time, to such place, and on such terms as to payment of costs by the party amending as may be just.

154. Abandonment of part of claim - A plaintiff may, at any time before an action is called on for hearing, or in opening his case, abandon any parts of his claim.

155. Amendment to increase claim on taking of accounts - Where upon taking an account it appears that a plaintiff is entitled to recover an amount larger than that claimed in his statement of claim, he may, by leave of the Court and on payment of the difference between the fees paid and those payable on the larger amount, amend his statement of claim so as to claim the larger amount, and judgment may be entered therefor.

156. Appearance of person not named as defendant in action for recovery of land - (1) In an action for the recovery of land, any person not named as a defendant in the summons may by leave of the Court be allowed to appear and defend, on filing in the Court and serving on the parties not less than five clear days before the day of hearing an affidavit showing that he is in possession, either by himself or by his tenant, of the land or of some definite part thereof.

(2) Where leave is given, the person obtaining leave shall be added as a defendant, and shall serve on every other party notice thereof in the form No. 29.

157. Change of defendant - Where a person other than the defendant appears at the hearing and admits that he is the person whom the plaintiff intended to sue, or ought to have sued, he may, if the plaintiff consents, be substituted for the defendant, and the proceedings shall continue as if he had originally been made defendant.

158. Clerical mistakes and slips - 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.

PART XVI - TRANSFER OF PROCEEDINGS

159. Generally - All actions shall be tried at the place mentioned in the summons but if it is made to appear by either party that the action cannot be conveniently or fairly tried at that place, the Court or a Judge thereof may at any time order the action to be tried at some other place.

160. Where proceedings commenced in wrong place - Where proceedings are commenced in the wrong place, a Judge on such terms and conditions as he thinks fit, may either -

(a) Transfer the proceedings to the place in which they ought to have been commenced; or

(b) Order that the proceedings shall continue in the place in which they were commenced.

161. Change of venue with or without Application - (1) Any transfer of proceedings authorized by the foregoing rules of this Part may be made by the Judge of his own motion, or on the application of any party on not less than three clear days' notice.

(2) Where all parties consent, an order for the transfer of proceedings from one place to another may be made by the Registrar.

(3) The order shall be endorsed on the plaint-note or originating application, as the case may require.

162. Procedure on change of venue - Where a transfer is ordered the Registrar at the place in which the proceedings are pending shall send to the Registrar at the other place all the documents in his custody relating to the proceedings. The Registrar at the place to which the proceedings are transferred shall, after entering the proceedings in the books of the Court, appoint a day for the hearing and serve notice of hearing in the form No.30 on all parties interested, and all subsequent proceedings shall be taken in the Court at that place.

PART XVII - DISCONTINUANCE

163. Notice of discontinuance - (1) The plaintiff may at any time before the hearing discontinue, either wholly or in part, any proceedings against all or any of the parties thereto, on giving notice of discontinuance in the form No.31 to the Registrar and to all other parties to the proceedings.

(2) Where in any proceedings a notice of discontinuance signed on behalf of all parties to the proceedings is filed, the discontinuance shall be entered in the civil-record book and signed by the Registrar forthwith. In any such case every party as against whom the proceedings are discontinued shall, unless the Court otherwise orders, be entitled to the costs incurred by him up to the time of the signing by him of the notice, or, if the proceedings are not wholly discontinued, his costs incurred up to that time in relation to that part discontinued and may have judgment entered for those costs, together with the costs of entering judgment.

(3) If the notice of discontinuance is signed by the plaintiff only, discontinuance shall not be entered until the day appointed for the hearing, and costs may then be awarded by the Court on the application of the defendant. If no application is made for costs on the day of hearing, the defendant shall be deemed to have abandoned his claim to them.

(4) Discontinuance under this rule shall not be a defence to any subsequent proceedings, but if subsequent proceedings are brought for substantially the same cause of an action before the payment of the costs to which the defendant is entitled under this rule, the Judge may stay the proceedings until those costs have been paid.

PART XVIII - POWERS OF REGISTRARS

164. During absence or inability of Judge - During the absence of a Judge or the inability of a Judge to act, from any cause whatever, every Registrar shall have the jurisdiction and powers of a Judge sitting in Chambers -

(a) To hear and decide any application for further time for filing a statement of defence:

(b) To adjourn a trial, reserving, to the Court or a Judge the costs of and arising out of the adjournment:

(c) To order a stay of proceedings under Rule 138:

(d) To order a stay of proceedings on any application being made to vary or rescind any order or decision of the Registrar:

(e) To make an interlocutory order in proceedings "inter-partes" on receiving a draft order consented to in writing by all necessary parties or by their counsel or solicitors:

(f) To exercise the powers conferred by Rule 284 being the Rule relating to writs of arrest.

165. Registrar's authority to dispose of application - It shall not be necessary to direct any application to the Registrar but, subject to any general or special directions of a Judge, the Registrar may dispose of any application made to the Court or to a Judge if the application relates to a matter within the Registrar's jurisdiction.

166. Registrar's powers exercisable only in Chambers - The jurisdiction confirmed on Registrars by Rules 164 and 165 shall not be exercised otherwise than in Chambers.

167. Registrar's orders - (1) An order made by a Registrar, when it is drawn up, shall -

(a) Be headed with the words "Before the Registrar at..... in Chambers":

(b) Be signed by a Registrar or a Deputy Registrar, and sealed with the seal of the Court:

(c) Refer to the rule from which the Registrar's jurisdiction to make the order is derived.

(2) Form 32 in the First Schedule hereto may be used.

168. Time for application to rescind or vary Registrar's decision - (1) Every application to a Judge in Chambers to vary or rescind the order or decision of a Registrar shall be filed -

(a) If it is made by a party who was present or represented when the order was made or the decision given, within seven days thereafter:

(b) If it is made by a party who was not present or represented within seven days after the receipt by him of notice of the making of the order or giving of the decision as the case may be.

(2) The application shall not be a stay of proceedings unless the Court or a Judge so orders, or unless the Registrar orders pursuant to Rule 138.

169. Registrar not to include Deputy Registrar - Nothing contained in the Rules of this Part shall be deemed to confer any jurisdiction on a Deputy Registrar.

PART XIX - REFERENCE TO REGISTRAR OR REFEREE FOR INQUIRY AND REPORT

170. Reference for inquiry and report - (1) A Judge may refer to the Registrar or a referee for inquiry and report -

(a) Any proceedings which require any prolonged examination of documents of any scientific or local investigation which cannot, in the opinion of the Judge, conveniently be made before him:
(b) Any proceedings where the question in dispute consists wholly or in part of matters of account:
(c) With the consent of the parties, any other proceedings:
(d) Any question arising in any proceedings.

(2) Where any proceedings or question are referred as aforesaid, the Judge may direct how the reference shall be conducted, and may remit any report for further inquiry and report, and, on consideration of any report or further report may give such judgment or make such order in the proceedings as may be just.

(3) The Judge may, after deciding or reserving any question of liability, refer to the Registrar or the Referee and an Accountant any mere matter of account which is in dispute, and after deciding the question of liability, may give judgment on the Registrar's report.

171. How effected - (1) An order for the reference of any proceedings or question to the Registrar or a referee for inquiry and report, shall be in the form No.33.

(2) The order may be made -

(a) On an application by any party at the hearing on notice; or
(b) On an application by any party at the hearing; or
(c) At any stage of the proceedings by the Judge of his own motion.

172. Conduct of reference for inquiry and report - Subject to any order of the Judge as to the conduct of the reference -

(a) The Registrar or referee shall fix a day and place for holding the inquiry, and shall give notice, in form No.34 to all parties entitled to attend the proceedings:
(b) The Registrar may hold the inquiry in Court or in his office or at any place convenient to the parties:
(c) A referee, other than the Registrar, may hold the inquiry at any place convenient to the parties:
(d) The Registrar or referee may inspect any property or thing concerning which any question may arise:
(e) The attendance of witnesses may be enforced by summons, and the inquiry shall be conducted in the same manner, as nearly as circumstances will permit, as if the inquiry were the hearing of an action:
(f) The Registrar or referee shall have the powers of a Judge with respect to discovery and production of documents and in the conduct of the inquiry:

Provided that nothing in this paragraph shall authorize the Registrar or referee to commit any person or to enforce any order by committal.

(g) The Registrar or referee may submit any question arising in the inquiry for the decision of the Judge.

173. Report - (1) The report of the Registrar or referee shall be in writing and shall be filed in the Court office, and shall be open to inspection by the parties and the Registrar shall, on the filing of the report give notice thereof to all parties.

(2) When the report has been filed, -

(a) If the further consideration of the proceedings has been adjourned to a day named, any party may apply on that day to the Judge to adopt the report, or may give not less than three clear days' notice of his intention to apply on that day to vary the report or to remit it or any part thereof for further inquiry or report:

(b) If the further consideration of the proceedings has not been adjourned to a day named, any party may on not less than three clear days' notice apply to the Judge to adopt or vary the report or remit it or any part thereof for further inquiry and report.

PART XX - EVIDENCE

174. Admission by any party - Any party to any proceedings may give notice to any other party that he admits the truth of the whole or any part of the case of the other party, and no costs incurred after the receipt of the notice in respect of the proof of any matters admitted therein shall be allowed. Such an admission may be contained in a statement of defence.

175. Mode of taking evidence - (1) Save as otherwise provided by these rules, the evidence of witnesses at the hearing of any proceedings shall be taken orally on oath; and where by these rules evidence is required or permitted to be taken by affidavit it shall nevertheless be taken orally on oath if the Court, on any application before or at the hearing, so directs.

(2) Evidence in support of or in opposition to any originating or interlocutory application may be taken by affidavit unless the Court otherwise orders.

176. Proof by affidavit in undefended actions - Where, in accordance with the provisions of Rule 24 hereof, an action is brought in a Court other than the Court nearest to the place where the plaintiff resides or carries on business, and the defendant has not filed and served a notice of intention to defend the action within the time prescribed, evidence by affidavit shall be admissible on behalf of the plaintiff without the notice required by Rule 178 hereof having been given, unless the Court otherwise orders.

177. Power to order proof by affidavit - In any action the Judge may at any time order, -

(a) That any particular fact or facts may be proved by affidavit; or

(b) That the affidavit of any witness may be read at the hearing on such conditions as the Judge thinks reasonable:

Provided that where it appears to the Judge that any party, in good faith, desires the production of a witness for cross-examination and that the witness can be produced, an order shall not be made authorizing his evidence to be given by affidavit.

178. Use of affidavit on notice - Where a party desires to use at the hearing of an action an affidavit by any witness as to particular facts, as to which no order has been made, he may, not less than five clear days before the hearing, give notice, accompanied by a copy of the affidavit, to the party against whom it is to be used; and unless the last-mentioned party, not less than two clear days before the hearing, gives notice to the other party that he objects to the use of the affidavit, he shall be taken to have consented to the use thereof and the affidavit may be used at the hearing unless the Judge otherwise orders.

179. Witness summons - (1) Where any party to any proceeding desires a person to be summoned as a witness to give oral evidence at the hearing in Court or to produce at the hearing in Court any document in his possession or control, the Registrar shall, on the request of the party, issue a witness summons in the form No.35 together with a copy thereof.

(2) The summons shall be served on the witness personally a reasonable time before the day fixed for the hearing.

(3) There shall be paid or tendered to the witness at the time of the service of the summons -

(a) The sum prescribed in the Fourth Schedule hereto in respect of travelling allowances; and

(b) The sum prescribed in that Schedule in respect of travelling expenses.

180. Notice to admit specific facts - (1) Any party may, by notice in the form No.36, call on any one or more of the opposite parties to admit, for the purpose of the action only, any specific facts mentioned in the notice.

(2) If the party served with the notice does not admit the facts mentioned in the notice by delivering a written admission thereof, in the form No.36, within three days after receiving the notice, he shall pay the costs of proving such facts, whatever the result of the proceedings may be, unless the Court otherwise orders:

Provided that -

(a) Any admission made in pursuance of the notice shall be used only for the purpose of the particular proceedings, and shall not be used against the party making it on any other occasion, or in favour of any person other than the party to whom it is made:

(b) The Court may at any time allow any party to amend or withdraw any admission so made.

181. Notice to admit documents - (1) Where a party desires to adduce any document in evidence, he may, not less than five clear days before the hearing, give to any other party who is competent to make admissions a notice, in the form No. 37, requiring him to inspect and admit the document.

(2) If the other party does not make the admission within three days after receiving the notice, the costs of proving the document shall be paid by that other party, whatever the result of the proceedings may be, unless at the hearing the Judge certifies that the refusal to admit was reasonable; and no costs of proving a document shall be allowed unless such a notice is given, except when the omission to give the notice is, in the opinion of the Judge, a saving of expense.

182. Notice to produce - Any party to the proceedings may serve on the other party a notice to produce documents, which shall be in the form No. 39.

183. Use of evidence taken at hearing - Evidence taken at the hearing of any proceedings may be used at any subsequent stage of the same proceedings.

184. Examination of witnesses out of Court - (1) Where in any proceedings any person, whether a party to the proceedings or not, -

(a) Is resident more than twenty miles from the Court where the hearing of the proceedings is appointed to be held; or

(b) Is about to go and remain beyond that distance until after the hearing; or

(c) Is or is likely to be unable to attend the hearing, whether through sickness or other cause, -

the party desiring to use the evidence of himself or of that person at the hearing may give notice of his desire to the Registrar (in this rule referred to as the examining Registrar) of the Court in which it is intended that the examination hereinafter mentioned shall take place (in this rule referred to as the Court for examination).

(2) The notice shall be in the form No. 40, and shall be filed in duplicate and shall specify the name of each person intended to be examined.

(3) Immediately upon receiving the notice the examining Registrar shall appoint a time and place for the examination and notify the applicant thereof, and, if the proceedings are not proceedings of his Court, shall send the duplicate of the notice, with a memorandum of the time and the place appointed for the taking of the examination to the Registrar of the Court (in this rule referred to as the Court of hearing) in which the proceedings are pending.

(4) The Registrar of the Court of hearing shall, forthwith after appointing the time and place for holding the examination or, as the case may be after receiving notice of the application, give notice in the form No. 41 to all interested parties, other than the applicant, of the intention to hold the examination and of the time and place appointed therefor.

(5) The Registrar of the Court of hearing shall, forthwith after service on such parties as aforesaid, send to the examining Registrar a copy of the last-mentioned notice, with an affidavit of service thereof and the statement of claim, statement of defence (if any), and counter-claim (if any).

(6) At any time after the filing of a notice under this rule the examining Registrar may issue a witness summons under the provisions of Rule 179 hereof.

(7) The examination of the witnesses shall take place in Court or in the examining Registrar's office, except that the examining Registrar may, if he thinks fit, examine any witness, at any other place; and the parties shall be at liberty to attend the examination with or without counsel or solicitor.

(8) The examining Registrar may administer an oath to each witness, who may be examined, cross-examined and re-examined as at the hearing of an action.

(9) The deposition shall be taken down in writing -

(a) By or in the presence of the examining Registrar; and

(b) Not ordinarily by question and answer, but so as to represent as nearly as may be practicable the statements of the witness.

(10) The examining Registrar may put down or cause to be put down any particular question or answer, if there appears to be any special reason for doing so, and may put any question to the witness as to the meaning of any answer or as to any matter arising in the course of the examination.

(11) The examining Registrar shall not have power to decide upon the admissibility of any evidence, but if any evidence is objected to he shall take down the question and the answer thereto or admit the document, as the case may be, and make a note of the objection on the deposition, and the question of admissibility shall be decided by the Judge at the hearing.

(12) If the witness objects to any question put to him before the examining Registrar, the question and the objection shall be taken down in the deposition, and the validity of the objection shall be decided by the Judge at the hearing.

(13) If any witness refuses -

(a) To attend; or

(b) To be sworn; or

(c) To answer any lawful question; or

(d) To produce any documents, -

a certificate of such refusal shall be made and signed by the examining Registrar and filed in the Court for examination, and the party requiring the attendance of the witness may apply to any Judge for an order directing the witness to attend, or to be sworn, or to answer any question, or to produce any document, as the case may require, and the Judge may thereupon make such order as he thinks fit.

(14) When the examination of each witness has been concluded, the deposition shall be read over to the witness, and each page thereof shall be signed by him and by the examining Registrar. If the witness refuses to sign the deposition, the examining Registrar shall make a note of the refusal on the deposition, and the deposition may be tendered in evidence, notwithstanding that it is not signed by the witness.

(15) Forms Nos. 42 and 43 shall be attached to the depositions which, together with any exhibits suitably marked, and the documents referred to in subsection (5) of this rule, and the certificate of costs referred to in subsection (16) of this rule, shall be transmitted to the Court of hearing.

(16) The costs of the examination, together with the allowances for solicitors, and witnesses in accordance with the prescribed scale, shall be certified by the examining Registrar in the form No. 44:

Provided that such costs and allowances shall in all cases be in the discretion of the Court of hearing.

(17) If at the time appointed or at any adjournment thereof the party applying to take evidence fails to appear, or fails to proceed with the examination, the application shall be struck out and the examining Registrar shall forthwith send to the Court of hearing a certificate in the form No. 45, together with the documents referred to in subsection (5) of this rule; and if the opposite party appears, the examining Registrar shall forward a certificate of costs in accordance with the provisions of subsection (16) of this rule.

(18) Evidence given in accordance with these rules before any examining Registrar may be tendered in the proceedings in respect of which the examination took place as if the evidence were given in the course of the hearing in those proceedings, and the signature of the examining Registrar to the deposition shall be judicially noticed without any proof thereof.

(19) Where it is proved to the satisfaction of a Judge that proceedings for the examination of a witness under this rule have been taken for the purpose of delay or other improper purpose, or that there is undue delay in the holding of the examination, the Court of hearing may proceed in the proceedings without waiting for the examination of the witness.

185. Affidavits - (1) Every affidavit shall be -

(a) Expressed in the first person:

(b) Drawn up in consecutively numbered paragraphs:

(c) Made by some person who has knowledge of the facts, stating -

(i) The deponent's full name, residence, and occupation:

(ii) What facts are within his own knowledge and his means of knowledge:

(iii) What facts are deposed to on information derived from other sources and what the sources are.

(2) In any affidavit made by two or more deponents the names of all the deponents shall be inserted in the jurat, but if the affidavit of all the deponents is sworn at one time before the same person it shall be sufficient to state that it is sworn by both or all of the "above-named" deponents.

(3) Affidavits required to be made by any corporation may be made on behalf of the corporation by any officer, attorney, solicitor, or agent of the corporation.

(4) No affidavit shall be filed which does not comply with section 126 of the Act.

(5) Before any affidavit is used it shall be filed in the Court office, but in an urgent case the Court may allow the affidavit to be read on the undertaking of the party to file it.

(6) Every party to any contentious proceeding shall, forthwith on filing any affidavit, deliver a true copy thereof, but not necessarily of the exhibits thereto to the opposite party.

(7) Where a party desires to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party the following provisions shall apply -

(a) He may serve on the opposite party a notice requiring the production of the deponent for cross-examination at the hearing:

(b) If the party served with the notice does not produce the deponent at the hearing, he shall not, without leave of the Judge, be entitled to use the affidavit as evidence:

(c) A witness summons may be issued, on the application of the party served with the notice, for the purpose of summoning the deponent to attend for cross-examination.

(8) Unless the Court otherwise orders, no affidavit shall be filed or used in any proceedings -

(a) Which is blotted so as to obliterate any word:

(b) Which is illegibly written:

(c) Which is so altered as to be illegible:

(d) Which is so imperfect, by reason of having blanks therein or otherwise that it cannot be easily read or understood:

(e) If there is any interlineation, alteration, or erasure in the body of the affidavit or jurat, unless the person before whom the affidavit was sworn has initialed the interlineation or alteration, and in the case of an erasure has rewritten and signed in the margin of the affidavit any words or figures written on the erasure.

(9) Where it appears to the person administering the oath that the deponent is illiterate or blind, he shall certify in the jurat -

(a) That the affidavit was read in his presence to the deponent; and

(b) That the deponent seemed perfectly to understand it; and

(c) That the deponent made his signature or mark in his presence, -

and the affidavit shall not be used in evidence without such a certificate, unless the Court is otherwise satisfied that it was read over to and appeared to be perfectly understood by the deponent.

(10) The Court may allow an affidavit to be used in evidence, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat or any other irregularity in the form of the affidavit.

PART XXI - HEARING OF ACTION OR MATTER

186. Where neither party appears - If neither party appears at the hearing of an action or matter, the proceedings may be struck out.

187. Where plaintiff does not appear - (1) If the plaintiff does not appear at the hearing of an action or matter but the defendant does, then -

(a) If the defendant admits the claim the Judge may give judgement as if the plaintiff had appeared:

(b) If the defendant does not admit the claim, the proceedings may be struck out, and in such case the Court may adjudge to the defendant by way of costs such sum as the Court thinks fit.

(2) Where the plaintiff does not appear at the hearing of an action or matter, but the Court has received from him an affidavit which is admissible in evidence by virtue of any Act or rule, the proceedings shall not be struck out but the plaintiff shall be deemed to have appeared at the hearing and to have tendered the evidence in the affidavit.

188. Where Defendant does not appear - (1) If the plaintiff appears at the hearing of an action or matter but the defendant does not appear, the Judge, upon proof of service and of facts entitling the plaintiff to relief, may give such judgment or make such order as may be just.

(2) If the defendant, not having delivered a confession, has addressed to the Court any letter admitting the claim, the Judge may treat the letter as a consent to judgment, and may enter judgment accordingly.

189. Order and conduct of hearing where both parties appear - Where both parties appear at the hearing of any action or matter the Judge shall decide which party shall have the right to begin or to reply, and as to the order and number of addresses by counsel; but, unless the Judge otherwise directs at the hearing, the following shall be the order of proceeding. The defendant shall be asked if the case is defended. If undefended, judgment may, with the consent of the defendant, be entered up accordingly. If the defendant does not so consent, the action shall be dealt with as if the defendant had not appeared. If defended, the plaintiff (or his counsel) shall state his case, and adduce evidence; the defendant (or his counsel) shall state his case and adduce evidence and also sum up the evidence; and then the plaintiff may reply on the whole case. If the defendant at the close of the plaintiff's case states his intention not to adduce evidence, the plaintiff shall sum up his evidence, and the defendant shall reply generally. Where a case not merely answering the case of the plaintiff is set up by the defendant and evidence is adduced in support thereof, the plaintiff may adduce rebutting evidence, and shall postpone his general reply until he has called such rebutting evidence and the defendant has replied on his new evidence.

190. Procedure where claim not proved - (1) Where the plaintiff appears but does not prove his claim to the satisfaction of the Court, the Judge may either nonsuit him, or give judgment for the defendant:

Provided that the plaintiff may at any time before judgment elect to be nonsuited.

(2) Where a plaintiff has been nonsuited he shall on payment of the costs of the first hearing be entitled to have the proceedings heard again on the same statement of claim or any amended statement of claim, and the Registrar, on the request of the plaintiff, shall issue a new summons as if the action had not previously been heard; and thereafter, should there be a second hearing, judgment shall be given thereat either for the plaintiff or for the defendant without any election of nonsuit.

191. New action after nonsuit or striking out - Where -

(a) After a plaintiff has been nonsuited; or

(b) After an action has been struck out, -

a subsequent action for the same or substantially the same cause of action is brought before payment of any costs awarded to the defendant when the plaintiff was nonsuited or the proceedings were struck out, the Judge may stay the subsequent action until such costs have been paid.

192. Counter-claim - (1) Where the defendant sets up a counter-claim and the claim of the plaintiff is discontinued, struck out, or stayed, or judgment is entered thereon, the counter-claim may be proceeded with and the defendant, on proof thereof, may have judgment.

(2) If a person, not originally a party to the proceedings, who has been served with a counter-claim does not appear at the hearing, the Judge may proceed with the hearing and give such judgment or make such order as may be just against the person so served, or may adjourn the hearing and give such directions as he thinks fit.

(3) The Court may order the claim and counter-claim to be heard together if it appears that they can be disposed of more conveniently together than separately.

(4) The Court may adjourn the hearing of a counter-claim if it appears that the plaintiff will be prejudiced by the hearing taking place as hereinbefore provided.

(5) Where any person has been improperly or unnecessarily joined as a plaintiff, a defendant who has set up a counter-claim may proceed with the counter-claim against the other plaintiff.

193. Injunctions - (1) In any proceedings in which an injunction has been or might have been claimed, a plaintiff may, before or after judgment, apply for an injunction to restrain the defendant from -

(a) The repetition or continuance of the wrongful act or breach of contract complained of; or

(b) The commission of any wrongful act or breach of contract of a like kind, relating to the same property or right or arising out of the same contract, -

and the Judge, in addition to giving judgment for such damages and costs as the plaintiff may be entitled to, may grant the injunction on such terms as may be just.

(2) An application under this rule may be made -

(a) Before the hearing of the proceedings, in accordance with Rule 132 hereof; or

(b) At or immediately after the hearing, in which case the order shall be included in the judgment; or

(c) After judgment, on notice and supported by affidavit.

194. Inspection by Judge - (1) The Judge may inspect any property or thing concerning which any question may arise in any proceedings.

(2) The expenses of any inspection under this rule shall be paid in the first instance by the party on whose application the inspection is made or ordered, or, if made or ordered without an application, by the plaintiff, and shall be costs in the proceedings unless the Judge otherwise orders.

195. Judgment by Registrar - (1) Where in an action for a liquidated sum of money the defendant appears and admits the claim or part thereof, the Registrar shall have power on the application of the plaintiff to enter judgment accordingly.

(2) In any action claiming other relief in addition to the payment of a sum of money, the last preceding subsection of this rule shall not apply unless the claim for other relief is first abandoned.

(3) Where the parties consent to judgment, the Registrar may at any time enter judgment by consent.

196. Matters - (1) Unless otherwise provided in the Act or rule under which the proceedings are brought, any matter may be heard by the Judge either in Court or in Chambers.

(2) Interlocutory applications shall be dealt with under the provisions of Part XIII of these rules, and not under this Part.

(3) On the hearing of any matter the Judge may make an order on any grounds appearing from the evidence.

197. Questions of law may be stated in special case - The parties may, after an action has been commenced, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to decide the questions raised thereby. On the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or of law, which might have been drawn therefrom if proved at the trial.

198. Leave to set down case required in certain cases - No special case in an action to which an infant or person of unsound mind is a party shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of the infant, or person of unsound mind, are true.

199. Mode of setting case down for argument - Either party may set down a special case for argument by delivering to the Registrar a notice in the form No. 46 and also, if an infant or person of unsound mind is a party to the action, producing a copy of the order giving leave to set down the same for argument.

200. Court may give judgment or order trial - On the argument of such point of law the Court may give judgment in the action, or may order the issues of fact or any of them to be tried before giving judgment.

PART XXII - JUDGMENTS AND ORDERS

201. Delivery of Decision - (1) In any proceedings the Judge, if he thinks fit, may forthwith deliver his judgment or make his order, or he may reserve his decision on any question of fact or law.

(2) Where a Judge has reserved his decision he may give it at any adjourned or subsequent sitting of theCourt, or of any other Court, or may draw up his decision in writing, sign it, and send it to the Registrar.

(3) When a written decision is sent to the Registrar as aforesaid he may, subject to any special directions of the Judge, appoint a time, being either a sitting of the Court or some other time, for delivery of it, and, after giving due notice of the appointed time to the parties or their solicitors, deliver it accordingly. At the time of delivery the Registrar may settle the costs between the parties unless those costs are settled by the written decision.

(4) Every reserved decision delivered by the Registrar and every order as to costs made by him under this rule shall be entered up and signed by the Registrar and shall have the same force and effect as if given by the Judge at the hearing of the proceedings.

202. Minute of judgment or order - Forthwith on the giving of judgment or the making of an order, a memorandum of the decision shall be entered in the civil-record book, and the memorandum shall thereupon be signed by the Judge or Registrar giving the judgment or making the order.

203. Orders need not be drawn up - Subject to the provisions of any Act or rule, no order need be drawn up or served unless the Court otherwise directs.

204. Counter-claim - (1) If a counter-claim is proved -

(a) To an amount less than that proved on the claim, the plaintiff shall have judgment for the balance of his claim after deducting the amount proved on the counter-claim:.

(b) To an amount exceeding that proved on the claim, or if the claim is not proved, the defendant shall have judgment for the excess, or the amount of the counter-claim, as the case may be.

(2) If a counter-claim is not proved, the defendant may be nonsuited or judgment may be given against him as the Court thinks fit.

205. Hire-purchase or conditional-purchase agreement - (1) Where the relief sought is the recovery of goods and moneys payable under a hire-purchase or conditional-purchase agreement, the Court may enter a judgment for possession and reserve leave to the plaintiff to apply on notice for such further relief as he may be entitled to.

(2) An application for further relief under this rule may be heard and determined by the Judge by whom leave was so reserved or by any other Judge.

206. Judgment debt to carry interest - Every judgment debt in excess of $200 shall carry interest at the rate of six per centum per annum from the time of judgment being given until the same is satisfied, and such interest may be levied under any writ of execution upon such judgment.

207. Time for doing any act to be stated - Every judgment or order requiring any person to do an act, other than the payment of money or costs, shall state the time within which the act is to be done.

208. Payment in reduction of amount - A person liable to pay money under a judgment or order may at any time pay money into Court in reduction of the amount payable by him.

209. New order for payment of unsatisfied judgment - (1) Where there is an unsatisfied judgment or order the party entitled to enforce it may apply on notice, in the form No.47, to the Court in which it was given or made, for an order that the amount due and unpaid be paid by instalments, or, if already payable by instalments, by the same or smaller instalments, and the Court may thereupon make an order accordingly.

(2) Where a judgment has been given or an order made for the payment of any sum of money, and it appears to the Court that the person liable under the judgment or order is unable to pay, in one sum, the sum ordered to be paid, the Court may, on the application of that person made on notice in the Form No. 46, order the amount unpaid under the judgment or order to be paid by instalments, and may from time to time vary any such order.

(3) If it appears to the Court that the person liable under any order for payment by instalments is able to pay the sum ordered to be so paid either in one sum or by larger or earlier instalments than those ordered, the Court may, on the application of the person entitled to enforce the order, made on notice in the form No.48, order the amount unpaid to be paid in one sum, or by larger or earlier instalments than those previously ordered, and may from time to time vary any such order.

(4) An order made under this rule shall be entered in the civil-record book against the entry in which the original judgment or order was recorded.

210. Stay of judgment, etc. - (1) An order to suspend or stay any judgment, order, execution, order of committal, or order for the discharge of a person, under the Act shall be in the form No.48.

(2) Where an order suspending or staying a judgment, order, or execution has been made and execution has been issued, the warrant shall be recalled, but the Judge may order the person named therein to pay the costs of the warrant and any fees or expenses incurred by the bailiff before the recall of the warrant, and may authorize the bailiff to sell a portion of the goods seized sufficient to realize those costs, fees, and expenses and the expenses of the sale; and any such warrant may be reissued by leave of the Judge.

(3) Where an order has been made for the discharge of any person arrested or confined in prison under the provisions of the Act, the following provisions shall apply:-

(a) The Registrar of the Court which made the order shall sign a sealed copy of the order, and if the person named therein was arrested by an officer of another Court, shall send the copy to the Registrar of the other Court. The Registrar of the Court, shall deliver the copy by post or otherwise to the gaoler or bailiff in whose custody the person is, and the gaoler or bailiff shall forthwith discharge the person:

(b) If the person is ordered to be discharged on terms which include liability to rearrest if the terms are not complied with, the party entitled to the benefit of the judgment or order may, if the terms are not complied with, apply to the Judge on notice, and the Judge may order the person to be rearrested and imprisoned for such portion of the term of imprisonment as remained unserved at the time of his discharge:

(c) Where an order is made under the last preceding paragraph an order shall be issued and delivered to the bailiff, and the order so issued shall be an authority to him to rearrest the person, and to the gaoler to receive and detain him for the remainder of the term of imprisonment or until he shall be sooner discharged in due course of law.

211. Where deed directed to be prepared - Where a judgment or order directs any deed to be prepared and executed it may state by which party and at whose expense the deed shall be prepared, and to whom it shall be submitted for approval, and, if the parties cannot agree upon the form of the deed, the Judge may, upon the application of any party on notice, settle the deed himself.

212. Sale of property directed to be sold - (1) Where any judgment or order directs any property to be sold, the property may be sold by public auction or private contract as the Judge directs.

(2) Where any property is directed to be sold by public auction or to be detained or preserved, the Registrar shall, if the Judge so directs, superintend the sale, detention, or preservation; and where any such property is directed to be sold by private contract it shall be the duty of the Registrar, unless the Judge otherwise directs, to see that the directions of the Judge are carried out.

213. Where possession ordered to be taken until security given - (1) Where a warrant directs the bailiff or other officer of the Court to take possession of any goods until security is given by some party for the safe keeping of the goods, or for the payment of their value in defaultof safe keeping, but does not specify the amount of the security, those persons shall cause to be made an inventory and appraisement of the goods of which he takes possession.

(2) Upon receiving as a deposit the amount of the appraisement, or sufficient security, to be approved by the Registrar, for the safe keeping of the goods, and for the delivery up of possession thereof upon request the bailiff or other officer shall relinquish possession thereof on condition that the goods shall be redelivered to him on request, or held to abide the order of the Court.

214. Certificate of judgment or order - (1) Any party to any proceedings requiring a certificate of any judgment or order shall state in writing the purposes for which it is required.

(2) Where a person applying for a certificate of any judgment or order is not a party to the proceedings in which the judgment or order was given or made, he shall state in writing, with particulars, the purpose for which the certificate is required and the capacity in which he applies for it, and shall satisfy the Registrar that the application may properly be granted. The Registrar may, if he thinks fit, refer the application to the Judge.

(3) Where the applicant is entitled to a certificate, the certificate shall be in the form No.49, and shall be signed by the Registrar and sealed with the seal of the Court.

(4) Whenever the Registrar is required to give a certificate of any order or proceeding recorded in the minute-book of the Court a true copy shall be made of the minute of the order or proceeding, and the Registrar shall append a certificate, signed by him, that it is a true copy, and seal the certificate with the seal of the Court.

(5) Whenever the Registrar issues a certificate of any judgment or order or proceeding as aforesaid he shall make an entry in the civil-record book, or in the minute-book, opposite the entry relating to the case, and in the fold of the plaint-note in the action, or in the originating application, stating the section of the Act or the rule under which the certificate is issued, and shall sign and date the entry. In addition to that entry, a similar entry shall be made in chronological order in the minute-book and shall be signed and dated by the Registrar.

215. Removal of judgment - (1) Where any final judgment or order for the payment of any sum of money is obtained in a Court it may on the application of the judgment creditor be removed to another Court.

(2) Upon such application being filed the Registrar shall forward a certificate of the judgment given under Rule 214 to the other Court under Rule 216 the judgment shall be in all respects a judgment of that other Court and may be enforced in and by that Court.

216. Entry of judgment removed by certificate - (1) Upon the filing in a Court of a certificate issued under any of the provisions of Rule 214, the Registrar of that Court shall enter in the civil-record book particulars of the judgment or order or decree, showing the date of the judgment, order, or decree, and shall add to the entry the following memorandum:

"Entered this.....day of.....19.....,
pursuant to a certificate of a judgment
(or order or decree) of the.....Court
at....., which certificate is dated the
..... day of ....., 19....."

(2) On completion of such entry and memorandum as aforesaid the Registrar shall sign the entry.

217. Entry of satisfaction - (1) Whenever a judgment has been satisfied by payment into Court an entry of satisfaction shall be endorsed on the plaint-note and, if the judgment debtor so requests, a like entry shall be made against the entry of judgment in the civil-record book.

(2) Whenever a memorandum of satisfaction in the form No.50 is filed, an entry of satisfaction shall be endorsed on the plaint-note and made in the civil-record book as aforesaid.

PART XXIII - REINSTATEMENT, SETTING ASIDE, AND REHEARING

218. Reinstatement - (1) When any proceedings have been struck out under the provisions of Rule 186 or Rule 187 hereof the following provisions shall apply:-

(a) If they were struck out under Rule 186, the Judge may reinstate the proceedings on the day of hearing or on any subsequent day within seven days, and may thereupon enter such judgment as may be required:

(b) If they were struck out under Rule 187, any application for reinstatement shall be made ex parte in the form No.15, and, if the proceedings are reinstated, notice of reinstatement in the form No.51 shall be served on the defendant personally at least seven clear days before the hearing.

(2) Any order for reinstatement made pursuant to this rule shall be subject to such order for costs as the Court thinks fit.

219. Setting aside judgment or order given in absence of defendant - (1) Where in any proceedings a defendant, or a defendant to a counter-claim, does not appear at the hearing and a judgment or order is given or made against him in his absence, the judgment or order and any execution thereon may on application be set aside and a new hearing may be granted.

(2) The application may, if the parties are present, be made on the day on which the judgment or order was given or made, and in any other case shall be made on notice.

(3) The application shall be made to a Judge if the judgment or order was given or made by a Judge, and in any other case shall be made to the Judge or Registrar.

(4) Notice of a new hearing pursuant to this rule shall be in the form No.52, and shall be served on the plaintiff seven clear days before the date fixed for the new hearing.

220. Setting aside judgment of Registrar - (1) Any judgment of a Registrar and any execution thereon (except where all parties have consented to the terms of the judgment) may on application be set aside by the Judge, who may give such judgment or make such order in substitution therefor as he thinks fit, or may grant a new hearing.

(2) The application may, if the parties are present, be made on the day on which the judgment was given, and, in any other case, shall be made on three days' notice to the parties affected.

(3) The Court may stay execution pending the hearing of the application.

221. Rehearing - (1) The Court shall in every proceeding have the power to order a rehearing to be had upon such terms as it thinks reasonable, and in the meantime to stay proceedings:

Provided that a rehearing shall not be granted on an application made more than fourteen days after the judgment or order, unless the Court is satisfied that the application could not reasonably be made sooner.

(2) The application shall be served on the opposite party not less than ten clear days before the day fixed for hearing, and shall state the grounds thereof, which shall be verified by affidavit.

(3) The application shall not operate as a stay of proceedings unless the Court so orders.

(4) On receipt of the application the Registrar shall, unless otherwise ordered, retain any money in Court until the application has been heard.

(5) An application for a rehearing may be heard by the Judge who heard the proceedings or, if that Judge is not available, by any other Judge.

(6) If the Registrar is satisfied that by reason of the absence of the Judge the application for a rehearing can be more expeditiously heard and determined in some other Court, he may on the request of either party order that the application be transferred to that Court. The Registrar of the Court to which the application has been transferred shall fix the day of hearing and give notice thereof, and shall also, after the application has been disposed of, return the papers to the Registrar of the Court of origin together with the Judge's order on the application.

(7) An order for a rehearing shall be in the form No.53, and shall be served on the opposite party.

(8) The rehearing need not take place before the Judge by whom the proceedings were originally heard.

222. Terms and conditions of orders - Any order authorized by this Part may be made upon and subject to such terms and conditions as the Court thinks fit.

PART XXIV - ENFORCEMENT OF JUDGMENTS AND ORDERS

Generally

223. Examination of judgment debtor - (1) Where a judgment or order is for the payment of money the party entitled to enforce it may make an application to the Court ex parte for an order that the debtor, or, if the debtor is a corporation, any officer thereof, be orally examined before the Court as to the debtor's means.

(2) The Court may make an order for the attendance and examination of the debtor, or, if the debtor is a corporation, of any officer thereof, and for the production of any books or documents.

(3) An order made under the last preceeding subsection shall be in the form No.54, and a copy thereof shall be served personally upon the person to be bound by the Order, and the person effecting the service shall at the time of service pay or tender to the person served the respective sums prescribed in the Fourth Schedule hereto in respect of travelling allowances and expenses.

(4) In making the order the Court may, if it thinks fit, award witnesses' fees in accordance with the prescribed scale.

(5) An order made under subsection (2) of this rule may, by leave of the Judge, be enforced by committal.

(6) Where the person to be bound by the order does not reside or carry on business within the district of the Court by which the order is made, the order may provide for his attendance and examination before the Registrar for the district in which he resides or carries on business. A copy of the order shall be sent by the Registrar of the home Court to the Registrar before whom the examination is to take place, who shall insert therein a notice of the time and place appointed for the examination, and thereupon subsection (3) of this rule shall apply.

(7) The provisions of Rule 184 hereof shall, with the necessary modifications, apply to an examination under this rule.

224. Examination of any party - Where any difficulty arises, in or about the execution or enforcement of any judgment or order for some relief other than the payment of money, the Judge or Registrar may on the application of any party interested make such order for the attendance and examination of any party or otherwise as may be just.

225. Applications under section 26 of Partnership Act, 1908 - (1) An application by a separate judgment creditor of a partner for an order charging the partner's interest in the partnership property and profits, under section 26 of the Partnership Act, 1908 (as amended by section 46 of the Statutes Amendment Act, 1947), and for such other orders as are thereby authorized to be made, shall be made to the Court on notice. The notice and any order made on the applications shall be served on the judgment debtor and his partners, or such of them as are in the Cook Islands.

(2) Any application by a partner of the judgment debtor under the said section 26 shall be made to the Court on notice. The notice shall be served on the judgment creditor, the judgment debtor, and such of the partners as do not concur in the application and are in the Cook Islands.

226. Change of parties after judgment - (1) Where any change has taken place after judgment, by death, assignment, or otherwise, in the parties entitled to enforce a judgment or order or in the parties liable under a judgment or order, the party claiming to be entitled to enforce the judgment or order may apply ex parte to the Judge for leave to issue the necessary process, and the Judge may -

(a) If satisfied that the party so applying is entitled to issue the process, make an order to that effect:

(b) If not so satisfied, order that any issue or question necessary to determine the rights of the parties be tried in an action.

(2) Notwithstanding anything contained in Rule 24 hereof, the action referred to in paragraph (b) of the last preceeding subsection may, unless the Court otherwise orders, be commenced in the Court in which the order was made.

(3) Any order made under subsection (1) of this rule shall be in the form No.55, and shall be served on the persons affected, and no process shall issue until the expiration of seven days after the day of service, except with the leave of the Judge.

(4) Where a party claims to be entitled, by reason of one and the same change, to enforce more judgments or orders than one, he may make one application in respect of all the judgments or orders specifying them in a schedule, and in the notice of any order made on the application it shall be sufficient to set out only that part of the order which affects the person on whom the notice is to be served.

227. Application to Registrar for suspension of judgment, etc. - Where any person desires to make an application to the Judge to suspend or stay any judgment, order or execution, or order of committal, he may in the absence of the Judge, apply to the Registrar, who may suspend or stay the judgment, order or execution, until application can be made to the Judge.

228. Execution of process - (1) The Registrar shall hand every warrant, writ, or other process issued for execution to an officer of his Court or to a constable for execution or service.

(2) Where a warrant, writ, or other process is required to be executed or served by the Court officer of a foreign Court, the Registrar of the home Court may cause it to be sent to the Registrar of the foreign Court, and the Registrar of the foreign Court shall endorse thereon the time when it was received by him, and shall forthwith deliver it to an officer of his Court or to a constable.

(3) The last-mentioned Court officer or constable shall certify to the Registrar of the foreign Court what he has done, and if he has received any money or fees shall, after deducting therefrom the fees allowed to him, pay over the balance to that Registrar, who shall, unless the warrant or writ has been retained by the gaoler, forthwith return the process to the Registrar of the home Court, together with any moneys paid to him as aforesaid.

229. Receipt to be attached to warrant - The Registrar shall prepare and attach to every warrant under which any money is payable a receipt in the form No.56. When any money is paid to the Court officer on the warrant he shall sign and hand the receipt to the defendant or to the person paying the money. If the receipt is not used by the Court officer he shall endorse on it a short statement of what was done under the warrant (for example, "Nulla bona"; "defendant left the district" or "cannot be found"; "withdrawn at request of plaintiff"), and the date, sign the endorsement, and return the receipt to the Registrar who issued it. The receipt form shall be securely attached to the duplicate thereof in the receipt-book.

230. Court officer to execute warrants, etc. - (1) The Court officer shall, upon receipt of any warrant, writ, or other process, affix his initials and the date in the appropriate column of the proper book as evidence of such receipt. He shall also keep a record of all processes received by him for execution or for service.

(2) The Court officer shall execute or serve all processes promptly and shall make periodic reports, as required by the Registrar, with respect to each warrant or writ issued to him, either from his own or from a foreign Court.

231. Return of unexecuted warrants to home Court - Where a warrant, writ, or other process has been received by a Registrar from another office of the Court for execution he shall return the process to the home office of the Court when requested by the execution creditor or the Registrar of the home office of the Court to do so, or, if the process has not been executed during the time it is in force, within twenty-four hours after the expiration of that time, endorsed with the reason for non-execution.

232. Currency of writ - A writ of execution (if unexecuted) shall remain in force for one year only from its issue unless renewed in the manner hereafter provided.

233. Renewal of writ - A writ of execution may at any time before its expiration, by leave of the Court or a Judge be renewed by the party issuing it for one year from the date of such renewal and so on from time to time during the currency of the renewed writ.

234. How effected - (1) A note of every renewal shall be endorsed on the writ, which shall have effect and be entitled to priority according to the time of its original issue.

(2) Any fee payable on a renewal may be allowed as costs of the execution and shall be entered on the writ.

235. Evidence of - The production of a writ of execution purporting to be endorsed as renewed shall be sufficient evidence of its having been so renewed.

236. When execution may issue - As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment.

237. Execution after six years or on change of parties - When six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly.

238. Leave may be granted - The Court or a Judge may, if satisfied that the party applying under the last preceding rule is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties may be tried. And in either case the Court or a Judge may impose such terms as to costs or otherwise as seem just.

239. Enforcing order of Court - Every order of the Court or a Judge may be enforced in the same manner as a judgment to the same effect.

240. Execution against a firm - (1) Where a judgment or order is against a firm, execution may issue -

(a) Against any property of the partnership:

(b) Against any person who has admitted in the proceedings that he was a partner when the cause of action arose, or who has been adjudged to be liable as a partner:

(c) Against any person who was individually served with the summons as a partner or a person sought to be made liable if he failed to appear at the hearing.

(2) If the party who has obtained the judgment or order claims to be entitled to issue execution against any other person as a partner, he may apply to the Judge for leave so to do, and the following provisions shall apply -

(a) He shall give to the alleged partner not less than three clear days' notice of his application:

(b) The notice shall be served on the alleged partner personally:

(c) On the hearing of the application the Judge may, if liability is not disputed, give leave to issue execution. If liability is disputed the Judge may order the issue of liability to be tried in such manner as he thinks fit and may give all necessary directions for that purpose.

(3) Except as against property of the partnership, a firm shall not render liable, release, or otherwise affect any partner who was out of the Cook Islands when the summons was issued, unless he has been individually served with the summons.

241. Officer executing writ to make inventory - (1) Where goods are seized in execution, the officer executing the writ shall give to the execution debtor a sufficient inventory of the goods seized, and notice, in the form No.57, of the time when and the place where the goods will be sold.

(2) The inventory and notice shall be given to the execution debtor personally, or sent to him by post to his place of residence or, if his residence is not known, may be left at or sent by post addressed to him at the place at which the goods were seized.

(3) The inventory shall be given or sent at the time of or immediately after the seizure of the goods, and the notice shall be given or sent at least twenty-four hours before the time fixed for the sale.

242. Accounts of sale - Where goods are sold under an execution, the officer shall, on the request of the execution debtor, furnish him with a detailed account in writing of the sale and of the application of the proceeds thereof.

243. Officer executing writ to furnish statements to the Registrar - (1) The officer to whom a writ has been delivered for execution shall deliver to the Registrar immediately after seizure an inventory of all cheques, bills of exchange, promissory notes, bonds, or other securities for money which have been seized or taken by him under a writ of possession.

(2) The officer shall also, when returning a writ of sale after execution, deliver therewith a copy of the inventory of the goods signed by him, and, if the goods have been sold, a statement setting out opposite each article the price realized at the sale thereof, together with a general balance-sheet in respect of the proceeds of the writ and the expenses thereon in the form No.58.

(3) If the officer after reasonable attempts to execute any writ has been unable to do so he shall return the same to the Registrar with a memorandum endorsed thereon stating the reason for not executing the writ.

(4) The Registrar shall require the officer to deliver to him the various statements, reports, and balance-sheets required by these rules, accompanied by vouchers for all disbursements, and shall examine them.

Delivery of chattels

244. Warrant for recovery of chattels - A plaintiff who has obtained a judgment or order for the delivery of specific chattels may apply to the Registrar in form No.59, whereupon the Registrar may issue a warrant in form No.60 to an officer of the Court requiring him to demand and seize the specific chattels if they can be found by him, and to deliver them to the plaintiff.

245. Warrant of committal - An application for a warrant of committal to enforce any such judgment or order as aforesaid shall be dealt with in accordance with Rule 252 hereof.

Writs of Sale and Possession

246. Writ of sale - A writ of sale may be in form 61 in the Second Schedule hereto.

247. Writ of possession - A writ of possession may be in form No.62 in the Second Schedule hereto.

Charging orders

248. Application for Charging order - A charging order under section 139 of the Cook Islands Act 1915 may be made by the Court ex parte on the application of the judgment creditor, and shall specify the property to which it relates.

249. Nature of charging order - So long as any such order remains in force the amount of the judgment debt shall constitute an equitable charge upon the property specified in the order.

250. Appointment of receiver, etc. - For the purpose of enforcing any such charge the Court may from time to time, and either on the making of the charging order or any time thereafter, on the ex parte application of the judgment creditor, make such order or orders as it thinks fit against all persons concerned -

(a) For the appointment of a receiver of the rents, profits, or revenues of any property so charged; or

(b) For the payment into Court in satisfaction of the judgment of any such rents, profits, or revenues, or of any moneys subject to the charge; or

(c) For the sale of any such property by an officer of the Court. Disobedience to any order so made shall constitute a contempt of Court.

251. Cancellation or variation of charging order - Any charging order, or any order so made in pursuance of a charging order, may be at any time cancelled or varied on the application either of the judgment debtor or the judgment creditor, or of any other person concerned.

Warrant of Committal

252. Application for warrant - (1) When a judgment or order enforceable by committal has been made for the benefit of one party (in this rule called the applicant) against another party (in this rule called the respondent), the Registrar shall, if the judgment or order is in the nature of an injunction, at the time when the order is drawn up, and in any other case on the request of the applicant, issue a copy of the judgment or order endorsed with a notice in the form No.63, and the copy so endorsed shall be served on the respondent in the manner prescribed by Rule 77 (2) (a) hereof.

(2) If the respondent fails to obey the judgment or order, the Registrar, on the request of the applicant, shall issue a notice in the form No.64 not less than two clear days after service of the endorsed copy of the judgment or order, unless a Judge gives leave for the notice to be issued sooner, and the notice shall be served on the respondent in such manner as aforesaid.

(3) On the day named in the notice the Court, on being satisfied that the respondent has failed to obey the judgment or order and, if the respondent does not appear, that the endorsed copy of the judgment or order and the notice have been served upon him, may order a warrant of committal to issue.

(4) The order for the issue of the warrant shall be in the form No.65, and the warrant, which shall be signed by the Registrar, shall be in the form No.66. A copy of the order shall be served on the respondent either before or at the time of the execution of the warrant, unless the Court otherwise orders.

253. Discharge of person in custody - (1) Where any person in custody under a warrant desires to apply for his discharge, he shall file an affidavit specifying the grounds on which he applies for discharge, and shall, not less than twenty-four hours before the application is made, serve on the party (if any) at whose instance the warrant of committal was issued a copy of the affidavit, together with notice of his intention to make the application.

(2) If the order of committal directs that the application for discharge is made to a Judge, it may be made at any place which the Judge may appoint.

(3) If the order of committal does not direct that the application shall be made to the Judge, it may be made to the Registrar.

(4) The order for discharge shall be in the form No.67.

PART XXV - PROCEDURE UNDER SECTION 141 OF THE COOK ISLANDS ACT 1915

254. Application for Judgment summons - An application for an order against a judgment debtor under section 141 of the Cook Islands Act 1915 may be in form 68 in the Second Schedule hereto.

255. Form of Summons - A judgment summons under section 141 of the Cook Islands Act 1915 may be in form 69 in the Second Schedule hereto.

256. Procedure - Every such judgment summons shall be served in the same manner as a summons to a defendant on the commencement of an action, and all the provisions of these rules as to the place and time of the hearing of an action shall apply also to the hearing of the application in respect of which such judgment summons is issued.

PART XXVI - GARNISHEE PROCEEDINGS

257. Garnishee proceedings - Any judgment or order of the Court or a Judge thereof for the payment of a sum of money may be enforced by garnishee proceedings for the attachment of moneys due to the Judgment debtor.

258. How effected - Any person who has obtained a judgment or order (referred to as the judgment creditor) for the payment of money may take garnishee proceedings in accordance with these rules in the Court in which he has judgment, to obtain payment to him of the amount of any debt owing or accruing to the judgment debtor from any other person (referred to as the sub-debtor) or so much thereof as may be sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

259. Commence of proceedings - (1) When a judgment creditor desires to take garnishee proceedings he shall file in the Court in which he has the judgment or order an affidavit in the form No.70.

(2) On the filing of the affidavit the Registrar shall issue a garnishee summons to the sub-debtor in the form No.71 and a notice to the judgment debtor in the form No.72.

260. Service, and effect of service - The summons shall be served on the sub-debtor personally, and the notice shall be served on the judgment debtor personally, in each case not less than ten clear days before the day of hearing. When served on the sub-debtor it shall bind in the hands of the sub-debtor so much of the debts owing or accruing from the sub-debtor to the judgment debtor as will satisfy the debt due under the judgment or order and the costs entered on the summons.

261. Payment into Court by sub-debtor - (1) The sub-debtor may at any time before the day of hearing, pay into Court -

(a) The amount admitted to be due from him to the judgment debtor; or

(b) If the amount admitted is more than sufficient to satisfy the amount due under the judgment or order and the costs entered on the summons, a sum sufficient to satisfy that amount and those costs.

(2) If the amount admitted to be due from him to the judgment debtor is less than the amount claimed to be owing under the summons, the judgment creditor may file in the Court and serve on the judgment debtor and sub-debtor a notice that he accepts the amount, and the sub-debtor shall then be deemed to be discharged from the proceedings.

262. Payment out of Court of moneys paid by sub-debtor - Moneys paid into Court by the sub-debtor may be paid out before the day of hearing by the Registrar on production of the consent in writing of the judgment debtor. In the absence of such consent the Judge may on the day of hearing, after hearing the judgment creditor and the judgment debtor, if he appears, make such order in the proceedings, including an order as to costs, as may be just.

263. Garnishee order where sub-debtor does not pay into Court or appear - (1) If the sub-debtor -

(a) Does not, before the day of hearing, pay into Court the amount admitted to be due from him to the judgment debtor, or so much thereof as is sufficient to satisfy the amount in respect of which the judgment or order is unsatisfied and the costs entered on the garnishee summons; and

(b) Does not, on the day of hearing, appear and dispute the debt alleged to be due from him to the judgment debtor, -

the Judge may, if the judgment debtor does not appear and show cause to the contrary, make an order for the payment by the sub-debtor to the judgment creditor of the amount due from the sub-debtor to the judgment debtor, or so much thereof as is sufficient to satisfy the judgment or order against the judgment debtor, and for costs, and an entry thereof shall be made in the civil-record book.

(2) Every such garnishee order may be enforced as a judgment of the Court.

264. Order in other cases - (1) Where the sub-debtor disputes liability he shall, within seven days after the service of the summons on him, file in the Court office a notice in the form No.73, and serve a copy thereof on the judgment creditor and on the judgment debtor. No fee shall be payable for filing the notice.

(2) Where notice has been given to the judgment creditor as aforesaid, or where the amount paid into Court under Rule 261 hereof is not accepted, the Judge may, after hearing the judgment creditor, the sub-debtor, and the judgment debtor, or such of them as appear, -

(a) Determine the question of the liability of the sub-debtor, and make such order as to the payment to the judgment debtor, and as to costs, as may be just; or

(b) Order that any issue necessary for determining the question of the liability of the sub-debtor be tried in the same manner as an action is tried, and direct which of the persons interested, including such a third person as is referred to in the next succeeding rule, shall be plaintiff and which shall be defendant; or

(c) Order that the judgment creditor be at liberty to sue the sub-debtor for the amount alleged to be due by him to the judgment debtor, if it is less than the judgment debt, or, if it is greater, then for the amount of the judgment debt with costs of suit.

(3) Every order for payment made under this rule may be enforced as a judgment of the Court.

(4) Notwithstanding anything contained in the foregoing provisions of this rule, the sub-debtor may at any time before the hearing apply to the Judge for an order -

(a) That the garnishee proceedings be transferred, under Part XVI of these rules to any Court in which they would have been commenced if they were proceedings brought against him by the judgment debtor to recover the debt; or

(b) That the garnishee proceedings be referred to the Registrar of any Court for inquiry and report under Part XIX of these rules, -

and on any such application as aforesaid the Judge may make such order as he thinks fit.

265. Where debt is stated to belong to third party - (1) If in garnishee proceedings it is suggested that the debt belongs to or is claimed by some third person, or that any third person has or claims to have a lien or charge upon it, the Judge may order the third person to appear and state the nature and particulars of his claim to the debt.

(2) After hearing the third person, if he appears, the Judge may bar the claim of the third person or may order an issue to be tried between the third person and the judgment creditor, or make such other order, including an order as to costs, as may be just.

266. Discharge of sub-debtor as against judgment debtor - Payment made by or execution levied upon the sub-debtor under garnishee proceedings, otherwise than in respect of any costs ordered to be paid by the sub-debtor personally, shall be a valid discharge to him as against the judgment debtor to the amount so paid or levied, notwithstanding that the proceedings may thereafter be sent aside or the judgment order reversed.

267. Judge may refuse order - (1) The Judge may hear evidence as to the circumstances of the judgment debtor, and, if it appears that the whole or any part of the moneys sought to be attached are reasonably required by the judgment debtor for the maintenance and support of himself and his family, the Court may refuse to make a garnishee order and may make such order as to the disposal of any moneys paid into Court as it thinks fit.

(2) The Judge may refuse to make a garnishee order if in his opinion an order should not be made owing to the smallness of the amount to be recovered or of the debt sought to be attached.

268. Where money due by sub-debtor under judgment or order - Where the amount due from the sub-debtor to the judgment debtor is due under a judgment or order obtained by the judgment debtor against the sub-debtor, the following provisions shall apply -

(a) Unless the Judge otherwise orders, the sub-debtor shall not be liable to pay to the judgment creditor the amount due from the sub-debtor to the judgment debtor by any larger instalments than those by which he is liable to pay the amount under the judgment or order obtained by the judgment debtor against him:

(b) The Registrar shall enter in the books of the Court relating to the judgment or order obtained by the judgment debtor against the sub-debtor a note of -

(i) The amounts paid or ordered to be paid by the sub-debtor in the garnishee proceedings, otherwise than in respect of costs ordered to be paid by him personally:

(ii) Any costs which the sub-debtor is, by order of the Court, allowed to deduct from the amount due from him to the judgment debtor.

269. Money in Court - (1) Where money is standing to the credit of the judgment debtor in any Court the judgment creditor shall not be entitled to take garnishee proceedings in respect thereof, but may apply to the Judge on notice for an order that the money or so much thereof as may be necessary to satisfy the judgment debt and costs may be paid to the judgment creditor.

(2) On receipt of notice of the application the Registrar shall retain the money in Court until the application has been heard.

(3) On the hearing of the application the Judge may make such order as to the money in Court as may be just, and shall have regard to the matters mentioned in Rule 267 hereof.

(4) A note of the order shall be made in the books of the Court relating to the money so standing to the credit of the judgment debtor.

270. Debts owing by firm - This Part shall apply to debts owing by or accruing from a firm carrying on business within the Cook Islands although one or more members of the firm may be resident abroad.

271. Costs - (1) The Court may award costs to any sub-debtor attending under this Part, or attending to give evidence under Rule 184 hereof.

(2) If within a reasonable time the judgment creditor fails to give notice under Rule 261 (2) hereof, the Court may award the sub-debtor the costs incurred by him at the hearing.

(3) The Court may, if the proceedings are abandoned by the judgment creditor or for any other reason that the Court thinks sufficient, also award costs, including expenses as aforesaid, to a judgment debtor attending to give evidence in garnishee proceedings.

(4) No fee shall be payable in respect of any order of the Court for the payment out of Court of any moneys paid into Court in any garnishee proceedings.

(5) Any costs allowed to the judgment creditor which are not ordered to be paid by the sub-debtor personally shall, unless it is otherwise ordered, be retained by the judgment creditor out of money recovered by him in the garnishee proceedings, in priority to the amount due under the judgment or order.

272. Garnishee proceedings against the Crown - In the case of garnishee proceedings against the Crown as sub-debtor, the provisions of this Part shall have effect subject to the following modifications:-

(a) This Part shall not apply to any debt that is excepted by the proviso to section 26 of the Crown Proceedings Act, 1950:

(b) The affidavit to be filed pursuant to Rule 259 hereof shall give, in addition to the particulars prescribed by form No.70, particulars of the circumstances in which it is alleged that the liability of the Crown has arisen, and of the Government Department or officer of the Crown concerned:

(c) The garnishee summons to be served on the sub-debtor pursuant to Rule 260 hereof shall be served on the Crown not less than thirty-five clear days before the day of hearing:

(d) The time within which, under Rule 264 (1) hereof, there may be filed a notice in the form No.73 that the sub-debtor disputes the debt claimed shall be twenty-eight days:

(e) The provisions of Rule 263 (2) and Rule 264 (3) hereof shall have effect subject to section 24 of the Crown Proceedings Act, 1950:

PART XXVII - INTERPLEADER

273. Procedure - Where a person is under a liability for any debt or other cause of action, money, or chattels for or in respect of which he is or expects to be sued by two or more persons making adverse claims thereto, he may apply to the Court in the manner prescribed for relief by way of interpleader.

274. Application for relief - (1) An application under the last preceding rule shall be made to the Court in which the applicant is sued, or if he has not been sued, to any Court in which he might be sued.

(2) The applicant shall file an affidavit showing -

(a) That the applicant claims no interest in the subject-matter in dispute other than for charges or costs:

(b) That the applicant is sued or expects to be sued by the claimants in respect of the subject-matter:

(c) That the applicant does not collude with any of the claimants:

(d) That the applicant has brought the subject-matter into Court or is willing so to do or to dispose of it as the Court may direct.

(3) Where the applicant is a defendant the affidavit shall be filed within five days after the service of the summons on him, inclusive of the day of service.

275. Claimants having adverse titles - The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of each other.

276. Issue of summons - (1) Where the applicant is a defendant the following provisions shall apply on the filing of the affidavit:-

(a) The Registrar shall issue for service on the claimant an interpleader summons, in the form No.74, to which shall be attached a copy of the summons and statement of claim in the action and a copy of the affidavit:

(b) The Registrar shall send to the plaintiff a notice in the form No.75, together with a copy of the affidavit:

(c) The action shall stand adjourned without further order to the day fixed for the hearing of the interpleader proceedings.

(2) Where the applicant is not a defendant the Registrar shall on the filing of the affidavit, enter the proceedings in the plaint-book, and issue for service on the claimants a summons in the form No.76.

277. Service - (1) An interpleader summons shall be served, not less than ten clear days before the day fixed for the hearing, in accordance with the rules for the service of an ordinary summons.

(2) The proceedings shall be served on such other persons as a Judge may direct.

278. Payment into Court, etc. - If the applicant has not brought the subject-matter into Court, a Judge may at any time direct the applicant to do so or to dispose of it in such manner as the Judge thinks fit, to abide the order of the Court.

279. Disclaimer or particulars - A claimant shall within seven days after the service of the summons on him, inclusive of the day of service, file in the office of the Court and serve on the other parties either -

(a) A notice stating that he makes no claim; or

(b) Particulars stating the grounds of his claim to the subject-matter:

Provided that the Judge may, if he thinks fit, hear the proceedings although particulars have not been filed and served.

280. Hearing - (1) Where the applicant is a defendant the following provisions shall apply with respect to the hearing of the proceedings:-

(a) If the plaintiff does not appear, the action shall be struck out, and if any claimant appears the Judge shall make an order finally determining the claim as between the defendant and the claimant, and may make an order barring the claim of the absent plaintiff:

(b) If the claimant does not appear, the Judge shall hear and determine the action as between the plaintiff and the defendant, and may make an order barring the claim of the claimant:

(c) If both the plaintiff and the claimant appear, the Judge shall, whether the defendant appears or not, hear the proceedings and give judgment finally determining the rights and claims of all parties.

(2) Where the applicant is not a defendant the following provisions shall apply with respect to the hearing:-

(a) If any claimant does not appear, the Judge shall make an order finally determining the claim as between the applicant and any claimant who appears, and may make an order barring the claim of the absent claimant:

(b) If all the claimants appear, the Judge shall, whether the applicant appears or not, hear the proceedings and make an order finally determining the rights and claims of all parties.

(3) An order barring the claim of a claimant shall declare that the claimant and all persons claiming under him be for ever barred as against the defendant or applicant and all persons claiming under him, and also (where the claimant has filed notice that he makes no claim) as against the plaintiff or the other claimant and all persons claiming under him.

(4) An order barring the claim of a plaintiff shall declare that the plaintiff and all persons claiming under him be for ever barred as against the defendant or claimant and all persons claiming under him.

(5) Where the claimant has not filed notice that he makes no claim, an order barring the claim shall not affect the rights of that claimant and the plaintiff or another claimant as between themselves.

281. Delivery to claimant of chattels seized under writ of sale - Where any chattels seized under a writ of sale are claimed by any person, not being the party against whom the Writ of sale has been issued, the officer executing the Writ shall deliver possession of the chattels so seized to

the person claiming the same upon such person paying into the Court the amount of the sum to be levied under the writ and the fees and expenses of execution, or giving security therefor to the satisfaction of the officer executing the writ; and the amount so paid or secured shall be subject to the decision of the Court on the claim of such person:

Provided that if the value of the chattels seized is less than the amount of the sum to be levied under the writ, and the fees and expenses of execution, the person claiming such chattels may obtain the delivery thereof on paying into Court or securing as aforesaid the value of such chattels, such value in case of dispute to be settled by the appraisement of some indifferent person to be appointed by a Judge; or the person so claiming any chattels as aforesaid may pay to the proper officer the amount of the fees he is entitled to charge for keeping possession of the chattels seized until a decision of the Court as to the claim of such person can be obtained, and such officer shall thereupon keep possession of such chattels until decision is obtained.

282. Officer executing writ of sale may issue interpleader summons - Where any chattels seized under a writ of sale are claimed by some third person, the officer executing the writ of sale may, before or after the return of the writ and whether an action has been commenced against him for such seizure or not, issue a summons to the party issuing such writ of sale, the party against whom it is issued, and the party making such claim; and on the hearing of the proceedings the Judge may, for the adjustment of such claim and the relief of such officer, exercise all or any of the powers conferred by Rule 280, and may make such orders as to any moneys paid into Court or secured, or any chattels retained by an officer of the Court, under the last precedings rule and otherwise, as appears just according to the circumstances of the case. Where an action has been commenced against the officer executing the writ such action shall upon the issue of such summons stand adjourned without further notice to the day fixed for the hearing of such interpleader proceedings.

283. Order for sale of chattels subject to bill of sale - Where chattels have been seized under a writ of sale, and some third person claims under a bill of sale or otherwise to be entitled to such chattels by way of security for a debt, the Court or a Judge may order a sale of the whole or part of such chattels on such terms as to payment of the whole or part of such secured debt or otherwise as the Court or a Judge thinks fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as the Court or Judge thinks just.

PART XXVIII - WRITS OF ARREST

284. Absconding debtors may be held to bail - (1) Where in an action for the recovery of any debt, damages or other sum of money the plaintiff proves to the satisfaction of a Judge of the Court at any time before final judgment that he has a good cause of action against a defendant and that there is probable cause for believing that the defendant is about to leave the Cook Islands or any island included in the Cook Islands and to evade payment of the said sum, the Judge may issue a writ of arrest under his hand returnable immediately; and, if payment of the said sum is not made before execution of the writ, may thereupon cause the defendant to be brought

before the Judge, and upon investigation of the case may either discharge the defendant or hold him to bail for any sum not exceeding the amount claimed in the action with costs:

Provided that if the claim is for a debt or amount long overdue the Judge may, before issuing the writ, require the person asking for the issue thereof to lodge in the Court any sum of money not exceeding one hundred dollars, or to give security therefor to the satisfaction of the Judge to abide the decision of the Court under paragraph (b) of the next succeeding Rule.

(2) In default of bail being given, or the amount with costs being deposited with the Registrar, as hereinafter provided, the Judge may order the defendant to be detained in some prison or lock-up, and to be brought from there to the Court at a time to be stated in the order, being not more than three months from the date of the order, unless he sooner gives the prescribed security or makes the said deposit.

(3) A defendant against whom a writ has issued for any amount may deposit that amount with the officer executing the writ, or with the Registrar, in lieu of bail, together with such amount for costs as may be shown on the writ; and the sum so deposited shall be paid, applied, and disposed of according to the final judgment of the Court.

285. Successful plaintiff entitled to execution, successful defendant entitled to compensation - Where the Court or a Judge hears and finally adjudicates upon the claim of a plaintiff under the power contained in the last preceding section the following provisions shall apply:-

(a) If judgment is given for the plaintiff the Court or a Judge may make an order for the immediate payment of the amount of the judgment, with costs, and execution may at once be issued and such other proceedings may be had thereon as if the judgment were a judgment obtained in the ordinary cause of procedure:

(b) If judgment is given for the defendant, the Court or a Judge may, in his discretion, award to the defendant by way of compensation any sum not exceeding one hundred dollars, and such award shall be deemed to be a judgment of the Court, and execution may issue thereon.

286. Application for writ - (1) An application for a writ of arrest and an affidavit in support thereof shall be in the form No.77.

(2) The applicant shall deposit such sum as the Judge or Registrar may think reasonable to cover the costs and expenses of arrest. Such costs and expenses shall be costs in the action.

287. Form of writ, and procedure - (1) A writ of arrest shall be in the form No.78, and may be addressed to any officer of the Court, or to any constable, either by name or by official designation.

(2) The officer or constable shall, on executing the writ, deliver to the defendant a notice, signed by the Judge or Registrar, in the form No.79.

(3) If the defendant gives bail for his attendance at the hearing, it may be by bond in the form No.80. In default of bail being given, the warrant of remand may be in the form No.81.

PART XXIX - PROCEEDINGS BY AND AGAINST EXECUTORS AND ADMINISTRATORS

288. Costs where executor sues and fails - In proceedings by an executor or administrator, if the plaintiff fails, costs awarded to the defendant shall, unless the Court otherwise orders, be levied on the goods of the plaintiff.

289. Judgment and execution against executor or administrator - (1) Where the Court gives judgment against an executor or administrator sued in his capacity as such executor or administrator, a minute shall be entered in the civil-record book that judgment is given against the defendant in that capacity.

(2) Subject to the provisions of this rule, execution on any such judgment shall be limited to assets of the estate of the deceased in the hands of the executor or administrator.

(3) In any case where the executor or administrator satisfies the Court that he has no assets, or insufficient assets, in his hands to satisfy the claim, the Court may give judgment that the amount or, as the case may require, the balance of the amount be levied on the assets of the estate which thereafter come into the hands of the executor or administrator.

(4) In any case where the executor or administrator unnecessarily denies the claim or unsuccessfully alleges that he has no assets, then, in addition to the other remedies available, the Court may order that the amount awarded for costs be levied against the executor or administrator personally.

290. Assets after judgment - Where judgment has been given against an executor or administrator that the amount be levied upon assets of the estate which should thereafter come into the hands of the defendant, as executor or administrator, to be administered, the plaintiff may make an application to the Judge on notice, and if it appears that since the judgment any assets of the estate have come into the hands of the executor or administrator the Judge may make an order in the form No.82. A copy of the order shall be served on the executor or administrator.

PART XXX - PROBATE AND LETTERS OF ADMINISTRATION

291. Form of probate - Probate of any will may be granted by the Court in form 83 in the Second Schedule hereto.

292. Form of letters of administration - Letters of administration of the estate of an intestate may be granted by the Court in form 84 in the Second Schedule hereto.

293. Form of letters of administration with will annexed - Letters of administration with the will annexed may be granted by the Court in form 85 in the Second Schedule hereto.

294. Form of administration bond - The security to be given by an administrator may be in form 86 in the Second Schedule hereto.

295. Grant to attorney - In the case of a person residing out of the Cook Islands, administration, with or without a will annexed, may be granted to his attorney acting under a power of attorney.

296. Administration account - Every executor or administrator shall, within twelve months after the grant of probate or letters of administration, or within such further period as the Court on application may direct, lodge with the Registrar a full and distinct account in writing of his administration of the estate. The account shall be verified by affidavit.

297. Default in filing account - If an executor or administrator makes default in filing such an account within the time aforesaid, or if any account so filed is insufficient, the Court may on the application of any person interested, or on the application of the Registrar, order the executor or administrator to file an account or a further account within such time as the Court in such order appoints, and disobedience to such order shall be a contempt of Court.

PART XXXI - GENERAL

298. Fees of Court - (1) The fees to be taken in respect of proceedings under these rules shall be those specified in the Third Schedule hereto.

(2) With respect to any proceedings taken in any Court or before any Judge under or by virtue of any enactment other than the Act, the following provisions shall apply:-

(a) If the enactment prescribes the fee payable in respect thereof, that fee shall be taken instead of any fee that would otherwise be payable in respect thereof under these rules:

(b) If the enactment contains no provision for the payment of any fee in respect thereof, or provides that no fee shall be payable, no fee shall be taken under these rules in respect thereof.

299. Allowances to witnesses - (1) Every witness attending Court on a witness summons, and every other person giving evidence in the cause of proceedings, shall be entitled as against the party calling him to a sum for his expenses and loss of time:

Provided the Court may disallow the whole or any part of such sum.

(2) The fees and expenses allowable to witnesses shall be in accordance with the scale specified in the Fourth Schedule hereto.

300. Costs - (1) Subject to the provisions of these rules, the costs of any proceedings shall be paid by or apportioned between the parties in such manner as the Court thinks fit; and in default of any special direction such costs shall abide the event of the proceedings.

(2) The amount of costs awarded shall be ascertained and stated in the judgment or order.

(3) The costs on any judgment or order carrying costs shall include any moneys paid or payable for Court fees under the Third Schedule hereto, for allowances to witnesses or fees under the Fourth Schedule hereto, or for other necessary payments or disbursements, together with solicitors' costs on the appropriate scale prescribed in the Fifth Schedule hereto.

(4) The Court may in its discretion disallow the whole or any part of any costs.

(5) Nothing in these rules shall be construed to deprive an executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings of any right to costs out of a particular estate or fund to which he would otherwise be entitled under any Act or rule of law.

301. Court may award expenses to parties - The Court may in its discretion award to any party -

(a) For his attendance to prosecute or defend any proceedings (whether or not he is called as a witness), fees, allowances, and expenses in accordance with the scales prescribed in the Fourth Schedule hereto in all respects as if he were a witness attending upon a witness summons:

(b) For service of any summons, application, notice, or other process in connection with the proceedings, the actual and reasonable expenses of such service.

302. Enforcement of order for costs - An order for the costs may be enforced in the same manner as any other order of the Court for the payment of money.

Provisions as to Scales of Costs

303. Amount on which costs allowed - Subject to Rules 304, 305 and 309 hereof, the scale of costs in an action for the recovery of a sum of money only shall be determined -

(a) As regards the costs of the plaintiff, by the amount recovered:

(b) As regards the costs of the defendant, by the amount claimed:

(c) As regards costs payable to a third party, by the amount claimed against him:

(d) As regards costs payable by a third party, by the amount recovered against him.

304. Counter-claim - (1) Subject to the next succeeding subsection, Rule 303 hereof shall apply to a counter-claim as it applies to a claim.

(2) Where in one action a claim for a sum of money only and a counter-claim for a sum of money only are heard, the following provisions shall apply:-

(a) If the plaintiff is awarded costs on both claim and counter-claim, the costs shall be on the scale applicable to the amount which he recovers on the claim and to the amount claimed under the counter-claim:

(b) If the defendant is awarded costs on both claim and counter-claim, the costs shall be on the scale applicable to the amount which he recovers on the counter-claim and to the amount claimed under the claim:

(c) If one party is awarded costs on the claim and the other party on the counter-claim, the costs shall be on the scale applicable to each party under Rule 303 hereof.

305. Money paid into Court, or confession filed - (1) Where money in Court, or a confession, is accepted in satisfaction of the cause of action in respect of which it was paid or given, and another cause of action remains to be heard, then, subject to the next succeeding subsection, the costs incurred after the date of payment into Court or confession shall be determined by the amount recovered or claimed in respect of the cause of action remaining to be heard.

(2) Where money is paid into Court without a plea of tender, or a confession is filed, and the plaintiff does not accept it in satisfaction of his claim or of the cause or causes of action in respect of which it was paid or filed, the costs incurred after the date of payment into Court or confession shall, unless the Court otherwise orders, be allowed on the scale applicable to the amount remaining in dispute or unpaid.

(3) Nothing in this rule shall limit the discretion of the Judge as to the scale in any case to which Rule 310 hereof applies.

306. Recovery of chattels, etc. - The solicitors' costs in an action for the recovery of property, other than land, shall be on the scale applicable to an action for the recovery of a sum of money equal to the value of the property plus the amount of the damages (if any). A Judge may determine the value of the property for the purposes of this rule.

307. Interpleader - (1) The solicitors' costs in interpleader proceedings under an execution shall be on the scale applicable to an action for the recovery of a sum of money, and shall be determined -

(a) As regards the costs of the claimant, by the amount of the value of the goods to which his claim is allowed, plus the amount of the damages (if any) awarded:

(b) As regards the costs of the execution creditor, by the amount of the value of the goods seized plus the amount of damages (if any) claimed:

(c) As regards the costs of the officer of the Court by the amount of damages claimed:

(2) In other interpleader proceedings, the Court or a Judge may award costs on such scale as he thinks fit.

308. Garnishee proceedings - Where in garnishee proceedings the sub-debtor disputes the debt and the issues are stated or the case heard, the costs shall be on the scale applicable to an action for the recovery of a sum of money, and shall be determined -

(a) As regards the costs of the judgment creditor, by the amount recovered against the sub-debtor:

(b) As regards the costs of the sub-debtor or the judgment debtor, by the amount claimed by the judgment creditor.

309. Novel or important question - In any proceedings in which a Judge certifies that the determination of the question in dispute is of importance to a class or body of persons or involves a novel or difficult question of law, or that the decision of the Court affects issues between the parties beyond those directly involved in the proceedings or is of general or public interest, he may, whatever the amount of the claim may be, allow such further sum for costs, in addition to the prescribed costs, as he thinks fit.

310. Other proceedings - In any proceedings to which Rules 306 to 308 hereof do not apply, the Judge may award costs on such scale as he thinks fit.

PART XXXII - GENERAL PROVISIONS

311. Directions to officer of the Court - A Judge may, on the application of any officer of the Court give such directions relating to the service or execution of any warrant, writ, or other process as he thinks fit.

312. Powers of Registrar - (1) Where the Registrar is authorized under any Act or these rules to hear and determine any proceedings or to exercise any other jurisdiction, he shall, within the limits of that authority and subject to any right of appeal to or review by a Judge under the Act or these rules, have all the powers of the Judge; and, any order made by the Registrar shall have the same effect, and be enforceable in the same manner, as if it were an order of a Judge.

(2) Any order made by a Judge may be signed by the Registrar, in his own name and description, and authenticated with the seal of the Court.

313. Leave to Registrar to exercise jurisdiction - Where by the Act or these rules the leave of a Judge is required for the exercise of any power or jurisdiction by the Registrar, such leave may be either general or special.

314. Notices - All notices required by these rules shall be in writing unless expressly authorized by the Court to be given orally.

315. Computation of time - (1) Where anything is required by these rules to be done within a specified period of or after the happening of a particular event, the period shall be computed from the end of the day of which the event happens unless the period is expressed to be inclusive of that day.

(2) Where anything is required by these rules to be done within a period not exceeding forty-eight hours, or where a period not exceeding forty-eight hours is required by these rules to elapse between the doing of an act and the happening of a particular event, no Saturday or Sunday, and no day on which the Court office is not open, shall be included in the computation for that period.

(3) Where the time prescribed for doing any act or taking any proceeding expires, on a Saturday or Sunday or any other day on which the Court office is not open, and by reason thereof the act or proceeding cannot be done or taken on that day, the act or proceeding shall be deemed to be in time if done or taken on the next day on which the Court office is open.

316. Solicitor acting for party - (1) Where a solicitor signs on behalf of a plaintiff the plaint-note or the statement of claim required for the entry of a plaint, or signs on behalf of a defendant a memorandum of acceptance of service of a summons, or a defence, counter-claim, or admission, the solicitor shall be considered the solicitor for the plaintiff or defendant, as the case may be, until the action is finally concluded or notice of change of solicitor is given in accordance with this rule.

(2) Where a party who has acted in person appoints a solicitor to act for him, he or the solicitor shall give notice of the appointment to the Registrar and to every other party, with the solicitor's address for service.

(3) Where a party for whom a solicitor has acted desires to change his solicitor, he or the new solicitor shall give notice to the Registrar and to every other party of the appointment of the new solicitor, with the new solicitor's address for service.

(4) Where a party for whom a solicitor has acted desires to act in person, he shall give notice to the Registrar and to every other party stating his intention to act in person and giving an address for service.

(5) Any rule which requires as many copies of a document as there are plaintiffs or defendants to be filed, served, delivered, sent, or given shall be sufficiently complied with, as regards two or more plaintiffs or defendants represented by the same solicitor, if one copy of the document is filed, served, delivered, sent, or given in respect of the plaintiffs or defendants so represented.

(6) This rule shall, with the necessary modifications, apply to matters as it applies to actions.

317. Payment of moneys in Court to solicitor or agent - (1) No person other than the solicitor on the record in respect of the proceedings shall be entitled to withdraw on behalf of any moneys paid into Court to the credit of that party unless there is lodged with the Registrar a written authority, in the form No. 87, signed by the party entitled to the moneys. No fee shall be payable on the filing of the authority.

(2) Every solicitor who withdraws any moneys on behalf of any party shall lodge his Trust Account receipt therefor with the Registrar.

318. Expense of advertisement - The expense of any advertisement in any proceedings in the Court shall be borne in the first instance by such party as the Court may direct, and shall be paid to the Registrar before the advertisement is inserted.

319. Security - Where any person is required or authorised to give security in relation to proceedings in the Court, then, subject to any express provision in any Act or rule, or to any order of a Judge -

(a) The security shall be given by a deposit of money or by a bond:
(b) The amount of the security shall be fixed by the Registrar:
(c) The person giving the security shall give it at his own expense.

320. Deposit - Where security is given by a deposit of money the following provisions shall apply:-

(a) The person giving security shall deposit the money in the Court office and shall file a memorandum signed by him or his solicitor, and approved by the Registrar, stating the conditions on which the deposit is made:
(b) The Court or a Judge may order the money to be paid out at such time and to such person as he thinks fit.

321. Bond - (1) Where security is to be given by bond, the following provisions shall apply:-

(a) The bond shall be in the form No.88, with one or more sureties to be approved by the Registrar. No solicitor or officer of the Court shall become surety on a bond:
(b) The bond shall be deposited with the Registrar until the proceedings are finally disposed of.

(2) Where a bond has been given to the Registrar to secure any obligation, and the obligation in the bond becomes enforceable, the Registrar may, by order of the Judge, assign the bond to any party entitled to the benefit thereof.

322. Duplicate of lost document - In the event of any summons, warrant, order, or other document issued by the Court being lost or destroyed a duplicate thereof may from time to time be issued upon proof, by affidavit or otherwise, to the satisfaction of the Registrar of the loss or destruction of the document.

323. Copies - A copy of any document in the custody of the Court shall be prepared by the Registrar, on payment of the prescribed fee, for any person entitled to require it.

324. Impounding documents - (1) The Court may order any document put in evidence at any stage of any proceedings to be impounded.

(2) A document which has been impounded shall not be delivered out of the custody of the Court or inspected, except on an order signed by a Judge:

Provided that upon the request in writing of a law officer of the Crown or the Crown Prosecutor the impounded documents shall be given into the custody of the law officer or Crown Prosecutor.

325. Translations - (1) All documents filed in or issued from the Court may be either in the English language or in the Maori language.

(2) Where in any proceedings a document is served on a Maori he shall be entitled, on making a request to the Registrar at any time within three days after the date of the service on him of the document, to a translation of the document into the Maori language.

(3) Where a translation is requested under subsection (2) of this rule the following provisions shall apply:-

(a) The translation shall be supplied by and at the expense of the person on whose behalf the document is issued, and shall be served on the Maori:

(b) The proceedings in respect of which the document is issued shall be stayed until the translation is so served:

(c) The document shall be deemed not to have been served until the translation is so served, unless the Court otherwise orders:

(d) Every subsequent document served on the Maori in the proceedings and every warrant issued for execution against him in the proceedings, shall be accompanied by a translation into the Maori language, unless the Court otherwise orders.

(4) Where in any proceedings a document in the English language is served on a Maori there shall be endorsed thereon the following words:-

"E tikaanga toou, ki tetai urianga o teia pepa nei, i roto i te reo Maori, me pati koe ki te Retita i roto i te toru ra i muri ake ite tae atu anga teia pepa nei kia koe.

Me ekoko, aravei vave atu i te Retita".

(5) If the Maori does not apply for a translation, the Court may at any time direct that a translation be served, and may grant any adjournment or rehearing that may be necessary in the interests of justice.

(6) The execution of any warrant against a Maori shall not be invalid by reason only of its not being accompanied by a translation into the Maori language.

(7) Every translation served under this rule shall be certified as correct by an authorized interpreter.

(8) For translating any document under this rule the interpreter may be allowed fees on the scale prescribed in the Sixth Schedule hereto. Such fees, and any additional costs of service, shall be costs in the cause.

(9) For the purposes of this rule the term "Maori" has the same meaning the term "Native" in the Cook Islands Act 1915.

PART XXXIII - JURISDICTION OF JUSTICE OF THE PEACE

326. Jurisdiction - A Justice of the Peace shall have jurisdiction -

(a) In actions for the recovery of any debt or damages not exceeding one hundred dollars ($100):
(b) In actions for the recovery of chattels not exceeding one hundred dollars ($100).

327. Appeals - (1) An appeal shall lie to a Judge of the High Court against any nonsuit or final judgment made under this Part of these rules.

(2) The Rules of the High Court 1916 (Amendment No.2) (being rules relating to Appeals from Commissioners) shall, with the necessary modifications, apply to appeals made under this rule.

PART XXXIV - MISCELLANEOUS

328. Repeals and Revocations - (1) Section 134 of the Cook Islands Act 1915 is hereby repealed.

(2) The rules specified in the First Schedule to these rules are hereby revoked to the extent indicated in that Schedule.

(3) Subject to the provisions of Rule 329 hereof, all offices, appointments, records, accounts, books, seals, certificates, plaints, summonses, applications, notices, documents, warrants, writs, judgments, orders, decisions, directions, appeals, and generally all acts of authority that originated under any of the provisions of the rules hereby revoked and are subsisting or in force at the commencement of these rules shall enure for the purposes of these rules as if they had originated under the corresponding provisions of these rules, and accordingly shall, where necessary, be deemed to have so originated.

329. Application of Rules - (1) These rules shall apply to any proceedings under the Cook Islands Act 1915, and, unless otherwise provided in any Act or rule, shall also apply to any other civil proceedings taken in the High Court or before any Judge.

(2) All proceedings in the High Court commenced before and pending or in progress on the commencement of these rules may be continued, completed, and enforced under these rules, and accordingly these rules shall, so far as practicable, apply to those proceedings. In so far as it is not practicable for any provision of these rules to be applied to any such proceedings the rules hereby revoked shall, to such extent as may be necessary, continue to apply to those proceedings.

(3) If in any proceedings to which subsection (2) of this rule applies any question arises as to the application of any provision of these rules or of the rules hereby revoked, the Court may, either on the application of any party to the proceedings or of its own motion, determine the question and make such order thereon as it thinks fit.

FIRST SCHEDULE (R.329)

Rules of the High Court of the Cook Islands 1916. Revoked by Rule 329.

Rules:		
	1 - 78	(both inclusive)
	83 to 86	(" ")
	100	
	101	
	102 - 107	(" ")

SECOND SCHEDULE

R.7 **FORMS** H.C.1.

GENERAL FORM OF TITLE OF PROCEEDINGS

(Where not otherwise provided in this Schedule)

Actions:- Plaint No. .....

In the High Court
held at.....

Between

....., of....., Occupation,
Plaintiff,

and

....., of....., Occupation,
Defendant.

Matters:-

In the High Court O.A. No. .....
held at.....

In the matter of [Here state the title of any Act, by which the Court is given power to entertain the proceedings]

and

In the matter of [Here refer to the particular matter in respect of which the proceedings are brought]

Between

....., of....., Occupation,
Applicant,

and

....., of....., Occupation,
Respondent.

(Or as the case may be.)

R.14 **PLAINT-BOOK** H.C.2.

High Court at.....

Date of Filing	No.	Plaintiff	Defendant	Claim

SECOND SCHEDULE - continued

R.15 H.C.3.

ORIGINATING-APPLICATIONS BOOK

High Court at.....

Date of Filing	No.	Applicant	Respondent	Nature of Application

R.17 CIVIL-RECORD BOOK H.C.4.

High Court at.....

Date	No.	Plaintiff	Defendant	Claim	Judgment				
					For Whom	Amount	Court Costs	Witnesses' Allowances	Solicitor's Costs
				$.c.		$.c.	$.c.	$.c.	$.c.

R.18 WARRANT-BOOK H.C.5.

High Court at.....

Warrant No.	Plaint No.	Date of Issue	Plaintiff	Defendant	Nature of Warrant	Amount	Initials of Baliff, and Date	Foreign Court to which sent	Date sent	Date of Return	Result	Amount Received
						$. c.						$. c.

SECOND SCHEDULE - continued

R.19 FOREIGN-PROCESS BOOK H.C.6.

High Court at.....

Received from	Date of Receipt	Plaintiff	Defendant	Date of Document	Nature issued for	Initials of Bailiff and Date of Receipt	How Dealt with	Date of Return to Foreign Court

R.20 SEARCH-BOOK H.C.7.

Search of.....

Signature of person making search: .....

Initials of Clerk: .....

R.47 (2) H.C.8.

UNDERTAKING BY NEXT FRIEND OF INFANT TO BE RESPONSIBLE FOR COSTS

(General title - Form 1)

I, the undersigned, ... of ..... /Occupation/ being the next friend of ..... an infant (or a mentally defective person) the plaintiff (or the claimant in an interpleader proceeding) in this action, hereby undertake to be responsible for the costs of the defendant (or plaintiff) in the manner following - viz.: If the said plaintiff (claimant) fails to pay to the defendant (plaintiff) when and in such manner as the Court orders all such costs of such action as the Court directs him to pay to the said defendant (plaintiff), I will forthwith, after notice of such default, pay the same to the Registrar of the Court.

Dated at....., this.....day of....., 19.....

.....
Next Friend of Plaintiff
(or Claimant)

SECOND SCHEDULE - continued

Signed by the above-named ..... in my presence:-

.....
Registrar
Justice of the Peace.

R.49 APPLICATION ON BEHALF OF INFANT OR MENTALLY DEFECTIVE PERSON FOR APPOINTMENT OF GUARDIAN AD LITEM. H.C.9.

(General title - Form 1)

I, the undersigned, ..., of ....., /Occupation/, hereby apply to have myself (or....., of....., /Occupation/) appointed to act as guardian ad litem to the defendant in this action, who is an infant (or a mentally defective person).

Dated at....., this..... day of....., 19.....

Signed: .....

I, the above-named,.....(being a person who has no interest in the matter in question in this action adverse to that of the defendant), hereby consent to be appointed and to act as guardian ad litem to the above-named defendant.

Dated at....., this..... day of....., 19.....

Signed: .....

Signed by the above-named.....in my presence:-

.....
Registrar
Justice of the Peace

R.67 (1) PLAINT-NOTE H.C.10.

(General title - Form 1)

Class of action:.....*

THE plaintiff claims the relief set out in the statement of claim filed herein and requests that an ordinary summons be issued forthwith.

Dated at....., this..... day of.....,19.....

Date of filing: .....

.....
Plaintiff.

SECOND SCHEDULE - continued

Amount of Stamps affixed	Nature of Fee	Date of Issue
	Summons .. .. Service fee	

*Specify "Ordinary action" or "Default action" + Delete as required

/Endorsement on plaint-note/

Plaint No.....

19.....

In the High Court at.....

ORDINARY ACTION

Plaintiff

$

(or.....)

v.

Date of hearing (if any):.....

Defendant

JUDGMENT FOR PLAINTIFF /DEFENDANT/ BY CONSENT, CONFESSION

On.....

	$. c.
For	.....
Costs	.....
Witnesses' expenses	.....
Solicitor's fee	.....
	$....

(Name of Judge /or Registrar/

Mr.....for Plaintiff

Mr.....for Defendant

PARTICULARS OF SERVICE

Outward		Inward		Plaintiff or Solicitor notified of Result, and Date
	Date	Date	Result	
To local court officer To High Court (police-station) at By registered post For private service				

SECOND SCHEDULE - continued

R.67 (2) H.C.11.

ORDINARY SUMMONS

(General title - Form 1)

YOU are hereby summoned to attend at the High Court to be held at..... on ..... day, the..... day of..... 19...., at the hour of..... in the forenoon, to answer the plaintiff's claim, the particulars of which are set out in the statement of claim annexed hereto.

Dated at ....., this.....day of..... 19.....

.....
Registrar.

To the Defendant

NOTICES TO DEFENDANT

(These notices should be read carefully)

If the claim is for money only and you admit the whole claim, you may, within days of service of this summons on you, inclusive of the day of service, either -

(a) File in the office of the Court and serve on the plaintiff a confession for the full amount and the costs noted on this summons; or

(b) Pay into Court the full amount of the claim and the costs noted on this summons -

and no further costs will be incurred. Note particularly that the Court cannot accept cheques.

	$. c.
Claim	.....
Cost of summons	.....
Service Fee	.....
Solicitor's fee for preparing statement of claim	.....

If you dispute the whole of the claim, you should, within days of service of this summons on you, inclusive of the day of service, file in the office of the Court and serve on the plaintiff a notice of intention to defend.

If you dispute part of the claim, you may, within days of service of this summons on you, inclusive of the day of service, either -

(a) File in the office of the Court and serve on the plaintiff a confession for the part you admit; or

(b) Pay the part you admit into Court, and serve notice of payment into Court on the plaintiff.

You should also, within the same period, file in the office of the Court and serve on the plaintiff a notice of intention to defend in respect of the part of the claim you dispute.

SECOND SCHEDULE - continued

If you have a counter-claim, you should, within days of service of this summons on you, inclusive of the day of service, file in the office of the Court and serve on the plaintiff a statement of such counter-claim.

If you do not file a notice of intention to defend or a counter-claim the plaintiff may proceed with his "claim and" judgment may be given against you for the amount of the plaintiff's claim and his costs.

Forms of notice of intention to defend, confession, and notice of payment into Court may be obtained at any office of the Court. No fee is payable on the filing of these documents.

The filing of a notice of intention to defend or a counter-claim does not relieve you from attendance at the Court on the day named in the summons.

If you do nothing, the plaintiff may have judgment entered against you, and may proceed to enforce that judgment.

Failure to observe the time-limits mentioned in these notices may add to the costs.

/A printed form of affidavit of service (see form 20) is to be endorsed hereon./ The following information is printed in the left-hand margin of the form:-

The office of the Court is open to the public from..... to.....on Mondays to Fridays inclusive.

If you are in doubt, consult the Registrar immediately.

R.67 (2) ORDINARY SUMMONS H.C.12.

(Where no money is claimed)

(General title - Form 1)

YOU are hereby summoned to attend at the High Court to be held at.....on.....day, the.....day of.....,19....., at the hour of.....in the forenoon, to answer the plaintiff's claim, the particulars of which are set out in the statement of claim annexed hereto.

If you dispute the claim or have a counter-claim, you should, within days after the service on you of this summons, inclusive of the day of service, file in the Court and serve on the plaintiff a notice of intention to defend, or a statement of your counter-claim. Forms of notice of intention to defend are obtainable at any office of the Court.

SECOND SCHEDULE - continued

R.67 (2) H.C.11.

ORDINARY SUMMONS

(General title - Form 1)

YOU are hereby summoned to attend at the High Court to be held at..... on ..... day, the..... day of..... 19...., at the hour of..... in the forenoon, to answer the plaintiff's claim, the particulars of which are set out in the statement of claim annexed hereto.

Dated at ....., this.....day of..... 19.....

.....
Registrar.

To the Defendant

NOTICES TO DEFENDANT

(These notices should be read carefully)

If the claim is for money only and you admit the whole claim, you may, within days of service of this summons on you, inclusive of the day of service, either -

(a) File in the office of the Court and serve on the plaintiff a confession for the full amount and the costs noted on this summons; or

(b) Pay into Court the full amount of the claim and the costs noted on this summons -

and no further costs will be incurred. Note particularly that the Court cannot accept cheques.

	$. c.
Claim	.....
Cost of summons	.....
Service Fee	.....
Solicitor's fee for preparing statement of claim	.....

If you dispute the whole of the claim, you should, within days of service of this summons on you, inclusive of the day of service, file in the office of the Court and serve on the plaintiff a notice of intention to defend.

If you dispute part of the claim, you may, within days of service of this summons on you, inclusive of the day of service, either -

(a) File in the office of the Court and serve on the plaintiff a confession for the part you admit; or

(b) Pay the part you admit into Court, and serve notice of payment into Court on the plaintiff.

You should also, within the same period, file in the office of the Court and serve on the plaintiff a notice of intention to defend in respect of the part of the claim you dispute.

The filing of either of these documents does not relieve you from appearing in Court on the day named, but delay in filing may add to the costs.

Dated at....., this..... day of....., 19.....

.....
Registrar.

To the Defendant.

	$. c.
Cost of summons	.....
Service fee	.....
Solicitor's fee for preparing statement of claim	.....
	____

/A printed form of affidavit of service (see form 20) is to be endorsed hereon./ The following information is printed in the left-hand margin of the form:-

The office of the Court is open to the public from..... to ..... on Mondays to Fridays inclusive.

If you are in doubt, consult the Registrar immediately.

R.67 (2) SUMMONS FOR POSSESSION OF SPECIFIC CHATTELS H.C.13.

(General title - Form 1)

YOU are hereby summoned to attend at the High Court to be held at..... on..... day, the..... day of....., 19....., at the hour of..... in the forenoon, to answer the plaintiff's claim for possession of..... (certain chattels) or the sum of.....dollars.....cents, being the value thereof (and the sum of.....dollars.....cents as compensation for the wrongful detention thereof (or damage thereto) -

Particulars of the plaintiff's claim are contained in the statement of claim annexed hereto.

Dated at.....,this.....day of.....,19.....

.....
Registrar.

To the Defendant.

NOTICES TO DEFENDANT

(These notices should be read carefully.)

If you admit the whole of the plaintiff's claim, you may, within days of service of this summons on you, inclusive of the day of service, either -

(a) Deliver possession of the chattels to the plaintiff and pay into Court the amount of his money claim (if any) and the costs noted on this summons; or

(b) File in the office of the Court and serve on the plaintiff a confession -

	$. c.
Value of chattels	.....
Money claim (if any)	.....
Cost of summons	.....
Service fee	.....
Solicitor's fee for preparing statement of claim	.....
	———

and no further costs will be incurred. Note particularly that the Court cannot accept cheques.

If you dispute the whole of the claim, you should, within days of service of this summons on you, inclusive of the day of service, file in the office of the Court and serve on the plaintiff a notice of intention to defend.

If you dispute part of the claim, you may, within days of service of this summons on you, inclusive of the day of service, either -

(a) File in the office of the Court and serve on the plaintiff a confession for the part you admit; or

(b) Deliver to the plaintiff the chattels to which you admit his claim, and pay into Court the part of his money claim (if any) you admit, and serve notice of payment into Court on the plaintiff.

You should also, within the same period, file in the office of the Court and serve on the plaintiff a notice of intention to defend in respect of the part of the claim you dispute.

If you have a counter-claim, you should, within days of service of the summons on you, inclusive of the day of service, file in the office of the Court and serve on the plaintiff a statement of such counter-claim.

If you do not file a notice of intention to defend or a counter-claim, judgment may be given against you for the plaintiff's claim, and his costs.

Forms of notice of intention to defend, confession, and notice of payment into Court may be obtained at any office of the Court.

SECOND SCHEDULE - continued

No fee is payable on the filing of these documents.

The filing of a notice of intention to defend or a counter-claim does not relieve you from attendance at the Court on the day named in the summons.

If you do nothing, the plaintiff may have judgment against you, and may proceed to enforce that judgment.

Failure to observe the time-limits mentioned in these notices may add to the costs.

/A printed form of affidavit of service (see form 20) is to be endorsed hereon./ The following information is printed in the left-hand margin of the form:-

The office of the Court is open to the public from..... to.....on Mondays and Fridays inclusive.

If you are in doubt, consult the Registrar immediately.

R.76 (2) H.C.14.

SUMMONS FOR RECOVERY OF LAND

(General title - Form 1)

YOU are hereby summoned to attend at the High Court to be held at..... on.....day, the.....day of....., 19....., at the hour of.....in the forenoon, to answer the plaintiff's claim to recover.....situate at....., on the grounds stated in the statement of claim annexed hereto, and also to recover the sum of ....., mentioned in the said statement of claim.

Dated at.....,this.....day of....., 19.....

.....
Registrar.

To the Defendant

NOTICES TO DEFENDANT

(These notices should be read carefully.)

If you dispute the whole or part of the claim, you should, within days of service of this summons on you, inclusive of the day of service, file in the office of the Court and serve on the plaintiff a notice of intention to defend, for which forms may be obtained at any office of the Court.

	$. c.
Claim	.....
Cost of summons	.....
Service fee	.....
Solicitor's fee for preparing statement of claim	.....

If you dispute part only of the money claim, you may pay into Court the amount admitted. Note particularly that the Court cannot accept cheques.

Filing of the notice of intention to defend does not relieve you from appearing on the day named in the summons.

No fee is payable on the filing of the notice.

If you have a counter-claim, you should, within days of service of the summons on you, inclusive of the day of service, file in the office of the Court and serve on the plaintiff a statement of such counter-claim. The filing of the counter-claim does not relieve you from attendance at the Court on the day named in the summons.

If you admit the whole or part of the claim and desire time for giving possession, you should, within days of the service of the summons upon you, inclusive of the day of service, send to the Registrar a confession (for which a form may be obtained from any Court office) and forward a copy of your confession to the plaintiff.

Failure to observe the time-limit mentioned in these notices may add to the costs.

Take notice that if you hold the above-mentioned premises as the tenant of any person other than the plaintiff you must give notice to that person of this summons immediately it comes to your knowledge.

/A printed form of affidavit of service (see form 20) is to be endorsed hereon./ The following information is printed in the left-hand margin of the form:-

The office of the Court is open to the public from..... to.....on Mondays to Fridays inclusive.

If you are in doubt, consult the Registrar immediately.

R.68 (3) R.126 (1) H.C.15.

Ex parte APPLICATION TO HIGH COURT OR TO A JUDGE

(General title - Form 1)

THE above-named plaintiff (defendant, or as the case may be) will apply to the High Court (or to a Judge) at....., on /To be filled in by the Registrar/ ..... day, the..... day of....., 19....., at ..... o'clock in the ..... noon, for an order that /State precisely the nature of the order sought/ on the grounds /Specify grounds on which application is

made, following the wording of the Act or regulation as closely as may be, and referring to the Act or authority relied on.7

Signature: .....

To the Registrar of the High Court at.....
This application is filed by....., whose address for service is at.....

R.68 (3); R.126 (1) H.C.16.

NOTICE OF APPLICATION TO HIGH COURT OR TO JUDGE

(General title - Form 1)

TAKE notice that the above-named plaintiff (defendant, or as the case may be) will apply to the High Court (or to a Judge) at..... on /To be filled in by the Registrar7 ..... day the..... day of....., 19....., at..... o'clock in the .....noon, for an order /State precisely the nature of the order sought7 on the grounds /Specify grounds on which application is made, following the wording of the Act or regulation as closely as may be, and referring to the Act or authority relied on.7

Signature: .....

To the Registrar of the High Court at.....
and
To the above-named: .....
This notice of application is filed by.....,whose address for service is at.....
The following information is printed in the left-hand margin of the form:-
If in doubt, consult the Registrar immediately.

R.81 NOTICE OF SERVICE OF SUMMONS H.C.17.

(General title - Form 1)

TAKE notice that the defendant was served with the summons issued in this action on.....

.....
Registrar.

...../...../19.....

To the Plaintiff.

SECOND SCHEDULE - continued

R.82 (1) H.C.18.

BAILIFF'S NOTICE OF NON-SERVICE OF SUMMONS

(General title - Form 1)

THE summons in this action has not been served, for the following reason: .....

Dated at....., this..... day of.....,19.....

.....

Court Officer or Constable

To the Registrar of the High Court at.....

R.82 (2) H.C.19.

NOTICE OF NON-SERVICE OF SUMMONS

(General title - Form 1)

TAKE notice that the summons in this action has not been served for the following reason: .....

.....

Registrar.

...../...../19....

To the Plaintiff.

R.84 (1) H.C.20.

AFFIDAVIT OF SERVICE

I, ..., of....., /Occupation/, do swear that I served..... with a summons (originating application, or as the case may be), a true copy of which is within written (or is hereunto annexed) marked "A" (together with a copy of the statement of claim) (or as the case may be) which is hereunto annexed marked "B"), by delivering the same to him personally at....., on the..... day of....., 19..... (or by sending the same to the said..... by registered letter (numbered.....) addressed to him at his last known or usual place of abode - namely, ..., on the..... day of....., 19.....; and I attach hereto a receipt for such registered letter given to a Post officer and purporting to be signed by the said..... on the..... day of....., 19.....) (or by delivering the same at..... on the ..... day of ....., 19...., to ....., who stated that he was a partner in the firm of ..... (or who carries on)

SECOND SCHEDULE - continued

(or who stated that he carried on) business in the name of the firm of.....)
(or by leaving the same on the ..... day of ....., 19....., at ....., the registered office of ....., with ....., the managing director (or as the case may be) of the said company (or as the case may be) (or, as the case may be, setting out the mode of service, and annexing extracts from newspapers, etc., where service by advertisement has been authorized).

Signature of deponent: .....

Sworn at....., this..... day of....., 19 ....., before me -

.....
Registrar
Justice of the Peace
Solicitor

R.102 (1) H.C.20.

CONFESSION OF CLAIM

I, the above-named defendant, do hereby confess that the sum of $....., the amount claimed (or the sum of $....., being part of the amount claimed) together with costs $..... (as set out in the statement appended hereto) is due to the plaintiff from me.

Dated at....., this..... day of....., 19.....

Signed in the presence of -

.....
Registrar
Justice of the Peace
Solicitor.

.....
Defendant

	$. c.
Amount of claim confessed	.....
Court fees	.....
Solicitor's fee	.....
	.....

SECOND SCHEDULE - continued

To the Registrar of the High Court at .....

and

To the above-named Plaintiff.

I, the above-named plaintiff, accept this confession in satisfaction of my claim, and I request that judgment be entered accordingly.

.....
Plaintiff.

R.102 (1) H.C.21.

CONFESSION OF CLAIM FOR RECOVERY OF LAND OR CHATTELS

(General title - Form 1)

I, THE above-named defendant, do hereby confess and admit the plaintiff's right to immediate possession of the land (or chattels) mentioned in the statement of claim in the action, and I will give up possession of the same on or before the ..... day of ..... 19 ....

I further confess that the sum of $....., the amount claimed (or the sum of $ ....., being part of the amount claimed), together with costs $ ..... (as set out in the statement appended hereto), is due to the plaintiff from me (and I have paid into Court $..... in satisfaction of the plaintiff's claim and costs).

Dated at ....., this ..... day of ....., 19 .....

Signed in the presence of -

....
Registrar Defendant
Justice of the Peace
Solicitor.

	$. c.
Amount of claim confessed	.....
Court fees	.....
Solicitor's fee	.....
	.....

I, the above-named plaintiff, accept this confession in satisfaction of my claim, and I request that judgment be entered accordingly.

.....
Plaintiff.

SECOND SCHEDULE - continued

R.103 (1) H.C.22.

NOTICE OF INTENTION TO DEFEND

(General title - Form 1)

I, THE above-named defendant, hereby give notice that I intend to defend this action.

(If the defendant intends to raise the defence of infancy, Statute of Limitations, or discharge in bankruptcy, he must give notice thereof to the Court and to the plaintiff. The space below may be used for this purpose. If an intention to set up such a defence is not indicated in this form or by separate notice, the defendant will not afterwards be permitted to set up that defence except by leave of the Court granted on special grounds, and subject to such terms as to costs and otherwise as the Court thinks fit.)

.....

.....

Dated at ....., this ..... day of ....., 19 ....

.....
Defendant.

To the Registrar of the High Court at.....
and
To the above-named Plaintiff.
My address for service is at.....

R.115 (1) H.C.23.

NOTICE OF PAYMENT INTO COURT

(General title - Form 1)

TAKE notice that I, the above-named defendant (or I, ..., one of the above-named defendants), have paid into Court the sum of $..... in satisfaction of the claim in this action (or in satisfaction of the cause of action for.....)

.....
Defendant.

To the Registrar of the High Court at.....
and
To the Plaintiff.

SECOND SCHEDULE - continued

R.120 (3) H.C.24.

THIRD-PARTY NOTICE

In the High Court held at..... Plaint No.....

Between

....., Plaintiff

and

....., Defendant

and

....., Third Party.

TAKE notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant $..... for ....., as appears by the statement of claim, a copy of which is annexed to the summons, which is delivered herewith.

The defendant claims against you -

(a) That he is entitled to contribution from you to the extent of.....; or

(b) That he is entitled to be indemnified by you against liability in respect of..... or

(c) That he is entitled to the following relief or remedy relating to or connected with the original subject-matter of the action, namely: .....; or

(d) That the following question or issue should properly be determined as between the plaintiff and the defendant and the third party, namely: .....

The grounds of the defendant's claim against you are: .....

And take notice that if you dispute the plaintiff's claim against the defendant or the defendant's claim against you, you must, within days of service of this notice on you, inclusive of the day of service, file in the office of the Court at ....., and serve on the plaintiff and the defendant at their respective addresses for service a notice of intention to defend, for which a form may be obtained from any office of the Court. In default of your so doing, you will be deemed to admit -

(1) The plaintiff's claim against the defendant; and

(2) The defendant's claim against you; and

(3) Your liability to contribute to the extent claimed or indemnify the defendant):

(4) The defendant's right to the relief or remedy claimed in paragraph (c) above; and

(5) The validity of any judgment in the action.

And you are hereby summoned to attend at the High Court at....., on.....day, the..... day of....., 19...., at the hour of..... in the forenoon, when the plaintiff's claim against the defendant, and the defendant's claim against you, will be heard and determined. In default of your appearing the action may be heard and determined in your absence, and you will be bound by the judgment in the action, which may be enforced against you.

Dated at....., this ..... day of ....., 19....

.....
Registrar.

To the above-named Third Party.

This notice is filed by ..... the defendant, whose address for service is at .....

The plaintiff's address for service is shown on the statement of claim which is delivered herewith.

R.139 (2) H.C.25.

ORDER FOR DISCOVERY OF DOCUMENTS

(General title - Form 1)

IT is ordered that the plaintiff (defendant, or as the case may be) do within days from the service of this order upon him answer on affidavit stating what documents are or have been in..... possession or power relating to the matters in question in these proceedings, and return such affidavit for filing, and deliver a copy thereof to the defendant (or as the case may be), and that the costs of and incidental to this order be reserved

Dated at....., this..... day of....., 19....

.....
Registrar.

To the Plaintiff (Defendant).

SECOND SCHEDULE - continued

R.139 (3) H.C.26.

AFFIDAVIT OF DOCUMENTS

(General title - Form 1)

I,....., of ..... /Occupation7, the defendant (or as the case may be) in this action, make oath and say as follows:-

(1) I have in my possession or power the documents relating to the matters in question in these proceedings set forth in the first and second parts of the First Schedule hereto:

(2) I object to produce the said documents set forth in the second part of the said First Schedule hereto:

(3) That /Here state upon what grounds the objection is made and verify the facts as far as may be7:

(4) I have had, but have not now, in my possession or power the documents relating to the matters in question in these proceedings set forth in the Second Schedule hereto:

(5) The last-mentioned documents were last in my possession or power on .....

(6) That /Here state what has become of the lastmentioned documents, and in whose possession they now are7:

(7) According to the best of my knowledge, information, and belief, I have not now and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitor or agent, or of any other person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever relating to the matters in question in this action, or any of them, or wherein any entry has been made relative to such matters or any of them, except the documents set forth in the First and Second Schedule hereto.

FIRST SCHEDULE

Part 1

Part 2

SECOND SCHEDULE

Signature of Deponent:.....

SECOND SCHEDULE - continued

Sworn at ....., this ..... day of ....., 19 ....., before me -

.....
Registrar.
Justice of the Peace
Solicitor

R.140 (1) H.C.27.

NOTICE TO PRODUCE DOCUMENTS FOR INSPECTION

(General title - Form 1)

TAKE notice that the defendant (plaintiff, or as the case may be) requires you to produce for his inspection the following documents:-

/Describe documents required/.

Dated at....., this ..... day of ....., 19....

.....
Defendant
(Plaintiff)

To the Plaintiff (Defendant)

R.152 H.C.28.

NOTICE TO ADDED OR SUBSTITUTED DEFENDANT

(General title - Form 1)

TAKE notice that by order of the Court, dated the ..... day of ....., 19....., a copy of which order is hereunto annexed, together with a copy of the summons and statement of claim in the action, you were ordered to be added as one of the defendants (or substituted as a defendant).

And further take notice that the hearing has been adjourned to the ..... day of....., 19....., at..... o'clock in the forenoon; and if you do not then attend at the High Court....., such judgment will be given as the Court thinks fit.

Dated at....., this ..... day of....., 19....

.....
Registrar.

(You are advised to read carefully the notices printed on the summons which is delivered to you herewith.)

To ....., of ....., /Occupation/.

The plaintiff's address for service is at ....., and the address for service of the other defendant in this action is at.....

R.156 (2) H.C.29.

NOTICE IN ACTION FOR RECOVERY OF LAND THAT A PERSON NOT ORIGINALLY A DEFENDANT WILL APPEAR AND DEFEND

(General title - Form 1)

TAKE notice that....., of....., /Occupation/, has filed an affidavit, a copy of which is hereto annexed, and that, leave having been granted by the Court, he will appear at the hearing as a defendant.

Dated at....., this ..... day of....., 19....

.....
Registrar

To the above-named plaintiff and defendant.

This notice is issued by....., whose address for service is at.....

R.162 H.C.30.

NOTICE OF DAY OF HEARING BY COURT TO WHICH ACTION HAS BEEN TRANSFERRED

(General title - Form 1)

TAKE notice that the above action (or matter) has been transferred from the High Court at..... to this Court, and will be heard at the High Court at....., on ..... day, the ..... day of....., 19....., at ..... o'clock in the forenoon.

Dated at....., this ..... day of ....., 19....

.....
Registrar.

To the plaintiff (applicant, etc.)
and
To the defendant (respondent, etc.)
