Queensland

Supreme Court of Queensland Act 1991

RULES OF THE SUPREME COURT

Volume 1

Reprinted as in force on 5 February 1999
(includes amendments up to SL No. 338 of 1998)

Reprint No. 1D

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel

Information about this reprint

These rules are reprinted as at 5 February 1999. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland

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RULES OF THE SUPREME COURT

[as amended by all amendments that commenced on or before 5 February 1999]

1. The following rules may be cited as the Rules of the Supreme Court.

2. They shall come into operation on 1 January 1901, and shall, so far as they are applicable, apply to proceedings in the Court in all its jurisdictions, unless otherwise stated, and except so far as they are inconsistent with any provision contained in any statute or rule of court relating to proceedings in any special jurisdiction of the Court.

3. They shall also apply, so far as may be practicable, and unless otherwise expressly provided, to all proceedings taken on or after 1 January 1901, in all causes and matters then pending.

4. In pursuance of the authority conferred by Her Majesty's order in council of 15 October 1894, the *Admiralty Rules 1894*, shall be varied in manner hereinafter appearing; and the same, as so varied, are set forth in these rules in their appropriate places.

ORDER 1—INTERPRETATION

Interpretation of terms

1.(1) The rules set forth in the *Acts Interpretation Act 1954* and in the *Judicature Act 1876*, section 1 relating to the interpretation of terms, shall, except as hereinafter stated, be applied in the construction of these rules.

(2) In the construction of these rules—

"admiralty action" means any action, cause, suit, or other proceeding instituted in the Court in the exercise of the jurisdiction conferred on it by the *Colonial Courts of Admiralty Act 1890*.

"bankruptcy" includes "insolvency".

"books" includes any register and any other record of information however

compiled, recorded or stored.

"cause" includes any subsidiary or incidental proceedings arising out of or in the course of a cause.

"Central Court" see the *Supreme Court Act 1995*, section 266.

"central district" see the *Supreme Court Act 1995*, section 266A.

"central registry" means the office of the registrar of the Court at Brisbane, Rockhampton, Townsville or Cairns, as the case may be.

"district registry" means a registry for a district established under the *Supreme Court Act 1995*, part 19.

"Far Northern Court" see the *Supreme Court Act 1995*, section 266.

"far northern district" see the *Supreme Court Act 1995*, section 266A.

"Judge" means a Judge sitting in chambers.

"marshal" means the marshal of the Court in its admiralty jurisdiction, and includes a deputy marshal or assistant marshal.

"Master" means a Master of the Supreme Court appointed pursuant to the *Supreme Court Act 1861*, section 39A, and includes a person acting in the office of Master.

"mentally ill person" includes any person who has been declared by the Court to be mentally ill and incapable of managing his or her estate, and any person who is otherwise a patient as defined in the *Mental Health Act 1962*, schedule 3 and any person who, on the trial of an indictment, has been acquitted on the ground of insanity, or who, on arraignment on an indictment, has been found by a jury to be insane, and who in either case is still in confinement.

"Northern Court" see the *Supreme Court Act 1995*, section 266.

"northern district" see the *Supreme Court Act 1995*, section 266A.

"originating proceeding" means the document by which a cause or matter is originated.

"originating summons" means and includes every summons other than a summons in a pending cause or matter.

"party" includes the party's solicitor, if the party sues or appears by a solicitor.

"printing" includes typewriting and lithography and reproduction of words by any mechanical means and **"printed"** has a corresponding meaning.

"probate action" means an action relating to the grant or recall of probate or of letters of administration.

"proper officer" means an officer to be ascertained as follows—

(a) when any duty to be performed under these rules is a duty which has heretofore been performed by any officer—such officer shall continue to be the proper officer to perform the same;

(b) when under these rules any new duty is to be performed—the proper officer to perform the same shall be such officer as may from time to time be directed to do so by a Judge.

"receiver" includes a consignee or manager appointed by or under an order of the Court.

"registrar" means the registrar of the Court at Brisbane, Rockhampton, Townsville or Cairns, as the case may be, and includes a deputy registrar; or, where necessary, any registrar at a district registry.

"ship" includes every description of vessel used in navigation not propelled by oars only.

"surety" includes a company authorised by law to become a surety.

"taxing officer" means a person appointed to discharge the duties of a taxing officer, and includes—

(a) a deputy taxing officer; and

(b) in a taxing officer's absence—a court officer directed by the chief justice, central, northern or far northern judge to discharge the taxing officer's duties.

"these rules" includes the forms referred to in them, and also any rules or forms that may hereafter be made or prescribed in amendment of or addition to them.

"writing" includes printing and typewriting and other similar methods of producing words in a visible form and **"written"** has a corresponding meaning.

(3) Whenever by any statute any power or duty is conferred or imposed

upon an officer of the Court by the name of the Master in Equity or Prothonotary, such power or duty shall and may be exercised and performed by a Master or by the registrar respectively.

Currency

1A.(1) In this rule—

"Commonwealth Currency Act" means the *Currency Act 1963* (Cwlth) and any later Act of the Commonwealth that provides for a decimal currency.

"new currency" means the currency provided for by the Commonwealth Currency Act.

"old currency" means the currency provided for by the Acts repealed by the Commonwealth Currency Act.

(2) Where a reference in any of these rules or in any of the schedules to money is related to both the old currency and the new currency by the expression therein of amounts respectively in the old currency and in the new currency, then such reference shall—

(a) until and including the day before 14 February 1966—be construed as a reference to the amount expressed in the old currency; and

(b) on and 14 February 1966—be construed as a reference to the amount expressed in the new currency.

Practice incorporated in Acts by reference abrogated and repromulgated

2. In any case in which any power has heretofore been conferred upon, or practice or procedure prescribed for, the Court in any of its jurisdictions by any statute or rule of court by reference to any statute or rule of court then in force, and such lastmentioned statute or rule of court has been repealed or abrogated, and a corresponding or new power, practice, or procedure, is conferred upon the Court or prescribed by these rules, such corresponding or new power, practice, or procedure, shall be, and shall be held and deemed to have always been and to be, the power, practice, or procedure, given and prescribed by such firstmentioned statute or rule of

court, and shall hereafter be used, exercised, and acted upon, in as full and ample a manner as if such corresponding or new power, practice, or procedure, had been specially mentioned in such firstmentioned statute or rule of court, in lieu of that actually mentioned therein.

ORDER 2—COMMENCEMENT OF CIVIL PROCEEDINGS

Mode of commencement

1.(1) Causes and matters in the Supreme Court may be commenced by writ of summons, motion, petition, originating summons, or order to show cause.

(2) Causes and matters which are by any statute or rules of court required or authorised to be commenced by motion, whether on notice or ex parte, or by petition, originating summons, or order to show cause, or in any other specified manner, shall and may, respectively, be so commenced.

(3) When by any statute or rules of court any person is authorised to make any application to the Court or a Judge with respect to any matter which is not already the subject matter of a pending cause or matter, and no other mode of making the application is prescribed by the statute or rules, the application, if made to the Court, shall be made by motion, and, if made to a Judge, shall be made by originating summons.

(4) Except as aforesaid, and except as otherwise provided by any statute, all causes in the Court shall be commenced by writ of summons.

(5) Causes commenced by writ of summons are called actions.

Titles of proceedings

7.(1) Every proceeding in the Court shall be entitled ‘In the Supreme Court of Queensland’.

(2) If the proceeding is taken in the Central Court , Northern Court or Far Northern Court, the word ‘Rockhampton’, ‘Townsville’ or ‘Cairns’ shall be added, as the case requires.

(3) If the proceeding is taken in a district registry, the name of the district shall be added.

Writs how tested and dated

8.(1) Every writ of summons shall bear date on the day on which it is issued, and shall be tested in the name of the Chief Justice.

(2) If the office of Chief Justice is vacant, the same shall be tested in the name of the acting Chief Justice or if there is no acting Chief Justice in the name of the Senior Puisne Judge resident at Brisbane.

Address of suitor and of suitor's solicitor to be endorsed on originating proceeding—address for service—document exchange address—name of principal and agent

9.(1) The solicitor of a party suing by a solicitor shall endorse upon the originating proceeding, and upon every notice in lieu of service of an originating proceeding, the address of the plaintiff or petitioner, and also his or her own name or firm and place of business and telephone number and, where the solicitor has facilities for the reception of documents in a document exchange, the document exchange address and also, if his or her place of business is more than 10 km from the registry, a place to be called his or her address for service, which shall not be more than 10 km from the registry, where any proceedings in the cause or matter may be left for the solicitor.

(2) And, if such solicitor is only agent of another solicitor, the solicitor shall add to the above particulars the name or firm and place of business and telephone number and if applicable the document exchange address of the principal solicitor.

Party suing in person to endorse address for service

10. A party suing in person shall endorse upon the originating proceeding, and upon every notice in lieu of service of an originating proceeding, the party's place of residence and occupation and telephone number (if any) and also, if the party's place of residence is more than 10 km from the registry, another proper place to be called the party's

address for service, which shall not be more than 10 km from the registry, where any proceedings in the cause or matter may be left for the party.

ORDER 3—PARTIES TO ACTIONS

1. Generally

Persons claiming jointly, severally, or in the alternative may be plaintiffs

1.(1) All persons in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may be joined in an action as plaintiffs, provided that the case is such that if such persons brought separate actions some common question of law or fact would arise.

(2) However, the Court or a Judge may, in any case in which separate and distinct questions arise, order that separate pleadings be delivered, or separate trials had, or may make such other order as may be just.

(3) When several plaintiffs are joined in an action, judgment may be given for such 1 or more of them as is or are entitled to relief for such relief as he, she or they may be entitled to, without any amendment.

(4) But the defendant shall be entitled to the defendant's costs occasioned by joining as a plaintiff any person who is not entitled to relief, unless the Court or a Judge in disposing of the costs otherwise directs.

Admiralty actions for wages

2. In admiralty actions for sailors' or masters' wages, 2 or more persons claiming relief against the same person or property may be joined as plaintiffs.

Action in name of wrong plaintiff

3. When an action has been commenced in the name of the wrong person as plaintiff, or it is doubtful whether an action has been commenced in the name of the right plaintiff, the Court or a Judge may order that any other person be substituted or added as plaintiff upon such terms as may be just.

Counterclaim—misjoinder

4. When any person has been improperly or unnecessarily joined as a plaintiff in an action, the defendant shall be entitled to the same relief by way of counterclaim or set-off against the other plaintiffs or any of them, as if such person had not been so joined, notwithstanding such misjoinder or any proceeding consequent thereon.

Persons to be joined as defendants

5.(1) All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative.

(2) And judgment may be given against such 1 or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

Joinder of parties by leave

5A. Notwithstanding rules 1 and 5, but without prejudice to any of the powers of the Court or a Judge under this order, 2 or more persons may be joined together in 1 action as plaintiffs or as defendants with the leave of the Court or a Judge.

Defendant need not be interested in all the relief claimed

6. It shall not be necessary that every defendant shall be interested as to all the relief claimed in the action, or as to every cause of action included in the action; but the Court or a Judge may make such order as may be just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which the defendant has no interest.

Joinder of person severally or jointly and severally liable

7. The plaintiff may, at the plaintiff's option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any 1 contract, including parties to bills of exchange and promissory notes.

Plaintiff in doubt as to person from whom redress is to be sought

8. When a plaintiff is in doubt as to the person from whom the plaintiff is entitled to relief, the plaintiff may join 2 or more persons as defendants, to the intent that the questions as to which (if any) of the defendants is liable, and as to what relief the plaintiff is entitled to, may be determined as between all parties.

Trustees, executors etc. may sue and be sued as representing estate

9.(1) Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the Court or a Judge may, at any stage of the proceedings, order any of such persons to be made parties, either in addition to or in lieu of the previously existing parties.

(2) This rule applies to trustees, executors, and administrators, sued in proceedings to enforce a security by foreclosure or otherwise, as well as in other cases.

Numerous persons

10. When there are numerous persons having the same interest in the subject matter of a cause or matter, 1 or more of such persons may sue, and the Court or a Judge may authorise 1 or more of such persons to be sued, or may direct that 1 or more of such persons shall defend, in such cause or matter, on behalf or for the benefit of all persons so interested.

Misjoinder and nonjoinder—striking out and adding parties—consent of plaintiff or next friend

11.(1) The Court shall not refuse to determine a cause or matter by reason only of the misjoinder or nonjoinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

(2) The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or Judge to be just, order that the names of any persons improperly joined, whether as plaintiffs or as defendants, be struck out, or that the names of any persons who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added, either as plaintiffs or defendants.

(3) But no person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without the person's own consent in writing thereto.

Application to strike out

12. An application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a Judge, at any time before the hearing of the cause, or may be made at the hearing in a summary manner.

When defendant added

13.(1) When a defendant is added or substituted, the defendant shall, unless the defendant waives such service, be served with the amended originating proceedings, or with notice in lieu of service, as the case may be, and the proceedings as against the defendant shall, unless otherwise ordered, be deemed to have begun only on such service being effected.

(2) Such service shall, unless otherwise ordered by the Court or a Judge, be effected in the same manner in which original defendants are served.

2. Persons under disability

Actions by and against infants and married women

14.(1) An infant may sue or carry on the proceedings in any cause or matter by the infant's next friend, and may appear in any cause or matter by the infant's guardian *ad litem.*

(2) Married women may sue and defend as provided by the *Married Women's Property Act 1890.*

Mentally ill persons

15. A person declared to be mentally ill may sue or defend or intervene in any cause or matter by the committee of his or her person or estate, as the case may be.

Mentally ill persons without committees

16. A person who is mentally ill but has not been so declared, and a person so declared, but of whom a committee of his or her person or estate, as the case may be, has not been appointed, may sue by the person's next friend, and may defend or intervene by a guardian appointed by a Judge for that purpose.

Next friend

17.(1) Before the name of any person is used in any cause or matter as next friend of any infant or other party, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the registry with the originating proceeding.

(2) The authority shall not extend to any other proceeding than that specified in it.

(3) A corporation other than the Public Trustee cannot be a next friend or a guardian for the purpose of bringing or defending an action.

Adoption of actions commenced without next friend

17A.(1) If any cause or matter is commenced without a next friend by an infant or by a mentally ill person who has not been so declared or by a mentally ill person so declared, but of whose person or estate, as the case may be, a committee has not been appointed, any person may by written authority to the solicitor for that purpose, which authority shall be filed in the registry, adopt the proceedings on behalf of the plaintiff and agree to be appointed as next friend of the plaintiff in the cause or matter.

(2) Thereupon the name of such next friend shall be added to the title of the cause or matter and all previous proceedings in the cause or matter shall be as valid and effective for all purposes as though they had been instituted in his or her name as next friend of the plaintiff.

Removal and appointment of next friend and guardian ad litem

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

(2) Whenever for any reason there is no next friend or guardian *ad litem* of an infant, the Court or a Judge may appoint a fit person, with the person's own consent, to be such next friend or guardian.

Consent of persons under disability to procedure

19. In any cause or matter to which any infant or mentally ill person, whether so declared or not, or a person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure shall, if given with the sanction of the Court or Judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent.

3. Administration and execution of trusts

Next of kin or class

20.(1) In any case in which the right of the next of kin of any person or

the right of any class of persons depends upon the construction which the Court or a Judge may put upon an instrument, and it is not known or is difficult to ascertain who are such next of kin or class, and the Court or Judge considers that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such next of kin or class have been ascertained by means of inquiry or otherwise, the Court or Judge may appoint some 1 or more persons to represent such next of kin or class, and the judgment or order of the Court or Judge given or made in the presence of the persons so appointed shall be binding upon the next of kin or class so represented.

(2) In any other case in which any next of kin or class are interested in any proceedings, the Court or a Judge may, if, having regard to the nature and extent of the interest of such persons or any of them, it appears expedient on account of the difficulty of ascertaining such persons, or in order to save expense, appoint 1 or more persons to represent all or any of such next of kin or class, and the judgment or order of the Court or Judge given or made in the presence of the persons so appointed shall be binding upon the persons so represented.

Residuary legatee and next of kin

21. Any person entitled to claim administration of the personal estate of a deceased person as residuary legatee or next of kin, may sue for and obtain such relief, or any other relief that might be obtained in an action for administration of the estate, without joining any other residuary legatee or next of kin as a party to the action.

Person interested in proceeds of realty

22. Any person who is entitled to claim administration of the real estate of a deceased person as a legatee interested in a legacy charged upon real estate, or as a person interested in the proceeds of real estate, or as next of kin, may sue for and obtain such relief, or any other relief that might be obtained in an action for administration of the estate, without joining any other legatee or person interested in the proceeds of the estate or next of kin as a party to the action.

Residuary devisee or heir

23. Any person entitled to the like relief as residuary devisee or heir may sue for and obtain the same, or any other relief that might be obtained in an action for administration of the estate, without joining any other residuary devisee or co-heir as a party to the action.

Beneficiaries

24. Any one of several beneficiaries under any deed or instrument, who is entitled to claim the execution of the trusts of the deed or instrument, may sue for and obtain such relief, or any other relief that might be obtained in an action for the execution of the trusts, without joining any other beneficiary as a party to the action.

Waste

25. In all cases of actions for the prevention of waste, or otherwise for the protection of property, one person may sue on behalf of himself or herself and all persons having the same interest.

Executors, administrators, and trustees

26. Any executor, administrator, or trustee, may bring an action against any one of the persons interested in the estate, or any one of the persons whose rights or interests are sought to be affected in the action, claiming the administration of the estate or the execution of the trusts, or any other relief or declaration of right that might be obtained in an action for such administration or execution, without joining any other person of the same class as a party to the action, and may obtain such relief in that action.

Conduct of action

27. In any of the cases mentioned in rules 20 to 26 the Court or a Judge may require any person to be made a party to the action or any proceeding in the action, and may give the conduct of the action or any proceeding therein to such person as the Court or Judge may think fit, and may make such order in any particular case as may be just for placing any party to the

record on the same footing in regard to costs as other parties having a common interest with the party in the matters in question.

Notice of judgment to be served on certain persons—effect

28.(1) Whenever, in any action for the administration of the estate of a deceased person or for the execution of the trusts of any deed or instrument, or for the partition or sale of any land, a judgment or an order has been pronounced or made directing any account or inquiry, or affecting the rights or interests of persons not parties to the action, all persons interested in the estate or under the trust or in the land shall be served with notice of the judgment or order; and after such notice such persons shall be bound by the proceedings, in the same manner as if they had originally been made parties to the action, and shall be at liberty to attend the proceedings under the judgment or order.

(2) Any person so served may, within 1 month after such service, apply to the Court or Judge to discharge, vary, or add to the judgment or order.

Order for liberty to attend not necessary—appearance to be entered

29. It shall not be necessary for any person served with notice of any judgment or order, to obtain an order for liberty to attend the proceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the same manner, and subject to the same provisions, as a defendant entering an appearance.

Form of notice of judgment

30. Notice of a judgment or order served pursuant to rule 28 shall be entitled in the action, and shall be in the form in schedule 1, with such variations as circumstances may require.

Memorandum of service to be entered in registry

31. A memorandum of the service upon any person of notice of the judgment or order in any action under rule 28 shall be entered in the registry upon due proof by affidavit of such service.

Service of notice of judgment on infants etc.

32.(1) Notice of a judgment or order to be served on an infant, or on a mentally ill person who has not been so declared, shall be served in the same manner as a writ of summons in an action.

(2) The Court or a Judge may require a guardian *ad litem* to be appointed for any such person.

Heir-at-law not necessary party in suit to execute trusts

33. In an action to execute the trusts of a will it shall not be necessary to make the heir-at-law or Public Trustee a party, but the plaintiff shall be at liberty to make the heir-at-law or Public Trustee a party, if the plaintiff desires to have the will established against the heir-at-law or Public Trustee.

Where no legal personal representative, Court may appoint or dispense with person to represent estate

34. If in any cause or matter it appears to the Court or a Judge that any deceased person who was interested in the matter in question has no legal personal representative, the Court or Judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent the deceased person's estate for the purposes of the cause or matter, on such notice to such persons (if any) as the Court or Judge may think fit, either specially or generally by public advertisement; and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the cause or matter.

Administration—appearance at chambers in respect of creditor's claims

35.(1) In an action for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the Court or a Judge, be entitled to appear either in court or in chambers on the claim of any person not a party to the action against the estate of the deceased person in respect of any debt or liability.

(2) The Court or a Judge may direct or give liberty to any other party to the action to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as the Court or Judge shall think fit.

4. Actions by Attorney-General on relation of private persons

Relator

36. Before the name of any person is used as a relator in a cause or matter, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the registry with the writ of summons.

Authority of Attorney-General

37. The writ of summons when presented for issue shall have upon it a fiat under the hand of the Attorney-General directing its issue.

ORDER 4—JOINDER OF CAUSES OF ACTION—PARTIAL RELIEF

1. Joinder of causes of action

All causes of action may be joined

1. Subject to the following rules of this order, a plaintiff may unite in the same action several causes of action.

Claims by trustee

3. Claims by a trustee in bankruptcy as such shall not, unless by leave of the Court or a Judge, be joined with any claim by the trustee in any other capacity.

Husband and wife

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

Executors and administrators

5. Claims by or against an executor or administrator as such may be joined with claims by or against him or her personally—

(a) if the lastmentioned claims 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; or

(b) with the leave of the Court or a Judge.

Claims by joint plaintiffs

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

Claims for wrongs against several defendants

7.(1) Claims for damages against several defendants for wrongs alleged to have been committed by them severally shall not be joined in the same action, nor shall a claim for damages against several defendants for a wrong alleged to have been committed by them jointly be joined with a claim for damages for a wrong alleged to have been committed by some or 1 of them only.

(2) But this rule shall not prevent judgment from being given against any 1 or more of several defendants alleged to have jointly committed a wrong.

Remedy for misjoinder

9. When the plaintiff has united in the same action several causes of action, any defendant who alleges that they cannot all be conveniently disposed of together may at any time apply to the Court or a Judge for an order limiting the action to such of the causes of action as may be conveniently disposed of together.

Order for exclusion

10. If, on the hearing of an application under rule 9, it appears to the Court or Judge that the causes of action are such that they cannot all be conveniently disposed of together, the Court or Judge may order any of such causes of action to be excluded, and may order any consequential amendments to be made, or may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof, and may make such order as to costs as may be just.

2. Partial relief

Declaratory judgments and orders

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

Actions relating to express trusts or the administration of the estate of a deceased person

12. The executors or administrators of a deceased person or any of them, or the trustees under any deed or instrument, or any of them, or any person claiming to be interested as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person, or as a beneficiary under the trusts of any deed or instrument, or claiming by assignment or otherwise under any such creditor or other person as aforesaid, may bring an action claiming relief, without an administration of the estate or trust, in respect of any of the following questions or matters—

(a) the decision of any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, heir-at-law, or beneficiary;

(b) the ascertainment of any class of creditors, devisees, legatees, next of kin, beneficiaries, or other persons;

(c) the furnishing of any particular accounts by executors or

administrators, or trustees, and the vouching, when necessary, of such accounts;

(d) the payment or bringing into court of any money or securities in the hands of executors or administrators or trustees;

(e) a direction to executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;

(f) the approval of any sale, purchase, compromise, or other transaction;

(g) any question arising in the administration of the estate or trust.

Interference with discretion of trustee etc.

13. When an action is brought by or against an executor or administrator or trustee under the provisions of rule 12 claiming limited relief, the bringing of such action shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought.

Judge not bound to order administration

14. It shall not be obligatory on the Court to pronounce a judgment for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment.

Orders which may be made on application for judgment for administration or execution of trusts, when no accounts or insufficient accounts have been rendered

15.(1) In an action for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust, when no accounts or no sufficient accounts have been rendered, the Court may order that the trial or motion for judgment shall stand over for a certain time, and that the executors, administrators, or trustees shall in the meantime render to the applicant a proper statement of their accounts, and may reserve the costs of

the proceedings.

(2) Or the Court may, when necessary to prevent proceedings by other creditors or by persons beneficially interested, pronounce the usual judgment for administration, and direct that no proceedings shall be taken under such judgment without leave of the Judge.

Actions for determination of questions of construction

16. Any person claiming to be interested under a deed, will, or other written instrument, may bring an action claiming the determination of any question of construction arising under the instrument, and a declaration of the rights of the persons interested, without any further relief.

ORDER 5—WRITS OF SUMMONS

Action to be commenced by writ

1. Every action shall be commenced by a writ of summons, which shall be endorsed with a statement of the nature of the claim made, or of the relief or remedy sought in the action.

Admiralty actions

2. Admiralty actions shall be of 2 kinds, actions in rem and actions in personam.

Crown admiralty actions

3. Actions for condemnation of any ship, boat, cargo, proceeds, slaves, or effects, or for recovery of any pecuniary forfeiture or penalty, shall be instituted in the name of the Queen.

Title of actions

4. The title of actions shall be as set forth in schedule 1.

Form of writ

5. Writs of summons for the commencement of an action shall be in such one of the forms in schedule 1 as may be applicable, with such variations as circumstances may require.

Cost of prolix writs

6. Any costs occasioned by the use of any forms of writs, and of endorsements thereon, other or more prolix than the forms hereby prescribed, shall be borne by the party using the same, unless the Court or a Judge otherwise orders.

Writ for service out of the jurisdiction

7. Save as is provided in order 11, a writ of summons to be served out of the jurisdiction or of which notice is to be given out of the jurisdiction may be issued without leave.

Form of notice of writ to be given out of the jurisdiction

8. Notice of a writ to be given out of the jurisdiction shall be in the form in schedule 1 with such variations as circumstances may require.

Time for appearance to be limited by writ

9. The time to be limited in the writ of summons for the appearance of any defendant shall be not less than the time next hereinafter specified, according to the place of service, that is to say—

(a) where the place of service is in Queensland, and not more than 320 km from the place where the appearance is to be entered—8 days;

(b) where the place of service is in Queensland, and more than 320 km from the place where the appearance is to be entered—14 days;

(c) if the place of service is outside Australia (including the external territories)—42 days.

Causes removed from inferior courts or district registries

10. When a cause is removed into the Supreme Court from an inferior court, or into the central registry from a district registry, the defendant shall, unless the defendant has appeared in a district registry or unless otherwise ordered, have the same time to appear in the Supreme Court or central registry, after service of the order of removal, as in the case of service of a writ of summons.

ORDER 6—ENDORSEMENTS ON WRIT OF SUMMONS

Endorsements to be made before issue

1. An endorsement of the plaintiff's claims shall be made on every writ of summons before it is issued.

Amendment allowed

2.(1) The endorsement required by rule 1 shall not be invalid by reason of failure to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself or herself entitled.

(2) The plaintiff may by leave of the Court or a Judge amend such endorsement so as to extend it to any other cause of action or any additional remedy or relief.

Probate actions

3. In probate actions the endorsement shall show whether the plaintiff claims as creditor, executor, administrator, devisee, residuary legatee, legatee, next of kin, heir-at-law, or in any and what other character.

Forms of endorsement

5. The endorsement of claim shall be to the effect of such of the forms in schedule 1 as may be applicable to the case, or, if none be found applicable,

then in such other similarly concise form as the nature of the case may require.

Endorsement to show representative capacity

6. If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the endorsement shall show, in manner appearing by such of the forms in schedule 1 as is applicable to the case, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

Special endorsement of certain claims

7. In any action in which the plaintiff seeks to recover—

(a) a debt or liquidated demand in money payable by the defendant, with or without interest whether that interest is claimed under the provisions of the *Common Law Practice Act 1867* or otherwise; or

(b) possession of any land (including any chattel real) with or without a claim for rent or mesne profits; or

(c) possession of any goods with or without a claim for hire thereof, or damages for their detention;

the writ of summons may be specially endorsed with particulars of the nature of the plaintiff's claim and of the amount (if any) sought to be recovered.

Further endorsement in case of certain claims

8.(1) When the plaintiff's claim is for a debt or liquidated demand only, with or without interest, the endorsement, besides stating the nature of the claim, shall state the amount claimed in respect of the debt or demand and interest, and for costs on issuing the writ, respectively, and that if payment of the amounts so claimed be made within the time allowed for appearance further proceedings will be stayed.

(1A) The endorsement shall also state the additional amount claimed for costs of judgment in default of appearance and that if payment of the whole

of the amounts so claimed, including such additional amount, be made before execution is issued, further proceedings will be stayed.

(1B) Such statement shall be in the form of schedule 1 if the defendant makes or tenders payment on account of such debt or demand with or without interest and the costs of issuing the writ then unless the plaintiff recovers on such account a greater sum the costs incurred after the date of such payment or tender shall unless the Court or a Judge otherwise orders be paid by the plaintiff.

(2) When the plaintiff's claim is for possession of any land (including any chattel real), with or without a claim for rent or mesne profits, or for possession of any goods, with or without a claim for hire thereof or damages for their detention, the endorsement, besides stating the nature of the claim, may state the amount (if any) claimed for rent, mesne profits, hire or damages for detention, and for costs on issuing the writ, respectively, and that if possession of the land or goods be delivered, and payment of the amounts so claimed be made, within the time allowed for appearance further proceedings will be stayed.

(2A) The endorsement may also state the additional amounts claimed for costs of judgment in default of appearance and that if possession of the land or goods be delivered, and payment of the whole of the amounts so claimed, including such additional amount, be made before execution is issued, further proceedings will be stayed.

(2B) Such statement shall be in the form of schedule 1.

(3) If the amount claimed for costs on issuing the writ of summons exceeds the sum prescribed in schedule 2, part 16 and the defendant within the time allowed for appearance pays the amounts claimed in respect of the debt or demand and for such costs, or delivers possession of the land or goods and pays the amounts claimed for rent, mesne profits, hire or damages for detention and for such costs, as the case may be, the defendant may notwithstanding such payment, have the costs taxed, and if more than $^1/_6$ thereof be disallowed or not more than the sum prescribed in schedule 2, part 16 be allowed the plaintiff's solicitor shall pay the costs of taxation and shall repay to the defendant the difference between the amount claimed for costs and the amount allowed on taxation.

(4) If the amount claimed for costs on issuing the writ of summons does not exceed the sum prescribed in schedule 2, part 16 and the amount

claimed for costs of obtaining judgment in default of appearance does not exceed the sum prescribed in schedule 2, part 16, and the defendant does not appear, such costs shall not be subject to taxation.

(5) If the amount claimed for costs on issuing the writ of summons exceeds the sum prescribed in schedule 2, part 16 or the amount claimed for costs of obtaining judgment in default of appearance exceeds the sum prescribed in schedule 2, part 16, and the defendant does not appear, the plaintiff's solicitors before obtaining judgment in default of appearance shall file, for submission to the registrar, a memorandum of the details of the costs so claimed on issuing the writ and of obtaining judgment in default of appearance.

(6) The registrar shall determine the amount of costs to be allowed and shall endorse his or her determination on the memorandum filed by the plaintiff's solicitor.

(7) The amount for costs to be specified in the judgment in default of appearance shall be the amount so determined by the registrar.

(8) If the registrar disallows more than $^1/_6$ of either of the amounts claimed for costs on issuing the writ or of judgment or does not allow more than the total of the sums prescribed in schedule 2, part 16 for costs on issuing a writ of summons and for costs of obtaining judgment in default of appearance in all for costs the plaintiff's solicitor shall pay the costs of taxation but otherwise no costs of taxation shall be payable.

Ordinary account

9. In an action in which the plaintiff desires to have an account taken in the first instance, the writ of summons may be specially endorsed with a claim that such account be taken.

Special endorsement of limited special relief

10. In an action brought under the provisions of order 4, rule 12 or 16, the writ of summons may be specially endorsed with a claim for the specific limited relief sought.

Special endorsement in actions for foreclosure etc.

11. In an action by a mortgagee or mortgagor, whether legal or equitable, or by any person who has or is entitled to a legal or equitable charge upon any property, or who has or is entitled to any property subject to a legal or equitable charge, or by any person entitled to foreclose or redeem any mortgage, whether legal or equitable, the writ of summons may be specially endorsed with a claim for such relief of the nature or kind following as may be specified in the endorsement, and as the circumstances of the case may require; that is to say, payment of moneys secured by the mortgage or charge; sale; foreclosure; delivery of possession (whether before or after foreclosure) to the mortgagee or person entitled to the charge by the mortgagor or person having the property subject to the charge or by any other person in, or alleged to be in possession of the property; redemption; reconveyance; delivery of possession by the mortgagee.

Possession after foreclosure

11A. Where any mortgage security is foreclosed by reason of the failure to redeem by any plaintiff in a redemption action, the defendant in whose favour the foreclosure has taken place may apply by motion or summons to the Court or a Judge for an order for delivery to the defendant of possession of the mortgaged property and the Court or a Judge may make such order thereon as the justice of the case may require.

Judgment in default

11B. In any action in which the plaintiff is claiming any relief of the nature or kind specified in rule 11—

(a) no judgment shall be entered in default of appearance or of defence without the leave of the Court or a Judge who may require the application to be supported by such evidence as might be required if judgment were being sought on motion under order 19, rule 4, and may require notice of such evidence to be given to the defendant and to such other person (if any) as the Court or a Judge may think proper;

(b) on any application for judgment under order 31, rule 11—the Court or a Judge may require the application to be supported by

such evidence as might be required if judgment were being sought on motion under order 19, rule 4, and may require notice of such evidence to be given to the defendant and to such other person (if any) as the Court or a Judge may think proper.

Form of special endorsement

12.(1) Special endorsements of writs shall be in the forms in schedule 1, or in such similar form as may be applicable to the case.

(2) A special endorsement may be joined with an endorsement which is not special.

(3) In such case the plaintiff shall deliver a statement of claim in respect of such claims as are not specially endorsed.

Account in certain admiralty actions

14. In admiralty actions for sailor's or master's wages, or for master's wages and disbursements, or for necessaries, or for bottomry, or any other admiralty action in which the plaintiff desires an account, the endorsement on the writ may include a claim to have an account taken.

ORDER 7—ISSUE OF WRITS OF SUMMONS—WARRANTS IN ADMIRALTY ACTIONS

1. Issue of writs

Preparing and printing writs

1. Writs of summons shall be prepared by the plaintiff or the plaintiff's solicitor, and shall be written or printed or partly written and partly printed, on paper of the same description as is directed by these rules in the case of proceedings directed to be printed.

Issue

2.(1) Every writ of summons shall be signed and sealed by the proper officer, and shall thereupon be deemed to be issued.

(2) However, if any such writ shall appear to the registrar at Brisbane, Rockhampton, Townsville or Cairns on its face to be an abuse of the process of the Court or a frivolous or vexatious proceeding, the registrar shall seek the direction of a Judge who may direct the registrar to issue the same or to refuse to issue the same without leave of a Judge first had and obtained by the party seeking to issue the same.

Copy to be left

3.(1) The plaintiff, or the plaintiff's solicitor, shall, on presenting any writ of summons for issue, leave with the officer a copy, written or printed, or partly written and partly printed, on paper of the description aforesaid, of such writ, and of all the endorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff personally if the plaintiff sues in person.

(2) No praecipe shall be required.

Filing and marking

4. The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book (the **"cause book"**), in which the action shall be distinguished by the date of the year and a number.

Writs issued in country

5. When a writ of summons is issued by a commissioner, the like entry shall be made on receipt of the copy of the writ from the commissioner.

Affidavit before writ in probate actions

6. In probate actions an affidavit made by the plaintiff or 1 of the plaintiffs, verifying the endorsement on the writ, must be filed before the issue of the writ.

2. Warrants in admiralty actions

Arrest in admiralty actions by warrant after affidavit

11.(1) In admiralty actions in rem a warrant for the arrest of property, which shall be in one of the forms in schedule 1, with such variations as circumstances may require, may be issued by the registrar at the instance either of the plaintiff or the defendant, at any time after the writ of summons has been issued.

(2) But, except by leave of the Court or a Judge, a warrant of arrest shall not be issued until an affidavit by the party or the party's agent setting forth the particulars hereby prescribed, has been filed, and the following provisions have been complied with, that is to say—

(a) the affidavit shall state the name and description of the party at whose instance the warrant is to be issued, and the nature of the property to be arrested, and that the claim or counterclaim has not been satisfied, and that the aid of the Court is required to enforce it;

(b) in an action for wages—the affidavit shall state the national character of the ship, and, if the ship is foreign, that notice of the action has been served upon a consular officer of the State to which the ship belongs, if there is one resident in Queensland;

(c) in an action for necessaries—the affidavit shall state the national character of the ship, and that, to the best of the deponent's belief, no owner or part owner of the ship is domiciled in Queensland at the time of the commencement of the action;

(d) in an action between co-owners relating to the ownership, possession, employment, or earnings of a ship registered in Queensland—the affidavit shall state the port at which the ship is registered and the number of shares in the ship owned by the party proceeding;

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

Arrest without affidavit by leave

12.(1) The Court or a Judge may in any case, if the Court or Judge think fit, allow the warrant to issue, although the affidavit in rule 11 mentioned may not contain all the prescribed particulars.

(2) The Court or Judge may also, in an action for wages against a foreign ship, dispense with the service of the notice, and, in an action of bottomry, with the production of the bond.

ORDER 8—CONCURRENT WRITS

Concurrent writ, how issued

1.(1) The plaintiff in any action may, at the time of, or at any time during 12 months after, the issuing of the original writ of summons, issue 1 or more concurrent writ or writs.

(2) Each concurrent writ shall bear teste of the same day as the original writ, and shall be marked with a seal bearing the word ‘concurrent’, and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the proper officer.

(3) However, any such concurrent writ or writs shall only be in force for the period during which the original writ in the action is in force.

Concurrent writs for service, within and without the jurisdiction

2. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, may be issued and marked as a concurrent writ with a writ to be served within the jurisdiction; and a writ of summons to be served within the jurisdiction may be issued and marked as a concurrent writ with a writ to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction.

ORDER 9—RENEWAL OF WRITS—LOST WRITS

Original writ in force for 12 months, but may be renewed

1.(1) Original writs of summons shall be in force for 12 months from the day of the date thereof, including the day of such date, and no longer; but if any defendant therein named has not been served within that time, the plaintiff may, before the expiration of the 12 months or within such further time (if any) as the Court or a Judge may allow, apply to the Court or a Judge for leave to renew the writ; and the Court or Judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for 12 months from the date of such renewal, inclusive of such date, and so from time to time during the currency of the renewed writ.

(2) The writ shall be renewed by being marked with the word ‘renewed’, and with a seal bearing the date of the day, month, and year of renewal; which seal shall be provided and kept for that purpose at the registry, and shall be impressed upon the writ by the proper officer, upon delivery to the proper officer by the plaintiff or the plaintiff’s solicitor of a memorandum in the form in schedule 1, with such variations as circumstances may require.

(3) A writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ.

Evidence of renewal

2. The production of a writ of summons purporting to be marked with the seal of the Court, showing the same to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the date of the original writ, for all purposes.

Lost writ

3. When a writ of which the production is necessary has been lost, the

Court or a Judge, upon production of a copy thereof, and upon being satisfied of the loss, and of the correctness of the copy, may order that such copy shall be sealed and served, or otherwise made use of, in lieu of the original writ.

ORDER 10—SERVICE OF ORIGINATING PROCEEDINGS

1. Generally

Personal service

1.(1) Unless otherwise prescribed or allowed, service of an originating proceeding shall be made personally.

(1A) But personal service shall not be required when the party to be served, by the party's solicitor, undertakes in writing to accept service, and enters an appearance.

(2) Where a defendant's solicitor endorses on the writ or other originating proceeding a statement that the defendant's solicitor accepts service thereof on behalf of that defendant, the writ or other originating proceeding shall be deemed to have been duly served on that defendant and to have been so served on the date on which the endorsement was made.

Personal service, how effected

2. Personal service shall be effected, in the case of a writ of summons, originating summons, or other document authenticated by signature or seal, by delivering to and leaving with, or offering to deliver to and leave with, the person to be served a copy of the writ, summons, or other document, in such a condition as to be open for examination, and at the same time showing the person the original writ, summons, or other document, if the person requires it; and, in the case of any other document, by delivering or offering to deliver the same to the person to be served in such a condition as to be open for examination.

2. On particular defendants

Husband and wife

3. When husband and wife are both parties to a cause or matter, they shall both be served unless the Court or a Judge otherwise orders.

Infants

4. When an infant is a party to a cause or matter, service on the infant's father or guardian, or, if the infant has none, then upon the person with whom the infant resides or under whose care the infant is, shall, unless the Court or a Judge otherwise orders, be deemed good service on the infant; but the Court or Judge may order that service made or to be made on the infant personally shall be deemed good service.

Mentally ill persons

5. When a mentally ill person is a party to a cause or matter, service on the committee (if any) of his or her person or estate, as the case may be, or, if the person has not been declared to be mentally ill, or if the person has been so declared but a committee of his or her person or estate, as the case may be, has not been appointed, service on the person with whom the person resides or under whose care the person is, shall, unless the Court or a Judge otherwise orders, be deemed good service on such party.

3. On corporations and other bodies

Service on corporations etc.

6. In the absence of any statutory provision regulating service of process, an originating proceeding to be served on a corporation aggregate, whether incorporated under the law of Queensland or not, may be served on the mayor or other head officer, or on the chief executive officer, manager, or other chief officer, or secretary or other similar officer, of such corporation in Queensland; and when by any statute provision is made for service of any legal process upon any corporation, or upon any society or fellowship,

or any body or number of persons, whether corporate or unincorporate, an originating proceeding may be served in the manner so provided.

4. In particular actions

Service in action for recovery of land

7. Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot be effected on the defendant personally, be made by posting a copy of the writ upon the door of the dwelling house, or, if there is no dwelling house, then on some conspicuous part of the property.

Service of writ on agent of oversea principal

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

(a) a contract has been entered into within the jurisdiction with or through an agent who is either an individual residing or carrying on business within the jurisdiction or a body corporate having a registered office or a place of business within the jurisdiction; and

(b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such an individual nor such a body corporate; and

(c) at the time of the application either the agent's authority has not been determined or the agent is still in business relations with the agent's principal;

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

(2) An order under this rule authorising service of a writ on a defendant's agent shall limit a time within which the defendant must enter an appearance.

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

Service of writ in pursuance of contract

9. Where—

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

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

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

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

Service when dispensed with in admiralty actions in rem

11. In admiralty actions in rem, service of the writ of summons or warrant of arrest shall not be required when the defendant agrees to accept service and to put in bail, or to pay money into court in lieu of bail.

Service of warrant of arrest in admiralty actions

12. In admiralty actions in rem the warrant of arrest shall be served by the marshal or the marshal's officer, and the party issuing the warrant shall, within 6 days from the service thereof, file the same in the registry with a certificate of service endorsed thereon.

Mode of service of writ of summons in rem and warrants

13.(1) In admiralty actions in rem, the service of a writ of summons in rem, or warrant against a ship, cargo, freight, or other property, shall be effected as follows—

(a) upon a ship, or upon cargo, freight, or other property, if the cargo or other property is on board a ship—by nailing or affixing the original writ or warrant for a short time on the mainmast or on

the single mast of the ship, or on some other conspicuous part of the ship, and on removing the writ or warrant leaving a true copy of it nailed or affixed in its place;

(b) upon cargo, freight, or other property, if the cargo or other property is not on board a ship—by placing the writ or warrant for a short time on the cargo or property, and on removing the writ or warrant leaving a true copy thereon;

(c) upon freight in the hands of any person—by showing the writ or warrant to the person, and leaving with the person a true copy.

(2) When the action is against proceeds in court, a warrant to arrest shall not be necessary, but the writ shall be served upon the registrar, and a caveat payment entered as hereinafter provided, and such service and entry shall be a sufficient arrest of the proceeds.

When no access to cargo

14. If cargo is in the custody of a person who will not permit access to it, service of the writ or warrant may be made by showing it to the custodian and leaving with the custodian a true copy, and also publishing a copy in some newspaper ordinarily circulating in the locality where the cargo is.

5. Endorsement of date of service

Endorsement to be made on writ within 3 days

15. The person serving a writ of summons shall, within 3 days after such service, endorse on the writ the day of the month and week of the service thereof; otherwise the plaintiff shall not, without leave of the Court or a Judge, be at liberty, in case of default of appearance, to proceed as upon default; and every affidavit of service of such writ shall mention the day on which such endorsement was made.

6. Substituted service

Substituted service may be allowed

16. If it is made to appear to the Court or a Judge or registrar that a party is from any cause unable to effect prompt personal service, or service in any other prescribed manner, of the originating proceeding, or any other proceeding requiring service, the Court or Judge or registrar may make such order for substituted service, or for the substitution for service of notice, by advertisement or otherwise, as may seem just.

Evidence

17. Every application to the Court or a Judge or registrar for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

ORDER 11—SERVICE OUT OF THE JURISDICTION

Service outside Australia

1.(1) In this rule—

"Australia" includes the external territories.

"proceeding" means—

(a) the cause or matter in respect of which an originating proceeding is issued; or

(b) an action mentioned in order 3, rule 28.

"process" means—

(a) an originating proceeding; or

(b) a notice of an originating proceeding; or

(c) a notice of judgment or order under order 3, rule 28.

(2) A process in relation to a proceeding may be served on a person outside Australia, without the leave of the Court, if any of the following paragraphs apply—

(a) the proceeding is founded on a cause of action arising in Queensland;

(b) the subject matter of the proceeding is—

(i) property situated in Queensland; or

(ii) the perpetuation of testimony relating to property in Queensland;

(c) any Act, deed, will, contract, obligation or liability affecting property situated in Queensland is sought to be construed, rectified, set aside or enforced in the proceeding;

(d) the proceeding is for any relief against a person domiciled or ordinarily resident in Queensland;

(e) the proceeding is for—

(i) the administration of the estate of a person who died domiciled in Queensland; or

(ii) any relief that might be obtained in a proceeding for the administration of the estate of a person who died domiciled in Queensland;

(f) the proceeding is for the execution of a trust and—

(i) the trust is created or declared by an instrument; and

(ii) the person is a trustee; and

(iii) the execution relates to trust property situated in Queensland; and

(iv) the trust ought to be executed according to the law of Queensland;

(g) the proceeding is to enforce, rescind, dissolve, rectify, annul or otherwise affect, or to recover damages or other relief in relation to the breach of, a contract that—

(i) was made in Queensland; or

(ii) was made by 1 or more parties carrying on business or

residing in Queensland; or

(iii) was made by or through an agent carrying on business or residing in Queensland on behalf of a principal carrying on business or residing outside Queensland; or

(iv) is governed by the law of Queensland;

(h) the proceeding is founded on a breach of contract committed in Queensland, regardless of where the contract was made and whether or not the breach was preceded or accompanied by a breach (wherever occurring) that renders impossible the performance of a part of the contract that ought to be performed in Queensland;

(i) the proceeding is founded on a contract that contains a term by which the parties agree to submit to the jurisdiction of the Court;

(j) the proceeding is for the recovery of an amount payable under an Act to a person or body in Queensland;

(k) the proceeding is founded on a tort committed in Queensland;

(l) the proceeding is for damage that—

(i) was suffered in whole or part in Queensland; and

(ii) was caused by a tortious act or omission (wherever happening);

(m) the proceeding affects the person in relation to the person's membership of—

(i) a corporation incorporated in Queensland; or

(ii) a partnership or an association or other body (whether corporate or unincorporate) formed, or carrying on any part of its affairs, in Queensland;

(n) the proceeding is for a contribution or indemnity for a liability enforceable in the Court;

(o) the proceeding is for an injunction ordering the defendant to do, or refrain from doing, anything in Queensland (whether or not damages are also claimed);

(p) the proceeding is properly brought in Queensland against a

person and another person outside Queensland is a necessary or proper party to the proceeding;

(q) the proceeding is brought under the *Civil Aviation (Carrier's Liability) Act 1959* (Cwlth)—

(i) by a resident of Queensland; or

(ii) in relation to damage that happened in Queensland;

(r) the person has submitted to the jurisdiction of the Court;

(s) the subject matter of the proceeding, so far as it concerns the person, is property in Queensland;

(t) the proceeding concerns the construction, effect or enforcement of—

(i) an Act; or

(ii) an Imperial or Commonwealth Act that affects property in Queensland;

(u) the proceeding concerns the effect or enforcement of an executive, Ministerial or administrative act done, or purported to have been done, under an Act;

(v) the proceeding relates to an arbitration held in Queensland;

(w) the proceeding is for the wardship, custody, management or welfare of an infant, or a mentally ill person, who is domiciled or present in, or a resident of, Queensland;

(x) the proceeding, so far as it concerns the person, falls partly within 1 or more of paragraphs (a) to (w).

(3) Each paragraph of subrule (2) is to be construed independently of the other paragraphs and the construction of a paragraph is not to be taken to affect the construction of another paragraph.

Service of notice of originating proceeding

2. Unless service is to be effected in any State or Territory, notice of the originating proceeding, and not the originating proceeding itself, is to be served.

Mode of service

3.(1) Subject to the following provisions of this rule, order 10, rules 1 and 16 shall apply in relation to the service of an originating proceeding or notice thereof, notwithstanding that the originating proceeding or notice is to be served out of the jurisdiction.

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

(3) Notice of an originating proceeding which is served out of the jurisdiction need not be served personally on the person required to be served so long as it is served on the person in accordance with the law of the country in which service is effected.

Liberty to proceed

4. The Court or a Judge, upon being satisfied by affidavit that the case is such that, under rule 1, the originating proceeding, or notice thereof, may be served out of the jurisdiction, and that it was served upon a party out of the jurisdiction, either personally, or in accordance with an order made under order 10, rule 16, or (being a notice of the originating proceeding) in accordance with the law of the country in which service was effected, or that reasonable efforts were made to effect service in any such manner upon the party and that it came to the party's notice, and either that the party wilfully neglects to appear in the cause or matter, or that the party is living out of the jurisdiction in order to defeat or delay the plaintiff or petitioner, may direct from time to time that the plaintiff or petitioner shall be at liberty to proceed in the cause or matter in such manner and subject to such conditions as to the Court or Judge may seem fit.

Service of summons, notices and orders in pending proceedings

4A.(1) Subject to subrule (2), service out of the jurisdiction of any summons, notice or order issued, given, or made in any proceedings is permissible with the leave of the Court.

(2) Where the proceedings are for the appointment or removal of an arbitrator or umpire or for leave to enforce an award or to remit or set aside

an award, service of the summons, notice of motion or order shall not be allowed unless the arbitration to which it relates is to be or has been held within the jurisdiction.

(3) Rule 3 shall apply in relation to any document for the service of which out of the jurisdiction leave has been granted under this rule as it applies in relation to an originating process or notice thereof.

Application for, and grant of, leave to serve process out of the jurisdiction

4B.(1) An application for a grant of leave under paragraph (7) of rule 1 or under rule 1A or under rule 4A must be supported by an affidavit stating the grounds on which the application is made and showing in what place or country the person to be served is or probably may be found.

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

Service of foreign legal process in Queensland

Letter of request from foreign tribunal—procedure

5. Where in any civil or commercial matter pending before a court or tribunal of a foreign country a letter of request from such court or tribunal for service on any person in Queensland of any process or citation in such matter is transmitted to the Supreme Court by Her Majesty's Attorney-General, with an intimation that it is desirable that effect should be given to the same, the following procedure shall be adopted—

(a) the letter of request for service shall be accompanied by a translation thereof in the English language, and by 2 copies of the process or citation to be served, and 2 copies thereof in the English language;

(b) service of the process or citation shall be effected by the sheriff, or the sheriff's authorised agent;

(c) such service shall be effected by delivering to and leaving with the person to be served 1 copy of the process to be served, and

1 copy of the translation thereof, in accordance with the rules and practice of the Supreme Court regulating service of process;

(d) after service has been effected the sheriff shall return to the registrar of the Supreme Court 1 copy of the process, together with the evidence of service by affidavit of the person effecting the service and particulars of charges for the cost of effecting such service;

(e) the registrar shall certify the correctness of the charges, or such other amount as shall be properly payable for the cost of effecting service;

(f) the registrar shall transmit to Her Majesty's Attorney-General the letter of request for service received from the foreign country, together with the evidence of service, with a certificate appended thereto duly sealed with the seal of the Supreme Court. Such certificate shall be in the form in schedule 1;

(g) instead of translated copies of the process or citation being forwarded with the letter of request, it shall be sufficient if each copy of the process or citation is endorsed with an annotation in the English language stating as precisely as possible the name and address of the person upon whom the document is to be served, the nature of the document, and the names of the parties;

(h) when the process or citation is so annotated, it shall not be necessary to leave with the person served a translated copy of the process or citation;

(i) the registrar shall transmit to the diplomatic consular or other authority making the request a certificate establishing the fact and the date of the service or indicating the reasons for which it has not been possible to effect service and at the same time shall certify to the said diplomatic, consular, or other authority the amount of the charges properly payable for the cost of effecting service.

Orders for substituted service etc.

6. Upon the application of the Crown Solicitor, with the consent of Her Majesty's Attorney-General, the Court or a Judge may make all such orders

for substituted service or otherwise as may be necessary to give effect to these rules.

Noncompliance with rules

7. The Court or a Judge may direct that effect shall be given to a letter of request for the service of process of a foreign court or tribunal, notwithstanding that all the requirements of rules 5 and 6 have not been complied with.

Request from consul or consular or diplomatic agent

8. Any request for service of process under any convention between the United Kingdom and any other country respecting legal proceedings in civil or commercial matters may be forwarded by the consul or consular or diplomatic agent, as the case may be, for that country, in Brisbane, to the registrar of the Supreme Court, Brisbane, instead of being forwarded by Her Majesty's Attorney-General to the Supreme Court, as provided by rule 5, and the said registrar may in such case return the documents mentioned in rule 5(f) to the said consul or consular or diplomatic agent, and such consul or consular or diplomatic agent may make application for substituted service as provided by rule 6.

ORDER 12—APPEARANCE

Appearance to writ of summons

1. A defendant shall enter the defendant's appearance to a writ of summons in Brisbane, Rockhampton, Townsville or Cairns, or in a district registry according to the exigency of the writ.

Filing memorandum of appearance

2.(1) A party enters an appearance by filing a memorandum of appearance in duplicate.

(2) The memorandum must be dated—

(a) if it is lodged for filing personally—on the day it is lodged for filing; or

(b) if it is lodged for filing by post—on the day it is posted.

(3) The memorandum must state the name of the party's solicitor or that the party appears in person.

(4) The proper officer must seal the duplicate memorandum with the office seal and return it to the filing party.

(5) The sealed duplicate memorandum is evidence the person entered an appearance on the day indicated by the seal.

Notice of appearance

3.(1) A defendant who lodges a memorandum of appearance for filing by post must, on the day it is posted, give a copy to the plaintiff.

(2) The copy may be served personally, sent by prepaid post or sent by facsimile.

(3) On the day a defendant receives the sealed duplicate memorandum of appearance from the proper officer, the defendant must give it to the plaintiff.

(4) The memorandum may be served personally or sent by prepaid post.

(5) Subrule (3) applies whether the memorandum was lodged for filing personally or by post.

(6) In this rule—

"plaintiff" means the plaintiff's solicitor or, if the plaintiff sues in person, the plaintiff.

Defendant's address for service—document exchange address

4.(1) The solicitor of a defendant appearing by a solicitor shall state in such memorandum the solicitor's name or firm and place of business and telephone number and, if the solicitor has facilities for the reception of documents in a document exchange, the document exchange address and also, if the solicitor's place of business is distant more than 10 km from the

registry, a place to be called the solicitor's address for service, which shall not be more than 10 km from the registry, where any proceedings in the action may be left for the solicitor.

(2) And, if such solicitor is only agent of another solicitor, the solicitor shall add to the above particulars the name or firm and place of business and telephone number and if applicable the document exchange address of the principal solicitor.

Defendant appearing in person

5. A defendant appearing in person shall state in such memorandum the defendant's address and telephone number (if any) and also a place, to be called the defendant's address for service, which shall not be more than 10 km from the registry.

Irregular memorandum—fictitious address

6. If the memorandum does not contain such address it shall not be received; and, if any such address is illusory or fictitious, the appearance may be set aside by the Court or a Judge on the application of the plaintiff.

Memorandum of appearance

7. The memorandum of appearance shall be in the form in schedule 1 with such variations as circumstances may require.

Officer to enter memorandum

8. Upon receipt of a memorandum of appearance, the proper officer shall forthwith enter the appearance in the cause book.

Defendants appearing by same solicitor

9. If 2 or more defendants in the same cause appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in 1 memorandum.

Solicitor not entering appearance

10. A solicitor who fails to enter an appearance in pursuance of the solicitor's written undertaking so to do, or who fails to put in security in an admiralty action in rem, in pursuance of a like undertaking, shall be liable to attachment.

Time for appearance

11.(1) A defendant may appear at any time before judgment.

(2) If the defendant appears after the time limited for appearance, the defendant shall not, unless the Court or a Judge otherwise orders, be entitled to any further time for delivering his or her defence, or for any other purpose, than if the defendant had appeared according to the exigency of the writ.

Recovery of land

12. Any person not named as a defendant in a writ of summons for the recovery of land may appear and defend, on filing an affidavit showing that the person is in possession of the land either personally or by the person's tenant.

Landlord appearing

13. Any person appearing to defend an action for the recovery of land as landlord, in respect of property whereof the person is in possession only by the person's tenant, shall state in the appearance that the person appears as landlord.

Recovery of land, person not named defendant

14.(1) When a person not named as defendant in a writ of summons for the recovery of land appears and defends, the person shall enter an appearance, according to the foregoing rules of this order, entitled in the action against the party named in the writ as defendant, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if the plaintiff sues in person.

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

Recovery of land, limiting defence

15.(1) Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his or her defence to a part only of the land mentioned in the writ, describing that part with reasonable certainty in the person's memorandum of appearance, or in a notice intituled in the action and signed by the person or the person's solicitor.

(2) Such notice shall be served within 4 days after appearance; and an appearance, when the defence is not limited as above mentioned, shall be deemed an appearance to defend for the whole.

Form of notice

16. The notice mentioned in rule 15 shall be in the form in schedule 1 with such variations as circumstances may require.

Probate intervention

17. In probate actions any person not named in the writ may intervene and appear in the action on filing an affidavit showing that the person is interested in the estate of the deceased.

Admiralty intervention

21. In an admiralty action in rem, any person not named in the writ may intervene and appear on filing an affidavit showing that the person is interested in the res under arrest, or in the fund in court.

Conditional appearance

22.(1) A defendant in any cause may enter a conditional appearance denying the jurisdiction of the Court, and shall not thereby be deemed to have submitted to such jurisdiction, except as to the costs occasioned by the appearance or by any application under this rule; and the defendant may thereupon apply to the Court or Judge for an order to set aside the service

upon the defendant of the originating proceeding, or the service upon the defendant of notice thereof, as the case may be.

(2) Or the defendant may make such application before appearing, and without entering a conditional appearance.

(3) If the defendant enters a conditional appearance, and does not make such application promptly, the Court or Judge may set aside the conditional appearance with costs, to be paid by the defendant by whom it was entered.

(4) If the application is made and dismissed, the conditional appearance shall be struck out, and the defendant may enter an appearance as in other cases.

2. Persons under disability

Appearance by infant

23. An order for the appointment of a guardian *ad litem* of an infant in an action shall not be necessary, but the solicitor applying to enter an appearance for the infant shall make and file an affidavit in the form in schedule 1, with such variations as circumstances may require.

Guardian ad litem in matters other than actions

24.(1) An infant served with an originating proceeding in any cause or matter, not being an action, may appear on the hearing of the cause or matter by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for.

(2) An order for the appointment of such guardian shall not be necessary, but the solicitor by whom the infant appears shall previously make and file an affidavit as in rule 23 mentioned.

Other cases

25. When proceedings in any cause or matter are directed to be continued by or against an infant, or an infant is at liberty to attend any proceedings in a cause or matter, the infant shall appear as in rule 24 directed.

ORDER 13—PROCEEDINGS BY AND AGAINST PAUPERS

Suing or defending as pauper

1. Any person may be allowed by the Court or a Judge to sue or defend in any cause or matter as a pauper on proof that the person is not worth £100 ($200), the person's wearing apparel and the subject matter of the cause or matter (if any) only excepted.

Case to be laid before counsel

2. A person desirous of suing as a pauper shall lay a case before counsel for counsel's opinion whether or not the person has reasonable grounds for proceeding.

Affidavit by party or solicitor that case is true

3. A person shall not be permitted to sue as a pauper unless the case laid before counsel for counsel's opinion, and counsel's opinion thereon, with an affidavit of the party, or the party's solicitor, stating that the case contains a full and true statement of all the material facts to the best of his or her knowledge and belief, and referring to the case as an exhibit, are produced before the Court or Judge to whom the application is made.

No court fees payable

5. A person admitted to sue or defend as a pauper shall not be liable to any court fees.

Counsel and solicitor may be assigned

6. When a person is admitted to sue or deferred as a pauper, the Court or a Judge may, if necessary, assign a counsel or solicitor, or both, to assist the person; and a counsel or solicitor so assigned shall not be at liberty to refuse his or her assistance unless he or she satisfies the Court or Judge that he or she has some good reason for refusing.

Default in proceeding by pauper

7. When a person who has been admitted to sue as a pauper neglects to proceed with the cause or matter, the person may be ordered to pay costs, although the person has not been dispaupered; and all further proceedings in the cause or matter may be stayed until payment of any costs so ordered to be paid by the person.

Notices etc. on behalf of pauper, how to be signed

8. A notice of motion shall not be served or summons issued, nor shall a petition be presented, on behalf of any person admitted to sue or defend as a pauper, except for the discharge of the person's solicitor, unless it is signed by the person's solicitor.

Duty of solicitor

9. It shall be the duty of the solicitor assigned to a person admitted to sue or defend as a pauper to take care that no notice is served, or summons issued, or petition presented, without good cause.

Pauper not to recover costs

10. A person admitted to sue or defend as a pauper shall not be entitled to recover costs from any other party without the order of the Court or a Judge.

Taxation of costs

11. Costs ordered to be paid to a person admitted to sue or defend as a pauper shall, unless the Court or Judge otherwise directs, be taxed as in other cases.

ORDER 14—DISCLOSURE BY SOLICITORS—CHANGE OF SOLICITORS

Where name of solicitor endorsed on writ

1. Every solicitor whose name is endorsed on any originating proceeding shall, on demand in writing made by or on behalf of any party who has been served therewith or has appeared thereto, declare forthwith in writing whether such originating proceeding has been issued or delivered by the solicitor or with the solicitor's authority or privity; and if such solicitor declares that the originating proceeding was not issued or delivered by the solicitor or with the solicitor's authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereon without leave of the Court or a Judge.

Change of solicitor by notice

2.(1) In any cause or matter, a party suing or defending by a solicitor shall be at liberty to change his or her solicitor without an order for that purpose, upon notice of such change being filed in the registry and served on the opposite party; but until such notice is filed, and a copy thereof served, the former solicitor shall be considered the solicitor of the party until the final conclusion of the cause or matter.

(2) The notice must give the address and address for service of the new solicitor, as prescribed in the case of writs issued and appearances entered by a solicitor.

Proceedings continued by solicitor

3.(1) When a party has sued in person, or has appeared in person, and such party by a solicitor of the Court gives notice in writing to the opposite party, that such solicitor is authorised to act as solicitor for the party on whose behalf such notice is given, all proceedings and written communications which are required to be delivered to or served upon the party on whose behalf such notice is given shall thereafter be delivered to or served upon such solicitor.

(2) The notice must give the address and address for service of the

solicitor, as prescribed in the case of writs issued and appearances entered by a solicitor.

Removal of solicitor

3A.(1) Where a solicitor who has acted for a party in a cause or matter has died or become bankrupt or cannot be found or has failed to take out a practising certificate or has been struck off the Roll of Solicitors or suspended from practice as a solicitor, and the party has not given notice of change of solicitor or notice of intention to act in person in accordance with the provisions of rule 2, any other party to the cause or matter may, on notice to be served on the firstnamed party personally or by letter addressed to the party's last known place of address, unless the Court or Judge otherwise directs, apply to the Court or Judge for an order declaring that the solicitor has ceased to be the solicitor acting for the firstnamed party in the cause or matter, and the Court or Judge may make an order accordingly.

(2) Where the order is made, the party applying for the order shall forthwith give a notice (a **"notice of removal"**) to the same effect as the order, and the provisions of this order shall apply to the notice of removal with the necessary modifications and subject to any direction in the order as to service on the firstnamed party.

(3) Where the party who applied for the order has complied with the provisions of this order, the firstnamed party shall either appoint another solicitor or else give such an address for service as is required of a party acting in person, and shall comply with the provisions of rule 2 relating to notice of appointment of a solicitor or notice of intention to act in person, and in default of the party so doing, any documents in respect of which personal service is not requisite may be served on the party so in default by being filed in the registry.

(4) Any order made under this rule shall not affect the rights of the solicitor and the party for whom he or she acted as between themselves.

Withdrawal of solicitor

3B.(1) Where a solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with the provisions of rule 2, the solicitor may on notice to be

served on the party personally or by letter addressed to the party's last known place of address, unless the Court or Judge otherwise directs, apply to the Court or Judge for an order to the effect that the solicitor has ceased to be the solicitor acting for the party in the cause or matter, and the Court or Judge may make an order accordingly.

(1A) However, until and unless the solicitor has complied with the provisions of this rule the solicitor shall (subject to the provisions of rules 2 and 5) be considered the solicitor of the party to the final conclusion of the cause or matter.

(2) Where the order is made, the solicitor shall forthwith give a notice (a **"notice of withdrawal"**) to the same effect as the order and the provisions of rule 2 shall apply to the notice of withdrawal with the necessary modifications and subject to any directions in the order as to service on the party.

(3) Where the solicitor has complied with the said provisions the party shall either appoint another solicitor or else give such an address for service as is required of a party acting in person, and shall comply with the provisions of rule 2 relating to notice of appointment of a solicitor or notice of intention to act in person, and in default of the party so doing, any document in respect of which personal service is not requisite may be served on the party so in default by being filed in the registry.

(4) Any order made under this rule shall not affect the rights of the solicitor and the party as between themselves.

Register of town solicitors' addresses

4. The registrar shall keep at the registry a book which shall be open to be inspected by any solicitor or solicitor's clerk, without fee or reward; and every solicitor practising in the Court without the intervention of a town agent shall cause to be entered in such book in alphabetical order the solicitor's name and place of business, and, if that place is distant more than 10 km from the registry, another place within 10 km of the registry where the solicitor may be served with proceedings; and as often as any such solicitor changes his or her place of business or the place where the solicitor may be so served as aforesaid, the solicitor shall cause the like entry thereof to be made in the said book; and all proceedings and written communications which do not require personal service shall be deemed

sufficiently served on such solicitor if a copy thereof is left at the place lastly entered in such book with any person resident at or belonging to such place; and if any such solicitor neglects to cause such entry to be made, the fixing up of any notice, or the copy of any proceeding, or any written communication for such solicitor, in the registry, shall be deemed sufficient service on the solicitor.

ORDER 15—DEFAULT OF APPEARANCE

Default of appearance by infant or mentally ill person—notice of application

1.(1) When no appearance is entered to a writ of summons for a defendant who is an infant or a mentally ill person who has not been so declared, the plaintiff shall, before further proceeding with the action against the defendant, apply to the Court or a Judge for an order that some proper person be assigned as guardian of such defendant, by whom he or she may appear and defend the action.

(2) Such an order shall not be made unless it appears that the writ of summons was duly served, and that notice of the application was, after the expiration of the time allowed for appearance, and at least 6 clear days before the day in such notice named for hearing the application, served upon or left at the dwelling house of the person with whom or under whose care such defendant is then residing, and also, if the defendant is an infant not residing with or under the care of the infant's father, mother or guardian, served upon or left at the dwelling house of the father, mother or guardian (if any) of the infant, unless the Court or Judge at the time of hearing the application dispenses with such lastmentioned service.

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

Default of appearance generally

2. When a defendant fails to appear to a writ of summons, and the

plaintiff is desirous of proceeding upon default of appearance under rules 3 to 17, or under order 19, the plaintiff shall, before taking such proceeding upon default, file an affidavit of service of the writ, or of notice in lieu of service, as the case may be.

Entry of judgment by post

2A.(1) This rule applies if the plaintiff seeks to enter judgment under this order by post.

(2) The documents filed to enter judgment must include—

(a) a notice stating the rule under which the plaintiff is seeking to enter judgment; and

(b) an affidavit by the plaintiff, attested on the day it is posted, deposing that the plaintiff has not received a copy of a memorandum of appearance lodged for filing by post or a sealed duplicate memorandum of appearance.

(3) The affidavit under subrule (2)(b) may be relied on, for this rule, until the end of 5 days after the day it is attested.

(4) If, before receiving the duplicate judgment, the plaintiff receives a copy of a memorandum of appearance lodged for filing by post or a sealed duplicate memorandum of appearance, the plaintiff must immediately give written notice to the registrar.

(5) The registrar may enter judgment in default of appearance if—

(a) the documents mentioned in subrule (2) have been filed; and

(b) the plaintiff has otherwise complied with this order in seeking to enter judgment; and

(c) the registrar is satisfied a memorandum of appearance has not been filed under these rules.

(6) If, after entering judgment in default of appearance, the registrar becomes satisfied a memorandum of appearance was filed under these rules before judgment was entered, the registrar must withdraw the judgment and notify the parties.

(7) In this rule—

"plaintiff" means the plaintiff's solicitor or, if the plaintiff sues in person, the plaintiff.

Liquidated demand endorsed

3. When the writ of summons is endorsed for a debt or liquidated demand only, whether by special endorsement or otherwise, and the defendant fails, or all the defendants, if more than 1, fail, to appear thereto, the plaintiff may enter final judgment against such defendant or defendants for any sum not exceeding the sum endorsed on the writ, together with interest at the rate claimed by the endorsement as the rate agreed upon (if any) or, if no rate is claimed to have been agreed upon, at the rate of 10% per annum, to the date of the judgment, and costs as provided by order 6, rule 8.

Liquidated demand—several defendants

4. When the writ is endorsed for a debt or liquidated demand, whether by special endorsement or otherwise, and there are several defendants, of whom 1 or more appears or appear to the writ, and another or others fails or fail to appear, the plaintiff may enter final judgment as by rule 3 provided against the defendant or defendants so failing to appear.

Interlocutory judgment for damages

5. If the claim endorsed on the writ is as against any defendant, for unliquidated damages only, and that defendant fails to appear, the plaintiff after filing a statement of claim or particulars may enter interlocutory judgment against the defendant for damages to be assessed and costs, and proceed with the action against the other defendants (if any).

Detention of goods—interlocutory judgment for return, assessment of value and damages

6.(1) If the claim endorsed on the writ is, as against any defendant, for the detention of goods only, and that defendant fails to appear, the plaintiff may enter interlocutory judgment against the defendant for the return of the goods or their value to be assessed and costs, or, at the option of the

plaintiff, interlocutory judgment for the value of the goods to be assessed and costs, and proceed with the action against the other defendants (if any).

(2) If the claim endorsed on the writ is, as against any defendant, for the detention of goods and also for unliquidated damages, but no other claim is made against that defendant and that defendant fails to appear, the plaintiff may enter interlocutory judgment against the defendant for the return of the goods or their value to be assessed, damages to be assessed and costs, or, at the option of the plaintiff, interlocutory judgment for the value of the goods to be assessed, damages to be assessed and costs, and proceed with the action against the other defendants (if any).

(3) The Court or a Judge may order that a statement of claim or particulars be filed before the assessment of damages.

Detention of goods, damages and liquidated demand

7.(1) If the claim endorsed on the writ is, as against any defendant—

(a) for unliquidated damages, or for the detention of goods, or for unliquidated damages and the detention of goods; and also

(b) for a debt or liquidated demand with or without interest;

whether or not the writ is specially endorsed, and no other claim is made as against that defendant, and that defendant fails to appear, the plaintiff may enter against that defendant, as respects the claim or claims for damages or detention of goods, such interlocutory judgment (with costs) as is provided for by rules 5 and 6, and such final judgment (with costs) in respect of the claim for a debt or liquidated demand as is provided for by rule 3 or 15, and proceed with the action against the other defendants (if any).

(2) The Court or a Judge may order that a statement of claim or particulars be filed before the assessment of damages.

Recovery of land

8. In an action for the recovery of land, if no appearance is entered within the time limited by the writ for appearance, or if an appearance is entered but the defence is limited to part only of the land, the plaintiff may enter final judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence

does not apply, with his or her costs, upon the production of a certificate by the solicitor for the plaintiff or, in the case of a plaintiff in person, of an affidavit that the action is not one to which order 6, rule 11B applies.

Recovery of land and other claims

9. If the plaintiff in an action for the recovery of land has also endorsed upon the writ a claim for mesne profits, arrears of rent or double value or any other claim mentioned in rules 3 to 7, the plaintiff may enter judgment as provided in rule 8 with respect to the land; and may proceed as provided in the other preceding rules with respect to the plaintiff's other claim so endorsed.

Cases where unnecessary to proceed

9A. In any case to which rules 3 to 9 do not apply, if by reason of the defendant's satisfying the claim or complying with the demands thereof or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to enter an appearance, the plaintiff may by leave of the Court or a Judge enter judgment against that defendant for costs.

Setting aside judgment by default

10. Any judgment by default under this order may be set aside or varied by the Court or a Judge upon such terms as to costs or otherwise as the Court or Judge may think fit.

Default of appearance in actions not otherwise specially provided for

13. In all actions not by this order otherwise specially provided for, in case any defendant does not appear within the time limited by the writ for appearance, the plaintiff may, upon filing a proper affidavit of service, and, if the writ is not specially endorsed under order 6, a statement of claim, proceed in the action as if such defendant had appeared; subject, nevertheless, as to admiralty actions, to the provisions of order 39, rule 26.

Effect of judgment by default

14. In any case in which a plaintiff enters judgment under the provisions of this order against 1 or more of several defendants who fails or fail to appear, such entry of judgment shall not, nor shall the issue of execution thereon, prejudice the plaintiff's right to proceed in the action against the other defendant or defendants.

15. Where a writ of summons is endorsed for a claim for a debt or liquidated demand together with a claim for interest under the *Common Law Practice Act 1867* then upon such defaults as are hereinbefore referred to—

(a) if the plaintiff elects to abandon the claim for such interest—the writ of summons shall for the purposes of this order be treated as endorsed for such debt or liquidated demand without such interest and the plaintiff may enter judgment accordingly; and

(b) if the plaintiff elects to accept interest at a rate not higher than that specified in a practice direction issued from time to time by the Chief Justice in respect of any period mentioned in the direction—the registrar has power to award interest in accordance with the direction (whether or not the defendant has paid the debt or liquidated demand after action brought) and the plaintiff may enter judgment against the defendant in default accordingly; and

(c) if the plaintiff seeks to recover a higher rate of interest than that specified in a practice direction mentioned in paragraph (b)—the Court or a Judge may determine the interest (if any) that is recoverable and may direct that judgment be entered for the interest (whether or not the defendant has paid the debt or liquidated demand after action brought) and may otherwise direct that judgment be entered as provided by this order; and

(d) if the period for which interest is to be awarded is not specified in the endorsement on the writ, interest must be allowed only from the date of the issue of the writ.

16.(1) Where a writ of summons is endorsed for service out of the jurisdiction and leave is required pursuant to the *Service and Execution of*

Process Act 1901 (Cwlth), section 11 or order 11 before the plaintiff may proceed to enter judgment in default of appearance pursuant to order 15, rule 3, the Judge may, if leave to proceed is given, with the consent of the plaintiff fix a sum for costs of the application instead of ordering a taxation thereof.

(2) Where the application has been prepared by a solicitor the sum so fixed shall, unless the Judge for good reason otherwise orders, be the amount prescribed in schedule 2, part 16 together with an amount fixed by the Judge for counsel's fees (if any).

17. The costs fixed under rule 16 shall be included in the amount of any judgment entered in default of appearance pursuant to order 15, rule 3 and shall be in addition to any costs allowable under order 6, rule 8.

ORDER 16—CHANGE OF PARTIES

Action not abated where cause of action continues

1. A cause or matter shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survives or continues, and shall not become defective by the assignment, creation, or devolution of any estate or title pendente lite.

In case of marriage etc. or devolution of estate, Court may order successor to be made a party or served with notice

2. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to a cause or matter, the Court or a Judge may, if it is necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest (if any) of such party shall be made a party, or shall be served with notice in such manner and form as hereinafter prescribed, on such terms as may be just, and may make such order for the disposal of the cause or matter as may be just.

In case of assignment, creation, or devolution of estate or title, action may be continued

3. In case of an assignment, creation, or devolution, of any estate or title pendente lite, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved.

Order to carry on proceedings

4.(1) When by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party or parties may be obtained ex parte, either by any continuing party, or by any person who may be made a party, on application to the Court or a Judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.

(2) If the party applying to be made a party as plaintiff is an infant, the application must be made by the infant by the infant's next friend.

Service of order to continue action

5.(1) Every order made under rule 4 shall, unless the Court or Judge otherwise directs, be served upon the continuing party or parties, and also upon each such new party, unless the person making the application is himself or herself the only new party; and the order shall from the time of such service, subject nevertheless to rules 6 and 7, be binding on the person served therewith; and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if the person had been served with a writ of summons.

(2) Notice of such obligation to appear shall be endorsed on the order before service.

Application to discharge order by person under no disability or having a guardian

6. When any person who is under no disability, or who is under no disability other than coverture, or who, being under some disability other than coverture, has a guardian *ad litem* in the cause or matter, is served with an order made under rule 4, such person may apply to the Court or a Judge to discharge or vary such order at any time within 8 days after the time allowed for appearance.

By person under disability, having no guardian

7. When any person who is under any disability other than coverture, and has no guardian *ad litem* in the cause or matter, is served with an order made under rule 4, such person may apply to the Court or a Judge to discharge or vary such order at any time within 8 days after the time allowed for the appearance of the person's guardian *ad litem* when duly appointed; and until such period of 8 days has expired such order shall have no force or effect as against such lastmentioned person.

Death of sole plaintiff or defendant

8.(1) When the plaintiff or defendant in a cause dies, and the cause of action survives, but the plaintiff or the person entitled to proceed fails to proceed, the defendant, or the person against whom the cause may be continued, may apply to a Judge for an order requiring the plaintiff or the person entitled to proceed to proceed within such time as may be ordered.

(2) And in default the Judge may order the cause to be dismissed for want of prosecution, with or without costs, as in other cases.

ORDER 17—THIRD PARTY AND SIMILAR PROCEEDINGS

Third party notice

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

(a) claims against a person not already a party to the action any contribution or indemnity; or

(b) claims against such a person any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

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

then, subject to subrule (2), the defendant may issue a notice in the form in schedule 1 (a **"third party notice"**) containing a statement of the nature of the claim made against the defendant and, as the case may be, either of the nature and grounds of the claim made by the defendant or of the question or issue required to be determined.

(2) A defendant to an action may not issue a third party notice without the leave of the Court or a Judge unless the defendant issues and serves the notice before delivering his or her defence to the plaintiff.

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

Application for leave to issue third party notice

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

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

(a) the nature of the claim made by the plaintiff in the action; and

(b) the stage which proceedings in the action have reached; and

(c) the nature of the claim made by the applicant or particulars of the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and

(d) the name and address of the person against whom the third party notice is to be issued.

Issue and service of, and entry of appearance to, third party notice

3.(1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.

(2) There shall be served with every third party notice a copy of the writ by which the action was begun and of the pleadings (if any) served in the action.

(3) Subject to the foregoing provisions of this rule, the following provisions of the within rules, namely order 5, rule 9, order 10 (except rule 15), order 11 (except rule 2), and order 12, shall apply in relation to a third party notice and to the proceedings begun thereby as if—

(a) the third party notice were a writ and the proceedings begun thereby were an action; and

(b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action.

(4) A defendant who issues a third party notice shall not later than 4 days after the date on which the notice is served on the third party serve a copy thereof on all other parties to the action.

Pleadings and third party directions

4.(1) Subject to any order of the Court or a Judge—

(a) a defendant who issues a third party notice shall deliver with the

notice a statement of claim against the third party; and

(b) a third party who has entered an appearance shall deliver his or her defence to the statement of claim of the defendant within 28 days from the time limited for the third party's appearance or from the delivery of the statement of claim whichever is the later; and

(c) the defendant shall deliver the defendant's reply (if any) within 14 days from the delivery of the defence.

(2) If the third party enters an appearance, any party (including the third party) may, by summons to be served on all the other parties to the action, apply to the Court or a Judge for directions.

(3) On an application for directions under this rule the Court or a Judge may—

(a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing—order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant; or

(b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court or a Judge may direct; or

(c) dismiss the application and terminate the proceedings on the third party notice;

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

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

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

Copies of pleadings

5.(1) A defendant who has brought third party proceedings shall as soon as possible after the close of pleadings supply to the plaintiff a copy of all pleadings (including applications and orders for particulars and particulars delivered pursuant thereto) in those proceedings.

(2) Any party shall be entitled on payment to a copy of any pleadings (including applications and orders for particulars and particulars delivered pursuant thereto) delivered by any other party to the action.

Default of third party etc.

6.(1) If a third party does not enter an appearance or, having been ordered, or being required by these rules, to deliver a defence, fails to do so—

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

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

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

(3) The Court or a Judge may at any time set aside or vary a judgment entered under subrule (1)(b) or (2) on such terms (if any) as the Court or Judge may think just.

Setting aside third party proceedings

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

Judgment between defendant and third party

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

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

Claims and issues between a defendant and some other party

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

(a) claims against a person who is already a party to the action any contribution or indemnity; or

(b) claims against such a person any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

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

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

(2) Where a defendant makes such a claim as is mentioned in subrule (1)

and that claim could be made by the defendant by counterclaim in the action, subrule (1) shall not apply in relation to the claim.

(3) No appearance to such a notice shall be necessary if the person on whom it is served has entered an appearance in the action or is a plaintiff therein, and the same procedure shall be adopted for the determination between the defendant by whom, and the person on whom, such a notice is served of the claim, question or issue stated in the notice as would be appropriate under this order if the person served with the notice were a third party and (where the person has entered an appearance in the action or is a plaintiff) had entered an appearance to the notice.

(4) Rule 4(1) shall have effect in relation to proceedings on a notice issued under this rule as if for the words 'within 28 days from the time limited for the third party's appearance' there were substituted the words 'within 28 days after service of the notice on the person'.

Claims by third and subsequent parties

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

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

(3) A third party may not issue a notice under rule 1 without the leave of the Court or a Judge unless the third party issues the notice before the expiration of 14 days after the time limited for appearing to the notice issued against the third party.

Offer of contribution

11. If, before the trial of an action, a party to the action who, either as a third party or as 1 of 2 or more tortfeasors liable in respect of the same damage, stands to be held liable in the action to another party to contribute

towards any debt or damages which may be recovered against that other party in the action, makes (without prejudice to his or her defence) a written offer to that other party to contribute to a specified extent to the debt or damages, then, notwithstanding that the party reserves the right to bring the offer to the attention of the Judge at the trial, the offer shall not be brought to the attention of the Judge until after all questions of liability and amount of debt or damages have been decided.

Counterclaim by defendant

12. Where in any action a counterclaim is made by a defendant, rules 1 to 11 shall apply in relation to the counterclaim as if the subject matter of the counterclaim were the original subject matter of the action, and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

Consolidation

13.(1) Notwithstanding the provisions of order 61, rule 5, causes or matters in which a plaintiff or a defendant desires to claim contribution or other relief under the *Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act 1952* against a plaintiff or a defendant in another cause or matter may be consolidated by the order of the Court or a Judge upon such terms as may appear to the Court or the Judge to be just, on the application of any person who is a party to any of the causes or matters.

(2) The application shall be supported by affidavit which shall be served on all other parties.

Costs

14. The Court or a Judge may decide all questions of costs arising as between a third or any subsequent party and the other parties to the action, or as between codefendants, or as between all parties in causes or matters consolidated under this order, and may order any party or parties to pay the costs of any other party or parties, or give such other directions as to costs as the justice of the case may require.

ORDER 18—SUMMARY JUDGMENT IN ACTIONS WITHIN ORDER 6, RULE 7

Application for summary judgment

1.(1) When a defendant appears to a writ of summons specially endorsed under order 6, rule 7, the plaintiff may, on affidavit made personally or by any other person, verifying the facts on which the claim, or the part of a claim, to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the case may be, apply to a Judge for judgment against that defendant.

(1A) The Judge may thereupon, unless the defendant satisfies the Judge with respect to the claim, or part of the claim, to which the application relates that there is a question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed.

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

(3) Where the plaintiff obtains judgment on a claim or part of a claim against any defendant, the plaintiff may proceed with the action as respects any other claim or as respects the remainder of the claim or against any other defendant.

(4) Any defect in the special endorsement may be amended forthwith upon such terms as the Judge may think just.

(5) When an application has been dismissed on the ground of formal defects in the proceedings or in the evidence, a fresh application may be made on amended proceedings.

Manner in which application to be made

2.(1) An application by a plaintiff for judgment under rule 1 shall be made by summons.

(2) Unless the Judge otherwise directs, an affidavit for the purposes of

the application may contain statements of information or belief with the sources and grounds thereof.

(3) The summons, a copy of any affidavit in support and of any exhibit referred to therein shall be served on the defendant not less than 4 clear days before the return day.

(4) The Judge may on such terms as may be just permit further evidence by affidavit or otherwise to be given on behalf of the plaintiff on the hearing of the application.

Defendant may show cause

3.(1) The defendant may show cause against such application by affidavit, or by leave of the Judge by oral evidence, or otherwise to the satisfaction of the Judge.

(2) If the defendant shows cause by affidavit, the affidavit shall state whether the defence alleged goes to the whole or to part only, and if so what part of the plaintiff's claim.

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

(4) The Judge may, if the Judge thinks fit, order the defendant or, in the case of a corporation, any officer thereof, to attend and be examined upon oath, or to produce any leases, deeds, books, or documents, or copies of or extracts therefrom.

Judgment for part of claim

4.(1) If it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of the plaintiff's claim is admitted, the plaintiff shall have judgment forthwith for that part of the plaintiff's claim to which the defence does not apply, or which is admitted, subject to such terms (if any) as to suspending execution, or the payment of the amount levied, or any part thereof, into court by the sheriff, the taxation of costs, or otherwise, as the Judge may think fit.

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

Where 1 defendant has good defence, but other not

5. If it appears to the Judge that any defendant has a good defence to the action, or ought to be permitted to defend, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend; and the plaintiff shall be entitled to judgment against the latter, and may issue execution upon such judgment without prejudice to the plaintiff's right to proceed with the action against the former.

Leave to defend

6. Leave to defend may be given unconditionally or subject to such terms as to giving security, or as to the time or mode of trial, or otherwise, as the Judge may think fit.

Summary disposal

7. On the hearing of the application, the Judge may, with the consent of all parties, dispose of the action in a summary manner.

Directions as to trial

8. When leave, whether conditional or unconditional, is given to defend, the Judge shall have power to give all such directions as to the further conduct of the action as might be given on a summons for directions under order 20, and may order the action to be forthwith set down for trial.

Costs

9.(1) If the plaintiff makes an application under rule 1 where the case is not within this order, or if it appears to the Judge that the plaintiff knew that the defendant relied on a contention which would entitle the defendant to unconditional leave to defend, then, without prejudice to any other power or discretion of the Court or a judge, the Judge may dismiss the application with costs and may require the costs to be paid by the plaintiff forthwith.

(2) Where no order is made as to the costs of the application, or when the costs are referred to the Judge at the trial, and no trial afterwards takes place,

or no order as to costs is made at the trial, the costs of the application shall be costs in the action.

Relief from forfeiture

10. A tenant shall have the same right of relief after a judgment under this order for recovery of land on the ground of forfeiture for non-payment of rent as if the judgment had been given after trial.

Judgment for delivery up of chattel

10A. Where the claim to which an application under rule 1 relates is for the delivery up of a specific chattel and the Judge gives judgment under that rule for the applicant, the Judge may order the defendant to deliver up the chattel without giving the defendant the option to retain it on paying its assessed value.

Setting aside judgment

10B. Any judgment given against a defendant who does not appear at the hearing of an application under rule 1 may be set aside or varied by the Court or a Judge on such terms as the Court or Judge may think just.

If writ issues from district registry

11. If the writ of summons is not issued at Brisbane, Rockhampton, Townsville or Cairns, the following rules apply—

(a) the summons for final judgment may be made returnable at a following place—

(i) the place where it was issued (**"issuing place"**);

(ii) if the issuing place is in the central district—Rockhampton;

(iii) if the issuing place is in the northern district—Townsville;

(iv) if the issuing place is in the far northern district—Cairns;

(v) if the issuing place is not in the central, northern or far

northern district—Brisbane.[1]

(b) a summons made returnable at the place from which it was issued shall be heard and determined by a Judge at that place, unless a Judge otherwise orders;

(c) if on the return day no Judge is present at the place at which the summons is made returnable, the registrar shall forthwith transmit the summons and other documents in the registrar's possession relating to the summons, to the registrar of the Court at Brisbane, Rockhampton, Townsville or Cairns, as the case may be;

(d) on the first day after the receipt of the summons and other documents on which a Judge is appointed to sit in chambers, such registrar shall submit the same to such Judge for hearing and determination; if the Judge is not present, the registrar shall adjourn the matter;

(e) when the summons is made returnable at Brisbane, Rockhampton, Townsville or Cairns, the registrar of the registry at which the summons was issued shall forthwith transmit a certified copy of the writ and of the summons, together with the affidavits and other documents relating thereto, to the registrar of the Court at Brisbane, Rockhampton, or Townsville, as the case may be;

(f) the minute of the order of the Judge, together with the summons and other documents relating to it, shall be returned by the registrar to the registrar at the place from which the summons was issued.

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1 For the boundaries of the central, northern and far northern districts, see the Supreme Court Act 1995, section 266A and schedules 1 to 3.

ORDER 18A—SUMMARY JUDGMENT IN ACTIONS FOR SPECIFIC PERFORMANCE ETC.

Application by plaintiff for summary judgment

1. Where the defendant has appeared to a writ of summons endorsed with a claim—

(a) for specific performance of an agreement (whether in writing or not) for the sale, purchase, exchange, lease or transfer of property, with or without an alternative claim for damages; or

(b) for rescission of such an agreement; or

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

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

Manner in which application must be made

2.(1) An application under rule 1 shall be made by summons supported by an affidavit made by some person who can swear positively to the facts verifying the cause of action and stating that in the person's belief there is no defence to the action.

(2) The summons shall set out or have attached thereto minutes of the judgment sought by the plaintiff.

(3) The summons, a copy of any affidavit in support and of any exhibit referred to therein shall be served on the defendant not less than 4 clear days before the return day.

(4) The Judge may on such terms as may be just permit further evidence by affidavit or otherwise to be given on behalf of the plaintiff on the hearing of the application.

Judgment for plaintiff

3. Unless on the hearing of an application under rule 1 either the Judge dismisses the application or the defendant satisfies the Judge that there is an

issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action the Judge may give judgment for the plaintiff in the action.

Leave to defend

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

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

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

(a) to produce any document;

(b) if it appears to the Judge that there are special circumstances which make it desirable that the defendant should do so, to attend and be examined on oath.

Directions

5. Where the Judge orders that a defendant have leave to defend the action, the Judge shall have power to give all such directions as to the further conduct of the action as might be given on a summons for directions under order 20, and may order the action to be set down for trial.

Costs

6. If the plaintiff makes an application under rule 1 where the case is not within this order, or if it appears to the Judge that the plaintiff knew that the defendant relied on a condition which would entitle the defendant to unconditional leave to defend, then, without prejudice to any other power or discretion of the Court or a Judge, the Judge may dismiss the application with costs and may require the costs to be paid by the plaintiff forthwith.

Setting aside judgment

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

ORDER 19—SUMMARY JUDGMENT

1. Actions for account

Order for account

1. When a writ of summons has been endorsed with a claim for an account under order 6, rule 9, or when the claim endorsed on a writ of summons involves taking an account, the plaintiff may at any time after appearance, or after the time for entering an appearance has expired, apply to a Judge for an order to take the account.

Application, how made

2.(1) An application for an order under rule 1 shall be made by summons, and shall, when necessary, be supported by affidavits, stating concisely the grounds of the plaintiff's claim to an account.

(2) If any defendant has made default in appearance, the application may, as against the defendant, be made ex parte.

Evidence in answer

3. If the defendant does not, by affidavit or otherwise, satisfy the Judge that there is some preliminary question to be tried, an order for the proper accounts, and for all necessary inquiries, with such directions as are usual in similar cases, shall be made forthwith.

2. Actions for administration, declaration of right, foreclosure, redemption etc.

Judgment without pleadings

4. In any action in which an account has been taken under rules 1 to 3, the plaintiff may, at any time after the account has been taken, and in any action for administration of real or personal estate, or for the execution of a trust, and in any action for limited relief under the provisions of order 4, rule 12 or 16 in which the writ of summons has been specially endorsed under order 6, rule 10, and in any action in which the writ has been specially endorsed under the provisions of order 6, rule 11, the plaintiff may at any time after appearance, or after the time for appearance has expired, apply to the Court for judgment in a summary way without pleadings, and the Court shall thereupon proceed to hear and determine the action and give such judgment as may be just.

Evidence

5. The motion shall be heard upon affidavit unless the Court otherwise directs, and the Court may give such directions as it thinks just for the trial of any questions arising thereon.

Action may be directed to proceed in usual course

6. On an application for summary judgment under the provisions of rules 4 and 5 the Court may refuse to give judgment on the motion, and may direct the action to proceed in the usual manner.

ORDER 20—SUMMONS FOR DIRECTIONS

Summons for directions

1.(1) A party to an action may take out a summons for directions at any time before judgment.

(2) A summons for directions shall not be taken out by or against a defendant until that defendant has entered an appearance.

Interlocutory proceedings

2.(1) Upon the hearing of the summons, the Court or a Judge or registrar may give such directions with respect to the proceedings as the Court or Judge or registrar thinks proper.

(2) Without prejudice to the generality of subrule (1), the Court or a Judge or registrar may—

(a) make such order as is just with respect to—

(i) discovery and inspection of documents; and

(ii) interrogatories; and

(iii) inspections of real or personal property; and

(iv) admissions of fact or of documents; and

(v) the place, time and mode of trial; and

(b) order that evidence of a particular fact or facts, to be specified in the order, shall be given at the hearing or trial—

(i) by statement on oath of information and belief;

(ii) by production of documents or entries in books;

(iii) by copies of documents or entries;

(iv) otherwise as the Court or Judge or registrar directs; and

(c) order the action to be set down for trial forthwith and settle the issues to be tried; and

(d) make such order as is just with respect to pleadings and particulars; and

(e) where 2 or more tortfeasors are sued together in respect of the same tort or damage and 1 of them in the same proceedings claims contribution from the other or others—order that a written offer of contribution made by 1 of those tortfeasors to the other or others of them shall be treated for the purposes of that claim as a notice of payment into court; and

(f) may revoke or vary an order made under this subrule.

(3) A registrar may refer any such summons to a Judge.

No affidavit to be used without leave

3. An affidavit shall not be used at the hearing of a summons for directions except by leave of the Court or a Judge or registrar.

Parties to apply for directions

4. On the hearing of the summons, a party to whom the summons is addressed, shall so far as practicable, apply for any interlocutory order or directions.

Subsequent applications

5. An application by a party subsequent to the original summons and before judgment for directions as to an interlocutory matter or thing shall be made under the summons by 2 clear days notice to the other party stating the grounds of the application.

Cost of subsequent application

6. An application by a party which might have been made at the hearing of the original summons shall, if granted on a subsequent application, be granted at the cost of the party applying unless the Court or a Judge or registrar is of opinion that the application could not properly and reasonably have been made at the hearing of the original summons.

Applications for judgment

7. Any application for judgment under order 18 or 18A, or in an action in which the only relief claimed is a mandamus or injunction, and any application for a certificate or order that an action should be tried speedily, may be treated as a summons for directions.

Adjournment

8. The further hearing of the summons shall be adjourned from time to time until the conclusion of the action.

ORDER 22—PLEADING GENERALLY

Pleading to state material facts and not evidence—costs of prolix pleadings

1.(1) Every pleading shall contain a statement, as brief as the nature of the case will allow, setting out the material facts on which the party pleading relies to support the party's claim or defence, as the case may be, but not the evidence by which they are to be proved; and shall, when necessary, be divided into paragraphs, numbered consecutively, and each containing, as nearly as may be, a separate allegation.

(2) Dates, sums, and numbers may be expressed in figures or in words.

(3) Signature of counsel shall not be necessary.

(4) Every pleading shall be signed by the solicitor of the party, or by the party personally, if the party sues or defends in person.

(5) The Court or a Judge in adjudging the costs of the action or the taxing officer in adjusting the costs of the action shall at the instance of any party, and may without any request, inquire into any unnecessary prolixity, and may order the costs occasioned by such prolixity to be borne by the party responsible for the same.

Delivery of pleadings

2.(1) The plaintiff shall, subject to the provisions of order 24, and at such time and in such manner as therein prescribed, deliver to the defendant a statement of the plaintiff's claim, and of the relief or remedy to which the plaintiff claims to be entitled.

(2) The defendant shall, subject to the provisions of order 25, and at such time and in such manner as therein prescribed, deliver to the plaintiff the

defendant's defence, set-off, or counterclaim (if any), and the plaintiff shall, subject to the provisions of order 27, and at such time and in such manner as therein prescribed, deliver the plaintiff's reply (if any) to such defence, set-off, or counterclaim.

Set-off and counterclaim

3.(1) A defendant may plead by way of set-off, or set-up by way of counterclaim, against the claim of the plaintiff, or any of the plaintiffs, if more than 1, any right or claim, whether such set-off or counterclaim sound in damages or not; and such set-off or counterclaim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original claim and on the cross claim.

(2) But the Court or a Judge may strike out a defence by way of set-off or a counterclaim, if in the opinion of the Court or Judge such set-off or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, or may order that it shall be disposed of separately.

Relief founded on separate facts

4.(1) When the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly.

(2) And the same rule shall apply where a defendant relies upon several distinct grounds of defence or counterclaim founded upon separate and distinct facts.

Particulars to be given in certain cases

6.(1) If the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary, particulars, with dates and items if necessary, shall be stated in the pleading.

(2) However, if the particulars are of debt, expenses, or damages, and exceed 3 folios, the fact shall be so stated, with a reference to full particulars already delivered or to be delivered with the pleading.

Printing pleadings

7. Pleadings may be either printed or written, or partly printed and partly written.

Pleadings how delivered—delivery by filing—service at document exchange

8.(1) Every pleading or other document required to be delivered to a party, or between parties, shall be delivered at the address for service, to the solicitor of every party who sues or appears by a solicitor, or to the party if the party does not sue or appear by a solicitor; but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed in the registry.

(2) Where a solicitor representing a party has facilities for the reception of documents in a document exchange, delivery of a pleading or other document into those facilities shall be deemed to be sufficient delivery to or service on that solicitor.

(3) Delivery to or service on a solicitor of a pleading or other document shall be deemed to be effected on the day after which the document is delivered into the facilities of the document exchange.

(4) In this rule—

"document exchange" means the Australian Document Exchange or any other document exchange for the time being approved by the Chief Justice.

Marking pleadings

9. Every pleading shall be marked on the face with the number of the action, the title of the action, the date of the day on which the pleading is delivered, and the description of the pleading, and shall be endorsed with the name and address for service of the solicitor and agent (if any) delivering the same, or the name and address for service of the party delivering the same if the party does not sue or appear by a solicitor.

Pleadings settled by counsel

9A. Where a pleading is settled by counsel, the name of the counsel shall be written on the pleading.

Plea of 'not guilty by statute' not to be used

10. The defence of 'not guilty by statute' shall not be used.

Specific denial

11. Every allegation of fact in any statement of claim or counterclaim, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant or a mentally ill person.

Conditions precedent to be specified by party denying performance

12.(1) An averment of the performance or occurrence of all conditions precedent necessary for the case of either party shall be implied in the party's pleading.

(2) And when the performance or occurrence of any condition precedent is denied, the condition must, unless it already appears by implication, be distinctly specified in his or her pleading by the party denying it.

Particulars of failure to perform a contract to be specified by party alleging failure

12A. A party intending to rely on the failure of a person to be or to have been ready, willing and able to perform a contract must—

(a) allege the failure as a fact; and

(b) give particulars of the failure;

in the party's pleading.

Several defences or answers

13. Any party may, without leave, plead any number of separate

defences or other replies or answers to the previous pleading of the opposite party.

Pleadings to raise all grounds of defence or reply

14. Each party must raise by the party's pleading all matters of fact which show that the claim of the opposite party is not maintainable, or that a transaction is either void or voidable in point of law; and all grounds of defence or reply, as the case may be, must be pleaded which, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, release, payment, performance, facts showing illegality either by statute or common law, or the *Statute of Frauds and Limitations 1867*, or any other statute of limitations.

Departure

15. A pleading shall not raise any new ground of claim, or contain any allegation of fact, inconsistent with the previous pleadings of the party pleading the same.

General denial

16. It is sufficient for a defendant in the defendant's statement of defence to deny generally any allegations in the statement of claim, and for a plaintiff in his or her answer to deny generally any allegations in a defence by way of counterclaim.

Confession and avoidance

17. When a party admits any allegation in the pleading of the opposite party, and sets up other matter in answer thereto, the party must, unless the party amends his or her pleading, plead such other matter specifically in a further pleading.

Joinder of issue

18.(1) Either party may, in any pleading subsequent to defence or answer

to counterclaim, join issue upon the last preceding pleading of the opposite party.

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

Effect of general denial

19. Subject to rule 20 and to order 25, a general denial of an allegation of fact in a previous pleading shall be construed as a denial of the allegation, and of all the alleged circumstances, whether of time, place, amount, or otherwise.

Effect of denial of contract

20. When a contract, promise, or agreement, is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement, alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the *Statute of Frauds and Limitations 1867*, or the *Sale of Goods Act 1896*, or otherwise, or of the authority of any person by whom the contract, promise, or agreement, is alleged to have been entered into.

Effect of documents to be stated

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

Malice, knowledge etc.

22. When it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it is sufficient to allege the

same as a fact without setting out the circumstances from which it is to be inferred.

Notice

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

Implied contract or relation

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

(2) And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, the person may state the same in the alternative.

Stated or settled account to be alleged

25. When the cause of action is a stated or settled account, the same must be alleged with sufficient particulars, but when a statement of account is relied on by way of evidence or admission of some other cause of action which is pleaded, the same shall not be alleged in the pleadings.

Presumptions of law

26. A party need not in any pleading allege any matter of fact which the law presumes in the party's favour, or as to which the burden of proof does not lie upon the party, unless the same has first been specifically denied by the other party: for example, the consideration for a bill of exchange when the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.

Points of law may be raised by pleadings

27.(1) Any party may raise by the party's pleading any point of law, and any point so raised shall, if not previously disposed of, be disposed of by the Judge who tries the action, at or after the trial.

(2) However, by consent of the parties, or by order of the Court or a Judge, made on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.

Dismissal of action

28. If, in the opinion of the Court or Judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, claim of damages, ground of defence, set-off, counterclaim, or answer, therein, the Court or Judge may thereupon dismiss the action or give or make such other judgment or order therein as may be just.

Technical objection

29. No technical objection shall be made to any pleading on the ground of any alleged want of form.

When judgment pleaded

30.(1) When a judgment is pleaded, the party pleading must, within 4 days after demand by the opposite party, deliver to the opposite party a copy of the judgment, certified by the proper officer of the court by which the judgment was given.

(2) In default of such delivery, the Court or a Judge may order the pleading to be struck out or amended.

Striking out pleading where no reasonable cause of action or defence disclosed

31. The Court or a Judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or ground of defence, or that it shows that the action or defence is frivolous or vexatious; and in any such case the Court or a Judge may order that the action be stayed or

dismissed, or that judgment be entered as in default of pleading, as may be just.

Striking out pleadings in other cases

32. The Court or a Judge may at any stage of the proceedings order to be struck out or amended any matter in any pleading which is unnecessary or scandalous, or which tends to prejudice, embarrass, or delay, the fair trial of the action; and may in any such case order the costs of the application to be paid as between solicitor and client.

Notice to plead or set down demurrer

33.(1) Upon every pleading, except a joinder of issue or a demurrer, there shall be endorsed a notice in the form in schedule 1, requiring the opposite party to deliver his or her pleading in reply thereto within the prescribed time.

(2) Upon every demurrer there shall be endorsed a notice in the form in schedule 1, requiring the party whose pleading is demurred to set the demurrer down within 10 days for argument.

ORDER 23—PARTICULARS

Order for particulars

1. The Court or a Judge may in any case order either party to deliver to the other a further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding, upon such terms, as to costs and otherwise, as may be just.

Effect of order for particulars

2.(1) The party at whose instance particulars have been delivered under a Judge's order shall, unless the order otherwise provides, have the same

length of time for taking any step in the action after the delivery of the particulars that he or she had at the return of the summons.

(2) Save as in this rule provided, an order for particulars shall not, unless the order otherwise provides, operate to stay proceedings, or to give any extension of time.

Affidavit of scripts in probate actions

3.(1) In probate actions the plaintiff and defendant shall respectively, within 8 days after the entry of appearance by the defendant, file an affidavit specifying every will, codicil, draft of a will or codicil, or written instructions for the same, made by or under direction of the testator or intestate, of which the deponent or the deponent's solicitor has any knowledge, and stating whether he or she has or has not any such document in his or her possession; and every such document which is in his or her custody or under his or her control shall be exhibited to the affidavit and filed with it.

(2) Except by leave of the Court or a Judge, a party to the action shall not, nor shall the party's solicitor, be at liberty to inspect the affidavit filed by any other party, or the documents exhibited to it, until the party's own affidavit has been filed.

Actions for damage by collision—preliminary acts to be filed

4.(1) In actions for damage by collision between vessels, unless the Court or a Judge otherwise orders, the plaintiff or the plaintiff's solicitor shall, within 7 days after the commencement of the action, and the defendant or the defendant's solicitor shall, within 7 days after appearance, and before any pleading is delivered, file in the registry a document (a **"preliminary act"**), which shall be sealed up, and shall not be opened until ordered by the Court or a Judge, and which shall contain a statement of the following particulars—

(a) the names of the vessels which came into collision, and the names of their masters;

(b) the time of the collision;

(c) the place of the collision;

(d) the direction and force of the wind;

(e) the state of the weather;

(f) the state and force of the tide;

(g) the course and speed of the vessel when the other was first seen;

(h) the lights (if any) carried by the vessel;

(i) the distance and bearing of the other vessel when first seen;

(k) the lights (if any) of the other vessel which were first seen;

(l) whether any lights of the other vessel, other than those first seen, came into view before the collision;

(m) what measures were taken, and when, to avoid the collision;

(n) the parts of each vessel which first came into contact;

(o) what sound signals (if any) were given, and when;

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

(2) The Court or a Judge may, on the application of either party, order the preliminary acts to be opened at any time and the evidence to be taken thereon without its being necessary to deliver any pleadings; but in such case, if either party intends to rely on the defence of compulsory pilotage, the party may do so, upon giving notice thereof in writing to the other party, within 2 days from the opening of the preliminary acts or within such further time as the Court or a Judge may allow.

Opening acts

5. The preliminary acts may be opened as soon as the action has been set down for trial.

ORDER 24—STATEMENT OF CLAIM

Claim beyond endorsement

1. When a statement of claim is delivered, the plaintiff may therein alter, modify, or extend, the plaintiff's claim against any defendant who has appeared, without any amendment of the endorsement of the writ.

Relief claimed to be specifically stated

3.(1) Every statement of claim shall state specifically the relief which the plaintiff claims, whether singly or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the Court or a Judge may think just, to the same extent as if it had been asked for.

(2) And the same rule shall apply to any counterclaim made or relief claimed by the defendant in his or her defence.

Probate actions

4. In probate actions, when the plaintiff disputes the interest of the defendant, the plaintiff must allege in his or her statement of claim that the plaintiff denies the defendant's interest.

Statement of claim

5. Subject to the provisions of order 15, rule 13, the delivery of statements of claim shall be regulated as follows—

(a) when the writ is specially endorsed under order 6, rule 7—no further statement of claim shall be delivered, except as required by order 6, rule 12, and the endorsement on the writ be deemed to be the statement of claim;

(b) when the plaintiff has, within 28 days after appearance, applied for judgment under order 18, order 18A or order 19, rule 4, or for an order under order 19, rule 1, or for relief under order 57, rule 2—a statement of claim shall not be delivered unless the Court or a Judge or registrar so orders;

(c) in all other cases—the statement of claim shall be delivered with the writ or notice of the writ or within 28 days after appearance or within such other time as the Court or a Judge or registrar shall order.

Probate actions

6. In probate actions the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver the plaintiff's statement of claim within 6 weeks from the entry of appearance by the defendant, or from the time limited for the defendant's appearance, in case the defendant has made default; but when the defendant has appeared the plaintiff shall not be required to deliver it until the expiration of 8 days after the defendant has filed the defendant's affidavit as to scripts.

Admiralty actions

7. In admiralty actions in rem, the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver the plaintiff's statement of claim within 12 days from the entry of appearance by the defendant.

Actions in which an insurer must be served

8. Where a plaintiff is required by any Act or statutory instrument to serve a copy of the writ on the State Government Insurance Office (Queensland) or any other insurer, and to file an affidavit as to such service before taking any other step in the action, the plaintiff must allege in the statement of claim that the plaintiff has served the writ and filed the affidavit accordingly.

ORDER 25—DEFENCE AND COUNTERCLAIM

Mere denial insufficient

1. In actions for a debt or liquidated demand in money, a mere denial of the debt is not sufficient.

Defence to action on bills etc.

2. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact; for example, the drawing, making, endorsing, accepting, presenting, or notice of dishonour, of the bill or note.

Defences to action for debt or liquidated demand

3. In actions to recover a debt or liquidated demand under a contract, a defence in denial must deny any matters of fact from which the liability of the defendant is alleged to arise which are disputed; for example, in actions for goods bargained and sold or for goods sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed; in an action for money received to the use of the plaintiff, it must deny the receipt of the money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff.

Pleading to damages

4. A denial or defence shall not be necessary as to damages claimed or their amount: but the damages shall be deemed to be put in issue in all cases, unless expressly admitted.

Denial of right of person in representative capacity

5. If any party desires to put in issue the right of any other party to claim as executor or administrator, or as trustee, whether in insolvency or otherwise, or in any representative or other alleged capacity, or to put in issue the alleged constitution of any partnership firm, the party must do so specifically.

Time for delivery of defence

6. Subject to rule 7, when a defendant has entered an appearance the defendant shall deliver his or her defence including his or her counterclaim (if any) within 28 days from the time limited for appearance or from the delivery of the statement of claim, whichever is the later, or within such other time as the Court or a Judge or registrar shall order.

Delivery of defence to a specially endorsed writ

7.(1) Where a defendant has appeared to a writ of summons specially endorsed under order 6, rule 7, the defendant shall deliver his or her defence within 10 days from the time limited for appearance, unless such time is extended by the Court or Judge, or unless in the meantime plaintiff serves a summons for judgment under order 18.

(2) However, where a special endorsement is joined with an endorsement not special, the defendant shall not be required to deliver his or her defence to the claims specially endorsed before delivering his or her defence to the statement of claim delivered in respect of such claims as are not specially endorsed.

Where leave to defend given

8. When leave has been given to a defendant to defend under order 18, the defendant must deliver his or her defence (if any) within the period limited by the order giving the defendant leave to defend; or if no period is thereby limited, then within 28 days after the order.

Admissions

9. When the Court or a Judge is of opinion that any allegation of fact denied or not admitted by the defence ought to have been admitted, the Court or Judge may make such order as may be just with respect to any extra costs occasioned by such denial or failure to admit.

Defence of tender

9A. Where in any action a defence of tender before action is pleaded, the defendant must pay into Court in accordance with order 46 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into court has been made.

Counterclaim

10. When a defendant relies upon any facts or circumstances alleged in the pleadings as establishing a right of counterclaim, the defendant must, in

his or her defence, state specifically that the defendant relies on them by way of counterclaim.

Title of counterclaim

11. When a defendant sets up any counterclaim which raises questions between himself or herself and the plaintiff together with any other person, the defendant must add to the title of his or her defence a further title similar to the title in a statement of claim, setting forth as defendants the names of all the persons who, if such counterclaim were to be enforced by cross action, would be defendants to such cross action, and must deliver his or her counterclaim to such of them as are parties to the action within the period within which the defendant is required to deliver it to the plaintiff.

Claim against person not party

12. When any such person as in rule 11 mentioned is not a party to the action, the person shall be summoned to appear in the action by personal service upon the person of a copy of the counterclaim endorsed in the form in schedule 1, or to the like effect.

Appearance by third parties

13. Any person, not being a party to the action, who is served with a counterclaim as aforesaid must appear thereto as if the person had been served with a writ of summons to appear in an action, and, in default of appearance, the defendant counterclaiming against the person may upon filing a proper affidavit of service proceed with the counterclaim as against the other defendants to the counterclaim as if such person had appeared, and may proceed against the party so making default in the same manner, and subject to the same conditions, as if the counterclaim were a writ of summons.

Answer to counterclaim

14.(1) Any person named in a defence as a party to a counterclaim thereby made must, if the person is party to the action, deliver his or her answer to the counterclaim within 14 days or such other time as the Court

or a Judge or registrar shall order.

(2) If the person is not a party to the action, the person must deliver his or her answer to the counterclaim within 28 days after the time limited for the person's appearance.

Answer by way of cross action

15. The plaintiff may set up in answer to a counterclaim any matter arising out of the facts alleged in the counterclaim which would be available to the plaintiff as a defence if the counterclaim were a statement of claim in an action against the plaintiff, whether such answer is in the nature of a cross action or not.

Exclusion of counterclaim

16. When a defendant sets up a counterclaim against any other person not a party to the action, if such person contends that the claim thereby raised ought to be disposed of in an independent action, the person may, at any time before delivering his or her answer, apply to the Court or a Judge for an order that such counterclaim may be struck out; and the Court or a Judge may, on the hearing of such application, make such order as may be just.

Discontinuance

17. If, in any case in which the defendant sets up a counterclaim, the action of the plaintiff is stayed, discontinued, or dismissed, the counterclaim may nevertheless be proceeded with.

Judgment for balance

18. When, in any action for a pecuniary demand, a set-off or counterclaim for a pecuniary demand is established as a defence against the plaintiff's claim, the Court or a Judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as the defendant may be entitled to upon the merits of the case.

Notice in probate actions

19. In probate actions the party opposing a will may, with his or her defence, give notice to the party setting up the will that the party merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will; and the party shall thereupon be at liberty to do so, and shall not in any event be liable to pay the costs of the other party, unless the Court or Judge is of opinion that there was no reasonable ground for opposing the will.

Plea in abatement

20. No defence shall be pleaded in abatement.

Actions for recovery of land

21. Without prejudice to rules 1 to 20, a defendant to an action for the recovery of land must plead specifically every ground of defence on which the defendant relies, and a plea that the defendant is in possession of the land personally or by his or her tenant shall not be sufficient.

ORDER 26—OFFER TO SETTLE

Interpretation

1. In this order—

"defendant" includes a defendant to a counterclaim and a party against whom a claim is made in accordance with order 17.

"offer to settle" means an offer to settle made in accordance with this order and offer has a corresponding meaning.

"plaintiff" includes a defendant who makes a counterclaim or who makes a claim in accordance with order 17.

Where offer to settle available

2.(1) A party may serve on any other party an offer to settle any 1 or more of the claims in a cause or matter on the terms specified in the offer to settle.

(2) A party may serve more than 1 offer to settle.

(3) An offer to settle made in accordance with this order shall be in writing and shall contain a statement that it is made in accordance with this order.

Time for making offer

3.(1) An offer to settle shall be served in the case of a jury trial, at any time before a verdict is returned, and subject to subrules (2) and (3) where the trial is by any other mode, before the judgment is given.

(2) Where an account is claimed in the first instance or where a claim involves taking an account an offer to settle may be served at any time before the certificate under order 67, rule 49 becomes final and binding.

(3) Where there is an interlocutory judgment for the assessment of damages an offer to settle may be served at any time before the damages are assessed.

Withdrawal or expiry of offer

4.(1) A party shall specify in an offer to settle a period, expiring not less than 14 days after the day of service of the offer, during which the offer is open for acceptance, and the offer shall not be withdrawn during that period without the leave of the Court.

(2) An offer to settle lapses at the expiration of the period during which it is specified to be open.

(3) The Court may, at any time within which an offer to settle is open for acceptance, grant leave to a party to withdraw the offer to settle but the offer may be accepted at any time before the determination of the application for leave to withdraw it.

(4) Subrule (2) has effect even though at the expiry of the period for accepting the offer to settle an application for leave to withdraw it has not

been determined by the Court.

(5) The Court shall not, notwithstanding any other provision of these rules, extend the time for accepting an offer to settle.

Effect of offer

5. An offer to settle made in accordance with this order shall be taken to be an offer made without prejudice.

Disclosure of offer

6.(1) Subject to rule 12, no statement of the fact than an offer to settle in accordance with this order has been made shall be contained in any pleading or affidavit.

(2) Where an offer to settle is not accepted, no communication in respect of the offer shall be made to the Court at the trial or hearing until all questions of liability and the relief to be granted, except costs, have been determined.

Acceptance of offer

7.(1) Acceptance of an offer to settle shall be effected by serving a written notice of acceptance on the offeror or on the offeror's solicitor.

(2) An offer to settle does not lapse on the making of a counter offer to settle.

(3) Where an offeree rejects an offer or makes a counter offer to settle which is not accepted the offeree may subsequently accept the original offer to settle during the period that it is open for acceptance.

(4) Where an offer to settle is accepted the Court may incorporate any of its terms into a judgment.

(5) An offer to settle providing for the payment of a sum of money shall, unless it otherwise provides, be taken to be an offer providing for the payment of that sum within 14 days after acceptance of the offer.

Legal disability

8. A party who is under a legal disability may make or accept an offer to settle in accordance with this order but the acceptance of an offer to settle is not binding on the disabled party unless it is approved in accordance with the *Public Trustee Act 1978*, section 59.

Costs

9.(1) Where the plaintiff makes an offer to settle which is not accepted by the defendant and the plaintiff obtains a judgment no less favourable than the offer to settle the Court shall order the defendant to pay the plaintiff's costs fixed on a solicitor and client basis, unless the defendant shows that another order for costs is proper in the circumstances.

(2) Where the defendant makes an offer to settle which is not accepted by the plaintiff and the plaintiff obtains a judgment which is not more favourable to the plaintiff than the offer to settle the Court shall order the defendant to pay the plaintiff's costs, fixed on a party and party basis, up to and including the day of service of the offer to settle and order the plaintiff to pay the defendant's costs, fixed on a party and party basis, after the day of service of the offer to settle, unless the plaintiff shows that another order for costs is proper in the circumstances.

(3) For the purposes of subrule (2), where the offer to settle is served on the first or later day of the trial then unless the Court orders otherwise the plaintiff is entitled to his or her party and party costs to the opening of the Court on the next day of the trial and the defendant is entitled to the defendant's party and party costs incurred after the opening of the Court on that day.

(4) Where the plaintiff obtains judgment for the recovery of a debt or damages and—

(a) the amount of the judgment includes interest or damages in the nature of interest; or

(b) under any Act the Court awards the plaintiff interest or damages in the nature of interest;

for the purposes of making an order for costs under subrule (1) or (2) the Court shall disregard the interest or damages in the nature of interest that relates to the period after the day of service of the offer to settle.

(5) Subrules (1) and (2) shall not apply unless the Court is satisfied by the party serving the offer that that party was at all material times willing and able to carry out his or her part of what was proposed in the offer.

Multiple defendants

10.(1) Subject to subrule (2) where there are 2 or more defendants, the plaintiff may offer to settle with any defendant, and any defendant may offer to settle with the plaintiff.

(2) Where defendants are alleged to be jointly or jointly and severally liable to the plaintiff and rights of contribution or indemnity may exist between the defendants, this order does not apply to that offer to settle unless—

(a) in the case of an offer made by the plaintiff—the offer is made to all of the defendants and is an offer to settle the claim against all the defendants; or

(b) in the case of an offer made to the plaintiff—

(i) the offer is an offer to settle the plaintiff's claim against all the defendants; and

(ii) where the offer is made by 2 or more defendants—by the terms of the offer the defendants who make the offer are jointly or jointly and severally liable to the plaintiff for the whole of the amount of the offer.

Offer to contribute

11.(1) Where a defendant makes a claim (a **"contribution claim"**) to recover a contribution or an indemnity against any person, whether a defendant to the proceeding or not, in respect of any claim for a debt or damages made by the plaintiff in the proceeding, any party to the contribution claim may serve on any other party to the contribution claim an offer to contribute towards the settlement of the claim made by the plaintiff on the terms specified in the offer.

(2) The Court may take account of an offer to contribute in determining whether it should order that the party on whom the offer to contribute was served should pay the whole or part of—

(a) the costs of the party who made the offer; and

(b) any costs which that party is liable to pay to the plaintiff.

(3) Rules 5 and 6 apply, with such modification as is necessary to an offer to contribute as if it were an offer to settle.

Failure to comply with offer

12. Where a party does not comply with an accepted offer to settle the other party may elect to—

(a) apply to the Court for judgment in the terms of the offer and the Court may give that judgment; or

(b) continue with the proceeding as if an offer to settle had not been accepted.

ORDER 27—REPLY, ANSWER, AND SUBSEQUENT PLEADINGS

Reply

1. A party shall deliver the party's reply (if any) within 14 days from the delivery of the defence (or answer to the counterclaim as the case may be) or within such other time as the Court or a Judge or registrar shall order.

Pleading by leave after reply

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a Judge, and then shall be pleaded only upon such terms as the Court or Judge shall think fit.

ORDER 28—MATTERS ARISING PENDING THE ACTION

Before defence

1.(1) Any ground of defence which has arisen after action brought, but before the defendant has delivered his or her defence, and before the time limited for the defendant doing so has expired, may be set up by the defendant in his or her defence, either alone or together with other grounds of defence.

(2) And if, after a defence has been delivered, any ground of defence arises to any set-off or counterclaim alleged therein by the defendant, it may be set up by the plaintiff or any other defendant to the counterclaim in his or her reply or answer, either alone or together with any other ground of reply or answer.

Further defence or answer

2. When any ground of defence arises after the defendant has delivered a defence, or after the time limited for the defendant doing so has expired, the defendant may, and when any ground of defence to any set-off or counterclaim arises after reply or answer, or after the time limited for delivering a reply or answer has expired, the plaintiff or any other defendant to the counterclaim may, within 8 days after such ground of defence has arisen, or, by leave of the Court or a Judge, at any subsequent time, deliver a further defence or a further reply or further answer, as the case may be, setting forth such ground of defence.

Confession of defence

3. When any defendant, in his or her defence, or in any further defence delivered as in rule 2 mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence in the form in schedule 1, with such variations as circumstances may require, and may thereupon sign judgment for the plaintiff's costs up to the time of the pleading of such defence, with costs of judgment, unless the Court or a Judge, either before or after the delivery of such confession, otherwise orders.

ORDER 29—DEMURRER

Demurrer

1. Any party may demur to any pleading of the opposite party, or to any part of a pleading which sets up a distinct cause of action, or to any distinct and severable claim for damages, or to any claim for damages exceeding an amount named by the demurring party, or to any pleading or part of a pleading of the opposite party which sets up a distinct ground of defence, set-off, counterclaim, reply, or answer, as the case may be, on the ground that the facts alleged do not show any cause of action, claim for damages, or ground of defence, set-off, counterclaim, reply or answer, as the case may be, to which effect can be given by the Court as against the party demurring.

Demurrer to state whether the whole or part—ground frivolous—demurrer set aside with costs

2.(1) A demurrer must state specifically whether it is to the whole or to a part, and if so to what part, of the claim or pleading of the opposite party.

(2) It must state some ground in law for the demurrer, but the party demurring shall not on the argument of the demurrer be limited to the ground so stated.

(3) A demurrer shall be in one of the forms in schedule 1.

(4) If no ground or only a frivolous ground of demurrer is stated, the Court or a Judge may set the demurrer aside with costs.

Delivery

3. A demurrer shall be delivered in the same manner and within the same time as any other pleading.

Demurrer and defence in 1 pleading

4. When a party entitled to put in a pleading desires both to demur and plead to the last pleading of the opposite party, or to demur to part of the last pleading of the opposite party and to plead to other part thereof, the party shall combine such demurrer and other pleading.

Leave to plead and demur together not necessary

5.(1) Any party may plead and demur to the same matter without leave.

(2) When a party demurring pleads as well as demurs, it shall be in the discretion of the Court or a Judge to direct whether the issues of law or fact shall be first disposed of.

Demurrer to claim founded on document

6.(1) When the claim or defence of any party depends, or may depend, upon the construction of a written document, and the party in the party's pleading refers to the document but does not set it out at length, the opposite party may, in the opposite party's demurrer, set out the document at length, or so much thereof as is material, and demur to the claim or defence founded upon it, in the same manner as if it had been pleaded at length by the other party.

(2) If the party does not set out the document truly or sufficiently, the Court or a Judge may order the demurrer to be struck out or amended.

Demurrer not entered for argument to be held sufficient

7.(1) When a demurrer, either to the whole or part of a pleading, is delivered, either party may set down the demurrer for argument immediately, and the party setting down the demurrer shall on the same day give notice thereof to the other party.

(2) If the demurrer is not set down and notice given within 10 days after delivery, and if the party whose pleading or claim is demurred to does not within such time amend, the demurrer shall be held sufficient for the same purposes and with the same result as to costs as if it had been allowed on argument, and the same judgment may be entered thereon.

Amendment pending demurrer

8. While a demurrer to the whole or any part of a pleading is pending, such pleading shall not be amended except on payment of the costs of the demurrer, unless by leave of the Court or a Judge.

Costs when demurrer allowed

9. When a demurrer to the whole or part of any pleading or claim is allowed upon argument, the party whose pleading or claim is demurred to shall pay to the demurring party the costs of the demurrer, and when a demurrer is overruled the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless in either case the Court otherwise orders.

Effect of decision on demurrer going to whole action

10. Subject to the power of amendment, when a demurrer to the whole of any pleading, so far as it relates to a separate cause of action, is allowed or overruled, the Court shall give such judgment as to that cause of action as upon the pleadings the successful party appears to be entitled to, and, if the judgment is for the defendant with respect to the whole action, the plaintiff shall pay to the defendant the costs of the action, unless the Court otherwise orders.

Where demurrer allowed to part of a pleading that part is to be deemed to be struck out

11. When a demurrer to any pleading or claim or part of a pleading or claim is allowed in any case not falling within rule 10, then, subject to the power of amendment, the matter demurred to shall as between the parties to the demurrer be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not been pleaded.

Demurrer overruled with leave to plead

12. When a demurrer is overruled, the Court may make such order, and upon such terms, as to the Court shall seem fit, for allowing the demurring party to raise by further pleading any case which the demurring party may desire to set up in opposition to the matter demurred to.

Form of entry for argument

13. A demurrer shall be set down for argument by filing a copy of the pleadings so far as they relate to the matters of law raised by the demurrer,

and delivering to the registrar a memorandum of entry in the form in schedule 1.

When demurrer required to be heard before Court of Appeal

14. When the party entering a demurrer for argument enters it to be heard before a single Judge, and any other party requires it to be heard before the Court of Appeal in the first instance, the other party must, within 4 days after receiving notice that the demurrer has been so entered, deliver to the registrar and to the opposite party a memorandum in the form in schedule 1 or to the like effect, and the demurrer shall thereupon be deemed to have been entered to be heard before the Court of Appeal in the first instance.

Pleadings for Judges

16. Four days at least before the day for which a demurrer is set down for argument, the party setting it down shall leave at the chambers of the Judge, or at the chambers of each of the Judges who are to sit on the hearing of the argument, a copy of the pleadings so far as they relate to the matters of law raised by the demurrer.

ORDER 30—DISCONTINUANCE ETC.

Discontinuance of action before defence

1.(1) The plaintiff or a counterclaiming defendant may, at any time before receipt of the defence of any defendant or any answer to the counterclaim, or after the receipt of the defence or answer, but before taking any other proceeding in the action against such defendant or plaintiff or defendant to the counterclaim other than an interlocutory application, by notice in writing wholly discontinue his or her action or counterclaim against such party, or may withdraw any part or parts of his or her alleged cause of action against such party, and thereupon the plaintiff or counterclaiming defendant shall pay such party his or her costs of the action or counterclaim, or, if the action or counterclaim is not wholly discontinued, the taxed costs occasioned by the matter so withdrawn.

(2) Such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action for the same cause.

Not otherwise except by leave

2.(1) Save as in this order provided, it shall not be competent for a plaintiff to withdraw the record or discontinue the action without leave of the Court or a Judge.

(2) But the Court or a Judge may, before, or at, or after, the hearing or trial, upon such terms as to costs, and as to bringing any other action or otherwise, as may be just, order the action to be discontinued, or any part of the alleged cause of action to be struck out.

Court may allow a defendant to discontinue his or her defence

3. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, or of a plaintiff or other person defendant to a counterclaim, order the whole or any part of his or her defence or counterclaim to be withdrawn or struck out; but it shall not be competent to any defendant to withdraw his or her defence or counterclaim, or any part thereof, without such leave.

Effect on consolidated actions and on counterclaims

4. The discontinuance of an action by the plaintiff shall not prejudice any action consolidated therewith, or any counterclaim previously set up by the defendant.

Withdrawal by consent

5. When a cause has been entered for trial, it may be withdrawn by either the plaintiff or the defendant, upon production to the proper officer of a consent in writing, signed by the parties.

Entering judgment on discontinuance

6. A defendant may enter judgment for the costs of the action if it is wholly discontinued against the defendant, or for the costs occasioned by

the matter withdrawn, if the action is not wholly discontinued, in case such respective costs are not paid within 4 days after taxation.

ORDER 31—DEFAULT OF PLEADING

Default of plaintiff in delivering statement of claim

1. If a plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a Judge to dismiss the action with costs for want of prosecution; and on the hearing of such application the Court or Judge may order the action to be dismissed accordingly, or may make such other order on such terms as may be just.

Entry of judgment by post

1A.(1) This rule applies if the plaintiff seeks to enter judgment under this order by post.

(2) The documents filed to enter judgment must include—

(a) a notice stating the rule under which the plaintiff is seeking to enter judgment; and

(b) an affidavit by the plaintiff, attested on the day it is posted, deposing that a defence has not been delivered to the plaintiff.

(3) The affidavit under subrule (2)(b) may be relied on, for this rule, until the end of 5 days after the day it is attested.

(4) If, before receiving the duplicate judgment, a defence is delivered to the plaintiff, the plaintiff must immediately give written notice to the registrar.

(5) The registrar may enter judgment in default of delivery of defence if—

(a) the documents mentioned in subrule (2) have been filed; and

(b) the plaintiff has otherwise complied with this order in seeking to enter judgment; and

(c) the registrar is satisfied a defence has not been delivered under these rules.

(6) If, after entering judgment in default of delivery of defence, the registrar becomes satisfied that a defence was delivered under these rules before judgment was entered, the registrar must withdraw the judgment and notify the parties.

(7) In this rule—

"plaintiff" means the plaintiff's solicitor or, if the plaintiff sues in person, the plaintiff.

Liquidated demand

2.(1) If the plaintiff's claim is for a debt or liquidated demand only, and the defendant fails, or all the defendants, if more than 1, fail, to deliver a defence within the time allowed for that purpose, the plaintiff may, at the expiration of such time, enter final judgment against the defendant or defendants for the amount claimed, together with interest at the rate claimed by the statement of claim as the rate agreed upon (if any) or, if no rate is claimed to have been agreed upon, at the rate of 10% per annum to the date of the judgment, with the plaintiff's costs of action.

(2) However, if the solicitor for the plaintiff files a notice electing to accept costs endorsed on the writ pursuant to order 6, rule 8 together with costs fixed under order 15, rule 16 (if any) in full satisfaction of the plaintiff's costs recoverable from the defendant, the final judgment may be entered for the plaintiff for the amount of such costs in lieu of the plaintiff's costs of action.

Liquidated demand—several defendants

3. When the claim is for a debt or liquidated demand, and there are several defendants, if 1 or more of them makes or make default as mentioned in rule 2, the plaintiff may enter final judgment as by that rule provided against the defendant or defendants so making default.

Interlocutory judgment for damages

4. If the plaintiff's claim is, as against any defendant, for unliquidated damages only, and that defendant does not, within the time allowed for that purpose, deliver a defence, the plaintiff may enter interlocutory judgment against the defendant for damages to be assessed and costs, and proceed with the action against the other defendants (if any).

Detention of goods—interlocutory judgment for return, assessment of value and damages

5.(1) If the plaintiff's claim is, as against any defendant, for the detention of goods only, and that defendant does not, within the time allowed for the purpose, deliver a defence, the plaintiff may enter interlocutory judgment against the defendant for the return of the goods or their value to be assessed, and costs, or at the option of the plaintiff, interlocutory judgment for the value of the goods to be assessed and costs, and proceed with the action against the other defendants (if any).

(2) If the plaintiff's claim is, as against any defendant, for the detention of goods and also for unliquidated damages, but no other claim is made as against that defendant and that defendant does not, within the time allowed for that purpose, deliver a defence, the plaintiff may enter interlocutory judgment against the defendant for the return of the goods or their value to be assessed, damages to be assessed and costs, or, at the option of the plaintiff, interlocutory judgment for the value of the goods to be assessed, damages to be assessed and costs, and proceed with the action against the other defendants (if any).

Detention of goods, damages and liquidated demand

6. If the plaintiff's claim is, as against any defendant—

(a) for unliquidated damages, or for the detention of goods, or for unliquidated damages and the detention of goods; and also

(b) for a debt or liquidated demand with or without interest;

and no other claim is made against that defendant, and that defendant does not, within the time allowed for that purpose, deliver a defence, the plaintiff may enter against that defendant, as respects the claim or claims for

damages or detention of goods, such interlocutory judgment (with costs) as is provided for by rules 4 and 5, and such final judgment (with costs) in respect of the claim for the debt or liquidated demand as is provided for by rule 2 or 6A, and proceed with the action against the other defendants (if any).

6A. If the plaintiff's claim is or includes a claim for a debt or liquidated demand together with a claim for interest under the *Common Law Practice Act 1867*, then upon such defaults as are hereinbefore referred to—

(a) if the plaintiff elects to abandon the claim for such interest—the plaintiff's claim shall, for the purposes of this order be deemed to be for such debt or liquidated demand without such interest and the plaintiff may enter judgment accordingly; and

(b) if the plaintiff elects to accept interest at a rate not higher than that specified in a practice direction issued from time to time by the Chief Justice in respect of any period mentioned in the direction—the registrar has power to award interest in accordance with the direction (whether or not the defendant has paid the debt or liquidated demand after action brought) and the plaintiff may enter final judgment against the defendant in default accordingly; and

(c) if the plaintiff seeks to recover a higher rate of interest than that specified in a practice direction mentioned in paragraph (b)—the Court or a Judge may determine the interest (if any) that is recoverable and may direct that judgment be entered for the interest (whether or not the defendant has paid the debt or liquidated demand after action brought) and may otherwise direct that judgment be entered as provided by this order; and

(d) if the period for which interest is to be awarded is not specified in the statement of claim—interest must be allowed only from the date of the writ.

Recovery of land

7. In an action for the recovery of land, if any defendant does not, within the time allowed for that purpose, deliver a defence, the plaintiff may enter

final judgment that the person whose title is asserted in the writ of summons shall as against that defendant recover possession of the land, with the plaintiff's costs of action, upon the production of a certificate by the solicitor for the plaintiff or, in the case of a plaintiff in person, of an affidavit that the action is not one to which order 6, rule 11B applies.

Recovery of land and other claims

8. When in an action for the recovery of land the plaintiff has also endorsed upon the writ a claim for mesne profits, arrears of rent or double value or any other claim mentioned in rules 2 to 6, if any defendant does not, within the time allowed for that purpose, deliver a defence, the plaintiff may enter judgment against the defendant as provided in rule 7 with respect to the land; and may proceed as mentioned in rules 2 to 6 with respect to the plaintiff's other claim so endorsed.

Defence to part of claim only

9.(1) If the plaintiff's claim is for a debt or liquidated demand, or for pecuniary damages only or for the detention of goods with or without a claim for pecuniary damages, or for any of such matters, or for the recovery of land, and the defendant delivers a defence, which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may, by leave of the Court or a Judge, enter judgment, final or interlocutory, as the case may be, for the part unanswered.

(2) However, the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand.

(3) In addition, when there is a counterclaim, execution on any such judgment as above mentioned in respect of the plaintiff's claim shall not issue without leave of the Court or a Judge.

Probate actions

10. In probate actions, if any defendant makes default in delivering a defence, the action may proceed, notwithstanding such default.

Default in other cases

11. In all other actions than those in rules 1 to 10 mentioned, if the defendant makes default in delivering a defence, the plaintiff may set down the action as against the defendant on motion for judgment, and such judgment shall be given as upon the statement of claim the plaintiff appears to be entitled to.

One of several defendants in default

12.(1) When, in any such action as mentioned in rule 11, there are several defendants, then, if any defendant makes default in delivering a defence, the plaintiff may, if the cause of action is severable, set down the action at once on motion for judgment against the defendant so making default, or may in any case set it down on motion for judgment against the defendant at the time when it is entered for trial or set down on motion for judgment against the other defendants.

(2) In the first case the Court may adjourn the motion to come on at the time lastmentioned.

When statements of fact put in issue

13.(1) If no reply is delivered, then at the expiration of 14 days from the delivery of the defence (or answer to the counterclaim, as the case may be) the pleadings shall be deemed to be closed and all material statements of fact in the defence (or answer) shall be deemed to have been denied and put in issue.

(2) If a reply or subsequent pleading is delivered, all material statements of fact in the pleading last delivered shall at the expiration of 14 days from the delivery thereof be deemed to have been denied and put in issue.

Judgment by default in other cases

14.(1) In any case not hereinbefore provided for, if any party makes default in delivering any pleading, the opposite party may apply to the Court or a Judge for such judgment (if any) as upon the pleadings the opposite party may appear to be entitled to.

(2) And the Court or Judge may order judgment to be entered

accordingly, or may make such other order as may be necessary to do complete justice between the parties.

Setting aside judgment by default

15. Any judgment by default under this order may be set aside or varied by the Court or a Judge, upon such terms as to costs or otherwise as the Court or Judge may think fit.

Effect of judgment by default

16. In any case in which a plaintiff enters judgment under the provisions of this order against 1 or more of several defendants who makes or make default in delivering a defence, such entry of judgment shall not, nor shall the issue of execution thereon, prejudice the plaintiff's right to proceed in the action against the other defendant or defendants.

Counterclaims

17. The provisions of this order shall apply to counterclaims, and to proceedings thereon, as if the counterclaim were a statement of claim, and the defendant setting up the counterclaim were a plaintiff.

ORDER 32—AMENDMENT

Amendment in general

1.(1) The Court or a Judge may, in any cause or matter, at any stage of the proceedings, allow or direct either party to alter or amend the writ of summons, or any endorsement thereon, or any pleadings or other proceedings, in such manner and on such terms as may be just.

(2) Where an application to the Court or a Judge for leave to make the amendment mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation current at the date of the issue of the writ has expired, the Court or a Judge may nevertheless grant such leave in the circumstances

mentioned in that subrule if the Court or Judge thinks it just to do so.

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

(4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under subrule (2) if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ or the making of the counterclaim, as the case may be, the party might have sued.

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

(6) Subject to this rule, an amendment may be allowed under this rule notwithstanding that the effect of the amendment would be to add or substitute a cause of action arising after the issue of the writ of summons or other proceedings by which the proceedings were commenced.

Amendment of writs of summons

2.(1) When a writ of summons or any endorsement thereon is amended, the amendment shall be made in such manner as to distinguish the amendments from the original matter, and the writ shall be resealed.

(2) A copy thereof, as amended, shall be filed, unless the Court or Judge allows the amendment to be made upon the copy of the original already filed.

Amendment of statement of claim by plaintiff without leave

3. The plaintiff may, without any leave, amend the plaintiff's statement

of claim, whether endorsed on the writ or not, once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of 4 weeks from the appearance of the defendant who shall have last appeared, or where defence is delivered, but no order for reply is made within 10 days from delivery of the defence or the last of the defences.

Amendment of counterclaim or set-off by defendant without leave

4. A defendant who has set up any counterclaim or set-off may, without any leave, amend such counterclaim or set-off at any time before the expiration of the time allowed the defendant for answering the reply, and before such answer, or in case there be no reply, then at any time before the expiration of 28 days from defence.

Disallowance of amendment

5. When any party has amended the party's pleading or endorsement under either rule 3 or 4, the opposite party may, within 8 days after the delivery to the opposite party of the amended pleading or endorsement, apply to the Court or a Judge to disallow the amendment, or any part thereof, and the Court or Judge may, if satisfied that the justice of the case requires it, disallow the same, or may allow it subject to such terms as to costs or otherwise as may be just.

Pleading to amended pleading

6. When any party has amended the party's pleading or endorsement under rule 3 or 4, the opposite party shall plead to the amended pleading or endorsement, or amend his or her pleading, within the time which the opposite party then has to plead, or within 8 days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, the opposite party shall be deemed to rely on his or her original pleading in answer to such pleading as amended.

Amendment by leave

7. In any case not provided for by rules 1 to 6, application for leave to amend any pleading or endorsement may be made by either party to the Court or a Judge, or to the Judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just.

Failure to amend after order

8. If a party who has obtained an order for leave to amend any proceeding does not amend accordingly within the time limited for that purpose by the order, or, if no time is thereby limited, then within 14 days from the date of the order, such leave to amend shall, on the expiration of such limited time as aforesaid, or of such 14 days, as the case may be, cease to have effect, unless the time is extended by the Court or a Judge.

Amendments of delivered documents how made

9.(1) Any document which has been delivered to a party to a cause or matter, and which it is proposed to amend, may be amended by written alterations in the copy which has been delivered, and by additions on paper to be interleaved therewith or added thereto if necessary, for which purpose the party to whom the document has been delivered shall produce it to the party desiring to make the amendment.

(2) But if the amendments require the insertion of more than 144 words in any 1 place, or are so numerous or of such a nature that making them in writing would render the document difficult or inconvenient to read, the amendment must be made by delivering a fair copy of the document as amended.

Date of order and date of amendment to be marked

10. When any proceeding is amended, it shall, when amended, unless otherwise ordered, be marked with the date of the order (if any) under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.: ‘Amended the day of , pursuant to order dated the day of ’.

Delivery of amended pleadings

11. When it is necessary to deliver a fair copy of a document as amended, such amended document shall be delivered to the opposite party within the time allowed for amendment.

Clerical mistakes and accidental omissions

12. Clerical mistakes in judgments or orders, or errors appearing therein and arising from any accidental slip or omission, may at any time be corrected by the Court or a Judge on motion or summons, and an appeal shall not lie from an order directing such amendment.

General power to amend

13. The Court or a Judge may at any time, and on such terms as to costs or otherwise as the Court or Judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real questions in controversy between the parties.

Costs

14. The costs of and occasioned by any amendment made pursuant to rules 3 and 4 shall be borne by the party making the same, unless the Court or a Judge otherwise orders.

ORDER 33—SECURITY

1. Security in general

General form of security

1. Whenever in any cause or matter security is required to be given by or on behalf of any party, such security shall, unless otherwise required by law or by these rules, or unless otherwise directed by the Court or a Judge, be

given by an instrument in writing signed by the person to be bound, whether as principal or surety, and setting forth that the person submits himself or herself to the jurisdiction of the Court, and consents that, upon the happening of the event specified in the instrument, judgment may be signed against the person for the amount for which the security is given.

Title—attestation

2.(1) The instrument shall be entitled in the cause or matter in which the security is given, and shall be executed by each person to be bound in the presence of the registrar or a commissioner of affidavits, who shall satisfy himself or herself that the person signing it understands the liability which the person incurs, and that such liability may be enforced against the person in a summary way.

(2) The sureties may execute the instrument either together or separately.

(3) A commissioner shall not attest a security on behalf of any person for whom the person, or any person in partnership with the person, is acting as solicitor or agent.

Form of bond for security

3. When a bond is ordered to be given as security, it shall, unless the Court or Judge otherwise orders, be given to the party for whose benefit it is given.

Two sureties required

4. The security shall, unless otherwise directed by these rules, or unless otherwise ordered by the Court or a Judge, be given by 2 sureties, who shall be approved by the registrar or by a Judge as hereinafter provided, and each of whom shall be bound in the full amount of the security.

Notice of sureties

5.(1) The party by whom security is to be given shall serve on the registrar, and also on the party for whose benefit the security is to be given (if any) unless the security is given before service on such party, a notice

setting forth the names, addresses, and descriptions, of the proposed sureties in the form in schedule 1; and the registrar shall appoint a time for inquiring into the sufficiency of the sureties.

(2) The party proposing the sureties shall give at least 24 hours notice to the opposite party (if any) of such appointment, and shall state in the notice that any objection to the sureties must be then made.

Justification of sureties

6. Each surety shall, except by consent of the party for whose benefit the security is to be given, make an affidavit of his or her sufficiency in the form in schedule 1, and the sureties shall attend to be cross-examined before the registrar or a commissioner for affidavits, if required.

Affidavits of justification

7. Every affidavit of sufficiency must state that the deponent is worth double the amount for which the deponent is to become surety, or, if that amount exceeds £1 000 ($2 000), is worth £1 000 ($2 000) over and above what will pay his or her just debts, and over and above the amount for which the deponent is to become surety, and every other sum for which the deponent is then surety.

Registrar to be satisfied

8. If the registrar is satisfied of the sufficiency of the sureties, the registrar shall endorse upon the instrument of security a memorandum that the registrar is so satisfied.

Reference to Judge

9.(1) Either party may require that any question arising before the registrar as to the sufficiency of any surety shall be referred to a Judge, and the Judge may hear and determine such question without any summons for that purpose.

(2) The determination of the Judge shall be endorsed by the registrar upon the instrument of security in manner directed by rule 8.

Security to be filed of record

10. Every instrument of security made under this order shall be filed, and shall thereupon become a record of the Court.

Enforcement of security

11. Any party claiming to be entitled to enforce the security against any person by whom it is signed may apply to a Judge by summons in the cause or matter in which the security is given for an order that judgment be entered against the person by whom the security is given in accordance with his or her submission, and the Judge may order that judgment be entered accordingly in favour of such party for such amount as may be just.

To be filed within 6 months

12. No such instrument, and no recognisance or other security of any kind, shall be filed after the expiration of 6 months from the time of its execution, except by order of the Court or a Judge, made upon notice to all the persons by whom the security was executed or their representatives.

Payment into court in lieu of security

13.(1) Any party directed to give security may give the same by paying the amount for which security is to be given into court to a separate account in the cause or matter (the **"security account"**) and to abide the order of the Court, and giving notice of such payment to the party for whose benefit the security is to be given.

(2) The notice shall be accompanied by a duplicate original bank receipt for the money paid into court.

2. Security for costs

Security for costs of plaintiff and counterclaiming defendant

14.(1) A plaintiff ordinarily resident out of the jurisdiction of the Court may be ordered to give security for costs of the cause, whether the plaintiff is or is not temporarily within the jurisdiction.

(2) A defendant setting up a counterclaim not arising out of the plaintiff's claim may be ordered to give security for costs in any case in which a plaintiff making the like claim might be so ordered.

Second action for same cause

15. When a plaintiff who has been ordered to pay the defendant the costs of a cause, institutes a fresh cause against the same defendant in respect of the same, or substantially the same, cause of action, the Court or a Judge may order the plaintiff to give security for the costs of such second cause.

Security to be given

16. When security for costs is ordered to be given, the security shall be of such amount and shall be given at such time or times, and in such manner, as the Court or a Judge may direct.

Amount of security

17. The amount of security shall, unless the Court or a Judge otherwise orders, be £150 ($300).

Security not required from sailors in admiralty actions

18. A sailor suing in an admiralty action for the sailor's wages or for the loss of the sailor's goods or clothes in a collision shall not be required to give security for costs.

Staying proceedings

20. When a party is ordered to give security for costs, the action, or other proceeding in respect whereof the security is required to be given, shall be stayed until the security is given, unless the Court or a Judge otherwise orders.

Disposal of money paid into court

21.(1) In any case in which money has been paid into court as security

for costs, when the cause has been finally disposed of, if the party by whom the payment into court was made is adjudged to pay the costs of the cause, or any balance in respect of the costs of the cause, or any other balance of costs in the cause, to any party or parties for whose security the payment was made, the amount standing to the credit of the security account in the cause shall, unless the Court or a Judge otherwise orders, be liable to be applied in payment of the costs so ordered to be paid to such other party or parties.

(2) In any other case the party by whom the payment into court was made shall be entitled to have the sum paid out to the party.

Registrar to certify at conclusion of cause

22. When a cause has been finally disposed of by consent or otherwise the registrar shall, on the application of any party to the cause, and on being satisfied that such party is entitled to have any money standing to the credit of the security account paid out to the party, give the party a certificate to that effect.

Saving

23. Nothing in rules 14 to 22 shall be construed to affect the power of the Court or a Judge to require security for costs to be given by any party to any cause or matter in any case in which it is just that such security should be given.

ORDER 34—RELEASES AND CAVEATS IN ADMIRALTY ACTIONS

Release

1. Property arrested by warrant in admiralty actions shall not be released except under the authority of an instrument issued from the registry (a **"release"**).

Caveat against release

2. A party desiring to prevent the release of any property under arrest, shall file in the registry a notice, and thereupon a caveat against the release of the property shall be entered in a book, to be kept in the registry (the **"caveat release book"**).

On payment into registry

3. A party may obtain the release of any property by paying into court the sum in respect of which the action has been commenced.

Release of cargo arrested for freight only

4. Cargo, arrested for freight only, may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into court, or upon an order of the Court or a Judge upon proof that the freight has already been paid.

In salvage actions

5. In an action for salvage, the value of the property under arrest shall be agreed, or an affidavit of value filed, before the property is released, unless the Court or a Judge otherwise orders.

On filing bail bond

6. A party who has given security in the sum in respect of which the action has been commenced, or paid such sum into court, and, if the action is one of salvage, has also filed an affidavit as to the value of the property arrested, shall be entitled to a release for the same, unless a caveat against the release is outstanding in the caveat release book.

On consent or discontinuance or dismissal of action

7. A release may also be issued by the registrar, unless there is a caveat outstanding in the caveat release book, on a consent in writing being filed, signed by the party at whose instance the property has been arrested, or on

discontinuance or dismissal of the action in which the property has been arrested.

To be left with marshal

8. The release, when obtained, shall be left with the marshal by the party taking it out, who shall also at the same time pay all costs, charges, and expenses, attending the care and custody of the property while under arrest; and the property shall thereupon be released.

Registrar may require Judge's order

9. The registrar may refuse to issue a release without the order of a Judge.

Liability for delaying release

10. A party delaying the release of any property by the entry of a caveat shall be liable to be condemned in the costs and damages occasioned thereby, unless the party shows to the satisfaction of the Court or a Judge good and sufficient reason for having done so.

Caveat against warrant to arrest

11. A party desiring to prevent the arrest of any property, may cause a caveat against the issue of a warrant for the arrest thereof to be entered in the registry.

Caveat warrant book

12. For the purpose in rule 11 mentioned, the party shall cause to be filed in the registry a notice, signed personally or by the party's solicitor, undertaking to enter an appearance in any action that may be commenced against the property, and to give security in such action in a sum not exceeding an amount to be stated in the notice, or to pay such sum into court; and a caveat against the issue of a warrant for the arrest of the property shall thereupon be entered in a book to be kept in the registry (the **"caveat warrant book"**).

Writ to be served on party entering caveat

13. A plaintiff commencing an action against any property in respect of which a caveat has been entered in the caveat warrant book, shall forthwith serve a copy of the writ upon the party on whose behalf the caveat has been entered, or upon the party's solicitor.

Security to be given within 3 days

14. The party on whose behalf the caveat has been entered shall, if the sum in respect of which the action is commenced does not exceed the amount for which the party has undertaken, give security in such sum within 3 days from the service of the writ.

If security not given, action may proceed as on default

15. After the expiration of 12 days from the filing of the notice in rule 12 mentioned, if the party on whose behalf the caveat has been entered has not, within 3 days from the service of the writ, given security as required by rule 14, the plaintiff may proceed with the action as upon default of appearance.

Judgment may be enforced by attachment and warrant

16. If, when the action comes before the Court, the Court is satisfied that the claim is well founded, it may pronounce for the amount which appears to be due, and may enforce payment thereof by attachment against the party on whose behalf the caveat has been entered, as well as by the arrest of the property, if it then is, or thereafter comes, within the jurisdiction of the Court.

Arrest notwithstanding caveat

17. Nothing in these rules shall prevent a solicitor from taking out a warrant for the arrest of any property, notwithstanding the entry of a caveat in the caveat warrant book; but the party at whose instance any property in respect of which the caveat was entered has been arrested shall be liable to have the warrant discharged, and to be condemned in costs and damages,

unless the party shows to the satisfaction of the Court or Judge good and sufficient reason for having so done.

Caveat payment book

18. A book shall be kept in the registry (the **"caveat payment book"**) in which caveats shall be entered against the payment of money out of court in admiralty actions.

Address of caveator

19. If the person entering a caveat is not a party to the action, the notice shall state the person's name and address, and an address within 1 mile of the registry, at which it shall be sufficient to leave all documents required to be served upon the person.

Withdrawal of caveats

20. A caveat may at any time be withdrawn by the person at whose instance it has been filed, on the person filing a notice withdrawing it.

Caveat may be overruled

21. The Court or a Judge may set aside any caveat.

ORDER 35

1. Disclosure and inspection

Interpretation

1.(1) In this order—

"document" has the meaning given by the *Evidence Act 1977*, section 5(1).

"trial" includes the hearing of an action and a proceeding other than an

action, but does not include an interlocutory proceeding.

(2) A reference in an Act, rule or practice direction to discovery of a document includes a reference to disclosure under this order.

Application

2.(1) This order applies to all parties, including—

(a) infant parties; and

(b) next friends and guardians *ad litem* of infants.

(2) This order does not affect—

(a) the right of a party to inspect a document if the party has a common interest in the document with the party who has possession or control of the document; or

(b) any other right of access to the document apart from under this order.

Nature of disclosure

3. Disclosure is the delivery or production of documents in accordance with this order.

Duty to disclose documents

4.(1) A party to an action has a duty to disclose to each other party each document that—

(a) is in the possession or under the control of the first party; and

(b) is directly relevant to an allegation in issue in the cause.

(2) The duty of disclosure continues until the cause is determined.

(3) An allegation remains in issue until it is—

(a) admitted or taken to be admitted; or

(b) withdrawn, struck out or otherwise disposed of.

Documents to which disclosure does not apply

5.(1) The duty of disclosure does not apply to—

(a) a document in relation to which there is a valid claim to privilege from disclosure; or

(b) a document that relates only to the credit of an individual who may testify at the trial; or

(c) a document consisting of—

(i) a brief or instructions to counsel; or

(ii) advice from counsel; or

(d) an additional copy of a document already disclosed if it is reasonable to suppose the additional copy contains no modification, obliteration or other marking or feature likely to affect the outcome of the action.

(2) A document consisting of a statement or report of an expert is not privileged from disclosure.

Privilege claim

6.(1) A claim to privilege from disclosure is to be made by affidavit.

(2) The affidavit is to be made by an individual knowing the facts giving rise to the claim.

(3) The affidavit is to be filed and served not later than the relevant time mentioned in rule 7(2).

Disclosure by delivery of copies of documents

7.(1) Subject to rules 9 and 14, a party to an action performs the duty of disclosure by delivering to the other parties in accordance with this order copies of the documents to which the duty relates.

(2) The times for the delivery are as follows—

(a) if an order for disclosure is made before a defence is delivered—the time specified in the order;

(b) when a defence is delivered;

(c) when any further pleading or amended pleading is delivered;

(d) if the first occasion on which a document comes into the possession or under the control of the party, or is located by the party, happens after a time mentioned in paragraph (a) to (c)—within 7 days after the occasion;

(e) if the party is requested in writing by another party to deliver a copy of a document—within 28 days after the request.

Requirement to produce documents

8. Despite rule 7, a party may require another party to produce for inspection of the first party specified original documents of which copies are, or are to be, disclosed.

Disclosure by inspection of documents

9.(1) This rule applies if—

(a) it is not convenient for a party to deliver documents under rule 7 because of the number, size, quantity or volume of the documents or some of the documents; or

(b) a requirement for production of documents is made of a party under rule 8.

(2) If this rule applies, the party must effect disclosure by—

(a) producing the documents for inspection at the time specified in rule 7(2); and

(b) notifying the other party in writing of a convenient place and time at which the documents may be inspected.

Procedure for disclosure

10.(1) If disclosure is effected by the production of documents, the documents must be—

(a) contained together, and arranged, in a way that makes the documents readily accessible to, and capable of convenient inspection by, the party to whom the documents are produced;

and

(b) identified in a way that enables particular documents to be retrieved readily on later occasions.

(2) If disclosure is effected by the production of documents, the party producing the documents for inspection must—

(a) provide facilities (including mechanical and computerised facilities) for the inspection and copying of the documents; and

(b) make available a person who is able to—

(i) explain the way the documents are arranged; and

(ii) assist in locating and identifying particular documents or classes of documents.

(3) If disclosure is effected by the production of documents, the mode of arrangement of the documents when in use—

(a) must not be disturbed more than is necessary to achieve substantial compliance with subrule (1)(a); and

(b) if the party to whom the documents are produced for inspection so requires—must not be disturbed at all.

(4) If disclosure is effected by the delivery of copies of documents, the party delivering the copies must provide a list with the copies—

(a) describing the nature of each document; and

(b) identifying the person by whom the document is made.

(5) The person made available under subrule (2) by a party producing documents for inspection must, if required by the person inspecting the documents—

(a) explain to the person the way the documents are arranged; and

(b) assist the person to locate and identify particular documents or classes of documents.

(6) For the purposes of subrule (1)—

(a) the containment of the documents may be effected by files, folders or another way; and

(b) the arrangement of the documents may be effected—

(i) according to topic, class, category or allegation in issue; or

(ii) by an order or sequence; or

(iii) in another way; and

(c) the identification of the documents may be effected by a number, description or another way.

Costs

11. Subject to rule 12, a party who does not make use of the opportunity to inspect documents in accordance with a notice under rule 9 is not entitled, without an order of the Court or a Judge, to inspect the documents except on tendering an amount for the reasonable costs of providing another opportunity for inspection.

Deferral of disclosure

12.(1) A party may give a written notice to another party stating that documents relating to a specified question or class are not to be disclosed to the first party until requested by the party at a time that is reasonable having regard to the stage of the proceeding.

(2) The party to whom the notice is given may disclose to the other party a document to which the notice relates only if the other party requests its disclosure.

(3) A party may disclose to another party a document relating only to damages only if the other party requests its disclosure.

Inspection of documents mentioned in pleadings or affidavits

13. A party may, by written notice, require another party in whose pleadings, particulars or affidavits mention is made of a document—

(a) to produce the document for the inspection of the party making the requirement or the solicitor for the party; and

(b) to permit copies of the document to be made.

Court orders relating to disclosure

14.(1) The Court or a Judge may order a party to any proceeding to disclose to another party a document or class of documents by—

(a) delivering to the other party in accordance with this order a copy of the document, or of each document in the class; or

(b) producing for the inspection of the other party in accordance with this order the document, or each document in the class.

(2) The Court or a Judge may order a party to any proceeding to file and serve on another party an affidavit—

(a) deposing that a specified document or class of documents does not exist or has never existed; or

(b) deposing to the circumstances in which a specified document or class of documents—

(i) ceased to exist; or

(ii) passed out of the possession or control of the first party.

(3) The Court or a Judge may order that delivery, production or inspection of a document or class of documents for the purposes of disclosure—

(a) be provided; or

(b) not be provided; or

(c) be deferred.

(4) An order mentioned in subrule (1) or (2) may be made only if—

(a) there are special circumstances and the interests of justice require it; or

(b) it appears there is an objective likelihood that—

(i) the duty to disclose has not been complied with; or

(ii) a specified document or class of documents exists or existed and has passed out of the possession or control of a party.

(5) An order mentioned in subrule (3) may be made subject to conditions that the Court or Judge considers just.

(6) If, on an application for an order under this rule, objection is made to

the disclosure of a document (whether on the ground of privilege or another ground), the Court or a Judge may inspect the document to decide the validity of the objection.

Relief from duty to disclose

15.(1) The Court or a Judge may order that a party be relieved, wholly or to a specified extent, of the duty of disclosure.

(2) In determining whether to make the order, the matters to which the Court or Judge may have regard include the following—

(a) the likely time, cost and inconvenience involved in disclosing the documents or classes of documents compared with the amount involved in the action;

(b) the relative importance of the question to which the documents or classes of documents relate;

(c) the probable effect on the outcome of the action of disclosing or not disclosing the documents or classes of documents.

Consequences of non-disclosure

16. If a party does not disclose a document in accordance with this order or a notice or order under this order, the party—

(a) may not tender the document, or adduce evidence of its contents, without leave of the Court or a Judge at the trial; and

(b) is liable to process of contempt or sequestration for the failure; and

(c) may be ordered to pay the costs or a part of the costs of the cause.

Certificate by solicitor

17.(1) The solicitor having conduct of a cause on behalf of a party must give to the Court or a Judge at the trial, a certificate—

(a) stating that the duty of disclosure has been explained fully to the party; and

(b) if the party is a corporation—identifying the individual or

individuals to whom the duty was explained.

(2) The certificate must be—

(a) given at or immediately before the trial; and

(b) signed by the solicitor; and

(c) addressed to the Court.

Production of documents at trial

18.(1) Documents disclosed under this order must be produced at the trial if—

(a) notice to produce them has been given with reasonable particularity; and

(b) their production is asked for at the trial.

(2) If a document disclosed under this order is tendered at the trial, it is admissible in evidence against the disclosing party as relevant and as being what it purports to be.

2. Interrogatories

Entitlement to deliver interrogatories

19. Interrogatories may be delivered only in accordance with this order.

Delivery of interrogatories

20.(1) By leave of the Court or a Judge, interrogatories may, at any time, and on such terms as may be ordered as to costs, be delivered to—

(a) a party to a cause; or

(b) a person whom it is necessary to identify for the purpose of a cause it is proposed to start.

(2) The number of interrogatories may be more than 30 only if the Court or a Judge directs that a greater number may be delivered.

(3) The number of interrogatories is to be determined by treating each distinct question as 1 interrogatory.

Granting of leave to deliver interrogatories

21.(1) Subject to an order of the Court or a Judge, leave to deliver interrogatories may be granted—

(a) on application without notice to any other person; and

(b) only if the Court or Judge is satisfied there is not likely to be available to the applicant at the trial any other reasonably simple and inexpensive way of proving the matter sought to be elicited by interrogatory.

(2) The application must be accompanied by a draft of the interrogatories intended to be delivered, unless the Court or Judge otherwise directs.

Answering interrogatories

22.(1) Subject to this order, a person to whom interrogatories are delivered is required to answer them.

(2) The person must answer the interrogatories—

(a) within the time ordered by the Court or Judge; and

(b) by delivering to the interrogating party—

(i) a statement in answer to the interrogatories; and

(ii) an affidavit verifying the statement.

(3) If a party—

(a) claims relief against 2 or more other parties; and

(b) delivers interrogatories to 1 or more of them;

the statement and affidavit also must be delivered to each party who enters an appearance.

Statement in answer to interrogatories

23.(1) The statement in answer to interrogatories must comply with this

rule, unless the Court or a Judge otherwise orders.

(2) The statement must deal with each interrogatory specifically—

(a) by answering the substance of the interrogatory; or

(b) by objecting to answer the interrogatory.

(3) An answer must be given directly and without evasion or resort to technicality.

(4) An objection must be made by—

(a) specifying the grounds of the objection; and

(b) briefly stating the facts on which the objection is made.

(5) The statement is not required to deal with an interrogatory to which an order under rule 25(a) applies.

(6) The statement is required to deal with an interrogatory to which an order under rule 25(b) applies only to the extent required by the order.

Grounds for objection to answering interrogatories

24.(1) The following are the only grounds on which a person may object to answering an interrogatory—

(a) the interrogatory does not relate to a matter in question, or likely to be in question, between the person and the interrogating party;

(b) the interrogatory is vexatious or oppressive;

(c) privilege.

(2) The Court or a Judge may—

(a) require the grounds of objection specified in a statement in answer to interrogatories to be specified with greater particularity; and

(b) determine the sufficiency of the objection.

(3) If the objection is determined to be sufficient, the interrogatory is not required to be answered.

Unnecessary interrogatories

25. On an application made to the Court or a Judge, the Court or Judge may—

(a) order that a person is not required to answer an interrogatory; or

(b) by order, limit the extent to which the person is required to answer an interrogatory.

Identity of individual by whom verifying affidavit to be made

26.(1) Subject to subrule (2), the affidavit verifying the statement of a person in answer to interrogatories must be made—

(a) by the person; or

(b) if the person is under disability—by the guardian or committee of the person; or

(c) if the person is a corporation or organisation—

(i) by a member or officer of the corporation or organisation; or

(ii) by another individual involved in the management of its affairs; or

(d) if the person is a body of persons lawfully suing or being sued in the name of the body or in the name of an officer or other person—by a member or officer of the body; or

(e) if the person is a State, a Territory or the Commonwealth or an officer of a State, a Territory or the Commonwealth suing or being sued in an official capacity—by an officer of the State, Territory or Commonwealth.

(2) If the person is a person to whom subrule (1)(c), (d) or (e) applies—

(a) the Court or a Judge may, in relation to all or any of the interrogatories—

(i) specify (by name or otherwise) the individual to make the affidavit; or

(ii) specify (by description or otherwise) the individuals from whom the interrogating party may choose the individual to make the affidavit; and

(b) the affidavit must be made in relation to the interrogatories, or the relevant interrogatories, by—

(i) the individual specified; or

(ii) the individual chosen by the interrogating party.

(3) Subject to subrule (2), if the person is a person to whom subrule (1)(c), (d) or (e) applies—

(a) the interrogating party must specify in the interrogatories, in relation to each interrogatory, the individual to make the affidavit; and

(b) the affidavit must be made, in relation to an interrogatory, by the individual specified.

(4) The individual specified under subrule (3) must be a person who reasonably may be supposed—

(a) to be qualified to make the affidavit under the relevant paragraph of subrule (1); and

(b) to have knowledge of the relevant facts.

Failure to answer interrogatory

27.(1) This rule applies if a person does not give an answer, or gives an insufficient answer, to an interrogatory.

(2) If this rule applies, the Court or a Judge may—

(a) order that an answer or further answer be given under rule 22; or

(b) order the person to attend to be orally examined; or

(c) if the person is not qualified to make the affidavit verifying the statement in answer to the interrogatories—order an individual who is qualified to make the affidavit to attend to be orally examined.

(3) This rule does not limit the powers of the Court under rule 28.

Failure to comply with Court order

28.(1) If a person does not comply with an order under rule 27(2)(a), the

interrogating party or another party may apply on notice to the Court or a Judge for—

(a) an order that the cause be stayed or dismissed as to the whole or a part of the relief being claimed; or

(b) judgment or an order against the person; or

(c) an order that the relevant statement in answer to interrogatories or affidavit verifying the statement be filed or served within the time specified in the order.

(2) The Court or a Judge may make an order under subrule (1), or another order, specifying consequences for failing to comply with the order that the Court or Judge considers appropriate.

(3) This rule does not limit the powers of the Court or a Judge to punish for contempt of court.

Tendering answers

29.(1) A party may tender as evidence—

(a) an answer of another party to an interrogatory without tendering other answers; or

(b) part of an answer of another party to an interrogatory without tendering all of the answer.

(2) If the whole or a part of an answer to an interrogatory is tendered as evidence, the Court or a Judge may—

(a) consider all of the answers; and

(b) subject to subrule (3), reject the tender, unless another answer or part of an answer is tendered also.

(3) The Court or Judge may reject the tender on the condition mentioned in subrule (2)(b) only if it appears to the Court or Judge that the other answer or part of an answer is so connected with the matter tendered that the matter should not be used without the other answer or part.

3. General

Public interest considerations

30. This order does not affect any rule of law that authorises or requires the withholding of any matter on the ground that its disclosure would be injurious to the public interest.

Service on solicitors of disclosure orders

31.(1) If an order relating to interrogatories or the delivery, production or inspection of documents is served on the solicitor for the party against whom the order is made, the service is sufficient service for making an application for contempt of court for disobedience to the order.

(2) If—

(a) an application of a kind mentioned in subrule (1) is made; and

(b) the order to which the application relates was served in the way mentioned in the subrule;

the party against whom the order is made may show in answer to the application that the party has no notice or knowledge of the order.

Attachment of solicitor

32. If—

(a) an order mentioned in rule 31 is served on the solicitor for the party against whom the order is made; and

(b) the solicitor fails, without reasonable excuse, to give notice of the order to the party;

the solicitor is liable to a proceeding for contempt of court.

Costs

33. If, in any case, the cost of complying with this order would be oppressive to a party, the Court or a Judge may order that another party—

(a) pay or contribute to the cost of compliance; or

(b) provide security for the cost.

Right to disclosure

34. The right of a party to a cause to discovery is limited to obtaining disclosure, inspection and interrogatories under this order.

4. Transitional

Proceedings already commenced

35. Order 35, as in force immediately before the commencement of this rule, continues to apply to a cause in which an affidavit of documents was filed before the commencement.

ORDER 36—ADMISSIONS—NOTICES TO PRODUCE

Notice of admission of facts

1. Any party to a cause may give notice, by the party's pleading, or otherwise in writing, that the party admits the truth of the whole or any part of the case of any other party.

Notice to admit facts or documents—costs of refusal or neglect to admit

2.(1) Any party to a cause may, by notice in writing, call upon any other party to admit any specific fact, or any document, saving all just exceptions; and, in case of refusal or neglect to admit after such notice, the costs of proving any such fact or document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial or hearing the Court or Judge certifies that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice is given, unless the omission to give the notice is, in the opinion of the

taxing officer, a saving of expense.

(2) However, any admission made in pursuance of such notice shall be deemed to be made only for the purposes of the particular cause or issue, and shall not be used as an admission against the party on any other occasion, or in favour of any person other than the party giving the notice.

(3) In addition, the Court or a Judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

Form of notice and admission

3. Notices to admit documents and facts, and admission of facts, shall be in the forms in schedule 1, with such variations as circumstances may require.

Notice under the Evidence Act 1977, s 63

4. A notice of intention to adduce in evidence as proof of the execution of a will, codicil, deed, or instrument in writing, a declaration under the *Oaths Act 1867* made by an attesting witness or any other person, shall specify the name of the person by whom the declaration is made, and shall be given not less than 10 days before the day on which the cause or issue is appointed to be tried.

Judgment or order upon admissions of facts

5. When admissions of fact have been made in a cause, either on the pleadings or otherwise, any party may, at any stage of the cause, apply to the Court or a Judge for such judgment or order as upon such admissions the party may be entitled to, without waiting for the determination of any other question between the parties; and the Court or a Judge may, upon such application, make such order, or give such judgment, as may be just.

Affidavit of signature to admissions

6. An affidavit made by the solicitor, or the solicitor's clerk, of the due signature of any admissions made in pursuance of a notice to admit documents or facts, shall be sufficient evidence of such admissions.

Notice to produce documents

7.(1) A notice to produce documents at a trial or other hearing of any cause or matter shall be in the form in schedule 1, with such variations as circumstances may require.

(2) An affidavit made by the solicitor, or the solicitor's clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice served, shall be sufficient evidence of the service of the notice, and of the time when it was served.

ORDER 37—ISSUES, INQUIRIES AND ACCOUNTS

Issues may be prepared and settled

1. When in any cause it appears to the Court or a Judge that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the Court or a Judge.

Inquiries and accounts when directed

5. The Court or a Judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

ORDER 38—QUESTIONS OF LAW AND ISSUES WITHOUT PLEADINGS

1. Questions of law

Special case by consent

1.(1) The parties to any cause may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court.

(2) Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby.

(3) Upon the argument of the case the Court and the parties shall be at liberty to refer to the whole contents of any documents referred to therein, and the Court shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or law, which might have been drawn therefrom if they had been proved at a trial.

Special case by order before trial

2. If in any cause it is made to appear to the Court or a Judge that there is any question of law which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient; and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

Special case to be filed

3. Every special case shall be signed by the several parties or their solicitors, and shall be filed by the plaintiff.

Leave to set down where infant, or mentally ill person is a party

4. A special case in any cause to which an infant, or a mentally ill person who has not been so declared, or for whom a committee of the person or estate, as the case may be, has not been appointed, is a party, shall not be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence on oath that the statements contained in such special case, so far as the same affect the interest of such infant, or mentally ill person, are true.

Agreement as to payment of money and costs

5. The parties to a special case may sign a memorandum to the effect that, on the judgment of the Court being given in the affirmative or negative of any question of law raised by the case, a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by 1 of the parties to the other of them, either with or without the costs of the cause; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal.

Form of entry for argument

6. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the form in schedule 1, and, if an infant, or any such mentally ill person as mentioned in rule 4, is a party to the cause, producing a copy of the order giving leave to enter the same for argument.

Special case may be heard before Court of Appeal in the first instance

7. When the party entering a special case for argument enters it to be heard before a single Judge, and any other party requires it to be heard before the Court of Appeal in the first instance, the other party must, within 4 days after receiving notice that the case has been so entered, deliver to the registrar and to the opposite party a memorandum in the form in schedule 1 or to the like effect, and the special case shall thereupon be deemed to have been entered to be heard before the Court of Appeal in the first instance.

Copies for Judges

9. Four days at least before the day for which a special case is set down for argument the party setting it down shall leave a copy of the case at the chambers of the Judge, or at the chambers of each of the Judges who are to sit on the hearing of the argument.

Application of order

10. This order applies to every special case stated in a cause.

No special case under Equity Act 1867

11. No special case shall hereafter be stated under the *Equity Act 1867*.

2. Issues of fact without pleadings

Trial of questions of fact agreed upon

12.(1) If the parties to a cause agree as to any question or questions of fact to be decided between them, they may, at any time before judgment, by consent and by order of the Court or a Judge, proceed to the trial of such question or questions of fact without formal pleadings.

(2) Any such question may be stated for trial in the form in schedule 1, with such variations as circumstances may require; and such questions may be entered for trial and tried in the same manner as issues joined upon pleadings in an action, and the proceedings thereon shall be subject to the same control by the Court or a Judge as when issue is joined upon pleadings.

Order for payment of sum of money

13. The Court or a Judge may by consent of the parties order that, upon the finding in the affirmative or negative of any such question as in rule 12 mentioned, a sum of money, fixed by the parties, or to be ascertained upon a question stated for that purpose, shall be paid by 1 of the parties to the other of them, either with or without the costs of the cause.

Entry of judgment upon the finding

14. Upon the finding on any such question as in rules 12 and 13 mentioned, judgment may be entered for any sum so agreed or ascertained as aforesaid, or for any other relief to which the finding shows either party to be entitled, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a Judge otherwise orders for the purpose of giving either party an opportunity of moving to set aside the finding or for a new trial.

Record of proceedings

15. The proceedings upon any such issue as aforesaid may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action.

ORDER 39—TRIAL

1. Place

Place of trial

1.(1) The plaintiff may in the endorsement on the plaintiff's writ, or in the plaintiff's statement of claim, name the place where the plaintiff proposes that the action shall be tried, and the action shall, unless the Court or a Judge otherwise orders, be tried in the place so named.

(2) When no place of trial is named, the place of trial shall, unless the Court or a Judge otherwise orders, be Brisbane, Rockhampton, Townsville or Cairns, according to the district in which the cause of action arose.

(3) This rule shall not apply to actions commenced under order 95.

2. Mode of trial

Trial by jury

4.(1) Subject to the provisions of rules 5 to 13, and to the provisions of any Act requiring the action to be tried without a jury, the plaintiff may in the plaintiff's statement of claim, and any defendant may, in the defendant's defence, require that the issues of fact shall be tried by a Judge with a jury and thereupon the same shall be so tried.

(2) Subject to rules 5 to 13, where a defendant by a counterclaim raises new issues of fact, the plaintiff may in the plaintiff's answer require the issues of fact to be tried by a Judge with a jury and thereupon the same shall be so tried.

Trial by Judge

5. When neither the plaintiff nor the defendant requires the issues of fact to be tried by a Judge with a jury under the provisions of rule 4, the same shall be tried by a Judge without a jury, unless the Court or a Judge otherwise orders.

Mode of trial in admiralty actions

6.(1) Admiralty actions shall be tried by a Judge without a jury, unless the Court or a Judge otherwise orders.

(2) At the trial the Court may pronounce for the claim with or without a reference to the registrar or to the registrar assisted by merchants.

Causes not formerly triable without jury may be tried by Judge and assessors, or referee

7. Subject to such right as existed at the commencement of the *Judicature Act 1867* to have particular cases submitted to the verdict of a jury, and subject to the like right under any later statute, the Court or Judge may at any time direct the trial of any question or issues of fact, or partly of fact and partly of law, arising in any cause or matter to be tried without a

jury, either by a Judge or by a Judge with assessors, or may refer the same for inquiry and report to a special referee.

Issue requiring prolonged examination of documents etc.

8. The Court or a Judge may direct the trial without a jury of any cause, matter, or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in their, his or her opinion conveniently be made with a jury or conducted by the Court through its ordinary officers.

Changing mode of trial

9. In any case in which neither party has given notice under rules 4 to 8 that the party desires to have the issues of fact tried before a Judge with a jury, and in any case within the *Judicature Act 1867*, section 12 in which the plaintiff or any defendant desires to have the action tried in any other mode than that specified in the notice of trial, he or she must apply to the Court or a Judge for an order to that effect within 4 days after service of the notice of trial, or within such extended time as the Court or a Judge may allow.

Court may direct trial with jury at any time

10. If in any cause or matter it appears to the Court or a Judge either before or at the trial that any issue of fact could be more conveniently tried before a Judge with a jury, the Court or Judge may direct that it shall be so tried, and may for that purpose vary any previous order.

Jury of 4 unless otherwise stated

11. A notice of trial before a Judge with a jury shall, unless otherwise stated, be deemed to be for trial before a jury of 4 persons, as provided by the *Jury Act 1929*, section 18, and the *Jury Act Amendment Act 1934*, section 3.

Trying of questions in different ways and at different times

12.(1) In this rule—

"question" means a question or issue, whether of fact or law, or partly of fact and partly of law, that arises in a proceeding (whether or not the question or issue is raised by the pleadings or by the agreement of the parties to the proceeding).

(2) A Judge may at any time make an order providing for—

(a) a question to be tried separately; or

(b) when, in relation to the rest of the proceeding, a question that is to be tried separately is to be tried; or

(c) how a question that is to be tried separately is to be tried; or

(d) where a question that is to be tried separately is to be tried; or

(e) the amendment of an order made under this subrule.

(3) If a question has been tried separately under this rule, a Judge may make an order or give a direction that is appropriate, including for example—

(a) dismissing the proceeding, or the whole or a part of a claim for relief that is a part of the proceeding; or

(b) giving judgment in the proceeding.

(4) However, if an assessment of damages is made, it must be on a final basis for the proceeding.

(5) Except with leave of the Court of Appeal, an appeal does not lie from an order made or a direction given under subrule (3) unless the order or direction disposes of the proceeding.

Trial to be before single Judge, unless specially ordered

13. Every trial of a question or issue of fact with a jury shall be held before a single Judge, unless such trial is specially ordered to be held before 2 or more Judges.

3. Notice and entry of trial

Notice of trial by plaintiff

14.(1) Notice of trial may be given in any cause or matter by the plaintiff or other party in the position of plaintiff.

(2) Such notice may be given with the reply (if any); or, in other than admiralty actions, where no order for a reply has been made under order 27, rule 1, on the expiration of 4 days after the defence, or the last of the defences shall have been delivered; or at any time after the issues of fact are ready for trial.

Notice of trial by defendant—motion to dismiss for want of prosecution

15. If the plaintiff does not give notice of trial within 6 weeks after the plaintiff is first entitled to do so, or within the like period after a new trial is ordered, or, in either case, within such extended time as the Court or a Judge may allow, any defendant may, before notice of trial given by the plaintiff, give notice of trial, or may apply to the Court or a Judge to dismiss the action for want of prosecution; and on the hearing of such application the Court or a Judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or Judge may seem just.

Form of notice of trial

16.(1) The notice of trial shall state whether it is for the trial of the cause or of questions or issues therein, and shall name the place where, and the sittings at which, the trial is to be had.

(2) The notice shall be in one of the forms in schedule 1, with such variations as circumstances may require.

Length of notice

17.(1) Ten days notice of trial shall be given when the party to whom it is given resides within 320 km of Brisbane, Rockhampton, Townsville or

Cairns, as the case may be, according as the cause is pending in the Supreme Court at Brisbane, or in the Central Court, Northern Court or Far Northern Court, and 16 days notice in any other case, unless, in either case, the party to whom it is given has consented, or is under terms, to take short notice of trial; and such notice shall be sufficient in all cases, unless otherwise ordered by the Court or a Judge.

(2) Short notice of trial shall be half the number of days for full notice, less 1, unless otherwise ordered.

Entry of cause for trial

18. Notice of trial shall be given on or before entering the cause or questions or issues for trial; and a cause may be entered for trial, provided that notice of trial has been given.

Avoidance of notice of trial

19. The entry must be made within 6 days after notice of trial is given; otherwise the notice of trial shall cease to have effect.

Notice of trial at Brisbane, Rockhampton, Townsville or Cairns

20. Notice of trial of a cause or questions or issues before a Judge with a jury at Brisbane, Rockhampton, Townsville or Cairns shall be for the first day of the sittings, unless the Court or a Judge allows it to be given for a later day.

Notice of trial in the country

21. Notice of trial at any place other than Brisbane, Rockhampton, Townsville or Cairns shall be for the first day of the then next civil sittings at the place for which notice of trial is given.

Countermanding notice

22. A notice of trial shall not be countermanded except by consent, or by leave of the Court or a Judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just.

Entry for trial by party served with notice

23. If the party giving notice of trial omits to enter the cause or issues for trial on the day or the day after giving notice of trial, the party to whom notice has been given may, within 4 days thereafter, enter the same for trial, unless in the meantime the notice has been countermanded under rule 22.

Trial

24. When notice of trial of a cause or questions or issues is given for any appointed civil sittings of the Court, the cause or questions or issues may, subject to rule 30A, be tried at that sittings or at any later date for which the trial is fixed.

Power to certify for speedy trial

24A.(1) On the hearing of a summons under order 18, or any adjournment thereof, or of a summons for directions or any adjournment thereof, or of any application on notice thereunder or of any summons, it shall be lawful for the Court or Judge, if it appears that the action, cause, issue, or matter is one which ought to be tried at any early date, to certify that the same should be tried speedily and to fix the mode of trial.

(2) If the Court or Judge so certifies either party may apply to a Judge to fix an early date for the trial of such action, cause, issue, or matter, and such Judge may, if in his or her discretion the Judge thinks fit so to do, dispense with any notice of trial or any certificate of readiness for trial and fix the date and place of trial, or direct that the trial be expedited and the action, cause, issue, or matter placed in the list for trial in such position as the Judge may think fit.

Trial in default of appearance in admiralty actions

26.(1) In an admiralty action, if no appearance has been entered, the plaintiff may, at any time after the time limited for appearance, enter the action for trial on obtaining from the Judge leave to proceed ex parte.

(2) In an action in rem, a certificate of service of the warrant to arrest, or, in the case of an action against proceeds in Court, an affidavit of service of

the writ upon the registrar and of entry of a caveat payment, must be filed before the leave is applied for.

In default of pleading in admiralty actions

27. In an admiralty action, if an appearance has been entered, either party may give notice of trial and enter the action for trial as soon as the last pleading has been delivered, or as soon as the time allowed to the opposite party for delivering any pleading has expired without such pleading having been delivered.

In case of accounts in admiralty actions

28. In an admiralty action, if the writ of summons has been endorsed with a claim to have an account taken, or if the liability has been admitted or determined, and the question is simply as to the amount due, the Judge may, on the application of either party, fix a time within which the accounts and vouchers, and the proofs in support thereof, shall be filed, and at the expiration of that time either party may give notice of trial and enter the action for trial.

Setting down causes for further consideration

29.(1) When a cause or matter has been adjourned for further consideration, the same may, after the expiration of 8 days from the filing of the registrar's certificate, be set down for further consideration, on the written request of the plaintiff or party having the conduct of the proceedings, or his or her solicitor; and after the expiration of 14 days from the filing of the certificate the cause or matter may be set down on the written request of the defendant or any other party, or his or her solicitor.

(2) The request shall be in the form in schedule 1.

(3) Notice of the setting down and of the day for which the cause or matter is set down shall be given to the other parties in the action 6 days at least before the day for which it is set down.

(4) Such notice shall be in the form in schedule 1.

3A. Personal injury and death

Application

29A.(1) This division applies to actions for damages for personal injury or death.

(2) This division takes effect subject to rule 30A.

Setting down for trial

29B. An action to which this division applies shall not be allocated a trial date—

(a) unless all parties have complied with this division; or

(b) the party seeking to have a trial date allocated for the action has complied with this division and has given written notice to all other parties and the Court that further compliance with this division is waived.

Plaintiff's statement of loss and damage

29C.(1) The plaintiff shall, within 28 days after the close of pleadings, file and serve on the defendant a written statement of loss and damage disclosing—

(a) particulars of any amount claimed for out-of-pocket expenses and listing all documents in the plaintiff's possession or power concerning those expenses;

(b) if there is a claim for economic loss—

(i) the name and address of each of the plaintiff's employers during the 3 years immediately before the injury, the period of employment and the capacity in which the plaintiff was employed by each employer and the plaintiff's net earnings for each period of employment;

(ii) the name and address of each of the plaintiff's employers since the injury, the period of employment by each employer, the capacity in which the plaintiff was employed

and the plaintiff's net earnings for each period of employment;

(iii) particulars of any amount the plaintiff is claiming for loss of income to the date of the statement;

(iv) particulars of any disability resulting in loss of earning capacity and of the amount of any future economic loss claimed; and,

(v) in the case of a self-employed plaintiff, such additional or other particulars as will disclose the basis of the claim for economic loss;

(c) particulars of the pain and suffering experienced by the plaintiff and the loss of amenities caused by the injuries, including particulars of the physical, social and recreational consequences of the injuries sustained;

(d) particulars of any other amount sought as damages not otherwise mentioned;

(e) the names and addresses of all hospitals, doctors, other experts and all other persons who have examined the plaintiff or who have given reports on the plaintiff's injury, loss (including economic loss) and treatment;

(f) all documents in the plaintiff's possession or power relating to the plaintiff's injury, loss (including economic loss) and treatment and without limiting the generality of the plaintiff's obligation the statement shall disclose—

(i) hospital and medical reports; and

(ii) hospital, medical and similar accounts; and

(iii) documents (if any) concerning the refund of workers' compensation payments, social security benefits or any similar payments; and

(iv) documents concerning the amount of wages paid to the plaintiff, or if the plaintiff was self-employed, the loss of net income for any period mentioned in paragraph (b); and

(v) documents concerning the tax paid by the plaintiff and the taxable income of the plaintiff for any period mentioned in

paragraph (b); and

(vi) documents concerning any other head of the plaintiff's claim for damages.

(2) The plaintiff shall on request and at a reasonable charge supply to the defendant a copy of any document mentioned in the plaintiff's statement of loss and damage.

(3) If the plaintiff proposes to rely at the trial on evidence as to the plaintiff's injury, loss (including economic loss) or treatment (including future treatment) not in a report which if it were in a report would be liable to be disclosed under subrule (1) the plaintiff shall before the call-over at which a trial date is allocated serve on the defendant a report or a proof of that evidence.

(4) Evidence which has not been disclosed or supplied to the defendant as required by subrule (1), (2) or (3) shall not be called or tendered at the trial (except by consent or in cross-examination) unless the Court, for special reason, gives leave.

(5) The plaintiff shall file and serve supplements to the statement of loss and damage—

(a) whenever there is a significant change in the information given in the statement of loss and damages after the making of the statement; and

(b) so that the statement is accurate at the time of the holding of the call-over at which a trial date is allocated; and

(c) so that after the allocation of a trial date the statement is accurate at all times.

Defendant's expert and economic evidence

29D.(1) The defendant shall within 28 days after being served with the plaintiff's statement of loss and damage file and serve on the plaintiff a written statement of expert and economic evidence disclosing the names and addresses of all of the hospitals, doctors, and other experts who have given the defendant reports on the plaintiff's injury, loss (including economic loss) and treatment and without limiting the generality of the defendant's obligation the statement shall disclose—

(a) hospital and medical reports; and

(b) hospital, medical and similar accounts; and

(c) documents (if any) concerning the refund of workers' compensation payments, social security benefits or any similar payments; and

(d) documents concerning the amount of wages paid to the plaintiff by the defendant during the 3 years immediately before the date of the plaintiff's injury; and

(e) documents concerning the tax paid by the plaintiff and the taxable income of the plaintiff for the last 3 years immediately before the date of the plaintiff's injury.

(2) The defendant shall, on request, supply to the plaintiff a copy of any document mentioned in the defendant's statement of expert and economic evidence.

(3) If the defendant proposes to rely at the trial on evidence as to the plaintiff's injury, loss (including economic loss) or treatment (including future treatment) not in a report which if it were in a report would be liable to be disclosed under subrule (1) the defendant shall before the call-over at which a trial date is allocated serve on the plaintiff a report or proof of that evidence.

(4) Evidence which has not been disclosed or supplied to the plaintiff as required by subrule (1), (2) or (3) shall not be called or tendered at the trial (except by consent or in cross-examination) unless the Court, for special reason, gives leave.

(5) The defendant shall file and serve supplements to the statement of expert and economic evidence—

(a) whenever there is a significant change in the information given in the statement of loss and damage after the making of the statement;

(b) so that the statement is accurate at the time of the holding of the call-over at which a trial date is allocated; and,

(c) after the allocation of a trial date the statement is accurate at all times.

Insurers

29E.(1) An insurer who is defending an action in the name of the defendant is bound by this division.

(2) Where an insurer is defending an action in the name of a defendant this division applies with respect to documents in the possession or power of the insurer as well as to documents in the possession or power of the defendant.

(3) The defendant's statement of expert and economic evidence may be in the form of a joint statement of documents in the possession or power of the defendant and in the possession or power of the insurer defending in the name of the defendant and in such case the statement shall be endorsed to that effect.

(4) If an insurer and the defendant do not prepare a joint statement of expert and economic evidence each shall file and serve a separate statement.

Legal advice

29F. Nothing in this division requires a party to disclose the existence, or nature, of legal advice given to that party.

Pleadings

29G. Compliance with this division does not relieve a party of the obligation to amend a pleading where it is necessary to do so to properly plead that party's case.

Costs

29H. The Court may in making an order for costs take account of a party's failure to comply with this division or of a party's manner of compliance with this division.

Interpretation

29I. In this division—

"defendant" includes a defendant by election.

4. Papers for Judge

Copies of pleadings etc. to be delivered

30. The party entering the cause or questions or issues for trial shall deliver to the proper officer 2 copies of the whole of the pleadings (if any) (including pleadings in any third party proceedings), and of the issues, or of such other proceedings as show the questions for trial, 1 of which shall be for the use of the Judge at the trial.

4A. Setting actions down for trial

Lists and date of trial—readiness for trial

30A.(1) Subject to the provisions of this rule, every action entered for trial shall be set down in an appropriate list, to be known as a call-over list.

(2) No action shall be set down in a call-over list, and no date shall be fixed for the trial of any action, unless—

(a) a certificate of readiness for trial in the form in schedule 1 signed by the plaintiff and all other parties who have entered an appearance has been filed; or

(b) the Court or a Judge has certified that the action should be tried speedily and has dispensed with any certificate of readiness for trial; or

(c) by order of a Judge or registrar made under subrules (5) and (5A) on the application of a party who has signed a certificate of readiness for trial; or

(d) by order of a Judge or registrar made under subrule (9).

(3) A certificate of readiness for trial shall be deemed to be signed by a party for the purposes of this rule if it is signed by the party's solicitor.

(3A) A certificate of readiness for trial need not be signed by any plaintiff whose action has been wholly discontinued or by any defendant whose defence has been wholly withdrawn or struck out and shall be sufficient for the purposes of subrule (2)(a) notwithstanding that it is not signed by any such plaintiff or defendant.

(4) A certificate of readiness for trial shall not be signed by a party unless—

(a) any order or requirement by notice pursuant to order 35 for the making of discovery by or to that party or for the inspection of documents, and any order for the furnishing of particulars by or to that party, has been complied with and an affidavit has been filed in answer to any interrogatories delivered by or to that party; and

(b) so far as the party is concerned, all necessary interlocutory steps in the action (including steps to obtain discovery or inspection of documents, admissions, particulars and answers to interrogatories) have been completed; and

(c) all the party's necessary witnesses are available; and

(d) so far as the party is concerned, the action is in all respects ready for trial; and

(e) if in the action there is a claim in respect of damages for personal injury or death—a conference between all the parties or their solicitors or counsel has been held for the purpose of discussing, and if possible reaching agreement on, all matters in dispute in the action.

(5) Any party who has signed a certificate of readiness for trial may tender the certificate to the other party or parties for signature, and, if any party to whom the certificate is tendered neglects or refuses to sign it within 21 days of the date of tender, may apply to a Judge or registrar that the action be set down in a call-over list.

(5A) On the making of any such order the Judge or registrar may give such directions as to the listing of the action as the Judge or registrar thinks fit.

(6) If on the hearing of an application under subrule (5) it appears to the Judge or registrar that a party has unreasonably delayed signing a certificate of readiness for trial, then, without prejudice to any other power or discretion of the Judge or registrar, the Judge or registrar may require that party to pay the costs of the application forthwith.

(7) No party shall, without the leave of the Court or a Judge, make any request for particulars, or serve any notice requiring discovery or inspection

or calling upon any party to make any admission, or deliver any interrogatory or make any interlocutory application other than for an order under subrules (5) and (5A), at any time after the party has signed a certificate of readiness for trial, or after the expiration of 21 days from the date of the tender of such a certificate to the party for signature in accordance with subrule (5).

(8) If the plaintiff does not sign a certificate of readiness for trial but every other party who has entered an appearance has signed such a certificate, any party may apply to the Court or a Judge to dismiss the action for want of prosecution and on the hearing of such application the Court or Judge may order the action to be dismissed accordingly or may make such other order and on such terms as to the Court or Judge may seem meet.

(9) Where, in an action to which subrule (4)(e) applies, the pleadings have closed, any party may give to the other parties a notice in writing specifying a day, time and place for the holding of a conference for the purpose of discussing, and if possible reaching agreement on, all matters in dispute in the action.

(9A) If any party to whom such notice has been given unreasonably neglects or refuses to attend a conference, the Judge or registrar may, on the application of any party who would be in a position immediately to sign a certificate of readiness for trial if such a conference had been held, give such directions as to the listing of the action as the Judge or registrar thinks fit, and may, without prejudice to any other power or discretion of the Judge or registrar, require the party neglecting or refusing to attend to pay the costs of the application forthwith.

(10) Evidence of anything said, or of any admission made, in the course of a conference for the purpose of subrule (4)(e) or subrules (9) and (9A) is not admissible at the trial of the action.

5. Proceedings at trial

Default of appearance by defendant at trial

31. If, when a cause is called on for trial, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove the plaintiff's claim, so far as the burden of proof lies upon the plaintiff.

Default of appearance by plaintiff

32. If, when a cause is called on for trial, the defendant appears, and the plaintiff does not appear, the defendant, if the defendant has no counterclaim, shall be entitled to judgment dismissing the action, but if the defendant has a counterclaim, then the defendant may prove such counterclaim so far as the burden of proof lies upon the defendant.

Judgment by default may be set aside on terms

33.(1) A verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court or a Judge upon such terms as may be just.

(2) If the cause was set down for trial in the country, the application may be made either at the place appointed for the trial before the close of the sittings, or afterwards in Brisbane, Rockhampton, Townsville or Cairns, as the case may be.

Adjournment of trial

34. A Judge may, at or before the trial, if the Judge thinks it expedient for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms (if any) as the Judge may think fit.

Disallowance of vexatious questions on cross-examination

34A. The Judge may in all cases disallow any questions put in cross-examination of any witness which may appear to the Judge to be vexatious and not relevant to any matter proper to be inquired into in the cause or matter.

Nonsuit

35. When the plaintiff at the trial fails to establish by the plaintiff's evidence such a case as to call for an answer from the defendant, the Court may direct judgment of nonsuit to be entered.

Effect of judgment of nonsuit

36. A judgment of nonsuit shall not have the effect of a judgment on the merits for the defendant.

Judgment—further consideration

37.(1) The Judge may, at or after a trial, direct that judgment be entered for any or either party, or may adjourn the case for further consideration, or may leave any party to move for judgment.

(2) No judgment shall be entered after a trial without the order of the Judge before whom the trial took place, except as provided by section 9 of the *Supreme Court Act 1892.*

Entry of findings of fact on trial at assizes etc.

38. At every trial at civil sittings, when the officer present at the trial is not the officer by whom judgment ought to be entered, the associate shall enter all such findings of fact as the Judge may direct to be entered, and the directions (if any) of the Judge as to judgment, and the certificates (if any) granted by the Judge, in a book to be kept for the purpose.

Endorsement for entry of judgment

39. If the Judge directs that any judgment be entered for any party absolutely, the endorsement of the associate on the filed copy pleadings to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly.

Adjournment of matters not heard

39A. Any cause, question or issue entered for trial at a civil sittings or adjourned from some other civil sittings for trial at that sittings the hearing of which has not commenced before the date appointed for the commencement of the next ensuing civil sittings at the place at which it was entered for trial or to which it was adjourned for trial shall, unless the Court or a Judge otherwise orders, stand adjourned to such next ensuing civil sittings.

6. Assessors, special referees, and arbitrators

Trial with assessors

40. Trials with assessors shall take place in such manner and upon such terms as the Court or a Judge may direct; and the assessors shall be chosen and sworn in such manner, and their remuneration shall be of such amount, and shall be paid by such party in the first instance, as the Court or Judge may direct.

Sittings of special referee—inspection or view

41.(1) When a cause or matter, or any question in any cause or matter, is referred to a special referee, the special referee may, subject to the order of the Court or a Judge, hold the inquiry at, or adjourn it to, any place which the special referee may deem most convenient, and may have any inspection or view which the special referee may deem expedient for the better disposal of the controversy before him or her.

(2) The special referee shall, unless otherwise directed by the Court or a Judge, proceed with the inquiry from day to day, in the same manner as in actions tried with a jury.

Evidence at trial before special referee

42. Subject to any order made by the Court or Judge in any particular case, evidence shall be taken at inquiries before special referees, and the attendance of witnesses at such inquiries may be enforced, and the inquiries shall be conducted, in the same manner, as nearly as circumstances will admit, as trials are conducted before a Judge.

Authority of special referee

43.(1) Subject to any such order as last aforesaid, a special referee shall have the same authority in the conduct of the reference as a Judge has when presiding at a trial.

(2) But this rule does not authorise a special referee to commit any person to prison or to enforce any order by attachment or otherwise.

Special referee may submit questions to the Court—Court may remit case or decide it

44. The special referee may, before the conclusion of any inquiry before him or her, or by his or her report under the reference made to the special referee, submit any question arising therein for the decision of the Court, or may state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from the special referee, and to remit any question for fresh inquiry or further consideration to the special referee or to another special referee; or the Court may decide the question referred to any special referee on the evidence taken before the special referee, either with or without additional evidence as the Court may direct.

Notice of special referee's report

45. When a report is made by a special referee, the special referee shall on the same day cause notice thereof to be given to all the parties to the inquiry before the special referee by prepaid post letter directed to the address for service of each party, and the parties shall be deemed to have notice of such report in due course of post.

Judgment on report of special referee

46. When any question arising in a cause or matter has been referred to a special referee, either party may set down a motion for the adoption of the report and for judgment in accordance therewith.

Same where further consideration of cause not adjourned

47. When the report of a special referee has been made in a cause or matter the further consideration of which has not been adjourned, any party may, upon 8 days notice, apply to the Court by motion to adopt and carry into effect the report of the special referee, or to vary the report, or to remit any question for re-hearing or further consideration to the same or to another special referee.

Adoption or variation of report of special referee where further consideration of cause has been adjourned

48. When the report of a special referee has been made in a cause or matter the further consideration of which has been adjourned, any party may, on such further consideration, without notice of motion or summons, apply to the Court or Judge to adopt the report, or may, without leave of the Court or a Judge, give not less than 4 days notice of motion, to come on with the further consideration, to vary the report or to remit any question for re-hearing or further consideration to the same or to another special referee.

Setting aside report

49.(1) The Court may set aside the report of a special referee on the ground of error in law or fact.

(2) The application for the order shall be made by motion, which may be brought on with a motion for the adoption of the report.

(3) Upon hearing the motion the Court may order that the whole matter or some specific question be referred back for further report to the same or to another special referee.

Arbitrators etc. under an order to have the powers of a referee

50. The provisions of rules 41 to 49 shall apply where any matter of account is referred to an arbitrator, officer of the Court, Judge of a District Court, associate, or commissioner, of the Supreme Court, under the *Interdict Act 1867*, section 10.

7. Writs of inquiry and references as to damages

Abolition of writ of inquiry

51. No writ of inquiry shall be issued in any cause or matter.

Assessment of damages by a Master, District Court Judge or registrar

52.(1) Where judgment is given for damages to be assessed, and no

provision is made by the judgment as to how they are to be assessed, the damages shall, subject to the provisions of this order, be assessed by a Master, District Court Judge or a registrar, at the option of the party entitled to the benefit of the judgment, and the party entitled to the benefit of the judgment may, after obtaining the necessary date for hearing from the Master or District Court Judge or the necessary appointment from the registrar, as the case may be, and, at least 10 days before the date of the hearing or appointment serving notice thereof on the party against whom the judgment is given, proceed accordingly.

(2) Where the party against whom a judgment is given has not for the time being an address for service, a notice under this rule shall be deemed to be properly served on the party if left, or sent by post in a prepaid letter addressed to the party, at his or her normal or last known residence, or, where the party is a body corporate, its registered or principal office, and, if served by post, to have been served at the time at which it would have been delivered in the ordinary course of post.

(3) Without prejudice to any other power or discretion of the Master, District Court Judge or of the registrar, the attendance of witnesses and the production of documents before the Master, District Court Judge or the registrar may be compelled by subpoena, and the Master, District Court Judge or the registrar may adjourn the matter from time to time.

Certificate of amount of damages

53.(1) Where in pursuance of this order damages are assessed by a District Court Judge or the registrar, the District Court Judge or registrar shall certify the amount of damages found by him or her and shall deliver a copy of the certificate to the person entitled to the damages.

(2) The certificate shall be filed in the registry.

Judgment in default against 1 of 2 or more defendants

53A. Where any such judgment as is mentioned in rule 52 is given in default of appearance or in default of defence, and the action proceeds against other defendants, the damages under the judgment shall be assessed at the trial unless the Court or a Judge otherwise orders.

Court or Judge may order assessment before Judge, officer of the Court etc.

53B. The Court or a Judge may, in the case of any such judgment as is mentioned in rule 52, order that the assessment of damages shall be referred to a Judge or to any officer of the Court or to any Magistrates Court, or shall be made in any other way which the Court or a Judge may direct, and save as is otherwise provided in such order the provisions of rules 52 and 53 shall mutatis mutandis apply.

Assessment of value

53C. Rules 52 to 53B shall apply in relation to a judgment for the value of goods to be assessed, with or without damages to be assessed, as they apply to a judgment for damages to be assessed, and references in those rules to the assessment of damages shall be construed accordingly.

Damages in respect of continuing cause of action

54. When damages are to be assessed in respect of a continuing cause of action, they shall be assessed down to the time of the assessment.

ORDER 40

1. Evidence

Witnesses to be examined viva voce, unless otherwise agreed or ordered

1.(1) In the absence of any agreement between the parties testified by consent order, and subject to these rules, the witnesses at the trial of any cause or at any assessment of damages shall be examined viva voce and in open court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witness

whose attendance in court ought for some sufficient cause to be dispensed with shall be examined by interrogatories or otherwise before a commissioner or examiner.

(2) However, when it appears to the Court or Judge that any party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

Evidence by telephone, video link or another form of communication

1A.(1) The Court, a Judge or a registrar may, in a proceeding, determine to receive evidence or submissions by telephone, video link or another form of communication.

(2) The Court, the Judge or the registrar may impose conditions under subrule (1).

Evidence etc. to be taken down in shorthand

2.(1) The evidence given at the trial of an action, and any ruling, direction or summing up thereat, shall be taken down in shorthand by a reporter or reporters of the State Reporting Bureau unless the Court or a Judge otherwise orders.

(2) The Court or a Judge may direct that the evidence or any other proceedings (including any argument, ruling, direction or judgment) in any cause or matter shall be taken down in shorthand by a reporter or reporters of the said Bureau.

Proof on trial in default of appearance in admiralty actions in rem

3. Upon the trial of an admiralty action in rem upon default of appearance, the claim must be proved to the satisfaction of the Judge.

Affidavit evidence in admiralty references

4. In default actions in rem, and in references in admiralty actions evidence may be given by affidavit.

Reading evidence taken in other causes or matters

5. When evidence taken in another cause or matter is admissible, an order to read it shall not be necessary, but such evidence may, saving all just exceptions, be read, in the case of an ex parte application by leave of the Court or a Judge, to be obtained at the time of making the application, and, in any other case, upon the party desiring to use such evidence giving 2 days previous notice to the other party of his or her intention to read it.

Office copies admissible in evidence

6. Office copies of writs, records, pleadings, and documents filed in the Court shall be admissible in evidence in all causes and matters, and between all persons or parties, to the same extent as the original would be admissible.

Distribution of property—evidence

7.(1) In any case relating to the distribution of any property, whether in court or out of court, the Judge may, in order to avoid expense or delay, admit as evidence statements on oath of information and belief, and such other evidence as, having regard to the circumstances of the case, may be reasonable.

(2) As regards proceedings before the registrar, the Judge may exercise his or her discretion under this rule, without any formal application, by giving directions to the registrar in any particular case as to the nature of the evidence to be admitted.

2. Examination of witnesses

Court or Judge may order evidence to be taken

8. The Court or a Judge may, in any cause or matter, if it appears necessary for the purposes of justice, make an order for the examination of any person upon oath before the Court or Judge, or before any officer of the Court, or other person, and at any place, or may order a commission to be issued to any person, either in Queensland or elsewhere, authorising the person to take the evidence on oath of any person, and may empower any

party to any such cause or matter to give in evidence in the cause or matter the deposition so taken, on such terms (if any) as the Court or Judge may direct.

Form of commission

9.(1) A commission to examine witnesses must be in schedule 1, form 178.

(2) The form may include variations that the circumstances of the case require.

Request to examine witnesses

10.(1) The Court or a Judge may, in any case in which a request to examine witnesses may by law be issued, order that a request to examine witnesses be issued in lieu of a commission.

(2) The forms in schedule 1 shall be used for such order and request respectively, with such variations as circumstances may require.

Order for attendance of person to produce documents

11.(1) The Court or a Judge may, in any cause or matter, at any stage of the proceedings order the attendance of any person before the Court or a Judge for the purpose of producing any writing or other document named in the order which the Court or Judge may think fit to be produced.

(2) However, no person shall be compelled to produce under any such order any writing or other document which the person could not be compelled to produce at the hearing or trial.

Disobedience to order for attendance

12. Any person who wilfully disobeys any order requiring his or her attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of court, and may be dealt with accordingly.

Expenses of person ordered to attend

13. Any person required to attend for the purpose of being examined or of producing any document shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in court.

Examiner to have copy writ and pleadings

14. When any witness or person is ordered to be examined before any officer of the Court, or any other person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings (if any) or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.

Persons to be present at examination

15. The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses shall be subject to cross-examination and re-examination.

Depositions to be taken down in writing, read over to and signed by witness, or, if the witness refuses, by the examiner—questions objected to

16.(1) The depositions taken before an officer of the Court, or any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner, ordinarily by question and answer, so as to represent as nearly as may be the statement of the witness, and when completed shall be read over to the witness and signed by the witness in the presence of the parties, or such of them as may think fit to attend.

(2) If the witness refuses to sign the depositions, the examiner shall sign the same.

(3) The examiner 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.

(4) Any questions which may be objected to shall be taken down by the examiner in the depositions, with a note of the objection, but the examiner

shall not have power to decide upon the materiality or relevancy of any question.

Refusal of witness to attend or to be sworn

17. If any person duly summoned by subpoena to attend for examination refuses to attend, or if, having attended, the person refuses to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed in the registry, and thereupon the party requiring the attendance of the witness may apply to the Court or a Judge, ex parte or on notice, for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be.

Objection by witness to questions

18. If any witness objects to any question which may be put to the witness before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner and transmitted by the examiner to the registry, to be there filed, and the validity of the objection shall be decided by the Court or a Judge.

Costs occasioned by refusal or objection

19. In any case under rules 17 and 18, the Court or a Judge may order the witness to pay any costs occasioned by the wintess' refusal or objection.

Depositions to be transmitted to registry

20.(1) When the examination of any witness before an examiner has been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by the examiner to the registry, and there filed.

(2) Any party may have a copy of the depositions, or of any part thereof, on payment of the prescribed fee.

Special report by examiner

21. The person taking the examination of a witness under these rules may, and if need be shall, make a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon, and the Court or a Judge may thereupon direct such proceedings to be taken, and may make such order, as upon the report may be just.

Depositions not to be given in evidence without consent or by leave of Judge

22. Except as by this order otherwise provided, no deposition shall be given in evidence at the hearing or trial of a cause or matter without the consent of the party against whom the same is offered, unless the Court or Judge is satisfied that the deponent is dead, or beyond the jurisdiction of the Court, or unable from sickness or other infirmity to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence, saving all just exceptions, without proof of the signature to such certificate.

Oaths

23. Any officer of the Court or other person directed to take the examination of any person may administer the necessary oaths to such person.

Evidence taken after trial

24. Evidence taken subsequently to the hearing or trial of a cause or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial.

Practice as to taking evidence at any stage of a cause or matter

25. The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage.

Special directions as to taking evidence

26. The practice of the Court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the Court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions which may be given in any case.

Notice to use affidavit or depositions at trial

27. An affidavit or deposition filed or made before issue joined in any cause or matter shall not, without special leave of the Court or a Judge, be received at the hearing or trial thereof as evidence for the party on whose behalf it is filed, unless, not later than 1 month after issue joined, or within such further period as may be allowed by special leave of the Court or a Judge, notice in writing has been given by the party intending to use the same to the opposite party of his or her intention to do so.

Evidence in proceedings subsequent to trial

28. Evidence taken at the hearing or trial of a cause or matter may be used in any subsequent proceedings in the same cause or matter.

3. Subpoenas

Attendance of witness under subpoena for examination or to produce documents

29. Any party to a cause or matter may, subject to these rules, by a writ of *subpoena ad testificandum* or *subpoena duces tecum*, require the attendance of any person, or the production of any document, before the Court or Judge at the hearing or trial, or on the hearing of any motion or application in the cause or matter, or before the registrar or other officer of the Court or other person appointed to make any inquiry in the cause or matter, or before any person appointed to take any examination of witnesses.

Form of writ of subpoena

30. A writ of subpoena shall be in the appropriate form in schedule 1, with such variations as circumstances may require.

Subpoena for attendance of witness in chambers

31. When a subpoena is required for the attendance of a witness for the purpose of proceedings in chambers, such subpoena shall issue from the registry upon a fiat of the Judge.

Subpoena for attendance before registrar

32. When a subpoena is required for the attendance of a witness for the purpose of proceedings before the registrar or other officer of the Court, such subpoena shall be issued upon the direction of the registrar or such officer.

Number of persons in a subpoena other than a subpoena duces tecum

33. Every subpoena other than a *subpoena duces tecum* shall contain the names of 3 persons when necessary or required, but may contain the names of any larger number of persons.

Correction of errors in subpoena

35. In the interval between the suing out and the service of any subpoena the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ re-sealed upon leaving a corrected praecipe for such subpoena marked with the words ‘altered and re-sealed’, and signed with the name and address of the solicitor or party suing out the same.

Service of subpoena

36.(1) The service of a subpoena shall be effected in the same manner as the service of a writ of summons in an action.

(2) The copy of a subpoena for a witness served upon the witness need not contain the name of any witness other than the person served.

Affidavit to prove service of subpoena

37. Affidavits filed for the purpose of proving the service of a subpoena upon any person must state when, where, and how, and by whom, such service was effected.

Within what time subpoena to be served

38. The service of a subpoena shall be of no validity unless it is made within 12 weeks after the date of issue of the writ.

3A. Non-party discovery

Writ of non-party discovery

38A. A party to a cause may, by writ of non-party discovery, require a person who is not a party to the cause, to produce to the party a document that—

(a) relates to the matter in question in the cause; and

(b) is in the person's possession or control; and

(c) the person could be required to produce at the trial of the matter.

Form and service of writ

38B. The writ must—

(a) be in schedule 1, form 169A; and

(b) be served within 7 days after its issue in the same way as a writ of summons.

Application to set aside or vary writ

38C. The respondent to the writ may, within 14 days after its service,

apply to a Judge to have it set aside or varied, and the Judge may make such order as the Judge determines.

Privilege or objection to discovery

38D. If, in relation to the production of a document, the respondent—

(a) makes a claim of privilege; or

(b) otherwise objects to its production; or

(c) fails to produce it;

the applicant for the writ, or the respondent, may apply to a Judge for a determination in relation to the claim or objection or failure to produce the document, and the Judge may make such order as the Judge determines.

Production and copying of documents

38E.(1) Subject to any order under rules 38C and 38D, the respondent must, within 14 days after the service of the writ, produce the document specified in the writ for inspection by the applicant at the place of business of the respondent or the respondent's solicitor within ordinary business hours, unless the applicant and the respondent agree to the document's production at some other place or time.

(2) The applicant may copy the produced document.

Costs

38F. The respondent's costs and expenses of producing the document must be paid by the applicant after being taxed, unless the applicant and the respondent agree otherwise.

4. Perpetuating testimony

Action to perpetuate testimony

39. Any person who would, under the circumstances alleged by the person to exist, become entitled, upon the happening of any future event, to

any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by the person be brought to trial before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim.

When Attorney-General should be made a defendant to an action to perpetuate testimony

40. In actions to perpetuate testimony touching any honour, title, dignity, or office, or any matter or thing in which the Crown may have any estate or interest, the Attorney-General may be made a defendant as representing the Crown; and the depositions taken in any such action in which the Attorney-General is so made a defendant shall be admissible in any proceedings in which they are otherwise admissible, notwithstanding any objection that might be taken to them upon the ground that the Crown was not a party to the action in which such depositions were taken.

Examination of witnesses to perpetuate testimony

41. Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for that purpose.

Action not to be set down for trial

42. An action to perpetuate the testimony of witnesses shall not be set down for trial, but evidence shall be taken therein in such manner, and before such person, as the Court or a Judge may direct.

5. Obtaining evidence for foreign tribunals

Evidence for foreign tribunals

43. Where under the *Foreign Tribunals Evidence Act 1856*, or the *Extradition Act 1870*, section 24, any civil or commercial matter or any criminal matter is pending before a court or tribunal of a foreign country and it is made to appear to the Court or a Judge, by commission rogatoire or letter of request, or other evidence as hereinafter provided, that such court

or tribunal is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction the Court or a Judge may, on the ex parte application of any person shown to be duly authorised to make the application on behalf of such foreign court or tribunal, and on production of the commission rogatoire or letter of request, or of a certificate signed in the manner, and certifying to the effect mentioned in the *Foreign Tribunals Evidence Act 1856*, section 2, or such other evidence as the Court or a Judge may require, make such order or orders as may be necessary to give effect to the intention of the Acts above mentioned in conformity with the *Foreign Tribunals Evidence Act 1856*, section 1.

Form of order

44. An order made under rule 43 shall be in form in schedule 1, with such variations as circumstances may require.

Before what persons examination conducted

45. The examination may be ordered to be taken before any fit and proper person nominated by the person applying, or before any officer of the Court, or such other qualified person as to the Court or a Judge may seem fit.

How depositions to be forwarded

46. Unless otherwise provided in the order for examination, the person before whom the examination is taken shall, on its completion, forward the same to the registrar of the Supreme Court, and on receipt thereof such officer shall append thereto a certificate, in form in schedule 1, with such variations as circumstances may require, duly sealed with the seal of the Supreme Court, and shall forward the depositions so certified, and the commission rogatoire or letter of request (if any) to the Attorney-General of the State for transmission to Her Majesty's Secretary of State for the Colonies.

Transmission of depositions direct to foreign tribunals

47. The Court or a Judge may in any case and at any time order that the

certified depositions and the commission rogatoire or letter of request (if any) shall be forwarded to the Attorney-General of the State for transmission direct to the foreign court or tribunal desirous of obtaining the said testimony.

Manner of examination

48.(1) An order made under rule 43 may, if the Court or a Judge shall think fit, direct the said examination to be taken in such manner as may be requested by the commission rogatoire or letter of request from the foreign court, or therein signified to be in accordance with the practice or requirements of such court or tribunal, or which may, for the same reason, be requested by the applicant for such order.

(2) But in the absence of any such special directions the examination shall be taken in the manner prescribed by the rules and practice of the Court.

Application by Crown Solicitor

49. Where a commission rogatoire or letter of request, as mentioned in rule 43, is transmitted to the Supreme Court by His or Her Excellency the Governor with an intimation that it is desirable that effect should be given to the same without requiring an application to be made to the Court by the agents in Queensland of any of the parties to the action or matter in the foreign country, the registrar shall transmit the same to the Crown Solicitor, who may thereupon, with the consent of the Attorney-General, make such applications and take such steps as may be necessary to give effect to such commission rogatoire or letter of request, in accordance with these rules.

6. Obtaining evidence under conventions respecting legal proceedings in civil and commercial matters

Request from consul etc. of country party to convention

50. Any commissions rogatoires or letters of request received by the registrar from any consul or consular or diplomatic agent in Brisbane of any country between which country and the United Kingdom or the

Commonwealth of Australia there is existing a convention regarding legal proceedings in civil and commercial matters, shall be dealt with in the same manner as provided by rules 43 to 48 in respect to any civil or commercial matter mentioned therein with all necessary variations, including the return of the commissions rogatoires or letters of request and depositions to the said consul or consular or diplomatic agent instead of to the Attorney-General for the State.

Application of forms

51. The forms mentioned in rules 44 and 46 shall, with the necessary alterations, apply to rule 50.

Language

52. The commission rogatoire or letters of request shall be drawn up in the language of the country of origin, accompanied by a translation in the English language.

Consul etc. to be informed of date and place of proceedings

53. The said consul or consular or diplomatic agent shall, if he or she so desires, be informed of the date and place where the proceedings asked for will take place.

No fees payable

54. No fees of court shall be payable in respect to the execution of the commission rogatoire or letters of request.

Power of examiner

55. The person appointed to take the examination of witnesses shall have the same power and authority as a person appointed to take an examination of witnesses in a matter pending in the Supreme Court.

7. Dispensing with rules of evidence

Court may dispense with rules of evidence

56.(1) The court may, at any time during a proceeding, dispense with the rules of evidence relating to the proof of a fact if the court considers that strict proof of the fact might cause unnecessary or unreasonable expense, delay or inconvenience in the proceeding or that the fact is not seriously in dispute.

(2) Without limiting subrule (1), the court may dispense with the rules about proof of handwriting, documents, authority or identity.

(3) This rule applies regardless of the importance of the fact sought to be proved.

ORDER 41—AFFIDAVITS

Evidence on motions etc.

1. Upon any motion, petition, or summons, evidence may be given by affidavit; but the Court or a Judge may, on the application of either party, order that a subpoena shall be issued requiring any person making any such affidavit to attend before the Court or Judge, or an officer of the Court, or commissioner of affidavits, for cross-examination.

Title of affidavits

2.(1) Every affidavit shall be entitled in the cause or matter in which it is sworn, if any is then pending; but in any case in which there are more plaintiffs or defendants than 1, it shall be sufficient to give the full name of the first plaintiff or defendant respectively, adding the words ‘and another’, or ‘and others’, as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the taxing officer.

(2) If no cause or matter is pending, it shall not be necessary to entitle the affidavit otherwise than as provided by order 2, rule 7.

Contents of affidavits

3.(1) Affidavits shall be confined to facts to which the deponent is able to depose of his or her own knowledge, except in the cases specially provided for by these rules, and except in the case of affidavits used on interlocutory motions or applications, in which statements as to the belief of the deponent, giving the sources of the deponent's information and the grounds of his or her belief, may be admitted.

(2) The costs of any affidavit which unnecessarily sets forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, may be disallowed on taxation.

Form of affidavits

4.(1) Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and shall, as nearly as may be, be confined to a distinct portion of the subject.

(2) No costs shall be allowed for any affidavit or part of an affidavit which substantially violates this rule.

Description of abode or true place of business or employment of deponent to be stated

5. Every affidavit shall state the description and the true place of abode or true place of business or place of employment of the deponent.

Jurat several sheets

6.(1) The jurat of an affidavit must state that it was sworn by the deponent on the day and at the place where it was sworn.

(2) Each separate sheet must be signed by the deponent and by the person before whom the affidavit is taken.

Affidavits made by 2 or more deponents

7. In an affidavit made by 2 or more deponents the names of the several persons making the affidavit must be inserted at length in the jurat, except

that if the affidavit is sworn by all the deponents at the same time by the same officer it shall be sufficient to state that it was sworn by 'both' or 'all' the 'abovenamed' deponents, using those words.

Alterations in affidavits

8. An affidavit which has either in the body thereof or in the jurat any interlineation, alteration, or erasure, shall not, without leave of the Court or a Judge, be read or made use of in any cause or matter unless the interlineation or alteration, not being by erasure, is authenticated by the initials of the officer taking the affidavit, or, if the affidavit is taken in the registry, either by his or her initials or by the office stamp; nor, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.

Affidavits by illiterate or blind persons

9.(1) When an affidavit is sworn by any person who appears to the officer before whom it is taken to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in the officer's presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his or her signature or mark in the presence of the officer.

(2) No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

Affirmation

10. When a deponent does not take an oath, the form of jurat shall be varied, and the necessary alterations made, so as to conform with the solemn affirmation or other declaration of the deponent.

Affidavits to be filed

11.(1) Every affidavit shall be filed in the registry.

(2) A note shall be endorsed on every affidavit stating the name of the deponent and on whose behalf it is filed, and no affidavit shall, without the leave of the Court or a Judge, be filed or used without such note endorsed thereon.

Scandalous matter

12. The Court or a Judge may order any matter which is scandalous to be struck out from any affidavit, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.

Use of defective affidavit

13. Notwithstanding anything in rules 1 to 12, the Court or a Judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect, by misdescription of parties or otherwise, in the title or jurat, or any other irregularity, and may direct a memorandum to be made on the affidavit that it has been so received.

Alterations in accounts to be initialled

14. Every alteration in an account verified by affidavit to be left at chambers or in the registry shall be marked with the initials of the officer before whom the affidavit is taken, and such alteration shall not be made by erasure.

Exhibits

15.(1) Documents and other objects and things referred to by affidavit shall not be annexed to the affidavit or referred to in the affidavit as annexed, but shall be referred to as exhibits.

(2) Instead of making a document an exhibit to an affidavit the relevant portion of the document may be included in the body of the affidavit and the party filing the affidavit shall in that case produce the document whenever the affidavit is used.

Certificate on exhibit

16. An exhibit to an affidavit shall have endorsed on it the short title of the proceeding (if any) and the number (if any) of the proceeding, and a certificate in the form in schedule 1 signed by the person before whom the affidavit is sworn or taken identifying the exhibit with the affidavit to which it is an exhibit.

Use of figures

16A. In an affidavit dates and sums of money may be written or printed in figures instead of words.

Originals to be used

17. Original affidavits may be used in all cases.

Stamping of affidavits, and use of office copies

18.(1) Before an original affidavit is allowed to be used, it shall be stamped with a filing stamp to be kept for that purpose, and, if not already filed, shall at the time when it is used be delivered to and left with the proper officer in court or in chambers, who shall send it to be filed.

(2) An office copy of an affidavit may be used instead of the original, the original affidavit having been previously filed, and the copy being duly authenticated with the seal of the office.

Affidavit sworn before the party

19. An affidavit sworn before the party himself or herself shall not be received.

Special times for filing affidavits

20. When a special time is limited for filing affidavits, an affidavit filed after that time shall not be used without leave of the Court or a Judge.

Affidavits in support of ex parte applications

21. Except by leave of the Court or a Judge, an order made ex parte in court founded on any affidavit shall not be drawn up unless the affidavit on which the application was founded was actually made before the order was applied for, and was produced or filed at the time of making the motion.

2. Affidavits and evidence in chambers in administrative jurisdiction

Notice of intention to use affidavits in chambers in certain cases

22. A party intending to use, in support of an application made by the party in chambers in any cause or matter pending in the administrative jurisdiction of the Court, any affidavit which has not been previously read in court in the same cause or matter, shall give notice to the other parties concerned of the party's intention to do so.

Use in chambers of affidavits used in Court

23. Any affidavit which has been previously read in Court upon any proceeding in a cause or matter may be used before the Judge in chambers or the registrar without notice.

3. Trial on affidavit

Time for filing plaintiff's affidavits

24. Within 14 days after a consent order for taking evidence by affidavit as between the parties has been filed, or within such other time as the parties may agree upon, or the Court or a Judge may allow, the party having the conduct of the proceedings shall file the party's affidavits and deliver to the opposite party a list thereof.

Time for filing defendant's affidavits

25. The opposite party shall, within 14 days after delivery of such list, or within such other time as the parties may agree upon, or the Court or a

Judge may allow, file his or her affidavits and deliver to the other party a list thereof.

Affidavits in reply

26. Within 7 days after the expiration of the lastmentioned 14 days, or such other time as aforesaid, the party who first filed his or her affidavits shall file his or her affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver a list thereof to the opposite party, and thereupon the evidence shall be deemed to be closed.

Cross-examination of deponent

27.(1) Any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial.

(2) Such notice may be served at any time before the expiration of 7 days next after the expiration of the time allowed for filing affidavits in reply, or within such further period as the Court or a Judge may allow.

(3) If any such deponent is not produced accordingly, his or her affidavit shall not be used as evidence, unless by the special leave of the Court or a Judge.

(4) The party producing such deponent for cross-examination shall not be entitled to demand the expenses of his or her attendance in the first instance from the party requiring such production.

Compelling attendance for cross-examination

28. A party to whom such notice as is mentioned in rule 27 is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as the party might compel the attendance of a witness to be examined.

Notice of trial

29.(1) When the evidence is taken by affidavit under this order, notice of

trial shall be given as in other cases, and may be given within the like periods, but calculated with reference to the close of the evidence instead of with reference to the close of the pleadings.

(2) The notice must be for trial by a Judge without a jury at Brisbane, Rockhampton, Townsville or Cairns, or, by leave of the Court or a Judge, at a circuit court.

4. Commissioners for affidavits

Time and place of taking affidavits etc. to be stated

30. Every commissioner or other person who takes an affidavit, or an acknowledgment or recognisance, shall express therein the time when and the place where the commissioner or other person takes the affidavit, acknowledgment, or recognisance; otherwise the same shall not be held authentic, nor be admitted to be filed without the leave of the Court or a Judge; and every such commissioner shall express in like manner the time when, and the place where, the commissioner does any other act incident to his or her office.

Publication of names register

31. The issue of every commission for taking affidavits shall be notified in the Gazette, and a register of such commissions shall be kept in the registry, and published annually in the Gazette.

ORDER 42—MOTION FOR JUDGMENT

Motion for judgment

1. Except when by statute or by these rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained upon motion for judgment.

When no judgment given at trial

2.(1) When at the trial of a cause the Judge does not direct any judgment to be entered, the plaintiff may set down the cause on motion for judgment.

(2) If the plaintiff does not set down the cause and give notice of such setting down to the other parties within 10 days after the trial, any defendant may set down the cause on motion for judgment and give notice of such setting down to the other parties.

Setting down motion for judgment when issues have been directed and tried

3.(1) When issues have been ordered to be tried, or questions or issues of fact have been ordered to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such questions or issues have been determined.

(2) If the plaintiff does not set down such a motion, and give notice of such setting down to the other parties within 10 days after his or her right so to do has arisen, then after the expiration of such 10 days any defendant may set down a motion for judgment, and give notice of such setting down to the other parties.

When some only of several issues directed have been tried

4.(1) When issues have been ordered to be tried, or questions or issues of fact have been ordered to be determined in any manner, and some only of such questions or issues of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination of the others should be postponed, may, by leave of the Court or a Judge, set down a motion for judgment, without waiting for such trial or determination.

(2) And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms (if any) as may be just, and may give any directions which may be desirable as to postponing the trial of the other questions or issues of fact.

Motion to be set down within 1 year

5. A motion for judgment shall not, except by leave of the Court or a Judge, be set down after the expiration of 1 year from the time when the party seeking to set down the same first became entitled to do so.

Power of Court on motion for judgment

6. Upon a motion for judgment, the Court may draw any inference of fact not inconsistent with the findings of the jury (if any) and may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if not so satisfied, direct the motion to stand over for further consideration, and may direct such questions or issues of fact to be tried or determined, and such accounts and inquiries to be taken and made, as may be just.

Motion for judgment on default or on admissions

7.(1) When judgment is desired upon default of pleading, or upon admissions, the cause shall be set down on motion for judgment, and a copy of the pleadings or admissions shall be filed.

(2) This rule does not apply to the cases mentioned in order 31, rules 2 to 9.

ORDER 44—ENTRY OF JUDGMENTS

Mode of entry

1.(1) Every judgment shall be entered by the proper officer in a book to be kept for that purpose.

(2) The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings (if any) not already filed.

(3) The forms in schedule 1 shall be used, with such variations as circumstances may require.

Date of judgment pronounced in court

2.(1) When a judgment is pronounced by the Court or by a Judge in court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, unless the Court or Judge otherwise orders, and the judgment shall take effect from that date.

(2) However, by special leave of the Court or a Judge a judgment may be ante-dated or post-dated.

Date of entry of other judgments

3. In any other case the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgement shall take effect from that date.

Time to be stated for doing any act ordered to be done—memorandum to be endorsed

4. Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered to be done shall state the time, or the time after service of the judgment or order, within which the act is to be done, and there shall be endorsed upon the copy of the judgment or order served upon the person required to obey the same a memorandum in the words or to the effect following, viz.—

'If you, the within-named A.B., neglect to obey this judgment [*or* order] by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the judgment [*or* order]'.

Judgment on production of affidavit or document

5. When by any statute or these rules, or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced; and, if the same is regular and contains all that is by law required, the officer shall enter judgment accordingly.

Judgment on production of order or certificate

6. When by any statute or these rules, or otherwise, it is provided that any judgment may be entered pursuant to any order or certificate, or to the return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

Judgment on registrar's certificate

7. When reference is made to the registrar to ascertain the amount for which final judgment is to be entered, the registrar's certificate shall be filed in the registry before judgment is entered.

Judgment by consent when party appears by a solicitor

8. In any cause in which a party has sued or appeared by solicitor, a consent order for entering judgment against such party shall not be made unless the consent of the party is given by the party's solicitor or the town agent of the party's solicitor.

Consent of party in person

9. When the plaintiff sues in person, or the defendant has not appeared, or has appeared in person, a consent order for entering judgment against such party shall not be made unless the party attends before a Judge and personally gives consent, or unless the party's written consent is attested by a solicitor acting on the party's behalf, unless the party is himself or herself a barrister, solicitor, or conveyancer.

Judgment on warrant of attorney

10.(1) After the expiration of a year from the date of a warrant of attorney, judgment shall not be entered up thereon without the leave of a judge.

(2) Up to the expiration of 10 years from the date thereof, such leave may be obtained ex parte, but at any later time must be applied for by summons to show cause.

Entry of satisfaction

11.(1) A memorandum of satisfaction of a judgment may be entered upon a consent to the entry, signed by the party entitled to the benefit of the judgment, and attested and verified by the affidavit of the attesting witness, being filed in the registry.

(2) If the attesting witness is not a solicitor, the approval of a Judge must be obtained, which may be endorsed on the affidavit.

ORDER 45—RELIEF AGAINST JUDGMENTS AND ORDERS

Matters arising after judgment or order

1. When facts arise after the giving of a judgment or making of an order which entitle the person against whom the judgment or order is given or made to be relieved from it, or when facts are discovered after the giving of a judgment or making of an order which, if discovered in time, would have entitled the party against whom the judgment or order is given or made to a judgment or decision in the party's favour, or to a different judgment or order, the party may apply to the Court or a Judge for a stay of execution or other appropriate relief; and the Court or a Judge may grant such relief, and for that purpose may direct such proceedings to be taken, and such questions or issue of fact to be tried or determined, and such inquiries to be made, as may be just.

Entry of satisfaction

2. Any party against whom a judgment is given may apply to the Court or a Judge for an order directing entry of satisfaction of the judgment to be made, and the Court may make such order accordingly.

Procedure under this order exclusive

3. No proceedings shall be taken for the purpose of obtaining relief from

judgments or orders on the ground of facts arising or discovered after the judgment or order, except as by this order provided.

ORDER 46—MONEYS IN COURT

Payment or deposit of money in court

1.(1) Where a person is required or permitted by an Act, these rules, an order of the Court or any other law or practice to pay into or deposit money in court that person shall file an affidavit that complies with the *Court Funds Regulation 1988*, section 6(1).

(2) An affidavit filed in accordance with subrule (1) shall as soon as practicable after it is filed be served on all other parties and any other interested person.

Defamation

2.(1) This rule applies where a party makes a payment into court under the *Defamation Law Act 1889*, section 22.

(2) On making a payment into court and on increasing an amount already paid into court the defendant shall give notice in the form in schedule 1 to the plaintiff and every defendant.

(3) The defendant may increase the amount paid into court.

(4) The defendant shall not withdraw money paid into court or amend the notice of payment into court without leave of the Court, which may be granted on terms.

(5) Where 2 or more causes of action for defamation are joined in an action and money is paid into court then unless the Court or a Judge otherwise orders the notice of payment shall specify—

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

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

(6) Within 14 days after the date of receipt of the notice of payment into

court or, where more than 1 payment has been made or the notice has been amended, within 14 days after the date of receipt of the last notice or the amended notice but, in any case, before the trial or hearing of the action begins, the plaintiff may—

(a) where the money was paid in respect of the cause of action or all of the causes of action in respect of which the plaintiff claims—accept the money in satisfaction of that cause of action or those causes of action, as the case may be; or

(b) where the money was paid in respect of some only of the causes of action in respect of which the plaintiff claims—accept in satisfaction of any such cause or causes of action the sum specified in respect of that cause or those causes of action in the notice of payment;

by giving notice in the form in schedule 1 to every defendant to the action.

(7) Where in an action against several defendants sued jointly the plaintiff accepts money paid into court by any of those defendants in satisfaction of the plaintiff's cause of action against that defendant then the action is stayed as against that defendant only, but the sum paid into court shall be set off against any damages awarded to the plaintiff against any other defendant against whom the action is continued.

(8) Where a party takes money out of court in satisfaction of a cause of action for defamation, the plaintiff or the defendant as the case may be, may apply to a Judge in chambers for leave to make in open court a statement in terms approved by the Judge.

(9) Where the plaintiff in an action for defamation against several defendants sued jointly accepts money paid into court by 1 of the defendants in satisfaction of the cause of action, or all of the causes of action, in respect of which the plaintiff claims, or if the plaintiff accepts a sum or sums paid in respect of 1 or more specified causes of action and gives notice that the plaintiff abandons the action, the plaintiff may after 4 days from payment out and unless the court or a Judge otherwise orders, tax his or her costs incurred to the time of receipt of the notice of payment into court (including the expenses of taking the money out) and 48 hours after taxation may sign judgment for his or her taxed costs.

(10) The Court or Judge in exercising discretion as to costs shall, to the extent the Court or Judge sees fit, take into account any payment of money

into court and the amount of the payment.

(11) If any money paid into court is not accepted in accordance with subrule (6) the money remaining in court shall not be paid out except pursuant to an order of the Court or a Judge which may be made at any time before, at or after the trial or hearing of the action; and where the order is made before the trial or hearing the money shall not be paid out except in satisfaction of the cause or causes of action in respect of which it was paid in.

(12) When money paid into court is liable to be paid out payment shall be to the party who is entitled or on the party's written authority to his or her solicitor, but with leave of the Court or a Judge the money may be paid to the party's solicitor without the party's written authority.

Disposal of money in court

3.(1) An application for payment out of court of money paid into or deposited in court in a proceeding to which these rules apply shall be served on all other parties.

(2) A person who applies for payment out of court of money paid into or deposited in court in a proceeding to which these rules apply shall state whether the person is aware of a right or a claim made by any other person to all or part of that money.

(3) Except as provided otherwise by these rules money paid into or deposited in court shall be dealt with in accordance with the *Court Funds Act 1973.*

2. Admiralty actions

Payment out of court to be on order only

7. Money paid into court in an admiralty action shall not be paid out of court except in pursuance of an order of the Court or a Judge.

Caveat against payment out of court

8. A person desiring to prevent the payment of money out of court in an

admiralty action must file a notice objecting to the payment, and thereupon a caveat shall be entered in the caveat payment book.

Liability for delaying payment

9. The party at whose instance a caveat payment is entered, shall be liable to be condemned in the costs and damages occasioned thereby, unless the party shows to the satisfaction of the Court or Judge good and sufficient reason for entering the caveat.

Tender to be accompanied by payment into court

10. In an admiralty action a party desiring to make a tender in satisfaction of the whole or any part of the adverse party's claim, shall pay into court the amount tendered by the party, and shall file a notice of the terms on which the tender is made.

Acceptance or rejection of tender

11. Within 8 days after the filing of the notice, the adverse party shall file a notice stating whether the adverse party accepts or rejects the tender, and if the adverse party does not do so, the adverse party shall be deemed to have rejected it.

Suspension of proceedings

12. Pending the acceptance or rejection of a tender, the proceedings in the action shall be suspended.

ORDER 47—EXECUTION

Judgment or order to be obeyed without demand

1. When any person is by any judgment or order directed to pay any money, whether by way of debt, costs, damages, or otherwise, or to deliver up or transfer any property real or personal to another, it shall not be

necessary to make any demand of performance of the judgment or order, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand.

Waiver of conditional judgment or order

2. When any person who has obtained any judgment or order upon condition does not perform or comply with such condition, the person shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself or herself; and any other person interested in the matter may, on breach or non-performance of the condition, take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the Court or a Judge otherwise directs.

Enforcing judgment for payment of money

3. A judgment or order for the payment of money to any person, whether by way of debt, damages, costs, or otherwise, may be enforced by writ of fieri facias or writ of elegit, or, in cases in which that writ is by law allowed, by writ of capias *ad satisfaciendum*, or, in the cases hereinafter mentioned, by the appointment of a receiver of any moneys payable to the person against whom the judgment is given.

For delivery of land

4. A judgment or order for the recovery of land, or for the delivery of the possession of land, may be enforced by writ of possession.

For recovery of other property

5. A judgment or order for the recovery of any property other than money or land may be enforced by writ of delivery or writ of sequestration, or by attachment.

For performance of an act

6. A judgment or order for the payment of money into court, or for the performance of a judgment, order, or writ, by which any person is required to do any act other than the payment of money to some person, may be enforced by writ of attachment or writ of sequestration.

For payment of alimony or maintenance or costs

6A.(1) A judgment or order for the payment of any sum in respect of alimony or the maintenance of children, or for the payment of costs incidental to or consequent upon any such judgment or order, may be enforced by writ of attachment.

(2) This rule applies to any such judgment or order, whether made before or after the date of this rule.

(3) This rule shall not take away or curtail any right heretofore existing to enforce or give effect to any such judgment or order.

Judgment to abstain from any act

7. A judgment or order requiring any person to abstain from doing any act may be enforced by committal.

Undertakings

8.(1) An undertaking to do any act other than the payment of money to some person may be enforced in the same manner as a judgment requiring a person to do an act, and an undertaking to abstain from doing an act may be enforced in the same manner as a judgment requiring a person to abstain from doing an act.

(2) In the case of non-performance of an undertaking to pay money to any person, the Court or a Judge may make an order for payment of the money, which may be enforced in the manner prescribed by rule 3.

Meaning of "writ of execution" etc.

9. In these rules—

"issuing execution" means the issuing of any such process against the person or property of a party as is applicable to the case under these rules.

"writ of execution" includes writs of fieri facias, elegit, capias, attachment, sequestration, and all subsequent writs that may issue for giving effect thereto.

Execution of judgment on condition

10.(1) When a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and upon demand made upon the party against whom the party is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party.

(2) And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any manner in which any question or issue of fact in an action may be tried.

When writ issued

11. A writ of execution shall not be issued unless the officer is satisfied that the proper time has elapsed to entitle the party suing out the same to have execution.

Endorsement on writ of execution

12. Every writ of execution shall be endorsed with the name and address of the party suing it out, or the party's solicitor, in the same manner as a writ of summons in an action.

Date and form of writ

13.(1) Every writ of execution shall bear date of the day on which it is issued.

(2) The forms in schedule 1 shall be used, with such variations as circumstances may require.

Affidavit of debt in certain cases

14.(1) An affidavit of debt shall be filed before the issue of a writ of execution or renewed writ of execution upon any judgment by default, or upon a judgment entered on a warrant of attorney or cognovit actionem, or upon a judgment entered more than 1 year before the issue of the writ.

(2) If the plaintiff is absent from the State the affidavit may be made by the plaintiff's solicitor, or by his or her agent in Queensland.

Expenses of execution

15. In every case of execution the party entitled to execution may levy the taxed costs of the writ of execution, and the poundage, fees, and expenses of execution, over and above the sum recovered.

Costs of execution

16. The plaintiff may endorse on a writ of execution a direction to levy the sum prescribed in schedule 2, part 16 for costs of the writ, which sum shall not be subject to taxation.

Amount of money and interest to be recovered to be endorsed

17. Every writ of execution for the recovery of money shall be endorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate prescribed from time to time pursuant to the *Common Law Practice Act 1867*, section 73 or at such other rate ordered by the Court pursuant to that section, from the time when the judgment or order was entered or made, together with the costs of the writ.

Time to sue out fi. fa., elegit, ca. sa., writ of possession or delivery

18.(1) A party may sue out a writ of fieri facias, elegit, capias *ad satisfaciendum*, possession, or delivery, at any time after the date of the judgment or order in the party's favour.

(2) However, if the judgment or order is for payment within a period therein mentioned, the writ shall not be issued until after the expiration of such period.

(3) In addition, the Court or a Judge may, at or after the time of giving judgment or making an order, stay execution until such time as the Court or Judge may think fit.

Time for execution except for money or costs

19. A party shall not be entitled to sue out any other writ of execution until after the expiration of 14 days from the date of the judgment or order, without the leave of the Court or a Judge.

Execution of judgment for money and costs

20. Upon a judgment or order for the payment of a sum of money and costs, the party entitled thereto may sue out, at the party's election, either 1 writ or separate writs of execution for the money and for the costs; but a second writ shall be for costs only, and shall be issued not less than 8 days after the first writ.

Renewal of writ

21. A writ of execution, if unexecuted, shall remain in force for 1 year only from its issue, unless renewed in the manner hereinafter provided; but, at any time before its expiration, any such writ may, by leave of the Court or a Judge, be renewed by the party suing it out for 1 year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with the word 'renewed' and with a seal bearing the date of the day, month, and year of renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or the party's solicitor, and bearing the like office seal; and a writ of execution

so renewed shall have effect, and shall be entitled to priority, according to the time of the original delivery thereof.

Evidence of renewal

22. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in rule 21 mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

Execution to issue within 6 years

23. As between the original parties to a judgment or order, execution may be issued at any time within 6 years from the date of the judgment or order.

Leave to issue execution in certain cases

24.(1) In the following cases, that is to say—

(a) when 6 years have elapsed since the date of the judgment or order, or any change has taken place by death or otherwise in the parties entitled or liable to execution;

(b) when a husband is entitled or liable to execution upon a judgment or order for or against his wife;

(c) when a party is entitled to execution against any of the shareholders of a company upon a judgment recorded against such company, or against a public officer or other person representing such company;

the party claiming to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly.

(2) And the Court or Judge may, if satisfied that the party so applying is entitled to execution, make an order giving the party leave accordingly, or may order that any question or issue of fact necessary for determining the rights of the parties shall be tried in any manner in which any question or issue of fact in an action may be tried.

(3) And in either case the Court or Judge may impose such terms as to costs or otherwise as may be just.

Enforcement of orders

25. Every order of the Court or a Judge in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect.

Execution by or against a person not a party

26. Any person, not being a party to a cause or matter, who obtains any order, or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if the person were a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if the person were a party to such cause or matter.

Saving of pre-existing mode of process

27. Nothing in this order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

Order of issue of writs

28. Nothing in this order shall affect the order in which writs of execution may be issued.

Court may order act to be done at expense of party refusing

29. If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract, is not complied with, the Court or a Judge, in addition to or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or by some other person

appointed by the Court or Judge for the purpose, and may order that the expenses incurred in doing it shall be paid by the disobedient party: and, upon the act being done, such expenses may be ascertained in such manner as the Court or a Judge may direct, and execution may issue for the amount so ascertained, and costs.

Enforcing judgment or order against corporation

30. When a judgment or order requiring a corporation to do or abstain from doing any act is disobeyed, the party in whose favour the judgment or order was given or made may, by leave of the Court or a Judge, enforce the same by writ of sequestration against the corporate property, or by writ of attachment or sequestration against the directors or other officers of the corporation, or by committal of such directors or officers, according to the nature of the disobedience.

Return of writ

31.(1) No order shall issue for the return of any writ, or to bring in the body of a person ordered to be attached or committed; but a notice to the sheriff by the solicitor of the party at whose suit the writ was issued, or the order for attachment or committal was obtained, or by the party personally if the party sues or appears in person, requiring the sheriff to return such writ or to make the sheriff's report or to bring in the body within a specified time, shall, if not complied with, entitle such party to apply for an order for the attachment of the sheriff.

(2) The time specified in the notice shall not be less than 8 days.

(3) Any such notice may be given in vacation as well as at any other time.

Enforcing award

32. The Court or a Judge may, upon such terms as to security or otherwise as may be just, allow an award to be enforced at any time though the time for moving to set it aside has not elapsed.

Discovery in aid of execution

Examination of judgment debtor as to debts owing to him or her

33. When a judgment or order is given or made for the payment of money, the party entitled to enforce it may apply ex parte to the Court or a Judge for an order that the debtor liable under such judgment or order, or, in the case of a corporation or company, or other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, that any officer thereof be orally examined before a Judge or an officer of the Court as the Court or Judge may appoint, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order; and the Court or Judge may make an order for the attendance and the examination of such debtor, or of such officer, and for the production by him or her of any books or documents.

Difficulty in enforcing judgment

34. In the case of a judgment or order for relief other than the payment of money, if any difficulty arises in or about the execution or enforcement thereof, the Court or a Judge may, on the application of any party interested in such execution or enforcement, make such order for giving effect to the judgment or order as may be just; and may make an order for the attendance and examination of any party or other person as to any matter concerning such execution or enforcement.

Costs of application under rr 33 and 34

35. The costs of any application under rules 33 and 34, or either of them, and of any proceedings arising from or incidental thereto, shall be in the discretion of the Court or a Judge.

Execution by appointment of receiver

When receiver may be appointed

36. When it is impracticable to enforce payment of money payable under a judgment or order otherwise than by appointment of a receiver, the Court or a Judge may appoint a receiver to receive any money payable to the person by whom the payment is adjudged or ordered to be made, and to pay the same to the person in whose favour the judgment or order was given or made.

Conditions of appointment of receiver

37.(1) When an application is made for the appointment of a receiver for the purpose of enforcing payment of money payable under a judgment or order, the Court or Judge, in determining whether it is just or convenient that such appointment should be made, shall have regard to the amount of the debt claimed by the applicant, the amount which may probably be obtained by the receiver, and the probable expenses to be incurred by his or her appointment, and may direct any inquiries as to the matters aforesaid, or as to any other matters, before making the appointment.

(2) The provisions of order 58 relating to receivers shall apply to receivers so appointed.

ORDER 48—WRITS OF FIERI FACIAS, ELEGIT, AND SEQUESTRATION

1. Effect of writs

Effect and manner of execution of writs of fi. fa. and elegit

1. Writs of fieri facias and of elegit shall have the same force and effect as the like writs have heretofore had, and shall, except as hereby otherwise

provided, be executed in the same manner in which the like writs have heretofore been executed.

Writ of venditioni exponas

2. When it appears, upon the return of a writ of fieri facias, that the sheriff or other officer has by virtue of such writ seized, but has not sold, any goods of the person directed to pay a sum of money or costs, the person to whom such sum of money or costs is payable shall, immediately after such writ and return have been filed, be at liberty to sue out a writ of *venditioni exponas*.

Writs in aid of fi. fa. or elegit

3. Writs of *venditioni exponas*, and all other writs in aid of a writ of fieri facias or a writ of elegit, may be issued and executed in the same cases and in the same manner as heretofore.

Sequestration to enforce payment into court, or doing of other acts

4.(1) When any person is by any judgment or order directed to pay money into court or to do any other act in a limited time, and after due service of such judgment or order refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order shall, at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person.

(2) Such writ of sequestration shall have the same effect as a writ of sequestration heretofore had, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration have heretofore been dealt with by the Court.

(3) A writ of sequestration to enforce payment of costs shall not be issued without the leave of the Court or a Judge.

No subpoena for costs

5. No subpoena for the payment of costs shall be issued.

2. Sales under writs of fieri facias

Application for order for private sale—sheriff's list

6.(1) In any case in which execution by fieri facias has been issued against any person, either party may apply to a Judge for an order that the sale under the execution shall be made otherwise than by public auction.

(2) In any such case the sheriff shall, at the request of either party furnish him or her with a list of the names and addresses of every person at whose suit any other writ of execution against the property of the same person has been lodged with the sheriff (the **"sheriff's list"**).

Summons

7.(1) The summons shall contain a short statement of the grounds of the application, and shall be served on the following persons—

(a) if the applicant is an execution creditor—upon the sheriff, and upon every person named in the sheriff's list;

(b) if the applicant is the execution debtor—upon the execution creditor at whose suit the execution has been levied under which the sale is intended to be made, the sheriff, and every other person named in the sheriff's list.

(2) The summons shall be served 4 clear days before the day on which it is returnable.

List

8. On the hearing of the application the applicant shall produce the sheriff's list to the Judge.

Hearing

9. The sheriff and every other person on whom the summons has been served may attend the hearing of the application and be heard in opposition to or in support of the application.

Costs

10. The Judge may, at the hearing of the summons, make such order as to the mode of sale as may be just, or may direct that all or any part of the costs shall be borne by any of the persons attending, or otherwise as may be just.

Order of sale

11. The person against whom an execution under which any property is to be sold is issued may point out which description of property, whether real or personal, and what part or parts thereof, the person desires to have first sold, and in what order, and the sale shall be made accordingly; but if the proceeds of part are not sufficient to satisfy the execution, the sheriff shall proceed forthwith to sell the remainder or such part thereof as shall be sufficient to satisfy the execution, in the order so pointed out.

Advertisements

12. When any property is to be put up for sale by the sheriff, the sheriff shall cause notice of the time and place of sale, and particulars of the property, to be given by advertisement in 1 or more newspapers published within the court district in which the execution was issued; and, if the property is situated, or the sale is to be held, at a distance of more than 35 km from the registry from which the execution issued, the sheriff shall cause further notice to be given by advertisement in 1 or more of the nearest local newspapers; and, if there is no local newspaper published within 35 km of the situation of the property, the sheriff shall cause such further notice to be given by affixing the same on the property or the premises where the property is, or in some public place or places near to the intended place of sale, or in both places, as the case may be.

Interpretation

13. In rules 6 to 12—

"sheriff" includes any officer charged with the execution of any writ of execution.

ORDER 49—ATTACHMENT OF DEBTS

Order for attachment of debts

1. Any person who has obtained a judgment or order for the payment of money by any other person may, either before or after any oral examination of the person by whom the payment is adjudged or ordered to be made (the **"debtor"**) and upon affidavit by himself, herself or the person's solicitor, or any other person who can swear to the facts, showing that the judgment has been recovered, or the order made, and that it is still unsatisfied, in whole or in part, and that any other person is indebted to the debtor, and is within the jurisdiction, apply to the Court or a Judge or registrar ex parte for an order (a **"garnishee order"**) that all debts owing or accruing from such other person (**"the garnishee"**) to such debtor shall be attached to answer the judgment or order, together with the costs of the garnishee proceedings, and the Court or Judge or registrar may make an order accordingly; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a Judge or registrar to show cause why the garnishee should not pay to the person who has obtained such judgment or order the debt due from the garnishee to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs aforesaid.

Effect of order

2.(1) Notice of every such order shall be given to the garnishee by service thereof on the garnishee, either personally or in such other manner as the Court or a Judge or registrar may direct.

(2) And, upon such notice being given, all debts owing or accruing from the garnishee to the debtor shall be attached in his or her hands.

Execution against garnishee

3.(1) The garnishee may pay into court the amount due from the garnishee to the debtor, or an amount equal to the amount payable under the judgment or order.

(2) If the garnishee does not do so, but appears in pursuance of the order,

and does not dispute the debt due or claimed to be due from the garnishee to such debtor, or if the garnishee does not appear in pursuance of the order, the Court or Judge may order that execution be issued against the garnishee, and execution may be issued accordingly, without any previous writ or process, to levy the amount due from the garnishee to the debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

Trial of liability of garnishee

4. If the garnishee disputes his or her liability, the Court or Judge, instead of making an order that execution shall be issued, may order that any question or issue of fact necessary for determining the garnishee's liability shall be tried in any manner in which any question or issue of fact in an action may be tried.

Lien or claim of third person on debt

5. If it is suggested by the garnishee, or otherwise appears, that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or Judge may order such third person to appear and state the nature and particulars of his or her claim upon such debt.

Trial of claim of third person and order thereon or on non-appearance

6. After hearing any such third person who appears under such order as in rule 5 mentioned, and any other person who in the same or any subsequent order the Court or a Judge may order to appear, or in the absence of such third person if the third person does not appear when ordered, the Court or Judge may order execution to be issued against the garnishee to levy the amount due from the garnishee to the debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings, or may order any question or issue of fact to be tried as provided by rule 4, and may bar the claim of any such third person, or may make such other order as the Court or Judge may

think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of any such third person, and to costs, as may be just.

Payment by or execution on garnishee a valid discharge

7. Payment made by, or execution levied upon, the garnishee under any such proceedings as aforesaid shall be a valid discharge to the garnishee as against the debtor to the extent of the amount paid or levied, although such proceeding may be afterwards set aside, or the judgment or order reversed.

Costs of proceedings

8.(1) The costs of any application for an attachment of debts and of any proceedings arising from or incidental to such application shall be in the discretion of the Court or Judge.

(2) The costs of the judgment creditor of the garnishee proceedings shall, unless otherwise directed, be retained out of the money recovered by the judgment creditor under the garnishee order, and in priority to the amount of the money due under the judgment or order.

(3) The Court or Judge may order the creditor to pay the costs of the garnishee and may allow him or her to add them to his or her own costs of the garnishee proceedings.

ORDER 50—CHARGING ORDERS—EXECUTION AGAINST FUNDS IN COURT

Charging orders

1. Any person who has obtained a judgment or order for the payment of money by any other person may apply to a Judge for an order, under the *Common Law Practice Act 1867*, sections 49 and 50, charging any annuities, funds, stock, or shares of the person by whom the payment is adjudged or ordered to be made (the **"debtor"**) in any public company whether incorporated or not, or any deposit standing to the credit of the debtor, or to the credit of any person in trust for the debtor, in any bank in

Queensland, or any equitable interest of the debtor in any property which cannot be taken in execution, and the Judge may make an order accordingly.

Mode of application

2. The order may be made on summons upon notice, or may be made ex parte in the first instance by an order calling on the debtor to show cause.

Mode of enforcing charge

3. Proceedings to enforce such charge may be taken at any time after the expiration of 3 months from the date of the order, and shall be taken by action.

Discharge of order

4. An application to vary or discharge a charging order made under rules 1 to 3 shall be made by summons.

Charge on partnership property

5. A summons for an order charging the interest of a partner in the partnership property and profits under the *Partnership Act 1891*, section 26, or for any such other order as is thereby authorised to be made, shall be served on the judgment debtor and on his or her partners, or such of them as are within the jurisdiction; and such service shall be good service on all the partners; and all orders made on any such summons shall be similarly served.

Applications by partners of debtor

6. Any application made by any partner of the judgment debtor under the same section shall be made by summons, which shall be served on the person by whom the charging order was obtained, and on the debtor, and on such of the other partners as do not concur in the application and are within the jurisdiction; and such service shall be good service on all the partners; and all orders made on any such summons shall be similarly served.

Enforcement of charge

7. Proceedings to enforce a charge created under rules 5 and 6 shall be by summons in the same cause or matter.

Execution against money in court

8. When any person against whom a judgment or order for the payment of money has been given or made is entitled in the person's own right to any money standing to the credit of any cause or matter in court, the Court or a Judge, upon the application of the party who has obtained the judgment or order, may order that the money shall be applied so far as it will extend in satisfaction of the amount payable under the judgment or order, and paid to the person entitled thereunder accordingly.

Mode of application

9. An order under rule 8 may be made on summons, or the Judge may make an order ex parte in the first instance charging the money in court, and calling on the person by whom the payment is adjudged or ordered to be made to show cause why it should not be paid to the party who has obtained the judgment or order.

ORDER 51—WRITS OF POSSESSION

Writ of possession for recovery of land

1. A writ of possession shall have the same effect as the writ of possession heretofore used in actions of ejectment in the Supreme Court.

Writ obtained on proof of service of judgment, and default

2. When by any judgment or order any person therein named is directed to deliver up possession of any land to some other person, the party prosecuting such judgment or order shall be entitled, without any order for

that purpose, to sue out a writ of possession on filing an affidavit showing that the judgment or order has been duly served and has not been obeyed.

Execution on judgment for recovery of land and costs

3. Upon a judgment or order for the recovery of any land and costs, the successful party may, at his or her election, sue out either 1 writ of execution for the recovery of possession and for the costs, or separate writs for the recovery of possession and for the costs.

Writ of restitution

4. When, after possession of land has been given to any person under a writ of possession, any other person wrongfully takes possession of the land, the Court or a Judge may direct that a writ or writs of restitution be issued to restore possession of the land to the party to whom possession was so given in the first instance.

ORDER 52—WRITS OF DELIVERY

Writ of delivery for recovery of property other than land or money

1. When it is sought to enforce a judgment or order for the recovery of any property other than land or money by writ of delivery, the Court or a Judge may, upon the application of the party entitled to delivery, order that execution shall issue for the delivery of the property, without giving the other party the option of retaining the property on payment of the assessed value (if any) and that if the property cannot be found, the sheriff shall, unless the Court or a Judge otherwise orders, distrain the other party by all his or her lands and chattels in the sheriff's bailiwick, until the other party delivers the property; or, at the option of the party entitled to delivery, that execution shall issue to recover the assessed value (if any) of the property.

Separate writ for damages, costs, and interest

2. When a writ of delivery is directed to be issued, the successful party may, at his or her election, include execution for the damages (if any) and costs awarded, in the same writ, or may sue out a separate writ or writs of execution for the damages and costs, or for the costs only.

Form of writ

3. Writs of delivery shall be in the form in schedule 1, with such variations as circumstances may require.

Writ of delivery in aid of receiver

4. When by any order any person therein named is directed to deliver up possession of any property, other than land or money, to a receiver, the party prosecuting such order shall be entitled, without any order for that purpose, to sue out a writ of delivery, on filing an affidavit showing that the order has been duly served and has not been obeyed.

ORDER 53—ATTACHMENT AND COMMITTAL

1. Attachment

Effect of writ of attachment

1.(1) A writ of attachment shall have the same effect as a writ of attachment issued out of the Court in its equitable jurisdiction heretofore had.

(2) The sheriff or other officer to whom the writ of attachment is directed may deliver the party attached to the superintendent of any prison and such superintendent shall receive the said party attached and the party safely keep in the said prison until such time as the Court or the sheriff or other officer shall direct.

Application for leave to issue writ of attachment

2. A writ of attachment shall not be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued.

Evidence of disobedience

3. The application for the writ must be supported by an affidavit showing that the party against whom it is sought has been served with the judgment or order or writ (if any) sought to be enforced, either personally or by some mode of substituted service specially directed by the Court or a Judge or authorised by these rules, or that it has come to his or her knowledge, or that personal service has been waived by the party, or, in the case of an undertaking, that the undertaking was duly given by the party, and, in either case, that the party has failed to obey the judgment, or order, or writ, or to perform the undertaking.

Court may make peremptory order before issue of writ

4. In the case of non-performance of an undertaking the Court or a Judge may, in the first instance, instead of directing the issue of a writ of attachment, make a peremptory order for the performance of the act undertaken to be done.

Corporations

5. Rules 1 to 4 shall apply to the case of writs of sequestration against corporations for disobedience to judgments or orders by which they are required to do any act.

2. Committal

Motion for committal

6. Applications for committal for disobedience to a judgment or order requiring a person to abstain from doing any act shall be made by motion

upon notice, which must be served personally, unless the Court or a Judge authorises substituted service.

Corporations

7. Applications for writs of sequestration against corporations for disobedience to judgments or orders by which they are required to abstain from doing any act shall be made in the same manner.

Order 84 to apply

8. The provisions of order 84 relating to committal for contempt of court shall apply to applications for committal, and to persons committed, for disobedience to judgments or orders, and also, so far as the same are applicable, to corporations against whom a writ of sequestration is issued for the like cause.

ORDER 54—ACTIONS BY AND AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN

Actions by and against firms within the jurisdiction

1. Any 2 or more persons claiming or being liable as copartners and carrying on business within the jurisdiction may sue or be sued in the name of the respective firms (if any) of which such persons were copartners at the time of the accruing of the cause of action.

Disclosure of partners' names

2. When partners sue in the name of their firm, the plaintiffs or their solicitor shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm in whose name the action is brought; and if the plaintiffs or their solicitor fail to comply with such demand, all proceedings

in the action may be stayed upon such terms as the Court or a Judge may direct.

Action to continue in name of firm

3.(1) When the names of the partners are declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as the plaintiffs in the originating proceeding.

(2) But all the proceedings shall, nevertheless, continue in the name of the firm.

Order for disclosure

4. In any case in which partners sue or are sued in the name of their firm under rule 1, any party to the cause may apply to a Judge for an order directing that a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, copartners in any such firm, shall be furnished in such manner, and verified on oath or otherwise, as the Judge may direct.

Service

5.(1) When persons are sued as partners in the name of their firm under rule 1, the originating proceeding shall be served either upon some 1 or more of the partners, or at the principal place, within the jurisdiction, of the business of the partnership upon some person having at the time of service the control or management of the partnership business there; and, subject to these rules, such service shall be deemed good service upon the firm so sued, whether any of the members thereof are out of the jurisdiction or not.

(2) However, in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the originating proceeding shall be served upon every person within the jurisdiction sought to be made liable.

Notice in what capacity served

6.(1) When persons are sued as partners, and the originating proceeding is served as directed by rule 5, there shall be delivered with it to every person upon whom it is served a notice in writing stating whether the person is served as a partner or as a person having the control or management of the partnership business, or in both characters.

(2) In the absence of such notice, the person served shall be deemed to be served as a partner.

Appearance of partners

7. When persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

No appearance except by partners

8. When a writ is served under rule 5 upon a person having the control or management of the partnership business, an appearance by the person shall not be necessary unless the person is a member of the firm sued.

Appearance under protest of person served as partner

9. Any person served as a partner under rule 5 may enter a conditional appearance, denying that he or she is a partner, but such appearance shall not preclude the plaintiff from duly serving the firm otherwise than by service upon the person, and obtaining judgment against the firm in default of appearance if no partner enters an appearance in the ordinary form.

Execution of judgment against a firm

10.(1) When a judgment or order is given or made against a firm, execution may issue—

(a) against any property of the partnership within the jurisdiction;

(b) against any person who has appeared in the action in the person's own name or who has admitted on the pleadings that the person is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served, as a partner, with the writ of summons, and has failed to appear.

(2) If the party who has obtained the judgment or order claims to be entitled to issue execution against any other person as being a member of the firm, the party may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability of such other person is not disputed, or, if such liability is disputed, may order that the liability of such person be tried in any manner in which any question or issue of fact in an action may be tried.

(3) But, except as against any property of the partnership, a judgment against a firm shall not render liable, or release, or otherwise affect, any member thereof who was out of the jurisdiction when the cause was commenced, and who has not appeared in the cause, unless the member has been served within the jurisdiction with the originating proceeding, or the plaintiff has obtained liberty to proceed in the action against the member under order 11.

Attachment of debts owing from a firm

11.(1) The provisions of order 49 as to attachment of debts shall apply to the attachment of debts owing or accruing from a firm carrying on business within the jurisdiction, although 1 or more members of the firm may be resident abroad; and service of notice of the garnishee order upon some person having the control or management of the partnership business or some member of the firm within the jurisdiction shall be deemed good service on the firm.

(2) An appearance by any member of the firm pursuant to the garnishee order shall have the same effect as appearance by all the members of the firm.

Application of rules to actions between copartners

12.(1) This order shall apply to causes between a firm and 1 or more of its members, and to causes between firms having 1 or more members in common, provided that such firm or firms carry on business within the jurisdiction.

(2) But execution shall not be issued in such causes without leave of the

Court or a Judge, and on an application for leave to issue such execution all such accounts and inquiries may be directed to be taken and made, and directions given, as may be just.

Application of rules to person trading as a firm

13. Any person carrying on business within the jurisdiction in a name or style other than his or her own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all the rules of this order relating to proceedings against firms shall apply to any such case.

ORDER 55—ACTIONS ON PENAL BONDS

Further breaches

1. In an action on a penal bond for the breach of any covenant contained therein in respect of which there may be further breaches, the writ may be endorsed with a claim for the amount of the penal sum mentioned in the bond, and judgment may be entered for the plaintiff for that amount as security against further breaches, but execution on the judgment shall be limited to the amount of the damages which the plaintiff has sustained by reason of the breach or breaches of covenant up to the time of the trial or other assessment of damages, and costs.

Ascertainment of damages on further breaches

2.(1) When a plaintiff has obtained judgment for the amount of the penal sum mentioned in a bond under rule 1, the Court or a Judge may, upon affidavit showing that since the judgment was obtained further breaches have been committed, order that any damages sustained by the plaintiff by reason of the said further breaches shall be assessed in such way as the Court or Judge may direct, and by the same or any subsequent order may order that execution limited to the amount of such damages and costs so to be ascertained shall be issued on the original judgment.

(2) However, the plaintiff shall not in any case recover in all, by way of damages, more than the amount of the penalty mentioned in the bond.

No statement of claim when defendant does not appear

3.(1) If in any such action the defendant fails to appear to the writ, judgment may be entered as provided in order 15 and rule 1 of this order.

(2) The plaintiff may thereupon apply to the Court or a Judge ex parte for an order for the assessment of damages sustained in respect of breaches of covenant up to the time of assessment, and may afterwards, from time to time, proceed as mentioned in rule 2.

Payment into court limited to particular breaches

4. When the writ of summons in an action is endorsed with a claim for the full amount of any penal sum mentioned in a bond, payment into court shall be made with respect to particular breaches only, and not with respect to the whole claim.

ORDER 56—PENAL ACTIONS

Leave to compound penal action

1. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice has first been given to the Attorney-General; but in other cases it may be given without notice to any officer.

Undertaking by defendant

2. The order giving leave to compound a penal action shall contain an undertaking by the defendant to pay the sum for which the Court or Judge gives leave to compound the action.

Queen's half of composition

3. When leave is given to compound a penal action in a case where part of the penalty goes to the Crown, the Queen's half of the composition shall be paid to the Treasurer.

ORDER 57—ACTIONS FOR MANDAMUS AND INJUNCTION

Claim for mandamus or injunction to be endorsed on writ

1. When the plaintiff in an action claims a mandamus or an injunction, the plaintiff must endorse his or her claim upon the writ of summons in the form in schedule 1, or to the like effect.

Trial of action

2. When the only relief claimed in the action is a mandamus or injunction, with or without a declaration, the plaintiff may at any time after appearance, or in default of appearance, apply to the Court by motion on affidavit for the relief to which the plaintiff claims to be entitled, and on the hearing of the motion the Court may give judgment in the action, or may direct that pleadings shall be delivered, and that the action shall be brought to trial as in other cases.

Time for performance of duty

3.(1) When judgment is given for the plaintiff in an action for a mandamus, the Court may by the judgment command the defendant to perform the duty in question either forthwith or on the expiration of such time and on such terms as the Court may think fit.

(2) The Court or a Judge may extend the time limited by the judgment for the performance of the duty ordered to be performed.

Mandamus or injunction to be by judgment or order

4.(1) No writ of mandamus or injunction shall be issued in an action.

(2) The command or injunction shall be expressed in the judgment or order, and any such judgment or order shall have the effect which a writ of mandamus or injunction formerly had.

ORDER 58—INSPECTION OF PROPERTY—INTERIM PRESERVATION, CUSTODY, AND MANAGEMENT OF PROPERTY—RECEIVERS—STOP ORDERS

1. Interim preservation, custody, and management of property

Inspection, detention, or preservation of property the subject of an action

1. The Court or a Judge may, upon the application of any party to a cause or matter, and upon such terms as may be just, make any order that may be necessary for the inspection, detention, or preservation, of any property or thing, being the subject matter of the litigation, or as to which any question may arise therein, and for all or any of the purposes aforesaid may authorise any person to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of such purposes may authorise any samples to be taken, or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

Inspection by Judge

2. Any Judge by whom any cause or matter is heard or tried, with or without a jury, or before whom any cause or matter is brought by way of appeal, may inspect any property or thing concerning which any question may arise therein.

Inspection by jury

3.(1) The provisions of rule 1 as to inspection shall apply to inspection by a jury, and in such case the Court or a Judge may make all such orders upon the sheriff or other proper officer as may be necessary to procure the attendance of the jury at such time and place, and in such manner, as the Court or Judge may think fit.

(2) The Court or Judge shall by the order make such provision as to defraying the expenses of the inspection as may be just.

Preservation or interim custody of subject matter of disputed contract

4. When a prima facie case of liability under a contract is established, the Court or a Judge may make an order for the preservation or interim custody of the subject matter of the litigation, notwithstanding that there is alleged as matter of defence a right to be relieved wholly or partially from such liability; or may order that the amount in dispute be brought into court or otherwise secured.

Application when and how made

5. An application for an order under rule 4 may be made by the plaintiff at any time; and may be made upon the pleadings, if the plaintiff's right appears by the pleadings; or, if there are no pleadings, upon proof of the facts by affidavit or otherwise to the satisfaction of the Court or a Judge.

Order for sale of perishable goods etc.

6. The Court or a Judge may, on the application of any party to a cause or matter, make an order for the sale, by any person or persons named in such order, and in such manner, and on such terms, as the Court or Judge may think desirable, of any goods, wares, or merchandise being the subject of the cause or matter, or as to which any question may arise therein, which may be of a perishable nature or likely to be injured by keeping them, or which for any other just and sufficient reason it may be desirable to have sold at once.

Applications under s 5(8) of the Judicature Act, or rule 1 or 6

7.(1) An application for an injunction or receiver, or for an order under rule 1 or 6, may be made to the Court or a Judge by any party.

(2) An application for an injunction or receiver may be made either ex parte or upon notice.

(3) An application for an order under rule 1 or 6 may be made upon notice to the opposite party at any time after the commencement of the cause, and, if the party making the application is not the plaintiff, after appearance by the party.

Early trial of cause

8. When an application is made before trial for an injunction or other order, and it appears to the Court or Judge that the matter in controversy in the cause can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purposes of the application, the Court or Judge may, subject to the right of either party to demand a jury, make an order for such trial accordingly, and may direct such trial to be had at any time or place, and in any manner in which a cause may be tried, and in the meantime may make such order as the justice of the case may require.

Order for recovery of specific property, other than land, subject to lien etc.

9. When an action is brought to recover, or a defendant in his or her defence seeks by way of counterclaim to recover, specific property other than land, and it appears from the pleadings, or, if there are no pleadings, it is made to appear, by affidavit or otherwise, to the satisfaction of the Court or a Judge, that the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien, or otherwise as security for any sum of money, the Court or a Judge may at any time order that the party claiming to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the Court or

Judge may direct, and that, upon such payment into court being made, the property claimed shall be given up to the party claiming it.

Allowance of income of property pendente lite

10. An application under the *Equity Act 1867*, section 77 for the payment of the income of any real or personal estate which forms the subject of any cause or matter may be made to a Judge.

Injunction against repetition of wrongful act or breach of contract

11. In any action in which an injunction has been or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a Judge may grant the injunction, either upon or without terms, as may be just.

Damages for injunction wrongly granted

12.(1) Every interlocutory order for an injunction shall contain an undertaking by the party at whose instance it is granted to pay to the opposite party any damages which such opposite party may sustain by reason of the injunction, and which the Court or Judge may think the party ought to pay.

(2) An application for an order for payment of such damages shall be made by motion, and the damages may be ordered to be assessed in any manner in which damages may be assessed in an action.

2. Receivers

Receivers—security by and allowance to—form of security

13.(1) When an order is made directing a receiver to be appointed, the person to be appointed shall, unless otherwise ordered, first give security, to

be approved by the Court or Judge and taken before the registrar or a commissioner for affidavits, duly to account for what the person shall receive as such receiver, and to pay the same as the Court or Judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance.

(2) Such security shall be in the form in schedule 1, unless the Court or a Judge otherwise orders.

Where receiver appointed in court—adjournment into chambers to give security

14. When a judgment or order is pronounced or made in court by which a person therein named is appointed to be receiver, the Court may adjourn the cause or matter to chambers, in order that the person named as receiver may give security as in rule 13 mentioned, and may thereupon direct such judgment or order to be drawn up.

Fixing days for receivers to leave and pass their accounts and pay in balances—neglect of receivers

15.(1) When a receiver is appointed with a direction that the receiver shall pass accounts, the Court or Judge shall fix the days upon which the receiver shall, either annually, or at longer or shorter periods, leave and pass such accounts, and also the days upon which the receiver shall pay the balances appearing due on the accounts so left, or such part thereof as shall be certified as proper to be paid by the receiver.

(2) If no days are fixed, the accounts shall be left half-yearly, and the balance shall be paid monthly, reckoning in each case from the day on which the receiver is appointed.

(3) If any such receiver neglects to leave and pass the receiver's accounts, and pay the balances thereof at the times fixed for that purpose as aforesaid, the Judge before whom such receiver is to account may, from time to time, when the receiver's subsequent accounts are produced to be examined and passed, disallow the salary therein claimed by such receiver, and may also, if the Judge thinks fit, charge the receiver with interest at a rate not exceeding 8% per annum upon the balances so neglected to be paid by the

receiver for the time during which the same appear to have remained in the receiver's hands.

Form of receivers' accounts

16. Receivers' accounts shall be in the form in schedule 1, with such variations as circumstances may require.

Leaving account in registry

17.(1) A receiver shall leave the receiver's account in the registry, together with an affidavit verifying the same in the form in schedule 1, with such variations as circumstances may require.

(2) An appointment shall thereupon be obtained by the plaintiff or other person having the conduct of the cause for the purpose of passing such account.

Consequences of default by receiver

18. If a receiver fails to leave any account or affidavit, or to pass such account, or to make any payment, or otherwise to perform the receiver's duty, any party may apply to the Court or a Judge for a peremptory order requiring the receiver to do the act which the receiver has failed to do, and thereupon the Court or Judge may make such peremptory order, or may order the receiver to be discharged and another appointed, or may make such other order, and may give such directions as to costs or otherwise, as may be just.

Account on discharge of receiver

19. When a receiver is discharged before the receiver's final accounts have been passed, the receiver shall leave his or her account in the registry within such time as may be directed by the order of discharge.

Death of receiver

20.(1) When a receiver dies, any party to the cause or matter may apply by summons for an order that the personal representative of the deceased

receiver shall leave at the registry, within a time to be specified in the order, an account showing the receipts and payments of the receiver from the date of the receiver's appointment or from the receiver's last account, as the case may be, to the date of his or her death.

(2) Such account shall be verified, examined, and passed, in the same manner as other receiver's accounts.

Certificate of receiver's account

21. The registrar shall give a certificate stating the result of the examination of a receiver's account.

3. Stop orders

Order to prevent transfer or payment without notice to applicant

22. Any person claiming to be entitled to or to have a charge upon any moneys or securities standing to the credit of a cause or matter in court may apply to a Judge for an order to prevent the payment or transfer thereof to any person without notice to the person.

Mode of application

23. The application for such order shall be made by summons, which must be served upon the persons interested in such parts of the moneys or securities as are sought to be affected by the order asked for, but need not be served upon the parties to the cause or matter or any other persons, unless they are so interested.

Costs

24. The costs of and occasioned by any such application or order shall be in the discretion of the Court or Judge.

ORDER 59—INTERPLEADER

When relief by interpleader granted

1. Relief by way of interpleader may be granted in the following cases, that is to say—

(a) on the application of any person who is under liability for any debt, money, goods, or chattels, for or in respect of which an action has been brought against the person, and in respect whereof some third party has also sued or is expected to sue;

(b) on the application of a sheriff or other person charged with the execution of process by or under the authority of the Court, when a claim is made to any money, goods, or chattels, taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels, by any person other than the person against whom the process issued.

Procedure

2.(1) In the first case the application for relief shall be made by summons in the action, or by 1 summons entitled in all the actions, as the case may be.

(2) In the second case the application shall be made by summons in the cause or matter in which the process is issued.

Summons

3. The summons shall, in either case, call on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

Matters to be proved by applicant

4. The applicant must satisfy the Judge or registrar by affidavit or otherwise—

(a) that the applicant claims no interest in the subject matter in

dispute, otherwise than for charges or costs; and

(b) that the applicant does not collude with any of the claimants; and also

(c) except in the case of a sheriff or other person charged with the execution of process by or under the authority of the Court who, having seized goods has, since the issue of the summons, withdrawn from possession upon the admission by the execution creditor of the claim of the claimant under rule 16, that the applicant is willing to pay or transfer the subject matter into court or to dispose of it as the Court or a Judge or registrar may direct.

Adverse titles of claimants

5. 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 one another.

When application to be made by a defendant

6.(1) If the applicant is a defendant in an action, application for relief may be made at any time after service of the writ of summons.

(2) Service of the summons upon the plaintiff or plaintiffs in the action or actions may be made at his, her or their address or addresses for service in the same manner as if the summons were a proceeding in that action or in the respective actions.

Stay of action

7. If the application is made by a defendant in an action, the Judge or registrar may stay all further proceedings in that action or in the respective actions.

Order upon summons

8. If the claimants, or either of them, appear or appears in pursuance of the summons, the Judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject matter

in dispute, in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff and which defendant.

Disposal of matters in summary manner

9. The Judge may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and may decide the same in a summary manner, either in chambers or in court, and on such terms as may be just.

Questions of law

10.(1) If the question in dispute is a question of law, and the facts are not in dispute, the Judge may either decide the question without directing the trial of an issue, or may order that a special case be stated for the opinion of the Court.

(2) If a special case is ordered to be stated, the provisions of order 38 shall, as far as applicable, apply thereto.

Failure of claimant to appear, or neglect to obey summons

11. If a claimant, having been duly served with the summons, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his or her appearance, the Judge may make an order declaring the claimant, and all persons claiming under the claimant, for ever barred against the applicant and persons claiming under the applicant; but any such order shall not affect the rights of the claimants as between themselves.

Order for sale of goods seized in execution

12. When goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the Court, and any claimant alleges that the claimant is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Judge may order the sale of the whole or a part thereof, and may direct the

application of the proceeds of the sale in such manner and upon such terms as may be just.

Application of orders 35, 36, and 39 to interpleader proceedings

13. Orders 35, 36, and 39, shall, with the necessary modifications, apply to interpleader issues; and the Court or Judge by or before whom the issue is tried may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.

Title of order

14. When in any interpleader proceeding it is necessary or expedient to make 1 order in several causes or matters pending before different Judges, such order may be made by the Judge before whom the interpleader proceeding is taken, and shall be entitled in all such causes or matters; and any such order shall, subject to the right of appeal, be binding on the parties in all such causes or matters.

Costs etc.

15. The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

Claim, how made—notice thereon—sheriff's costs

16.(1) Upon any claim being made to or in respect of any goods or chattels taken in execution under the process of the Court the sheriff or other officer charged with the execution of the process shall forthwith give notice thereof to the execution creditor in the form in schedule 1, or to the like effect, and the execution creditor shall, within 4 days after receiving the notice, give notice in the form in schedule 1, or to the like effect, to the sheriff or such other officer, stating whether he or she admits or disputes the claim.

(2) If the execution creditor admits the title of the claimant, and gives notice as directed by this rule, the execution creditor shall only be liable to

such sheriff or officer for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Withdrawal of sheriff

17.(1) If the execution creditor gives notice to the sheriff or such other officer that the execution creditor admits the claim of the claimant, the sheriff or officer shall forthwith withdraw from possession of the goods claimed.

(2) But if the execution creditor does not in due time, as directed by rule 16, admit or dispute the title of the claimant to the goods or chattels, and the claimant does not withdraw his or her claim thereto by notice in writing to the sheriff or such other officer, the sheriff may take out an interpleader summons.

Costs

18. If at or before the hearing of the summons the execution creditor admits the title of the claimant, or the claimant withdraws his or her claim, the Judge may nevertheless make as against the execution creditor, or as against the claimant if he or she appears, any such order as to costs, fees, charges, and expenses, as may be just and reasonable.

Payment into court

19. If the Court or Judge directs that the claimant shall pay money into court as a condition of the sheriff or other officer withdrawing from possession of the goods or chattels claimed, and the claimant pays money into court accordingly, the money so paid into court shall be deemed to represent the goods or chattels claimed in whole or in part, as the case may be, so that the claimant shall not, so long as the money remains in court, be liable to make any further payment into court or otherwise as a condition of withdrawal from seizure under any other execution against the same goods or chattels, except so far as the value of the goods or chattels may exceed the amount so paid in.

ORDER 60—STAYING PROCEEDINGS

General authority to stay

1. The authority of the Court or a Judge to direct a stay of proceedings in a cause or matter may be exercised at any time after the institution of the cause or matter, and may be exercised, either as to the whole cause or matter, or as to any proceedings therein, or as to any proceedings under a judgment or order given or made therein.

Stay of proceedings on ground of abuse of procedure

2. An application to stay proceedings on the ground that there is no reasonable or probable cause of action or suit, or that the action or suit or proceeding is vexatious and oppressive, or is an abuse of the procedure of the Court, may be made at any time, and whether the plaintiff does or does not admit the allegations of fact (if any) on which the application is founded.

Stay of proceedings

3. The Court or a Judge may stay the proceedings in any cause or matter improperly instituted in the name of any person by a next friend.

Withdrawing juror

4. When at the trial of a cause before a Judge with a jury a juror is withdrawn with the consent of the parties, such withdrawal shall have the effect of an order by consent for the staying of all proceedings in the cause or matter, except so far as the Court at the time of the withdrawal, and with the consent of the parties, otherwise orders.

Staying action until costs paid

5. When an action is discontinued or dismissed for want of prosecution, or judgment of nonsuit is entered, if, before payment of the costs, a subsequent action is brought for the same, or substantially the same, cause of action, the Court or a Judge may order that proceedings in such subsequent action shall be stayed until such costs have been paid.

ORDER 61—TRANSFERS AND CONSOLIDATION

Transfer from one Judge to another on fiat of Judges

1. Any cause or matter may, at any stage, be transferred from one Judge to another by an order to be drawn up on the fiat of such 2 Judges, or by rule of court.

Transfer of action where order for winding-up or administration made

3. When an order has been made by any Judge for the winding-up of any company, or for the administration of the assets of any testator or intestate, or for any relief incident to such administration, or for the administration of any trust, the Judge in whose court such winding-up or administration shall be pending shall have power, without any further consent, to order the transfer to himself or herself of any cause or matter pending in any other court and brought or continued by or against such company, or by or against the executors or administrators of the testator or intestate whose assets are being administered, or against the trustees of the trust which is being administered, as the case may be.

Consolidation of causes or matters

5.(1) Causes or matters may be consolidated by order of the Court or a Judge, in any case in which it appears that substantially the same question is involved in all the causes or matters, or that the decision in 1 cause or matter will determine the other or others or that for some other reason it is desirable to make an order under this rule.

(2) The application may be made by any person who is a party to 2 or more of the causes or matters.

Transfer of proceedings from one branch of the Court to another

In case of absence etc. of central, northern or far northern judge

6.(1) Whenever—

(a) by reason of illness, interest, or other inability, the central, northern or far northern judge is unable to hear or determine any motion or application intended to be made in any cause or matter depending in the Supreme Court at Rockhampton, Townsville or Cairns, respectively; or

(b) any party desires to make a motion or application in any such cause or matter, but is unable to do so by reason of the absence of the central judge from Rockhampton, northern judge from Townsville, or far northern judge from Cairns, and such absence is likely to last for a period longer than 7 days;

and no other Judge is present at Rockhampton, Townsville or Cairns respectively, the party desiring to make the application may lodge with the registrar of the Supreme Court at Rockhampton, Townsville or Cairns respectively a request, in the form in schedule 1, that the cause or matter may be transferred, for the purpose of the application only, to the Supreme Court at Brisbane; and the cause or matter shall thereupon, without further order, be transferred accordingly.

(2) The registrar at Rockhampton, Townsville or Cairns shall thereupon transmit the request to the registrar at Brisbane, together with such papers and documents as are necessary for the purpose of the motion or application.

(3) The motion or application may be heard and disposed of at Brisbane by any Judge of the Court; and, as soon as it has been disposed of, the cause or matter shall, without further order, be re-transferred to the Supreme Court at Rockhampton, Townsville or Cairns, as the case may be, and all papers and documents relating to it shall be transmitted by the registrar at Brisbane to the registrar of that Court.

(4) No fees shall be payable in respect of any such transfer or re-transfer.

Notice, how given

7. In any of the cases mentioned in rule 6, if the application is to be made upon notice to any person, the notice may be given of the motion to be made before a Judge at Brisbane, or the summons may be made returnable before a Judge at Brisbane on a day to be fixed by the registrar at Rockhampton, Townsville or Cairns.

Order to be communicated in writing

8. When in any such case an order has been made by a Judge at Brisbane, the registrar shall, at the request and expense of either party, and without payment of any further fee, give the registrar at Rockhampton, Townsville or Cairns written notice of the effect of the order; and the registrar or other officer at Rockhampton, Townsville or Cairns may thereupon, and without waiting for receipt of the order, do any such act as the registrar or other officer is authorised by the order to do.

Transfers in other cases

9.(1) Except as hereinbefore provided, the transfer of any cause or matter depending in the Supreme Court at Brisbane to the Supreme Court at Rockhampton, Townsville or Cairns, and of any cause or matter depending in either of those Courts to the other, or to the Supreme Court at Brisbane, shall be made by order of the Court or a Judge, or by consent order.

(2) If the cause or matter is depending in the Supreme Court at Brisbane, an application for transfer must be made to the Court or a Judge at Brisbane.

(3) If the cause or matter is depending in the Supreme Court at Rockhampton, it must be made to the Central Judge.

(4) If the cause or matter is depending in the Supreme Court at Townsville, it must be made to the Northern Judge.

(5) If the cause or matter is depending in the Supreme Court at Cairns, the application for transfer must be made to the far northern judge.

(6) The transfer may be ordered on such terms as the Court or Judge thinks fit.

ORDER 62—MOTIONS

Application by motion

1. When by these rules any application is authorised to be made to the

Court or a Judge, such application, if made to the Court of Appeal or to a Judge in court, and not required to be made by petition, shall be made by motion.

Title of notices of motions

2.(1) When a motion is made upon notice in a cause or matter, the notice shall be entitled in the cause or matter.

(2) When a cause or matter is originated by notice of motion, the notice shall be entitled in the matter of the statute under which the motion is to be made, and in the matter of the application of the applicant, naming the applicant, for the relief sought, describing briefly the nature of such relief.

Originating notices

3.(1) When a cause or matter is originated by a notice of motion, a copy of the notice shall be filed before the motion is heard.

(2) In other cases a copy need not be filed.

Notice of motion to name Judge

4. A notice of motion shall name the Court or Judge before whom, and the time at which, it is intended to be made, and shall be signed with the name of the party intending to move, or the party's solicitor, if the party sues or appears by a solicitor, and addressed to the party to be affected by the order sought.

To be moved by counsel in order of seniority

5. On days on which the Court of Appeal sits to hear motions they shall, unless the Court otherwise orders, be heard before the matters set down in the paper are called on for hearing, and counsel may move them in the order of their seniority.

Costs of abandoned motions

6.(1) If a motion of which notice has been given is not moved at the

sitting of the Court for which notice was given, or at any adjournment of that sitting, the party to whom the notice was given may, on filing an affidavit stating the fact, obtain an order for the payment to the party by the party by whom the notice was given of his or her costs of the motion; and such order may be drawn up and signed by the registrar without other warrant than this rule.

(2) But any such order may be set aside by the Court or a Judge upon sufficient cause shown.

Restrictions on rules nisi and orders to show cause

7.(1) A rule nisi or order to show cause shall not be made in an action, or on an application to set aside, remit, or enforce an award, or on an application for an attachment, or for an order to answer the matters in an affidavit, or on an application against the sheriff to pay money levied under an execution.

(2) But upon any motion or application for a rule or order ex parte in the first instance the Court or Judge may grant a rule or order calling on the party to be affected by the order to show cause why it should not be made.

Where notice of motion to be given—ex parte applications

8.(1) Except as by these rules otherwise provided, a motion or application shall not be made without previous notice to the party to be affected thereby.

(2) But the Court or a Judge, if satisfied that the delay caused by giving notice would or might entail irreparable or serious mischief, may make any order ex parte upon such terms as to costs or otherwise, and subject to such undertaking (if any) as the Court or Judge may think just; and any party affected by any such order may move to set it aside.

Grounds of notice of motion to be stated in certain cases—copies of affidavits

9. Every notice of motion to set aside, remit, or enforce an award, or for an attachment, shall state in general terms the grounds of the application; and, when any such motion is founded on evidence by affidavit, a copy of

every affidavit intended to be used on the motion shall be served with the notice of motion.

Length of notice of motion

10. Unless the Court or a Judge gives special leave to the contrary, which leave may be obtained ex parte, there must be at least 2 clear days between the service of a notice of motion and the day named in the notice for making the motion.

Motions may be dismissed or adjourned where necessary notice not given

11. If, on the hearing of a motion or other application, the Court or a Judge is of opinion that any person to whom notice has not been given ought to have notice, the Court may either dismiss the motion or application, or may adjourn the hearing thereof, in order that such notice may be given, upon such terms (if any) as the Court or Judge may think fit.

Adjournment of hearing

12. The hearing of any motion or application may from time to time be adjourned upon such terms (if any) as the Court or Judge may think fit, and the Court or Judge may order that any question of fact arising on the motion or application be tried in any manner in which any question or issue of fact in an action may be tried.

Service of notice of motion with originating proceedings

13. A plaintiff may, without any special leave, serve any notice of motion upon any defendant along with the originating proceeding, or at any time after service of the originating proceeding, and before the time (if any) limited for the appearance of such defendant.

Service of notice on defendant served but not appearing

14. A plaintiff may, without any special leave, serve any notice of motion or other notice or any petition or summons upon any defendant, who,

having been duly served with the originating proceeding and required to appear, has not appeared within the time limited for that purpose.

Notice of evidence

15.(1) A list of all affidavits intended to be used on the hearing of a motion shall be served with the notice of motion; and no other affidavits shall be used, or other evidence given, on the hearing without the leave of the Court.

(2) When it is intended to adduce oral evidence on the hearing of a motion, notice of such intention shall be served with the notice of motion.

In admiralty actions

16. In admiralty actions, a copy of every affidavit intended to be used on the motion shall be served with the notice of motion.

ORDER 63—PETITIONS

Title and address

1.(1) Petitions in a cause or matter shall be entitled in the cause or matter.

(2) Petitions by which a cause or matter is originated shall, unless otherwise directed by these rules, be entitled in the matter of the estate or trust or other subject matter in respect whereof they are presented, in such a manner as to identify it, and, if they are presented under the provisions of a statute, shall also be entitled in the matter of the statute by its short title.

(3) All petitions shall be addressed to ‘the Supreme Court of Queensland’.

Form of petitions

2.(1) Every petition shall contain a statement, as brief as the nature of the case will allow, of the material facts on which the petitioner relies, but not

the evidence by which they are to be proved, nor, except so far as they are material, the contents of documents.

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

(3) Dates, sums, and numbers may be expressed in figures or in words.

(4) Signature of counsel shall not be necessary, but the petition shall be signed by the solicitor of the party, or by the party personally, if the party proceeds in person.

Statement of persons to be served with petition

3. At the foot of every petition, and of every copy thereof, a statement shall be made of the persons (if any) intended to be served therewith, and, if no person is intended to be served, a statement to that effect shall be made at the foot of the petition.

Filing

4. Every petition shall be filed.

Time for hearing

5.(1) In the case of a petition in a cause or matter which is to be served on a party to the cause or matter, there must be at least 2 clear days between the day of service and the day for which the petition is set down to be heard, unless the Court or a Judge gives leave to bring on the petition on shorter notice.

(2) In any other case the same time must be allowed between the day of service and the day appointed for the hearing of the petition as would be allowed for appearance to a writ of summons directed to the same person, unless the Court or a Judge otherwise orders.

Appointment of hearing

6.(1) Upon the filing of an originating petition the proper officer shall appoint a day for the hearing thereof, and shall endorse thereon a

memorandum requiring all parties concerned to attend the Court at the time so appointed.

(2) A copy of such endorsement shall be endorsed upon every copy of the petition intended for service, and shall be sealed with the office seal.

Service

7.(1) The service of an originating petition shall be effected by serving the party with a copy of the petition, endorsed as aforesaid, in the same manner in which a writ of summons in an action is required to be served, except that the original petition and memorandum need not be produced.

(2) The service of a petition in a cause or matter on any party to the cause or matter shall be effected by leaving a copy for the party to be served at the party's address for service, if the party has an address for service.

(3) If the party has no address for service, it must be served upon the party personally, unless the Court or a Judge otherwise directs.

(4) The copy must be endorsed with a notice stating the time for which the petition is set down to be heard.

Evidence

8.(1) Petitions must be verified by affidavit, or in such other manner as the Court may allow.

(2) The Court may allow a petition to be verified by reference to the petition itself, without repetition of the facts set out therein, if the facts are such that the deponent can sufficiently verify them in that manner.

ORDER 64—ORIGINATING SUMMONSES

Jurisdiction

1. The following matters may be heard and disposed of in chambers upon originating summons, that is to say—

(a) applications for interim or permanent investment of, and for the payment of interest arising from, moneys paid into court under the *Railway Act 1864* or the *Public Works Lands Resumption Act 1878*, or any other Act by which the purchase money of land taken or sold, or compensation for injury to land, is directed to be paid into court;

(b) applications, not being applications made in a pending cause or matter, for the appointment of a guardian of an infant, or for the custody, maintenance, or advancement of infants, or access to infants, or the administration of their estate;

(c) applications, not being applications made in a pending cause or matter, for the sanction of the Court to the settlement of any property of an infant on marriage under the provisions of the *Equity Act 1867*, section 151;

(d) applications, not being applications made in a pending cause or matter, under the provisions of the *Trustees and* of the *Trustees and Incapacitated Persons Act 1867*;

(e) applications under the *Settled Land Act 1886*;

(f) applications, not being applications made in a pending cause or matter, under the provisions of the *Trustees and Executors Act 1897*, which are not by these rules directed to be made by petition;

(g) applications for orders for the delivery or taxation of a solicitor's bill of costs, or for the delivering up by a solicitor of deeds, documents, or papers in his or her custody, possession, or power, or otherwise relating to the same;

(h) applications, not being applications made in a pending action, for relief against a forfeiture for breach of a condition to insure against loss or damage by fire;

(i) applications, not being applications made in a pending cause or matter, relating to the sale or management of property, or the disposition of the proceeds of sale;

(j) any application authorised by any statute, or by these rules to be made by originating summons;

(k) any application, not being an application made in a pending cause

or matter, for any order authorised by any statute or by these rules to be made by a Judge, and not expressly required to be made by a Judge in court, or upon petition.

Power to make declaration on summons

1A. Any person claiming to be interested under a deed, will, contract, or other written instrument, may apply by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested.

Construction of statute

1B. Any person claiming any legal or equitable right in a case where the determination of the question whether the person is entitled to the right depends upon a question of construction of a statute, may apply by originating summons for the determination of such question of construction, and for a declaration as to the right claimed.

Questions of law

1BB. Any person claiming any legal or equitable right in a case where the determination of the question whether the person is entitled to the right depends upon a question of law, and there is unlikely to be any substantial dispute of fact, may apply by originating summons for the determination of such question of law, and for a declaration as to the right claimed.

Service

1C. The Court or a Judge may direct such persons to be served with the summons as the Court or Judge may think fit.

Evidence

1D. The application shall be supported by such evidence as the Court or a Judge may require.

Discretion of Court

1E. A question of construction under rule 1A or 1B or a question of law under rule 1BB shall be determined having regard to the events that have happened but the Court or a Judge shall not be bound to determine any such question if there is any substantial dispute of fact or if for any other reason in their, his or her opinion it ought not to be determined on originating summons.

Form of summons

2.(1) An originating summons shall be in the form in schedule 1 with such variations as circumstances may require.

(2) It shall be prepared by the plaintiff or other applicant or his or her solicitor, and shall be issued in the same manner as prescribed in the issue of a writ of summons, and a copy thereof shall be filed in the registry, as in that case.

(3) At the foot of the summons, and of every copy thereof, a statement shall be made of the persons (if any) intended to be served therewith, and, if no person is intended to be served, a statement to that effect shall be made at the foot of the summons.

Endorsement of address

3. The summons shall be endorsed with the address of the applicant, and the name and address of the applicant's solicitor (if any) in the same manner as required in the case of a writ of summons.

Time for service

4. An originating summons which is to be served upon any person shall be served 2 clear days before the summons is returnable, unless a longer notice is required by these rules, or unless a Judge otherwise orders.

No appearance required

5. An appearance need not be entered to an originating summons.

Ex parte applications

6. An originating summons to be heard ex parte may be made returnable on any chamber day of the Judge to whom the matter is assigned.

Solicitors

Account by solicitor

7.(1) When the relationship of solicitor and client exists, or has existed, an originating summons may be issued by the client or the client's representatives for the delivery of a cash account, or the payment of money, or the delivery of securities, by the solicitor; and the Judge may from time to time order the solicitor to deliver to the applicant particulars of the moneys or securities which the solicitor has in his or her custody or control on behalf of the applicant, or to bring into court the whole or any part of the same, within such time as the Judge may order.

(2) If the solicitor sets up a claim for costs, the Judge may make such provision for the payment thereof, or for securing the same, or for the protection of the respondent's lien (if any) as the Judge may think fit.

ORDER 65—CHAMBERS

1. Jurisdiction in chambers

General jurisdiction

1. The following matters may be determined by a Judge in chambers, that is to say—

(a) any application authorised by statute or by these rules to be made to a Judge, and not specifically required to be made to a Judge in court;

(b) any application relating to the conduct of a cause or matter;

(c) any application in a pending cause or matter which, if the application were not made in a pending cause or matter, might, under the provisions of these rules, be heard and determined by a Judge in chambers;

(d) applications for payment or transfer to any person of any money or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights of the applicant, or where the title of the applicant depends only upon proof of the identity, or of the birth, marriage, or death, of particular persons;

(e) applications for payment or transfer to any person of any money or securities standing to the credit of a cause or matter, when the nominal amount or value of either the money or the securities proposed to be dealt with does not exceed £1 000 ($2 000), exclusive of interest;

(f) applications for payment to any person of the interest or dividends on any money or securities standing to the credit of a cause or matter, whether to a separate account or otherwise;

(g) applications relating to the investment or disposition of money or securities in court;

(h) applications for orders on the further consideration of any cause or matter, when the order to be made is for the distribution of an insolvent estate or for the distribution of the estate of an intestate, or for the distribution of a fund among creditors or debenture holders;

(i) applications in a cause or matter for or relating to the sale of property by auction or private contract, and as to the manner in which the sale is to be conducted, and for payment into court and investment of the purchase-money;

(j) applications for directions as to the management of any property under the control of the Court;

(k) applications for orders or directions as to any matter which by these rules is made subject to the order or direction of a Judge.

Powers of registrar

1A.(1) A registrar at Brisbane, Rockhampton, Townsville or Cairns may transact all such business and exercise all such authorities and jurisdiction in respect of the same as under any Act of the State or rule of court thereunder may be transacted or exercised by a Judge in chambers in respect of the following proceedings and matters when the same are unopposed—

(a) passing accounts and allowing commission in probate and administration matters;

(b) extending time for renewal of registration of bills of sale;

(c) extending time for registration of stock mortgages, liens on wool and liens on crops including crops of sugarcane and renewal of registration of liens on such crops;

(d) extending time for registration of charges under section 106 of the *Companies Act 1961*;

(e) orders to administer or sell by the Public Trustee and revocation of elections;

(f) to file any document or take any document off the file or admit informal affidavits to be filed.

(2) However, the registrar may refer any of the above applications to a Judge in chambers and any party may appeal from the order or decision of the registrar to a Judge in chambers.

Procedure in general

Applications to be made by summons unless ex parte

2.(1) Every application made to a Judge in chambers in a pending cause or matter, and not made ex parte, shall be made by summons, signed by a Judge or the registrar or other proper officer, and sealed with the office seal.

(2) The summons must be served on the opposite party.

Certain ex parte applications to be by summons

3. Every application for payment or transfer of money or securities out of court made ex parte shall be made by summons.

Ex parte applications in general

4.(1) Other ex parte applications in a pending cause or matter, and applications for orders nisi, may be made without summons.

(2) But the Judge may, upon any application made ex parte, require a summons to be taken out, or a memorandum of the order asked for to be filed.

Form of summons

5. A summons in a pending cause or matter shall be entitled in the cause or matter, and shall be in the form in schedule 1, with such variations as circumstances may require, and shall be addressed to all the persons on whom it is to be served.

Alteration of summons

6. Summonses shall not be altered after they are sealed without an order of a Judge.

Service of summons

7.(1) Every summons not being an originating summons shall be served 1 clear day before the return day thereof, unless the Court or a Judge allows a shorter period of service.

(2) However, a summons for time only may be served on the day previous to the return thereof, and that a summons signed by a Judge may be made returnable at any time.

No stay unless so ordered by a Judge

8. A summons shall not operate as a stay of proceedings unless a stay is included therein by order of a Judge.

Counsel

10. Any party to a proceeding before a Judge in chambers may be represented by counsel or by his or her solicitor.

Right of audience in chambers

11.(1) Subject to subrule (2), the following persons may be heard on applications in chambers—

(a) a solicitor's managing clerk;

(b) a person who has successfully completed, or has been awarded credit for half of the course for, the degree of Bachelor of Laws of an Australian university;

(c) a person who has completed or has been granted exemption from—

(i) any 6 subjects of the Solicitors' Board examinations; or

(ii) stage 3 of the Barristers' Board examinations;

(d) a person approved by the registrar under subrule (3).

(2) A person mentioned in subrule (1)(a) to (c) may be heard only if the person has given to the registrar a certificate from the person's master, or a partner in the firm of solicitors in which the person is employed, stating that the person—

(a) is a person mentioned in subrule (1)(a), (b) or (c); and

(b) has a competent knowledge of the practice of the Court.

(3) The registrar may approve a person as a person who may be heard on applications in chambers if the registrar—

(a) is given a certificate from the person's master, or a partner in the firm of solicitors in which the person is employed—

(i) stating that the person has a competent knowledge of the practice of the Court; and

(ii) giving details of the person's legal training and experience; and

(b) is satisfied that the person has sufficient knowledge, training and

experience to be heard.

(4) The registrar must keep a list of the persons mentioned in subrule (1) in the registry.

(5) In the hearing of an application in chambers, a person who—

(a) is not a person mentioned in subrule (1); and

(b) is not a party to the application, or counsel or solicitor for a party to the application;

may be heard only by leave of a Judge.

Proceedings when any party fails to attend

12.(1) When any party to a summons fails to attend within half an hour after the time when the application is to be heard, whether upon the return of the summons, or at any time appointed for the consideration or further consideration of the matter, the Judge may proceed in the party's absence, if, considering the nature of the case, the Judge thinks it expedient so to do.

(2) An affidavit of non-attendance shall not be required or allowed, but the Judge may require such evidence of service as the Judge may think fit.

Reconsideration of proceeding—costs

13. When the Judge has proceeded in the absence of a party, the proceeding shall not be reconsidered in chambers, unless the Judge so directs; and in such case the costs occasioned by the non-attendance of the party shall be in the discretion of the Judge, who may direct them to be paid by the party before the party is permitted to have such proceeding reconsidered, or may make such other order as to such costs as the Judge may think just.

Costs thrown away by non-attendance of any party

14. When a proceeding in chambers fails by reason of the non-attendance of any party, and the Judge does not think it expedient to proceed in the party's absence, the Judge may order such an amount of costs (if any) as the Judge thinks reasonable to be paid to the party attending by the absent party.

What matters to be included in the same summons

15. In any cause or matter, any party making an application at chambers may include in one and the same summons all matters upon which the party then desires the order or directions of the Judge; and upon the hearing on the summons the Judge may make any such order, and give any such directions, relative to or consequential on the matter of the application as may be just.

Adjournment to court or chambers

16.(1) Any application may, if the Judge thinks fit, be adjourned from chambers into court.

(2) Any application made in court which might have been made at chambers may be adjourned from court into chambers.

Further attendance where summons not fully disposed of

17. When all the matters in respect of which a summons has been issued are not disposed of upon the return of the summons, the parties shall attend from time to time, on 1 days notice, without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter.

Form of order—signature

18. An order made by a Judge shall be in the form in schedule 1, with such variations as circumstances require, and shall be signed by, or with the stamp of, the Judge by whom it is made, unless the Judge directs it to be signed by the registrar, and shall be sealed with the office seal.

Signatures of certain orders made in chambers

19. Orders made in chambers to be acted on by the Treasurer shall, unless the Judge otherwise directs, be signed by the registrar.

Associate's name to be written on documents stamped with Judge's name

20. The Judge's associate by whom the Judge's name is impressed on a document shall sign the document in his or her own proper handwriting.

Associate's duty as to proceedings at chambers

21. The associate or Judge's clerk shall keep a book, in which the associate or Judge's clerk shall enter particulars of all proceedings had in chambers, with dates, names of cases, a description of the proceedings, and a minute of the decisions, and shall deliver all documents used at chambers to the registrar, who shall initial the entries.

ORDER 65A—LISTING APPLICATIONS FOR HEARING

Application

1. This order applies to all matters listed for hearing in chambers, whether before a Judge or by a Master.

List of applications

2. On the filing of an application for a determination (whether final or interlocutory) by a Judge or by a Master, the registrar must—

(a) enter it on a list of applications for hearing before a Judge or by a Master according to the date for hearing; and

(b) record on that list the estimated hearing time for the matter.

Estimate of hearing time

3. The party filing the application must endorse on it an estimate of the hearing time for the matter.

Adjournments

4.(1) If an application to which this order applies is adjourned to a fixed date, the registrar, on a request for relisting, must enter it on the appropriate list for the adjourned date.

(2) If an application is adjourned to a date to be fixed, a party may request that it be relisted for a particular day.

(3) The party who requests the relisting of an adjourned application must give the registrar a revised estimate of the duration of the hearing unless the revised estimate was given orally to the Judge or Master on the adjournment being granted.

(4) When an application is relisted, the registrar must record the estimated hearing time for the matter on the list.

(5) The party who requests the relisting of an adjourned application must give all other parties reasonable notice of the new date of hearing.

(6) If all parties consent to an adjournment, they may sign an endorsement to that effect on the court file and the application stands adjourned as if there was an order to that effect.

Sequence of listing

5.(1) The registrar must enter an application on the appropriate list immediately on the filing of the application or on the request for a relisting because of an adjournment.

(2) The sequence of listing must not be altered except by an order of the Court.

Sequence of hearing

6. Unless the Court directs to the contrary at the daily call-over or otherwise, applications must be heard in the sequence in which they appear on the list as published for that day by the registrar.

ORDER 66—ORDERS

Enlarging orders

1.(1) When an order to show cause has been made, and has not been served, or has not been served a sufficient time before the day appointed in the order for showing cause the Court or Judge may direct that the order shall be amended by appointing a later day for showing cause.

(2) Such direction may be given on an ex parte application either before or on the day appointed for showing cause.

Orders of course abolished

2. No side-bar rule or order of course shall hereafter be drawn up.

Submission to arbitration

3. An order to make a submission to arbitration a rule of court may be made by a Judge ex parte.

Date of order when drawn up

4. Every order, when drawn up, shall be dated of the day of the week, month, and year, on which the same was made, unless the Court or Judge otherwise directs, and shall take effect accordingly.

When orders need not be drawn up

5.(1) Subject to this rule and order 88, rule 18, it shall not be necessary to draw up or enter any order that is interlocutory only, except where—

(a) the Court or a Judge, Master, or registrar so directs; or

(b) it is sought—

(i) to enforce the order by execution or other process or order of the Court; or

(ii) to appeal to the Court of Appeal against the order; or

(c) the order is returnable before the Court of Appeal.

(2) The endorsement or authentication by the Court, Judge, Master or registrar who made the order, or by the associate or clerk to such Judge or Master, of the file or any document placed in the file shall, until an interlocutory order is drawn up or entered, be sufficient proof of the making of the order, its date and terms to the extent that the same appears from such file or document.

(3) For the purpose of this rule, an order—

(a) does not cease to be interlocutory by reason only that it orders payment of or otherwise deals with costs;

(b) is not interlocutory if it finally disposes of the rights of parties.

(4) In any case of doubt the Court or a Judge, Master, or registrar may direct that it shall not be necessary to draw up or enter an order under these rules.

Orders for jury

6. An order or precept under the *Jury Act 1929*, section 22 may be drawn up and signed by the registrar or associate without other warrant than this rule.

Consent orders

7.(1) Upon the written consent of the parties or their solicitors, the registrar may draw up, sign, and seal an order in any case in which, in the registrar's opinion, the Court or a Judge would have made such an order upon consent of parties.

(2) Every such order shall state that it is made by consent, and shall be of the same force and validity as if it had been made by the Court or a Judge.

(3) Every such consent shall be filed.

(4) The order may include an order as to costs provided the consent of the parties extends to the order as to costs.

Orders drawn up by registrar

9. Orders which under the authority of these rules may be drawn up by the registrar on the application of a party without the special direction of the Court or a Judge shall be drawn up upon a praecipe, which shall be filed in the registry by the party applying for the order.

ORDER 67—PROCEEDINGS UNDER JUDGMENTS AND ORDERS

2. Summons to proceed

Summons to proceed with accounts and inquiries directed—directions

6.(1) A party entitled to prosecute a judgment or order directing accounts or inquiries to be taken or made may within 14 days after the entry of such judgment or order, and any party may thereafter, issue a summons to proceed with the accounts or inquiries directed, and upon the return of the summons the Judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to the manner in which each of the accounts and inquiries is to be prosecuted, the advertisements (if any) to be published, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, the time for adjudicating on claims, and the time within which any other proceeding is to be taken, and a day or days may be appointed for the further attendance of the parties.

(2) Any such directions may afterwards be varied, by addition thereto or otherwise, as may be found necessary.

Settling deed in case parties differ

7. When by a judgment or order a deed is directed to be settled by the Judge in case the parties differ, the party entitled to prepare the draft deed shall deliver a copy thereof to the party entitled to object thereto, and the party entitled to object shall deliver to the other party a statement in writing

of his or her proposed amendments (if any) within 8 days after the delivery of such copy, and, if the party proposes any amendments which the other party is not willing to accept, a summons shall be taken out to settle the draft.

Dispensing with service of notice of judgment or order

8. When, upon the hearing of a summons to proceed, it appears to the Judge that by reason of absence, or for any other sufficient cause, personal service of notice of the judgment or order upon any party cannot be made or ought to be dispensed with, the Judge may at the Judge's discretion order any substituted service or notice by advertisement or otherwise in lieu of such service.

Power to bind persons when service dispensed with

9. When personal service of notice of a judgment or order for accounts and inquiries is dispensed with, the Judge may, if the Judge thinks fit, order that the persons as to whom such service is dispensed with shall be bound as if served, and they shall be bound accordingly, except when the judgment or order has been obtained by fraud or non-disclosure of material facts.

Stay of proceedings where all necessary parties have not been served with notice of judgment or order

10. If on the hearing of a summons to proceed it appears that all necessary parties are not parties to the action, or have not been served with notice of the judgment or order, directions may be given for advertisements for creditors; but the adjudication on creditors' claims and the accounts shall not be proceeded with, and no other proceedings shall be taken, except for the purpose of ascertaining the parties to be served, until all necessary parties have been served and are bound, or personal service has been dispensed with, and until directions have been given as to the parties who are to attend on the proceedings.

Course of proceeding at chambers—papers for use of Judge

11.(1) The course of proceeding in chambers under a judgment or order

shall ordinarily be the same as the course of proceeding in court upon motions.

(2) Copies, abstracts, or extracts of or from accounts, deeds, or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the Judge, and when so directed, copies shall be handed to the other parties.

(3) But no copies shall be made of deeds or documents when the originals can be brought in, unless the Judge so directs.

3. Attendances

Classifying interests of parties—costs of party appearing separately

12. When upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment or order, it appears to the Judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, the Judge may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings; and, if the parties constituting any class cannot agree upon the solicitor to represent them, the Judge may direct that any of the parties constituting such class who insists upon being represented by a separate solicitor shall personally pay the costs of his or her own solicitor of and relating to the proceedings in question, and all such further costs as may be occasioned to any of the parties by his or her being represented by a separate solicitor.

Judge may require separate solicitor to represent parties

13. Whenever in any proceeding before a Judge in chambers the same solicitor is employed for 2 or more parties, the Judge may at the Judge's discretion require that any of the parties shall be represented before the Judge by a separate solicitor, and may adjourn the proceedings until such party is so represented.

Attendance of parties not directed to attend

14. Any of the parties other than those who have been directed to attend may attend at their own expense, and upon paying the costs (if any) occasioned by such attendance; or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action either in addition to or in substitution for any of the parties who have been directed to attend.

4. Reference to registrar

Accounts etc. to be taken by registrar

15. Accounts shall be taken, and inquiries shall be made, by the Master or, at a place other than Brisbane, if no Master is sitting at that place the registrar as the Judge's deputy without any special order of reference to him or her, unless otherwise ordered by the Court or Judge.

Powers of registrar

16. The registrar shall, for the purpose of any proceedings directed to be taken before the registrar, have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to require the production of documents, to take affidavits and acknowledgments, and unless otherwise ordered, to examine parties and witnesses viva voce.

Duty of persons summoned to attend before registrar

17. Parties and witnesses summoned to attend before the registrar shall be bound to attend in pursuance of the subpoena, and shall be liable to the same consequences in case of default in attendance as in the case of default in attendance in pursuance of a writ of subpoena in any other case.

Reference to Judge

18. Any party may require any question arising before the registrar to be adjourned before the Judge for the Judge's opinion thereon, and the registrar shall act upon the opinion of the Judge accordingly; but the

decision of the Judge shall not be deemed to be finally given upon any matter so referred to the Judge until the filing of the registrar's certificate embodying the result of the Judge's opinion.

5. Accounts

Special directions as to mode of taking account

19. When an account is directed to be taken, the Court or a Judge may, either by the judgment or order directing the account, or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the account, the books of account in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

Accounts to be verified by affidavit numbered and left in registry

20.(1) When an account is directed to be taken, the accounting party shall, unless the Court or a Judge otherwise directs, make out his or her account and verify the same by affidavit.

(2) The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit, and shall be left in the registry within the time directed by the Court or Judge.

Mode of vouching accounts

21.(1) Upon the taking of any account the payment of all sums exceeding £10 ($20) shall be vouched by proper receipts signed by the persons to whom the payments are alleged to have been made, unless the Court or a Judge otherwise orders.

(2) The Court or a Judge may direct that the vouchers shall be produced at the office of the solicitor of the accounting party, or at any other convenient place, and that only such items as may be contested or surcharged shall be brought before the registrar or Judge in chambers.

Surcharge

22. Any party seeking to charge any accounting party for an amount in excess of that which the party has by his or her account admitted to have received shall give notice thereof to the accounting party, stating, so far as the party is able, the amount sought to be charged, and the particulars thereof, in a short and succinct manner.

Inquiry as to personalty

23. Every judgment or order for a general account of the personal estate of a testator or intestate person shall contain a direction for an inquiry what parts (if any) of such personal estate are outstanding or undisposed of, unless the Court or a Judge otherwise directs.

Accounts and inquiries to be numbered

24. When by any judgment or order, whether made in court or in chambers, any accounts are directed to be taken or inquiries to be made, each direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number; and such judgment or order shall be in the form in schedule 1, with such variations as circumstances may require.

Just allowances

25. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

Registrar to report delay

26. The registrar shall from time to time report to the Judge any case in which the registrar considers that there has been any undue delay in prosecuting any account or inquiry.

Expediting proceedings in case of undue delay

27. If it appears to the Court or a Judge, on the representation of the registrar, that there is any undue delay in the prosecution of any accounts or

inquiries, or in any other proceedings under any judgment or order, the Court or Judge may require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such other order with regard to expediting the proceedings or the conduct thereof, or the stay thereof, and as to the costs of the proceedings, as the circumstances of the case may require; and, for the purposes aforesaid, any party or the registrar may be directed to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions which may be given; and any costs incurred by the registrar in obedience to any such order shall be paid by such parties or out of such funds as the Court or Judge may direct; and if any such costs are not otherwise paid, the same shall be paid out of such moneys (if any) as may be provided by Parliament.

Evidence

28. Any person attending before the Judge or the registrar as a witness may be examined or cross-examined on oath as upon the trial of a cause.

6. Creditors and claimants

Claimants not coming in to prove etc. excluded

29. When a judgment or order is given or made, whether in court or in chambers, directing an account of debts, claims, or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, all persons who do not come in and prove their claims within the time fixed for that purpose by advertisement shall, unless otherwise ordered, be excluded from the benefit of the judgment or order.

Advertisements

30.(1) When an advertisement is required for the purpose of any proceeding in chambers, a peremptory advertisement, and only 1, shall be published, unless for some special reason the Judge directs a second advertisement or further advertisements to be published.

(2) But every advertisement shall be published as many times and in such papers as may be directed.

By whom prepared and signed

31. An advertisement for creditors and other claimants shall be prepared by the party prosecuting the judgment or order, and submitted to the registrar for approval, and when approved shall be signed by the registrar, and such signature shall be sufficient authority to the Government Printer to insert the same in the Gazette.

Substance and form of advertisement

32.(1) Advertisements for creditors and other claimants shall fix a time within which each claimant, not being a creditor, is to come in and prove his or her claim, and within which each creditor is to send to the executor or administrator of the deceased, or to such other party as the Judge may direct, or to his or her solicitor, to be named and described in the advertisement, the name and address of such creditor and the full particulars of his or her claim, and a statement of his or her account and the nature of the security (if any) held by him or her.

(2) Such advertisements shall be in one of the forms in schedule 1, with such variations as the circumstances of the case may require.

Unless served with notice, creditors need not attend

33. A creditor need not make an affidavit nor attend in support of the creditor's claim, except to produce his or her security, unless the creditor is served with a notice requiring the creditor to do so as hereinafter provided.

Creditors to produce their securities, and evidence of their debts if required

34. Every creditor shall produce the security (if any) held by the creditor before the registrar at a time to be specified in the advertisement for that purpose, which shall be the same as the time appointed for adjudicating on the claims; and every creditor shall, if required, by notice in writing, in the form in schedule 1, which shall be given by the executor or administrator of

the deceased, or by such other party as the Judge may direct, produce all other deeds and documents necessary to substantiate the creditor's claim before the registrar at a time to be specified in such notice.

Creditor neglecting notice to lose costs

35. If a creditor neglects or refuses to comply with the requirements of the notice mentioned in rule 34, the creditor shall not be allowed any costs of proving his or her claim, unless the Judge so directs.

Examination and verification of claims

36. The executor or administrator of the deceased, or such other party as the Judge may direct, shall examine the claims of creditors sent in pursuant to the advertisement, and shall ascertain, so far as the Judge is able, to which of such claims the estate in course of administration is justly liable, and the Judge shall, at least 7 clear days prior to the time appointed for adjudication, file an affidavit in the form in schedule 1, to be made by such executor or administrator, or 1 of the executors or administrators, or such other party, either alone or jointly with his or her solicitor or other competent person, or otherwise as the Judge may direct, verifying a list, in the form in schedule 1, of the claims whereof particulars have been sent in pursuant to the advertisement, and stating to which of such claims, or parts thereof respectively, the estate is in the opinion of the deponent justly liable, and his or her belief that such claims, or parts thereof respectively, are justly due and proper to be allowed, and the reasons for such belief.

Affidavit verifying claims may be postponed

37. The Judge may direct that the making of the affidavit referred to in rule 36 shall be postponed till after the day appointed for adjudication, and may give such directions as the Judge thinks fit with respect to it.

Adjournment—further evidence

38. If on the day appointed for hearing the claims any of them remain undisposed of, a later day for hearing such claims shall be fixed, and, if further evidence is to be adduced, a time may be named within which the

evidence on both sides is to be closed, and directions may be given as to the mode in which such evidence is to be given.

Adjudication on the claims

39. At the time appointed for adjudicating upon the claims of creditors, or at any adjournment thereof, the registrar may in the registrar's discretion allow any of the claims, or any part thereof respectively, without proof by the creditors, and may direct such investigation of all or any of the claims not allowed, and require such further particulars, information, or evidence relating thereto, as the registrar may think fit; and may, if the registrar thinks fit, require any creditor to attend and prove the creditor's claim, or any part thereof: and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed.

Notice to creditors of claims allowed or disallowed

40.(1) Notice of allowance, in the form in schedule 1, shall be given by the party prosecuting the judgment or order to every creditor whose claim, or any part of whose claim, has been allowed without proof by the creditor.

(2) When the claim, or part of the claim, of any creditor is not allowed, but no direction is given as to the further investigation thereof under rule 39, notice, in the form in schedule 1, shall be given by the party prosecuting the judgment or order to such creditor requiring the creditor to prove his or her claim, or such part thereof as is not allowed, by a time to be named in the notice, not being less than 7 days after the service of the notice, and to attend at a time to be therein named, being the time to which the adjudication thereon has been adjourned.

(3) If any creditor fails to comply with such notice, the creditor's claim, or such part thereof as aforesaid, shall be disallowed, unless the Judge otherwise orders.

Claims after expiration of time fixed

41. After the time fixed by the advertisement no claims shall be received, except as hereinbefore provided in case of an adjournment, except by special leave of the Judge, upon application made by summons, and then

upon such terms and conditions as to costs and otherwise as the Judge may think fit.

Costs of creditor proving his or her debt

42. A creditor who has come in and proved his or her debt under a judgment or order shall be entitled to the costs of so proving the debt, and the sum to be allowed for such costs shall be fixed by the registrar, unless the registrar thinks fit to direct the taxation thereof; and the amount of such costs, or the sum allowed in respect thereof, shall be added to the debt so proved.

List of claims allowed

43. A list of all claims allowed shall, when required by the registrar, be made out and left in the registry by the person who examines the claims.

Payment of creditors

44. When any judgment or order is given or made for payment of money in court to creditors, the party whose duty it is to prosecute such judgment or order shall send to each such creditor, or the creditor's solicitor (if any) a notice in the form in schedule 1, that the cheques may be received from the Treasurer; and such party shall, when required, produce such judgment or order and any other papers necessary to enable such creditors to receive their cheques.

Service of notices under this order

45. Every notice by this order required to be given to creditors or other claimants shall, unless the Judge otherwise directs, be deemed sufficiently given and served if transmitted by post prepaid to the creditor or other claimant to be served according to the address given in the claim sent in by him or her pursuant to the advertisement, or, if such creditor or other claimant has employed a solicitor, to such solicitor according to the address given by him or her.

7. Interest

Computation of interest on debts bearing interest

46. When a judgment or order is given or made directing an account of the debts of a deceased person, interest shall, unless otherwise ordered, be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of 4% per annum from the date of the judgment or order.

Allowance of interest on debts not carrying interest

47. A creditor whose debt does not carry interest, who comes in and proves the same under a judgment or order of the Court or a Judge, shall be entitled to interest upon the creditor's debt at the rate of 4% per annum from the date of the judgment or order out of any assets which may remain after satisfying the costs of the cause or matter, the debts proved, and the interest of such debts as by law carry interest.

Interest on legacies

48. When a judgment or order is given or made directing an account of legacies, interest shall be computed on such legacies after the rate of 4% per annum from the end of 1 year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will, and in that case according to the will.

8. Certificates of the registrar

Registrar's certificate

49.(1) The result of proceedings before the registrar shall be stated in the shape of a concise certificate.

(2) It shall not be necessary for the Judge to sign such certificate, and unless an order to discharge or vary the same is made, the certificate shall be deemed to be approved and adopted by the Judge.

Reference to judgment etc.

50. The certificate of the registrar shall not, unless the circumstances of the case render it necessary, set out the judgment or order, or any documents or evidence or reasons, but shall refer to the judgment or order, documents, and evidence, or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded.

Preparation and settlement of certificate

51.(1) The certificate shall, unless the Judge otherwise directs, be prepared by the party having the prosecution of the judgment or order, who shall obtain an appointment to settle the certificate, and shall give notice of such appointment to the other parties.

(2) No summons to settle the certificate shall be issued.

Form of certificate

52. The certificate shall be in the form in schedule 1, with such variations as the circumstances may require, and when prepared and settled shall be transcribed in such form and within such time as the registrar may require, and shall be signed by the registrar either then or, if necessary, at an adjournment to be made for the purpose.

Contents of certificate in cases of accounts—transcript—filing of accounts and transcripts

53.(1) When an account is directed, the certificate shall state the results of such account, and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed, and shall specify by the numbers attached to the items in the account which (if any) of such items have been disallowed or varied, and shall state what additions (if any) have been made by way of surcharge or otherwise; and, if the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the certificate.

(2) The accounts and the transcripts (if any) referred to in the certificate

shall be filed therewith.

(3) No copy of any such account shall be required to be taken by any party.

Taking opinion of Judge

54. Any party may, before the proceedings before the registrar are concluded, take the opinion of the Judge upon any matter arising in the course of the proceedings without any fresh summons for the purpose.

When certificate becomes binding application to discharge or vary it

55. Every certificate shall be filed in the registry, and shall thenceforth be binding on all the parties to the proceedings, unless discharged or varied upon application to the Court or a Judge to be made before the expiration of 8 clear days after the date of the filing of the certificate; or, in the case of certificates which are to be acted upon by the Treasurer without further order, or certificates on passing receivers' accounts, within 2 clear days after the date of the filing of the certificate.

Discharge or variation after any lapse of time

56. The Court or a Judge may, nevertheless, in any case, if the special circumstances make it just to do so, order a certificate to be discharged or varied, notwithstanding that it has become binding on the parties.

Computation of interest etc. to be acted upon by Treasurer etc.

57. The Court or a Judge may direct any computation of interest, or the apportionment of any fund, to be certified by the registrar, and to be acted upon by the Treasurer or other person without further order.

9. Further consideration

Setting down cause or matter for further consideration

58.(1) When the further consideration of any cause or matter has at the

original or any subsequent hearing, whether in court or chambers, been adjourned for the purpose of taking any accounts, or making any inquiries, such cause or matter may, after the expiration of 8 days, and within 14 days from the date of the filing of the registrar's certificate, be set down for further consideration in court or chambers, as the case may be, by the party having the prosecution of the judgment or order, and after the expiration of such 14 days by any other party.

(2) Six clear days notice shall be given by the party so setting down the cause or matter to the opposite party that the same has been so set down.

10. References in admiralty actions

Application of rules

59. Rules 60 to 72 shall apply to references by the Court or a Judge to the registrar, whether the reference is to the registrar alone, or to the registrar assisted by a merchant or merchants.

Reference to registrar and merchants

60.(1) The Court or Judge may refer the assessment of damages and the taking of any account to the registrar, either alone or assisted by a merchant or merchants.

(2) The appointment of the merchants shall be made in the same manner as that of assessors.

Filing of claim and affidavits

61. Within 12 days from the day when the order for the reference is made the claimant shall file his or her claim and his or her affidavits verifying the same; and within 12 days from the day when the claim and affidavits are filed, the adverse party shall file his or her counter affidavits.

Filing of further affidavits

62. After the filing of the counter affidavits, 6 days shall be allowed to either party for filing further affidavits, and after that period no further

affidavits shall be filed, unless by order of the Court or a Judge, or by permission of the registrar.

Time for hearing

63. Within 3 days from the expiration of the time allowed for filing the last affidavits, the claimant shall file in the registry a notice, praying to have the reference set down for hearing, and if the claimant does not do so, the adverse party may apply to the Court or a Judge to have the claim dismissed with costs.

Hearing

64. At the time appointed for the reference, if either party is present, the reference may be proceeded with; but the registrar may adjourn the reference from time to time as the registrar may deem proper.

Witnesses

65. Witnesses may be produced before the registrar for examination, and the evidence may, on the application of either party, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by a shorthand writer or reporter appointed by the Judge, who shall be sworn faithfully to report the evidence; and a transcript of the shorthand writer's or reporter's notes, certified by the shorthand writer or reporter to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the registrar's report.

Counsel

66. Counsel may attend the hearing of any reference, but the expenses attending the employment of counsel shall not be allowed on taxation, unless the registrar is of opinion that the attendance of counsel was necessary.

Report by registrar

67.(1) When a reference has been heard, the registrar shall make a report

in writing of the result in the form of a certificate, showing the amount (if any) found due, and to whom, together with any further particulars that may be necessary.

(2) The certificate shall be in the same form as directed in the case of certificates in other actions.

Costs

68. The registrar may, if the registrar thinks fit, report whether any and what part of the costs of the reference should be allowed, and to whom.

Notice to parties

69. When the report is ready, notice shall be sent to the parties, and either party may thereupon take up and file the report.

Motion to vary

70. Within 2 weeks from the date of the filing of the registrar's report, either party may give notice of motion to vary the report, specifying the items objected to.

Order thereon

71. At the hearing of the motion the Judge may make such order thereon as the Judge thinks just, or may remit the matter to the registrar for further inquiry or report.

Confirmation if no motion to vary

72. If a notice of motion to vary the report is not filed within 2 weeks from the date of the filing of the registrar's report, the report shall stand confirmed.

ORDER 68—SALES BY THE COURT

1. In ordinary actions

Power of Court to order sale of real estate

1. In any cause or matter relating to any real estate, in which it appears necessary or expedient that the real estate or any part thereof should be sold before judgment in the cause or matter, an order for the sale may be made by the Court or a Judge at any time after the necessity or expediency becomes apparent.

Abstract of title to be laid before conveyancing counsel

2.(1) When any land is ordered to be sold under a judgment or order, the Court or Judge may order that an abstract of the title be laid before some counsel approved by the Court or Judge for counsel's opinion thereon, so as to enable proper directions to be given respecting the conditions of sale and other matters connected with the sale.

(2) In any such case the conditions of sale shall specify a time for the delivery of the abstract of title to the purchaser or to the purchaser's solicitor.

Sale with the approbation of the Judge

3. When a judgment or order is given or made, whether in court or in chambers, directing any property to be sold, the same shall, unless otherwise ordered, be sold by auction, with the approbation of the Judge, to the best purchaser that can be got, the purchase being allowed by the Judge; and all such parties shall join in the sale and conveyance as the Judge shall direct.

Order for payment of purchase-money into court not necessary

4. An order for the payment of purchase-money into court shall not be necessary, but a direction for that purpose signed by the registrar shall be sufficient authority for the Treasurer to receive the money.

Mode of carrying out sale, mortgage, partition, or exchange, when ordered by Court

5.(1) In any case in which a sale, mortgage, partition, or exchange, is ordered, the Court or a Judge shall have power, with a view to avoiding expense or delay, or for other good reason, to authorise the same to be carried out, either—

(a) by auction; or

(b) by laying a specific proposal for sale before the Judge for the Judge's sanction; or

(c) by proceedings altogether out of court, any moneys produced thereby being paid into court or to trustees, or otherwise dealt with as the Judge may order.

(2) However, proceedings altogether out of court shall not be authorised, unless and until the Judge is satisfied, by such evidence as the Judge may deem sufficient, that all persons interested in the estate to be sold, mortgaged, partitioned, or exchanged, are before the Court or are bound by the order for sale, mortgage, partition, or exchange.

(3) Every order authorising a sale by proceedings altogether out of court shall be prefaced by a declaration that the Judge is so satisfied as aforesaid, and a statement of the evidence upon which such declaration is made.

Power to make order for sale in debenture-holders' action at any time

6. In debenture-holders' actions, when the debenture-holders are entitled to a charge by virtue of the debentures, or of a trust deed or otherwise, and the plaintiff is suing on behalf of himself or herself and other debenture-holders, if the Judge is of opinion that there must eventually be a sale, the Judge may in the Judge's discretion direct a sale before judgment, and also may direct a sale after judgment, although all the persons interested are not ascertained, and whether the judgment has been served on any of them or not.

Conduct of sale of trust estates

7. When in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered

of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court or a Judge otherwise directs.

Form of affidavit of value

8. Affidavits for the purpose of enabling the Judge to fix reserved biddings upon a sale by auction shall state the value of the property by reference to an exhibit containing such value, so that the value may not be disclosed by the affidavit when filed.

Prints of particulars and conditions of sale

9. As soon as particulars and conditions of sale have been settled, a print thereof, certified by the solicitor to be a correct print of the particulars and conditions as settled, shall be left at the registry.

Certificate of result of sale to be made by auctioneer and solicitor in lieu of affidavit

10.(1) In every case of a sale under the direction of the Court the particulars of sale shall be signed by, and the result of the sale shall be certified under the hands of, the auctioneer and the solicitor of the party having the conduct of the sale.

(2) It shall not be necessary to file any affidavit verifying the particulars or the result of the sale.

(3) The form in schedule 1 shall be used, with such variations as the circumstances may require.

2. Appraisement and sale etc. in admiralty actions

Appraisement

11. In admiralty actions the Court or a Judge may, either before or after final judgment, order any property under the arrest of the Court to be appraised, or to be sold without appraisement, and either by public auction or by private contract.

Sale of perishable property

12. If the property is deteriorating in value, the Court or a Judge may order it to be sold forthwith.

Without commission in certain cases

13. If the property to be sold is of small value, the Court or a Judge may, if the Court or Judge think fit, order it to be sold without a commission of sale being issued.

Removal of property

14. The Court or a Judge may, either before or after final judgment, order any property under arrest of the Court to be removed, or any cargo under arrest on board ship to be discharged.

Commissions

15. The appraisement, sale, and removal of property, the discharge of cargo, and the demolition and sale of a vessel condemned under any Slave Trade Act, shall, except as provided by rule 13, be effected under the authority of a commission, which, unless the Court or a Judge otherwise orders, shall be addressed to the marshal, and executed by the marshal or the marshal's officers.

Return of commission

16. The commission shall, as soon as possible after its execution, be filed by the marshal, with a return setting forth the manner in which it has been executed.

Gross proceeds of sale to be paid into court

17. The marshal shall pay into court the gross proceeds of sale of any property which has been sold by the marshal, and shall at the same time bring into the registry the account of sale, with vouchers in support thereof, for taxation by the taxing officer, who shall proceed to tax the same.

Taxation of marshal's expenses

18. Any person interested in the proceeds may be heard before the taxing officer on the taxation of the marshal's account of expenses, and an objection to the taxation shall be heard in the same manner as an objection to the taxation of a solicitor's bill of costs.

ORDER 70—APPEALS AND NEW TRIALS

1. Appeals

Appeals to be by way of rehearing

1. Appeals to the Court of Appeal from judgments or orders of Judges of the Supreme Court, whether in court or chambers, shall be by way of rehearing.

Mode of instituting appeals

2.(1) Appeals shall be instituted by notice of appeal, which shall be served and filed as hereinafter provided; and no petition, case, or other formal proceeding other than such notice of appeal shall be necessary.

(1A) The appellant may by the notice of appeal appeal from the whole or any part of the judgment or order appealed from.

(2) The notice of appeal shall state—

(a) whether the whole or part only, and what part, of the judgment or order is appealed from; and

(b) briefly, but specifically, the grounds of the appeal; and

(c) what judgment or order the appellant seeks in lieu of that appealed from.

To whom notice to be given

3.(1) Notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the cause or matter, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties.

(2) Any notice of appeal may be amended at any time as the Court of Appeal may think fit.

Serving of notice of appeal

4.(1) The notice of appeal must be served within 28 days of the day on which the judgment or order is pronounced or within any extended time allowed by the Court or a Judge.

(2) The times of the vacations are to be reckoned in the computation of the period of 28 days.

(3) Within the time prescribed for serving the notice of appeal, the appellant must file—

(a) an original notice in the office of the registrar at Brisbane; and

(b) a copy of the notice in the office of the registrar at the place in which the proceedings were commenced.

(4) The appeal is instituted once the notice of appeal has been duly served and filed.

Payment of security or deposit

5.(1) Unless the Court otherwise orders—

(a) the dismissal of an appeal is sufficient authority for the registrar of the Court in which any security or deposit has been lodged to pay the security or deposit to the successful respondent or respondents; and

(b) the allowance of an appeal with costs is sufficient authority for the

registrar to pay the security or deposit to the appellant; and

(c) in either case, the payment may be made to the solicitors on the record for the party entitled to the security or deposit.

(2) If the parties agree that an appeal should be dismissed by consent, the appellant may file in the registry a memorandum in form 258A signed by the appellant or the appellant's solicitors and by the respondent or the respondent's solicitors.

(3) A memorandum that is filed under subrule (2) and sealed by the registrar has effect as an order of the Court—

(a) dismissing the appeal by consent; and

(b) providing (according to the terms of the memorandum) for 1 or more of the following—

(i) that any amounts paid into court by way of security for, or deposited to answer, the costs of the appeal, be paid out of court to a specified party or that party's solicitors;

(ii) that the appellant pay the respondent's costs of the appeal, to be taxed;

(iii) that there be no order as to costs of the appeal;

(iv) that the appellant pay the respondent's costs of the appeal fixed by consent at a specified amount;

(v) that the appellant pay the respondent's costs of the appeal and that the costs be paid out of any amounts paid into court by way of security for, or deposited to answer, the costs of the appeal, and that the balance (if any) of the amounts be paid out of court to a specified party or that party's solicitors.

Appeals from refusal of ex parte applications

6.(1) When an ex parte application has been refused by a Judge, the application may be renewed ex parte by way of appeal to the Court of Appeal.

(2) The application may be made at any sitting of the Court of Appeal held within 4 days, or, in the case of an application refused by a Judge

sitting in the central, northern or far northern district, within 14 days, from the day of the refusal, or within any extended time that the Court of Appeal allows.

Amendment—further evidence

10.(1) The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court or Judge appealed from, and shall have full discretionary power to receive further evidence upon questions of fact, which evidence may be taken either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner.

(2) Such further evidence may be given without special leave except upon appeals from final judgments, and in any case as to matters which have occurred after the date of the decision from which the appeal is brought.

(3) Upon an appeal from a judgment after the trial or hearing of a cause or matter upon the merits, such further evidence, save as to matters subsequent as aforesaid, shall not be admitted except on special grounds.

Powers of Court on Appeal

11.(1) The Court, upon the hearing of an appeal, shall have power to draw inferences of fact, not inconsistent with the findings of the jury (if any) and to give any judgment and make any order which ought to have been given or made in the first instance, and to make such further or other order as the case may require.

(2) The powers aforesaid may be exercised by the said Court notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision.

(3) The Court shall have power to make such order as to the whole or any part of the costs of appeal as may be just.

New trial may be ordered

12. If upon the hearing of an appeal it appears to the Court that a new trial ought to be had, the Court may, if it thinks fit, order that the judgment shall be set aside and that a new trial shall be had.

Cross appeals

13.(1) It shall not under any circumstances be necessary for a respondent to give notice of appeal by way of cross appeal, but if a respondent intends upon the hearing of an appeal to contend that the decision appealed from should be varied, the respondent shall within the time prescribed by rule 14, or such time as may be directed by special order in any case, give notice of the respondent's intention to the appellant and such other parties as may be affected by such contention.

(1A) The omission to give such notice shall not diminish the powers of the Court when hearing the appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal or for a special order as to costs.

(2) The notice shall state what part of the judgment or order the respondent contends should be varied, and shall state, briefly but specifically, the grounds of that contention, and the judgment or order that the respondent seeks.

(3) The powers given to the Court by rule 3 shall extend to any such notice as though it were a notice of appeal.

(4) It is not necessary to give any such notice if a respondent proposes to contend that some matter of fact or law has been erroneously decided against the respondent but does not seek a discharge or variation of a part of the judgment, decree, or order actually pronounced or made.

Time for giving of notice and filing of copy of notice

14.(1) For the purposes of rule 13 and subject to a special order mentioned in the rule, notice of the respondent's intention must be given within 7 days of the service of the notice of appeal on the respondent.

(2) Within the 7 days mentioned in subrule (1) or the time directed by a special order mentioned in rule 13, the respondent must file a copy of the

notice of the respondent's intention—

(a) in the office of the registrar at Brisbane; and

(b) in the office of the registrar at the place in which the proceedings were commenced.

Notice to registrar

14A. A respondent who gives a notice under rule 13 shall within the time prescribed by rule 14 file in the Supreme Court Office at Brisbane, and, if the judgment or order appealed from was in proceedings pending in a registry other than the registry at Brisbane, in such other registry, a copy of the notice.

Documents to be forwarded

15. When a copy of the notice of appeal has been filed, as provided by rule 4, in the registry of the Court at the place in which proceedings were commenced, the registrar of the Court must forward to the registrar at Brisbane all documents that are necessary for the hearing of the appeal.

16.(1) Unless otherwise directed by the Court of Appeal or a Judge of Appeal or other person authorised by the President of the Court of Appeal—

(a) a record shall be prepared for use in a proceeding in the Court of Appeal and the party by whom the record is prepared shall forthwith serve a copy on each other party and lodge 4 copies in the registry at Brisbane; and

(b) the record shall contain only the notice of appeal or other document by which the proceeding in the Court of Appeal was instituted together with a copy of that part of the record of the proceedings below which is necessary for the consideration and determination of the proceeding in the Court of Appeal; and

(c) the part of the record of the proceedings below which is to be copied and included in the record and all matters relating to the preparation of the record shall be determined in accordance with the rules and practice directions in force from time to time.

(2) The record shall be bound in volumes not more than 40 mm in thickness which shall be indexed and shall be prepared and produced in a manner satisfactory to the registrar.

(3) The record shall be comprehensively and informatively indexed.

(4) The costs of copies of unnecessary documents will not be allowed on taxation.

16A. A request by the appellant to the State Reporting Bureau to prepare or cause the preparation of the record with an undertaking to pay the cost of preparation and any associated work or an undertaking by the appellant to cause the record to be prepared and lodged forthwith upon the determination of the material to be included in the record in accordance with the rules and practice directions or an order or direction in the proceeding shall be included in the notice of appeal or other document by which a proceeding is instituted in the Court of Appeal or filed and served within 7 days thereafter.

Interlocutory orders not appealed from not to bar relief

18. An interlocutory order or rule from which there has been no appeal shall not operate to prevent the Court of Appeal, upon hearing an appeal, from giving such decision upon the appeal as may be just.

Rule nisi on appeal from Central, Northern or Far Northern Court

19. When on an appeal from the refusal of an ex parte application by the central, northern or far northern judge the Court of Appeal is of opinion that a rule nisi or order nisi should have been granted, the Court of Appeal may grant a rule or order nisi returnable before itself or before the Central, Northern or Far Northern Court.

2. New trials

Applications for new trials of causes heard before a Judge

20. Except as by these rules specially provided, every application for a new trial or to set aside a verdict, finding, or judgment in a cause or matter

where there has been a trial by a Judge without a jury shall be made by appeal to the Court of Appeal.

Applications for new trials of cases tried by jury to be by notice of appeal

21.(1) An application for a new trial or to set aside a verdict, finding or judgment in a cause or matter in which a verdict has been found by a jury must be made to the Court of Appeal.

(2) The application must be made by the giving of a notice of appeal.

(3) The notice of appeal must state—

(a) the grounds of the application; and

(b) whether all or part only of the verdict, finding or judgment is complained of.

Amendment of notice of appeal

22. A notice of appeal may be amended at any time by leave of the Court of Appeal or a Judge of Appeal upon the terms that the Court or Judge decides.

Time

23.(1) The notice of appeal must be served upon the party in whose favour the judgment was given within 28 days from the conclusion of the trial or the date of the pronouncing of the judgment upon further consideration, as the case may be; or within such extended time as the Court of Appeal or a Judge of Appeal may allow.

(2) The times of the vacations shall be reckoned in the computation of the period aforesaid.

General practice

24. Except as aforesaid, all the provisions of rules 1 to 23 relating to appeals shall apply to applications for new trials or to set aside verdicts,

findings, or judgments in causes or matters in which a verdict has been found by a jury.

New trial as to any question

25. A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

Power of Court

26. Upon the hearing of an application for a new trial or to set aside the verdict or finding of a jury, the Court of Appeal may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, and may for that purpose draw any inference of fact not inconsistent with the findings of the jury (if any); or may, if it is of opinion that it has not sufficient materials before it to enable it to give judgment, direct the appeal to stand over for further consideration, and may direct such issues or questions to be tried or determined and such accounts and inquiries to be taken and made as it may think fit.

3. General provisions

Notes of ruling or direction

27. If, upon the hearing of an appeal or application for a new trial or to set aside a verdict or finding of a jury, a question arises as to the ruling or direction of the Judge to a jury or assessors, the Court of Appeal may have regard to the transcript of the proceedings or to the Judge’s notes or such other evidence or materials as the Court of Appeal may deem expedient.

Appeal for a new trial not to be stay of proceedings

28.(1) An appeal or proceeding with the object of obtaining a new trial or of setting aside a verdict or finding or judgment shall not operate as a stay of proceedings unless the Court of Appeal or a Judge of Appeal so orders.

(2) Any such order may be made as to the whole or any part of the proceedings in the cause or matter, and may be made upon such terms as the Court of Appeal or the Judge of Appeal granting the stay may think fit.

(3) No intermediate act or proceeding shall be invalidated except so far as the Court of Appeal may direct.

Return of documents to court below

29.(1) When an appeal or other proceedings in a cause or matter has been disposed of by the Court of Appeal, the registrar at Brisbane must transmit to the office of the registrar in which the proceedings in the court below were commenced, all documents that are not required as records of the Court of Appeal at Brisbane, together with details of the judgment or order given on the appeal.

(2) The order of the Court of Appeal must be drawn up by the registrar in Brisbane and filed, and a copy of the order must be filed in the registry of the court below, and all necessary proceedings must be had and taken in the registry of the court below as if the order had been made by that court.

Costs to be taxed in Brisbane

30. The costs of appeals and all other proceedings before the Court of Appeal under this order shall be taxed by the taxing officer at Brisbane.

4. Appeals under statutes

Application of order to appeals

32. Where by any Act or regulation provision is made for an appeal to the Court of Appeal and no provision is made as to the practice and procedure in relation to such appeal then the provisions of this order shall so far as possible apply to such appeal.

5. Appeals from registrars

33.(1) Any person affected by any order or decision of a registrar may appeal therefrom to a Judge at chambers.

(2) Such appeal shall be by way of endorsement on the summons by the registrar at the request of any party, or by notice in writing to attend before the Judge without a fresh summons, within 5 days after the decision complained of, or such further time as may be allowed by a Judge or registrar.

(3) Unless otherwise ordered there shall be at least 1 clear day between service of the notice of appeal and the day of hearing.

6. Appeals from District Courts

34. A party appealing, either by leave or as of right, from a judgment of a District Court shall institute an appeal in accordance with order 70, rule 2 within the time prescribed in the *District Court Rules 1968*, rule 334.

35. Upon the filing of a notice of appeal the provisions of order 70 shall, subject to the *District Courts Act 1967* and rules, apply in relation thereto.

Return of records

36.(1) When an appeal has been disposed of by the Court of Appeal the registrar at Brisbane must transmit to the registrar of the District Court all documents relating to the appeal that are not required as records of the Court of Appeal at Brisbane, together with details of the judgment or order given on the appeal.

(2) The order of the Court of Appeal must be drawn up by the registrar in Brisbane and filed, and a copy of the order filed in the registry of the District Court from which the appeal was brought.

7. Exercise of appellate jurisdiction and powers

37.(1) Subject to any Act and to subrules (2) and (3), the jurisdiction and powers of the Court of Appeal may be exercised by 1 or more Judges of Appeal in proceedings of the following kind—

(a) appeals and applications in proceedings of a kind in which a Master may exercise the original jurisdiction of the Court without a direction of the Chief Justice or the consent of the parties;

(b) proceedings concerning a matter of practice and procedure in a proceeding in the Court of Appeal;

(c) applications in civil proceedings for leave to appeal;

(d) applications in civil proceedings for an extension of time within which to appeal or to apply for leave to appeal;

(e) appeals from the refusal of ex parte applications.

(2) Subject to any Act, the jurisdiction and powers of the Court of Appeal may be exercised by 2 or more Judges of Appeal in proceedings of the following kind—

(a) applications in criminal proceedings for an extension of time within which to appeal or to apply for leave to appeal;

(b) applications in criminal proceedings for leave to appeal;

(c) appeals by leave other than appeals against conviction;

(d) appeals in which the only matters in question (apart from costs) are—

(i) the amount of damages; or

(ii) the value of goods; or

(iii) the amount of damages and the value of goods;

(e) civil proceedings except appeals from judgments or orders given or made by a Judge of the Supreme Court (other than appeals referred to in subrule (1) or paragraph (d));

(f) proceedings relating to the admission of barristers and solicitors.

(3) The jurisdiction and powers of the Court of Appeal may not be

exercised by fewer than 2 Judges of Appeal on an appeal from a Judge of the Supreme Court.

Miscellaneous

38. In any provision of these rules relating to evidence or procedure, a reference to a notice of motion may, where appropriate, be taken to be a reference to a notice of appeal.

ORDER 71—PROBATE AND ADMINISTRATION—COMMON FORM BUSINESS

1. Applications

Applications to be made by request

1.(1) Every application for a grant of probate or administration in common form shall be made by request in writing in the form in schedule 1, and shall be supported by an affidavit in the form applicable to the circumstances of the case, sworn by the applicant, and by such other evidence as the registrar may require.

(2) A petition shall not be necessary.

(3) The request need not be served on any person.

Affidavits

2.(1) Affidavits in support of the request shall be entitled in the same manner as the request.

(2) They may be sworn before the request is filed.

Advertisements

3.(1) Fourteen days at least before an application is filed for a grant,

notice of the intended application must be given by the applicant or the applicant's solicitor by advertisement published in the Gazette and in 2 newspapers each of which is a newspaper published at intervals not exceeding 7 days.

(2) One of such newspapers must be a local Brisbane, Rockhampton, Townsville or Cairns newspaper, according as the application is to be made to the Court at Brisbane, Rockhampton, Townsville or Cairns, unless the deceased was resident at a place in Queensland distant more than 150 km from Brisbane, Rockhampton, Townsville or Cairns, in which case such notice may be published in some local newspaper circulating in the neighbourhood of the place of the deceased's residence.

(3) The other must be a newspaper approved by the Chief Justice.

(4) Such approval may be given by a general direction to the registrar or by a special direction as to any particular case.

(5) The registrar may require such further advertisements as the registrar may deem necessary.

Notice to claimants

3A.(1) An executor applying for a grant of probate may include in the advertisements published in accordance with rule 3 a notice calling upon all persons having claims against the estate of the testator to send their claims to the executor.

(2) If probate is granted to such executor the executor may, at the expiration of the time named in the advertisement, or the last of the advertisements, for sending in claims, distribute the assets of the testator amongst the parties entitled thereto, having regard to the claims of which the executor then has notice, and the publication of such a notice in the said advertisements shall be sufficient for the purposes of the *Trusts Act 1973*.

Notice to Public Trustee or Local Deputy Public Trustee in certain cases

4.(1) When an application for a grant of probate or letters of administration with the will annexed is made more than 3 months after the death of the deceased and in all cases of applications for a grant of

administration in intestacy, a copy of the notice must be served on the Public Trustee or Local Deputy Public Trustee as the case may be 7 days before the application is heard.

(2) Service as required by this rule may be effected by post.

Dispensation with notice

5. In cases of urgency the Court or a Judge may dispense with notice of application for a grant of probate or administration, or may allow the grant to be made after less than 14 days notice.

When deceased resident out of Queensland

6. If the deceased was resident or died out of Queensland, such other advertisements shall be published as the registrar or the Court or a Judge may direct.

Applications to be made to registrar

7.(1) Applications for grants of probate or administration may be made in the first instance to the registrar, who shall have power to make the grant.

(2) The registrar may refer any question arising upon the application to a Judge, or may require the application to be made to the Court.

(3) Applications to the Court shall be made by motion.

Inquiry before grant

9. The registrar may in any case make or cause to be made such inquiries as the registrar thinks fit as to the identity of the deceased or of the applicant, or as to any other matter which appears to the registrar to require proof or explanation, and may require that such inquiries shall be answered by affidavit.

2. Probate and letters of administration with the will

Affidavit with will, date of death—certificate of death

11.(1) The affidavit of the applicant in support of an application for a grant of probate or of administration with the will, must identify the will (which must be exhibited to the affidavit) and set forth the date of the testator's death and in the case of an application for probate, the identity of the applicant with the executor named in or designated by the will.

(2) If the exact date of death is not known the circumstances must be stated.

(3) A certificate of death must also be produced or its absence accounted for.

Title of applicant for administration

12. In the case of an application for administration with the will, the applicant's affidavit must also set forth the facts giving rise to the applicant's claim to the grant in the same manner as prescribed by these rules in the case of an application for a grant of administration in the case of intestacy.

Attestation proved by attestation clause

13. If the will has an attestation clause which sets out the manner of its execution in such a way as to show that the provisions of the law relating to the execution of wills have been duly complied with, such attestation clause may be accepted as sufficient prima facie evidence of the due execution of the will.

Evidence when no attestation clause

14. If there is no attestation clause, or if the attestation clause does not set out the manner of the execution of the will in such a way as to show that it was duly executed, the evidence of 1 at least of the subscribing witnesses, if either of them is living, showing that the provisions of the law were in fact complied with, must be procured, if practicable.

Evidence when attesting witnesses dead or absent

15.(1) If both the subscribing witnesses are dead, or if it is not practicable to obtain the evidence of either of them, the evidence must, if possible, be obtained of other persons who were present at the execution of the will.

(2) If such evidence cannot be obtained, evidence must be produced of that fact, and of the handwriting of the subscribing witnesses, and also of any other circumstances which may raise a presumption in favour of the due execution of the will.

Interlineations

16. Interlineations and alterations appearing upon the face of a will shall not be included in the probate or letters of administration, unless they existed in the will or codicil at the time of its execution, or, if they were made afterwards, unless they were executed and attested in the manner required by law, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil.

Proof as to interlineations or alterations

17. When it is proposed to include any such interlineations or alterations in the probate or letters of administration on the ground that they existed in the will at the time of execution, then, unless they appear on the face of the will to have been duly executed or are duly accounted for by the attestation clause, proof must be given of their having existed in the will before its execution, except in the case of alterations which are merely verbal or of trivial importance, and are attested by the initials of the attesting witnesses.

Erasures

18.(1) Erasures and obliterations shall not be included in the probate or letters of administration unless they are proved to have existed in the will at the time of its execution, or unless the alterations effected by them are duly executed and attested, or unless they have been rendered valid by the re-execution of the will or by the subsequent execution of some codicil.

(2) If it is not shown when any such erasures and obliterations were made, and the words erased or obliterated are not entirely effaced, but can

upon inspection of the paper be readily ascertained, they shall be included in the probate or letters of administration.

Explanation of erasures of importance

19. In every case in which words have been erased which might have been of importance, the matter must be explained by evidence.

Documents referred to in will

20. If a will contains a reference to any deed, paper, memorandum, or other document, of such a nature as to raise a question whether it does or does not form a constituent part of the will, such deed, paper, memorandum, or other document must be produced, or its absence accounted for.

Only existing documents to be included

21. A deed, paper, memorandum, or other document so referred to shall not be included in the probate or letters of administration, unless it was in existence at the time when the will was executed.

Apparent annexures

22. If there are upon a will any traces of sealing wax or wafers, or other appearances leading to the inference that any paper, memorandum, or other document may have been annexed or attached to the will, they must be accounted for; and if it appears that there was any such paper, memorandum, or other document, it must be produced, or its absence accounted for.

Blind and illiterate persons

23. Probate of the will, or administration with the will, of a blind person or of an apparently illiterate or ignorant person shall not be granted unless it is proved that the will was read over to the deceased before its execution, or that at the time of its execution the deceased had knowledge of its contents.

Copy will and codicils—engrossments

25.(1) In applications for probate or letters of administration the grant shall be engrossed on special engrossment sheets of paper of the kind hitherto approved.

(2) No other paper engrossments shall be accepted.

Arrangement of sheets

(3) When more than 1 engrossment sheet is required, the sheets shall be arranged in book-form (sheet within sheet).

Spelling and abbreviations

(4) Spelling and abbreviations in the will shall be followed in the engrossment.

Dates and numbers

(5) Dates and numbers if written at length in the will shall be so written in the engrossment; if written in figures in the will they shall be engrossed in figures.

(6) If there are alterations in the will or codicil, and these alterations are verified by the signatures or initials of the testator and witnesses, or by a reference in the attestation clause, or are shown by affidavit to have been made before the execution of the will or codicil, the will or codicil shall be engrossed fair (and not facsimile), so that words interlined, or interpolated, appear in the text and words struck through or obliterated are omitted.

(7) But where it is not shown that material alterations were made before the execution of the will or codicil the alterations shall be excluded from probate.

(8) In such case a copy of the will or codicil, as in its original state, i.e. before the alterations were effected, shall be made and lodged with the original for collation with the other documents to lead to the grant.

(9) Where deletions occur in the will and either it cannot be shown when they were made, or evidence is given that they were made after the will was executed, a copy of the will restoring the words deleted shall be lodged.

(10) If there are indecipherable words or figures they shall be omitted from the copy, and blank spaces shall be left where the words or figures would appear.

(11) Should a will or any part thereof be written in pencil, a copy of the will shall be made in which the pencil-writings are shown in red ink.

Marginal initials

(12) Marginal initials of the testator and witnesses verifying alterations shall be omitted.

(13) But an alteration initialled by the testator and by other witnesses than those subscribing to the will or codicil, shall be engrossed facsimile, with the initiallings shown in the margin.

Incorporated document engrossed and registered

(14) When a document is to be incorporated, it shall be engrossed and registered in its entirety immediately after the will or codicil which refers to it.

Mistakes in engrossments

(15) Mistakes in engrossments shall not be erased but shall be struck through with the pen.

(16) No alteration in the name of the testator, executor or legatee, in the amount of a legacy, or in a date shall be permitted.

Marginal notes

(17) Only such marginal notes as shall be considered to form part of a will shall be engrossed and registered, and when a reference in the will to the notes states that they form no part thereof such notes shall not be engrossed or registered.

(18) Subject to the provisions of this rule the copy of the will and codicils (if any) in the engrossment and in the copy of the grant to be filed in the registry shall be reproduced by clear photographic copy instead of being printed or typed provided the registrar may in the registrar's discretion accept any engrossment or copy grant which contravenes this rule.

Marginal note

26. If there is no attestation clause to the will there shall be written in the margin of the grant a memorandum stating the name of the witness by whom its due execution was proved.

3. Letters of administration

Affidavit in case of intestacy

27.(1) The affidavit of the applicant in support of an application for a grant of administration in the case of intestacy must set forth the date of the death of the deceased person and also set forth the relationship (if any) of the applicant to the deceased person and show that the applicant is entitled to the grant in priority to all other persons and how the applicant is so entitled, or, if the applicant is not so entitled, set forth fully the facts on which the applicant relies to satisfy the Court that the grant should be made to the applicant.

(2) If the exact date of death is not known the circumstances must be stated.

(3) A certificate of death must also be produced or its absence accounted for.

Next of kin to be named

28. The applicant's affidavit must also set forth what other relations or next of kin the deceased person left surviving so far as the same can be set forth by the deponent.

Notice to next of kin

29. When the application for administration is made by 1 or some only of the next of kin, there being another or other next of kin equally entitled, the registrar or the Court or Judge may require notice of the application to be given to such other next of kin.

Grant to attorney of absent person

30. In the case of a person residing out of Queensland, and otherwise entitled to administration, administration may be granted to some person resident in Queensland, acting under a power of attorney attested to the satisfaction of the registrar or Court or Judge.

Persons having prior right to be accounted for

31. When administration, with or without the will, is granted to a person who is not the person having the prior right to the grant, the grant shall, on the face of it, account for the claims of all other persons having prior right.

Limited administration

32. Limited administration shall not be granted to the person entitled to a general grant, except by the Court or a Judge.

Notice to persons entitled to general grant

33. Limited administration shall not be granted, except by the Court or a Judge, unless every person entitled to a general grant has consented, or renounced, or has been cited and failed to appear.

Limited and special administration

34. In the case of limited or special administration, the grant shall set forth the circumstances under which the special or limited grant is made.

Grants for benefit of minors

36.(1) Grants of administration may be made to the guardians of minors, and of infants under the age of 7 years, for their use and benefit during their minority.

(2) Minors above the age of 7 years may by writing under their hand elect any of their next of kin or a next friend as a guardian for that purpose.

(3) Every such election shall be filed.

(4) A written acceptance of such guardianship shall not be required.

(5) An assignment of a grant of a guardian to a minor above the age of 7 years shall not be necessary.

Guardians to be assigned by Court or Judge

37.(1) In the case of infants under the age of 7 years not having a

testamentary guardian or a guardian appointed by the Court, a guardian for the purpose of taking administration must be assigned by the Court or a Judge.

(2) The application for the assignment shall be made by the infant by the infant's next friend, and shall be supported by affidavit, showing that the proposed guardian is either next of kin to the infant, or that the infant's next of kin is absent from Queensland, or has renounced his or her right to the guardianship and consents to the appointment of the proposed guardian, and that the proposed guardian is ready to undertake the guardianship.

Elected guardian where infants under 7 also interested

38. When there are both minors and infants under the age of 7 years in equal degree, a guardian elected by the minors may act for the infants to take a grant without a special appointment.

Renunciation by minors and infants

39. When it is necessary that a grant should be renounced by a minor or infant, a guardian must be specially assigned for that purpose by the Court or a Judge.

Grant where intestacy not to be made within 30 days of death

40. A grant of administration in the case of intestacy shall not be made before the expiration of 30 days from the death of the deceased without the order of the Court or a Judge.

Administration of estates of persons without next of kin

41. When application is made for administration, either with or without the will, of the goods of a person who died without any known relations, notice of the application shall be given to the Attorney-General.

4. Notice to other parties interested

Summons to persons interested

42.(1) When the person applying for a grant of administration is not entitled to the grant in priority to all other persons, and is not the attorney of a person who being otherwise so entitled is absent from Queensland, the applicant shall, unless the Court or a Judge otherwise orders, take out a summons upon the request requiring all persons in Queensland who are entitled to the grant in priority to the applicant, and who have not renounced administration, to attend on the hearing of the application and show cause why it should not be granted to the applicant.

(2) The summons shall limit the same number of days for appearance as in the case of a writ of summons in an action, and shall be served in the same manner as a writ of summons.

Summons to next of kin at large

43.(1) In the case of persons dying intestate without any known relations, the applicant shall take out a summons in like manner, directed to the next of kin (if any) and all persons having or pretending to have any claim upon the estate of the deceased person.

(2) Every such summons shall be served by posting up in the registry, and by publication in the Gazette and in such papers as a Judge may direct.

(3) It shall also be served upon the Attorney-General.

Appearance to be entered

44. Any person who is summoned to attend on the hearing of the application for administration, and who desires to oppose the grant, must enter an appearance to the summons in the same manner as in the case of appearance to a writ of summons in an action.

Hearing—grant

45.(1) When an appearance has been entered to a summons the registrar shall appoint a day for proceedings with the application, of which day

2 days notice shall be given by the applicant to the other party.

(2) If either party requires it, the application shall be referred to the Court or a Judge, and the Court or Judge shall make such order in the matter as may be just.

(3) If a party summoned to attend, being entitled in priority to the applicant, will not undertake to make application for administration forthwith and to proceed thereon with diligence, the grant may be made to the applicant as if the applicant were entitled in priority to the party so refusing.

Summons in other cases

46. The registrar or a Judge may direct the issue of a summons in any other case in which it may be necessary or desirable to hear any party before making a grant of probate or administration in common form.

Costs when action brought

47. If on the hearing of the summons an action is directed to be brought, the costs of and occasioned by the summons shall be deemed to be costs in the action.

5. Sureties

Security when grant to an authorised company

50. In the case of companies authorised to obtain grants of administration and required by law to invest a specified sum in the name of the Treasurer in trust for the company, a certificate under the hand of the Treasurer or the Under Secretary to the Treasury addressed to the registrar shall be sufficient evidence that the sum mentioned in the certificate as so invested is so invested: and any such certificate shall be received in evidence upon all applications by the company for administration until a further certificate is received by the registrar stating that a different sum is so invested.

6. Caveats

Caveats by persons objecting

51.(1) Any person interested who desires to object to, or to be heard upon, an application for a grant of probate of the will or a grant of administration of the lands or goods of a deceased person, with or without the will, or to object to a grant of probate or administration with the will being made except upon proof in solemn form of law, may file in the registry a caveat against such grant.

(2) The caveat shall give an address for service similar to that required to be endorsed upon writs of summons in an action.

Duration of caveat

52. A caveat shall remain in force for 6 months only, but may be renewed from time to time.

Caveat book

53. Caveats shall be entered in a book to be kept in the registry (the **"probate and administration caveat book"**).

Notice to caveator

54. When a caveat has been filed, nothing shall be done upon a request for a grant of probate or administration in respect of the estate of the deceased person in respect of which the caveat was filed, whether the request is presented before or after the filing of the caveat, until the expiration of 8 days after notice to the person by whom the caveat was filed, unless the Court or a Judge otherwise orders.

To be given by registrar—form

55. Such notice shall be given by the registrar to the person by whom the caveat was filed by post-letter addressed to the person at his or her address for service given in the caveat, and calling upon the person within 8 days to cause a memorandum of appearance upon the caveat to be filed, stating his

or her interest in the estate and undertaking to appear to any action that may be commenced by the applicant for a grant of probate of the will or administration of the estate, as the case may be.

Caveator to enter appearance

56.(1) Within the said period of 8 days the person by whom the caveat was filed shall cause to be filed in the registry a memorandum of appearance upon the caveat, signed personally or by the person's solicitor, setting forth the person's interest in the estate, and undertaking to enter an appearance in any action that may be commenced against the person by the applicant for a grant of the probate or administration claimed in the request.

(2) If the caveat is filed after the request has been presented, the person by whom it was filed may file his or her memorandum of appearance upon the caveat concurrently therewith, and without waiting for notice from the registrar.

Default of appearance

57. If such memorandum of appearance is not filed within 8 days after notice, the proceedings on the request shall go on as if a caveat had not been filed.

Action to be brought—service

58.(1) If such memorandum of appearance is filed, no further proceedings shall be had upon the request unless the caveat is set aside or withdrawn; but the applicant may, subject to the provisions of order 7, rule 6, commence an action against the person by whom the caveat was filed, claiming the relief claimed by the request, or relief of substantially the same nature.

(2) The writ in such action may be served at the address for service given in the caveat.

Setting aside caveat

59. The Court or a Judge may set aside a caveat, or an appearance upon a

caveat, on the ground that the person by whom the caveat was filed has no interest sufficient to entitle the person to object to the grant applied for.

Withdrawal

60. A caveat may be withdrawn by the person by whom it was filed.

Costs when caveat set aside or withdrawn

61. In either of the cases mentioned in rules 59 and 60, the Court or a Judge may order that the costs of the applicant occasioned by the filing of the caveat shall be paid by the person by whom it was filed.

Caveat on date of grant

62. A caveat shall not affect a grant made on the day on which it is filed, unless the caveat is brought to the actual knowledge of the registrar before the grant is sealed.

Costs of action in consequence of caveat

63.(1) When an action is commenced in consequence of the filing of a caveat the costs of and occasioned by the filing of the caveat shall be deemed to be costs in the action.

(2) Except as aforesaid, the contentious business shall be deemed to begin with the issue of the writ.

7. Other opposition to grants

Limited caveat

64.(1) Notwithstanding the provisions of the preceding rules of this order, a person by whom a caveat is filed may in the person's memorandum of appearance upon the caveat state that the person desires only to be heard upon the application for the grant, and that the person does not require the applicant to bring an action.

(2) And in such case the person shall receive 2 days notice of the hearing

of the application, to be served at the person's address for service stated in the caveat.

(3) The person by whom the caveat was filed shall be entitled to be heard on the application.

(4) If either party requires it, the application shall be heard by the Court or a Judge, and in that case the costs shall be in the discretion of the Court or Judge.

(5) If it appears to the Court or Judge on the hearing of the application that an action should be brought, the Court or Judge may direct accordingly, and in such case the writ of summons may be served as directed in rule 58.

8. Sealing probates and letters of administration granted by British Courts

Application to be made to registrar

65.(1) Applications to seal a grant of probate or letters of administration or copy thereof, under the *British Probates Act 1898*, may be made to the registrar, who shall have authority to seal such grant or copy.

(2) The application may be made by the executor or administrator, or a person lawfully authorised for the purpose by such executor or administrator, either in person or by solicitor.

(3) A request or other formal written application is not necessary.

Notice

66. It shall not be necessary to advertise notice of the application but in special circumstances, the registrar may require that notice of the application be given by advertisement in the same manner as prescribed by this order in the case of applications for grants of probate and administration.

Affidavit by applicant

67.(1) The applicant must file an affidavit made by the executor or administrator or a person lawfully authorised by the executor or administrator, or as the case may be, in the form in schedule 1, with such

variations as the circumstances of the case may require.

(2) The affidavit must also set forth a list of creditors (if any) of the estate in Queensland.

(3) Where the applicant is a person lawfully authorised by the executor or administrator the original certificate or letter of authority addressed to the applicant by the executor or administrator authorising the applicant to make such application on behalf of such executor or administrator shall be exhibited to the affidavit.

Caveat of creditor or beneficiary or next of kin requiring security

69.(1) A creditor, beneficiary, or next of kin, desiring to obtain an order for security under the *British Probates Act 1898*, section 4(3), may file in the registry a caveat against sealing the grant without notice to him or her.

(2) The caveat shall give an address for service similar to that required to be endorsed upon writs of summons in an action.

Notice to caveator

70. When a caveat has been filed under rule 69, the grant shall not be sealed until the expiration of 8 days after notice to the person by whom the caveat was filed, unless the Court or a Judge otherwise orders.

Application for security

71. The application for an order for security shall be made to a Judge by summons, supported by an affidavit setting out particulars of the applicant's claim or interest.

Domicile

72. When the domicile of the deceased at the time of death, as sworn to in the affidavit, differs from that suggested by the description in the grant, the registrar shall, and in any other case the registrar may, require further evidence as to domicile.

Grant not to be sealed in certain cases

73. If it appears that the deceased was not at the time of death domiciled within the jurisdiction of the court from which the grant issued, the seal shall not be affixed to the grant, unless the grant is such as would have been made by the Supreme Court on application made to that court for a grant in the first instance.

Grant produced and copies must include all testamentary papers

74. The grant or copy grant of probate, or administration with the will, to be sealed, and the copy to be deposited in the registry, must include copies of all testamentary papers admitted to probate.

Special grants

76. Special or limited or temporary grants are not to be sealed without an order of a Judge.

Notice to court of origin

77. Notice of the sealing in Queensland of a grant shall be sent by the registrar to the court from which the grant issued.

Notice to courts in which Queensland grants re-sealed

78. When intimation has been received of the re-sealing of a Queensland grant, notice of the revocation of, or any alteration in, such grant shall be sent by the registrar to the court by whose authority such grant was re-sealed.

General rules to apply

79. Except as herein otherwise provided, the provisions of this order relating to grants of probate and administration shall apply to applications for sealing grants of probate and letters of administration under the *British Probates Act 1898*.

9. General

Proof in solemn form may be made

80. Notwithstanding the foregoing provisions of this order, any executor or other person entitled to prove a will may prove the same in solemn form of law.

Or may be required

81.(1) Any next of kin or other person interested in the estate of a deceased person may require that a will propounded as his or her last will shall be proved in solemn form of law.

(2) Such requirements shall be made by caveat as provided by these rules.

(3) The costs occasioned by any such proof in solemn form shall be in the discretion of the Court or a Judge.

Proof in solemn form after grant in common form

82.(1) When a grant has been made of probate or of administration with the will, any person interested who desires that the will shall be proved in solemn form of law may apply to the Court or a Judge, upon notice to the executor or administrator, for an order directing the executor or administrator to bring the grant into the registry.

(2) When such order is made, the executor or administrator shall bring in the grant accordingly, and shall forthwith commence an action for probate of the will in solemn form.

(3) The order may include such directions as to parties to the action, or as to service upon them, or otherwise, as the Court or Judge may think fit.

Action for revocation of grant—grant to be brought in on order

83. A person who desires to bring an action for revocation of a grant of probate or administration must before action apply to the Court or a Judge, upon notice to the executor or administrator, for an order directing the executor or administrator to bring the grant into the registry.

Revocation of grants without action—limited grants

84.(1) The Court may revoke a grant of probate or administration upon motion, without action brought, or may make a limited grant to such person and on such terms as it may think fit, in any of the following cases—

(a) if it appears that the executor or administrator is no longer capable of acting in the administration, or cannot be found;

(b) if the administrator is desirous of retiring from the administration;

(c) if it appears that the grant was made upon a mistake of fact or of law.

(2) Upon the hearing of the motion the Court may direct that an action shall be brought for revocation of the grant.

Grant to be brought in

85. When a grant is revoked without action, or a limited grant is made under rule 84, the order of revocation, or order directing a limited grant to be made, shall direct the executor or administrator to bring the original grant into the registry.

Retraction of renunciation

86. Any person who has renounced the person's right, or prior right, to a grant of administration may, by leave of the Court or a Judge, retract the person's renunciation.

Application under the Probate Act, s 5

87.(1) Applications to the Court under the *Probate Act 1867*, section 5, in cases where no action is pending, shall be made to a Judge by summons in chambers.

(2) The summons shall be entitled, 'In the matter of A.B., late of, etc., deceased'.

Witnesses

88. When a request has been filed, applying for a grant of probate or administration, the applicant may, as of course, take out a subpoena requiring the attendance before the registrar of any person as a witness to give evidence touching any matter necessary to be proved by the applicant in order to the obtaining of the grant.

Copy to be filed

89. Upon the issue of any grant a copy thereof shall be filed in the registry.

Interpretation

90. In this order—

"will" includes "codicil."

ORDER 72—PROCEEDINGS UNDER THE INTESTACY ACT 1877

Title of proceedings

1. Proceedings under the *Intestacy Act 1877* shall be entitled in the matter of the Act, and shall also be intituled 'In the lands', or 'In the goods' or 'In the lands and goods' of the deceased person in question.

Applications as to administration

2.(1) Applications under sections 22 and 24 of the Act shall be made by originating summons, which shall be served on such persons as the Court or a Judge may direct.

(2) When the application is for an allowance for maintenance or advancement to an infant, the summons must be entitled in the matter of the infant as well as in the manner hereinbefore prescribed.

(3) At the hearing of the summons the Judge may direct that proceedings shall be taken by action.

Removal of creditor administrator

3. Applications by any person for administration under section 47 of the Act shall be made in the manner prescribed by order 71 with respect to applications for grants of administration in common form, but shall be heard by the Court or a Judge.

ORDER 72A—PROCEEDINGS UNDER THE PUBLIC TRUSTEE ACT 1978

Applications to be made by request

1.(1) Every application by the Public Trustee for an order to administer with the will annexed or in intestacy, shall be by request in writing in the form in schedule 1 and shall be supported by an affidavit in the form applicable to the circumstances of the case, sworn by the Public Trustee or Local Deputy Public Trustee as the case may be, and by such other evidence as the registrar may require.

(2) A petition shall not be necessary.

(3) The request need not be served on any person.

Revocation of order

2.(1) The Court may, upon motion, without action brought, revoke an order to administer granted to the Public Trustee either in intestacy or with the will annexed if it appears that the order was made upon a mistake of fact or of law.

(1A) Upon the hearing of the motion the Court may direct that an action shall be brought for revocation of the order to administer.

(2) The Public Trustee, or any person with the consent of the Public Trustee, may, on filing an affidavit setting forth that such an order to

administer had been made, the grounds and the particulars thereof for its revocation and, where necessary, identifying such consent (which in that event, must be annexed to the affidavit) apply to a registrar for an order that the said order to administer be revoked.

(2A) The registrar may revoke the order to administer or may refer any such application or any question arising thereon to a Judge who may revoke the order to administer or, if the registrar thinks fit, direct an action to be brought for the revocation of the order to administer.

(3) If an order to administer is revoked without action, the duplicate of such order shall be brought into the registry by the Public Trustee.

ORDER 73—EXECUTORS' ADMINISTRATORS' AND TRUSTEES' ACCOUNTS

Filing and passing account on application of person interested

1.(1) Any person beneficially interested in an estate and who desires that an executor or administrator be called upon to file and pass an account may at any time apply to the Court or a Judge for an order requiring the executor or administrator to file such account and to proceed to have such account examined and passed and in support of such application shall file an affidavit stating the reasons for the person's application.

(2) Thereupon such proceedings shall be had and taken as the Court or a Judge may think fit and the costs of such order and of the proceedings shall be in the discretion of the Court or a Judge.

Order requiring account

2.(1) The executor or administrator shall within 2 months from the date of service upon the executor or administrator of a copy of the order mentioned in rule 1, file such account and take out an appointment to have the account examined and passed and proceed on such appointment.

(2) If the executor or administrator fails to comply with the said order and this rule, the Court or a Judge, on the application of the person

beneficially interested may direct such proceedings to be taken against the executor or administrator as may be thought fit.

Account

3.(1) Where the executor or administrator proposes to apply for commission or if required by order of the Court or a Judge to have his or her account examined and passed under the provisions of rules 1 and 2 the account shall be a full, true and just account of his or her administration of the estate of the deceased in the form in schedule 1 verified by the affidavit of the executor or administrator.

(2) A trustee who desires to obtain an order for the allowance of commission out of the income or proceeds of the trust property may cause to be filed in the registry an account of the trustee's administration of the trust property in the form in schedule 1 verified by the affidavit of such trustee and such executor or administrator or trustee shall proceed to have such account examined and passed and rules 4 to 19 shall apply thereto.

Notice

4.(1) Notice of the filing of the account of any executor or administrator or trustee (and of his or her intention to apply for an allowance of commission) and of the day fixed for examining the same shall be given by advertisement published in the manner directed by these rules in the case of applications for probate and letters of administration.

(2) Such notice shall state that any person having claims on the estate or being otherwise interested therein may inspect the account at the registry and may before a day specified in the advertisement (and being not earlier than 30 days after the last publication of the advertisement) file in the registry a memorandum stating that he or she claims to be heard on the examination and passing of the account, or allowance of commission.

(3) Notice of the filing of the account and of the day fixed for the examination thereof and also of the application to pass the account shall be served on the sureties to the bond (if any) unless their consents duly verified are filed.

(4) Such service may be made by forwarding the notice by registered post addressed to the sureties and obtaining from the postal authorities a

written receipt for the registered article purporting to be signed by the person or persons to whom it is addressed.

Appearance of person interested

5.(1) Any person having claims on, or being otherwise interested in, the estate may, before the day specified in the notice, file in the registry a memorandum stating that the person claims to be heard on the examination and passing of the account.

(2) The memorandum shall state an address which shall be distant not more than 10 km from the registry, at which all notices relating to the matter may be served upon the person on whose behalf the memorandum is filed.

(3) The memorandum shall be accompanied by an affidavit stating the nature and ground of objection or exceptions (if any) to such account or allowance of commission.

(4) On the filing of such memorandum such person shall be entitled to receive from the executor or administrator or trustee free of charge a copy of such account.

Service

6. The registrar may make such order as to service of such memorandum upon any of the parties interested as the registrar may think fit.

Examination of account

7. On the day appointed the registrar shall proceed to examine the account and shall hear the executor or administrator or trustee and all persons who have filed a memorandum under rule 5, and who attend and claim to be heard and shall inquire into any objection or exception that may be taken to the account or allowance of commission by any such person.

Examination of account, appearances—proceeding ex parte—vouching

8.(1) Any person interested may attend before the registrar upon the examination of such account, but shall not be entitled to object to the passing of the account unless the person has filed a memorandum under rule 5.

(2) If no person files a memorandum claiming to be heard on the examination and passing of the account it may be passed upon the oath of the executor or administrator or trustee alone with the proper vouchers.

(3) Upon the taking of any account the payments of all sums exceeding $50 shall be vouched by proper receipts signed by the persons to whom the payments are alleged to have been made, or in such manner as the registrar may deem satisfactory.

(4) However, where the account in question consists wholly of items of receipts and expenditure paid into and drawn out of the trust account of a duly qualified and practising solicitor on behalf of an executor or administrator or trustee and such trust account has been duly audited by an accountant duly qualified within the meaning of the *Public Accountants Registration Act 1946* (or where such account is prepared in accordance with ordinary accountancy practice and discloses in detail the receipts and disbursements and the true position of the estate accounts), such account may be passed on the production of a certificate by such accountant as to the correctness of the vouching thereof without revouching.

(5) The registrar, however, if the registrar sees fit so to do may require the account to be filed in the manner otherwise prescribed by these rules and the registrar may require further revouching of the items referred to in the said account.

Certificate

9. The result of the registrar's examination of the account shall be set forth in a certificate.

Application to Judge

10.(1) When the certificate has been filed the executor or administrator or

trustee shall apply to a Judge by summons for an order that the account be passed and may if the executor, administrator or trustee so desires apply for an allowance of commission.

(2) Notice of the application shall be given to every person who has filed a memorandum claiming to be heard on the passing of the account, or the allowance of commission, and who is not stated in the certificate to have withdrawn his or her objection or exception (if any).

Power of Judge

11.(1) Upon the hearing of the application, the Court or a Judge may refer the certificate back to the registrar for review, or may make an order that the account be passed with or without amendment and may allow the costs and expenses of examining and passing the same to the executor or administrator or trustee out of the estate and may make such order as to commission as may be just, and may allow the trustee to retain out of the estate the costs and expenses of the examination and application or may make such other order as may be just.

(2) The Court or a Judge may also grant an extension of time for filing and passing further accounts.

Costs

12. The costs of and occasioned by any objection or exception shall be in the discretion of the Court or a Judge and may be ordered to be paid by or to the person by whom the objection or exception was made.

Amended or further account

13. The Court or a Judge may at any time require an account to be amended, or a further account or an amended account to be brought in by the executor or administrator or trustee and such proceedings to be taken thereon as may seem fit.

Renewal of objection in subsequent action

14. When the account has been passed under this order, and the same

account is afterwards directed to be taken in an action, a person who, on the taking of the account under this order has made an objection or exception before the registrar, which objection or exception has been disallowed or overruled, shall not be allowed to renew the objection or exception as against the executor or administrator or trustee without the leave of the Court or a Judge.

Evidence in subsequent action

15.(1) When the account of an executor or administrator or trustee has been passed under this order, and the same account is afterwards directed to be taken in an action, the evidence taken before the registrar on passing the account may, saving all just exceptions, be read on behalf of the executor or administrator or trustee upon the taking of the account in the action.

(2) The order passing the account may also be read on behalf of the executor or administrator or trustee upon the taking of the account in the action, and shall be prima facie evidence on his or her behalf of the facts appearing by the account.

General practice to apply

16. Except as otherwise provided by this order, the provisions of order 67 relating to proceedings before the registrar in taking accounts under judgments and orders shall apply to proceedings before the registrar under this order.

Combined executors' and trustees' account

17.(1) When the same person is both executor and trustee or administrator and trustee the person may include in the same account a statement of his or her administration of the property in both capacities, but distinguishing the moneys received and disposed of by the person in the several capacities.

(2) In any such case the notices by advertisement shall be entitled both in the matter of the will, or of the goods, or land and goods, of the deceased person, as the case may be, and in the matter of the trust; and the registrar's certificate shall set forth separately the result of the registrar's examination of the account so far as it relates to each matter.

Allowance of commission in action

18.(1) When a trustee's account has been taken in an action the trustee may apply to the Court or a Judge for commission at any time after the account has been taken.

(2) Rules 1 to 17 do not apply to any such case.

Powers of taxing officer

19. In the Brisbane registry, for the purpose of this order, the taxing officer shall have and be charged with all the powers, authority, and duties of the registrar.

ORDER 74—SUMMARY RELIEF AGAINST EXECUTORS, ADMINISTRATORS AND TRUSTEES

Relief in case of neglect or refusal by executor, administrator or trustee

1. Where an executor or administrator or trustee, after request in writing, neglects or refuses to—

(a) make application for and take all necessary steps to have transmission of any real or leasehold estate entered or registered; or

(b) where such executor, administrator or trustee has or is entitled to the legal estate in such land—execute a conveyance or transfer to the person entitled thereto; or

(c) pay or hand over to the person entitled any legacy or residuary bequest;

such person making such request as aforesaid may apply by summons for an order calling upon such executor or administrator or trustee to show cause why the person should not comply with such request, and thereupon such proceedings shall be had and taken as the Court or a Judge may think fit.

ORDER 75—PROCEEDINGS UNDER THE TRUSTEES AND EXECUTORS ACT 1897

Application, how made

1. Any application under the *Trustees and Executors Act 1897* may, except as otherwise provided by these rules, be made by petition, but the Court may disallow any additional costs occasioned by proceeding by petition instead of summons, and may direct such costs to be borne and paid by such persons as may be just.

Titles of proceedings

2.(1) Petitions and summonses under the Act relating to money or securities lodged in court under the Act shall be entitled in the same manner as the authority under which the lodgment was made.

(2) Proceedings under the Act, not being taken in a pending cause or matter, shall be entitled in the matter of the Act, and in the matter of the trust, described so as to identify it.

Sections to be mentioned in certain cases

3. Every petition or summons under the Act for a vesting order, or for the appointment of a person to convey property, shall specify the section or sections of the Act under which the order is sought.

Verification of new trustee's consent to act

4.(1) The consent of a new trustee to act shall be sufficiently evidenced by a written consent signed by the trustee and verified by the signature of the trustee's solicitor without affidavit.

(2) The form in schedule 1 shall be used for that purpose, with such variations as circumstances may require.

Mode of making payment into court

5. When a trustee desires to pay or transfer money or securities into court under the provisions of the Act, the trustee shall make and file an affidavit setting forth—

(a) a short description of the trust and of the instrument creating it;

(b) particulars of the lodgment intended to be made;

(c) the names of the persons interested in or entitled to the money, stock, or securities, and their places of residence, to the best of the trustee's knowledge and belief;

(d) the trustee's submission to answer all such inquiries relating to the application of the money, stock, or securities lodged in court, as the Court or the Judge may make or direct;

(e) the place where the trustee is to be served with any proceeding or order, or notice of any proceeding, relating to the money or securities.

Notice of payment

6. The trustee having made the lodgment shall forthwith give notice thereof by prepaid letter through the post to the several persons whose names and places of residence are stated in the trustee's affidavit as interested in or entitled to the money, stock, or securities lodged in court.

Address for service

7. Every petition or summons relating to money or securities paid into court under the Act shall bear upon it a statement of a place where the petitioner or applicant may be served with any proceeding, order, or notice relating to the money, stock, or securities, or the dividends thereof.

Notice of applications

8.(1) Notice of any applications in respect of the money, stock, or securities, so paid into court shall, unless otherwise directed by the Court or a Judge, be served on the trustee and on the persons named in the trustee's affidavit as interested in or entitled to the same, and on such other persons

as the Court or a Judge may direct.

(2) When a special direction to dispense with service is desired, the fact is to be stated on the petition or summons, and the direction must be obtained and stated on the petition or summons before service of it on any party.

Application under s 43

9. An application under section 43 of the Act may be made by the trustee or other person authorised to dispose of the land in question.

Application for advice

10.(1) An application for the opinion, advice, or direction of the Court under section 45 of the Act shall be made by summons.

(2) The written statement shall be filed when the summons is issued.

Time for service

11. A summons taken out under rule 10 must be served 7 clear days before the summons is returnable, unless the person served consents to accept shorter notice.

Record of advice etc.

12. The opinion, advice, or direction of the Court shall be drawn up and remain of record in the same manner as an order made by the Court or a Judge, and shall be termed ‘a judicial opinion’, or ‘judicial advice’, or ‘a judicial direction’, as the case may be.

ORDER 75A—PROVISIONS AS TO ACTIONS IN TORT BETWEEN HUSBAND AND WIFE

1.(1) This rule applies to any action in tort brought by one of the parties

to a marriage against the other during the subsistence of the marriage.

(2) On the first application by motion or summons in an action to which this rule applies, the Court or a Judge shall consider, if necessary of its own motion, whether the power to stay the action under the *Law Reform (Husband and Wife) Act 1968*, section 2(2) should or should not be exercised

(3) Notwithstanding anything in order 15 or 31 judgment in default of appearance or defence shall not be entered in an action to which this rule applies except with the leave of a Judge

(4) An application for the grant of leave under subrule (3) must be made by summons and the summons must, notwithstanding anything in order 93, rule 12, be served on the defendant personally unless the Court or a Judge otherwise orders

(5) If the summons is for leave to enter judgment in default of appearance, the summons shall not be issued until after the time limited for appearance.

ORDER 76—INFANTS

Ward of court, how constituted

1. An infant may be made a ward of court in any of the following modes, that is to say—

(a) by the commencement of an action for the administration of property in which the infant has an interest, or for the direction of the Court with relation to the estate or person of the infant and for the infant's benefit;

(b) by the appointment of a guardian of the person or estate of the infant by the Court or a Judge;

(c) by the making of an order by the Court or a Judge with respect to the maintenance of the infant;

(d) by the payment into court under the provisions of the *Trustees*

and Executors Act 1897, or in an action, of money or securities in which the infant is interested.

Title of summons

2.(1) An originating summons for the appointment of a guardian of an infant, or with respect to the maintenance of an infant, shall be entitled in the matter of the infant, naming the infant, and also in the matter of the statute (if any) under which the application is made.

(2) When an application for the appointment of a guardian or with respect to maintenance is made in a cause or matter, the summons shall be entitled in the cause or matter, and also in the matter of the infant, naming the infant.

Evidence upon applications for appointment of guardians and for maintenance

3. Upon an application for the appointment of a guardian of an infant, or with respect to the maintenance of an infant, the evidence must show the age of the infant, the nature and amount of the infant's estate and income, and what relations the infant has.

Evidence upon applications for sanction to settlements of infants on marriage

4.(1) Upon an application for the sanction of the Court to the settlement of the property of an infant on marriage under section 151 of the *Equity Act 1867*, evidence must be produced showing—

(a) the age of the infant;

(b) whether the infant has any parents or guardians;

(c) with whom or under whose care the infant is living, and, if the infant has no parents or guardians, what near relations the infant has;

(d) the rank and position in life of the infant and parents;

(e) what the infant's estate and income consist of;

(f) the age, rank and position in life of the person to whom the infant is about to be married;

(g) what property and income such person has;

(h) the fitness of the proposed trustees, and their consent to act.

(2) Written proposals for the settlement of the property of the infant and of the person to whom such infant is proposed to be married, shall be submitted to the Judge.

Guardians' accounts

5. The accounts of guardians of infants shall be passed and verified in the same manner in which the accounts of receivers are by these rules directed to be passed and verified.

Mode of application under the Guardianship and Custody of Infants Act 1891

6. Applications under the *Guardianship and Custody of Infants Act 1891* shall be made as follows—

(a) if a cause or matter is pending by reason whereof the infant is a ward of court—by a summons in such cause or matter;

(b) if no such cause or matter is pending—by an originating summons.

Procedure under s 3

7. A summons under section 3 of that Act may be taken out by any next friend of the infant, and shall be served upon the mother of the infant.

Procedure under s 4

8.(1) A summons under section 4(2) of the Act may be taken out by any next friend of the infant, and shall be served upon the father of the infant.

(2) A summons under section 4(3) may be taken out by any guardian of the infant, and shall be served upon the other guardian or guardians.

Procedure under s 6

9.(1) A summons under section 6 of the Act taken out by the mother of an infant shall be served upon the father of the infant, or, if the father is dead, upon the guardian or guardians of the infant (if any) other than the mother.

(2) A summons under section 6 of the Act taken out by the father of an infant shall be served upon the mother of the infant, or, if the mother is dead, upon the guardian or guardians of the infant (if any) other than the father.

(3) A summons under section 6 of the Act taken out by any guardian of an infant, other than a parent, shall be served upon the other guardian or guardians of the infant (if any) other than a surviving parent, and also upon the surviving parent (if any).

Procedure under s 7

10. A summons under section 7 of the Act may be taken out by any next friend of the infant, and shall be served upon his or her guardian or guardians.

Service on other persons

11. In any proceeding under the Act the Judge may direct such persons, other than those in rules 1 to 10 respectively mentioned, to be served with the summons as the Judge may think fit.

ORDER 77—PROCEEDINGS UNDER THE SETTLED LAND ACT 1886

Definition

1. In this order—

"tenant for life" includes the tenant for life as defined by the Act, and any person having the powers of a tenant for life under the Act.

Title of proceedings

2. Proceedings under the Act shall be entitled in the matter of the Act, and in the matter of the settlement, described so as to identify it.

Service

3.(1) The persons to be served in the first instance with a summons taken out for the purpose of an application under the Act shall be as follows—

(a) in the case of applications by the tenant for life under section 20—the trustees;

(b) in the case of applications under section 40—all the tenants for life except the applicant;

(c) in the case of applications under section 42—the tenant for life, or the trustees, as the case may be;

(d) in the case of applications under section 45 or 61—the trustees (if any) and the tenant for life, if he or she is not the applicant.

(2) Subject to subrule (1), when an application under the Act is made by any person other than the tenant for life, the tenant for life alone shall be served in the first instance.

Application by tenant for life

4. Except in the cases mentioned in rule 3, upon applications by a tenant for life the summons shall not in the first instance be served on any person.

Service on other persons

5.(1) The Court or Judge may require notice of any application under the Act to be served upon such persons as the Court or Judge may think fit, and may give all necessary directions as to the persons (if any) to be served; and such directions may be added to or varied from time to time as the case may require.

(2) If the application is made by petition, the petitioner may, after the petition has been presented, apply to a Judge for directions with regard to the persons on whom the petition is to be served.

(3) If any person not already served is directed to be served with notice of an application, the application shall stand over generally, or for such period as the Court or Judge may direct.

(4) The Court or Judge may, in any particular case, upon such terms (if any) as the Court or Judge think fit, dispense with service upon any person upon whom, under these rules, or under any direction of the Court or Judge, notice of any application is to be served.

Evidence

6. The title of the tenant for life and trustees or other persons interested in the application may be proved by affidavit, without production of the original settlement, unless the Court or Judge in any particular case requires further evidence.

Sales

7. A sale authorised or directed by the Court under the Act shall be carried into effect out of Court unless the Court or Judge otherwise directs, and generally in such manner as the Court or Judge may direct.

Leases and grants

8. When a lease is authorised under section 20 of the Act, the order may either approve a lease or conveyance already prepared, or may direct that the lease or conveyance shall contain conditions specified in the order, or such conditions as may be approved by the Judge at chambers, without directing the lease or conveyance to be settled by the Judge.

Payment of capital money into court

9. Any person directed by the tenant for life under section 31 of the Act to pay into court any capital money arising under the Act may pay the same into court, without any order, in the manner directed by order 75, rule 5.

Form of order

10.(1) When money is paid into court under section 31 of the Act, the Court may direct the investment of the money on any securities authorised by section 30(a) of the Act, and the payment of the dividends to the tenant for life, either forthwith or upon production of the consent in writing of the trustees, the signature to which consent must be verified by the affidavit of a solicitor.

(2) But, if the transaction in respect of which the money arises is not completed at the date of payment into court, the money shall not, without the consent of the trustees, be ordered to be invested in any securities other than those upon which cash under the control of the Court may be invested.

Title of account

11. Money paid into court under the Act shall be paid to an account to be entitled in the matter of the Act and of the settlement, with a short description of the mode in which the money arises if it is necessary or desirable to identify it.

Costs of payment into court

12. Any person paying into court any capital money arising under the Act shall be entitled first to deduct the costs of paying the money into court, which may be taxed by the taxing officer without any other authority than this rule.

ORDER 78—ARREST OF ABSCONDING DEFENDANTS

Form of writ of capias ad respondendum

1.(1) A writ of capias against a defendant directed to be held to bail in an action shall be in the form in schedule 1, and shall have upon it the memoranda in that form set forth.

(2) It shall be endorsed with a statement of the amount for which the defendant is to be held to bail, and of the name of the Judge by whom the order to hold to bail was made, and the date of the order.

(3) It shall also be endorsed with a statement of the plaintiff's address, and address for service, and the name and address for service of the plaintiff's solicitor, if the plaintiff sues by solicitor, in the same form as is prescribed in the case of writs of summons.

Effect of noncompliance

2. If the provisions of rule 1 are not complied with, the writ and all proceedings taken under it may be set aside by the Court or a Judge, and the bail bond hereinafter mentioned may be ordered to be cancelled, or the deposit may be ordered to be returned.

Misdescription of defendant

3. If the defendant is described in the writ of capias or affidavit to hold to bail by initials or by a wrong name, or without a christian name, the defendant shall not for that reason only be entitled to be discharged from custody, or to have the bail bond delivered up to be cancelled, or the deposit returned.

Writ to be executed within 2 months

4.(1) The writ of capias must be executed within 2 months from the date thereof, including the day of such date, or within such longer or shorter period as may be specially directed by the order to hold to bail.

(2) The sheriff or other officer to whom the writ of capias is directed may deliver the defendant to the superintendent of any prison and such superintendent shall receive the said defendant and the defendant safely keep in the said prison until such time as the Court or the sheriff or other officer shall direct.

Service of writ

5. The writ of summons in the action shall be served upon the defendant

at the time of the arrest; otherwise the arrest and all proceedings thereon may be set aside by the Court or a Judge, and the bail bond may be ordered to be delivered up to be cancelled, or the deposit may be ordered to be returned.

Bail bond

6. When the defendant upon the defendant's arrest gives a bail bond to the sheriff or other officer to whom the writ of capias is directed, the bond shall be in a sum not exceeding double the amount of the sum for which the defendant is ordered to be held to bail, exclusive of costs, and shall be conditioned that the defendant shall, within the time allowed for the defendant's appearance to the writ of summons, either render himself or herself to the sheriff or such other officer, or put in and perfect special bail in the action in manner hereinafter directed.

Deposit to be paid into court

7. When the defendant on the defendant's arrest, instead of giving a bail bond, makes deposit with the sheriff or other officer of the sum for which the defendant is ordered to be held to bail, with £10 ($20) for costs, the sheriff or such other officer shall forthwith pay the same into court to the credit of the action to abide the order of the Court, and shall give notice of such payment to the plaintiff.

Endorsement of execution

8. The person by whom a writ of capias is executed shall within 6 days after the execution thereof endorse on the writ the day of the month and week of the execution thereof.

Default of defendant in perfecting bail

9. If the defendant makes default in performing the conditions of the bail bond, the plaintiff may by notice signed by the plaintiff's solicitor, if the plaintiff sues by solicitor, or personally if the plaintiff sues in person, require the sheriff or other officer to whom the writ of capias is directed, to

retake the defendant within a time specified in the notice, and not being less than 8 days.

Duty of sheriff

10.(1) Upon such notice being given it shall be the duty of the sheriff or such other officer to retake the defendant and retain the defendant as of his or her former custody.

(2) The sheriff or other officer may exercise this power whether the writ of capias has or has not been returned.

Sureties may require defendant to be rearrested

11.(1) At any time before special bail has been perfected, the sureties to the bail bond, or either of them, may apply to a Judge ex parte for and obtain an order that the defendant be retaken by the sheriff or such other officer as aforesaid.

(2) When such an order has been made, any such surety may personally retake the defendant and render the defendant to the sheriff or such other officer.

(3) Upon such order being made the sureties to the bail bond shall be exonerated.

Assignment of bail bond to plaintiff

12. The plaintiff, instead of giving notice to retake the defendant as provided by rule 9, may by like notice require the sheriff or such other officer to assign the bail bond to the plaintiff, and the sheriff or other officer shall thereupon assign the same to the plaintiff by instrument under his or her hand and seal, and the plaintiff may sue thereon in the plaintiff's own name.

Attachment of sheriff

13.(1) If the sheriff or other officer makes default in compliance with a notice or order under rule 9 or 11, the sheriff or other officer shall be liable to attachment as for disobedience to an order of the Court.

(2) But the Court or a Judge may extend the time for retaking the defendant.

Special bail, how given

14.(1) Special bail shall be given by giving security in the action in the manner in which security is required to be given in actions, and shall be deemed to be perfected when the security is filed.

(2) The condition of the security shall be that, if judgment is given against the defendant in the action, the defendant shall satisfy the judgment and costs, or render himself or herself to the sheriff under a writ of capias *ad satisfaciendum*, and that, in default of the defendant so making satisfaction or rendering himself or herself, the sureties will make satisfaction of the judgment and costs.

Number of sureties

15.(1) Except by consent, 2 sureties shall be required to the security, each of whom shall be bound in the full amount for which the defendant is ordered to be held to bail, and £10 ($20) for costs.

(2) The Court or a Judge may allow security to be given by a greater number of sureties than 2, so that the sum of the amounts for which the sureties are severally bound is not less than double the amount for which the defendant is ordered to be held to bail.

Security of certain persons to be ineffectual

16. If a surety, although the surety has been approved, is a practising solicitor or clerk to a practising solicitor, or a sheriff's officer, bailiff, or person concerned in the execution of process of any Court, the plaintiff may treat the bail as a nullity.

Effect of assignment of bail bond

17. When the bail bond has been assigned to the plaintiff, no further proceedings shall be taken for the purpose of putting in or perfecting special bail in the action.

Discharge of defendant in special bail

18. As soon as special bail is perfected, the defendant, if in custody, shall be entitled to be discharged, and no further proceedings shall be taken on the bail bond, whether it has been assigned to the plaintiff or not.

Deposit may be applied in lieu of special bail

19. If the defendant on the defendant's arrest has made a deposit instead of giving a bail bond, the defendant may give notice to the plaintiff, signed personally, or by the defendant's solicitor, if the defendant appears by solicitor, that the money deposited is to be applied in lieu of special bail; and thereupon the same consequences shall ensue as if special bail had been put in and perfected.

Render of defendant

20.(1) After special bail has been given the Court or a Judge may, on the application of the defendant, or the defendant's sureties, or either of them, make an order that the defendant be rendered to a prison to be specified in the order, and such order shall be a sufficient warrant to the sureties, or either of them, to take the defendant, and render the defendant to the prison specified, and to the superintendent of the prison to receive and detain the defendant, and to the sheriff to detain the defendant.

(2) Upon the render of the defendant to prison in pursuance of such order, an office copy of the order, together with a notice in writing, signed by the defendant or his or her sureties, or 1 of them, or his, her or their solicitor, shall be delivered to the sheriff, and also to the plaintiff, or the plaintiff's solicitor, and thereupon the sureties shall be exonerated from their obligation under the security.

If defendant already in custody

21. If the defendant is already in custody under the judgment of any court or by virtue of any process issued out of any court, a like order may be made, and the same, together with a like notice, shall be served in like manner; and the order shall operate as a sufficient warrant to the sheriff and the superintendent of the prison to detain the defendant, and the sureties shall be exonerated in like manner.

Speedy trial

22.(1) When the defendant is in custody under a writ of capias or under an order for rendering or detaining the defendant as hereinbefore provided, the plaintiff shall give notice of trial for a time not later than the first sittings for which notice of trial can be given, unless the Court or a Judge otherwise orders.

(2) If the plaintiff fails to give such notice, the defendant shall be entitled to be discharged from custody under the capias or such order as aforesaid.

Writ of capias ad satisfaciendum

23.(1) Before enforcing the special bail against the sureties the plaintiff shall issue a writ of capias *ad satisfaciendum* against the defendant, and shall procure the same to be returned.

(2) Such writ shall be issued within 1 month after the date of judgment, and the time for the return of the writ shall be 8 days after the date of the issue thereof.

Liability of sureties

24. The sureties shall not be liable for any greater sum than that for which the defendant is ordered to be held to bail, and £10 ($20) for costs, nor shall they collectively be liable for a greater sum than that specified in the security.

Discharge of sureties

25. If the plaintiff discontinues the plaintiff's action, or judgment is given for the defendant, or the action is otherwise determined in his or her favour, the liability of the sureties shall be determined, and the deposit (if any) shall be ordered to be returned to the defendant.

ORDER 79—FOREIGN ATTACHMENT

Form of writ

1.(1) A writ of foreign attachment under the provisions of the *Common Law Process Act 1867* shall be in the form in schedule 1.

(2) The time limited for the appearance of the garnishee shall be the same as if the writ were a writ of summons in an action against the garnishee, except that it shall in no case be less than 14 days.

Entry of appearance not required

2. The garnishee shall not be required to enter an appearance to the writ of foreign attachment.

Time for examination of garnishee

3.(1) The plaintiff shall deliver to the sheriff for service on the garnishee a notice, signed by the plaintiff or the plaintiff's solicitor, if the plaintiff sues by solicitor, requiring the garnishee to attend on a day to be named in the notice, and not being earlier than the time limited by the writ for appearance, at a specified hour before the Judge sitting in chambers, to be examined touching the property referred to in the writ.

(2) The date for such attendance may be left blank in the notice when it is delivered to the sheriff, but shall, before service of the notice, be written therein by the sheriff or the sheriff's officer.

(3) Any day on which a Judge sits in chambers may be so inserted in the notice.

(4) The notice shall be served with the writ or within 7 days afterwards.

Default of attendance

4. If the garnishee fails to attend at the Judge's chambers on the day and at the hour so appointed, the like proceedings may be taken against the garnishee as if the garnishee had disobeyed a subpoena to attend at the same time and place.

Inquiry to be ex parte

5. The inquiry into the several matters specified in section 36 of the Act shall be made ex parte.

Service of proceedings on defendant

6. For the purpose of proceedings in the action the address for service of the defendant shall be deemed to be the registry, and all proceedings required to be served on a defendant shall be served by sticking them up in the public office of the registry.

Proceedings to be taken on notice

7. All proceedings of which the defendant would be entitled to notice if the defendant had appeared to the action shall be taken upon notice served at the defendant's address for service in manner aforesaid.

ORDER 80—PROCEEDINGS RELATING TO MENTALLY ILL PERSONS

Title of proceedings

1.(1) Proceedings in the Court in the exercise of its jurisdiction with respect to the person or estate of mentally ill persons, shall be entitled in the matter of the person in question, naming the person by his or her name at length, and describing the person as a mentally ill person.

(2) If the person has not been declared to be mentally ill by a judicial proceeding, the words 'not so declared' shall be added, unless the person is a patient in a hospital for mentally ill persons under the laws relating to such persons, in which case the words 'a patient' shall be added.

Proceedings in chambers

2.(1) Any application with respect to the person or estate of a person who is mentally ill may be heard and determined by a Judge in chambers, except

when by law or by these rules it is required to be made by petition, or to be heard and determined in court.

(2) But the Judge may require any matter to be brought on by motion or petition.

Original proceedings for declaration that a person is mentally ill

3.(1) An application for a declaration that a person is mentally ill, and incapable of managing his or her estate, or for an order authorising the removal of a person who is mentally ill out of Queensland shall be made by petition.

(2) Every such petition shall set forth the interest of the petitioner in the matter and shall be signed by the petitioner and attested by a solicitor or commissioner for taking affidavits or a justice of the peace.

Service

4.(1) The petition shall, unless the Court or a Judge otherwise orders, be served on the person alleged to be mentally ill; and shall be served by being delivered to the person personally, or, if it is found impracticable or inexpedient to serve the person personally, by being delivered to some adult inmate of the dwelling house or usual or last known place of abode within the jurisdiction of the person to be served.

(2) A copy of the petition and of any supporting affidavit shall be served on the Public Trustee and on such other persons as the Court may direct.

(3) A notice in the form in schedule 1 shall be endorsed on the copy petition served.

(4) An affidavit of service, which, if personal service has not been effected, shall set forth the grounds why such service was impracticable or inexpedient, shall be filed forthwith after service.

Request for jury

5.(1) An application that the question whether a person is mentally ill and incapable of managing his or her estate shall be tried by a jury may be made by the person personally, or by the petitioner, or by any person who would

be competent to present a like petition against the person alleged to be mentally ill, and may be made at any time before the time appointed for trying the question, or at the time so appointed.

(2) A request for a jury, in the form in schedule 1, shall be filed, and shall be served on the Public Trustee; and, if the request is not made by the petitioner, shall be served on him or her also.

Discharge of persons alleged to be mentally ill

6.(1) An application for an order for the discharge from custody of a person detained as mentally ill shall be made in the first instance to a Judge ex parte.

(2) And the Judge may thereupon make an order calling on the person having the custody of the person in question to show case why the latter should not be discharged from such custody.

Party becoming mentally ill

7. Where, after any cause or matter has begun, a party to the cause or matter becomes a mentally ill person, his or her solicitor shall forthwith notify all other parties to the cause or matter, and an application shall be made for the appointment of a person to be the next friend or guardian *ad litem* of that party.

ORDER 81—RULES OF COURT RELATING TO APPLICATIONS FOR JUDICIAL REVIEW

Interpretation

1.(1) In this order—

"Act" means the *Judicial Review Act 1991*.

"review application" means an application started or continued in accordance with rule 2, 3, 4 or 5.

(2) In this order, a reference to a form by number is a reference to the form so numbered in schedule 1.

Form of application for statutory order of review

2.(1) An application for a statutory order of review under the Act must be made in, or substantially in, form 465.

(2) If the grounds of the application include an allegation of fraud or bad faith, the applicant must set out in the application particulars of the fraud or bad faith on which the applicant relies.

Form of application for review

3.(1) An application for review under section 43 of the Act must be made in, or substantially in, form 466.

(2) If the grounds of the application include an allegation of fraud or bad faith, the applicant must set out in the application particulars of the fraud or bad faith on which the applicant relies.

Application for statutory order of review and for review

4. If—

(a) an application for a statutory order of review under the Act; and

(b) an application for any relief mentioned in section 43 of the Act;

relate to the same matter—

(c) the applications may be made in the one application; and

(d) that application must, with all necessary adaptations, be made in, or substantially in, form 465.

Relief based on application for review if application made for statutory order of review

5. If—

(a) an application is made for a statutory order of review in accordance with rule 2 or 3 in relation to—

(i) a decision; or

(ii) conduct engaged in, or proposed to be engaged in, for the purpose of making a decision; or

(iii) a failure to make a decision; and

(b) the Court considers—

(i) that the decision to which the application relates does not fall within the definition "decision to which this Act applies" in section 4 of the Act; and

(ii) that any relief or remedy mentioned in section 43 of the Act may have been granted in relation to the decision, conduct or failure if it had been sought in an application for review at the time of starting the application for a statutory order of review;

the Court may, instead of refusing the application, order the proceeding to continue as if it had been started as an application for review at that time.

Related damages claim

6. A cause of action for damages that relates to the same matter as a review application may be pleaded in, or joined with, the review application.

Filing documents

7. On the filing of a review application, or as soon afterwards as is practicable, the applicant must file copies of such of the following documents as are in the applicant's possession unless a copy of the document has been filed previously in the proceeding—

(a) a statement of the terms of the decision to which the application relates;

(b) either—

(i) a statement relating to the decision given to the applicant under section 33 of the Act; or

(ii) any other statement given by or on behalf of the person who made the decision purporting to set out—

(A) findings of fact; and

(B) a reference to the evidence or other material on which the findings were based; and

(C) the reasons for making the decision.

Fixing of directions hearing

8. On the filing of a review application, the registrar must fix a time, date and place for a directions hearing before the Court (constituted by a Judge or Master).

Service on other parties

9. The applicant must serve—

(a) a copy of the review application; and

(b) notice of the time, date and place of the directions hearing; and

(c) a copy of all statements filed under rule 7;

on the other parties to the proceeding at least 14 days before the directions hearing, unless the time for service is abridged by the Court.

Orders and directions at directions hearing

10.(1) At the directions hearing, the Court (constituted by a Judge or Master) may make such orders and give such directions relating to the conduct of the proceeding as it considers appropriate.

(2) Without limiting subrule (1), the Court may make orders relating to—

(a) discovery and inspection of documents; and

(b) interrogatories; and

(c) inspections of real or personal property; and

(d) admissions of fact or of documents; and

(e) the defining of the issues by pleadings or otherwise; and

(f) the standing of affidavits as pleadings; and

(g) the joinder of parties; and

(h) the method and sufficiency of service; and

(i) amendments; and

(j) the interlocutory steps appropriate to a cause of action in damages, pleaded or joined under rule 6; and

(k) the filing of affidavits; and

(l) the giving of particulars; and

(m) the place, time and method of hearing (including whether the hearing is to take place before a single judge of the Court or before the Court of Appeal); and

(n) the giving of evidence at the hearing (including whether evidence of witnesses in chief is to be given orally or by affidavit, or both); and

(o) the disclosure of reports of experts; and

(p) costs; and

(q) the filing and exchange of signed statements of evidence of intended witnesses and their use in evidence at the hearing.

(3) Without limiting subrule (1), the Court may—

(a) order that evidence of a particular fact be given at the hearing—

(i) by statement on oath on information and belief; or

(ii) by production of documents or entries in books; or

(iii) by copies of documents or entries; or

(iv) by an agreed statement of facts; or

(v) otherwise as the Court directs; and

(b) order that an agreed bundle of documents be prepared by the parties; and

(c) order that no more than a specified number of expert witnesses may be called; and

(d) order that the reports of experts be exchanged; and

(e) order that a party serve a copy of the application on the

Attorney-General; and

(f) order that a party give notice of the application to such persons or classes of persons, and in such way, as the Court directs; and

(g) exercise any of the discretions conferred by part 1, division 3 or section 48 of the Act to stay or dismiss an application; and

(h) fix a date for a further directions hearing; and

(i) fix a date for hearing; and

(j) fix a date after which the parties are directed to arrange with the registrar a date for hearing.

(4) The Court may revoke or vary an order made under subrule (1), (2) or (3).

Hearing and determination of application at directions hearing if parties agree

11. The Court may hear and determine the review application on a directions hearing if the parties agree.

Non-appearance of parties at directions hearing

12.(1) If no applicant appears before the Court on a directions hearing, the Court may—

(a) dismiss the review application; or

(b) make any other order it considers appropriate.

(2) If no respondent appears before the Court on a directions hearing, the Court may give such directions as it considers appropriate.

Motion for dismissal or stay at directions hearing

13.(1) A party may move the Court for an order under section 10 or 42 of the Act at a directions hearing if notice of the motion is served on the other parties to the proceeding not less than 3 days before the directions hearing.

(2) The Court may abridge the time for service, or dispense with service, under subrule (1).

Motion for dismissal to be made promptly

14. A party who seeks to have a review application dismissed—

(a) on a ground set out in part 1, division 3 or section 48 of the Act; or

(b) in the exercise of the Court's discretion;

must apply promptly for the dismissal.

Motion for costs order at directions hearing

15. An applicant may move the Court for an order under section 49 of the Act at a directions hearing if notice of the motion is served on the other parties to the proceeding not less than 3 days before the directions hearing.

Interlocutory orders or directions to be sought at directions hearing

16. On a directions hearing, each party must, so far as practicable, apply for any interlocutory order or direction that the party requires.

Motion for interlocutory order or direction otherwise than at directions hearing

17. A party may move on notice for an interlocutory order or direction not made at a directions hearing.

Noncompliance with interlocutory order

18.(1) If a party fails to comply with an order of the Court directing the party to take a step in the proceeding, another party may move the Court on notice—

(a) if the party in default is an applicant—for an order that the proceeding be stayed or dismissed as to the whole or a part of the relief claimed by the applicant in the proceeding; or

(b) if the party in default is a respondent—for judgment or an order against the respondent; or

(c) for an order that the step in the proceeding be taken within the time specified in the order.

(2) The Court may—

(a) make an order of the kind mentioned in subrule (1); or

(b) make another order; or

(c) give such directions, and specify such consequences for noncompliance with the order, as the Court considers appropriate.

(3) This rule does not limit the power of the Court to punish for contempt.

Additional requirements for order of certiorari

19. An order of certiorari may be granted only if—

(a) a copy of the order, warrant, conviction, inquisition or record relevant to the proceeding, verified by an affidavit, has been filed; or

(b) the failure of the applicant to file the copy is accounted for to the satisfaction of the Court.

No action in relation to things done under mandamus order

20. No action or proceeding may be begun or prosecuted against a person in relation to anything done in obedience to an order of the Court for relief in the nature of mandamus.

Consolidation of actions for prerogative injunctions

21. If there is more than 1 application for an injunction under section 42 of the Act pending against several persons in relation to the same office and on the same grounds, the Court may order the applications to be consolidated.

Proceedings in relation to statements of reasons

22.(1) An application to the Court for a declaration or order under part 4 of the Act must be made in, or substantially in, form 467.

(2) On the filing of an application under subrule (1), the applicant must file an affidavit containing—

(a) the applicant's name and description; and

(b) details of the relief sought and the grounds on which it is sought; and

(c) the facts relied on.

(3) On the filing of an application under subrule (1), the registrar must fix a time, date and place for a directions hearing before the Court (constituted by a Judge, Master or registrar), not earlier than 14, and not later than 21, days after the filing of the application, unless the time is abridged by the Court.

(4) The applicant must serve the application and the affidavit mentioned in subrule (2) on the respondent at least 7 days before the directions hearing, unless the time for service is abridged by the Court.

(5) At a directions hearing, the Court may make such orders and give such directions relating to the conduct of the proceeding as it considers appropriate (including such of the orders and directions set out in rule 10 as may be appropriate to the proceeding).

(6) The provisions of rules 11 and 16 to 18 apply, with necessary modifications, to an application made to the Court under subrule (1).

Use of affidavits

23. Despite order 41, rule 27, the Court may—

(a) dispense with the attendance for cross-examination of a person making an affidavit; and

(b) may direct that an affidavit be used without the person making the affidavit being cross-examined in relation to the affidavit.

Application by unincorporated body

24.(1) If the applicant in an application made to the Court under the Act is an unincorporated body, the application may be brought in the name of the body.

(2) Subrule (1) does not apply unless, at the time of filing the application, there is also filed an affidavit sworn by an officer of the body deposing to the names and addresses of all members of the body.

(3) The affidavit must be served on each party to the proceeding.

Joining of action for declaration or injunction

25. An action for a declaration or injunction started by writ of summons or originating summons that relates to the same matter as a review application may be joined with the review application.

ORDER 82—HABEAS CORPUS

How applied for

1.(1) Applications for writs of habeas corpus or for orders for the production of persons in confinement for the purpose of examination or trial, may be made to the Court or a Judge ex parte.

(2) The affidavits upon which the application is made shall be entitled 'In the Supreme Court of Queensland' without other title, except in the case of applications for orders to produce persons for examination as witnesses in causes or matters pending in the Court, in which case they shall also be entitled in the cause or matter.

How granted

2.(1) The Court or Judge may make an order absolute in the first instance for the issue of the writ or production of the person, or may make an order calling upon the person who would be required to obey the writ or order, if granted, to show cause why it should not be issued or made.

(2) The order and all subsequent proceedings shall be entitled 'The Queen against' the person to whom the writ or order is directed.

Service

3.(1) Writs of habeas corpus, and orders for production directed to persons charged by law with the custody of persons in lawful custody or confinement, may be served either personally or by leaving the original with a servant or officer of the person to whom the writ or order is directed at the place where the person in question is confined or detained.

(2) Other writs of habeas corpus must be served personally.

(3) When a writ of habeas corpus is directed to more persons than 1, it shall be served in the same manner as a writ of mandamus directed to several persons.

(4) Together with the writ there shall be served a notice, directed to the person to whom the writ is addressed, and pointing out the acts to be done by the person in obedience to the writ, and the consequences of making default.

Returns to writs of habeas corpus

4.(1) The person to whom a writ of habeas corpus is directed shall, at the time and place specified therein, make the person's return to the writ, which shall be endorsed upon or attached to the writ, and shall set out all the causes of the detention of the person named in the writ.

(2) The return shall be filed.

Amendment of return

5. The return may be amended by leave of the Court or a Judge.

Proceedings on return

6. Upon the return of the writ the return shall be read, and a motion shall then be made for the disposition of the person therein named, or for amending or quashing the return.

Order of speeches

7. Upon a motion for the discharge of the person in custody, the person or the person's counsel shall first be heard, then the person denying his or her right to be discharged, or the person's counsel, and then the first named person, or 1 of his or her counsel, in reply.

Discharge without writ

8. When an order to show cause has been made, the Court or Judge may, on the return of the order, direct the discharge or other disposition of the person in question without the issue of a writ of habeas corpus, and any such order shall be as effectual as if it had been made on the return of a writ.

ORDER 83—ESCHEAT

Direction of writ

1. A writ of inquisition issued under the *Escheat (Procedure and Amendment) Act 1891* shall, unless otherwise ordered by the Court or a Judge, be addressed to the District Court Judge to whom the district within which the land with respect to which the inquiry is to be made is situated is assigned.

Jury

2.(1) When a writ of inquisition is addressed to a District Court Judge, the questions of fact arising on the inquiry shall, unless otherwise ordered by the Supreme Court or a Judge thereof, be determined by a jury of 4 persons, who shall be chosen and impanelled from the panel of jurors summoned for the trial of civil actions at the sittings of the court at which the inquiry is to be made.

(2) The Judge shall administer or cause to be administered to the jurors an oath to inquire into the matter, and give a true verdict according to the evidence.

(3) The laws relating to jurors summoned for the trial of civil actions in District Courts shall apply to such juries and jurors.

Notice of inquiry

3. The time for holding the inquiry shall be appointed by the District Court Judge or other person to whom the writ is addressed, and shall be notified twice at least by public advertisement in some newspaper circulating in the district and published not less than 16 days before the time so appointed.

Time for holding inquiry

4.(1) If the writ is addressed to a District Court Judge, the inquiry shall be held at a time appointed for holding sittings of the District Court of the district within which the land in question is situated.

(2) In any other case, the inquiry shall be held at a convenient place to be appointed by the person to whom the writ is directed, and to be notified in the advertisement.

Inquiry to be in open court

5. The inquiry shall be held in open court, and may be adjourned from time to time.

Witnesses

6. The attendance of witnesses may be enforced by subpoena issued from the registry.

Parties

7. Any person who shall offer himself or herself may give evidence on the inquiry; and any person claiming or setting up any title to the land in question may be heard, and may cross-examine any witness personally or by the person’s counsel or solicitor.

Discharge of jury

8. When there is a jury, the District Court Judge may discharge the jury under any such circumstances as would warrant the discharge of a jury in a civil action, and thereupon a fresh jury shall be impanelled at the same or some later sittings of the court.

Certificate of result of inquiry

9. The result of the inquiry shall be set forth in a certificate in writing or print, under the hand and seal of the District Court Judge, or other person holding the inquiry.

Form of certificate

10. The certificate shall certify the facts found with respect to every material matter specified in the writ of inquisition.

To be endorsed on or annexed to writ

11. The certificate shall be endorsed upon or annexed to the writ of inquisition, and shall be forthwith returned into the registry and filed.

Writ of further inquiry

12. A writ of further inquiry upon the same writ of inquisition, as to the whole or any part of the matters specified therein, may be awarded from time to time on the fiat of a Crown Law Officer, or by order of the Court or a Judge.

Proceedings on writ of further inquiry

13.(1) When a writ of further inquiry is issued, the inquiry shall be held de novo, except so far as otherwise directed by the fiat or order.

(2) The proceedings on the writ of further inquiry shall be the same, with the necessary variations, as on a first inquiry.

Objection to certificate

14. Any person affected by a certificate, whether upon a first inquiry or a further inquiry, may traverse the same, or object thereto, within 2 months after the filing of the certificate, or within such further period as may be allowed by the Court or a Judge.

Mode of making objection

15.(1) A person desiring to traverse or object to a certificate must file in the registry within the prescribed time a notice specifying whether the person denies any, and, if so, which, of the findings of fact set forth in the certificate, or whether the person objects to the certificate on some other ground; and must on the same day serve a copy thereof on the Attorney-General.

(2) The notice must give an address for service, as in the case of an appearance to a writ of summons.

Proceedings on traverse

16. If the notice denies any of the facts found by the certificate, the like proceedings shall be had and taken, and within the same times, as if the certificate were a statement of claim in an action, and the objector had pleaded the notice as his or her defence, but so that the burden of proof shall lie on the objector.

Setting aside certificate

17.(1) If the objector does not deny any of the findings of fact set forth in the certificate, the notice must specify the grounds of his or her objection; and the objector must, within 30 days after filing the objector's notice, apply to the Court or a Judge for an order setting aside the certificate.

(2) Upon the hearing of the application the Court or Judge may confirm the certificate with or without amendment, or may quash the certificate, and in the latter case may direct the issue of a writ of further inquiry.

Formal defects

18.(1) A writ of inquisition or certificate shall not be quashed or avoided by reason of any omission or informality which is capable of being supplied or amended, and the Court or a Judge may make any amendment, or direct any proceedings to be taken, which may be just.

(2) The Court or a Judge may at any time direct that the certificate shall stand good, notwithstanding any defect specified in the direction, and any such direction shall be forthwith endorsed on the certificate by the proper officer, and shall have effect as part of the certificate.

Application of rules to other cases

19.(1) Rules 1 to 18 may be applied, with the necessary variations, and so far as it is not otherwise provided by law, to inquests of office touching any title or claim of the Crown to or in respect of goods or chattels.

(2) But nothing in this rule shall invalidate any proceedings conducted otherwise than in accordance with these rules which would otherwise be valid.

Saving of prerogative rights

20. Nothing in this order shall take away or prejudice any right, title, or prerogative of the Crown.

ORDER 84—COMMITTAL FOR CONTEMPT OF COURT

Contempt in the face of the Court

1.(1) When a person is alleged to be guilty of contempt of court, committed in the face of the Court, or in the hearing of the Court, the Court may, by verbal order, direct the person to be arrested and brought before it forthwith, or the presiding Judge may issue a warrant under the Judge’s hand for the arrest of the accused person.

(2) When the accused person is brought before the Court, the Court shall cause the accused person to be informed orally of the nature of the contempt with which the accused person is charged, and shall require the accused person to make his or her defence to the charge, and shall after hearing the accused person proceed, either forthwith or after adjournment, to determine the matter of the charge, and shall make such order for the punishment or discharge of the accused person as may be just.

(3) The accused person shall be detained in custody until the charge is disposed of, unless the Court allows the accused person to be discharged on bail.

In other cases

2. In cases other than those in rule 1 mentioned, application for punishment for contempt of court shall be made by motion, upon notice to the accused person, for an order that the accused person be committed to prison for his or her contempt.

Form of notice

3.(1) The notice of motion shall specify the nature of the contempt of which the accused person is alleged to be guilty.

(2) It shall be entitled in the cause or matter (if any) with reference to which the contempt is alleged to have been committed, or, if it is not alleged to have been committed with reference to any particular cause or matter, shall be entitled 'The Queen against' the accused person, naming the accused person.

Service

4. The notice of motion shall be served personally unless the Court or Judge otherwise orders.

Warrant

5.(1) When a notice of motion for the committal of a person for contempt has been filed, if it is made to appear to a Judge that the accused

person is likely to abscond or otherwise withdraw himself or herself from the jurisdiction of the Court, the Judge may by warrant under the Judge's hand direct that the accused person shall be arrested and detained in custody until the accused person gives security in such sum as the Judge may direct to appear in person and answer the charge and submit to the judgment of the Court.

(2) The warrant shall be directed to the sheriff.

(3) All police officers in the State shall be required to aid and assist the sheriff in the execution of the warrant and the sheriff or any such police officer may deliver the accused person to the superintendent of any prison and such superintendent shall receive the said accused person and the accused person safely keep in the said prison until such time as the Court or the sheriff shall direct.

Interrogatories may be administered

6.(1) On the hearing of the motion the Court may order the accused person to answer on oath within 4 days interrogatories to be exhibited to the accused person touching his or her contempt.

(2) The answer to the interrogatories shall be made by affidavit.

Adjournment

7. When the accused person is ordered to answer interrogatories, the hearing of the motion shall be adjourned for a sufficient time to allow the answer to be made and filed.

Punishment

8. Upon the hearing of the motion the Court may impose a fine instead of ordering the accused person to be committed to prison, or may impose a fine in addition to ordering his or her committal; and, when it imposes a fine, may order that the accused person shall be imprisoned, or further imprisoned, until the fine is paid, or instead of passing sentence, discharge the offender on recognisance in accordance with the provisions of the Criminal Code, section 19(9).

Order of committal

9. When the accused person is ordered to be committed to prison, the order of committal shall specify the prison to which the accused person is to be committed.

Discharge

10. The Court may order the discharge of a person committed to prison for contempt notwithstanding that the time for which the accused person was ordered to be committed has not expired.

Costs

11. The costs of an application for committal shall be in the discretion of the Court, whether an order for committal is made or not.

ORDER 85—APPEALS FROM LAND APPEAL COURT

2. Appeals by way of special case

Notice of appeal

9. When the Crown is a respondent to an appeal from the Land Appeal Court, the notice of appeal shall be served on the chief executive of the department in which the *Land Act 1962* is administered.

Evidence of notice to be transmitted

10.(1) In the case of appeals by way of special case, the appellant shall with the case transmit to the registrar of the Supreme Court an affidavit stating that the notice of appeal, together with the copy of the special case, has been duly served on the other or respondent party.

(2) The registrar shall note upon the case, when received by the registrar,

the day when it was so received, and, if it was transmitted to the registrar by post, the day on which it purports to have been posted.

Setting down

11.(1) The appellant must, within 14 days after the case is received by the registrar, set the same down for hearing.

(2) If the appellant fails to do so, any other party may set it down for hearing.

General provisions

12. Except as otherwise provided by this order, the ordinary practice of the Court shall be followed in proceedings relating to appeals under the Act.

3. Proceedings in relation to arbitration

Definition

13. In rules 14 to 18—

"the Act" means the *Commercial Arbitration Act 1990*.

Application

14.(1) This rule and rules 15 to 18 apply to—

(a) arbitration proceedings in respect of which the Court has jurisdiction under the Act; and

(b) proceedings in the Court under the Act.

(2) The following rules do not apply to proceedings mentioned in subrule (1)—

(a) order 47, rule 32;

(b) order 62, rule 9;

(c) order 90, rule 10.

Jurisdiction

15. The jurisdiction and powers of the Court under the Act may be exercised—

(a) by a Judge; and

(b) except under sections 38 to 45 of the Act, by a Master.

Procedure

16.(1) An application under the Act or these rules is to be made by motion.

(2) An application for leave under section 33 of the Act to enforce an award as a judgment or order of the Court must—

(a) be accompanied by evidence of—

(i) the agreement to arbitrate and the award; and

(ii) the extent (if any) to which the award has been complied with; and

(b) state the name and address of the person against whom it is sought to enforce the award.

(3) Unless otherwise ordered—

(a) an application for leave to enforce an award need not be served on anyone; and

(b) the award may not be enforced for 14 days after service of the order granting leave to enforce it.

Time

17.(1) An application—

(a) for the leave of the Supreme Court under section 38(4)(b) of the Act to appeal on a question of law arising out of an award; or

(b) under section 42(1) of the Act to set aside an award;

must be filed and served within 21 days after the award is made.

(2) An application under section 39(1) of the Act to determine a question

of law must be filed and served within 21 days after the giving of the consent mentioned in that section.

Offers to settle

18. The provisions of order 26 apply to an arbitration as if a reference to a Court included a reference to an arbitrator or an umpire.

ORDER 86—JURISDICTION OF THE MASTERS

Jurisdiction

1. A Master may exercise the jurisdiction of the Court—

(a) which by virtue of any statute, practice, custom or these rules may be exercised by a Judge sitting in chambers except in respect of the following proceedings and matters, that is to say—

(i) matters relating to criminal proceedings (other than applications for orders to review under the *Justices Act 1886*, section 209) or to the liberty of the subject; and proceedings on the Crown side of the Court (other than applications for orders *nisi* for certiorari prohibition, mandamus or *quo warranto*);

(ii) subject to subparagraph (v), applications for injunctions, other than injunctions so far (and so far only) as the same are ancillary to equitable execution or charging orders; and contested applications for the appointment of receivers or for dissolution of an injunction made by the Court;

(iii) applications for the review of taxation of costs;

(iv) applications under order 18A, order 64, rules 1A to 1BB, order 90, rule 9 and order 98 or under the *Limitation of Actions Act 1974*, section 31;

(v) contested applications for the guardianship or custody of infants. However, nothing in this paragraph shall prevent a

Master from entertaining applications or from making orders for interim custody or access, either under the *Children's Services Act 1965* or under the inherent jurisdiction of the Court or from making orders for those purposes which include relief by way of injunction;

(vi) applications in matters pending in the High Court of Australia;

(viii) proceedings in any action, cause, or matter in respect of which a Judge shall order that this rule shall not apply, so long as such order shall be in force. A Judge may at any time make and may rescind any such order;

(ix) proceedings or classes of proceedings which the Chief Justice shall from time to time order to be excepted;

(x) the hearing and determination of applications for provision out of estates of deceased persons under section 41 of the *Succession Act 1981*, unless with the consent of all parties;

(xi) proceedings, if contested, under the *Trusts Act 1973*, or under the *Succession Act 1981*, but subject to subparagraph (x);

(xii) proceedings under the *Property Law Act 1974* (except uncontested proceedings under sections 38 and 41 and proceedings under sections 257(3) and (4) and 258(3) and (4));

(xiii) proceedings under the *Land Title Act 1994*;

(xiv) subject to paragraphs (g) and (h), proceedings under or by virtue of any companies legislation as defined in rule 12;

(xv) proceedings, if contested, under the *Commercial Arbitration Act 1990*;

(b) in respect of the approval of compromises on behalf of persons under disability;

(c) in respect of trial (except with a jury) or proceedings where the only matters in question are—

(i) the amount of damages and costs; or

(ii) the value of goods and costs, or the amount of damages, the value of goods and costs;

(d) in respect of trial of an issue pursuant to a direction under order 59, rule 8;

(e) in respect of any direction by consent for entry of judgment and any order by consent;

(f) notwithstanding the provisions of paragraph (a)(i), in respect of punishment for contempt in the face of the Court or in the hearing of the Court, where the Court is constituted by the Master concerned and punishment for breach of an undertaking given to the Court constituted by a Master and for failure to comply with an order of the Court constituted by a Master;

(g) in respect of proceedings, if uncontested, under any companies legislation, as defined in rule 12, for; confirmation of reduction of share capital; summoning of a meeting of creditors or members to consider a compromise or arrangement; appointment of a liquidator or provisional liquidator; winding-up of a company; extension of time within which to register a charge; by a liquidator for the consent, approval, or authority of the Court to exercise a power or do an act in the winding-up; by a liquidator for his or her release with or without dissolution of the company;

(gg) in respect of proceedings commenced on or after 1 July 1982 as to which jurisdiction is conferred upon a Master by the *Companies (Queensland) Rules 1985*;

(h) in respect of the examination (whether or not in public) of an officer or former officer of a company, but not so as to authorise the making of an order for repayment or restoration of money or property or for payment of damages;

(i) in respect of motions for probate and for letters of administration where an applicant is out of the jurisdiction;

(j) in respect of a motion to make absolute in the first instance an order nisi for certiorari, to quash a conviction, which he or she has made on the application of the Crown pursuant to this rule;

(k) in respect of such other proceedings and matters as the Chief

Justice shall from time to time direct, whether by deletion of an exception under paragraph (a) or otherwise.

Effect of decisions

2. Subject to these rules every judgment order or decision given or made by a Master in the exercise of the Master's jurisdiction shall be as valid and binding on, and be enforceable in the same manner against all parties concerned as a judgment order or decision given or made by a Judge.

References

3. The office of a Master shall be deemed to be Judge's chambers for the purposes of any matter which is authorised by or under these rules to be dealt with by a Master and in relation to such matters references in these rules to a Judge shall be deemed to be references to a Master.

When matters allotted to Masters may be brought before Judge

4. No matter which is authorised by or under this order to be dealt with by a Master shall be brought before a Judge or the Court except—

(a) on a reference by or removal from the Master; or

(b) on an appeal under this order; or

(c) at a place other than Brisbane if no Master is sitting at that place; or

(d) by special leave of the Court or a Judge.

Master acting for another Master

5. On the application of any party to a matter any Master may, and if the circumstances require it shall, hear and dispose of such matter on behalf of any other Master by whom the application would otherwise have been heard.

Reference and removal

6.(1) A Master may, whether the Master shall have entered upon the hearing thereof or not, refer to a Judge in chambers any application or matter which the Master shall think proper for the decision of a Judge and the Judge may either dispose of the matter or refer it back to the Master with such directions as the Judge may think fit.

(2) A Judge may, before the conclusion of any proceedings before a Master on application by a party order that such proceedings be removed as the Judge shall direct.

(3) Upon the reference of any proceedings under subrule (1) or the removal of any proceedings under subrule (2), the Judge may

(a) hear and determine any matter in the proceedings in respect of which matter the proceedings were before the Master; or

(b) determine any question arising in the proceedings and remit the proceedings to the Master with such directions as the Judge thinks fit.

(4) Pending the final disposal of the application or matter the Master may upon referring the same to a Judge in chambers make such interim order as the Master shall think just.

Appeal to Court of Appeal

7.(1) An appeal shall lie to the Court of Appeal from any decision, judgment or order made or given by a Master under rule 1(a)(x), (c) and (f) but an appeal shall not lie to the Court of Appeal from any other decision judgment or order made or given by a Master except by leave of the Court or a Judge.

(2) Order 70 with all necessary adaptations shall apply to such an appeal as if it were an appeal from a Judge.

Appeal to Judge in chambers

8.(1) Subject to rule 7, any person affected by any order or decision of a Master may appeal therefrom, by notice in writing, to a Judge in chambers.

(2) Unless otherwise ordered by the Judge or the Master the notice shall

be served, and a copy filed, within 5 days after the decision complained of, and there shall be at least 2 clear days between service of the notice of appeal and the day of hearing.

(3) The notice of appeal shall set forth brief particulars of the decision complained of, shall give particulars of the grounds of such complaint, and shall set out the order sought by the appellant.

(4) The appeal shall be by way of a hearing of the application de novo.

(4A) Further evidence may be received, and the Judge may exercise the Judge's own discretion without regard to the manner in which the discretion has been exercised by the Master.

(5) Except by leave of a Judge no appeal shall lie from the decision of a Judge under this rule.

General powers

9. A Master shall, for the purpose of any proceedings within the Master's jurisdiction, have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to take affidavits, to receive affirmations, to examine parties and witnesses viva voce and to receive evidence upon affidavit.

Default in compliance

10. Parties and witnesses so summoned shall be bound to attend in pursuance of any such summons, and shall be liable to process of contempt in like manner as parties or witnesses are now liable to in case of disobedience to any order of the Court, or in case of default in attendance in pursuance of any order of the Court or of any writ of subpoena ad testificandum, and all persons swearing or reaffirming before and such Master shall for any wilful and corrupt false swearing or affirming be liable to the penalties of perjury.

Distribution of business

11. The distribution of business between the Masters shall, subject to the direction of the Chief Justice, be by direction of the senior Master.

12. In rule 1—

"companies legislation" means the *Companies Act 1961*; the Companies Regulations; the *Companies Rules 1963*; the *Securities Industry Act 1975*; the *Company Take-overs Act 1979*; and any legislation (including rules or regulations) enacted in consequence of the Agreement referred to in the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*, section 3.

ORDER 87—THE REGISTRY

Great seal of the Court

1. The seal of the Supreme Court shall be in the custody of the registrar as the deputy of the Chief Justice, and shall, when not in actual use, be kept under lock and key.

Seal in Central, Northern and Far Northern Court

2.(1) The seals of the Supreme Court to be used in the Central, Northern and Far Northern Court shall be in the custody of the registrars of the Central, Northern and Far Northern Court, respectively, as deputies of the Chief Justice, and shall, when not in actual use, be kept under lock and key.

(2) All documents to which the seal of the Supreme Court is affixed at those places shall also be impressed with an office seal bearing the words 'Supreme Court, Rockhampton', or 'Supreme Court, Townsville' or 'Supreme Court, Cairns', as the case may be.

To what documents affixed

3. The seal of the Supreme Court shall be affixed to all commissions issued by authority of the Court or a Judge, whether under the authority of any statute or of these rules, to all exemplifications of proceedings in the Court, to all grants of probate or administration, whether by way of original grant or by sealing a grant made elsewhere, to all certificates of admission

of persons to practise as barristers, solicitors, or conveyancers of the Court, to all writs of certiorari, mandamus, prohibition, and habeas corpus, and to all documents issued from the Court for use beyond the jurisdiction of the Court, not being writs or other documents for service on a party to a cause or matter, and to such other documents as the Court or a Judge may in any case direct.

Office seals

4. The registrar shall keep a seal (the **"office seal"**) which shall bear the words 'Supreme Court Office', with the word 'Brisbane', 'Rockhampton', 'Townsville' or 'Cairns', as the case may be, which shall be affixed to all writs, judgments, and orders, and to all other documents which are authorised to be sealed, except as provided in rule 3.

Rules of court

5.(1) The registrar shall countersign all rules of court made and promulgated by the Judges, and shall cause copies thereof, certified by the registrar, to be transmitted to the Department of Justice and to be published in the Gazette.

(2) The registrar shall keep the originals of all such rules, and of all former rules and orders heretofore made, in safe custody, and shall keep an index thereof.

Custody of papers

6.(1) The registrar shall have the custody of all the records of the Court, and of all documents filed in the registry, or ordered to be deposited therein for safe custody, or to be impounded.

(2) The registrar shall, a sufficient time before the time appointed for holding any sittings or circuit court, deliver to the associate of the Judge who is to preside at such sittings or circuit court all documents necessary for use at the hearing or trial of any cause or matter to be there heard or tried; and the associate shall return the same to the registrar forthwith after the conclusion of the sittings or circuit court.

General authority of registrar

7. The registrar shall have the general supervision of the officers employed in the registry, and shall distribute their duties from time to time in such manner as may be most expedient, but so that when any officer is appointed to discharge any special duty such duty shall be discharged by such officer.

Duty of officers of registry

8. All acts and things which by these rules are required to be performed and done in, or with reference to, the registry shall be done by the registrar or officers employed in the registry, or with reference to them, as the case may be.

Testing of writs etc.

9. Every writ and commission shall be tested and dated in the same manner as prescribed in the case of a writ of summons in an action, and, unless otherwise provided by these rules, shall be issued on a praecipe filed by the party applying for the instrument.

Sealing writs etc.

10.(1) Any person desiring to sue out any writ or commission authorised by law or by these rules, or by any other rules of court, may prepare the same in the prescribed form and present it for issue to the registrar, and if it appears that the writ is in proper form and that the person presenting it for issue is entitled to sue out the same, the registrar or the registrar's clerk shall sign the writ and seal it with the office seal, and such signature and seal shall have the same effect as if it were sealed with the seal of the Court, and the writ shall thereupon be deemed to be issued.

(2) However, if any such writ or commission shall appear to the registrar at Brisbane, Rockhampton, Townsville or Cairns on its face to be an abuse of the process of the Court or a frivolous or vexatious proceeding the registrar shall seek the direction of a Judge who may direct the registrar to issue the same or to refuse to issue the same without the leave of a Judge first had and obtained by the party seeking to issue the same.

Power of clerks

11.(1) Writs and commissions may be signed for the registrar, and documents may be received and filed, by any clerk in the registry to whom such duties are assigned.

(2) Judgments which are not actually settled by the registrar may in like manner be signed for the registrar by any clerk to whom that duty is assigned.

Fees to be prepaid

12. No document in respect of which a fee is payable shall be sealed or received or filed until the fee has been paid.

Office copies

13.(1) Any person entitled to have a copy of any record of the Court or of any document filed in the registry may apply to the registrar for an office copy thereof, and the registrar shall thereupon cause a copy of such record or document to be made and examined, and shall cause the same to be marked with the words ‘office copy’, and sealed with the office seal.

(2) All copies of documents so marked and sealed with the office seal shall be presumed to be office copies duly issued from the registry, and shall be deemed to be certified copies within the meaning of any law relating to the admission in evidence of certified copies.

(3) Office copies shall be ready to be delivered within 48 hours after they are bespoken.

Date upon document filed

14. Upon every document which is filed in the registry the date of filing it shall be noted.

Indexes to files to be kept

15.(1) Proper indexes or calendars to the files or bundles of all documents (including judgments and orders) filed in the registry shall be kept so that they may be conveniently referred to when required.

(2) The indexes or calendars and documents shall, at all times during office hours, be accessible to the public on payment of the prescribed fee.

Register of documents filed and proceedings taken

16.(1) In the registry a record of all documents filed and all proceedings taken in every cause or matter shall be kept, showing the dates of filing the documents and taking the proceedings, so that all the proceedings in the cause or matter are shown consecutively and in chronological order.

(2) The record shall, at all times during office hours, be accessible to the public on payment of the prescribed fee.

Reference on judgment etc. to record

17. Every judgment, order, certificate, petition, affidavit, or document made, presented, or used in any cause or matter, shall be distinguished by having plainly written or stamped on the first page thereof the year, and the number by which the cause or matter is distinguished in the books kept at the registry.

Searches

18. The registrar shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under the registrar's custody, and issue a certificate of the result of the search.

Certificate of proceedings in cause or matter

19. The registrar shall, at the request of any person, whether a party or not to the cause or matter, and on payment of the prescribed fee, give a certificate specifying therein the dates and general description of the several proceedings which have been taken in any cause or matter.

Certificates to be filed

20. All certificates of the registrar made in pursuance of a judgment or order shall be filed in the registry.

Restrictions on removal of documents from registry

21.(1) No record of the Court or other document shall be taken out of the registry without the order of the Court or a Judge, and no subpoena for the production of any such document shall be issued.

(2) However, if a court order in a proceeding is the subject of an appeal to another court (the **"other court"**), the registrar may, without an order of the court or a judge, give or lend the court records and other documents for the proceeding to the registrar (however called) of the other court.

Fees of officer required to attend away from court building

22. Any officer, not being the associate of the Judge presiding at the Court, who is required to attend with any record or document at any court or place out of the Supreme Court building shall be entitled to require that the solicitor or party desiring his or her attendance shall deposit with the officer a sufficient sum of money to answer his or her just fees, charges, and expenses in respect of such attendance, and shall undertake to pay any just fees, charges, and expenses which may not be fully answered by such deposit.

Deeds ordered to be deposited to be left in registry

23. When any deeds or other documents are ordered to be left or deposited, whether for safe custody or for the purpose of any inquiry in chambers or otherwise, the same shall be left or deposited in the registry, and shall be subject to such directions as may be given by the Court or a Judge as to the production thereof.

Delivery of impounded documents

24.(1) Impounded documents, while in the custody of the Court, shall not be parted with, and shall not be inspected, except on an order made by the Court or a Judge.

(2) Such documents shall not be delivered out of the custody of the Court except upon an order made on motion in open court.

(3) However, impounded documents in the custody of the Court shall, upon the request in writing of a Crown Law Officer representing the

Crown, or, in the case of documents directed to be impounded under the laws relating to stamps, upon the request in writing of the Commissioners, be given into the custody of such law officer or Commissioners.

Scandalous matter

25. The Court or a Judge may order that any affidavit or other document filed in the registry which contains scandalous matter shall be taken off the file, and may order that the costs of the application be paid by the party by whom the same was filed or by the party's solicitor.

Attendance of registrar in court

26. The registrar or the registrar's deputy shall if required by the Court or a Judge attend the sittings of the Court of Appeal, and also every Judge sitting in court, except when sitting for the trial of causes, or in the criminal jurisdiction of the Court.

Directions to registrar

28. Any party may apply to the Court or a Judge ex parte in a summary way for a direction to the registrar to do any act which the party applying requires the registrar to do, and which the registrar refuses to do.

Admiralty actions

Minute book

29. There shall be kept in the registry a separate book (the **"admiralty minute book"**) in which the registrar shall enter in order of date, under the head of each admiralty action, and on a page numbered with the number of the action, a record of the commencement of the action, of all appearances entered, all documents issued or filed, all acts done, and all judgments and orders made in the action, whether made by the Court or a Judge or by consent of the parties.

Inspection of minute and caveat books

31. Any solicitor may, free of charge, inspect the admiralty minute book and admiralty caveat book.

Inspection of records

32. The parties to an admiralty action may, while the action is pending, and for 1 year after its termination, inspect, free of charge, all the records in the action.

By whom to be made

33. Except as provided by rules 31 and 32, no person shall be entitled to inspect the records in a pending admiralty action without the permission of the registrar.

After action terminated

34. In an admiralty action which is terminated any person may, on payment of the prescribed fee, inspect the records in the action.

ORDER 87A—FILING

Filing

1.(1) A document may be lodged for filing by—

(a) delivering it to the registry personally; or

(b) sending it to the registry, by pre-paid post, in an envelope marked with a note that it contains court documents.

(2) If a document is lodged for filing in contravention of these rules, the registrar may refuse to accept the document for filing.

(3) A document lodged for filing under these rules is not taken to be filed until it is stamped as filed.

Filing by post

2.(1) This rule applies if a document is lodged for filing by post.

(2) The document must be accompanied by the number of copies required by these rules and a stamped envelope addressed to the filing party or the filing party's solicitor.

(3) The registrar must return to the filing party or solicitor in the envelope—

(a) any copies of the document that, under these rules, have been lodged with the document and endorsed or sealed by the registrar; or

(b) if the document is not accepted for filing—the document.

(4) If, on filing the document, a hearing is required before a chamber judge or registrar, the registrar must not fix a return day earlier than 14 days after the filing day.

(5) If the document contains an affidavit about a debt—

(a) it must be attested on the day it is posted; and

(b) it may be relied on, for these rules, until the end of 5 days after the day it is attested.

Risk

3. A document lodged for filing by post is at the risk of the filing party.

Postal dealing fee

4.(1) A party must pay the prescribed fee (the **"postal dealing fee"**) for lodging a document for filing by post.

(2) The postal dealing fee is in addition to any other fee payable for lodging the document and is not refundable if the document is not accepted for filing.

ORDER 88—DRAWING UP JUDGMENTS AND ORDERS

By whom judgments and orders to be drawn up

1. Judgments and orders, whether given or made in court or chambers, or by default, shall be drawn up by the registrar or under the registrar's direction, unless otherwise directed by the Court or a Judge.

Entry not required

2. It shall not be necessary to enter any judgment or order, whether given or made before or after the coming into operation of these rules, except as provided by order 44 and this order.

Documents to be filed before judgment or order signed

3. No judgment or order founded, in whole or part, on a petition, or on affidavits, written admissions, or other written documents, shall be signed until such petition, admissions, affidavits, or other documents, have been filed in the registry.

Documents to be left with registrar on bespeaking judgment or order

4. At the time of bespeaking a judgment or order, the party bespeaking the same shall leave with the registrar his or her counsel's brief (if any) and such other documents as may be required by the registrar for the purpose of enabling him or her to draw up the same.

Registrar may require party to submit draft

5. The registrar may require the party bespeaking a judgment or order to prepare a draft of the same and leave the same in the registry for the registrar's use and assistance, and may accept the draft so prepared and left as the registrar's own draft of the judgment or order, which such alterations (if any) as the registrar may think fit.

Time for bespeaking judgment or order

6. Every judgment or order shall be bespoken, and the requisite documents mentioned in rule 5 but one shall be left with the registrar, within 7 days after the judgment or order is finally given or made by the Court or Judge.

Where judgment or order not bespoken

7. If any judgment or order is not bespoken, and the requisite documents are not left with the registrar within the time prescribed by rule 6, the registrar may decline to draw up the judgment or order without the direction of the Court or a Judge.

Appointment for settling judgment or order

8. At the time of delivering out the draft of a judgment or order which, in the opinion of the registrar, ought to be settled in the presence of the parties, the registrar shall deliver out to the party on whose application the draft has been prepared an appointment in writing of a time for settling the same.

Notice of appointment to be served on opposite party

9. A notice of the appointment shall be served on the opposite party 1 clear day at least before the time thereby appointed for settling the draft, and the party serving the notice and the party so served shall attend the appointment, and produce to the registrar counsel's briefs (if any) and such other documents as may be necessary to enable the registrar to settle the draft.

Service of notice of appointment

10. Service of the notice of appointment shall be effected by leaving it at the place for service of the party to be served, or by transmitting it by post to such party at such place for service.

Proof of service

11. At the time appointed for settling the draft the registrar shall satisfy himself or herself in such manner as the registrar may think fit that service of the notice of appointment has been duly effected, and for that purpose may require evidence on oath.

Appointment for passing judgment or order

12. When the draft has been settled by the registrar, the registrar shall name a time in the presence of the several parties, or else deliver out an appointment in writing of a time for passing the judgment or order; and in the latter case notice of the appointment shall be served by the party to whom the appointment is delivered on the opposite party, and the service shall be proved, in the manner prescribed by rules 10 and 11 with reference to an appointment to settle the draft of a judgment or order.

Default in attending appointment with documents

13.(1) If any party fails to attend the registrar's appointment for settling the draft of a judgment or order, or for passing a judgment or order, or fails to produce his or her counsel's briefs and such other documents as the registrar may require to enable the registrar to settle such draft, or to pass such judgment or order, the registrar may proceed to settle the draft, or to pass the judgment or order, in his or her absence, and the registrar shall be at liberty to dispense with the production of counsel's briefs, and to act upon such evidence as the registrar may think fit of the actual appearance by counsel of the party failing to attend, or with the production of such documents or papers as aforesaid, or may require the matter to be mentioned to the Court or Judge.

(2) When such matter has been so mentioned as required by the registrar the Court or Judge may direct such party or the solicitor for the party so failing to attend before the registrar or to produce such documents or papers as aforesaid (unless a satisfactory explanation of such failure be forthcoming) to pay all or any part of the costs of drawing up and entering the judgment or order as the Court or Judge shall think fit.

Adjournment of appointments

14. The registrar may adjourn any appointment for settling the draft of a judgment or order, or for passing a judgment or order, to such time as the registrar may think fit, and the parties who attended the appointment shall be bound to attend such adjournment without further notice.

Settling and passing judgment or order without any appointment

15.(1) Notwithstanding rules 1 to 14, the registrar may, in any case in which the registrar may think it expedient so to do, settle and pass any judgment or order, without making any appointment for either purpose and without notice to any party.

(2) A judgment or order when settled and passed shall be engrossed by the party having the carriage of the judgment or order.

(3) A judgment or order shall be marked to show by whom it was made.

Judgments and orders to be drawn up within 14 days

15A.(1) Every judgment or order shall unless otherwise ordered be drawn up and entered within 14 days from the date thereof, and if any judgment or order shall not have been drawn up and entered within the time aforesaid the registrar responsible for the drawing up of such order may report to the Judge in writing as to the reason why the provisions of this rule have not been complied with and whether in the registrar's opinion any and which of the parties or their solicitors are responsible for the delay, and thereupon the Judge may direct such parties or solicitors to attend before the Judge and may unless a satisfactory explanation be forthcoming make such order for the payment of all or any part of the costs of drawing up and entering the judgment or order as the Judge shall think fit.

(2) The Judge may also direct that as against any party responsible for such delay the time for appealing from such judgment or order shall run as from the date when the same ought to have been drawn up and entered in accordance with this rule.

Judgments and orders to be filed—duplicates

16.(1) Every judgment and order shall be filed in the registry.

(1A) An entry of the filing shall be made in special books to be kept for that purpose.

(1B) All judgments and orders given and made in any year shall be numbered consecutively in the order in which they are filed.

(1C) Every judgment and order so filed shall be deemed to be duly entered, and the date of such filing shall be deemed the date of entry.

(1D) Orders which are not required to be formally drawn up before being acted upon need not be entered, unless it becomes necessary to serve the order for any purpose.

(2) A certified duplicate of every judgment or order shall, 1 clear day after the same has been filed, or in urgent cases sooner if so directed by the registrar, be supplied by the registrar without fee to the party having the carriage of the judgment or order; and whenever any rule or order or the practice of the Court requires the production or service of a judgment or order, it shall be sufficient to produce or serve the duplicate.

(3) In the case of printed orders a printed copy shall be marked as a duplicate and duly examined before sealing the same.

(3A) In the case of written orders the duplicate shall be written without abbreviations, and carefully examined, and the examination thereof certified in such manner as the registrar may direct; and no duplicate shall be sealed unless such examination has been so certified.

(3B) Every duplicate shall be sealed before being issued, and there shall be noted thereon the number of the judgment or order, the date of entry, and the amount of the fee paid on the original judgment or order.

(4) A further duplicate may at any time, with the sanction of the registrar and on payment of the prescribed fee, be issued on production of the duplicate first issued, or on the registrar being satisfied of the loss of that duplicate, and that the person applying is properly entitled to it.

(5) A judgment or order shall not be amended except upon production of the duplicate or duplicates, or the duplicate last issued, as the case may be, which shall, after the original order has been amended, be also amended in

accordance therewith, under the direction of the registrar, and the amendment in the duplicate shall be sealed under the like direction.

Certificate for special allowance

17. The registrar shall if requested to do so by any party at the time of any attendance before the registrar for the purpose of settling the draft of a judgment or order, or of passing a judgment or order, certify, for the information of the taxing officer, whether in the registrar's opinion any special allowance ought to be made on taxation of costs in respect of such attendance, or in respect of the preparation of the draft by any party whom the registrar has requested to prepare the same, on the ground that the judgment or order is of a special nature or of unusual length or difficulty.

Orders for payment into or out of court

18. Orders for the payment or transfer of money or securities into court or out of court shall be drawn up in conformity with the regulations made by the Governor in Council under the provisions of the *Supreme Court Funds Act 1895*.

ORDER 89—THE SHERIFF AND OTHER OFFICERS CHARGED WITH SERVICE AND EXECUTION OF PROCESS

Process to be returned

1. The sheriff, and every other officer charged with the execution of process, shall return the process into court if required by the party by whom it is sued out.

Mode of making returns

2. The return shall be made by filing the original process in the registry, with a certificate endorsed thereon or annexed thereto, and signed by the

sheriff or the sheriff's deputy, or such other officer as aforesaid, and setting forth what has been done under the process.

Return of non est inventus

3. When a writ of summons or other process is delivered to the sheriff or other officer specially appointed in that behalf for service upon any person, and the sheriff or officer is unable to find the person to be served, the sheriff or officer shall, if so required by the party by whom the process was delivered to the party, return the process into court in the same manner as in the case of process of execution, with a certificate setting forth such inability.

Attendance of sheriff in court

4. The sheriff or the sheriff's deputy shall if required by the Court or a Judge attend the sittings of the Court of Appeal, and all sittings of the Court in its criminal jurisdiction, and all sittings of the Court for the trial of causes, and shall also attend any Judge of the Court when sitting in court on any occasion when the sheriff or officer is required by the Judge to do so.

Process in admiralty actions to be executed by marshal

5. The marshal shall execute, personally or by the marshal's officers, all instruments issued from the Court which are addressed to the marshal, and shall make returns thereof in the same manner as the sheriff.

Or the marshal's officers

6. Whenever, by reason of distance or any other sufficient cause, the marshal cannot conveniently execute any instrument in person, the marshal shall employ some fit person as his or her officer to execute the same.

To be left with marshal with written instructions

7. Every instrument to be served or executed by the marshal shall be left with the marshal by the party at whose instance it is issued, with written instructions for the service or execution thereof.

Verification of service or execution

8.(1) The service or execution of any instrument by the marshal shall be sufficiently proved by the marshal's return, which shall state by whom the warrant has been served or executed, and the date and mode of service or execution, and shall be signed by the marshal.

(2) When any instrument issued in an admiralty action is served by any other person, the service shall be proved by affidavit.

ORDER 90—TIME

Exclusion of Sundays and court holidays

1. When any limited time less than 6 days from or after any date or event is appointed or allowed for doing any action or taking any proceeding Saturdays, Sundays and court holidays shall not be reckoned in the computation of such limited time.

Time expiring on close day

2. When the time for doing any act or taking any proceeding expires on a Saturday, Sunday or court holiday, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the next day which is not a Saturday, Sunday or court holiday.

No delivery of pleadings in vacation

3. Pleadings shall not be delivered or amended in vacation except with the leave of the Court or a Judge or with the consent of all the parties to the action.

Vacation not to be reckoned in time for delivery etc. of pleadings

4. The time of the vacations shall not be reckoned in the computation of the times appointed or allowed by these rules for filing, amending, or delivering any pleading, unless so directed by the Court or a Judge or unless the parties have so agreed in writing.

Time for giving security for costs, when not to be reckoned

5. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of the time allowed for pleading, answering interrogatories, or taking any other proceeding in the cause.

Power of Court or Judge to enlarge or abridge time

6. The Court or a Judge may enlarge or abridge the time for doing any act or taking any proceeding allowed or limited by these rules, or allowed or limited for the like purpose by any order of the Court or a Judge, whether so allowed by way of enlargement or otherwise, upon such terms (if any) as the justice of the case may require; and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time originally allowed or limited.

Appointment of early day for trial in admiralty actions

7. In admiralty actions either party may, at any stage of the proceedings, apply to the Court or a Judge for an order that the trial shall take place on an early day to be appointed by the Court or Judge; and on such application the Court or Judge may appoint that the trial shall take place on any day or within any time which the Court or Judge may think fit; and for such purpose may dispense with giving notice of trial, or may abridge the time or times appointed by these rules for giving notice of trial or for the delivery of pleadings, or for doing any other act or taking any other proceeding in the action, upon such terms (if any) as may be just.

Time of day for service

8.(1) Service of pleadings, notices, summonses, orders, rules, and other proceedings, shall be effected before 4 p.m.

(2) Service effected after 4 p.m. on any day shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day.

Notice after delay of 1 year

9.(1) When no proceeding has been taken in a cause for 1 whole year from the time when the last proceeding was taken, any party who desires to proceed shall, before taking any step in the cause, give a month's notice to every other party of his or her intention to proceed.

(2) When 3 years have elapsed from the time when the last proceeding was taken, no fresh proceeding shall be taken without the order of the Court or a Judge, which may be made either ex parte or upon notice.

(3) A summons on which no order has been made shall not be deemed a proceeding within this rule; but notice of trial, although avoided by non-entry or countermanded, shall be deemed such a proceeding.

Time for application to set aside award

10. An application to set aside an award may be made at any time not later than the fourth day of the sittings of the Court of Appeal held next after such award has been made and published to the parties.

Duration of caveat in admiralty actions

11. In admiralty actions a caveat, whether against the issue of a warrant, the release of property, or the payment of money out of court, shall not remain in force for more than 6 months from the date thereof.

Time for service in admiralty actions

12. In admiralty actions every instrument requiring to be served shall be served within 12 months from the date on which it bears date; otherwise the service shall be of no effect.

ORDER 91—COSTS

1. Costs in general

Costs to be in the discretion of the Court

1.(1) Subject to the provisions of the *Judicature Act 1876* and these rules, the costs of and incident to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or Judge.

(2) However, nothing herein contained shall 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 or she would be entitled according to the rules heretofore acted upon in courts of equity.

(3) In addition, subject to rule 2, when any cause, matter, or issue is tried with a jury, the costs shall follow the event, unless the Judge by whom such cause, matter, or issue is tried, or the Court, shall for good cause otherwise order.

Limitation of costs

2.(1) If the plaintiff in an action to recover a debt or damages commenced in the Supreme Court recovers £10 ($20) or more but less than the sum of £50 ($100), and the action was one that might have been brought in a Magistrates Court, the plaintiff shall not be entitled to any greater costs than the plaintiff would have recovered if the action had been brought in such Magistrates Court unless the Court or Judge so orders.

(2) If the plaintiff in an action to recover debt or damages commenced in the Supreme Court recovers less than £10 ($20), the plaintiff shall not be entitled to any costs, unless the Court or Judge so orders.

(3) Subject to subrules (1) and (2), where the plaintiff in an action to recover a debt or damages brought in the Supreme Court recovers an amount which the plaintiff could have sued for and recovered by action in a District Court and the action was one which otherwise might have been brought in a District Court, the Court or a Judge may when awarding costs

order in its, his or her discretion that the plaintiff shall not be entitled to any greater costs than the plaintiff would have recovered if the action had been brought in such District Court.

Costs of issues to follow event

3.(1) When several issues, whether of fact or law, are raised upon a claim or counterclaim, the costs of the several issues respectively, both in law and fact, shall, unless otherwise ordered, follow the event.

(2) A judgment or order giving a party costs except so far as they have been occasioned or incurred by or relate to some particular issue or part of the proceedings shall be construed as excepting only the amount by which the costs have been increased by such issue or proceedings.

(3) The Court or Judge, when the whole costs of a cause or of any issue or proceeding are not intended to be given to a party, may, when practicable, direct taxation of the whole costs and award such proportion thereof as the Court or Judge may think fit.

Costs of cause removed from inferior court

4. If a cause is removed from an inferior court which had jurisdiction in the cause, the costs in the Court below shall be costs in the cause.

Costs of solicitor guardian ad litem

5. When a solicitor acts as the guardian *ad litem* of an infant, or is appointed to be guardian *ad litem* of a mentally ill person, in any cause or matter, the Court or a Judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties, or some one or more of the parties, to the cause or matter or out of any fund in court in which the infant or mentally ill person is interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require.

Costs out of estate

6. The costs occasioned by an unsuccessful claim or unsuccessful

resistance to any claim to any property shall not be paid out of the estate unless the Court or a Judge so orders.

Costs as regards particular shares

7. The costs of inquiries to ascertain the person entitled to any legacy, money, or share, or otherwise incurred in relation thereto, shall be paid out of such legacy, money, or share, unless the Court or a Judge otherwise orders.

Distribution not to be delayed by difficulties as to some shares

8. When some of the persons entitled to a distributive share of a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the persons entitled to the other shares, the Court or a Judge may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to answer the subsequent costs of ascertaining the persons entitled to the other shares; and in any such case such orders may be made for the ascertainment and payment of the costs incurred down to and including such payment as the Court or Judge may think just.

Costs of excessive claims in admiralty action

9. In an admiralty action a party claiming an excessive amount, either by way of claim or of set-off or counterclaim, may be ordered to pay all costs and damages occasioned by the excess.

Tender improperly rejected in admiralty action

10. In an admiralty action, if a tender is rejected, but is afterwards accepted, or is held by the Court to be sufficient, the party rejecting the tender shall, unless the Court otherwise orders, pay all the costs incurred after the tender is made.

Set-off of damages and of costs in same cause or matter

11. When in any cause or matter any sum of money is ordered to be paid

by one party to another, whether for debt, damages, or costs, and in the same cause or matter the party to whom such sum is to be paid is ordered to pay any sum, whether for debt, damages, or costs, to the party by whom the firstmentioned sum is to be paid, 1 of such sums shall be set off against the other without any order for that purpose, and the balance (if any) shall be payable by the party by whom the larger sum is ordered to be paid, and to the other party.

Set-off in different causes or matters

12. Money recovered by 1 party against another party in any cause or matter shall not be set-off against money recovered by the latter party against the former in another cause or matter, except subject to the liens of their respective solicitors upon the sum so recovered, but may be set-off subject to such liens.

Costs of incidental applications

13. Unless the Court or a Judge otherwise orders, the costs of a motion or application in a cause shall be deemed to be part of the costs of the cause of the party in whose favour the motion or application is determined, unless the motion or application is unopposed, in which case the costs of both parties shall be deemed to be part of their costs of the cause, unless the Court or a Judge otherwise orders.

Costs of motion not disposed of

14. When a motion or application or other proceeding is ordered to stand over to the trial, and no order is made at the trial as to the costs of such motion, application, or proceeding, the costs of both parties of such motion, application, or proceeding shall be deemed to be part of their costs of the cause.

Costs reserved

15. When the costs of any motion or application or other proceeding in a cause or matter are reserved by the Court or Judge, no costs of such

motion, application, or proceeding shall be allowed to either party without the order of the Court or Judge.

Costs when further proceedings become unnecessary

16. When for any reason the further prosecution of any cause or matter becomes unnecessary except for the purpose of determining by whom the costs of the cause or matter should be paid, any party may apply to the Court or a Judge to determine such question, and thereupon the Court or Judge may make such order as may be just.

Costs of unnecessarily expensive proceedings

17. When a party takes proceedings of an unnecessarily expensive character, the Court may order the costs incurred by such proceedings, so far as they are in excess of the costs which would have been incurred by proceedings of a less expensive character, to be borne and paid by the party by whom the proceedings are taken, although the party is otherwise entitled to the costs of the cause or matter.

3. Scale of costs

Costs in general

29. The fees payable to solicitors in respect of business transacted by them in the Court, or the offices thereof, shall be as prescribed by this order, and save as hereinafter provided, no other fees shall be charged, either as between party and party, or as between solicitor and client, in respect of such business as aforesaid.

Costs to be in general allowed on schedule 2

30. In causes and matters commenced after these rules come into operation, solicitors shall be entitled to charge, and shall be allowed the fees set forth in schedule 2, in all causes and matters, and no higher fees shall be allowed in any case, except as by this order otherwise provided.

Costs in small admiralty cases

31.(1) When the sum in dispute in an admiralty action does not exceed £50 ($100), or the value of the res does not exceed £100 ($200), $^1/_2$ only of the ordinary costs on the scale shall be allowed.

(2) When costs are awarded to a plaintiff, the expression **"sum in dispute"** means the sum recovered by the plaintiff in addition to the sum (if any) counterclaimed from the plaintiff by the defendant; and, when costs are awarded to a defendant, it means the sum claimed from the plaintiff, in addition to the sum (if any) recovered by the defendant.

Half-costs in admiralty action

32. The Judge may, in any admiralty action, order that half-costs only shall be allowed.

Costs as between solicitor and client

35.(1) The Court or a Judge may, in any case in which costs are ordered to be paid to any party out of an estate or fund, direct that the costs shall be allowed and taxed as between solicitor and client, and the costs shall be allowed and taxed accordingly.

(2) In the absence of any such direction, costs so ordered to be paid shall be taxed as between party and party.

4. Taxation of costs

Trustee's costs

36. An executor, administrator, or trustee, shall not be allowed in his or her accounts any sum paid by the executor, administrator or trustee to his or her solicitor for costs unless and until the same have been duly taxed as between solicitor and client, or unless the registrar is satisfied that the same or some part thereof ought to be allowed without formal taxation.

Receiver's costs

37. The costs of a receiver appointed in any cause or matter may be taxed by the taxing officer on the application of the receiver, or of any party to such cause or matter.

Costs on an award

38. Costs may be taxed on an award, notwithstanding that the time for setting aside the award has not elapsed.

Reference to taxing officer

39.(1) Every reference for the taxation of costs shall be made to the taxing officer, who shall appoint a time for taxation on the application of the party claiming the taxation.

(2) No warrant to tax or other warrant shall be necessary.

Filing bill of costs

40.(1) An application to the taxing officer for costs to be taxed must be made by—

(a) delivering the bill of costs to the taxing officer for an appointment date for directions; and

(b) filing the bill of costs.

(2) The bill of costs must be prepared in accordance with rule 47.

(3) There must be endorsed on the back of the bill of costs a notice for an appointment for direction in schedule 1, form 512.

(4) The taxing officer may direct the party filing the bill of costs to lodge with the taxing officer, before the date appointed for directions, any documents in the party's possession, custody or power that may be of assistance to the taxing officer on the appointment for directions or on the taxation.

Service

40A.(1) Unless the taxing officer otherwise directs, the bill of costs must be served not less than 14 days before the date for hearing given in the notice of appointment for directions.

(2) Subject to subrule (3), the taxing officer must not tax costs unless the bill of costs has been served on all persons having an interest in the taxation or on the solicitor acting for any interested person.

(3) Service of the bill of costs on a person who has not appeared in person or by a solicitor or next friend is not necessary.

Appointment for directions

41. On the date appointed for directions, the taxing officer may give directions with respect to—

(a) the persons to be served with the bill of costs; and

(b) the persons who should attend or be represented on the taxation; and

(c) the content or service of any notice of objection; and

(d) the date and time of taxation of the bill of costs; and

(e) any other matter the taxing officer considers relevant to, or would assist the taxing officer on, the taxation.

Objections to bill of costs

41A.(1) A person on whom a bill of costs is served may, by notice, object to any item in the bill of costs.

(2) A person who intends to object must, in the notice of objection—

(a) list each item in the bill of costs to which the person objects; and

(b) state specifically and concisely the grounds and reasons for the objection to each item.

(3) The notice of objection must be filed and served on any other person entitled to be heard on the taxation at least 2 clear days before the date given by the taxation officer in the notice of appointment for directions.

(4) If—

(a) no objection is made to a bill of costs; or

(b) either party fails to attend before the taxing officer;

the taxing officer may—

(c) allow or disallow the amount of the costs in the bill of costs in whole or in part; or

(d) take such action regarding the taxation as the taxing officer considers appropriate.

Date of entering of order to be certified

42. The officer by whom any order directing a taxation of costs, not being an order merely directing payment of costs by one party to another, is drawn up, shall certify upon the order the date on which it was entered.

Copy of order and statement of names etc. of parties to be left at taxing office

43.(1) The party having the carriage of any such order, or the party's solicitor, shall, within 7 days, or such further time as the taxing officer may allow for reasons to be certified by the taxing officer, after the order was entered, leave at the office of the taxing officer a copy of the order, having annexed to it a statement containing the names and addresses of the parties appearing in person, and of the solicitors of the parties not appearing in person.

(2) No costs of drawing and copying the bill nor of attending the taxation, shall be allowed to a solicitor failing to comply with this order.

Notice of time for leaving bills of costs to be given by taxing master

44. On the copy of the order being left with the taxing officer, the taxing officer shall forthwith send by post to the parties appearing in person, and to the solicitors of the parties not appearing in person, a notice fixing a date before which the bill, the taxation whereof is directed by the order, shall be left for taxation, with all necessary papers and vouchers, and a subsequent date on which the taxation shall be proceeded with.

Notice of adjournment of taxation

45.(1) Every taxation shall if possible be continued without interruption till completed.

(2) When a taxation is adjourned for any reason, notice of the adjournment shall be sent by the taxing officer by post to any solicitor not present at the time of the adjournment, whose attendance the taxing officer may desire at the next appointment.

Forms of bills of costs

47.(1) Bills of costs are to be prepared with 6 separate columns, as follows—

(a) the first or left-hand column for dates, specifying years, months, and days;

(b) the second for consecutive numbers of the items;

(c) the third for the particulars of the services charged for;

(d) the fourth for disbursements, ruled for dollars and cents;

(e) the fifth for the professional charges, similarly ruled;

(f) the sixth for the taxing officer's deductions, similarly ruled.

(2) Every money column shall be cast up before the bill is left for taxation.

(3) Bills of costs as between solicitor and client shall be prepared, and the items therein set out, as nearly as possible in the same manner as if the bill were one between party and party.

Amendment of bill

48. No addition or alteration shall be made in a bill of costs after it is lodged for taxation, except by permission or direction of the taxing officer; and, if any such addition or alteration is allowed on taxation of a bill of costs between a solicitor and his or her client, such addition or alteration shall not be taken into consideration in determining whether the bill has or has not been reduced by a sixth part.

Bill not to be marked except by taxing officer

49. No entry, initialling, or marking in a bill of costs submitted for taxation shall be made except by the taxing officer personally, nor shall any erasure be allowed to be made therein.

Books etc. to be transmitted by registrar to taxing officer

50. When, upon the taxation of any bill of costs, it appears to the taxing officer that for the purpose of duly taxing the same it is necessary to inspect any books, papers, or documents, relating to the cause or matter in the registry, the taxing officer may request the registrar to cause the same to be transmitted to the taxing officer, and may also request the registrar to certify any proceedings in the registry which may be comprised in the bill of costs under taxation, and in such cases the registrar shall direct such books, papers, and documents, to be transmitted to the taxing officer for the taxing officer's use during the taxation, and shall certify the proceedings which have taken place in the registry according to the request of the taxing officer; and after the costs in respect of which such request was made have been certified, the taxing officer shall cause all such books, papers, and documents, which have been so transmitted to the taxing officer, to be returned to the registry.

Costs of counsel settling drafts already settled by counsel appointed by the Court

51. When in pursuance of any direction of the Court or a Judge, the draft of any deed or other instrument is settled by counsel nominated by the Court or Judge for that purpose, the expense of procuring such draft to be previously or subsequently settled by other counsel on behalf of the same parties on whose behalf such draft is settled by the counsel so nominated, shall not be allowed on taxation, either as between party and party or as between solicitor and client, unless the Court or a Judge so directs.

Gross sum for costs—proportional part of costs

52. In any case where the Court or a Judge awards costs to a party, the Court or Judge may direct taxation of the whole costs of such party in respect of the matter and payment by the other party of a proportion thereof

only, or may direct payment of a fixed sum, to be named by the Court or Judge, in lieu of taxed costs.

Costs where such application heard in Court

53. When a Judge directs that any matter commenced by summons shall be adjourned into Court, the same fees shall, unless the Judge otherwise orders, be payable and the same costs shall be allowed in respect of proceedings subsequent to the adjournment as would have been payable if the matter had been begun in Court.

5. Directions as to taxation

Application of rules

54. Rules 55 to 121 shall apply to all proceedings and all taxations in the Court.

Allowances for pleadings etc. in discretion of taxing officer

55.(1) The taxing officer may, in lieu of the allowances for instructions, and for preparing or drawing writs of summons requiring special endorsement, or special cases, pleadings, or affidavits in answer to interrogatories, affidavits of documents, or other special affidavits, or admissions of facts under order 36, rule 2, and for attendances in respect thereof, make such allowance for work, labour, and expenses, in or about the preparation of such documents as in the taxing officer's discretion the taxing officer may think proper.

(2) In this rule—

"special affidavit" includes any affidavit requiring special or unusual care either in its preparation or consideration.

Drawing pleadings

56. The fees allowed for drawing any pleading or other document shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

Instructions to sue or defend etc.

57. If in any case the taxing officer, on special grounds, considers the fee provided in either scale for instructions to sue or defend, or the preparation of briefs, inadequate, the taxing officer may make such further allowance as the taxing officer in his or her discretion may consider reasonable.

Swearing affidavits

58. When there are several deponents to be sworn to an affidavit, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his or her discretion may think fit.

Drawing affidavits and attending deponent

59. The allowances for instructions and drawing affidavits in answer to interrogatories and other special affidavits, and for attending the deponent to be sworn, include all attendances on the deponent to settle and read over the affidavit.

Delivery of pleadings etc.

60. Fees for delivery of pleadings, services, and notices, are not to be allowed when the same solicitor acts for both parties, unless it is necessary for the purpose of making an affidavit of service.

Perusals

61. Fees for perusals shall not be allowed when the same solicitor acts for both parties.

Separate proceedings by the same solicitor

62. When the same solicitor is employed for 2 or more defendants, and separate pleadings are delivered or other proceedings had by or for such 2 or more defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party or between solicitor and client, whether such separate pleadings or other

proceedings were necessary or proper, and if the taxing officer is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

Costs of joint trustees not joining in defence

63. In taxing the costs as between party and party of joint executors or trustees who defend separately, the taxing officer shall, unless otherwise ordered by the Court or a Judge, allow 1 set of costs only for such defendants, which shall be apportioned among them as the taxing officer may deem just.

Evidence

64. Such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

Agency correspondence

65. In country agency causes and matters, if it is shown to the satisfaction of the taxing officer that the agency correspondence has been special and extensive, the taxing officer may make such special allowance in respect thereof as in his or her discretion the taxing officer may think proper.

Drawing and settling judgments or orders

66. In the cases provided for by order 88, rule 5, the taxing officer may make such allowances in respect of the preparation of the draft of the judgment or order by the solicitor, or for the attendance of the solicitor on settling the draft, as the taxing officer may consider reasonable.

Special allowance for attendances at chambers in cases of difficulty etc.

67. When, from the length of an attendance in chambers or in the registry, or from the difficulty of the case, the Judge thinks the fees

specified in schedule 2 an insufficient remuneration for the services performed, or when the preparation of the cause or matter in order to lay it before the Judge in chambers or registrar, on a summons or otherwise, has required skill and labour for which no fee has been allowed, the Judge may allow such fee, in lieu of the fees specified, as in his or her discretion the Judge may think fit.

Non-attendance or neglect of parties on proceedings in chambers or in registry

68. When by reason of the non-attendance of any party at the Judge's chambers or in the registry, or when by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the Judge may order such an amount of costs (if any) as the Judge may think reasonable to be paid to the party attending by the party so absent or neglectful; and the party so absent or neglectful shall not be allowed any fee as against any other party, or against any estate or fund in which any other party is interested.

Inspection of documents under O 35, r 14

69. No allowance shall be made for any notice or inspection of documents under order 35, rule 14, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection.

Copies of documents, allowance of 1s 6d (15c) per folio, except where solicitor refuses production

70. The party entitled to have a copy of a document in the possession of another party, or an extract therefrom, under these rules, or under any special order, shall pay to the solicitor of the party producing the document for such copy or extract as the party may, by writing, require, at the rate of 1s 6d (15c) per folio; and, if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract shall be at liberty to make it, and the solicitor for the party producing it shall not be entitled to any fee in respect thereof.

Tender for respondent's costs on service of petition

71.(1) When a petition in a cause or matter is served, and notice is given to the party served that in case of the party's appearance upon the hearing of the petition, the party's costs will be objected to, accompanied by a tender of costs for perusing the same, the amount to be tendered shall be £2 2s ($4.20).

(2) The party making such payment shall be allowed the same in the party's costs, if the service was proper, but not otherwise.

(3) This rule is without prejudice to the right of either party to receive costs, or to object to costs, when no such tender is made, or when the Court or Judge thinks the party entitled, notwithstanding such notice or tender, to appear on the hearing.

(4) In any other case in which a solicitor of a party served necessarily or properly peruses any such petition, without appearing on the hearing, a fee not exceeding the amount aforesaid shall be allowed.

Disallowance of costs of improper, vexatious, or unnecessary matter in documents or proceedings

72.(1) The Court or Judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in court or chambers or in the registry, and whether objection is made or not, direct the costs of any endorsement on a writ of summons, or any pleading, summons, affidavit, evidence, notice requiring a statement of claim, notice to produce or admit, or to cross-examine witnesses, or any account, statement, discovery by interrogatories or order, application for time, bill of costs, service of notice of motion or summons, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or is occasioned by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as the taxing officer shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or to have been occasioned by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned by the proceeding to the other parties.

(2) In any case in which such question has not been raised before, and

dealt with by, the Court or Judge, it shall be the duty of the taxing officer to look into the matter, for the purpose aforesaid, notwithstanding, in the case of evidence, that the same is entered as read in any judgment or order, and thereupon the same consequences shall ensue as if the taxing officer had been specially directed to do so.

Set-off of costs

73. In any case in which, under rule 72, or any other rule of court, or by the order or direction of the Court or a Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs which such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if the taxing officer thinks fit, delay the allowance of the costs which such party is entitled to receive until the party has paid or tendered the costs which the party is liable to pay; or the taxing officer may allow or certify the costs to be paid, and may direct payment thereof; and thereupon an order for payment shall be drawn up and signed by the registrar, and the costs may be recovered by the party entitled thereto in the same manner as costs ordered to be paid by a Judge's order may be recovered.

Notes of order as to costs of prolixity

74. When any question as to any costs is dealt with by a Judge in chambers, the associate shall make a note thereof, for the information of the taxing officer.

Unnecessary appearance in court or at chambers

75. When any party appears upon any application or proceeding in court or chambers, in which the party is not interested, or upon which, according to the practice of the Court, the party ought not to attend, the party shall not be allowed any costs of such appearance, unless the Court or Judge expressly directs such costs to be allowed.

Costs of applications to extend time

76.(1) The costs of applications to extend the time for taking any

proceeding shall be in the discretion of the taxing officer, unless the Court or Judge has specially directed how the costs are to be paid or borne.

(2) The taxing officer shall not allow the costs of more than 1 extension of time, unless the taxing officer is satisfied that such extension was necessary, and could not, with due diligence have been avoided.

(3) The costs of a summons to extend time shall not be allowed, unless the party taking out such summons has previously applied to the opposite party to consent to an order for a sufficient extension, and the opposite party has not given such consent, or unless the taxing officer is of opinion that there was good reason for not making such application; and if the taxing officer does not allow the costs of such summons, and if the taxing officer is of opinion that the party applying ought to pay the costs of any other party occasioned thereby, the taxing officer may direct such payment, and may deal with such costs, in the manner provided by rule 73.

Powers of taxing officer

77. The taxing officer shall, for the purpose of any proceeding before the taxing officer, have power and authority to summon and examine witnesses, and to administer oaths, and to require the production of books, papers, and documents by any person, and for that purpose to direct subpoenas to be issued, and to make separate certificates or allocaturs, and to require any party to be represented by a separate solicitor, and to do such other acts and adopt such proceedings as may be directed by these rules, or by the Court or a Judge.

Costs of taxation

77A.(1) Costs to be taxed under these rules must include the costs of taxation.

(2) Costs to be taxed under a judgment or order must, unless otherwise provided, include the costs of taxation.

(3) If an offer to settle under rule 89 is made and is not accepted—

(a) if the amount allowed by the taxing officer before determination of the costs of taxation is equal to, or more than, the amount of the offer—the party liable for the costs must pay the costs of

taxation; or

(b) if the amount allowed by the taxing officer before determination of the costs of taxation is less than the amount of the offer—the party entitled to the costs must pay the costs of taxation;

unless the taxing officer is satisfied that another order is proper in the circumstances.

(4) Subject to this rule and to any order of the Court or a Judge, the taxing officer may make orders with respect to the costs of taxation, including the costs of the appointment for directions.

(5) In determining the costs of taxation, the taxing officer must take into consideration—

(a) whether the taxation has been affected by the neglect or delay of any person attending on the taxation; and

(b) whether any person has been put to unnecessary or improper expense by any other person attending on the taxation; and

(c) whether, before the case and taxation are of special difficulty and importance and involve questions of principle, it was necessary or proper for counsel to appear on the taxation; and

(d) all other relevant circumstances.

(6) The taxing officer may disallow the costs of attendance on a taxation of any person whose attendance is unnecessary.

Taxing officer to assist when account comprises costs

78. When an account consists in part of costs which have not been required to be taxed by an order of the Court or a Judge, or are not required to be taxed by these rules, the Court or a Judge may direct, or the registrar may request, the taxing officer to assist in settling such costs, and the taxing officer, on receiving such direction or request, shall proceed to tax such costs and shall have the same powers, and the same fees shall be payable in respect thereof, as if the same had been referred to the taxing officer by an order; and the taxing officer shall certify the result of the taxation in the same manner.

Attendance of parties on taxation

79. The taxing officer may arrange and direct what parties are to attend before the taxing officer on the taxation of costs to be borne by an estate or fund, and may disallow the costs of any party whose attendance the taxing officer may in his or her discretion consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or adequately protected by other parties interested, or for other sufficient reason.

Refusal or neglect to procure taxation

80. When 1 of several parties entitled to costs refuses or neglects to bring in his or her costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer may proceed to tax the costs of the other parties, and may certify such refusal or neglect, and the other parties may, by leave of the Court or a Judge, proceed as if the costs of the party so refusing or neglecting had been allowed at a nominal or other sum, so as to prevent any other party from being prejudiced by such refusal or neglect.

Costs between party and party

81. Costs which do not appear to the taxing officer to have been necessary or proper for the attainment of justice, or for maintaining or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party, shall not be allowed to any party, to be paid or borne by another party.

Costs as between solicitor and client

82.(1) On the taxation of costs as between solicitor and client, costs which do not appear to the taxing officer to have been necessarily or properly incurred by the solicitor for the attainment of justice or protecting the rights of the party, or which appear to have been incurred improvidently, or through over caution, negligence, or mistake, on the part of the solicitor, shall not be allowed.

(2) On the taxation as between solicitor and client of costs of proceedings

in court, the taxing officer may allow reasonable charges for work or outlay properly done or made, notwithstanding that such charges are not recoverable from any other party, or have been disallowed in taxation in whole or part as between party and party, unless, in any case, the taxing officer is of opinion that the consent of the client ought to have been obtained before the charge was incurred, in which case no allowance shall be made in respect thereof unless it is shown to his or her satisfaction that the charge was incurred with the consent or with the subsequent approval of the client.

(3) The taxing officer's allowance or disallowance, in whole or in part, of any costs taxed under this rule shall be subject to review, as in other cases.

(4) If, during the taxation of a bill of costs, or the taking of an account, between solicitor and client, it appears to the taxing officer that there must in any event be moneys due from the solicitor to the client, the taxing officer may from time to time make an interim certificate as to the amount so payable by the solicitor.

(5) Upon the filing of such certificate the Court or a Judge may order the moneys so certified to be forthwith paid to the client or brought into court.

General power of allowance

82A. Subject to rules 81 and 82 the taxing officer shall, on every taxation, allow all such costs, charges, and expenses as shall appear to the taxing officer to have been necessary or proper for the attainment of justice or for defending the rights of the party whose costs are to be taxed.

Inclusion in bill of disbursements due but not paid

82B.(1) In taxations under or pursuant to the *Costs Act 1867* of a solicitor's bill of costs, whether on the application of the solicitor or the party to be charged with the bill or any other person, the taxing officer may allow disbursements (including counsel's fees)—

(a) which have been actually made before the delivery of the bill; or

(b) notwithstanding that they have not been made before the delivery of the bill, provided that they were made in respect of a liability properly incurred by the solicitor on behalf of the party to be

charged with the bill, and that they are described in the bill as not then made, and that they have been made before the taxation is completed.

(2) For the purposes of the computation of $^1/_6$ thereof any such bill shall be deemed to include such unpaid disbursements as part of the bill.

(3) The provisions as to the review of taxations shall apply to anything done by the taxing officer pursuant to this rule.

Solicitor trustee

83.(1) On the taxation of a bill of costs between a solicitor who is an executor or trustee and his or her beneficiary, no costs other than costs out-of-pocket shall be allowed in respect of any professional services rendered by the solicitor, either in the administration of the trust estate out of court, or in respect of a cause or matter concerning the trust estate to which the solicitor is a party, unless the solicitor is specially authorised to make such charges by the instrument creating the trust.

(2) But such solicitor may employ as his or her solicitor for the purposes of the trust a member of a firm of which the solicitor is himself or herself a partner; and a partner so employed may be allowed the usual professional charges, provided that the solicitor trustee does not participate in the profits, and that a certificate to that effect, signed by the solicitor trustee, is produced on the taxation.

Solicitor mortgagee

84. A solicitor in whose favour, either alone or jointly with any other person, a mortgage or charge on any property is made, and any firm of solicitors of which such mortgagee solicitor is a member, shall be entitled to charge and receive for all professional business transacted by such solicitor or firm in investigating the title, and in preparing and completing the mortgage or charge, such and the same costs, charges, and remuneration, as he, she or they would be entitled to receive if such mortgage or charge had been made to a person not a solicitor, and the mortgagee had retained and employed such solicitor or firm to transact such business as his or her solicitor or solicitors; and such charges and remuneration shall be recoverable from the mortgagor or person giving the charge accordingly.

Fees not specially provided for

85. When any services are necessarily and properly performed for which no specific allowance is provided in schedule 2, but which is of the same nature as services for which allowances are provided, the taxing officer may in his or her discretion allow for such services fees similar to those specified in schedule 2 for services of like nature.

Costs of amendment of plaintiff's pleadings

86. When a plaintiff is directed to pay to a defendant the costs of the cause, the costs occasioned to the defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause, except as to any amendment which was rendered necessary by the default of such defendant; but there shall be deducted from such costs any sum which may have been already paid by the plaintiff in respect of such amendment.

Plaintiff refused costs of his or her amendments

87. When, upon the taxation of the costs of a plaintiff who has obtained a judgment with costs, the costs of any amendment of the plaintiff's pleadings are disallowed on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof shall be deducted from the costs to be paid by the defendant to the plaintiff.

Taxation when cause dismissed with costs

88. When a cause is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such costs without any order referring the same for taxation, unless the Court or a Judge otherwise directs.

Offer to settle costs

89.(1) A person liable to pay costs may serve an offer to settle on the party entitled to the costs.

(2) An offer to settle—

(a) must—

(i) be in writing; and

(ii) include a statement that it is made under this rule; and

(iii) be made in respect of the whole of that person's liability for costs; and

(b) may be served—

(i) in the case of costs not payable under a judgment or order or otherwise under these rules—at any time after the liability for costs accrues (but not less than 7 days before the day appointed for directions by the taxing officer); or

(ii) in any other case—at any time after the judgment or order for costs is made.

(3) An offer to settle—

(a) cannot be withdrawn without the leave of the Court or a Judge; and

(b) does not lapse because of rejection or failure to be accepted; and

(c) expires at the start of taxation of the bill of costs to which the offer relates.

(4) Except for the purpose of subrule (6), the making of an offer to settle must not be disclosed to the taxing officer until the costs of taxation are to be determined.

(5) The acceptance of an offer to settle must be in writing.

(6) On being satisfied that the offer to settle has been accepted, the taxing officer must certify that the costs have been fixed at the amount of the offer.

When total of costs taxed to be stated

90. When any costs are by any judgment or order directed to be taxed and to be paid out of any money or fund in court, the taxing officer shall, in the taxing officer's certificate of taxation, without any direction for that purpose in such judgment or order, state the total amount of all such costs as taxed.

Considerations by which taxing officer's discretion must be influenced

91.(1) Fees or allowances which are discretionary shall, unless otherwise provided, be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, shall take into consideration the other fees and allowances to the solicitor and counsel (if any) in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the persons, estate, or fund, by whom or by which the costs are to be borne, the general conduct and costs of the proceedings, and all other circumstances.

(2) When a party is entitled to sign judgment for costs, the taxing officer, in taxing the costs, may allow a fixed sum for the costs of the judgment.

Power to taxing officer to assess costs at a gross sum in case of delay or improper conduct of litigation

92.(1) If in any case in which a taxation is directed the costs have been increased by unnecessary delay, or by improper, vexatious, or unnecessary proceedings, or by other misconduct or negligence, or if from any other cause the amount of the costs is excessive having regard to the value of the estate, fund, or assets to which they relate, or other circumstances, the taxing officer shall allow only such an amount of costs as would have been incurred if the litigation had been properly conducted, and shall assess the same at a gross sum, and shall, if necessary, apportion the amount so allowed among the parties.

(2) The provisions as to the review of taxations shall apply to allowances and certificates under this rule.

Disallowances when bill reduced by a sixth

93. If, on the taxation of a bill of costs payable out of an estate or a fund, or out of the assets of a company in liquidation, the amount of the professional charges contained in the bill is reduced by a sixth part, no costs shall be allowed to the solicitor leaving the bill for taxation for drawing and copying it, nor for attending the taxation.

Premature delivery of briefs

94. When a cause or matter is not brought on for trial or hearing, the costs of and consequent on the preparation and delivery of briefs shall not be allowed, if the taxing officer is of opinion that such costs were prematurely incurred.

Defendant's costs, when trial comes on but action cannot be tried

95. When a cause which stands for trial is called on to be tried, but cannot be decided by reason of want of parties or other defect in the proceedings occasioned by the error or default of the plaintiff, and is therefore struck out of the paper, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although the defendant does not obtain the costs of the cause or matter.

Delivery of bill to client, when costs to be paid out of a fund

97. When in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any estate or fund, the taxing officer may require the solicitor to deliver or send to the solicitor's clients, or any of them, free of charge, a copy of such bill, or any part thereof, previously to such officer completing the taxation thereof, accompanied by any statement which the taxing officer may direct, and by a letter informing such client that the bill of costs has been referred to the taxing officer for taxation, and will be proceeded with at the time the taxing officer has appointed for this purpose, and in any such case the taxing officer may suspend the taxation for such time as the taxing officer may consider reasonable.

Proof of payment

98. Except in the case of counsel's fees, no costs shall be allowed on taxation in respect of sums payable or paid to persons other than the party whose costs are being taxed, or the party's solicitor, except upon an affidavit that such sums have been actually paid, or upon a consent order that the amount thereof shall be paid into court, to abide the order of the Court.

Power of taxing officer to limit or extend time

99.(1) The taxing officer shall have power to limit or extend the time for any proceeding before the taxing officer; and, when by any rules of court, or any order of the Court or a Judge, a time is appointed for any proceeding before or by the taxing officer, the taxing officer shall, unless the Court or Judge otherwise directs, have power from time to time to extend the time appointed, upon such terms (if any) as the justice of the case may require, and although the application for the extension is not made until after the expiration of the time appointed.

(2) It shall not be necessary to make any certificate or order for the purpose of any such extension, unless the same is required for any special purpose.

Witnesses' expenses

100.(1) The affidavit as to witnesses' expenses must state the place of abode, and the condition, quality, occupation, or rank in life, of the witnesses or intended witnesses charged for; the places at which they were subpoenaed, and the distances which they had to travel for the purpose of attending the trial; and whether, to the knowledge or belief of the deponent, they attended as witnesses in any other cause, or came upon any other business; and shall also state that they were material and necessary witnesses for the party on the trial of the cause.

(2) The affidavit shall also state the day for which notice of trial was given, the day appointed, the day or days on which the cause was tried, and the number of days during which the witnesses were necessarily absent from home for the purpose of the trial, in going, remaining, and returning.

(3) When witnesses are paid separately, it must be made to appear clearly how much has been paid to each; and if they have been paid partly by separate payments to themselves, and partly by discharging their railway or air fare or car hire, hotel bills, or the like, it should be shown how much of such joint expenses may fairly be allocated to each person.

(4) When the witnesses are numerous, the payments and other particulars above required shall be stated by way of schedule to the affidavit; the schedule shall be drawn with clearness and precision, and the affidavit must fully verify it.

(5) Every such affidavit shall be made by the solicitor or person actually making the payments, and not on information and belief.

Direction as to documents on taxation

101.(1) An index or schedule of the documents included in each brief, with the number of folios in each and the pages of the brief on which the same are respectively copied, shall be endorsed on such brief, or annexed thereto, and shall be left with the taxing officer together with each brief at the time of obtaining the appointment for the taxation.

(2) All orders, reports, and other important documents shall be produced on taxation.

(3) All drafts and other documents, the preparation whereof is charged for by the folio, shall be produced at the time of taxation, and the folios thereof shall, if required by the taxing officer, be numbered consecutively in the margin, and the number of the folios endorsed thereon in figures.

(4) The length of all documents not vouched by attested copies or other satisfactory evidence shall be certified by the solicitor, and, if such certificate is erroneous, the taxing officer may disallow the costs of the document so erroneously certified or any part thereof.

Endorsement on bill of costs

102.(1) Every bill of costs left for taxation shall be endorsed with the name and address of the solicitor by whom it is left, and also the name and address of the solicitor (if any) for whom the solicitor is agent.

(2) The name of every solicitor who is entitled or intended to participate in the costs to be so taxed shall be added.

Copies of bills of costs

103. Copies of bills of costs shall be made page for page, so as to correspond with the bill left for taxation.

Folio to be 72 words

104. A folio comprises 72 words, every figure comprised in a column, or authorised to be used, being counted as 1 word.

6. Fees to counsel and other professional persons

Retaining fees

105. On taxation as between party and party, a retaining fee shall not be allowed to more than 1 counsel.

Fees to counsel for settling pleadings, affidavits etc. and advising thereon

106. Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings, in any cause or matter as the taxing officer may in the taxing officer's discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer may in the taxing officer's discretion think proper to be settled by counsel, are to be allowed; but as to affidavits a separate fee is not to be allowed for each affidavit, but 1 fee shall be allowed for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

Fees for conferences

107. Fees for conferences with counsel shall not be allowed in any cause or matter in addition to the solicitor's and counsel's fees for drawing and settling, or perusing any pleadings, affidavits, deeds, or other proceedings or abstracts of title, or for advising thereon, unless it appears to the taxing officer that for some special reason a conference was necessary or proper.

Counsel

108. In cases in which the costs of employing 2 or more counsel may properly be allowed, such allowance may be made although neither of such counsel is one of Her Majesty's counsel.

Consultations

109. In cases in which the costs of employing 2 or more counsel may properly be allowed, the taxing officer may, in the taxing officer's discretion, allow the costs of consultations between them.

Refresher fees

110. When the trial or hearing of any cause or matter in court or chambers extends beyond the day in which it is begun, the taxing officer may allow refresher fees to counsel for every day subsequent to that on which the trial or hearing began.

Counsel in registry

111. The costs of counsel attending in the registry shall not be allowed in any case unless the Judge certifies or the taxing officer at Brisbane, Rockhampton, Townsville or Cairns considers it to be a proper case for the attendance of counsel.

Vouchers for counsel's fees

112. No fee to counsel shall be allowed on taxation unless it is vouched by his or her signature, or payment thereof is proved by affidavit.

Fees of counsel nominated by the Court, accountants etc.

114. The allowances in respect of fees to counsel nominated by the Court to settle drafts of deeds or other interests, and to any accountants, merchants, engineers, actuaries, and other scientific persons to whom any question is referred, shall be regulated by the taxing officer, subject to appeal to a Judge, whose decision shall be final.

Previous costs

115. The taxing officer, in taxing any subsequent costs in the same cause or matter, shall have regard to the preceding bills, so as to ascertain that none of the items charged were included in any previous bill.

7. Certificate and review

Allocatur

116.(1) When the taxation is concluded, the taxing officer shall state the result thereof either in the form of an allocatur written on the bill of costs or in the form of a certificate, as the case may require.

(2) Such certificate shall be prepared without interlineation or alteration, save such as the taxing officer may think it right to mark with the taxing officer's initials, and no erasure shall be allowed.

(3) The taxing officer may nevertheless make from time to time an interim allocatur or certificate, or interim allocaturs or certificates, in respect of any portion or portions of the bill of costs, without waiting for the conclusion of the taxation.

Objections to taxation—review

117.(1) Any party who is dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by the taxing officer, of the whole or any part of any items, may, at any time before the certificate or allocatur is signed, or such earlier time as may be fixed by the taxing officer, deliver to the other party interested therein, and leave with the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items or parts thereof objected to, and the grounds and reasons for such objections, and may thereupon apply to the taxing officer to review the taxation in respect of the same.

(2) The taxing officer may, pending the consideration and determination of any such objection, sign a certificate or allocatur in respect of the remainder of the bill of costs or any part thereof, and after the taxing officer's decision upon the objections shall sign such further certificate or allocatur as may be necessary.

Review of taxation by taxing officer

118.(1) Upon such application the taxing officer shall reconsider and review his or her taxation upon such objections, and the taxing officer may,

if the taxing officer thinks fit, receive further evidence in respect thereof, and, if so required by either party, the taxing officer shall state either in his or her certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of the taxing officer's decision thereon, and any special facts or circumstances relating thereto.

(2) Except as provided by this rule, the taxing officer shall not be at liberty, after the certificate or allocatur is signed, to review his or her taxation or amend his or her certificate, except to correct a clerical or manifest error before payment or process issued for recovery of the costs.

Review of taxing officer's decision by Judge

119. Any party who is dissatisfied with the certificate or allocatur of the taxing officer as to any item or part of an item which has been objected to as aforesaid, may within 14 days from the date of the certificate or allocatur, or such other time as the Court or a Judge, or the taxing officer at the time when the taxing officer signs his or her certificate or allocatur, may allow, apply to a Judge at chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as the Judge may think just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

Evidence on review

120. Unless the Judge otherwise directs, every such application shall be heard and determined by the Judge upon the evidence which was before the taxing officer, and no further evidence shall be received upon the hearing thereof without such direction.

Note about taxation of costs

121.(1) After costs have been taxed, a note about the taxation may be attached to the judgment or order in the case.

(2) If the note is attached, it must be in schedule 1, form 513.

ORDER 92—SITTINGS AND VACATIONS

Court of Appeal

1.(1) Sittings of the Court of Appeal shall be held in each year on days to be appointed for that year, and on such other days as may be specially appointed from time to time by the Judges.

(2) Any act or proceeding which by any statute or practice is required to be done or taken in or with reference to terms, shall be done or taken in or with reference to the sittings of the Court of Appeal annually appointed as aforesaid.

Sittings before single Judges

2. Sittings of the Court before a single Judge shall, if there is any business to be transacted and subject to the Judge being available to sit, be held in each year on days to be appointed for that year, and on such other days as the Judge may think fit to sit in court.

Vacations

5. There shall be 2 vacations in each year, a winter vacation of 2 weeks, beginning on a day in July or August to be appointed annually by the Judges, and a summer vacation of 6 weeks, beginning on a day in December, to be appointed annually in like manner.

Holidays

6.(1) The following days shall be observed as holidays of the Court, that is to say: New Year's Day, Good Friday, Easter Eve, Easter Monday, Christmas Day, the days following Christmas Day up to and including New Year's Eve, the birthday of the Sovereign, and such other days as may be appointed by rules of court from time to time and by the *Holidays Act 1983*.

(2) However, if in any year any day other than the actual birthday of the Sovereign is observed as a public holiday under the *Holidays Act 1983* in honour of the Sovereign then such public holiday shall be observed as a

holiday of the Court instead of the actual birthday of the Sovereign and the several offices of the Court shall be closed on such public holiday and not on the actual birthday of the Sovereign.

(3) In addition, when a day has been appointed a holiday under the *Holidays Act 1983*, all business set down to be heard in court or in chambers on that day, will, unless otherwise ordered, be taken and heard on the day next following on which the Court or a Judge in chambers sits to hear such business.

Office hours

7.(1) The several offices of the Court shall be open on every day in the year except Saturdays and Sundays and Court holidays, and shall be open from 9 a.m. until 4 p.m.

(2) However, when the time for doing any act or taking any proceeding or filing any document in or at the offices of the Court expires on a Saturday and by reason thereof the act or proceeding cannot be done or taken or the filing made on that day, the act or proceeding or filing shall, so far as regards the time of doing or taking it or making the filing, be held to be duly done or taken or made if done or taken or made on the next day on which the offices of the Court are open.

Vacation Judges

8. Any Judge may sit in vacation for another, and may in vacation exercise any authority which any other Judge might exercise if the other Judge were present and sitting in court or chambers.

ORDER 93—GENERAL PROVISIONS

1. Notices, printing, paper, copies, office copies etc.

All notices to be in writing

1. All notices required by these rules shall be in writing, unless expressly authorised by the Court or a Judge to be given orally.

Form of documents

2.(1) All proceedings, accounts, and copies, filed in the registry, shall be written or printed upon paper of the size known as International Paper Size A4, that is to say, measuring approximately 298 mm by 210 mm of good and durable quality and capable of receiving ink writing, bookwise, with a quarter margin, unless the nature of the document renders it impracticable to do so.

(2) Every document intended to be filed shall be legibly and cleanly written or printed, without blotting, or erasure, and without any such alteration as to cause material disfigurement.

(3) The registrar may refuse to file any document which contravenes the provisions of this rule, and the taxing officer may disallow the costs of any such document.

Regulations as to printing and printed copies

3. The following regulation shall be observed with respect to printed documents—

(a) the document shall be printed upon paper of the size and quality as defined in rule 2, or similar paper, in pica type leaded, with an inner margin about 19 mm wide, and an outer margin about 63 mm wide;

(b) the document shall be printed by the party on whose behalf it is filed;

(c) to enable the party printing to print any document already filed,

the registrar shall on demand deliver to such party a copy written on draft paper on 1 side only;

(d) the party printing shall, on demand in writing, furnish to any other party any number of printed copies, not exceeding 10, upon payment therefor at the rate prescribed in schedule 3 for office copies;

(e) as between a solicitor delivering any printed copies and his or her client, credit shall be given by the solicitor for the whole amount payable by any other party for such printed copies;

(f) a party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the Court or a Judge so directs;

(g) when, by any order of the Court or a Judge, any document is ordered to be printed, the Court or Judge may order the expense of printing to be borne and allowed, and printed copies to be furnished, by and to such parties and upon such terms as may be just.

Affidavits printed or written

4. Affidavits may be either in print or in manuscript, or partly in print and partly in manuscript.

Copies of affidavits

5. Any party may demand from any other party a copy of any affidavit which is not printed, and which has been filed by such other party, or is referred to in a list of affidavits served by the party.

Copies of documents not printed

6. The following rules shall be observed with respect to copies—

(a) when any party is entitled to a copy of any document filed or prepared by or on behalf of another party which is not printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared;

(b) the party requiring any such copy, or the party's solicitor, shall make written application to the party by whom the copy is to be furnished, or the party's solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of 24 hours after the receipt of such request and undertaking, or within such other time as the Court or a Judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges;

(c) in the case of an ex parte application of an injunction or writ of capias ad respondendum, the party making such application is to furnish copies of the affidavits upon which it is granted upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the Court or a Judge;

(d) the note at the foot of every affidavit filed stating on whose behalf it is so filed shall be printed on every printed copy of the affidavit, and copied on every office copy and copy furnished to a party;

(e) the name and address of the party or solicitor by whom any copy is furnished shall be endorsed thereon in like manner as upon proceedings in court, and such party or solicitor shall be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be;

(f) the folios of all printed and written office copies, and of copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies;

(g) if any party or solicitor who is required to furnish any such written copy as aforesaid refuses, or, for 24 hours from the time when the application for such copy has been made, neglects, to furnish the same, the party by whom such application is made shall be at liberty to procure an office copy from the registry, and in such case no costs shall be payable to the solicitor so making default in respect of the copy so applied for, unless the Court or a Judge so directs.

2. Service

Personal service

7. When any document is required to be served personally, service shall, unless otherwise provided by these rules, be effected by delivering to the person to be served a copy of the document to be served, and, if that document is not the original document, at the same time showing the person the original, if the person so requires, or by delivering to him an office copy of the document to be served.

Substituted service

8.(1) In any case in which personal service of any document is required by these rules or otherwise, if it is made to appear to the Court or a Judge that prompt personal service cannot be effected, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just.

(2) Service so effected in accordance with any such order shall have the same operation as personal service.

Service of judgments and orders

9.(1) Subject to order 53, rule 3, when it is intended to enforce obedience to a judgment or order by process of attachment, the judgment or order must be served personally upon the person against whom such process is to be sought.

(2) Except as aforesaid, personal service of a judgment or order shall not be necessary, nor need the original be shown unless required by the party served.

Mode and time of service when not personal

10. Any document of which personal service is not prescribed by statute or by these rules shall be sufficiently served if left within the prescribed hours (if any) at the address for service of the person to be served as

defined by these rules with any person resident at or belonging to such place or if posted in a prepaid envelope addressed to the person to be served at such address as aforesaid; provided that where service under this rule is made by post, the time at which the document so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof.

Service of notices from Court

11. Notices sent from any office of the Court may be sent by post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service.

Service when no appearance or no address for service

12.(1) When no appearance has been entered for a party, or when a party or the party's solicitor, as the case may be, has omitted to give an address for service as required by these rules, all documents in respect of which personal service is not prescribed by statute or by these rules may be served by filing them in the registry.

(2) Any document so filed shall be stuck up in the registry, and shall remain so stuck up for 14 days.

Service upon solicitor of party formerly appearing in person

13. When a party after having sued or appeared in person has given notice in writing to the opposite party or the opposite party's solicitor, through a solicitor, that such solicitor is authorised to act in the cause or matter on his or her behalf, all documents which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor at the address given in the notice.

Service upon town solicitor of person not a party

14. When a person who is not a party appears in any cause or matter, either before the Court or in chambers, service upon the town solicitor by

whom such person appears, whether such solicitor act as principal or agent, shall be deemed good service except in matters requiring personal service.

Service not to be effected on Good Friday or Christmas Day

15. No instrument, except a warrant in an admiralty action, shall be served on Good Friday or Christmas Day.

Affidavits of service

16. Affidavits of service shall state the time when, the place where, the person by whom, and the manner in which, the service was effected.

3. Effect of noncompliance

Noncompliance with rules

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

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

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

Application to set aside for irregularity, when allowed

18. An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity.

Objections for irregularity

19. When an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the notice of motion or summons.

Costs

20. When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally without any special direction as to costs, the order dismissing the summons shall be drawn up including an order that the applicant pay the costs thereof.

4. General

Repealed orders not revived

21. No order or rule repealed by any former order or rule of court shall be revived by any of these rules unless expressly so declared.

Practice where not prescribed

22.(1) When any party desires to take any step in a cause or matter and the manner or form of procedure is not prescribed by these rules, the party may apply to the Court or a Judge for directions and any step taken in accordance with such directions shall be deemed to be regular and sufficient.

(2) The Court or a Judge, in giving such directions, shall have regard to the procedure and practice observed at the time of the coming into operation of the *Rules of the Supreme Court 1900.*

Testing of writs and commissions

23.(1) All writs and commissions issued from the Court, and all documents issued under the Great Seal of the Court, shall, unless by any statute or by these rules it is otherwise provided, bear date on the day on which they are issued.

(2) All writs and commissions shall be tested in the same manner as writs of summons in actions.

Solicitor to act for party

24. Whenever by these rules any act is required to be done by, or to, or with reference to, a party, then, in the case of a party who sues or appears by solicitor, such act shall be done by, or to, or with reference to, such solicitor, unless it is expressly provided that it shall be done by, or to, or with reference to, the party in person.

Publication of reasons

25. When any judgment is pronounced in any cause or matter either by a Court of Appeal or a single Judge and the opinion of any Judge is reduced to writing it shall be sufficient to state orally the opinion of the Judge without stating the reasons therefor but the Judge's written opinion shall be then published by delivering the same to the registrar or associate in open court.

ORDER 94—FORMS—FEES

Forms

1. The several forms in schedule 1 shall be used for the several purposes to which they are respectively applicable, with such variations as circumstances may require.

Fees

2. The fees and percentages to be taken in the several offices of the Court, and by the several officers thereof, shall be as set forth in schedule 3.

No fees payable by Crown or out of the Consolidated Fund

3. Notwithstanding anything to the contrary in these rules contained, in any proceedings in which Her Majesty, or any person on behalf of the Crown, or any department, corporation, or instrumentality whose expenditure is appropriated or drawn from the Consolidated Fund, or any person on behalf of any such department, corporation, or instrumentality, is a party, no fees of court need be prepaid on behalf of Her Majesty, or the said department, corporation, instrumentality, or person, but such fees may nevertheless be recoverable from the opposite party with costs, if judgment is given against such party.

ORDER 95—DISTRICT REGISTRIES

Proceedings in district registries

1.(1) Subject to the rules hereinafter set forth, all civil causes and matters may be commenced in a district registry.[2]

(2) Subject to the *Supreme Court Act 1995*, part 19 and any rule of court, all applications and other proceedings in any such cause or matter shall be made and carried on in such registry, and such cause or matter shall be tried or heard in the district for which such registry has been constituted.

Application of these rules

2. This order shall apply to all such causes and matters.

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2 For the definition “district registry”, see order 1, rule 1.

District where action to be commenced

3. The district in which an action shall be commenced shall be—

(a) the district within which the defendant, or 1 of 2 or more defendants, as the case may be, reside or carries on business; or

(b) the district within which the cause of action or claim, either wholly or in some material point arose; or

(c) the district within which by an engagement or promise in writing given by the defendant a debt or sum of money is made payable.

Transfer of action

4. If an action is commenced in any registry, the Court or a Judge or registrar may order its removal to any other registry, district or central, on such terms as to costs as the Court or Judge may think fit.

Power to reserve judgments

5.(1) Where any Judge shall reserve a decision in any cause or matter the Judge may draw up such decision in writing, and having signed the same, forward it to the registrar of the Court.

(2) Upon the receipt of such decision, the registrar shall notify the parties or their solicitors of the registrar's intention at some convenient time specified by the registrar to read the same in the courthouse at which such Court is held, or other convenient place, and the registrar shall read the same accordingly if either or both parties his, her or their solicitor or solicitors shall be present; but if the parties or either of them shall not be present at such reading, the registrar shall forward a copy of such judgment to the absent party or parties, and such decision shall be of the same force and effect as if given by such Judge at the trial or hearing of such cause or matter.

Procedure in district registry

6. Where a cause or matter is proceeding in a district registry—

(a) all proceedings, except where by these rules it is otherwise provided or except where the Court or a Judge or registrar shall

otherwise order, shall be taken in the district registry up to and including the entry of final judgment, and every final judgment and every order for an account by reason of the default of the defendant or by consent shall be entered in the district registry in the proper book;

(b) all writs of execution for enforcing any judgment or order therein shall issue from the district registry;

(c) all proceedings relating to the following matters, namely—

(i) leave to enter judgment under order 17, rule 6;

(ii) leave to issue or renew writs of execution;

(iii) examination of judgment debtors for garnishee purposes or under order 47, rule 33;

(iv) garnishee orders;

(v) charging orders;

(vi) interpleader orders;

shall, unless the Court or a Judge or registrar shall in any particular matter otherwise order, be taken in the district registry.

Costs

Taxation of costs

10.(1) All costs and charges as between party and party shall be taxed by the registrar of the district in which the costs were incurred.

(2) For the purpose of this rule the registrar may exercise all the powers of the taxing officer.

(3) However, in any cause or matter the registrar may and shall at the request of either party refer the costs for taxation to a taxing officer at a central registry.

ORDER 96—REMOVAL OF ACTIONS TO AND FROM MAGISTRATES COURTS

Removal of action from Magistrates Court

1.(1) If the Supreme Court or a Judge thereof thinks it desirable that any action or proceeding commenced in a Magistrates Court should be tried in the Supreme Court the Court or Judge may direct that the same shall be transferred to and heard and determined in the Supreme Court upon such terms as to payment of costs, giving security for costs or otherwise, as such Court or Judge thinks fit.

(2) An action or proceeding shall not be so removed when the amount claimed does not exceed £50 ($100), unless the defendant gives security to the satisfaction of such Court or Judge for the amount claimed, and also for a sum not exceeding £100 ($200) for the costs in the Supreme Court.

Removal of action to Magistrates Court

2.(1) When any cause or proceeding is commenced in the Supreme Court which a Magistrates Court has jurisdiction to try, the defendant may at any time apply to the Court or a Judge for an order transferring the action or proceeding to a Magistrates Court, or the Court or a Judge may on its, his or her own motion call upon the plaintiff to show cause why such action should not be so transferred, and unless in either case it is shown by the plaintiff—

(a) that unnecessary delay would be caused by a trial in the Magistrates Court; or

(b) that either by reason of the probable cost of trial in the Magistrates Court or by reason of the questions of law involved in the action, there is reason to believe that a fair trial cannot be had in the Magistrates Court, the case ought to be tried in the Supreme Court;

the Court or Judge may make an order directing that the cause or matter be transferred to and heard and determined in the Magistrates Court.

(2) Thereupon the registrar of the Supreme Court shall transmit to the registrar of the Magistrates Court to which the action is remitted, a copy of

the order, together with a copy of the writ and of the pleadings (if any).

(3) The costs of the parties in respect of the proceedings subsequent to the order and up to judgment shall be allowed according to the scale prescribed for Magistrates Courts.

(4) The costs of any other proceeding shall be at the discretion of the Supreme Court or the Judge thereof.

ORDER 97—ARBITRATION

Power to refer to arbitration

1.(1) The Court or a Judge may order any action, cause, or matter, or any question arising therein, with or without other matters within the jurisdiction of the Court in dispute between the parties, to be referred to arbitration of such person or persons and in such manner and on such terms as the Court or Judge thinks reasonable.

(2) The arbitrator or arbitrators or umpires shall hear and determine the case, and the award given by him, her or them may be entered as the judgment in the cause or matter, or shall be dealt with as a step therein according as the Court or Judge may order.

(3) But the Court or Judge may, on application, at the first sittings of the Court held after the expiration of 1 week after the entry of the award, if it has been entered as the judgment in the action, set aside the award, or refer the award back to the arbitrator, arbitrators, or umpire, or, with the consent of the parties, revoke the reference or order another reference to be made in the manner before prescribed.

ORDER 98—CROSS VESTING

Interpretation

1. In this order—

"cross-vesting laws" means the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cwlth) and the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Qld).

"proceeding" includes an action cause or matter.

Applications

2. This order applies to proceedings to which the cross-vesting laws apply.

Commencement of proceedings

3.(1) Subject to subrule (2) a proceeding in which a party relies on the cross-vesting laws shall be commenced in accordance with the rules of court.

(2) In a case of doubt or difficulty as to the manner of commencement of a proceeding the Court may give directions.

(3) An application under subrule (2) shall be by summons and may be ex parte.

(4) A party who relies on the cross-vesting laws shall endorse the process by which those laws are invoked with a statement identifying each claim or ground of defence, as the case may be, in respect of which the cross-vesting laws are invoked.

(5) A failure to comply with subrule (4) does not invalidate the process.

(6) Where a party has not complied with subrule (4) and wishes to invoke the cross-vesting laws that party shall apply to the Court for directions and the Court may give any direction that it could give under rule 6.

Special federal matters

4.(1) Where a matter for determination is a special federal matter the plaintiff or the defendant, as the case may be, shall give particulars of that special matter in the endorsement required under rule 3(4).

(2) The Court shall not determine a proceeding which raises for determination a special federal matter unless it is satisfied that the notice required by section 6(3)(a) of the cross-vesting laws sufficiently specifies the nature of that special federal matter.

Service

5.(1) Notwithstanding order 11 any originating proceeding or notice of an originating proceeding that contains a claim in which the cross-vesting laws are relied on may be served outside the jurisdiction.

(2) Where a defendant is served outside the jurisdiction under subrule (1) and the defendant does not enter an unconditional appearance no further step shall be taken by the plaintiff unless the Court gives leave to proceed.

(3) The Court shall not give leave to proceed unless it is satisfied—

(a) that jurisdiction under the cross-vesting laws is being invoked; and,

(b) that the Court is a convenient court in which to determine the matter.

(4) An application for leave to proceed shall be made by summons or it may be included in the summons for directions under rule 6.

(5) An order under subrule (2) giving leave to proceed does not prevent the Court from subsequently transferring the proceeding to another court.

Directions

6.(1) The first party to invoke the cross-vesting laws shall take out a summons for directions and serve it on all other parties.

(2) Where the plaintiff is required to take out the summons for directions the summons shall be taken out and served within 7 days of the plaintiff being served with the first notice of appearance.

(3) Where a defendant is required to take out the summons for directions the summons shall be taken out and served within 7 days of the delivery or service, as the case may be, of the process which invokes the cross-vesting laws.

(4) When a proceeding is transferred to the Court from another court the party who originated the proceeding shall within 14 days of the date of the order transferring the proceeding file and serve a summons for directions and in default of any other party may do so or the Court may call the parties before it of its own motion.

(5) On the hearing of the summons for directions the Court shall give any direction or make any decision as to the conduct of the proceeding that the Court thinks proper.

(6) The Court may at the trial or hearing of the proceeding vary an order or decision made on the summons for directions.

Transfer of proceedings

7.(1) Unless the Court orders otherwise when the Court makes an order transferring a proceeding to another court the registrar shall send to the Court to which the proceeding is transferred all documents filed and orders made in the proceeding.

(2) When a proceeding is transferred to the Court from another court the registrar shall give it a number or title.

Transfer on Attorney-General's application

8. An application by an Attorney-General under sections 5 or 6 of the cross-vesting laws for the transfer of a proceeding may be made by summons without the Attorney-General becoming a party to the proceeding.

Transfer to Court when no proceeding pending

9.(1) Where a proceeding is removed to the Court pursuant to section 8 of the cross-vesting laws the Court may immediately on that removal, give any direction, make any decision or direct the parties to take any step that the Court sees fit.

(2) The powers exercisable under subrule (1)—

(a) are in addition to the powers exercisable under rule 6; and,

(b) include the powers to give any directions that could have been given by the court or tribunal from which the proceeding was removed.

ORDER 99—ALTERNATIVE DISPUTE RESOLUTION PROCESSES

Division 1—Definitions

Definitions for order

1. In this order—

"ADR costs" include—

(a) for a mediation—the extra costs mentioned in rule 15;[3] and

(b) for a case appraisal—the extra costs mentioned in rule 24.[4]

"referred dispute" means a dispute referred to a case appraiser under rule 21.

"Supreme Court" includes a Judge.

Division 2—Establishment of ADR processes

Approval as mediator

2.(1) A person seeking approval as a mediator must—

(a) make application in form 514; and

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3 Rule 15 (Mediator may seek independent advice)

4 Rule 24 (Case appraiser may seek information)

(b) pay the fee prescribed under schedule 3, part 2; and

(c) satisfy the Senior Judge Administrator the person is a suitable person to be approved as a mediator.

(2) The Senior Judge Administrator must inform the registrar of an approval of a person as a mediator.

(3) If the Senior Judge Administrator decides not to approve a person as mediator, the Senior Judge Administrator must give the person a statement of reasons for the decision.

Approval as case appraiser

3.(1) A person seeking approval as a case appraiser must—

(a) be a barrister or solicitor of 5 years standing; and

(b) make application in form 515; and

(c) pay the fee prescribed under schedule 3, part 2; and

(d) satisfy the Senior Judge Administrator the person is a suitable person to be approved as a case appraiser.

(2) The Senior Judge Administrator must inform the registrar of an approval of a person as a case appraiser.

(3) If the Senior Judge Administrator decides not to approve a person as case appraiser, the Senior Judge Administrator must give the person a statement of reasons for the decision.

ADR register

4. The ADR register must contain the fees notified to the registrar under rule 5.

Information to be given to registrar by ADR convenors and venue providers

5.(1) A person intending to provide a venue for ADR processes must give notice to the registrar in form 516 of the person's name and address and the address of the venue.

(2) A person intending to act as a mediator, case appraiser or venue provider for ADR processes must give notice to the registrar of the fee the person intends to charge for providing the services or venue.

(3) If a person intends to change the fee notified to the registrar, the person must give notice of the change to the registrar in form 517 at least 4 weeks before the change is effective.

(4) Notice of the fee may be given by notifying the way the fee may be worked out, including, for example, an hourly or daily rate of charge or another way approved by the registrar.

Form of consent order for ADR process

6. For the *Supreme Court of Queensland Act 1991*, section 100H,[5] the consent order must be made, as far as practicable, in form 518.

Registrar to give notice of proposed reference to ADR process

7.(1) The Supreme Court may direct the registrar to give written notice to the parties (the **"referral notice"**) that the parties' dispute is to be referred, by order, to an ADR process to be conducted by a specified mediator or case appraiser.

(2) A party may object to the reference by filing an objection notice in the registry.

(3) The objection notice must—

(a) state the reasons why the party objects to the referral; and

(b) be filed within 7 days after the objecting party receives the referral notice.

(4) If an objection notice is filed, the Supreme Court may require the parties or their representatives to attend before it (the **"hearing"**).

(5) The court may make an order at the hearing it considers appropriate in the circumstances.

5 Section 100H (Parties may agree to ADR process)

Proceedings referred to ADR process are stayed

8. If a dispute is referred to an ADR process, the dispute and all claims made in the dispute are stayed until—

(a) the report of the ADR convenor certifying the finish of the ADR process is filed with the registrar; or

(b) the Supreme Court otherwise orders.

When does a party impede an ADR process?

9. A party impedes an ADR process if the party—

(a) fails to attend at the process; or

(b) fails to participate in the process; or

(c) fails to pay an amount the party is required to pay under a referring order within the time stated in the order.

Division 3—Mediation

Referral of dispute to appointed mediator

10.(1) A referring order for a mediation must—

(a) appoint as mediator—

(i) a specified mediator; or

(ii) a mediator to be selected by the parties; or

(iii) if all parties agree, a person who is not a mediator; and

(b) include enough information about pleadings, statements of issues or other documents to inform the mediator of the dispute and the present stage of the proceeding between the parties; and

(c) fix a period beyond which the mediation may extend only with the authorisation of the parties or estimate how long the mediation should take to finish.

(2) The order must also—

(a) fix the ADR costs or estimate the costs to the extent possible; and

(b) state the percentage of ADR costs each party must pay; and

(c) state a time (not more than 7 days) within which the ADR costs, including any fee negotiated under subrule (3), must be paid to the registrar.

(3) Instead of fixing or estimating the appointed mediator's fee, the order may direct the parties to negotiate a fee with the appointed mediator.

(4) A person appointed as mediator under subrule (1)(a)(iii) is taken to be a mediator for the mediation and issues incidental to the mediation.

(5) An order must, as far as practicable, be made in form 519.

When mediation must start and finish

11. A mediator must start a mediation as soon as possible after the mediator's appointment and try to finish the mediation within 28 days after the appointment.

Parties must assist mediator

12. The parties must act reasonably and genuinely in the mediation and help the mediator to start and finish the mediation within the time estimated or fixed in the referring order.

Mediator's role

13.(1) The mediator may gather information about the nature and facts of the dispute in any way the mediator decides.

(2) The mediator may decide whether a party may be represented at the mediation and, if so, by whom.

(3) During the mediation, the mediator may see the parties, with or without their representatives, together or separately.

Liberty to apply

14. The mediator, a party or the registrar may apply to the Supreme Court at any time for directions on any issue about the mediation.

Mediator may seek independent advice

15.(1) The mediator may seek legal or other advice about the dispute from independent third parties.

(2) However, if the advice involves extra cost, the mediator must first obtain—

(a) the parties' agreement to pay the extra cost; or

(b) the Supreme Court's leave.

(3) If the court gives leave under subrule (2)(b), the court must also—

(a) order the parties to pay the extra cost; and

(b) state the time within which the payment must be made to the registrar.

(4) The mediator must disclose the substance of the advice to the parties.

Record of mediation resolution

16.(1) Unless the parties otherwise agree, the mediator must ensure that an agreement mentioned in the *Supreme Court of Queensland Act 1991*, section 100N[6] is—

(a) placed in a sealed container, for example, an envelope; and

(b) marked with the court file number; and

(c) endorsed 'Not to be opened without an order of the Supreme Court or a Judge'; and

(d) filed in the court.

(2) The container may be opened only if the Supreme Court orders it to be opened.

(3) No fee is payable for filing the container.

Abandonment of mediation

17.(1) The mediator may abandon the mediation if the mediator

6 Section 100N (Mediated resolution agreement)

considers further efforts at mediation will not lead to the resolution of the dispute or an issue in the dispute.

(2) Before abandoning the mediation, the mediator must—

(a) inform the parties of the mediator's intention; and

(b) give them an opportunity to reconsider their positions.

Mediator to file certificate

18.(1) For the *Supreme Court of Queensland Act 1991*, section 100O,[7] the mediator must file a certificate in form 520.

(2) The certificate must not contain comment about the extent to which a party participated or refused to participate in the mediation.

(3) However, the certificate may indicate that a party did not attend the mediation.

(4) No fee is payable for filing the container.

Unsuccessful mediations

19. If a mediation is unsuccessful, the dispute may go to trial in the ordinary way without any inference being drawn against any party because of the failure to settle at the mediation.

Replacement of mediator

20.(1) The Supreme Court may, by further order, revoke the appointment of a mediator and appoint someone else as mediator if the court is satisfied it is desirable to do so.

(2) When appointing a substitute mediator, the court may decide the amount (if any) to be paid to the retiring mediator for work done.

7 Section 100O (Mediator to file certificate)

Division 4—Case appraisal

Referral of dispute to appointed case appraiser

21.(1) A referring order for a case appraisal must—

(a) appoint as case appraiser—

(i) a specified case appraiser; or

(ii) a case appraiser to be selected by the parties; and

(b) include enough information about pleadings, statements of issues or other documents to inform the case appraiser of the dispute and the present stage of the proceeding between the parties; and

(c) fix a period beyond which the case appraisal may extend only with the authorisation of the parties or estimate how long the case appraisal should take to finish.

(2) The order must also—

(a) fix the ADR costs or estimate the costs to the extent possible; and

(b) state the percentage of ADR costs each party must pay; and

(c) state a time (not more than 7 days) within which the ADR costs, including any fee negotiated under subrule (3), must be paid to the registrar.

(3) Instead of fixing or estimating the appointed case appraiser's fee, the order may direct the parties to negotiate a fee with the appointed case appraiser.

(4) An order must, as far as practicable, be made in form 519.

Jurisdiction of case appraiser

22.(1) The case appraiser for a referred dispute has the power of the Supreme Court to decide the issues in dispute in the referred dispute.

(2) However, the case appraiser—

(a) may only give a decision that could have been given in the dispute if it had been decided by the court; and

(b) cannot punish for contempt.

(3) Subrule (1) is subject to rule 30.[8]

Appearances

23. A party appearing before a case appraiser has the same rights to appear by lawyer or otherwise the party would have if the appearance were before the Supreme Court.

Case appraiser may seek information

24. A case appraiser may ask anyone for information and may obtain, and act on, information obtained from anyone on any aspect of the dispute.

Case appraisal proceeding may be recorded

25.(1) A case appraiser may have the case appraisal proceeding recorded if the case appraiser considers it appropriate, in the special circumstances of the case.

(2) If the proceeding is to be recorded, the case appraiser must decide the extent to which, and the way in which, the recording may be done.

Case appraiser's decision

26.(1) A case appraiser's decision must be in writing, but the case appraiser need not give reasons for the decision.

(2) However, a case appraiser may, at any stage of a case appraisal proceeding, decline to proceed further with the proceeding.

Example of subsection (2)—

The dispute proves to be unsuitable for case appraisal.

(3) A copy of the decision must be given to each party.

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8 Rule 30 provides that a party dissatisfied with a case appraiser's decision may elect to go to trial.

Case appraiser's decision on costs in the dispute

27.(1) In a referred dispute, a case appraiser has the same power to award costs in the dispute the Supreme Court would have had if it had heard and decided the dispute.

(2) A case appraiser's decision under rule 26(1) must include a decision on costs in the dispute.

Case appraiser's decision final unless election made

28. A case appraiser's decision is final, unless an election to go to trial is made under rule 30.

Case appraiser to file certificate and decision

29.(1) For the *Supreme Court of Queensland Act 1991*, section 100P,[9] the case appraiser must file a certificate in form 521.

(2) If the case appraiser makes a decision about the dispute or any issue in the dispute, the case appraiser must—

(a) place the written decision in a sealed container, for example, an envelope; and

(b) mark the container with the court file number; and

(c) endorse the container 'Not to be opened without an order of the Supreme Court or a Judge'; and

(d) file the container in the court.

(3) The container may be opened only if the Supreme Court orders it to be opened.

(4) No fee is payable for filing the certificate and decision.

Dissatisfied party may elect to go to trial

30.(1) A party who is dissatisfied with a case appraiser's decision may elect to have the dispute go to trial in the ordinary way by filing an election

9 Section 100P (Case appraiser to file certificate and decision)

in form 522 with the registrar.

(2) The election must be filed within 28 days after the case appraiser's certificate is filed in registry.

(3) If an election is filed—

(a) the case appraiser's decision ceases to have effect other than as provided by rule 31; and

(b) the dispute must be decided in the Supreme Court as if it had never been referred to the case appraiser.

Court to have regard to case appraiser's decision when awarding costs

31.(1) In this rule—

"challenger" means a party who filed an election under rule 30.

(2) If the Supreme Court's decision in the dispute is not more favourable overall to a challenger than the case appraiser's decision in the dispute was to the challenger, the costs of the action and the case appraisal must be awarded against the challenger.

(3) However, the court may make another order about costs if the court considers there are special circumstances.

(4) If all parties are challengers, the case appraiser's decision has no effect on the awarding of costs.

Replacement of case appraiser

32.(1) The Supreme Court may, by further order, revoke the appointment of a case appraiser and appoint someone else as case appraiser if the court is satisfied it is desirable to do so.

(2) When appointing a substitute case appraiser, the court may decide the amount (if any) to be paid to the retiring case appraiser for work done.

Division 5—ADR costs

Payment of ADR costs

33. Each party to an ADR process is severally liable for the party's percentage of the ADR costs in the first instance.

Party may pay another party's ADR costs

34.(1) If a party to an ADR process does not pay the party's percentage of ADR costs, another party may pay the amount.

(2) If another party pays the amount, the amount is the other party's costs in any event.

Registrar to facilitate payment of ADR costs

35. After the registrar has been paid all payments under the referring order and the ADR process has finished, the registrar must pay the ADR convenor and the venue provider their fees from the funds held for the purpose.

When ADR convenor or venue provider may recover further costs

36.(1) An ADR convenor or venue provider may recover an amount more than the amount paid to the convenor or provider by the registrar—

(a) if the referring order estimates the ADR costs by fixing a fee rate and period for which the rate is to be paid—only if the parties authorise the ADR process to continue beyond the period fixed in the referring order; or

(b) in any other case—only if the parties agree in writing to the payment of a greater amount than the amount paid by the registrar.

(2) The parties are severally liable for an amount recoverable under subrule (1).

(3) The amount may be recovered as a debt payable to the convenor or provider.

Court may extend period within which costs are to be paid or grant relief

37.(1) A party may apply to the Supreme Court for an order—

(a) extending the time for payment to the registrar of ADR costs; or

(b) relieving the party from the effects of noncompliance with any requirement about costs.

(2) The court may make any order it considers appropriate.

Costs of failed ADR process are costs in the dispute

38. Unless otherwise ordered by the Supreme Court, each party's costs of and incidental to an ADR process that did not result in the full settlement of the dispute between the parties are the party's costs in the dispute.