CHAPTER 53

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CHAPTER 53

SUPREME COURT

RULES OF THE SUPREME COURT

(SECTION 29)

S.I. 46/1978
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S.I. 38/1996
S.I. 92/1997
S.I. 4/2001
1 of 2003
S.I. 131/2002
S.I. 44/2004

[Commencement 5th July, 1978]

PRELIMINARY

ORDER 1
CITATION, APPLICATION, INTERPRETATION AND FORMS

(R.S.C. 1978)

Citation (O. 1, r. 1).

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

Application. (O. 1, r. 2).

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

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

TABLE

	Proceedings	*Enactments*
1.	Bankruptcy proceedings	Bankruptcy Act, s. 102.
2.	Proceedings relating to the winding up of companies	Companies Act, Part VII.
3.	Non-contentious or common form probate proceedings	Supreme Court Act, s. 29.
4.	Matrimonial proceedings	Matrimonial Causes Act, s. 7.

S.I. 30/1988.
S.I. 38/1996.

(3) These Rules shall not have effect in relation to any criminal proceedings other than any criminal proceedings to which Order 39, Order 57, Order 59 or Order 81 applies.

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

Application of Interpretation and General Clauses Act (O. 1, r. 3).

3. The Interpretation and General Clauses Act shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

Definitions (O. 1, r. 4).

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

"the Act" means the Supreme Court Act;

"an action for personal injuries" means an action in which there is a claim for damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death; and

"personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"cause book" means the book kept in the Registry, in which the year and number of, and other details relating to, a cause or matter are entered;

"the English Rules" means the Rules of the Supreme Court of England for the time being in force in England;

"the matrimonial causes rules" means rules made under section 7 of the Matrimonial Causes Act;

"money lending action" has the meaning assigned to it by Order 73;

"officer" means an officer of the Supreme Court;

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

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

"probate action" has the meaning assigned to it by Order 68;

"receiver" includes a manager or consignee;

"Registrar" means the Registrar or the Assistant Registrar of the Supreme Court;

"the Registry" means the Registry of the Supreme Court;

"the scheduled territories" has the meaning assigned to it by the Exchange Control Regulations;

"writ" means a writ of summons.

(2) In these Rules, unless the context otherwise requires, "the Court" means the Supreme Court or any one or more judges thereof, whether sitting in court or in chambers or the Registrar; but the foregoing provision shall not be taken as affecting any provision of these Rules and, in particular, Order 32, rule 11, by virtue of which the authority and jurisdiction of the Registrar are defined and regulated.

Construction of references to Orders, rules, etc. (O. 1, r. 5).

5. (1) Unless the context otherwise requires, any reference in these rules to a specified Order or rule is a reference to that Order or rule of these Rules and any reference to a specified rule, paragraph or subparagraph is a reference to that rule of the Order, that paragraph of the rule, or that subparagraph of the paragraph, in which the reference occurs, and any reference to an Appendix is a reference to the appropriate Appendix to the English

Rules.

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

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

Construction of references to action, etc., for possession of land (O. 1, r. 6).

6. Except where the context otherwise requires, references in these Rules to an action or claim for the possession of land shall be construed as including references to proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the land or to be possession thereof.

Forms (O. 1, r. 7).

7. The forms in the Appendices to the English Rules of 1976 shall be used where applicable with such variations as the circumstances of The Bahamas, the Constitution, the practice and procedure of the Supreme Court and the circumstances of the particular case require.

ORDER 2
EFFECT OF NON-COMPLIANCE

(R.S.C. 1978)

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

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

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

such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

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

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

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

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

ORDER 3
TIME

(R.S.C. 1978)

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

1. The word "month", where it occurs in any judgment, order, direction or other document forming part of any proceedings in the Supreme Court, means a calendar month unless the context otherwise requires.

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

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

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

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

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

(5) Where, apart from this paragraph, the period in question, being a period of 7 days or less, would include a Saturday, Sunday or public holiday, Christmas Day or Good Friday, that day shall be excluded. in this paragraph "public holiday" means any day declared to be a public holiday under the Public Holidays Act.

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

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

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

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

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

(3) The period within which a person is required by these Rules, or by any order or direction, to serve, file or amend any pleading or other document may be extended y consent (given in writing) without an order of the Court being made for that purpose.

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

5. Where a year or more has elapsed since the last proceeding in a cause or matter, the party who desires to proceed must give to every other party not less than one month's notice of his intention to proceed. a summons on which no order was made is not a proceeding for the purpose of this rule.

COMMENCEMENT AND PROGRESS OF PROCEEDINGS

ORDER 4
CONSOLIDATION OF PROCEEDINGS

(R.S.C. 1978)

Consolidation, etc., of causes or matters (O. 4, r. 1).

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

(a) that some common question of law or fact arises in both or all of them; or

(b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or

(c) that for some other reason it is desirable to make an order under this rule,

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

ORDER 5
MODE OF BEGINNING CIVIL PROCEEDINGS IN SUPREME COURT

(R.S.C. 1978)

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

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

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

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

(a) in which a claim is made by the plaintiff for any relief or remedy for any tort, other than trespass to land;

(b) in which a claim made by the plaintiff is based on an allegation of fraud;

(c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under an Act or independently of any contract or any such provision), where the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person or in respect of damage to any property;

(d) in which a claim is made by the plaintiff for damages for breach of promise of marriage;

(e) in which a claim is made by the plaintiff in respect of the infringement of a patent.

Proceedings which must be begun by originating summons (O. 5, r. 3).

3. Proceedings by which an application is to be made to the Supreme Court or a judge thereof under any Act must be begun by originating summons except where by these Rules or by or under any Act the application in question is expressly required or authorised to be made by some other means. This rule does not apply to an application made in pending proceedings.

Proceedings which may be begun by writ or originating summons (O. 5, r. 4).

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

(2) Proceedings —

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

(b) in which there is unlikely to be any substantial dispute of fact,

are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 75 or for any other reason considers the proceedings more appropriate to be begun by writ.

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

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

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

6. (1) Subject to paragraph (2) and to Order 70, rule 2, any person (whether or not he sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the Supreme Court by an attorney or in person.

(2) Except as expressly provided by or under any enactment, a body corporate may not begin or carry on any such proceedings otherwise then by an attorney.

ORDER 6
WRITS OF SUMMONS: GENERAL PROVISIONS

(R.S.C. 1978)

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

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

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

2. (1) Before a writ is issued it must be indorsed —

(a) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;

(b) where the claim made by the plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if, within the time limit for appearing, the defendant —

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

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

(c) where the claim made by the plaintiff is for possession of land, with a statement showing —

(i) whether the claim relates to a dwelling-house; and

(ii) if it does, whether the value of the premises exceeds $10,000;

(d) where the action is brought to enforce a right to recover possession of goods, with a statement showing the value of the goods.

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

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

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

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

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

3. (1) Before a writ is issued it must be indorsed —

(a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;

(b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.

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

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

4. (1) Before a writ is issued it must be indorsed —

(a) where the plaintiff sues by any attorney, with the plaintiff's address and the attorney's name or firm and a business address of his within the jurisdiction.

(b) where the plaintiff sues in person, with —

(i) the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent; and

(ii) his occupation.

(2) The address for service of a plaintiff shall be —

(a) where he sues by an attorney, the business address of the attorney indorsed on the writ;

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

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

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

Concurrent writ (O. 6, r. 5).

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

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

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

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

6. (1) No writ which, or notice of which, is to be served out of the jurisdiction shall be issued without the leave of the court:

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

(2) A writ must be issued out of the Registry.

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

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

(5) No writ shall be sealed unless at the time of the tender thereof for sealing the person tendering it leaves at the office at which it is tendered a copy thereof signed, where the plaintiff sues, in person, by him or, where he does not so sue, by or on behalf of his attorney, who may sign either in his own name or in the name of the firm to which he belongs.

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

7. (1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for twelve months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

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

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

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

ORDER 7
ORIGINATING SUMMONSES: GENERAL PROVISIONS

(R.S.C. 1978)

Application (O. 7, r. 1).

1. The provisions for this Order apply to all originating summonses subject, in the case of originating

summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any Act.

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

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

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

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

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

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

Concurrent summons (O. 7, r. 4).

4. Order 6, rule 5, shall apply in relation to an originating summons as it applies in relation to a writ.

Issue of summons (O. 7, r. 5).

5. An originating summons must be issued out of the Registry.

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

6. Order 6, rule 7, shall apply in relation to an originating summons as it applies in relation to a writ.

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

7. (1) Rules 2(1), 3(1) and 5 shall, so far as applicable, apply to *ex parte* originating summonses; but, save as aforesaid, the foregoing rules of this Order shall not apply to *ex parte* originating summonses.

(2) Order 6, rule 6(3) and (5), shall, with the necessary modifications, apply in relation to an *ex parte* originating summons as they apply in relation to a writ.

ORDER 8
ORIGINATING AND OTHER MOTIONS: GENERAL PROVISIONS

(R.S.C. 1978)

Application (O. 8, r. 1).

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

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

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

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

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

3. (1) The notice of an originating motion must be in Form No. 13 in Appendix A and the notice of any other motion in Form No. 38 in that Appendix. Where leave has been given under rule 2(2) to serve short notice of motion, that fact must be stated in the notice.

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

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

(4) The notice of an originating motion must be issued in the Registry.

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

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

4. Notice of a motion to be made in an action may be served by the plaintiff on the defendant with the writ of summons or originating summons or at any time after

service of such writ or summons, whether or not the defendant has entered an appearance in the action.

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

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

ORDER 9
PETITIONS: GENERAL PROVISIONS

(R.S.C. 1978)

Application (O. 9, r. 1).

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

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

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

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

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

Presentation of petition (O. 9, r. 3).

3. A petition must be presented by leaving it at the Registry.

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

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

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

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

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

ORDER 10
SERVICE OR ORIGINATING PROCESS: GENERAL PROVISIONS

(R.S.C. 1978)

General provisions (O. 10, r. 1).

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

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

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

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

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

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

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

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

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

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

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

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

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

3. (1) Where —

(a) a contract contains a term to the effect that the Supreme Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the Supreme Court has jurisdiction to hear and determine any such action; and

(b) the contract provides that, in the event of any action in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, in such manner, or at such place (whether within or out of the jurisdiction), as may be so specified,

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

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

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

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

(a) if satisfied on an *ex parte* application that no person appears to be in possession of the land and that service cannot be otherwise effected on any defendant, authorise service on that defendant to be effected by affixing a copy of the writ to some conspicuous part of the land;

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

Service of originating summons, petition and notice of motion (O. 10, r. 5).

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

ORDER 11
SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION

(R.S.C. 1978)

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

1. (1) Subject to rule 3 and provided that the writ does not contain any such claim as is mentioned in Order 67, rule 2(1), service of a writ, or notice of a writ, out of the jurisdiction is permissible with the leave of the Court in the following cases, that is to say —

(a) if the whole subject-matter of the action begun by the writ is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;

(b) if an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction is sought to be construed, rectified, set aside or enforced in the action begun by the writ;

(c) if in the action begun by the writ relief is sought against a person domiciled or ordinarily resident within the jurisdiction;

(d) if the action begun by the writ is for the administration of the estate of a person who died domiciled within the jurisdiction or if the action begun by the writ is for any relief or remedy which might be obtained in any such action as aforesaid;

(e) if the action begun by the writ is for the execution, as to property situate within the jurisdiction, of the trusts of a written instrument, being trusts that ought to be executed according to Bahamian law and of which the person to be served with the writ is a trustee or if the action begun by the writ is for any relief or remedy which might be obtained in any such action as aforesaid;

(f) if the action begun by the writ is brought against a defendant to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which —

(i) was made within the jurisdiction; or

(ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or

(iii) is by its terms, or by implication, governed by Bahamian law;

(g) if the action begun by the writ is brought against a defendant in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;

(h) if the action begun by the writ is founded on a tort committed within the jurisdiction;

(i) if in the action begun by the writ an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);

(j) if in the action begun by the writ being properly brought against a person duly served within the jurisdiction, a person out of the jurisdiction is a necessary or proper party thereto;

(k) if the action begun by the writ is either by a mortgagee of property situate within the jurisdiction (other than land) and seeks the sale of the property; the foreclosure of the mortgage or delivery by the mortgagor of possession of the property but not an order for payment of any moneys due under the mortgage or by a mortgagor of property so situate (other than land) and seeks redemption of the mortgage, reconveyance of the property or delivery by the mortgagee of possession of the property but not a personal judgment;

(l) if the action is a probate action within the meaning of Order 68.

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

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

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

Service out of jurisdiction in certain actions of contract (O. 11, r. 2).

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

Leave for service of notice of writ (O. 11, r. 3).

3. (1) Leave granted under rule 1 or 2 shall be leave for service out of the jurisdiction of notice of the writ and not the writ.

(2) Notice of a writ for service out of the jurisdiction must be in Form No. 6 in Appendix A.

Application for, and grant of, leave to serve writ out of jurisdiction (O. 11, r. 4).

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

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

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

Service of writ or notice of writ abroad: general provisions (O. 11, r. 5).

5. (1) Subject to the following provisions of this rule, Order 10, rule 1, and Order 61, rule 4, shall apply in relation to the service of a writ, or notice of a writ, notwithstanding that the writ or notice is to be served out of the jurisdiction.

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

(3) A writ, or notice of a writ, which is to be served out of the jurisdiction —

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

(b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 6 or rule 7.

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

(5) An official certificate stating that a notice of a writ as regards which rule 6 has been complied with has been served on a person personally, or in accordance with the law of the country in which service was effected, on a specified date, being a certificate —

(a) by a Bahamian or British consular authority in that country; or

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

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

shall be evidence of the facts stated.

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

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

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

Service of notice of writ abroad through foreign governments, judicial authorities and British consuls (O. 11, r. 6).

6. (1) This rule does not apply to service in any Commonwealth country, and colony, protectorate or protected state of the United Kingdom, or any trust territory administered by the Government of any Commonwealth country.

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

(a) through the judicial authorities of that country; or

(b) through a Bahamian or British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).

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

(a) through the authority designated under the Convention in respect of that country; or

(b) if the law of that country permits —

(i) through the judicial authorities of that country; or

(ii) through a Bahamian or British consular authority in that country.

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

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

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

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

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

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

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

(8) Documents duly lodged under paragraph (5) shall be sent by the Registrar to the appropriate Minister with a request that he arrange for notice of the writ to be served by the method indicated in the request lodged under paragraph (5) or, where alternative methods are indicated, by such one of those methods as is most convenient.

Undertaking to pay expenses of service by Minister (O. 11, r. 7).

7. Every request lodged under rule 6(4) must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Minister in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Public Treasury and to produce a receipt for the payment to the Registrar.

Service of originating summons, petition, notice of motion, etc. (O. 11, r. 8).

8. (1) Subject to paragraph 2 and Order 66, rule 4, service out of the jurisdiction of an originating summons is permissible with the leave of the Court.

(2) Where the proceedings begun by an originating summons might have been begun by writ, service out of the jurisdiction of the originating summons is permissible as aforesaid if, but only if, service of the writ, or notice of the writ, out of the jurisdiction would be permissible had the proceedings been begun by writ.

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

(4) Subject to Order 66, rule 4, service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court.

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

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

(7) Rules 5, 6 and 7 shall apply in relation to any document for the service of which out of the jurisdiction leave has been granted under this rule as they apply in relation to a writ.

ORDER 12
ENTRY OF APPEARANCE TO WRIT OR ORIGINATING SUMMONS

(R.S.C. 1978)

Mode of entering appearance (O. 12, r. 1).

1. (1) Subject to paragraph (2) and to Order 70, rule 2, a defendant to an action begun by writ may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) enter an appearance in the action and defend it by an attorney or in person.

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

(3) An appearance is entered by properly completing the requisite documents, that is to say, a memorandum of appearance, as defined by rule 2, and a copy thereof, and handing them in at, or sending them by post to the Registry.

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

Memorandum of appearance (O. 12, r. 2).

2. (1) A memorandum of appearance is a request to the Registry to enter an appearance for the defendant or defendants specified in the memorandum.

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

(3) A memorandum of appearance must specify —

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

(b) in the case of a defendant appearing by an attorney, a business address of his attorney's within the jurisdiction,

and where the defendant enters an appearance in person, the address within the jurisdiction specified under sub-paragraph (a) shall be his address for service, but otherwise his attorney's business address shall be his address for service.

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

Procedure on receipt of requisite documents (O. 12, r. 3).

3. (1) On receiving the requisite documents an officer of the Registry must in all cases affix to the copy of the memorandum of appearance an official stamp showing the date on which he received those documents and enter the appearance in the cause book, and —

(a) if the requisite documents were handed in at the Registry, hand back that copy of the memorandum; and

(b) if they were sent by post, send that copy by post to the plaintiff or, as the case may be, his attorney at the plaintiff's address for service and also send by post to the defendant or, as the case may be, his attorney at the defendant's address for service a notice of appearance (stamped with

an official stamp showing that date) stating that the defendant specified therein entered an appearance on that date.

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

Time limited for appearing (O. 12, r. 4).

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

(a) in the case of a writ served within the jurisdiction, to fourteen days after service of the writ (including the day of service) or, where that time has been extended by or by virtue of these Rules, to that time as so extended; and

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

Late appearance (O. 12, r. 5).

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

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

Conditional appearance (O. 12, r. 6).

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

(2) A conditional appearance, except by a person sued as a partner of a firm in the name of that firm and served as a partner, is to be treated for all purposes as an unconditional appearance unless the Court otherwise orders or the defendant applies to the Court, within the time limited for the purpose, for an order under rule 7 and the Court makes an order thereunder.

Application to set aside writ, etc. (O. 12, r. 7).

7. (1) A defendant to an action may at any time before entering an appearance therein, or, if he has entered a conditional appearance, within fourteen days after entering the appearance, apply to the Court for an order setting side the writ or service of the writ, or notice of the writ, on him, or declaring that the writ or notice has not been duly served on him or discharging any order giving leave to serve the writ or notice on him out of the jurisdiction.

(2) An application under this rule must be made by summons.

Appearance to originating summons (O. 12, r. 8).

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

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

(3) Subject to the foregoing provisions of this rule, the foregoing rules of this Order shall apply in relation to an originating summons to which an appearance is required to be entered as they apply in relation to a writ except that for the reference in rule 4(b) to Order 11, rule 1(3), there shall be substituted a reference to Order 11, rule 8(6).

ORDER 13
DEFAULT OF APPEARANCE TO WRIT

(R.S.C. 1978)

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

1. (1) Subject to Order 73, rule 3, where a writ is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

(2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest

accruing after the date of the writ at an unspecified rate, but any such interest shall be computed from the date of the writ to the date of entering judgment at the rate of 6 per cent.

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

2. Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

Claim in detinue (O. 13, r. 3).

3. Where a writ is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, at his option enter either —

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

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

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

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

4. (1) Where a writ is indorsed with a claim against a defendant for possession of land only, then, subject to paragraph (2), if that defendant fails to enter an appearance the plaintiff may, after the time limited for appearing, and on producing a certificate by his attorney, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 77, rule 1, enter judgment for possession of the land as against that defendant and costs, and proceed with the action against the other defendants, if any.

(2) Notwithstanding anything in paragraph (1), the plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under that paragraph unless he produces a certificate by his attorney, or (if he sues in person) an affidavit, stating either that the claim does not relate to a dwelling-house or that the claim relates to a dwelling-house of which the value exceeds $10,000.

(3) An application for leave to enter judgment under paragraph (2) shall be by summons stating the grounds of the application, and the summons must, unless the Court otherwise orders and notwithstanding anything in Order 61, rule 9, be served on the defendant against whom it is sought to enter judgment.

(4) If the Court refuses leave to enter judgment, it may make or give any such order or directions as it might have made or given had the application been an application for judgment under Order 14, rule 1.

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

Mixed claims (O. 13, r. 5).

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

Other claims (O. 13, r. 6).

6. (1) Where a writ is indorsed with a claim of a description not mentioned in rules 1 to 4, then, if any defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing and upon filing an affidavit proving due service of the writ on that defendant and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, proceed with the action as if that defendant had entered an appearance.

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

(3) An application for leave to enter judgment under paragraph (2) shall be by summons which must, unless the Court otherwise orders, and notwithstanding anything in

Order 61, rule 9, be served on the defendant against whom it is sought to enter judgment.

Proof of service of writ (O. 13, r. 7).

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

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

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

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

Setting aside judgment (O. 13, r. 8).

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

ORDER 14
SUMMARY JUDGMENT

(R.S.C. 1978)

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

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

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

(a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or

(b) a claim by the plaintiff based on an allegation of fraud.

(3) This Order shall not apply to an action to which Order 75 applies.

Manner in which application under rule 1 must be made (O. 14, r. 2).

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

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

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

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

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

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

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

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

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

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

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

(a) to produce any document;

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

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

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

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

(a) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;

(b) the words in rule 3(2) "any counterclaim made or raised by the defendant in" shall be omitted; and

(c) the reference in rule 4(3) to the action shall be construed as a reference to the counter-claim to which the application under this rule relates.

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

Directions (O. 14, r. 6).

6. (1) Where the Court —

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

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

the Court shall give directions as to the further conduct of the action, and Order 25, rules 2 to 7, shall, with the

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

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

Costs (O. 14, r. 7).

7. (1) If the plaintiff makes an application under rule 1 where the case is not within this Order or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend then, without prejudice to Order 59, and, in particular, to rule 4, thereof, the Court may dismiss the application with costs and may require the costs to be paid by him forthwith.

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

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

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

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

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

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

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

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

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

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

ORDER 15
CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES

(R.S.C. 1978)

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

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

(a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action; or

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

(c) with the leave of the Court.

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

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

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

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

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

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

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

3. (1) Where a defendant to an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject-matter of the action, then subject to rule 5(2), he may join that other person as a party against whom the counterclaim is made.

(2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim; and a person on whom a copy of a counterclaim is served under this paragraph shall, if he is not already a party to the action, become a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.

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

(4) The appropriate office for the entry of appearance to a counterclaim by a person who is not already a party to the action is the Registry.

(5) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on a person who is not already a party to the action, the following provisions

of these Rules, namely, Order 10 (except rule 1(4)), Order 11 (except rule 3), Orders 12 and 13 and Order 67, rule 4, shall, subject to the last foregoing paragraph, apply in relation to the counterclaim and the proceedings arising from it as if —

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

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

(6) A copy of a counterclaim required to be served on a person who is not already a party to the action must be indorsed with a notice, in Form No. 17 in Appendix A, addressed to that person —

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

(b) stating that the Registry is the appropriate office for the entry of appearance by that person to the counterclaim; and

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

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

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

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

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

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

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

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

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

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

Misjoinder and non-joinder of parties (O. 15, r. 6).

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

(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application —

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

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

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters

in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

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

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

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

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

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

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

(3) An action purporting to have been commenced against a defendant who has died shall, if the cause of action survives and no grant of probate or administration has been made, be treated as having been brought against his estate in accordance with paragraph (1).

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

(a) the plaintiff shall, during the period of validity for service of the writ or originating summons, apply to the Court for an order appointing a person to represent the deceased's estate for the purpose of the proceedings or, if a grant of probate or administration has been made since the commencement of the action, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person so appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;

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

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

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

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

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

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

(2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that

all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party. An application for an order under this paragraph may be made *ex parte*.

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

(a) if he is already a party on the other side, the order shall be treated as containing a direction that he shall cease to be a party on that other side; and

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

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

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

Provisions consequential on making of order under rule 6 or 8 (O. 15, r. 9).

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

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

(b) the date on which the amendment is made; and the amendment must be made within such period as may be specified in the order or, if no period is so specified, within 14 days after the making of the order.

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

(3) Where by an order under rule 6 or 8 a person is to be made a defendant the rules as to entry of appearance shall apply accordingly to entry of appearance by him, subject, in the case of a person to be made a defendant by an order under rule 7, to the modification that the time limited for appearing shall begin with the date on which the order is served on him under rule 7(4) or, if the order is not required to be served on him, with the date on which the order is noted in the cause book.

(4) Where by an order under rule 6 or 7 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until —

(a) where the order is made under rule 6, the writ has been amended in relation to him under this rule and (if he is a defendant) has been served on him; or

(b) where the order is made under rule 7, the order has been served on him under rule 7(4) or, if the order is not required to be served on him, the order has been noted in the cause book,

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

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

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

10. (1) If after the death of a plaintiff or defendant in any action the cause of action survives, but no order under rule 7 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives

may apply to the Court for an order that unless the action is proceeded with within such time as may be specified in the order the action shall be struck out as against the plaintiff or defendant, as the case may be, who has died; but where it is the plaintiff who has died, the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested persons who, in the opinion of the Court, should be notified.

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

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

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

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

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

Relator actions (O. 15, r. 12).

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

Representative proceedings (O. 15, r. 13).

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

(2) At any stage of proceedings under this rule the Court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons as representing whom the defendants are sued to represent all, or all except one or more, of those persons in the proceedings, and where, in exercise of the power conferred by this paragraph, the Court appoints a person not named as a defendant, it shall make an order under rule 6 adding that person as a defendant.

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

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

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

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

Representation of interested persons who cannot be ascertained, etc. (O. 15, r. 14).

14. (1) In any proceedings concerning —

(a) the estate of a deceased person; or

(b) property subject to a trust; or

(c) the construction of a written instrument, including a statute,

the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in paragraph (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested (whether presently or for any future,

contingent or unascertained interest) in or affected by the proceedings.

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

(a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;

(b) that the person, class or some member of the class, though ascertained cannot be found;

(c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.

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

(4) Where, in any such proceedings, a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings (including unborn or unascertained persons) but —

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

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

the Court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

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

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

(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 14.

Representation of deceased person interested in proceedings (O. 15, r. 16).

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

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

Declaratory judgment (O. 15, r. 17).

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

Conduct of proceedings. (O. 15, r. 18).

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

ORDER 16
THIRD PARTY AND SIMILAR PROCEEDINGS

(R.S.C. 1978)

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

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

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

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

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

then, subject to paragraph (2), the defendant may issue a notice in Form No. 20 or 21 in Appendix A, whichever is appropriate (in this Order referred to as a third party notice), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

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

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

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

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

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

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

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

(c) the nature of the claim made by the applicant or particulars of the question or issue required to be determined, as the case may 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 (O. 16, r. 3).

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

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

(3) Appearance to a third party notice must be entered at the Registry.

(4) Subject to the foregoing provisions of this rule, the following provisions of these Rules, namely, Order 6, rule 6(3) and (4), Order 10 (except rule 1(4), Order 11, (except rule 3), Order 12 and Order 67, rule 4, shall apply in relation to a third party notice and to the proceedings begun thereby as if —

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

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

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

4. (1) If the third party enters an appearance, the defendant who issued the third party notice must, by summons to be served on all the other parties to the action, apply to the Court for directions.

(2) If no summons is served on the third party under paragraph (1), the third party may, not earlier than 7 days after entering an appearance, by summons to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.

(3) On the application for directions under this rule the Court may —

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

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

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

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

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

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

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

5. (1) If a third party does not enter an appearance or, having been ordered to serve a defence, fails to do so —

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

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

contribution or indemnity claimed in the notice, and with the leave of the Court, in respect of any other relief or remedy claimed therein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER 17
INTERPLEADER

(R.S.C. 1978)

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

1. (1) Where —

(a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto; or

(b) claim is made to any money, goods or chattels taken or intended to be taken by a bailiff in execution under any process, or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued,

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

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

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

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

(2) On receipt of a claim made under this rule the bailiff must forthwith give notice thereof to the execution creditor and the execution creditor must, within 4 days after receiving the notice, give notice to the bailiff informing him whether he admits or disputes the claim. An execution creditor who gives notice in accordance with this paragraph admitting a claim shall only be liable to the bailiff for any fees and expenses incurred by the bailiff before receipt of that notice.

(3) Where —

(a) the bailiff receives a notice from an execution creditor under paragraph (2) disputing a claim, or the execution creditor fails, within the period mentioned in that paragraph, to give the required notice; and

(b) the claim made under this rule is not withdrawn,

the bailiff may apply to the Court for relief under this Order.

(4) A bailiff who receives a notice from an execution creditor under paragraph (2) admitting a claim made under this rule shall withdraw from possession of the money, goods or chattels claimed and may apply to the Court for relief under this Order of the following kind, that is to say, an order restraining the bringing. of an action against him for or in respect of his having taken possession of that money or those goods or chattels.

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

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

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

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

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

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

(b) does not collude with any of the claimants to that subject-matter; and

(c) is willing to pay or transfer that subject-matter into court or to dispose of it as the Court may direct.

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

To whom bailiff may apply for relief (O. 17, r. 4).

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

Powers of Court hearing summons (O. 17, r. 5).

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

(a) that any claimant be made a defendant in any action pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this Order; or

(b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which defendant.

(2) Where —

(a) the applicant on a summons under this Order is a bailiff; or

(b) all the claimants consent or any of them so request; or

(c) the question at issue between the claimants is a question of law and the facts are not in dispute,

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

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

Power to order sale of goods taken in execution (O. 17, r. 6).

6. Where an application for relief under this order is made by a bailiff who has taken possession of any goods or chattels in execution under any process, and a claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court may order those goods or chattels or any party thereof to be sold and may direct that the proceeds of sale be applied in such manner and on such terms as may be just and as may be specified in the order.

Power to stay proceedings (O. 17, r. 7).

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

Other powers (O. 17, r. 8).

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

One order in several causes or matters (O. 17, r. 9).

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

Discovery (O. 17, r. 10).

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

Trial of interpleader issue (O. 17, r. 11).

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

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

ORDER 18
PLEADINGS

(R.S.C. 1978)

Service of statement of claim (O. 18,

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

Service of defence (O. 18,

2. (1) Subject to paragraph (2), a defendant who enters an appearance in, and intends to defend, an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 14 days after the time limited for appearing or after the statement of claim is served on him, whichever is the later.

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

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

3. (1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with Rule 8; and if no reply is served, rule 14(1) will apply.

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

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

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

Pleadings subsequent to reply

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

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

5. (1) Every pleading in an action must bear on its face —

(a) the year in which the writ in the action was issued and the number of the action;

(b) the title of the action;

(c) the description of the pleading; and

(d) the date on which it was served.

(2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

(3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.

(4) Every pleading of a party must be indorsed —

(a) where the party sues or defends in person, with his name and address;

(b) in any other case, with the name or firm and business address of the attorney by whom it was served and also (if the attorney is the agent of another) the name or firm and business address of his principal.

(5) Every pleading of a party must be signed by counsel, an attorney or firm of attorneys, if settled by him or them, or by the party, if he sues o r defends in person.

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

6. (1) Subject to the provisions of this rule, and rules 7, 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

(2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.

(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

(4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

Conviction, etc., to be adduced in evidence: matters to be pleaded (O. 18, r. 7).

7. (1) If in any action which is to be tried with pleadings any party intends, in reliance on section 11 of the English Civil Evidence Act, 1978 (convictions as evidence in civil proceedings) to adduce evidence that a person was convicted of an offence by or before a court in The Bahamas or by a court-martial there or elsewhere, he must include in his pleading a statement of his intention with particulars of —

(a) the conviction and the date thereof;

(b) the court or court-martial which made the conviction; and

(c) the issue in the proceedings to which the conviction is relevant.

(2) If in any action which is to be tried with pleadings any party intends, in reliance on section 12 of the said Act of 1968 (findings of adultery and paternity as evidence in civil proceedings) to adduce evidence that a person was found guilty of adultery in matrimonial proceedings or was adjudged to be the father of a child in affiliation proceedings before a court in The Bahamas, he must include in his pleading a statement of his intention with particulars —

(a) the finding or adjudication and the date thereof;

(b) the court which made the finding or adjudication and the proceedings in which it was made; and

(c) the issue in the proceedings to which the finding or adjudication is relevant.

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

(a) denies the conviction, finding of adultery or adjudication of paternity to which the statement relates; or

(b) alleges that the conviction, finding or adjudication was erroneous; or

(c) denies that the conviction, finding or adjudication is relevant to any issue in the proceedings, he must make the denial or allegation in his pleading.

Matters which must be specifically pleaded (O. 18, r. 8).

8. (1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality —

(a) which he alleges makes any claim or defence of the opposite party not maintainable; or

(b) which, if not specifically pleaded, might take the opposite party by surprise; or

(c) which raises issues of fact not arising out of the preceding pleading.

(2) Without prejudice to paragraph (1), a defendant to an action for the recovery of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.

(3) A claim for exemplary damages must be specifically pleaded together with the facts on which the party pleading relies.

Matter may be pleaded whenever arising (O. 18, r. 9).

9. Subject to rules 6(1), 10 and 15(2), a party may in any pleading plead any matter which has arisen at any time, whether before or since the issue of the writ.

Departure (O. 18, r. 10).

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

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

Points of law may be pleaded (O. 18, r. 11).

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

Particulars of pleading (O. 18, r. 12).

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

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

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

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

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

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

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

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

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

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

Admissions and denials (O. 18, r. 13).

13. (1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it.

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

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

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

Denial by joinder of issue (O. 18, r. 14).

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

(2) Subject to paragraph (3) —

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

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

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

(4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is expected from the joinder and is stated to be admitted in which case the express joinder of issue operates as a denial of every other such allegation.

Statement of claim (O. 18, r. 15).

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

(2) A statement of claim must not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from

facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned; but, subject to that, a plaintiff may in his statement of claim, alter, modify or extend any claim made by him in the indorsement of the writ without amending the indorsement.

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

Defence of tender (O. 18, r. 16).

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

Defence of set-off (O. 18, r. 17).

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

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

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

(a) Rule 15(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff;

(b) Rules 8(2), 16 and 17 shall, with the necessary modifications apply to a defence to counterclaim as they apply to a defence.

Striking out pleading and indorsements (O. 18, r. 19).

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

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

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

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

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

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

Close of pleadings (O. 18, r. 20).

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

(a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim; or

(b) if neither a reply nor a defence to counterclaim is served, at the expiration of 14 days after service of the defence.

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

Trial without pleadings (O. 18, r. 21).

21. (1) Where in an action to which this rule applies any defendant has entered an appearance in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings or further pleadings, as the case may be.

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

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

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

(a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or

b) a claim by the plaintiff based on an allegation of fraud.

Saving for defence under Merchant Shipping Act (O. 18, r. 22).

22. Nothing in Order 67, rules 36 to 39, shall be taken as limiting the right of any shipowner or other person to reply by way of defence on any provision of the Merchant Shipping Act, which limits the amount of his liability in connection with a ship or other property.

ORDER 19
DEFAULT OF PLEADINGS

(R.S.C. 1978)

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

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

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

2. (1) Subject to the Order 73, rule 3, where the plaintiff's claim against a defendant is for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

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

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

3. Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules

for service of the defence, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

Default of defence: claim in detinue (O. 19, r. 4).

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

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

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

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

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

5. (1) Where the plaintiff's claim against a defendant is for possession of land only, then subject to paragraph (2), if that defendant fails to serve a defence on the plaintiff, the plaintiff may after the expiration of the period fixed by or under these Rules for service of the defence, and on producing a certificate by his attorney, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 77, rule 1, enter judgment for possession of the land as against that defendant and for costs, and proceed with the action against the other defendants, if any.

(2) Notwithstanding anything in paragraph (1), the plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under that paragraph unless he produces a certificate by his attorney, or (if he sues in person) an affidavit, stating either that the claim does not relate to a dwelling-house or that the claim relates to a dwelling-house of which the value exceeds $10,000.

(3) An application for leave to enter judgment under paragraph (2) shall be by summons stating the grounds of the application and the summons must, unless the Court otherwise orders, be served on the defendant against whom it is sought to enter judgment.

(4) If the Court refuses leave to enter judgment, it may make or give any such order or directions as it might have made or given had the application been an application for judgment under Order 14, rule 1.

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

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

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

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

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

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

(a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or

(b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment, against the other defendants.

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

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

8. A defendant who counterclaims against a plaintiff shall be treated for the purposes of rules 2 to 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to counterclaim, those rules shall apply as if the counterclaim were a statement of claim, the defence to counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively, as if references to the period fixed by or under these Rules for service of the defence were references to the period so fixed for service of the defence to counterclaim.

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

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

ORDER 20
AMENDMENT

(R.S.C. 1978)

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

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

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

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

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

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

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

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

Amendment of appearance (O. 20, r. 2).

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

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

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

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

(a) the defendant, if he has already served a defence on the plaintiff, may amend his defence; and

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

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

(a) the plaintiff, if he has already served a reply on that defendant, may amend his reply; and

(b) the period for service of his reply or amended reply, as the case may be, shall be 14 days after the amended defence is served on him.

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

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

(6) Where a party has pleaded to a pleading which is subsequently amended and served on him under paragraph (1), then, if that party does not amend his pleading under the foregoing provisions of this rule, he shall be taken to reply on it in answer to the amended pleading, and Order 18, rule 14(2), shall have effect in such a case as if the amended pleading had been served at the time when that pleading, before its amendment under paragraph (1), was served.

Application for disallowance of amendment made without leave (O. 20, r. 4).

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

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

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

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

5. (1) Subject to Order 15, rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Registrar.

ORDER 21
WITHDRAWAL AND DISCONTINUANCE

(R.S.C. 1978)

Withdrawal of appearance (O. 21, r. 1).

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

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

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

(2) A defendant may, without the leave of the Court —

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

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

by serving a notice to that effect on the plaintiff or other party concerned.

(3) Where there are two or more defendants to an action not all of whom serve a defence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period. This paragraph shall apply in relation to a counterclaim as it applies in relation to an action with the substitution for references to a defence, to the plaintiff and to paragraph (1), of references to a defence to counterclaim, to the defendant and to paragraph (2) respectively.

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

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

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

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

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

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

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

5. (1) Where a party has discontinued an action or counterclaim or withdrawn any particular claim made by him therein and he is liable to pay any other party's costs of the action or counterclaim or the costs occasioned to any other party by the claim withdrawn, then if, before

payment of those costs, he subsequently brings an action for the same, or substantially the same, cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.

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

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

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

ORDER 22
PAYMENT INTO AND OUT OF COURT

(R.S.C. 1978)

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

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

(2) On making any payment into court under this rule, and on increasing any such payment already made, the defendant must give notice thereof in Form No. 23 in Appendix A to the plaintiff and every other defendant (if any); and within three days after receiving the notice the plaintiff must send the defendant a written acknowledgement of its receipt.

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

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

(a) must state that the money is paid in respect of all those causes of action or, as the case may be, must specify the cause or causes of action in respect of which the payment is made; and

(b) where the defendant makes separate payments in respect of each, or any two or more of those causes of action, must specify the sum paid in respect of that cause or, as the case may be, those causes of action.

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

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

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

(a) the cause of action in respect of which he claims; or

(b) where two or more causes of action are joined in the counterclaim, all those causes of action or, if not all, which of them.

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

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

(a) where the money was paid in respect of the cause of action or all the causes of action in respect of which he claims, accept the money in satisfaction of that cause of action or those causes of action, as the case may be; or

(b) where the money was paid in respect of some only of the causes of action in respect of which he claims, accept in satisfaction of any such cause or causes of action the sum specified in respect of that cause or those causes of action in the notice of payment,

by giving notice in Form No. 24 in Appendix A to every defendant to the action.

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

(a) money is paid into court under rule 1; or

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

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

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

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

(5) Where money is paid into court by a defendant who made a counterclaim and the notice of payment stated, in relation to any sum paid, that in making the payment the defendant had taken into account and satisfied the cause or causes of action, or the specified cause or causes of action in respect of which he claimed, then, on the plaintiff accepting that sum, all further proceedings on the counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.

(6) A plaintiff who has accepted any sum paid into court shall, subject to rules 4 and 10 and Order 70, rule 10, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptance relates.

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

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

(a) by some but not all of the defendants sued jointly or in the alternative by him; or

(b) with a defence of tender before action; or

(c) in satisfaction either of causes of action arising under the Fatal Accidents Act, or of a cause of action arising thereunder where more than one person is entitled to the money,

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

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

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

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

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

Counterclaim (O. 22, r. 6).

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

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

7. Except in an action to which a defence of tender before action is pleaded, and except in an action all further proceedings in which are stayed by virtue of rule 3(4) after

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

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

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

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

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

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

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

Payment out of money paid into court under Exchange Control Regulations (O. 22, r. 9).

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

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

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

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

Person to whom payment to be made (O. 22, r. 10).

10. (1) Payment shall be made to the party entitled or to his attorney.

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

Payment out: small intestate estates (O. 22, r. 11).

11. Where a person entitled to a fund in court, or a share of such fund, dies intestate and the Court is satisfied that no grant of administration of his estate has been made and that the assets of his estate do not exceed $1,000 in value, including the value of the fund or share, it may order that the fund or share shall be paid, transferred or delivered to the person who, being a widower, widow, child, father, mother, brother or sister of the deceased, would have the prior right to a grant of administration of the estate of the deceased.

Payment of hospital expenses (O. 22, r. 12).

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

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

Investment of money in court (O. 22, r. 13).

13. Cash under the control of or subject to the order of the Court may be invested on fixed deposit at a bank or otherwise as the Registrar shall see fit.

ORDER 23
SECURITY FOR COSTS

S.I. 38/1996.

(R.S.C. 1978)

Security for costs of action, etc. (O. 23, r. 7).

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

(a) that the plaintiff is ordinarily resident out of the jurisdiction; or

(b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so; or

(c) subject to paragraph (2), that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein; or

(d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

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

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

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

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

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

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

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

ORDER 24
DISCOVERY AND INSPECTION OF DOCUMENTS

(R.S.C. 1978)

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

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

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

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

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

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

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

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

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

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

(b) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at the stage of the action, order that there shall be no discovery of documents by any or all of the parties either at all or at that stage,

and the Court shall make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the action or for saving costs.

(6) An application for an order under paragraph (5) must be by summons, and the summons must be taken out before the expiration of the period within which by virtue of this rule discovery of documents in the action is required to be made.

(7) Any party to whom discovery of documents is required to be made under this rule may, at any time before the summons for directions in the action is taken out, serve on the party required to make such discovery a notice requiring him to make an affidavit verifying the list he is required to make under paragraph (1), and the party on whom such a notice is served must, within 14 days after service of the notice, make and file an affidavit in compliance with the notice and serve a copy of the affidavit on the party by whom the notice was served.

Order for discovery (O. 24, r. 3).

3. (1) Subject to the provisions of this rule and of rules 4 and 8, the Court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.

(2) Where a party who is required by rule 2 to make discovery of documents fails to comply with any provision of that rule, the Court, on the application of any party to whom discovery was required to be made, may make an order against the first-mentioned party under paragraph (1) of this rule or, as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under rule 2 and to serve a copy thereof on the applicant.

(3) An order under this rule may be limited to such documents or classes of document only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

Order for determination of issue, etc., before discovery (O. 24, r. 4).

4. (1) Where on an application for an order under rule 2 or 3 it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

(2) Where in an action begun by writ an order is made under this rule for the determination of an issue or question, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application on which the order was made were a summons for directions.

Form of list and affidavit (O. 24, r. 5).

5. (1) A list of documents made in compliance with rule 2 or with an order under rule 3 must be in Form No. 26 in Appendix A, and must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

(2) If it is desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made as aforesaid verifying a list of documents must be in Form No. 27 in Appendix A.

Defendant entitled to copy of co-defendant's list

6. (1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing rules of this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) A party required by virtue of paragraph (1) to supply a copy of a list of documents must supply it free of charge on a request made by the party entitled to it.

(3) Where in an action begun by originating summons the Court makes an order under rule 3 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.

(4) In this rule "list of documents" includes an affidavit verifying a list of documents.

Order for discovery of particular documents (O. 24, r. 7).

7. (1) Subject to rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it.

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

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

Discovery to be ordered only if necessary (O. 24, r. 8).

8. On the hearing of an application for an order under rule 3 or 7 the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or

matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

Inspection of documents referred to in list (O. 24, r. 9).

9. A party who has served a list of documents on any other party, whether in compliance with rule 2 or with an order under rule 3, must allow the other party to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies thereof, and, accordingly, he must when he serves the list on the other party also serve on him a notice stating a time within 7 days after the service thereof at which the said documents may be inspected at a place specified in the notice.

Inspection of documents referred to in pleadings and affidavits (O. 24, r. 10).

10. (1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies thereof.

(2) The party on whom a notice is served under paragraph (1) must, within 4 days after service of the notice, serve on the party giving the notice a notice stating a time within 7 days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he objects to produce and on what grounds.

Order for production for inspection (O. 24, r. 11).

11. (1) If a party who is required by rule 9 to serve such a notice as is therein mentioned or who is served with a notice under rule 10(1) —

(a) fails to serve a notice under rule 9 or, as the case may be, rule 10(2); or

(b) objects to produce any document for inspection; or

(c) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there,

then, subject to rule 13(1), the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

(2) Without prejudice to paragraph (1), but subject to rule 13(1), the Court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.

(3) An application for an order under paragraph (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the cause or matter.

Order for production to Court (O. 24, r. 12).

12. At any stage of the proceedings in any cause or matter the Court may, subject to rule 13(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter and the Court may deal with the documents when produced in such manner as it thinks fit.

Production to be ordered only if necessary, etc. (O. 24, r. 13).

13. (1) No order for the production of any documents for inspection or to the Court shall be made under any of the foregoing rules unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where on an application under this Order for production of any document for inspection or to the Court, privilege from such production is claimed or objection is made to such production on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

Production of business books (O. 24, r. 14).

14. (1) Where production of any business books for inspection is applied for under any of the foregoing rules, the Court may, instead of ordering production of the original books for inspection, order a copy of any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.

(2) Any such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

Document disclosure of which would be injurious to public interest: saving (O. 24, r. 15).

15. The foregoing provisions of this Order shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

Failure to comply with requirement for discovery, etc. (O. 24, r. 16).

16. (1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose, fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision, to rules 3(2) and 11(1), the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, order that the defence be struck out and judgment entered accordingly.

(2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.

(3) Service on a party's attorney of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) An attorney on whom such an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

Revocation and variation of orders (O. 24, r. 17).

17. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

ORDER 25
SUMMONS FOR DIRECTIONS

(R.S.C. 1978)

Summons for directions (O. 25, r. 1).

1. (1) With a view to providing, in every action to which this rule applies, an occasion for the consideration by the Court of the preparations for the trial of the action, so that —

(a) all matters which must or can be dealt with on interlocutory applications and have not already been dealt with may so far as possible be dealt with; and

(b) such directions may be given as to the future of the action as appear best adapted to secure the just, expeditious and economical disposal thereof,

the plaintiff must, within one month after the pleadings in the action are deemed to be closed, take out a summons (in these rules referred to as a summons for directions) returnable in not less than 14 days.

(2) This rule applies to all actions begun by writ except —

(a) actions in which the plaintiff or defendant has applied for judgment under Order 14, or in which the plaintiff applied for judgment under Order 75, and directions have been given under the relevant Orders;

(b) actions in which the plaintiff or defendant has applied under Order 18, rule 21, for trial without pleadings or further pleadings and directions have been given under that rule;

(c) actions in which an order has been made under Order 24, rule 4, for the trial of an issue or question before discovery;

(d) actions in which directions have been given under Order 29, rule 7;

(e) actions in which an order for the taking of an account has been made under Order 43, rule 1;

(f) actions for the infringement of a patent; and

(g) actions ordered to be tried as Admiralty short causes.

(3) Where, in the case of any action in which discovery of documents is required to be made, by any party under Order 24, rule 2, the period of 14 days referred to in paragraph (1) of that rule is extended, whether by consent or by order of the Court or both by consent and by order, paragraph (1) of this rule shall have effect in relation to that action as if for the reference therein to one month after the pleadings in the action are deemed to be closed there were substituted a reference to 14 days after the expiration of the period referred to in paragraph (1) of the said rule 2 as so extended.

(4) If the plaintiff does not take out a summons for directions in accordance with the foregoing provisions of this rule, the defendant or any defendant may do so or apply for an order to dismiss the action.

(5) On an application by a defendant to dismiss the action under paragraph (4) the Court may either dismiss the action on such terms as may be just or deal with the application as if it were a summons for directions.

(6) In the case of an action which is proceeding only as respects a counterclaim, references in this rule to the plaintiff and defendant shall be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.

Duty to consider all matters (O. 25, r. 2).

2. (1) When the summons for directions first comes to be heard, the Court shall consider whether —

(a) it is possible, to deal then with all the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons for directions; or

(b) it is expedient to adjourn the consideration of all or any of those matters until a later stage.

(2) If when the summons for directions first comes to be heard the Court considers that it is possible to deal with all the said matters, it shall deal with them forthwith and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are also then dealt with.

(3) If, when the summons for directions first comes to be heard, the Court considers that it is expedient to adjourn the consideration of all or any of the matters which, by the subsequent rules of this Order are required to be considered on the hearing of the summons, the Court

shall deal forthwith with such of those matters as it considers can conveniently be dealt with forthwith and adjourn the consideration of the remaining matters and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with either then or at a resumed hearing of the summons for directions.

(4) If the hearing of the summons for directions is adjourned without a day being fixed for the resumed hearing thereof, any party may restore it to the list on 2 days' notice to the other parties.

Particular matters for consideration (O. 25, r. 3).

3. On the hearing of the summons for directions the Court shall, in particular, consider, if necessary of its own motion, whether any order should be made or direction given in the exercise of the powers conferred by any of the following provisions, that is to say —

(a) any provision of Part I of the Civil Evidence Act 1968 of England (hearsay evidence) or of Part III of Order 38;

(b) Order 20, rule 5, Order 38, rules 2 to 6, and Order 67, rule 25(4).

Admissions and agreements to be made (O. 25, r. 4).

4. At the hearing of the summons for directions, the Court shall endeavour to secure that the parties make all admissions and all agreements as to the conduct of the proceedings which ought reasonably to be made by them and may cause the order on the summons to record any admissions or agreements so made, and (with a view to such special order, if any, as to costs as may be just being made at the trial) any refusal to make any admission or agreement.

Limitation of right of appeal (O. 25, r. 5).

5. Nothing in rule 4, shall be construed as requiring the Court to endeavour to secure that the parties shall agree to exclude or limit any right of appeal, but the order made on the summons for directions may record any such agreement.

Duty to give all information at hearing (O. 25, r. 6).

6. (1) Subject to paragraph (2), no affidavit shall be used on the hearing of the summons for directions except by the leave or direction of the Court, but, subject to paragraph (4), it shall be the duty of the parties to the action and their advisers to give all such information and produce all such documents on any hearing of the summons as the Court may reasonably require for the purposes of enabling it properly to deal with the summons.

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

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

(3) If the Court on any hearing of the summons for directions requires a party to the action or his attorney or counsel to give any information or produce any document and that information or document is not given or produced, then, subject to paragraph (4), the Court may —

(a) cause the facts to be recorded in the order with a view to such special order, if any, as to costs as may be just being made at the trial; or

(b) if it appears to the Court to be just so to do, order the whole or any part of the pleadings of the party concerned to be struck out, or, if the party is the plaintiff or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.

(4) Notwithstanding anything in the foregoing provisions of this rule, no information or documents which are privileged for disclosure shall be required to be given or produced under this rule by or by the advisers of any party otherwise than with the consent of that party.

Duty to make all interlocutory applications on summons for directions (O. 25, r. 7).

7. (1) Any party to whom the summons for directions is addressed must so far as practicable apply at the hearing of the summons for any order or directions which he may desire as to any matter capable of being dealt with on an interlocutory application in the action and must, not less than 7 days before the hearing of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ, from the orders and directions asked for by the summons.

(2) If the hearing of the summons for directions is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or directions not asked for by the summons or in any notice given under paragraph (1), he must, not less than 7 days before the resumed hearing of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons or in any such notice as aforesaid.

(3) Any application subsequent to the summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action must be made under the summons by 2 clear days' notice to the other party stating the grounds of the application.

ORDER 26
INTERROGATORIES

(R.S.C. 1978)

Discovery of interrogatories (O. 26, r. 1).

1. (1) A party to any cause or matter may apply to the Court for an order —

(a) giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter; and

(b) requiring that other party to answer the interrogatories on affidavit within such period as may be specified in the order.

(2) A copy of the proposed interrogatories must be served with the summons, or the notice under Order 25, rule 7, by which the application for such leave is made.

(3) On the hearing of an application under this rule, the Court shall give leave as to such only of the interrogatories as it considers necessary either for disposing fairly of the cause or matter or for saving costs; and in deciding whether to give leave the Court shall take into account any offer made by the party to be interrogated to give particulars or to make admissions or to produce documents relating to any matter in question.

(4) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) shall be disallowed notwithstanding that it might be admissible in oral cross-examination of a witness.

Interrogatories where party is a body of persons (O. 26, r. 2).

2. Where a party to a cause or matter is a body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or be sued whether in its own name or in the name of an officer or other person, the Court may, on the application of any other party, make an order allowing him to serve interrogatories on such officer or member of the body as may be specified in the order.

Statement as to party, etc., required to answer (O. 26, r. 3).

3. Where interrogatories are to be served on two or more parties or are required to be answered by an agent or servant of a party, a note at the end of the interrogatories shall state which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.

Objection to answer on ground of privilege (O. 26, r. 4).

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

Insufficient answer (O. 26, r. 5).

5. If any person on whom interrogatories have been served answers any of them insufficiently, the Court may make an order requiring him to make a further answer, and either by affidavit or on oral examination as the Court may direct.

Failure to comply with order (O. 26, r. 6).

6. (1) If a party against whom an order is made under rule 1 or 5 fails to comply with it, the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If a party against whom an order is made under rule 1 or 5 fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.

(3) Service on a party's attorney of an order to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) An attorney on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

Use of answers to interrogatories at trial (O. 26, r. 7).

7. A party may put in evidence at the trial of a cause or matter, or of any issue therein, some only of the answers to interrogatories, or part only of such an answer, without putting in evidence the other answers or, as the case may be, the whole of that answer, but the Court may look at the whole of the answers and if of opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one ought not to be used without the other, the Court may direct that that other answer or part shall be put in evidence.

Revocation and variation of orders (O. 26, r. 8)

8. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

ORDER 27
ADMISSIONS

(R.S.C. 1978)

Admission of case of other party (O. 27, r. 1).

1. Without prejudice to Order 18, rule 13, a party to a cause or matter may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Notice to admit facts (O. 27, r. 2).

2. (1) A party to a cause or matter may not later than 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit, for the purpose of that cause or matter only, the facts specified in the notice.

(2) An admission made in compliance with a notice under this rule shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made or in favour of any person other than the person by whom the notice was given, and the Court may at any time allow a party to amend or withdraw an admission so made by him on such terms as may be just.

Judgment on admissions of facts (O. 27, r. 3).

3. Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just. An application for an order under this rule may be made by motion, or summons.

Admission and production of documents specified in list of documents (O. 27, r. 4).

4. (1) Subject to paragraph (2) and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a list of documents is served in pursuance of any provision of Order 24 shall, unless the Court otherwise orders, be deemed to admit —

(a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been; and

(b) that any document described therein as a copy is true copy. This paragraph does not apply to a document the authenticity of which the party has denied in his pleading.

(2) If before the expiration of 21 days after inspection of the documents specified in a list of documents or after the time limited for inspection of those documents expires, whichever is the later, the party on whom the list is served serves on the party whose list it is a notice stating, in relation to any document specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial, he shall not be deemed to make any admission in relation to that document under paragraph (1).

(3) A party to a cause or matter by whom a list of documents is served on any other party in pursuance of any provision of Order 24 shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the documents specified in the list as are in his possession, custody or power.

(4) The foregoing provisions of this rule apply in relation to an affidavit made in compliance with an order

under Order 24, rule 7, as they apply in relation to a list of documents served in pursuance of any provision of that Order.

Notices to admit or produce documents (O. 27, r. 5).

5. (1) Except where rule 4(1) applies, a party to a cause or matter may within 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit the authenticity of the documents specified in the notice.

(2) If a party on whom a notice under paragraph (1) is served desires to challenge the authenticity of any document therein specified he must, within 21 days after service of the notice, serve on the party by whom it was given a notice stating that he does not admit the authenticity of the document and requires it to be proved at the trial.

(3) A party who fails to give a notice of non-admission in accordance with paragraph (2) in relation to any document shall be deemed to have admitted the authenticity of that document unless the Court otherwise orders.

(4) Except where rule 4(3) applies, a party to a cause or matter may serve on any other party a notice requiring him to produce the documents specified in the notice at the trial of the cause or matter.

ORDER 28
ORIGINATING SUMMONS PROCEDURE

(R.S.C. 1978)

Application (O. 28, r. 1).

1. The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any Act; and, subject as aforesaid, Order 32, rule 5, shall apply in relation to originating summonses as it applies in relation to other summonses.

Fixing time for attendance of parties before court (O. 28, r. 2).

2. (1) Where, in the case of an originating summons to which appearance is required to be entered, any defendant served with the summons has entered, or has within the time limited for appearing failed to enter, an appearance,

the plaintiff may obtain an appointment for the attendance of the parties before the Court for the hearing of the summons, and a day and time for their attendance shall be fixed by a notice (in Form No. 12 in Appendix A) sealed with the seal of the Court.

(2) A day and time for the attendance of the, parties before the Court for the hearing of an originating summons to which appearance is not required, or for the hearing of an *ex parte* originating summons, may be fixed on the application of the plaintiff or applicant, as the case may be.

(3) Where a plaintiff fails to apply for an appointment under paragraph (1), any defendant may, with the leave of the Court, obtain an appointment in accordance with that paragraph provided that he has entered an appearance.

Notice of first hearing, etc. (O. 28, r. 3).

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

(2) Not less than 4 clear days before the day fixed under rule 2 for the hearing of an originating summons to which appearance is not required, the plaintiff must serve the summons on every defendant.

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

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

Directions, etc., by Court (O. 28, r. 4).

4. (1) The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of

the case may require, but where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the order may be varied or revoked by a subsequent order of the Court on such terms as it thinks just.

(2) Unless on the first hearing of an originating summons the Court disposes of the summons altogether or makes an order under rule 8, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(3) Without prejudice to the generality of paragraph (2), the Court shall, at as early a stage of the proceedings on the summons as appears to it to be practicable, consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing the summons on oral evidence or mainly on oral evidence, and, if it thinks fit, may order no further evidence shall be filed and that the summons shall be heard on oral evidence or partly on oral evidence and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.

(4) Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination and any directions which it could give under Order 25 if the cause or matter had been begun by writ and the summons were a summons for directions under that Order.

Adjournment of summons (O. 28, r. 5).

5. (1) The hearing of the summons by the Court may (if necessary) be adjourned from time to time, either generally or to a particular date, as may be appropriate, and the powers of the Court under rule 4 may be exercised at any resumed hearing.

(2) If the hearing of the summons is adjourned generally, the party on whose application the day for its hearing was fixed under rule 2 may restore it to the list on two days' notice to all the other parties (except a defendant who has failed to enter an appearance, or if the summons is one to which an appearance is not required, has not been served with the summons), and any of those parties may restore it with the leave of the Court.

Application affecting party in default of appearance (O. 28, r. 6).

6. Where in a cause or matter begun by originating summons an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

Counterclaim by defendant (O. 28, r. 7).

7. (1) A defendant to an action begun by originating summons who has entered an appearance to the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however arising) may make a counterclaim in the action in respect of that matter instead of bringing a separate action.

(2) A defendant who wishes to make a counterclaim under this rule must at the first or any resumed hearing of the originating summons by the Court but, in any case, at as early a stage in the proceedings as is practicable, inform the Court of the nature of his claim and, without prejudice to the powers of the Court under paragraph (3), the claim shall be made in such manner as the Court may direct under rule 4 or rule 8.

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

Continuation of proceedings as if cause or matter begun by writ (O. 28, r. 8).

8. (1) Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

(2) Where the Court decides to make such an order, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if there had been a summons for directions in the proceedings and that order were one of the orders to be made thereon.

(3) This rule applies notwithstanding that the cause or matter in question could not have been begun by writ.

(4) Any reference in these rules to an action begun by writ, shall, unless the context otherwise requires, be construed as including a reference to a cause or matter proceedings in which are ordered under this rule to continue as if the cause or matter had been so begun.

Order for hearing or trial (O. 28, r. 9).

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

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

(3) The Court shall by order determine the place and mode of the trial, but any such order may be varied by a subsequent order of the Court made at or before the trial.

(4) Order 33, rule 4(2), and Order 34, rules 1 to 7, shall apply in relation to a cause or matter begun by originating summons and to an order made therein under this rule as they apply in relation to an action begun by writ and to an order made therein under the said rule 4 and shall have effect accordingly with the necessary modifications and with the further modification that for references therein to the summons for directions there shall be substituted references to the first or any resumed hearing of the originating summons by the Court.

Failure to prosecute proceedings with despatch (O. 28, r. 10).

10. (1) If the plaintiff in a cause or matter begun by originating summons makes default in complying with any order or direction of the Court as to the conduct of the proceedings, or if the Court is satisfied that the plaintiff in

a cause or matter so begun is not prosecuting the proceedings with due despatch, the Court may order the cause or matter to be dismissed or may make such other order as may be just.

(2) Paragraph (1) shall, with any necessary modifications, apply in relation to a defendant by whom a counterclaim is made under rule 7 as it applies in relation to a plaintiff.

(3) Where, by virtue of an order made under rule 8, proceedings in a cause or matter begun by originating summons are to continue as if the cause or matter had been begun by writ, the foregoing provisions of this rule shall not apply in relation to the cause or matter after the making of the order.

Abatement, etc., of action (O. 28, r. 11).

11. Order 34, rule 6, shall apply in relation to an action begun by originating summons as it applies in relation to an action begun by writ.

ORDER 29
INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, INTERIM PAYMENTS, ETC.

I. Interlocutory Injunctions, Interim Preservation of Property, etc.

(R.S.C. 1978)

Application for injunction (O. 29, r. 1).

1. (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made *ex parte* on affidavit but, except as aforesaid, such application must be made by motion or summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction

applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

Detention, preservation, etc., of subject-matter of cause or matter (O. 29, r. 2).

2. (1) On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured.

(4) An order under this rule may be made on such terms, if any, as the Court thinks just.

(5) An application for an order under this rule must be made by summons or by notice under Order 25, rule 7.

(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he enters an appearance.

Power to order samples to be taken, etc. (O. 29, r. 3).

3. (1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of a party to the cause or matter, and on such terms, if any, as it thinks just, by order authorise or require any sample to be taken of any property which is the subject-matter of the cause or matter or as to which any question may rise therein, any observation to be made on such property or any experiment to be tried on or with such property.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

Sale of perishable property, etc. (O. 29, r. 4).

4. (1) The Court may, on the application of any party to a cause or matter, make an order for the sale by such person, in such manner and on such terms (if any) as may be specified in the order of any property (other than land) which is the subject-matter of the cause or matter or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other good reason it is desirable to sell forthwith. In this paragraph "land" includes any interest in, or right over, land.

(2) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

Order for early trial

5. Where on the hearing of an application, made before the trial of a cause or matter, for an injunction or the appointment of a receiver or an order under rule 2, 3 or 4, it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits thereof for the purposes of the application, the Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires. Where the Court makes an order for early trial it shall by the order determine the place and mode of the trial.

Recovery of personal property subject to lien, etc. (O. 29, r. 6).

6. Where the plaintiff, or the defendant by way of counterclaim claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings (if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum (if any), for interest and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it, but subject to the provisions of the Exchange Control Regulations.

Directions (O. 29, r. 7).

7. (1) Where an application is made under any of the foregoing provisions of this Order, the Court may give directions as to the further proceedings in the cause or matter.

(2) If, in an action begun by writ, not being any such action as is mentioned in subparagraphs (a) to (c) and (e) of Order 25, rule 1(2), the Court thinks fit to give directions under this rule before the summons for directions, rules 2 to 7 of that order shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application were a summons for directions.

Allowance of income of property *pendente lite* (O. 29, r. 8).

8. Where any real or personal property forms the subject-matter of any proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

II. Interim Payments

Interpretation of Part II (O. 29, r. 9).

9. In this Part of this Order —

"interim payment", in relation to a defendant, means a payment on account of any damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death which that defendant may be held liable to pay to or for the benefit of the plaintiff;

any reference to the plaintiff or defendant includes a reference to any person who, for the purpose of the proceedings, acts as next friend to the plaintiff or guardian of the defendant.

Application for interim payment (O. 29, r. 10).

10. In an action for personal injuries the plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to appear has expired, apply to the Court for an order requiring that defendant to make an interim payment.

Manner in which application under rule 10 must be made (O. 29, r. 11).

11. (1) An application under rule 10 must be made by summons, stating the grounds on which the application is made, and be supported by an affidavit, which must —

(a) verify the special damages, if any, claimed by the plaintiff up to the date of the application;

(b) exhibit the hospital and medical reports, if any, relied upon by the plaintiff in support of the application; and

(c) if the plaintiff's claim is made under the Fatal Accidents Act, contain the particulars mentioned in section 9 of the Act.

(2) The summons and a copy of the affidavit in support and any exhibit referred to therein must be served on the defendant against whom the order is sought not less than 10 clear days before the return day.

(3) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown by reason of a change of circumstances.

Order for interim payment (O. 29, r. 12).

12. (1) If, on the hearing of an application under rule 10, the Court is satisfied —

(a) that the defendant against whom the order is sought (in this paragraph referred to as "the respondent") has admitted liability for the plaintiff's claim; or

(b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or

(c) that, if the action proceeded to trial, the plaintiff would succeed in the action on the question of liability without any substantial reduction of the damages for fault on his part or on the part of any person in respect of whose injury or death the plaintiff's claim arises and would obtain judgment for damages against the respondent or, where there are two or more defendants, against any of them,

the Court may, if it thinks fit and subject to paragraph (2), order the respondent to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff.

(2) No order shall be made under paragraph (1) if it appears to the Court that the defendant, or, if there are two or more defendants, any of them, is not a person falling within one of the following categories, namely —

(a) a person who is insured in respect of the plaintiff's claim;

(b) a public authority;

(c) a person whose means and resources are such as to enable him to make the interim payment.

(3) Subject to Order 70, rule 10, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into court, and where the amount is paid into court, the Court may, on the *ex parte* application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.

(4) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.

Directions on application under rule 10 (O. 29, r. 13).

13. (1) Where an application is made under rule 10, the Court may give directions as to the further conduct of the action.

(2) If, in a case to which subparagraph (c) of rule 12(1) applies, the Court thinks fit to give directions under this rule before the summons for directions, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application were a summons for directions, and in particular the Court may order an early trial of the action.

Non-disclosure of order for interim payment (O. 29, r. 14).

14. The fact that an order has been made under rule 12 shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or of any question or issue as to liability or damages until all questions of liability and the amount of the damages have been decided.

Payment into court (O. 29, r. 15).

15. Where, after making an interim payment pursuant to an order under rule 12, a defendant pays a sum of money into court under Order 22, rule 1, the notice of payment must state that the defendant has taken into account the interim payment.

Adjustment on final judgment or order (O. 29, r. 16).

16. Where a defendant has made an interim payment pursuant to an order under rule 12, the Court may, on giving or making a final judgment or order determining that defendant's liability to the plaintiff in the action, make any such order with respect to the interim payment as may be necessary for giving effect to the determination and in particular —

(a) an order for the repayment by the plaintiff of any sum by which the interim payment exceeds the amount which that defendant is liable to pay the plaintiff; or

(b) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

Interim order on counterclaim (O. 29, r. 17).

17. A defendant who makes a counterclaim for damages in respect of personal injuries to himself or any other person or in respect of a person's death may apply for an order requiring the plaintiff to make an interim payment and this Part of this Order shall apply accordingly with the necessary modifications.

ORDER 30
RECEIVERS

(R.S.C. 1978)

Application for receiver and injunction (O. 30, r. 1).

1. (1) An application for the appointment of a receiver may be made by summons or motion.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

(3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so *ex parte* on affidavit.

(4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a

summons for the appointment of the receiver and may require such a summons returnable on such date as the Court may direct, to be issued.

Giving of security by receiver (O. 30)

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

(2) Where by virtue of paragraph (1), or of any judgment or order appointing a person named therein to be receiver, a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee or, if the amount for which the security is to be given does not exceed $3,000, by an undertaking.

(4) The guarantee or undertaking must be filed in the Registry, and it shall be kept as of record until duly vacated.

Remuneration of receiver (O. 30)

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

Receiver's accounts (O. 30, r. 4).

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

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

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

(4) The passing of a receiver's account must be certified by the Registrar.

Payment of balance, etc., by receiver (O. 30, r. 5).

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

Default by receiver (O. 30, r. 6).

6. (1) Where a receiver fails to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to submit, make or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in chambers to show cause for the failure, and the Court may, either in chambers or after adjournment into court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1), where a receiver fails to attend for the passing of any account of his or fails to submit any account or fails to pay into court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into court, charge him with interest at the rate of $12 per cent per annum on that sum while in his possession as receiver.

ORDER 31
SALES, ETC., OF LAND BY ORDER OF COURT: CONVEYANCING COUNSEL OF THE COURT

I. Sales, etc., of Land by Order of Court

(R.S.C. 1978)

Power to order sale of land (O. 31, r. 1).

1. Where in any cause or matter relating to any land it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct. In this Order "land" includes any interest in, or right over, land.

Manner of carrying out sale (O. 31, r. 2).

2. (1) Where an order is made, whether in court or in chambers, directing any land to be sold, the Court may permit the party or person having the conduct of the sale to sell the land in such manner as he thinks fit, or may

direct that the land be sold in such manner as the Court may either by the order or under paragraph (4) direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.

(2) The party entitled to prosecute the order must —

(a) leave a copy of the order at the judge's chambers with a certificate that it is a true copy of the order; and

(b) subject to paragraph (3), take out a summons to proceed with the order.

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

(4) On the hearing of the summons the Court may give such directions, as it thinks fit for the purpose of effecting the sale, including, without prejudice to the generality of the foregoing words, directions —

(a) appointing the party or person who is to have the conduct of the sale;

(b) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;

(c) fixing a reserve or minimum price;

(d) requiring payment of the purchase money into court or to trustees or other persons;

(e) for settling the particulars and conditions of sale;

(f) for obtaining evidence of the value of the property;

(g) fixing the security (if any) to be given by the auctioneer, if the sale is to be by public auction, and the remuneration to be allowed him;

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

Certifying result of sale (O. 31, r. 3).

3. (1) If either the Court has directed payment of the purchase money into court or the Court so directs, the result of a sale by order of the Court must be certified —

(a) in the case of a sale by public auction, by the auctioneer who conducted the sale; and

(b) in any other case, by the attorney of the party or person having the conduct of the sale; and the Court may require the certificate to be verified by the affidavit of the auctioneer or attorney, as the case may be.

(2) The attorney of the party or person having the conduct of the sale must leave a copy of the certificate and affidavit (if any) at the judge's chambers and, not later than two days after doing so, file the certificate and any affidavit in the Registry.

Mortgage, exchange or partition under order of the court (O. 31, r. 4).

4. Rules 2 and 3 shall, so far as applicable and with the necessary modifications, apply in relation to the mortgage, exchange or partition of any land under an order of the Court as they apply in relation to the sale of any land under such an order.

II. Conveyancing Counsel of the Court

Reference of matters to conveyancing counsel of court (O. 31, r. 5).

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

(a) any matter relating to the investigation of the title to any property with a view to an investment of money in the purchase or on mortgage thereof, or with a view to the sale thereof;

(b) any matter relating to the settlement of a draft of a conveyance, mortgage, settlement or other instrument; and

(c) any other matter it thinks fit,

and may act upon his opinion in the matter referred.

Objection to conveyancing counsel's opinion (O. 31, r. 6).

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

Distribution of references among conveyancing counsel (O. 31, r. 7).

7. The Court may direct or transfer a reference to a particular conveyancing counsel of the Court.

Obtaining counsel's opinion on reference (O. 31, r. 8).

8. (1) When any matter is referred to conveyancing counsel of the Court, a minute of the order of reference shall be prepared and signed by the Registrar.

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

ORDER 31A

S.I. 44/2004.

CASE MANAGEMENT BY COURT

PART I
OBJECTIVE

Court's duty to actively manage cases (O.31A. r.1).

1. The Court shall deal with cases actively by managing cases, which may include —

(a) encouraging the parties to co-operate with each other in the conduct of proceedings;

(b) identifying the issues in the case at an early stage;

(c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;

(d) deciding the order in which issues are to be resolved;

(e) encouraging the parties to use any appropriate form of dispute resolution and facilitating the use of such procedures;

(f) actively encouraging and assisting parties to settle the whole or part of their case on terms that are fair to each party;

(g) setting time standards or otherwise controlling the progress of the case;

(h) considering whether the likely benefits of taking a particular step will justify the cost of taking that step;

(i) dealing with as many aspects of the case as is practicable on the same occasion;

(j) dealing with the case or any aspect of it, where it appears appropriate to do so, without requiring the parties to attend court;

(k) making appropriate use of technology;

(l) giving directions to ensure that the trial of the case proceeds quickly and efficiently; and

(m) ensuring that no party gains an unfair advantage by reason of that party's failure to give full

disclosure of all relevant facts prior to the trial or the hearing of any application.

PART II
DISPUTE RESOLUTION CONFERENCE

Dispute resolution conference (O.31A, r.2).

2. (1) After the close of pleadings, a claim or any issue arising in a claim shall forthwith be referred by the Registrar to a dispute resolution conference.

(2) The conference must be conducted in accordance with the rules in this Part.

Person conducting conference (O.31A, r.3).

3. A judge or the Registrar, shall conduct the conference.

Procedure for dispute resolution conference (O.31A, r.4).

4. The judge or the Registrar as the case may be, who conducts the dispute resolution conference may —

(a) conduct a mediation, assisting the parties by meeting with them together or separately to encourage and facilitate discussion between them in an attempt to reach a mutually acceptable resolution of the dispute or any part of it;

(b) conduct an early evaluation of the proceedings or any issues in them to evaluate the relative strengths and weaknesses of the positions advanced by each party; and

(c) adopt any procedure that is just to the parties to facilitate and encourage an early settlement of one or more issues in dispute between them.

Confidentiality (O.31A, r.5).

5. Discussions in a dispute resolution conference and documents prepared solely for the purposes of such a conference are confidential and may not be disclosed to a third party.

Notice of settlement (O.31A, r.6).

6. (1) Where a settlement of the whole of any proceeding is reached at a dispute resolution conference —

(a) the settlement shall be recorded in writing and signed by the parties or their counsel and attorneys; and

(b) notice of the settlement must be filed at the Registry within 14 days after the settlement is reached and thereafter the Registrar shall forthwith mark the writ or other originating document "settled".

(2) Where only part of the proceedings is settled, the judge or the Registrar —

(a) shall make an order setting out the issues that have not been resolved; and

(b) shall give directions in accordance with Part III to ensure the fair, expeditious and economic trial of those issues.

(3) Where no settlement of the proceedings is reached, the following shall apply —

(a) where the conference is conducted by a judge, the judge shall give directions in accordance with Part III to ensure the fair, expeditious and economic trial of the issues; or

(b) where the conference is conducted by the Registrar, the Registrar shall refer the matter to a judge who shall give directions in accordance with sub-paragraph (a).

PART III
CASE MANAGEMENT CONFERENCE PROCEDURE

Scope of this Part (O.31A, r.7).

7. This Part deals with the procedures by which a judge will manage a case which was not resolved under Part II.

Case management conference (O. 31A, r.8).

8. (1) Where only part of the proceedings is settled or no settlement of the proceedings is reached, the Registrar shall cause to be fixed a case management conference.

(2) The Registrar must give all parties not less than 14 days notice of the date, time and place of the case management conference.

(3) The judge may with or without an application direct that shorter notice be given —

(a) if the parties agree; or

(b) in urgent cases.

(4) The judge may make some other order where the case management conference has to be adjourned due to the failure of one or more parties to —

(a) attend the hearing; or

(b) co-operate fully in achieving the objective of the case management conference.

Dispensing with case management conference (O.31A, r.9).

9. (1) On the application of a party the judge may dispense with a case management conference if he is satisfied that —

(a) the case may be dealt with justly without a case management conference; and

(b) the cost of the case management conference to the parties is disproportionate to the value of the proceedings and the benefits that might be achieved by a case management conference; or,

(c) in any case, the case should be dealt with as a matter of urgency.

(2) Where the judge dispenses with a case management conference, he must immediately —

(a) give directions in writing about the preparation of the case;

(b) set a timetable for the steps to be taken between the giving of directions and the trial;

(c) fix a date for a pre-trial review unless he is satisfied that the case may be dealt with justly without a pre-trial review; and

(d) in any event, fix —

(i) the trial date; or

(ii) the period within which the trial is to take place; and, in either case;

(iii) the date by which a listing questionnaire is to be filed by the parties at the Registry.

(3) The Registrar must serve the directions made under paragraph (2) on all parties and give notice of —

(a) the trial date or trial period; and

(b) the date on which the listing questionnaire is to be filed by the parties.

Small money claims (O.31A, r.10).

10. Where —

(a) the parties consent;

(b) the judge is satisfied that he can deal with the claim justly in a summary manner;

(c) the claim is for a specified sum of money, interest and costs only; and

(d) the sum of money does not exceed $50,000,

the judge may without a hearing —

(i) dispense with a case management conference and pre-trial review;

(ii) fix the trial date and dispense with a listing questionnaire under rule 16;

(iii) dispense with all or any of the requirements relating to the preparation and filing of bundles of documents; and

(iv) give any directions that will assist in the speedy and just trial of the claim including any direction that might be given under this Part or Part V.

Application for summary judgment.

11. Application for summary judgment under O.14 shall be made to a judge.

Attendance at case management conference or pre-trial review (O.31A, r.12).

12. (1) Where a party is represented by a counsel and attorney, that counsel and attorney or another counsel and attorney who is authorised to act on his behalf must attend the case management conference and any pre-trial review.

(2) The party or a person who is in a position to represent the interests of the party (other than the counsel and attorney) must attend the case management conference or pre-trial review.

(3) The judge may dispense with the attendance of a party or representative if upon prior representation the Court is satisfied that such attendance is not necessary.

(4) Where the case management conference or pre-trial review is not attended by the counsel and attorney and the party or a representative, the Court may adjourn the case management conference or pre-trial review to a fixed date and may exercise any of its powers under Part IV.

(5) Subject to paragraph (3), if the Court is satisfied that notice of the hearing has been served on the absent party or parties in accordance with these Rules, then —

(a) if the claimant does not attend, the Court may strike out the claim; and

(b) if any defendant does not attend, the Court may enter judgment against that defendant in default of such attendance.

Orders to be made at case management conference (O.31A, r.13).

13. (1) At a case management conference the Court must consider whether to give directions for —

(a) standard disclosure and inspection;

(b) service of witness statements; and

(c) service of experts' reports if any,

by dates fixed by the Court.

(2) The judge may also give directions for the preparation of —

(a) an agreed statement of facts;

(b) an agreed statement of issues;

(c) an agreed statement of the basic technical, scientific or medical matters in issue; and

(d) an agreed statement as to any relevant specialist area of law, which statement does not bind the trial judge.

(3) The judge must direct whether the trial is to be before —

(a) a judge alone; or

(b) a judge with a jury.

(4) The judge must fix a date for a pre-trial review unless he is satisfied that, having regard to the value, importance and complexity of the case, it may be dealt with justly without a pre-trial review.

(5) The judge shall in any event, —

(a) fix —

(i) the trial date; or

(ii) the period within which the trial is to commence; and

(iii) the date by which a listing questionnaire is to be filed at the Court by the parties; and

(b) direct which party must draft the order.

(6) The plaintiff or such other party as the Court may direct must serve the order containing the directions made on all other parties giving notice of —

(a) the trial date or trial period;

(b) the date of any pre-trial review; and

(c) the date by which the listing questionnaire is to be filed by the parties.

Adjournment of case management conference (O.31A, r.14).

14. (1) The Court shall not adjourn a case management conference without fixing a new date, time and place for the adjourned case management conference.

(2) Where the Court is satisfied that —

(a) the parties are in the process of negotiating, or are likely to negotiate, a settlement; or

(b) the parties are attending, or have arranged to attend, a form of alternative dispute resolution procedure,

the judge may adjourn the case management conference to a suitable date, time and place to enable negotiations or the alternative dispute resolution procedure to continue.

(3) Where the case management conference is adjourned under paragraph (2) each party shall notify the judge in writing promptly if the claim is settled and serve a copy on the Registrar.

(4) The judge may give directions as to the preparation of the case for trial if the case management conference is adjourned.

(5) So far as practicable, any adjourned case management conference and procedural applications made prior to a pre-trial review must be heard and determined by the judge who conducted the first case management conference.

Variation of case management timetable (O.31A, r.15).

15. (1) A party must apply to the judge if that party wishes to vary a date which the judge has fixed for —

(a) a case management conference;

(b) a party to do something where the order specifies the consequences of failure to comply;

(c) a pre-trial review;

(d) the return of a listing questionnaire; or

(e) the trial date or trial period.

(2) No date set by a judge under these Rules for doing any act may be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).

(3) A party seeking to vary any other date in the timetable without the agreement of the other parties must apply to the judge before that date.

(4) A party who applies after that date must apply —

(a) for relief from any sanction to which the party has become subject under these Rules or any Court order; and

(b) for an extension of time.

(5) The parties may agree to vary a date in the timetable other than one mentioned in paragraphs (1) or (2).

(6) Where the parties so agree, they must —

(a) file a consent application for an order to that effect; and

(b) certify on that application that the variation agreed will not affect the date fixed for the trial or, if no date has been fixed, the period in which the trial is to commence,

and the timetable shall be accordingly varied unless the judge directs otherwise.

Listing questionnaire (O.31A, r.16).

Schedule to O. 31A.

16. (1) Each party must file the completed listing questionnaire, in the Form in the Schedule, at the Registry by the date directed under rule 13(5).

(2) Where —

(a) a party —

(i) fails to file the completed questionnaire at the Registry by the date fixed under rule 13(5); or

(ii) fails to give all the information requested by the listing questionnaire; or

(b) the judge considers that a hearing is necessary to enable him to decide what directions to give in order to complete the preparation of the case,

the judge may fix a listing appointment and direct any or all of the parties to attend the appointment.

(3) The judge must give all parties at least 7 days notice of the date, time and place of the listing appointment.

(4) Any party at fault must attend the listing appointment.

(5) At the listing appointment the judge must —

(a) give any directions which may be needed to complete the preparation of the case for trial without any adjournment of the trial; and

(b) where the listing appointment has been fixed under paragraph (2)(a), order the party at fault to pay the costs of the hearing unless there is a special reason why the Court should not make such an order.

(6) Apart from the requirement to complete a listing questionnaire, the judge may at any time require the parties

to answer a questionnaire to assist him in the management of the case.

Fixing trial date (O.31A, r.17).

17. (1) As soon as practicable after —

(a) each party has returned a completed listing questionnaire to the Registry, or

(b) the Court has held a listing appointment under rule 16(3),

the Registrar must fix the date of the trial or, if the judge has already done so, confirm that date and notify the parties.

(2) The Registrar must give the parties at least 8 weeks notice of the date of the trial.

(3) The Court may however give shorter notice —

(a) if the parties agree; or

(b) where the Court considers it necessary to do so in the interest of justice.

PART IV
POWERS OF THE COURT

Court's powers (O.31A, r.18).

18. (1) The Court's powers in this rule are in addition to any powers given to the Court by any other rule, practice direction or enactment.

(2) Except where these Rules provide otherwise, the Court may —

(a) consolidate proceedings;

(b) extend or shorten the time for compliance with any rule, practice direction, order or direction of the Court even if the application for an extension is made after the time for compliance has passed;

(c) adjourn or bring forward a hearing to a specific date;

(d) stay the whole or part of any proceedings generally or until a specified date or event;

(e) decide the order in which issues are to be tried;

(f) direct a separate trial of any issue;

(g) try two or more claims on the same occasion;

(h) direct that part of any proceedings (such as a counterclaim or other ancillary claim) be dealt with as separate proceedings;

(i) dismiss or give judgment on a claim after a decision on a preliminary issue;

(j) exclude an issue from determination if it can do substantive justice between the parties on the other issues and determining it would therefore serve no worthwhile purpose;

(k) require the maker of an affidavit or witness statement to attend for cross-examination;

(l) require any party or a party's counsel and attorney to attend the Court;

(m) deal with a matter without the attendance of any party in accordance with O. 32 r.5;

(n) hold a hearing and receive evidence by telephone or other electronic means or use any other method of direct communication:

Provided that where evidence is received by telephone or other electronic means, all persons participating must be able to hear each other and to identify each other so far as is practicable;

(o) instead of holding an oral hearing, deal with a matter on written representations submitted by the parties;

(p) direct that any evidence be given in written form;

(q) where two or more parties are represented by the same counsel and attorney —

(i) direct that they be separately represented; and

(ii) if necessary, adjourn any hearing to a fixed date to enable separate representation to be arranged;

(r) direct that notice of any proceedings or application be given to any person; or

(s) take any other step, give any other direction or make any other order for the purpose of managing the case and ensuring the just resolution of the case.

(3) When the Court makes an order or gives a direction, the Court may —

(a) make the order or give a direction subject to conditions; and

(b) specify the consequence of failure to comply with the order or condition.

(4) The conditions which the Court may impose are —

(a) requiring a party to give security;

(b) requiring a party to give an undertaking;

(c) requiring the payment of money into Court or as the Court may direct;

(d) requiring a party to pay all or part of the costs of the proceedings; and

(e) requiring a party to permit entry at a reasonable time to property owned or occupied by that party to another party or someone acting on behalf of the other party.

(5) Where a party pays money into Court following an order under paragraphs (3) and (4) (c), that money shall be security for any sum payable by that party to another party in the proceedings subject to the right of a defendant to treat all or part of any money paid into Court as a payment in support of an offer to settle.

(6) In considering whether to make an order, the Court may take into account whether a party is prepared to give an undertaking.

(7) A power of the Court under these Rules to make an order includes a power to vary or revoke that order.

(8) Where it is considered to be in the interest of justice, the Court may on its own motion dispense with compliance with any of the rules in this Order.

Court's power to make orders of its own initiative (O.31A, r.19).

19. (1) Except where a rule or other enactment provides otherwise, the Court may exercise its powers on an application or of its own initiative.

(2) Where the Court proposes to make an order of its own initiative it must give any party likely to be affected a reasonable opportunity to make representations.

(3) Such opportunity to make representations may be made orally, in writing, by telephone or by such other means as the Court considers reasonable.

(4) Where the Court proposes —

(a) to make an order of its own initiative; and

(b) to hold a hearing to decide whether to do so,

the Registrar must give each party likely to be affected by the order at least 7 days notice of the date, time and place of the hearing.

Grounds for striking out pleading (O.31A, r.20).

20. (1) In addition to any other powers under these Rules, the Court may strike out a pleading or part of a pleading if it appears to the Court —

(a) that there has been a failure to comply with a rule or practice direction or with an order or direction given by the Court in the proceedings;

(b) that the pleading or the part to be struck out is an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings;

(c) that the pleading or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or

(d) that the pleading or the part to be struck out is prolix or does not comply with the requirements of any rule.

(2) Where —

(a) the Court has struck out a plaintiff's pleading;

(b) the plaintiff is ordered to pay costs to the defendant; and

(c) before those costs are paid, the plaintiff starts another claim against the same defendant based on the same or substantially the same facts, the Court may on the application of the defendant stay the subsequent claim until the costs of the first claim have been paid.

Court's power to strike out pleading (O.31A, r. 21).

21. (1) Where a party has failed to comply with any of these Rules or any Court order in respect of which no sanction for non-compliance has been imposed, any other party may apply to the Court for an unless order as defined in paragraph (7).

(2) An application under paragraph (1) may be made without notice but must be accompanied by —

(a) evidence on affidavit which —

(i) identifies the rule or order which has not been complied with;

(ii) states the nature of the breach; and

(iii) certifies that the other party is in default; and

(b) a draft order.

(3) The judge or Registrar may —

(a) grant the application;

(b) seek the views of the other party; or

(c) direct that a date be fixed to consider the application.

(4) Where a date is fixed under paragraph (3)(c), the applicant must give not less than 7 days notice of the date, time and place of such date to all parties.

(5) The party in default should be ordered to pay the costs of such an application.

(6) Where the defaulting party fails to comply with the terms of any unless order made by the Court that party's pleading shall be struck out.

(7) In this rule and in this Order, an unless order is an order which identifies the breach and requires the party in default to remedy the default by a specified date.

(8) Rule 26 shall not apply to this rule.

Judgment without trial after striking out (O.31A, r.22).

22. (1) This rule applies where the Court makes an order which includes a term that the pleading of a party be struck out if the party does not comply with the unless order.

(2) Where a striking out order was made, any other party may ask for judgment to be entered and for costs.

(3) A party may obtain judgment under this rule by filing a request for judgment.

(4) The request must —

(a) prove service of the striking out order;

(b) certify that the right to enter judgment has arisen; and

(c) state the facts which entitle the party to judgment.

(5) Where the party applying for judgment is the plaintiff and the claim is for —

(a) a specified sum of money;

(b) an amount of money to be decided by the Court;

(c) delivery of goods where the claim gives the defendant the alternative of paying their value; or

(d) any combination of these remedies,

judgment shall be in accordance with the terms of the particulars of the claim together with any interest and costs after giving credit for any payment that may have been made.

(6) Where the party applying for judgment is the plaintiff and the claim is for some other remedy, the judgment shall be such as the Court considers that the plaintiff is entitled to.

(7) Where a defendant seeks to obtain judgment on the claim, judgment shall be for costs to be taxed.

(8) Where a decision of the Court is necessary in order to decide the terms of the judgment the party making the request must apply for directions.

Setting aside judgment entered after striking out (O.31A, r.23).

23. (1) A party against whom the Court has entered judgment under rule 22 when the right to enter judgment had not arisen, may apply to the Court to set it aside.

(2) An application under paragraph (1) must be made not more than 14 days after the order for judgment has been served on the party making the application.

(3) Where the right to enter judgment had not arisen at the time when judgment was entered, the Court must set aside judgment.

(4) Where the application to set aside is made for any other reason, rule 25 (relief from sanctions) applies.

Sanctions to have effect unless defaulting party obtains relief (O.31A, r.24).

24. (1) Where the Court makes an order or gives directions the Court may whenever practicable also specify the consequences of failure to comply.

(2) Where a party has failed to comply with —

(a) any of these Rules;

(b) a direction or any order,

any sanction for non-compliance imposed by the rule, shall have effect unless the party in default applies for and obtains relief from the sanction, and in such case rule 26 shall not apply.

(3) Where a rule, practice direction or order —

(a) requires a party to do something by a specified date; and

(b) specifies the consequences of failure to comply,

the time for doing the act in question may not be extended by agreement between the parties.

Application for relief from sanctions (O.31A, r.25).

25. (1) An application for relief from any sanction imposed for a failure to comply with any rule, order or direction must be —

(a) made promptly; and

(b) supported by evidence on affidavit.

(2) The Court may grant relief only if it is satisfied that —

(a) the failure to comply was not intentional;

(b) there is a good explanation for the failure; and

(c) the party in default has generally complied with all other relevant rules, practice directions, orders and directions.

(3) In considering whether to grant relief, the Court must have regard to —

(a) the interests of the administration of justice;

(b) whether the failure to comply was due to the party or that party's counsel and attorney;

(c) whether the failure to comply has been or can be remedied within a reasonable time;

(d) whether the trial date or any likely trial date can still be met if relief is granted; and

(e) the effect which the granting of relief or not would have on each party.

(4) The Court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown.

General power of the Court to rectify matters where there has been a procedural error (O.31A, r.26).

26. (1) This rule applies only where the consequence of failure to comply with a rule, practice direction or Court order has not been specified by any rule, practice direction or Court order.

(2) An error of procedure or failure to comply with a rule, practice direction or Court order does not invalidate any step taken in the proceedings, unless the Court so orders.

(3) Where there has been an error of procedure or failure to comply with a rule, practice direction, Court order or direction, the Court may make such order as it deems necessary.

(4) The Court may make such an order on or without an application by a party.

PART V
PRE-TRIAL REVIEW

Scope of this Part (O.31A, r.27).

27. This Part deals with the pre-trial review which is to be held shortly before trial if the Court so orders.

Direction for pre-trial review (O.31A, r.28).

28. (1) At any case management conference and at any subsequent hearing in the proceedings other than the trial, the Court must consider whether a pre-trial review should be held to enable the Court to deal justly with the proceedings.

(2) A party may apply for a direction that a pre-trial review be held.

(3) An application for a pre-trial review must be made not less than 60 days before the trial date or the beginning of any trial period fixed under rule 9(2)(d) or 13(5).

(4) The Registrar must give each party not less than 14 days notice of the date, time and place for the pre-trial review.

(5) The costs incurred in attending a pre-trial review are costs in the cause.

(6) The Court may make some other order where the pre-trial review has to be adjourned due to the failure of one or more parties to —

(a) attend the hearing; or

(b) co-operate fully in achieving the objective of the pre-trial review.

Parties to prepare pre-trial memorandum (O.31A, r.29).

29. (1) The parties must seek to agree and file at the Registry a pre-trial memorandum not less than 7 days before the date fixed for the pre-trial review.

(2) Where the parties are not able to agree to such a memorandum each party must file its own memorandum and serve a copy on all other parties not less than 3 days before the date fixed for the pre-trial review.

(3) A pre-trial memorandum shall contain —

(a) a concise statement of the nature of the proceedings;

(b) details of any admissions made;

(c) the factual and legal contentions of the party or parties filing it; and

(d) a statement of the issues to be determined at the trial.

(4) The pre-trial memorandum must be accompanied by a copy of such documents that are intended to be used at trial which may be of assistance in settling the claim.

Directions at pre-trial review (O.31A, r.30).

30. (1) At the pre-trial review the Court must give directions as to the conduct of the trial in order to ensure the fair, expeditious and economic trial of the issues.

(2) In particular the Court may —

(a) direct either party to provide further information to the other party;

(b) give directions for the filing by each party and service on all other parties of one or more of —

(i) a skeleton argument;

(ii) a chronology of relevant events;

(iii) a summary of any legal propositions to be relied on at the trial; and

(iv) a list of authorities which it is proposed to cite in support of those propositions;

(c) direct the parties jointly to prepare one or more of —

(i) a core bundle of documents (that is, a bundle containing only such documents which the trial judge will need to review or to which it will be necessary to refer repeatedly at the trial);

(ii) an agreed statement of facts;

(iii) an agreed statement of the basic technical, scientific or medical matters in issue; and

(iv) an agreed statement as to any relevant specialist area of law, which statement shall not be binding on the trial judge;

(d) direct when and by whom the documents listed in paragraph (c) should be filed at the Court;

(e) give directions as to the extent to which evidence may be given in written form;

(f) direct the time to be allocated to opening and closing addresses;

(g) decide on the total time to be allowed for the trial; and

(h) direct how that time shall be allocated between the parties.

PART VI
MISCELLANEOUS

Rules to prevail (O.31A, r.31).

31. Where the rules of this Order conflict with the rules of any other Order, these Rules shall prevail.

SCHEDULE (rule 16)

LISTING QUESTIONNAIRE
IN THE SUPREME COURT CLAIM NO.

BETWEEN

PLAINTIFF

AND

DEFENDANT

WARNING: This is an important document. This information is required by the Court to list your case accurately. Inaccurate information may lead to a waste of the Court's time and delay to other Court cases. Failure to return the form to the Registry within FOURTEEN (14) DAYS or to complete it fully will lead to a Listing Hearing being fixed. You may have to pay the costs of this hearing.

1. Have all the directions given by the Court been carried out?
2. If not, which directions have not been carried out?

Disclosure of documents	YES/NO
Inspection of Documents	YES/NO
Service of Witness Statements	YES/NO
Service of Expert Reports	YES/NO
Other (state which)	

3. Why have all of the directions given by the Court not been carried out?
4. When can the directions given by the Court be complied with?
5. Will any application for relief be made by you?
6. Has alternative dispute resolution been tried?
7. If the answer to question 6 is no, why not?

8. How many witnesses do you intend to call? .....

9. What is your present estimate for trial length? .....hours/days

10. Please give names, addresses and telephone numbers of any expert witness whom you intend to call to give oral evidence.

11. Please state the name of the Counsel and Attorney who has conduct of this matter and give his direct telephone number or fax number.

Dated the day of 20

Signed

.....

Counsel and Attorney for the Plaintiff/Defendant

This form must be returned to the Registry within 14 days [by]

Filed by (specify name and address of Counsel and Attorney or firm of Counsel and Attorneys filing the document).

ORDER 32
APPLICATIONS AND PROCEEDINGS IN CHAMBERS

(R.S.C. 1978)

Mode of making application (O. 32, r. 1).

1. Except as provided by Order 25, rule 7, every application in chambers not made *ex parte* must be made by summons.

Issue of summons (O. 32, r. 2).

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

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

Service of summons (O. 32, r. 3).

3. A summons asking only for the extension or abridgement of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid and unless the Court otherwise orders or any of these Rules otherwise provides, a summons must be served on every other party not less than two clear days before the day so specified.

Adjournment of hearing (O. 32, r. 4).

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

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

Proceeding in absence of party failing to attend (O. 32, r. 5).

5. (1) Where any party to a summons fails to attend on the first or any resumed hearing thereof, the Court may proceed in his absence if, having regard to the nature of the application, it thinks it expedient so to do.

(2) Before proceeding in the absence of any party the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.

(3) Where the Court hearing a summons proceeded in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may re-hear the summons.

(4) Where an application made by summons has been dismissed without a hearing by reason of the failure of the party who took out the summons to attend the hearing, the Court, if satisfied that it is just to do so, may allow the summons to be restored to the list.

Order made *ex parte* may be set aside (O. 32, r. 6).

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

Subpoena for attendance of witness (O. 32, r. 7).

7. (1) A writ of subpoena *ad testificandum* or a writ of subpoena *duces tecum* to compel the attendance of a witness for the purpose of proceedings in chambers may be issued out of the Registry, if the Registrar so authorises.

(2) The Registrar may direct that the application for any such writ be made to the judge before whom the proceedings are to be heard.

Registrar and certain clerks may administer oaths, etc. (O. 32, r. 8).

8. The Registrar and any designated clerk shall have authority to administer oaths and take affidavits for the purpose of proceedings in the Supreme Court.

Application for leave to institute certain proceedings (O. 32, r. 9).

9. The jurisdiction of the Supreme Court to grant leave under the Mental Health Act to bring proceedings against a person may be exercised in chambers only by a judge.

Application to make order of Her Majesty's Privy Council order of Supreme Court (O. 32, r. 10).

10. An application to make an order of Her Majesty's Privy Council an order of the Supreme Court may be made *ex parte* by affidavit to the Registrar.

Jurisdiction of Registrar (O. 32, r. 11).

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

(a) matters relating to criminal proceedings;

(b) matters relating to the liberty of the subject;

(c) proceedings to which Order 57 applies and with respect to which a judge in chambers has jurisdiction;

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(d) any other matter or proceeding which by any of these Rules is required to be heard only by a judge.

(2) The Registrar shall have power to grant an injunction in the terms agreed by the parties to the proceedings in which the injunction is sought.

Reference of matter to judge (O. 32, r. 12).

12. The Registrar may refer to a judge any matter which he thinks should properly be decided by a judge, and the judge may either dispose of the matter or refer it back to the Registrar with such directions as he thinks fit.

Power to direct hearing in court (O. 32, r. 13).

13. (1) The judge in chambers may direct that any summons, application or appeal shall be heard in court or shall be adjourned into court to be so heard if he considers that by reason of its importance or for any other reason it should be so heard.

(2) Any matter heard in court by virtue of a direction under paragraph (1) may be adjourned from court into chambers.

ORDER 33
PLACE AND MODE OF TRIAL

(R.S.C. 1978)

Place of trial (O. 33, r. 1).

1. Subject to the provisions of these Rules, the place of trial of a cause or matter, or of any question or issue arising therein, shall be determined by the Court.

Mode of trial (O. 33, r. 2).

2. Subject to the provisions of these Rules, a cause or matter, or any question or issue arising therein, may be tried before —

(a) a judge alone; or

(b) a judge with a jury; or

(c) a judge with the assistance of assessors; or

(d) a registrar; or

(e) a special referee.

Time, etc., of trial of questions or issues (O. 33, r. 3).

3. The Court may order any question or issue arising in a cause or matter, whether of fact, or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

Determining the place and mode of trial (O. 33, r. 4).

4. (1) In every action begun by writ, an order made on the summons for directions shall determine the place and mode of the trial; and any such order may be varied by a subsequent order of the Court made at or before the trial.

(2) In any such action different questions or issues may be ordered to be tried at different places or by different modes of trial and one or more questions or issues may be ordered to be tried before the others.

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

Trial with assistance of assessors (O. 33, r. 5).

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

Dismissal of action, etc., after decision of preliminary issue (O. 33, r. 6).

6. If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment as may be just.

ORDER 34
SETTING DOWN FOR TRIAL ACTION BEGUN BY WRIT

(R.S.C. 1978)

Application and interpretation (O. 34, r. 1).

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

Time for setting down action (O. 34, r. 2).

2. (1) Every order made in an action which provides for trial before a judge shall, whether the trial is to be with or without a jury and wherever the trial is to take place, fix a period within which the plaintiff is to set down the action for trial.

(2) Where the plaintiff does not, within the period fixed under paragraph (1), set the action down for trial, the defendant may set the action down for trial or may apply to the Court to dismiss the action for want of prosecution

and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or may make such order as it thinks just.

(3) Every order made in an action shall contain an estimate of the length of the trial.

Lodging documents when setting down (O. 34, r. 3).

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

(a) the writ;

(b) the pleadings (including any affidavits ordered to stand as pleadings), any request or order for particulars and the particulars given;

(c) all orders made on the summons for directions.

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

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

(a) the bundle which is to serve as the record must be spoken from the person in whose custody it is and sent to the proper officer; and

(b) there must be delivered, along with the request that the action may be set down, a backsheet with the title of the action thereon, and the names, addresses and telephone numbers of the attorneys for the parties or, in the case of a party who has no attorney, of the party himself, stamped with the stamp denoting payment of the fee payable on setting down the action for the new trial.

Directions relating to lists (O. 34, r. 4).

4. Nothing in this Order shall prejudice any powers of the Chief Justice to give directions —

(i) specifying the lists in which actions, or actions of any class or description, are to be set down for trial and providing for the keeping and publication of the lists;

(ii) providing for the determination of a date for the trial of any action which has been set down or a date before which the trial thereof is not to take place; and

(iii) as to the making of applications (whether to a Court or a judge or the Registrar), to fix, vacate or alter any such date, and, in particular, requiring any such application to be supported by an estimate of the length of the trial and any other relevant information.

Further provisions as to lists (O. 34, r. 5).

5. (1) At any time after an action has been set down for trial and before it is tried, the Court may require the parties to furnish the Court or an officer thereof, by personal attendance or otherwise, with such information as may be necessary to show whether the action is ready for trial, and if any party fails to comply with any such requirement, the Court may —

(a) of its own motion, on 7 days' notice to the parties, direct that the action be removed from the list; or

(b) on the application of any party, dismiss the action for want of prosecution or strike out the defence or counterclaim or make such other order as the Court thinks fit. Where a direction is given under subparagraph (a), the Court may subsequently direct the action to be restored to the list on such terms, if any, as it thinks fit.

(2) Without prejudice to Order 33, rule 4(1), a judge, or the Registrar, may, if it appears to him that the action cannot conveniently be tried at the place of trial which has been ordered, change the place of trial to some other place.

(3) The power conferred by paragraph (2) may be exercised by the Court of its own motion or on the application of a party, but before acting of its own motion the Court shall give to every party concerned an

opportunity of being heard on the question whether the power should be exercised and for that purpose the Court may cause him to be given notice of a date, time and place at which the question will be considered.

Notification of setting down (O. 34, r. 6).

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

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

Abatement, etc., of action (O. 34, r. 7).

7. (1) Where after an action has been set down for trial the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the attorney for the plaintiff or other party having the conduct of the action must, as soon as practicable after becoming aware of it, certify the abatement or change of interest or liability and send the certificate to the Registrar, and that officer shall cause the appropriate entry to be made in the list of actions set down for trial.

(2) Where in any such list an action stands for one year marked as abated or ordered to stand over generally, the action shall on the expiration of that year be struck out of the list unless, in the case of an action ordered to stand over generally, the order otherwise provides.

ORDER 35
PROCEEDINGS AT TRIAL

(R.S.C. 1978)

Failure to appear by both parties or one of them (O. 35, r. 1).

1. (1) If, when the trial of an action is called on, neither party appears, the action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a judge.

(2) If, when the trial of an action is called on, one party does not appear, the judge may proceed with the trial of the action or any counterclaim in the absence of that party.

Judgment, etc., given in absence of party may be set aside (O. 35, r. 2).

2. (1) Any judgment, order or verdict obtained where one party does not appear at the trial may be set aside by the Court, on the application of that party, on such terms as it thinks just.

(2) An application under this rule must be made within 7 days after service of the judgment, order or verdict.

Adjournment of trial (O. 35, r. 3).

3. The judge may, if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit.

Order of speeches (O. 35, r. 4).

4. (1) The judge before whom an action is tried (whether with or without a jury) may give directions as to the party to begin and the order of speeches at the trial, and, subject to any directions, the party to begin and the order of speeches shall be that provided by this rule.

(2) Subject to paragraph (6) the plaintiff shall begin by opening this case.

(3) If the defendant elects not to adduce evidence, then, whether or not the defendant has in the course of cross-examination of a witness for the plaintiff or otherwise put in a document, the plaintiff may, after the evidence on his behalf has been given, make a second speech closing his case and the defendant shall then state his case.

(4) If the defendant elects to adduce evidence, he may, after any evidence on behalf of the plaintiff has been given, open his case and, after the evidence on his behalf has been given, make a second speech closing his case, and at the close of the defendant's case the plaintiff may make a speech in reply.

(5) Where there are two or more defendants who appear separately or are separately represented, then —

(a) if none of them elects to adduce evidence, each of them shall state his case in the order in which his name appears on the record;

(b) if each of them elects to adduce evidence, each of them may open his case and the evidence on behalf of each of them shall be given in the order aforesaid and the speech of each of them closing his case shall be made in that order after the evidence on behalf of all the defendants has been given;

(c) if some of them elect to adduce evidence and some do not, those who do not shall state their cases in the order aforesaid after the speech of the plaintiff in reply to the other defendants.

(6) Where the burden of proof of all the issues in the action lies on the defendant or, where there are two or more defendants and they appear separately or are separately represented, on one of the defendants, the defendant or that defendant, as the case may be, shall be entitled to begin, and in that case paragraphs (2), (3) and (4) shall have effect in relation to, and as between him and the plaintiff as if for references to the plaintiff and the defendant there were substituted references to the defendant and the plaintiff respectively.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this paragraph, be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may make a further speech in reply, but only in relation to that point of law or that authority, as the case may be.

Inspection by judge or jury (O. 35, r. 5).

5. (1) The judge by whom any cause or matter is tried may inspect any place or thing with respect to which any question arises in the cause or matter.

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

Death of party before giving a judgment (O. 35, r. 6).

6. Where a party to any action dies after the verdict or finding of the issues of fact and before judgment is given, judgment may be given notwithstanding the death, but the foregoing provision shall not be taken as affecting the power of the judge to make an order under Order 15, rule 8(2), before giving judgment.

List of exhibits (O. 35, r. 7).

7. (1) The Clerk of the Court shall take charge of every document or object put in as an exhibit during the trial of any action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in or the witness by whom it is proved, and with a number, so that all the exhibits put in by a party, or proved by a witness, are numbered in one consecutive series. In this paragraph a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

(2) The Clerk of the Court shall cause a list to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee, have an office-copy of that list.

(3) The list of exhibits when completed shall be attached to the pleadings and shall form part of the record of the action.

(4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit.

Custody of exhibit after trial (O. 35, r. 8).

8. It shall be the duty of every party to an action who has put in any exhibit to apply to the Registrar immediately after the trial for the return of the exhibit, and, so far as is practicable, regard being had to the nature of the exhibit, to keep it duly marked and labelled as before, so that in the event of an appeal to the Court of Appeal or the Privy Council, he may be able to produce the exhibit so marked and labelled at the hearing of the appeal in case he is required by the Court of Appeal or the Privy Council to do so.

Impounded documents (O. 35, r. 9).

9. (1) Documents impounded by order of the Court shall not be delivered out of the custody of the Court except in compliance with an order made by a judge on an application made by motion:

Provided that where the Attorney-General makes a written request in that behalf, documents so impounded shall be delivered into his custody.

(2) Documents impounded by order of the Court, while in the custody of the Court, shall not be inspected except by a person authorised to do so by an order signed by a judge.

ORDER 36
TRIALS BEFORE, AND INQUIRIES BY, THE REGISTRAR

(R.S.C. 1978)

Power to order trial before the Registrar (O. 36, r. 1).

1. If, in any cause or matter other than a criminal proceeding by the Crown, the Court considers, if all parties consent, that having regard to the nature of the case it is desirable (whether on grounds of expedition, economy or

convenience or otherwise) in the interests of one or more of the parties, the Court may, subject to any right to a trial with a jury, order that the cause or matter, or any question or issue of fact arising therein, shall be tried before the Registrar, with or without assessors.

Powers, etc., of Registrar (O. 36, r. 2).

2. (1) Subject to any directions contained in the order referring any business to the Registrar —

(a) the Registrar shall for the purpose of disposing of any cause or matter (including any interlocutory application therein) or any other business referred to him have the same jurisdiction, powers and duties (including the power of committal and discretion as to costs), as a judge, exercisable or, as the case may be, to be performed as nearly as circumstances admit in the like cases, in the like manner and subject to the like limitations; and

(b) every trial and all other proceedings before the Registrar shall, as nearly as circumstances admit, be conducted in the like manner as the like proceedings before a judge.

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

(3) The Registrar may hold any trial or any other proceedings before him at any time which appears to him to be convenient and may adjourn the proceedings from place to place as he thinks fit, but he shall not have power to make orders of committal.

ORDER 37
ASSESSMENT OF DAMAGES

(R.S.C. 1978)

Assessment of damages by the Registrar (O. 37, r. 1).

1. (1) Where judgment is given by the Court for damages to be assessed and in the judgment —

(a) provision is made that the damage shall be assessed by the Registrar; or

(b) no provision is made as how the damages are to be assessed,

the damages shall, subject to the provisions of this Order, be assessed by the Registrar, and the party entitled to the benefit of the judgment may, after obtaining the necessary appointment from the Registrar, and, at least 7 days before the date of the appointment, serving notice of the appointment on the party against whom the judgment is given, proceed accordingly.

(2) Notwithstanding anything in Order 61, rule 9, a notice under this rule must be served on the party against whom the judgment is given.

(3) The attendance of witnesses and the production of documents before the Registrar in proceedings under this Order may be compelled by writ of subpoena, and the provisions of Order 35, shall, with the necessary adaptations, apply in relation to those proceedings as they apply in relation to proceedings at a trial.

Certificate of amount of damages (O. 37, r. 2).

2. Where in pursuance of this Order or otherwise damages are assessed by the Registrar, he shall certify the amount of the damages, and the certificate shall, when judgment is entered, be filed in the Registry.

Default judgment against some but not all defendants (O. 37, r. 3).

3. Where any such judgment as is mentioned in rule 1, is given in default of appearance or in default of defence, and the action proceeds against other defendants, the damages under the judgment shall be assessed at the trial unless the Court otherwise orders.

Power to order assessment at trial (O. 37, r. 4).

4. The Court may, in the case of any such judgment as is mentioned in rule 1, order that the action shall proceed to trial before a judge (with or without a jury) as respects the damages; and where the Court orders that the action shall proceed to trial, Order 25, rules 2 to 7, shall, with the

omission of so much of rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application to the Court in pursuance of which the Court makes the order, were a summons for directions under Order 25.

Assessment of value (O. 37, r. 5).

5. The foregoing provisions of this Order shall apply in relation to a judgment for the value of goods to be assessed, with or without damages to be assessed, as they apply to a judgment for damages to be assessed, and references in those provisions to the assessment of damages shall be construed accordingly.

Assessment of damages to time of assessment (O. 37, r. 6).

6. Where damages are to be assessed (whether under this Order or otherwise) in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

ORDER 38
EVIDENCE

I. General Rules

(R.S.C. 1978)

General rule: witnesses to be examined orally (O. 38, r. 1).

1. Subject to the provisions of these rules and to the Civil Evidence Act 1968 of England, (in so far as the latter is applicable) and any other enactment relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of witnesses orally and in open court.

Evidence by affidavit (O. 38, r. 2).

2. (1) The Court may, at or before the trial of an action begun by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.

(2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavits and as to the production of the deponents for cross-examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.

(3) In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence may be given by affidavit unless in the case of any such cause, matter or application any provision of these rules otherwise provides or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence without the leave of the Court.

Evidence of particular facts (O. 38, r. 3).

3. (1) Without prejudice to rule 2, the Court may, at or before the trial of any action, order that evidence of any particular fact shall be given at the trial in such manner as may be specified by the order.

(2) The power conferred by paragraph (1) extends in particular to ordering that evidence of any particular fact may be given at the trial —

(a) by statement on oath of information on behalf; or

(b) by the production of documents or entries in books; or

(c) by copies of documents or entries in books; or

(d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.

Limitation of expert evidence (O. 38, r. 4).

4. The Court may, at or before the trial of any action, order that the number of medical or other expert witnesses who may be called at the trial shall be limited as specified by the order.

Limitation of plans, etc., in evidence (O. 38, r. 5).

5. Unless, at or before the trial, the Court for special reasons otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least 10 days before the commencement of the trial the parties, other than the party producing it, have been given an opportunity to inspect it and to agree to the admission thereof without further proof.

Revocation or variation of orders under rules 2 to 5 (O. 38, r. 6).

6. Any order under rules 2 to 5 (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the Court made at or before the trial.

Expert evidence in action arising out of accident (O. 33, r. 7).

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

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

Application to trials of issues, references, etc. (O. 38, r. 8).

8. The foregoing rules of this Order shall apply to trials of issues or questions of fact or law, references, inquiries and assessments of damages as they apply to the trial of actions.

Depositions: when receivable in evidence at trial (O. 38, r. 9).

9. (1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless —

(a) the deposition was taken in pursuance of an order under Order 39, rule 1; and

(b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the trial.

(2) A party intending to use any deposition in evidence at the trial of a cause or matter must, a reasonable time before the trial, give notice of his intention to do so to the other party.

(3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

Court documents admissible or receivable in evidence (O. 38, r. 10).

10. (1) Certified copies of writs, records, pleadings and documents filed in the Supreme Court shall be admissible in evidence in any cause or matter and between all parties to the same extent as the original would be admissible.

(2) Without prejudice to the provisions of any enactment, every document purporting to be sealed with the seal of the Supreme Court shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in, or issued out of, the Registry shall be deemed to be a certified copy of that document without further proof unless the contrary is shown.

Evidence of consent of new trustee to act (O. 38, r. 11).

11. A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person shall be evidence of such consent.

Evidence at trial may be used in subsequent proceedings (O. 38, r. 12).

12. Any evidence taken at the trial of any cause or matter may be used in any subsequent proceedings in that cause or matter.

Order to produce document at proceeding other than trial (O. 38, r. 13).

13. (1) At any stage in a cause or matter the Court may order any person to attend any proceedings in the cause or matter and produce any document, to be specified or described in the order, the production of which appears to the Court to be necessary for the purpose of this proceeding.

(2) No person shall be compelled by an order under paragraph (1) to produce any document at a proceeding in a cause or matter which he could not be compelled to produce at the trial of that cause or matter.

II. Writs of Subpoena

Form and issue of writ of subpoena (O. 38, r. 14).

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

(2) Issue of a writ of subpoena takes place upon its being sealed by the Registrar.

(3) Before a writ of subpoena is issued a *praecipe* for the issue of the writ must be filed in the Registry; and the *praecipe* must contain the name and address of the party issuing the writ, if he is acting in person, or the name or firm and business address of that party's attorney.

More than one name may be included in one writ of subpoena (O. 38, r. 15).

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

Amendment of writ of subpoena (O. 38, r. 16).

16. Where there is a mistake in any person's name or address in a writ of subpoena, then, if the writ has not been served the party by whom the writ was issued may have the writ resealed in correct form by filing a second *praecipe* under rule 14(3) indorsed with the words "Amended and re-sealed".

Service of writ of subpoena (O. 38, r. 17).

17. A writ of subpoena must be served personally and the service shall not be valid unless effected within 12 weeks after the date of issue of the writ.

Duration of writ of subpoena (O. 38, r. 18).

18. A writ of subpoena continues to have effect until the conclusion of the trial at which the attendance of the witness is required.

III. Hearsay Evidence

Interpretation and application (O. 38, r. 19).

19. (1) In this Part of this Order "the Act" means the Civil Evidence Act, 1968, of England and any expressions used in this Part of this Order and in Part I of the Act have the same meanings in this Part of this Order as they have in the said Part I.

(2) This Part of this Order shall apply in relation to the trial or hearing of an issue or question arising in a cause or matter, and to a reference, inquiry and assessment of damages, as it applies in relation to the trial or hearing of a cause or matter.

Notice of intention to give certain statements in evidence (O. 38, r. 20).

20. (1) Subject to the provisions of this rule, a party to a cause or matter who desires to give in evidence at the trial or hearing of the cause or matter any statement which is admissible in evidence by virtue of section 2, 4, or 5 of the Act must —

(a) in the case of a cause or matter which is required to be set down for trial or hearing or adjourned into court, within 21 days after it is set down or so adjourned, or within such other period as the Court may specify; and

(b) in the case of any other cause or matter, within 21 days after the date on which an appointment for the first hearing of the cause or matter is obtained, or within such other period as the Court may specify,

serve on every other party to the cause or matter notice of his desire to do so, and the notice must comply with the provisions of rule 21, 22 or 23, as the circumstances of the case require.

(2) Paragraph (1) shall not apply in relation to any statement which is admissible as evidence of any fact stated therein by virtue not only of the said section 2, 4 or 5 but by virtue also of any other statutory provision within the meaning of section 1 of the Act.

(3) Paragraph (1) shall not apply in relation to any statement which any party to a probate action desires to give in evidence at the trial of that action and which is alleged to have been made by the deceased person whose estate is the subject of the action.

(4) Where by virtue of any provision of these Rules or of any order or direction of the Court the evidence in any proceedings is to be given by affidavit then, without prejudice to paragraph (2), paragraph (1) shall not apply in relation to any statement which any party to the proceedings desires to have included in any affidavit to be used on his behalf in the proceedings, but nothing in this paragraph shall affect the operation of Order 41, rule 5, or the powers of the Court under Order 38, rule 3.

(5) Order 61, rule 9, shall not apply to a notice under this rule but the Court may direct that the notice need not be served on any party who at the time when service is to be effected is in default as to entry of appearance or who has no address for service.

Statement admissible by virtue of section 2 of the Civil Evidence Act of England: contents of notice (O. 38, r. 21).

21. If the statement is admissible by virtue of section 2 of the Act, and was made in a document, a copy or transcript of the document, or of the relevant part thereof, must be annexed to the notice and the notice must contain particulars of —

(a) the time, place and circumstances at or in which the statement was made;

(b) the person by whom, and the person to whom, the statement was made; and

(c) the substance of the statement or, if material, the words used.

(2) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 24, the notice must contain a statement to that effect specifying the reason relied on.

Statement admissible by virtue of section 4 of the Act: contents of notice (O. 38, r. 22).

22. (1) If the statement is admissible by virtue of section 4 of the Act, the notice must have annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain —

(a) particulars of —

(i) the person by whom the record containing the statement was compiled;

(ii) the person who originally supplied the information from which the record was compiled; and

(iii) any other person through whom that information was supplied to the compiler of that record,

and, in the case of any such person as is referred to in (i) or (iii) above, a description of the duty under which that person was acting when compiling that record or supplying information from which that record was compiled, as the case may be;

(b) if not apparent on the face of the document annexed to the notice, a description of the nature of the record which, or part of which, contains the statement; and

(c) particulars of the time, place and circumstances at or in which that record or part was compiled.

(2) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any. of the reasons specified in rule 24, the notice must contain a statement to that effect specifying the reason relied on.

Statement admissible by virtue of section 5 of the Act: contents of notice (O. 38, r. 23).

23. (1) If the statement is contained in a document produced by a computer and is admissible by virtue of section 5 of the Act, the notice must have annexed to it a copy or transcript of the document containing the

statement, or of the relevant part thereof, and must contain particulars of —

(a) a person who occupied a responsible position in relation to the management of the relevant activities for the purpose of which the computer was used regularly during the material period of store or process information;

(b) a person who at the material time occupied such a position in relation to the supply of information to the computer, being information which is reproduced in the statement or information from which the information contained in the statement is derived;

(c) a person who occupied such a position in relation to the operation of the computer during the material period,

and where there are two or more persons who fall within any of the foregoing subparagraphs and some only of those persons are at the date of service of the notice capable of being called as witnesses at the trial or hearing, the person, particulars of whom are to be contained in the notice, must be such one of those persons as is at that date so capable.

(2) The notice must also state whether the computer was operating properly throughout the material period and, if not, whether any respect in which it was not operating properly or was out of operation during any part of that period was such as to affect the production of the document in which the statement is contained or the accuracy of its contents.

(3) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 24, the notice must contain a statement to that effect specifying the reason relied on.

Reasons for not calling a person as a witness (O. 38, r. 24).

24. The reasons referred to in rules 21(2), 22(2) and 23(3) are that the person in question is dead, or beyond the seas or unfit by reason of his bodily or mental condition to attend as a witness or that despite the exercise of reasonable diligence it has not been possible to identify or find him or that he cannot reasonably by expected to have any recollection of matters relevant to the accuracy or otherwise of the statement to which the notice relates.

Counter-notice requiring person to be called as a witness (O. 38, r. 25).

25. (1) Subject to paragraphs (2) and (3), any party to a cause or matter on whom a notice under rule 20 is served may within 21 days after service of the notice on him serve on the party who gave the notice or a counter-notice requiring that party to call as a witness at the trial or hearing of the cause or matter any person (naming him) particulars of whom are contained in the notice.

(2) Where any notice under rule 20 contains a statement that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness for the reason specified therein, a party shall not be entitled to serve a counter-notice under this rule requiring that person to be called as a witness at the trial or hearing of the cause or matter unless he contends that that person can or, as the case may be, should be called, and in that case he must include in his counter-notice a statement to that effect.

(3) Where a statement to which a notice under rule 20 relates is one to which rule 27 applies, no party on whom the notice is served shall be entitled to serve a counter-notice under this rule in relation to that statement, but the foregoing provision is without prejudice to the right of any party to apply to the Court under rule 27 for directions with respect to the admissibility of that statement.

(4) If any party to a cause or matter by whom a notice under rule 20 is served fails to comply with a counter-notice duly served on him under this rule, then, unless any of the reasons specified in rule 24 applied in relation to the person named in the counter-notice, and without prejudice to the powers of the Court under rule 28, the statement to which the notice under rule 20 relates shall not be admissible at the trial or hearing of the cause or matter as evidence of any fact stated therein by virtue of section 2, 4 or 5 of the Act, as the case may be.

Determination of question whether person can or should be called as a witness (O. 38, r. 26).

26. (1) Where in any cause or matter a question arises whether any of the reasons specified in rule 24 applies in relation to a person particulars of whom are contained in a notice under rule 20, the Court may, on the application of any party to the cause or matter, determine the question before the trial or hearing of the cause or matter or give directions for it to be determined before the trial or hearing and for the manner in which it is to be so determined.

(2) Unless the Court otherwise directs, the summons by which an application under paragraph (1) is made must be served by the party making the application on every other party to the cause or matter.

(3) Where any such question as is referred to in paragraph (1) has been determined under or by virtue of that paragraph, no application to have it determined afresh at the trial or hearing of the cause or matter may be made unless the evidence which it is sought to adduce in support of the application could not with reasonable diligence have been adduced at the hearing which resulted in the determination.

Directions with respect to statement made in previous proceedings (O. 38, r. 27).

27. Where a party to a cause or matter has given notice in accordance with rule 20 that he desires to give in evidence at the trial or hearing of the cause or matter —

(a) a statement falling within section 2(1) of the Act which was made by a person, whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal); or

(b) a statement falling within section 4(1) of the said Act which is contained in a record of direct oral evidence given in some other legal proceedings (whether civil or criminal),

any party to the cause or matter may apply to the Court for directions under this rule, and the Court hearing such an application may give directions as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to do so and (where applicable) as to the manner in which that statement and any other evidence given in those other proceedings is to be proved.

Power of Court to allow statement to be given in evidence (O. 38, r. 28).

28. (1) Without prejudice to sections 2(2)(a) and 4(2)(a) of the Act and rule 27, the Court may, if it thinks it just to do so, allow a statement falling within section 2(1), 4(1) or 5(1) of the Act to be given in evidence at the trial or hearing of a cause or matter notwithstanding —

(a) that the statement is one in relation to which rule 20(1) applies and that the party desiring to give the statement in evidence has failed to comply with that rule; or

(b) that that party has failed to comply with any requirement of a counter-notice relating to that statement which was served on him in accordance with rule 25.

(2) Without prejudice to the generality of paragraph (1), the Court may exercise its power under that paragraph to allow a statement to be given in evidence at the trial or hearing of a cause or matter if a refusal to exercise that power might oblige the party desiring to give the statement in evidence to call as a witness at the trial or hearing an opposite party or a person who is or was at the material time the servant or agent of an opposite party.

Restriction on adducing evidence as to credibility of maker, etc., of certain statements (O. 28, r. 29).

29. Where —

(a) a notice given under rule 20 in a cause or matter relates to a statement which is admissible by virtue of section 2 or 4 of the Act; and

(b) the person who made the statement, or, as the case may be, the person who originally supplied the information from which the record containing the statement was compiled, is not called as a witness at the trial or hearing of the cause or matter; and

(c) none of the reasons mentioned in rule 24 applies so as to prevent the party who gave the notice from calling that person as a witness,

no other party to the cause or matter shall be entitled, except with the leave of the Court, to adduce in relation to that person any evidence which could otherwise be adduced by him by virtue of section 7 of the Act unless he gave a counter-notice under rule 25 in respect of that person or applied under rule 27 for a direction that that person be called as a witness at the trial or hearing of the cause or matter.

Notice required of intention to give evidence of certain inconsistent statements (O. 38, r. 30).

30. (1) Where a person, particulars of whom were contained in a notice given under rule 20 in a cause or matter, is not to be called as a witness at the trial or hearing of the cause or matter, any party to the cause or matter who is entitled and intends to adduce in relation to that person any evidence which is admissible for the purpose mentioned in section 7(1)(b) of the Act must, not more than 21 days after service of that notice on him, serve on the party who gave that notice, notice of his intention to do so.

(2) Rule 21 (1) shall apply to a notice under this rule as if the notice were a notice under rule 20 and the statement to which the notice relates were a statement admissible by virtue of section 2 of the Act.

(3) The Court may, if it thinks it just to do so, allow a party to give in evidence at the trial or hearing of a cause or matter any evidence which is admissible for the purpose mentioned in the said section 7(1)(b) notwithstanding that the party has failed to comply with the provisions of paragraph (1).

Costs (O. 38, r. 31).

31. If —

(a) a party to a cause or matter serves a counter-notice under rule 25 in respect of any person who is called as a witness at the trial of the cause or matter in compliance with a requirement of the counter-notice; and

(b) it appears to the Court that it was unreasonable to require that person to be called as a witness,

then, without prejudice to Order 59 and, in particular, to rule 7(1) thereof, the Court may direct that any costs to that party in respect of the preparation and service of the counter-notice shall not be allowed to him and that any costs occasioned by the counter-notice to any other party shall be paid by him to that other party.

Certain powers exercisable in chambers (O. 38, r. 32).

32. The jurisdiction of the Court under sections 2(2)(a), 4(2)(a) and 6(1) of the Act may be exercised in chambers.

IV. Expert Evidence

Interpretation (O. 38, r. 33).

33. In this Part of this Order a reference to a summons for directions includes a reference to any summons or application to which, under any of these Rules, Order 25, rules 2 to 7, apply.

Restrictions on adducing expert evidence (O. 38, r. 34).

34. (1) Except with the leave of the Court or where all parties agree, no expert evidence may be adduced at the trial or hearing of any cause or matter unless the party seeking to adduce the evidence has applied to the Court to determine whether a direction should be given under rule 35, 36, or 39 (whichever is appropriate) and has complied with any direction given on the application.

(2) Nothing in paragraph (1) shall apply to evidence which is permitted to be given by affidavit or shall affect the enforcement under any other provision of these Rules (except Order 45, rule 5) of a direction given under this Part of this Order.

Medical evidence in actions for personal injuries (O. 38, r. 35).

35. (1) Where in an action for personal injuries an application is made under rule 34(1) in respect of oral expert evidence relating to medical matters, then, unless the Court considers that there is sufficient reason for not doing so, it shall direct that the substance of the evidence be disclosed in the form of a written report or reports to such other parties and within such period as the Court may specify.

(2) The Court may, if it thinks fit, treat any of the following circumstances as a sufficient reason for not giving a direction under paragraph (1) —

(a) that the pleadings contain an allegation of a negligent act or omission in the course of medical treatment; or

(b) that the expert evidence may contain an expression of opinion —

(i) as to the manner in which the personal injuries were sustained; or

(ii) as to the genuiness of the symptoms of which complaint is made.

Other expert evidence (O. 38, r. 36).

36. (1) Where an application is made under rule 34(1) in respect of oral expert evidence to which rule 35 does not apply, the Court may, if satisfied that it is desirable to do so, direct that the substance of any expert evidence which is to be adduced by any party be disclosed in the form of a written report or reports to such other parties and within such period as the Court may specify.

(2) In deciding whether to give a direction under paragraph (1) the Court shall have regard to all the circumstances and may, to such extent as it thinks fit, treat any of the following circumstances as affording a sufficient reason for not giving such a direction —

(a) that the expert evidence is or will be based to any material extent upon a version of the facts in dispute between the parties; or

(b) that the expert evidence is or will be based to any material extent upon facts which are neither —

(i) ascertainable by the expert by the exercise of his own powers of observing; nor

(ii) within his general professional knowledge and experience.

Disclosure of part of expert evidence (O. 38, r. 37).

37. Where the Court considers that any circumstances rendering it undesirable to give a direction under rule 35 or 36 relate to part only of the evidence sought to be adduced, the Court may, if it thinks fit, direct disclosure of the remainder.

Expert evidence of engineers in accident cases (O. 38, r. 38).

38. In an action arising out of an accident on land due to a collision or apprehended collision a party who intends to apply to the Court under rule 34 in respect of the expert evidence of an engineer sought to be called on account of his skill and knowledge as respects motor vehicles shall before the hearing of the summons for directions make available to all parties for their inspection a report by the engineer containing the substance of his evidence.

Expert evidence contained in statement (O. 38, r. 39).

39. Where an application is made under rule 34 in respect of expert evidence contained in a statement and the applicant alleges that the maker of the statement cannot or should not be called as a witness, the Court may direct that the provisions of rules 19 to 22 and 24 to 32 shall apply with such modifications as the Court thinks fit.

Putting in evidence expert report disclosed by another party (O. 38, r. 40).

40. A party to any cause or matter may put in evidence any expert report disclosed to him by any other party in accordance with this Part of this Order.

Time for putting expert report in evidence (O. 38, r. 41).

41. Where a party to any cause or matter calls as a witness the maker of a report which has been disclosed in accordance with rule 38 or in accordance with a direction given under rule 35 or 36, the report may be put in evidence at the commencement of its maker's examination in chief or at such other time as the Court may direct.

Revocation and variation of directions (O. 38, r. 42).

42. Any direction given under this Part of this Order may on sufficient cause being shown be revoked or varied by a subsequent direction given at or before the trial of the cause or matter.

ORDER 39
EVIDENCE BY DEPOSITION: EXAMINERS OF THE COURT

(R.S.C. 1978)

Power to order depositions to be taken (O. 39, r. 1).

1. (1) The Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order (in Form No. 32 in Appendix A) for the examination on oath before a judge, an officer or examiner of the Court or some other person, at any place, of any person.

(2) An order under paragraph (1) may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court thinks fit.

Where person to be examined is out of the jurisdiction (O. 39, r. 2).

2. (1) Where the person in relation to whom an order under rule 1 is required is out of the jurisdiction, an application may be made —

(a) for an order (in Form No. 34 in Appendix A) under that rule for the issue of a letter of request to the judicial authorities of the country in which that person is to take, or cause to be taken, the evidence of that person; or

(b) if the government of that country allows a person in that country to be examined before a person appointed by the Court, for an order (in Form No. 37 in Appendix A) under that rule appointing a special examiner to take the evidence of that person in that country.

(2) An application may be made for the appointment as special examiner of a Bahamian or British consul in the country in which the evidence is to be taken or his deputy —

(a) if there subsists with respect to that country a Civil Procedure Convention providing for the taking of the evidence of any person in that country for the assistance of proceedings in the Supreme Court; or

(b) with the consent of the appropriate Minister of the Government.

Order for issue of letter of request (O. 39, r. 3).

3. (1) Where an order is made under rule 1 for the issue of a letter of request to the judicial authorities of a country to take, or cause to be taken, the evidence of any

person in that country the following provisions of this rule shall apply.

(2) The party obtaining the order must prepare the letter of request and lodge it in the Registry, and the letter must be in Form No. 35 in Appendix A, with such variations as the order may require.

(3) If the evidence of the person to be examined is to be obtained by means of written questions, there must be lodged with the letter of request a copy of the interrogatories and cross-interrogatories to be put to him on examination.

(4) Unless the official language, or one of the official languages, of the country in which the examinations is to be taken is English, each document lodged under paragraph (2) or (3) must be accompanied by a translation of the document in the official language of that country or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where the examination is to be taken.

(5) Every translation lodged under paragraph (4) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(6) The party obtaining the order must, when he lodges in the Registry the documents mentioned in paragraphs (2) to (5), also file in that office an undertaking signed by him or his attorney to be responsible personally for all expenses incurred by the Minister in respect of the letter of request and, on receiving due notification of the amount of those expenses, to pay that amount to the Public Treasurer and to produce a receipt for the payment to the Registrar.

Enforcing attendance of witness at examination (O. 39, r. 4).

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

(a) for the examination of any person before an officer or examiner of the Court or some other person (in this rule and rules 5 to 14 referred to as "the examiner"); or

(b) for the cross-examination before the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of that person before the examiner and the production by him of any document at the examination may be enforced by writ of subpoena in like manner as the attendance of a witness and the production by a witness of a document at a trial may be offered.

Refusal of witness to attend, be sworn, etc. (O. 39, r. 5).

5. (1) If any person, having been duly summoned by writ of subpoena to attend before the examiner, refuses or fails to attend or refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document therein, a certificate of his refusal or failure, signed by the examiner, must be filed in the Registry, and upon the filing of the certificate the party by whom the attendance of that person was required may apply to the Court for an order requiring that person to attend, or to be sworn or to answer any question or produce any document, as the case may be.

(2) An application for an order under this rule may be made *ex parte*.

(3) If the Court makes an order under this rule it may order the person against whom the order is made to pay any costs occasioned by his refusal or failure.

(4) A person who wilfully disobeys any order made against him under paragraph (1) is guilty of contempt of court.

Appointment of time and place for examination (O. 39, r. 6).

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

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

Examiner to have certain documents (O. 39, r. 7).

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

Conduct of examination (O. 39, r. 8).

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

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

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

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

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

Examination of additional witnesses (O. 39, r. 9).

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

Objection to questions (O. 39, r. 10).

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

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

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

Taking of depositions (O. 39, r. 11).

11. (1) The deposition of any person examined before the examiner must be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner but, subject to paragraph (2) and rule 10(1), the deposition need not set out every question and answer so long as it contains as nearly as may be the statement of the person examined.

(2) The examiner may direct the exact words of any particular question and the answer thereto to be set out in the deposition if that question and answer appear to him to have special importance.

(3) The deposition of any person shall be read to him, and he shall be asked to sign it, in the presence of such of the parties as may attend, but the parties may agree in writing to dispense with the foregoing provision. If a person refuses to sign a deposition when asked under this paragraph to do so, the examiner must sign the deposition.

(4) The original deposition of any person, authenticated by the signature of the examiner before whom it was taken, must be sent by the examiner to the Registry and shall be filed therein.

Time taken by examination to be indorsed on depositions (O. 39, r. 12).

12. Before sending any deposition to the Registry under rule 11 (4), the examiner must indorse on the deposition a statement signed by him of the time occupied in taking the examination and the fees received in respect thereof.

Special report by examiner (O. 39, r. 13).

13. The examiner may make a special report to the Court with regard to any examination taken before him and with regard to the absence or conduct of any person thereat, and the Court may direct such proceedings to be taken, or make such order, on the report as it thinks fit.

Order for payment of examiner's fees (O. 39, r. 14).

14. (1) If the fees and expenses due to an examiner are not paid he may report that fact to the Court, and the Court may direct the Registrar to apply for an order against the party on whose application the order for examination was made to pay the examiner the fees and expenses due to him in respect of the examination.

(2) An order under this rule shall not prejudice any determination on the taxation of costs or otherwise as to the party by whom the costs of the examination are ultimately to be borne.

Perpetuation of testimony (O. 39, r. 15).

15. (1) Witnesses shall not be examined to perpetuate testimony unless an action has been begun for the purpose.

(2) Any person who would under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any honour, title, dignity or office, or to any estate or interest in any real or

personal property, the night or claim to which cannot be brought to trial by him before the happening of such event, may begin an action to perpetuate any testimony which may be material for establishing such right or claim.

(3) No action to perpetuate the testimony of witnesses shall be set down for trial.

Examiners of the Court (O. 39, r. 16).

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

Assignment of examinations to examiners of the Court (O. 39, r. 17).

17. (1) The examinations to be taken before examiners of the Court shall be assigned to them in rotation by the Registrar.

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

Obtaining assignment of examiner of the Court (O. 39, r. 18).

18. (1) The party prosecuting an order for examination before an examiner of the Court must take the order or a copy thereof to the Registrar for him to note on it the name of the examiner to whom the examination is to be assigned and must leave a copy of the order with the Registrar.

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

Fees and expenses of examiners of the Court (O. 39, r. 19).

19. (1) The examiners of the Court shall be entitled to charge the fees determined by the Registrar.

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

(3) In the case of every examination, and every adjournment thereof, a deposit determined by the Registrar must be made with the Registrar, in respect of fees and expenses of the day, before the examination is begun or continued, and any balance remaining after the discharge of those fees and expenses shall be repaid by the Registrar.

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

ORDER 40
COURT EXPERT

(R.S.C. 1978)

Appointment of expert to report on certain questions (O. 40, r. 1).

1. (1) In any cause or matter which is to be tried without a jury and in which any question for an expert witness arises the Court may at any time, with or without the consent of the parties, appoint an independent expert or, if more than one such question arises, two or more such experts, to inquire and report upon any question of fact or opinion not involving questions of law or of construction. An expert appointed under this paragraph is referred to in this Order as a "court expert". This rule applies both to proceedings in open Court and in Chambers.

(2) Any court expert in a cause or matter shall, if possible, be a person agreed between the parties and, failing agreement, shall be nominated by the Court.

(3) The question to be submitted to the court expert and the instructions (if any) given to him shall, failing agreement between the parties, be settled by the Court.

(4) In this rule "expert" in relation to any question arising in a cause or matter, means any person who has such knowledge or experience of or in connection with that question that his opinion on it would be admissible in evidence.

Report of court expert (O. 40, r. 2).

2. (1) The court expert must send his report to the Court together with such number of copies thereof as the Court may direct, and the proper officer must send copies of the report to the parties or their attorneys.

(2) The Court may direct the court expert to make a further or supplemental report.

(3) Any part of a court expert's report which is not accepted by all the parties to the cause or matter in which it is made shall be treated as information furnished to the Court and be given such weight as the Court thinks fit.

Experiments and tests (O. 40, r. 3).

3. If the court expert is of opinion that an experiment or test of any kind (other than one of a trifling character) is necessary to enable him to make a satisfactory report he shall inform the parties or their attorneys and shall, if possible, make an arrangement with them as to the expenses involved, the persons to attend and other relevant matters; and if the parties are unable to agree on any of those matters it shall be settled by the Court.

Cross-examination of court expert (O. 40, r. 4).

4. Any party may, within 14 days after receiving a copy of the court expert's report, apply to the Court for leave to cross-examine the expert on his report, and on that application the Court shall make an order for the cross-examination of the expert by all the parties either —

(a) at the trial; or

(b) before an examiner at such time and place as may be specified in the order.

Remuneration of the court expert (O. 40, r. 5).

5. (1) The remuneration of the court expert shall be fixed by the Court and shall include a fee for his report and a proper sum for each day during which he is required to be present either in court or before an examiner.

(2) Without prejudice to any order providing for payment of the court expert's remuneration as part of the costs of the cause or matter, the parties shall be jointly and severally liable to pay the amount fixed by the Court for his remuneration, but where, the appointment of a court expert is opposed the Court may, as a condition of making the appointment, require the party applying for the appointment to give such security for the remuneration of the expert as the Court thinks fit.

Calling of expert witnesses (O. 40, r. 6).

6. Where a court expert is appointed in a cause or matter, any party may, on giving to the other parties a reasonable time before the trial notice of his intention to do so, call an expert witness to give evidence on the question reported on by the court expert but no party may call more than one such witness without the leave of the Court, and the Court shall not grant leave unless it considers the circumstances of the case to be exceptional.

ORDER 41
AFFIDAVITS

(R.S.C. 1978)

Form of affidavit (O. 41, r. 1).

1. (1) Subject to paragraphs (2) and (3), every affidavit sworn in a cause or matter must be entitled in that cause or matter.

(2) Where a cause or matter is entitled in more than one matter, it shall be sufficient to state the first matter followed by the words "and other matters", and where a cause or matter is entitled in a matter or matters and between parties, that part of the title which consists of the matter or matters may be omitted.

(3) Where there are more plaintiffs than one, it shall be sufficient to state the full name of the first followed by the words "and others", and similarly with respect to defendants.

(4) Every affidavit must be expressed in the first person and must state the place of residence of the deponent and his occupation or, if he has none, his description, and if he is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state that fact.

(5) Every affidavit must follow continuously from page to page.

(6) Every affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(7) Dates, sums and other numbers must be expressed in an affidavit in figures and not in words.

(8) Every affidavit must be signed by the deponent and the *jurat* must be completed and signed by the person before whom it is sworn.

Affidavit by two or more deponents (O. 41, r. 2).

2. Where an affidavit is made by two or more deponents, the names of the persons making the affidavit must be inserted in the *jurat* except that, if the affidavit is sworn by both or all the deponents at one time before the same person, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

Affidavit by illiterate or blind person (O. 41, r. 3).

3. Where it appears to the person administering the oath that the deponent is illiterate or blind, he must certify in the *jurat* that —

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

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

(c) the deponent made his signature or mark in his presence; and the affidavit shall not be used in evidence without such a certificate unless the Court is otherwise satisfied that it was read to and appeared to be perfectly understood by the deponent.

Use of defective affidavit (O. 41, r. 4).

4. An affidavit may, with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.

Contents of affidavit (O. 41, r. 5).

5. (1) Subject to Order 14, rules 2(2) and 4(2), to paragraph (2) of this rule and to any order made under Order 38, rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.

(2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.

Scandalous, etc., matter in affidavit (O. 41, r. 6).

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

Alterations in affidavits (O. 41, r. 7).

7. (1) An affidavit which has in the *jurat* or body thereof any interlineation, erasure or other alteration shall not be filed or used in any proceeding without the leave of the Court unless the person before whom the affidavit was sworn has initialled the alteration and, in the case of an erasure, has re-written in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.

(2) Where an affidavit is sworn at the Registry, the official stamp of that office may be substituted for the signature or initials required by this rule.

Filing of affidavits (O. 41, r. 8).

8. (1) Every affidavit must be filed in the Registry.

(2) Every affidavit must be indorsed with a note showing on whose behalf it is filed and the dates of swearing and filing, and an affidavit which is not so indorsed may not be filed or used without the leave of the Court.

Use of original affidavit or office copy (O. 41, r. 9).

9. (1) An original affidavit may not be used in any proceedings unless it has previously been stamped.

(2) Where an original affidavit is used then, unless the party whose affidavit it is undertakes to file it, he must immediately after it is used leave it with the proper officer in court or in chambers, as the case may be, and that officer shall send it to be filed.

(3) Where an affidavit has been filed, a certified copy thereof may be used in any proceedings.

Documents to be used in conjunction with affidavit to be exhibited to it (O. 41, r. 10).

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

(2) Any exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn. The certificate must be entitled, in the same manner as the affidavit and rule 1(1), (2) and (3) shall apply accordingly.

Affidavit taken in Commonwealth and other countries (O. 41, r. 11).

11. A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a court, judge, notary public or person having authority to administer oaths in a part of the Commonwealth outside The Bahamas in testimony of an affidavit being taken before it or him shall be admitted in evidence without proof of the seal or signature being the seal or signature of that court, judge, notary public or person:

Provided that no such document signed, sealed, executed or sworn outside The Bahamas or other part of the Commonwealth shall be admitted in evidence unless the seal or signature is proved by a certificate of the person having authority to give such certificate, which shall be conclusive in all respects, if it states that the person signing the certificate has such authority.

ORDER 42
JUDGMENTS AND ORDERS

(R.S.C. 1978)

Form of judgment, etc. (O. 42, r. 1).

1. (1) If, in the case of any judgment, a form thereof is prescribed by Appendix A the judgment must be in that form.

(2) The party entering any judgment shall be entitled to have recited therein a statement of the manner in which, and the place at which, the writ or other originating process by which the cause or matter in question was begun was served.

(3) An order must be marked with the name of the judge or Registrar by whom it was made and must be sealed.

(4) A judgment or order for the payment of a sum of money may state that sum in Bahamian currency, or in any appropriate foreign currency.

Judgment, etc., requiring act to be done: time for doing it (O. 42, r. 2).

2. (1) Subject to paragraph (2), a judgment or order which requires a person to do an act must specify the time after service of the judgment or order, or some other time, within which the act is to be done.

(2) Where the act which any person is required by any judgment or order to do is to pay money to some other person, give possession of any land or deliver any goods, a time within which the act is to be done need not be specified in the judgment or order by virtue of paragraph (1), but the foregoing provision shall not affect the power of the Court to specify such a time and to adjudge or order accordingly.

Date from which judgment or order takes effect (O. 42, r. 3).

3. (1) A judgment or order of the Court or of an official or special referee takes effect from the day of its date.

(2) Such a judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court orders it to be dated as of some earlier or later day, in which case it shall be dated as of that other day.

Orders required to be drawn up (O. 42, r. 4).

4. (1) Subject to paragraph (2), every order of the Court shall be drawn up unless the Court otherwise directs.

(2) An order —

(a) which —

(i) extends the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act; or

(ii) grants leave for the doing of any of the acts mentioned in paragraph (3); and

(b) which neither imposes any special terms nor includes any special directions other than a direction as to costs,

need not be drawn up unless the Court otherwise directs.

(3) The acts referred to in paragraph (2)(a)(ii) are —

(a) the issue of any writ, other than a writ of summons for service out of the jurisdiction;

(b) the amendment of a writ of summons or other originating process or a pleading;

(c) the filing of any document;

(d) any act to be done by an officer of the Court other than an attorney.

Drawing up and entry of judgments and orders (O. 42, r. 5).

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

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

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

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

(5) The order referred to in paragraph (4) must, when drawn up, be produced at the Registry, together with a copy thereof, and when passed by the proper officer the order, sealed with the seal of that office, shall be returned to the party producing it and the copy shall be lodged in that office.

ORDER 43
ACCOUNTS AND INQUIRIES

(R.S.C. 1978)

Summary order for account (O. 43, r. 1).

1. (1) Where a writ is indorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant

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

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

(3) On the hearing of the application, the Court may, unless satisfied by the defendant by affidavit or otherwise that there is some preliminary question to be tried, order than an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

Court may direct taking of accounts, etc. (O. 43, r. 2).

2. (1) The Court may, on an application made by summons at any stage of the proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made.

(2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgment or order so that, as far as may be, each distinct account and inquiry may be designated by a number.

Directions as to manner of taking account (O. 43, r. 3).

3. (1) Where the Court orders an account to be taken it may by the same or a subsequent order give directions with regard to the manner in which the account is to be taken or vouched.

(2) Without prejudice to the generality of paragraph (1), the Court may direct that in taking the account the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections thereto as they think fit.

Account to be made, verified, etc. (O. 43, r. 4).

4. (1) Where an account has been ordered to be taken, the accounting party must make out his account and, unless the Court otherwise directs, verify it by an affidavit to which the account must be exhibited.

(2) The items on each side of the account must be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party must lodge the account with the Court and must at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

Notice to be given of alleged omissions, etc., in account (O. 43, r. 5).

5. Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of amount or in any other respect, must give him notice thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or, as the case may be, the grounds for alleging that the item is erroneous.

Allowances (O. 43, r. 6).

6. In taking any account directed by any judgment or order all just allowances shall be made without any direction to that effect.

Delay in prosecution of accounts, etc. (O. 43, r. 7).

7. (1) If it appears to the Court that there is undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or for expediting them or for the conduct thereof and for costs as the circumstances require.

(2) The Court may direct any party to take over the conduct of the proceedings in question and to carry out any directions made by an order under this rule.

Distribution of fund before all persons entitled are ascertained (O. 43, r. 8).

8. Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons so ascertained without reserving any part of those shares to meet the subsequent costs of ascertaining those other persons.

Guardian's accounts (O. 43, r. 9).

9. The accounts of a person appointed guardian of a minor's estate must be verified and passed in the same manner as that provided by Order 30 in relation to a receiver's account or in such other manner as the Court may direct.

ORDER 44
PROCEEDING UNDER JUDGMENTS AND ORDERS: EQUITY SIDE

(R.S.C. 1978)

Application to proceedings under an order (O. 44, r. 1).

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

Documents to be left at chambers: summons to proceed (O. 44, r. 2).

2. (1) Where in order to carry out any directions contained in a judgment given in a cause or matter on the Equity Side of the Court it is necessary to proceed in chambers under the judgment, the party entitled to prosecute the judgment must, within 10 days after entry of the judgment, leave a copy of it at the judge's chambers with a certificate that it is a true copy of the judgment as entered.

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

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

Service of notice of judgment on person not a party (O. 44, r. 3).

3. (1) Where in an action for —

(a) the administration of the estate of a deceased person; or

(b) the execution of a trust; or

(c) the sale of any property,

the Court gives a judgment which affects the rights or interests of persons not parties to the action or directs any account to be taken or inquiry made, the Court may, when giving the judgment or at any stage of the proceedings under the judgment, direct notice of the judgment to be served on any person interested in the estate or under the

trust or in the property, as the case may be; and any person duly served with notice of a judgment in accordance with this rule shall, subject to paragraph (5), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.

(2) The Court may direct a notice of judgment to be served personally or in such manner as it may specify on the person required to be served, or if it appears to the Court that it is impracticable for any reason to serve such notice on any person it may dispense with service of the notice on that person. Before notice of a judgment is served the notice must be indorsed with a memorandum in Form No. 52 in Appendix A.

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

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

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

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

Directions by Court (O. 44, r. 4).

4. (1) The Court hearing the summons to proceed shall give directions with respect to the proceedings to be taken under the judgment and the conduct thereof, including, in particular, directions with respect to —

(a) the manner in which any account or inquiry is to be prosecuted;

(b) the evidence to be adduced in support thereof;

(c) the parties required to attend all or any part of the proceedings; and

(d) the time within which each proceedings is to be taken,

and may fix a day or days for the further attendance of the parties.

Court may require parties to be represented by the same attorney (O. 44, r. 5).

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

Court may require parties to be represented by different attorneys (O. 44, r. 6) *S.I. 65/1979.*

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

Leave to attend proceedings, etc. (O. 44, r. 7).

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

Judgment requiring deed to be settled by court: directions (O. 44, r. 8).

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

(a) that within such period as it may specify the party entitled to prepare a draft of the deed must serve a copy of the draft on every other party who will be a party to the deed; and

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

Application of rules 10 to 17 (O. 44, r. 9).

9. Rules 10 to 17 apply —

(a) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any

account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next of kin or other unascertained claimants to be made; and

(b) where in proceedings for the execution under the direction of the Court of a trust the judgment directs any such inquiry to be made,

and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs any account of debts or other liabilities to be taken or any inquiry to be made.

Advertisements for creditors and other claimants (O. 44, r. 10).

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

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

(a) in the case of an advertisement for creditors, shall be signed by that party's attorney or, if he has no attorney, by the Registrar; and

(b) in the case of an advertisement for other claimants, shall be submitted to the Registrar and if approved by the Registrar shall be signed by him.

(3) The Court shall fix the time within which, and the person to whom, any claimant is to send his name and address and particulars of his claim, and that time and the name and address of that person shall be stated in the advertisement.

Failure to claim within specified time (O. 44, r. 11).

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

Examination, etc. of claims (O. 44, r. 12).

12. (1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must —

(a) examine the claims of persons claiming to be creditors of the estate and determine, so far as he is able, to which of such claims the estate is liable; and

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

(i) claims sent in pursuance of any advertisement;

(ii) claims which have been received by any of the personal representatives otherwise than in pursuance of an advertisement; and

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

(2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must —

(a) examine the claims and determine, so far as he is able, which of them are valid claims; and

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

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

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

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

(4) If the personal representatives or trustees concerned are not the parties directed by the Court to examine claims, they must join with the party directed to examine them in making the affidavit required by this rule.

Adjudication on claims (O. 44, r. 13).

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

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

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

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

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

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

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

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

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

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

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

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

Adjournment of adjudication (O. 44, r. 14).

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

Service of notice of judgment on certain claimants (O. 44, r. 15).

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

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

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

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

Notice, etc., of claims allowed (O. 44, r. 16).

16. (1) Such party as the Court may direct must serve on every creditor whose claim or any part thereof has b en allowed or disallowed and who did not attend when the claim was disposed of, a notice informing him of that fact.

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

Service of notices (O. 44, r. 17).

17. For the purpose of Order 61, rule 5, in its application to the service of any notice under this Order on a claimant, the proper address of a claimant shall be the address stated in his claim, or, if an attorney is acting for him in connection with the claim, the business address of that attorney.

Interest on debts (O. 44, r. 18).

18. (1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed —

(a) on any such debt as carries interest, at the rate it carries; and

(b) on any other debt, at the rate of $10 per cent per annum from the date of the judgment.

(2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt at the rate of $10 per cent per annum from the date of the judgment out of any assets which may remain after satisfying the costs of the cause or matter, the debts which have been established and the interest on such of those debts as by law carry interest.

Interest on legacies (O. 44, r. 19).

19. When an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the Court, interest shall be allowed on each legacy at the rate of $10 per cent per annum beginning at the expiration of one year after the testator's death.

Determination by judge of question arising before Registrar (O. 44, r. 20).

20. (1) Any party may, before the proceedings before the Registrar under any judgment are concluded, apply to the judge for the determination of any question arising in the course of the proceedings. Unless the Court otherwise directs, a fresh summons shall not be issued for the purpose of an application under this paragraph.

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

Registrar's certificate (O. 44, r. 21).

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

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

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

(4) Where by reason of the alterations made in the account verified by filed affidavit the Court has directed a fresh account incorporating the alterations to be made, the reference in paragraph (3) to the account so verified shall be construed as a reference to the fresh account.

Settling and filing of Registrar's Certificate (O. 44, r. 22).

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

(2) The certificate signed by the Registrar and any account referred to therein shall be filed in the Registry.

Discharge or variation of Registrar's Certificate (O. 44, r. 23).

23. (1) Any party to proceedings under a judgment may, not later than 8 clear days after the filing of the Registrar's certificate therein, apply by summons for an order of the judge in person discharging or varying the certificate.

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

(3) The judge in person may, in special circumstances, by order discharge or vary the certificate of a Registrar notwithstanding that the certificate has become binding on the parties. An application for an order under the paragraph may be by motion or summons.

Further consideration of cause or matter in chambers (O. 44, r. 24).

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

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

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

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

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

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

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

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

Further consideration of cause or matter in court (O. 44, r. 25).

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

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

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

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

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

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

upon the production, in either case, of the judgment adjourning the cause or matter for further consideration, or a certified copy thereof, and a certified copy of the

Registrar's certificate or a memorandum of the date of filing of the certificate, indorsed on request by the proper officer on the judgment or certified copy thereof.

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

ORDER 45
ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL

(R.S.C. 1978)

Enforcement of judgment, etc., for payment of money (O. 45, r. 1).

1. (1) Subject to the provisions of these Rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into court, may be enforced by one or more of the following means, that is to say —

(a) writ of *fieri facias*;

(b) garnishee proceedings;

(c) a charging order;

(d) the appointment of a receiver;

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

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

(2) Subject to the provisions of these Rules, a judgment or order for the payment of money into court may be enforced by one or more of the following means, that is to say —

(a) the appointment of a receiver;

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

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

(3) Paragraph (1) and (2) are without prejudice to any other remedy available to enforce such a judgment or order as is therein mentioned or to the power of a court under the Debtors Act to commit to prison a person who makes a default in paying money adjudged or ordered to be paid by

him, or to the enactments relating to bankruptcy or the winding up of companies.

(4) In this Order references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.

(5) In any writ or order issued or made to enforce a judgment or order for the payment of money, the amount to be recovered must be stated in Bahamian currency.

Judgment, etc., for payment of money to person resident outside the scheduled territories (O. 45, r. 2).

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

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

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

Enforcement of judgment for possession of land (O. 45, r. 3).

3. (1) Subject to the provisions of these Rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say —

(a) writ of possession;

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

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

(2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was given or made in a mortgage action to which Order 77 applies.

(3) Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled.

(4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

Enforcement of judgment for delivery of goods (O. 45, r. 4).

4. (1) Subject to the provisions of these Rules, a judgment or order for the delivery of any goods which does not give a person against whom the judgment is given or order made the alternative of paying the assessed value of the goods may be enforced by one or more of the following means, that is to say —

(a) writ of delivery to recover the goods without alternative provisions for recovery of the assessed value thereof (hereafter in this rule referred to as a "writ of specific delivery");

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

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

(2) Subject to the provisions of these Rules, a judgment or order for the delivery of any goods or payment of their assessed value may be enforced by one or more of the following means, that is to say —

(a) writ of delivery to recover the goods or their assessed value;

(b) with the leave of the Court, writ of specific delivery;

(c) in a case in which rule 5 applies, writ of sequestration.

(3) A writ of specific delivery, and a writ of delivery to recover any goods or their assessed value, may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

(4) A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money.

Enforcement of judgment to do or abstain from doing any act (O. 45, r. 5).

5. (1) Where —

(a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time, or, as the case may be, within that time as extended or abridged under Order 3, rule 4; or

(b) a person disobeys a judgment or order requiring him to abstain from doing an act;

then, subject to the provisions of these Rules, the judgment or order may be enforced by one or more of the following means, that is to say —

(i) with the leave of the Court, a writ of sequestration against the property of that person;

(ii) where that person is a body corporate, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the body;

(iii) subject to the provisions of the Debtors Act an order of committal against that person or, where that person is a body corporate, against any such officer.

(2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 6 requiring the act to be done within some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as references to that order made under rule 6.

(3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under paragraph (1), but the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first mentioned person to deliver the goods to the applicant within a time specified in that order, and that order may be so enforced.

Judgment, etc., requiring act to be done: order fixing time for doing it (O. 45, r. 6).

6. (1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court, shall, without prejudice to Order 3, rule 4, have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.

(2) Where, notwithstanding Order 42, rule 2(1), or by reason of Order 42, rule 2(2), a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.

(3) An application for an order under this rule must be made by summons and the summons must, notwithstanding anything in Order 61, rule 9, be served on the person required to do the act in question.

Service of copy of judgment, etc., prerequisite to enforcement under r. 5 (O. 45, r. 7).

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

(2) Subject to Order 24, rule 16(3), Order 26, rule 6(3), and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless —

(a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and

(b) in the case or an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.

(3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 5(1)(ii) or (iii) unless —

(a) a copy of the order has also been served personally on the officer against whose property leave is sought to issue a writ of sequestration or against whom an order of committal is sought; and

(b) in the case of an order requiring the body corporate to do an act, a copy has been so served before the expiration of the time within which the body was required to do the act.

(4) There must be indorsed on the copy of an order served under this rule a notice informing the person on whom the copy is served —

(a) in the case or service under paragraph (2), that if he neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he disobeys the Order, he is liable to process of execution to compel him to obey it; and

(b) in the case of service under paragraph (3), that if the body corporate neglects to obey the order within the time so specified or, if the order is to abstain from doing an act, that if the body corporate disobeys the order, he is liable to process of execution to compel the body to obey it.

(5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order made under Order 3, rule 4, extending or abridging the time for doing the act and, where the first-mentioned order was made under rule 5(3) or 6 of this Order, a copy of the previous order requiring the act to be done.

(6) An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either —

(a) by being present when the order was made; or

(b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

(7) Without prejudice to its powers under Order 61, rule 4, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

Court may order act to be done at expense of disobedient party (O. 45, r. 8).

8. If an order of *mandamus*, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to any other power it may have including its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the

expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

Execution by or against person not being a party (O. 45, r. 9).

9. (1) Any person, not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.

(2) Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

Conditional judgment: waiver (O. 45, r. 10).

10. A party entitled under any judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

Matters occurring after judgment: stay of execution, etc. (O. 45, r. 11).

11. Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

Forms of writs (O. 45, r. 12).

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

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

(3) A writ of possession must be in Form No. 66 or 66A in Appendix A, whichever is appropriate.

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

Enforcement of judgments and orders for recovery of money, etc. (O. 45, r. 13).

13. (1) Rule 1 (1) of this Order, with the omission of subparagraphs (e) and (f) thereof, and Order 46 to 51 shall apply in relation to a judgment or order for the recovery of money as they apply in relation to a judgment or order for the payment of money.

(2) Rule 3 of this Order, with the omission of paragraph (1)(b) and (c) thereof, and Order 47, rule 2(2), shall apply in relation to a judgment or order for the recovery of possession of land as they apply in relation to a judgment or order for the giving or delivery of possession of land.

(3) Rule 4 of this Order, with the omission of paragraphs 1(b) and (c) and 2(2)(c) thereof, and Order 47, rule 2(2), shall apply in relation to a judgment or order that a person do have a return of any goods and to a judgment or order that a person do have a return of any goods or do recover the assessed value thereof as they apply in relation to a judgment or order for the delivery of any goods and a judgment or order for the delivery of any goods or payment of the assessed value thereof respectively.

ORDER 46
WRITS OF EXECUTION: GENERAL

(R.S.C. 1978)

Definition (O. 46, r. 1).

1. In this Order, unless the context otherwise requires, "writ of execution" includes a writ of *fieri facias*, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs.

When leave to issue any writ of execution is necessary (O. 46, r. 2).

2. (1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases, that is to say —

(a) where six years or more have elapsed since the date of the judgment or order;

(b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;

(c) where the judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the judgment or order, and it is sought to issue execution against such assets;

(d) where under the judgment or order any person is entitled to relief subject to the fulfilment of any condition which it is alleged has been fulfilled;

(e) where any goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.

(2) Paragraph (1) is without prejudice to any enactment or rule by virtue of which a person is required to obtain the leave of the Court for the issue of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order.

(3) Where the Court grants leave, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting such leave, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

Leave required for issue of writ in aid of other writ (O. 46, r. 2).

3. A writ of execution in aid of any other writ of execution shall not issue without the leave of the Court.

Application for leave to issue writ (O. 46, r. 4).

4. (1) An application for leave to issue a writ of execution may be made *ex parte* unless the Court directs it to be made by summons.

(2) Such an application must be supported by an affidavit —

(a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date of the application;

(b) stating, where the case falls within rule 2(1)(a), the reasons for the delay in enforcing the judgment order;

(c) stating, where the case falls within rule 2(1)(b), the change which has taken place in the parties entitled or liable to execution since the date of the judgment or order;

(d) stating, where the case falls within rule 2(1)(c) or (d), that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so;

(e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.

(3) The Court hearing such application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in an action may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

Application for leave to issue writ of sequestration (O. 46, r. 5).

5. (1) Notwithstanding anything in rules 2 and 4, an application for leave to issue a writ of sequestration must be made to a judge by motion.

(2) Subject to paragraph (3), the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ.

(3) Without prejudice to its powers under Order 61, rule 4, the Court may dispense with service of the notice of motion under this rule if it thinks it just to do so.

(4) The judge hearing an application for leave to issue a writ of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Order 52, rule 4, but, except in such a case, the application shall be heard in open court.

Issue of writ of execution (O. 46, r. 6).

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

(2) Before such a writ is issued a *praecipe* for its issue must be filed.

(3) The *praecipe* must be signed by or on behalf of the attorney of the person entitled to execution or, if that person is acting in person, by him.

(4) No such writ shall be sealed unless at the time of the tender thereof for sealing —

(a) the person tendering it produces —

(i) the judgment or order on which the writ is to issue, or an office copy thereof;

(ii) where the writ may not issue without the leave of the Court, the order granting such leave or evidence of the granting of it;

(iii) where rule 7(2) applies, the Central Bank of the Bahamas permission therein referred to; and

(b) the officer authorised to seal it is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.

(5) Every writ of execution shall bear the date of the day on which it is issued.

Writ and *praecipe* where Exchange Control Act (Ch. 360), and Regulations apply (O. 46, r. 7).

7. (1) Where any party entitled to enforce a judgment or order for the payment of money is resident outside the scheduled territories, then, unless the Central Bank of The Bahamas has given permission under the Exchange Control Act and Regulations for payment of the money to him unconditionally or on conditions which have been compiled with, any writ of execution to enforce that judgment or order must direct the bailiff to pay the proceeds of execution into court. Notice of a payment into court in compliance with such a direction must be given by the bailiff to the party by whom the writ of execution was issued or to his attorney or agent.

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

Duration and renewal of writ of execution (O. 46, r. 8).

8. (1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.

(2) Where a writ has not been wholly executed, the Court may by order extend the validity of the writ from time to time for a period of 12 months at any time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire.

(3) Before a writ the validity of which has been extended under this rule is executed either the writ must be sealed with the seal of the Supreme Court showing the date on which the order extending its validity was made or the applicant for the order must serve a notice (in Form No. 71 in Appendix A), sealed as aforesaid, on the bailiff to whom the writ is directed informing him of the making of the order and the date thereof.

(4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally delivered to the bailiff.

(5) The production of a writ of execution, or of such a notice as is mentioned in paragraph (3), purporting in either case to be sealed as mentioned in that paragraph, shall be evidence that the validity of that writ or, as the case may be, of the writ, referred to in that notice, has been extended under this rule.

Return to writ of execution (O. 46, r. 9).

9. (1) Any party at whose instance a writ of execution was issued may serve a notice on the bailiff to whom the writ was directed requiring him, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.

(2) If a bailiff on whom such a notice is served fails to comply with it, the party by whom it was served may apply to the Court for an order directing the bailiff to comply with the notice.

ORDER 47
WRITS OF *FIERI FACIAS*

(R.S.C. 1978)

Power to stay execution by writ of *fieri facias* (O. 47, r. 1).

1. (1) Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other party liable to execution —

(a) that there are special circumstances which render it inexpedient to enforce the judgment or order; or

(b) that the applicant is unable from any cause to pay the money,

then, notwithstanding anything in rule 2 or 3, the Court may by order stay the execution of the judgment or order by writ of *fieri facias* either absolutely or for such period and subject to such conditions as the Court thinks fit.

(2) An application under this rule, if not made at the time the judgment is given or order made, must be made by summons and may be so made notwithstanding that the party liable to execution did not enter an appearance in the action.

(3) An application made by summons must be supported by an affidavit made by or on behalf of the applicant stating the grounds of the application and the evidence necessary to substantiate them and, in particular, where such application is made on the grounds of the applicant's inability to pay, disclosing his income, the nature and value of any property of his and the amount of any other liabilities of his.

(4) The summons and a copy of the supporting affidavit must, not less than 4 clear days before the return day, be served on the party entitled to enforce the judgment or order.

(5) An order staying execution under this rule may be varied or revoked by a subsequent order.

Separate writs to enforce payment of costs, etc. (O. 47, r. 2).

2. (1) Where only the payment of money, together with costs to be taxed, is adjudged or ordered, then, if when the money becomes payable under the judgment or order the costs have not been taxed, the party entitled to enforce that judgment or order may issue a writ of *fieri facias* to enforce payment of the sum (other than for costs) adjudged or ordered and, not less than 8 days after the issue of that writ, he may issue a second writ to enforce payment of the taxed costs.

(2) A party entitled to enforce a judgment or order for the delivery of possession of any property (other than money) may, if he so elects, issue a separate writ of *fieri facias* to enforce payment of any damages or costs awarded to him by that judgment or order.

No expenses of execution in certain cases (O. 47, r. 3).

3. Where a judgment or order is for less than $300 and does not entitle the plaintiff to costs against the person against whom the writ of *fieri facias* to enforce the judgment or order is issued, the writ may not authorise the bailiff to whom it is directed to levy any fees, poundage or other costs of execution.

Order for sale otherwise than by auction (O. 47, r. 4).

4. (1) An order of the Court under the Bankruptcy Act that a sale under an execution may be made otherwise than by public auction may be made on the application of

the person at whose instance the writ of execution under which the sale is to be made was issued or the person against whom that writ was issued (in this rule referred to as "the judgment debtor") or the bailiff to whom it was issued.

(2) Such an application must be made by summons and the summons must contain a short statement of the grounds of the application.

(3) Where the applicant for an order under this rule is not the bailiff, the bailiff must, on the demand of the applicant send to the applicant a list containing the name and address of every person at whose instance any other writ of execution against the goods of the judgment debtor was issued and delivered to the bailiff (in this rule referred to as "the bailiff's list"); and where the bailiff is an applicant, he must prepare such a list.

(4) Not less than 4 clear days before the return day the applicant must serve the summons on each of the other persons by whom the applicant might have been made and on every person named in the bailiff's list.

(5) The applicant must produce the bailiff's list to the Court on the hearing of the application.

(6) Every person on whom the summons was served may attend and be heard on the hearing of the application.

ORDER 48
EXAMINATION OF JUDGMENT DEBTOR, ETC.

(R.S.C. 1978)

Order for examination of judgment debtor (O. 48, r. 1).

1. (1) Where a person has obtained a judgment or order for the payment by some other person (hereinafter referred to as "the judgment debtor") of money, the Court may, on an application made *ex parte* by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a body corporate, an officer thereof, to attend before the Registrar and be orally examined on the questions —

(a) whether any and, if so, what debts are owing to the judgment debtor; and

(b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment order,

and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.

(2) An order under this rule must be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination.

Examination of party liable to satisfy other judgment (O. 48, r. 2).

2. Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than such a judgment or order as is mentioned in rule 1, the Court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications.

The Registrar to make record of debtor's statement (O. 48, r. 3).

3. The Registrar shall take down, or cause to be taken down, in writing the statement made by the judgment debtor or other person at the examination, read it to him and ask him to sign it, and if he refuses the Registrar shall sign the statement.

ORDER 49
GARNISHEE PROCEEDINGS

(R.S.C. 1978)

Attachment of debt due to judgment debtor (O. 49, r. 1).

1. (1) Where a person (in this Order referred to as "the judgment creditor") has obtained a judgment or order for the payment by some other person (in this Order referred to as "the judgment debtor") of money, not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order referred to as "the garnishee") is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in paragraph (1), or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that paragraph and the costs of the garnishee proceedings.

Application for order (O. 49, r. 2).

2. An application for an order under rule 1 must be made *ex parte* supported by an affidavit —

(a) identifying the judgment or order to be enforced and stating the amount remaining unpaid under it at the time of the application; and

(b) stating that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information or the grounds for his belief.

Service and effect of order to show cause (O. 49, r. 3).

3. (1) An order under rule 1 to show cause must, at least 7 days before the time appointed thereby for the further consideration of the matter, be served —

(a) on the garnishee personally; and

(b) unless the Court otherwise directs, on the judgment debtor.

(2) Such an order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

No appearance or dispute of liability by garnishee (O. 49, r. 4).

4. (1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may, subject to rule 7, make an order absolute under rule 1 against the garnishee.

(2) An order absolute under rule 1 against the garnishee may be enforced in the same manner as any other order for the payment of money.

Dispute of liability by garnishee (O. 49, r. 5).

5. Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or

order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried.

Claims of third persons (O. 49, r. 6).

6. (1) If in garnishee proceedings it is brought to the notice of the Court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien upon it, the Court may order that person to attend before the Court and state the nature of his claim with particulars thereof.

(2) After hearing any person who attends before the Court in compliance with an order under paragraph (1), the Court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for determining the validity of the claim of such other person as is mentioned in paragraph (1) be tried in such manner as is mentioned in rule 5.

Judgment creditor resident outside scheduled territories (O. 49, r. 7).

7. (1) The Court shall not make an order under rule 1 requiring the garnishee to pay any sum to or for the credit of any judgment creditor resident outside the scheduled territories unless that creditor produces a certificate that the Central Bank of The Bahamas has given permission under the Exchange Control Regulations Act, for the payment unconditionally or on conditions which have been complied with.

(2) If it appears to the Court that payment by the garnishee to the judgment creditor will contravene any provision of the said Act or Regulations, it may order the garnishee to pay into court the amount due to the judgment creditor and the costs of the garnishee proceedings after deduction of his own costs, if the Court so orders.

Discharge of garnishee (O. 49, r. 8).

8. Any payment made by a garnishee in compliance with an order absolute under this Order, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order form which they arose reversed.

Money in court (O. 49, r. 9).

9. (1) Where money is standing to the credit of the judgment debtor in court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of that money but may apply to the Court by summons for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) Unless the Court otherwise directs, the summons must be served on the judgment debtor at least 7 days before the day named therein for the hearing of it.

(3) Subject to Order 67, rule 24, the Court hearing an application under this rule may make such order with respect to the money in court as it thinks just.

Costs (O. 49, r. 10).

10. The costs of any application for an order under rule 1 or 9, and of any proceedings arising therefrom or incidental thereto, shall, unless the Court otherwise directs, be retained by the judgment creditor out of the money recovered by him under the order and in priority to the judgment debt.

ORDER 50
CHARGING ORDERS, STOP ORDERS, ETC.

(R.S.C. 1978)

Order imposing charge on securities (O. 50, r. 1).

1. (1) The Court may for the purpose of enforcing a judgment or order for the payment of an ascertained sum of money to a person by order impose on any interest to which the judgment debtor is beneficially entitled in such of the securities to which this rule applies as may be specified in the order a charge for securing payment of the amount due under the judgment or order and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and imposing the charge until that time in any event.

(3) The securities to which this rule applies are —

(a) any government stock, and any stock of any company registered under any general Act of Parliament; and

(b) any dividend of or interest payable on such stock.

(4) In this Order "government stock" means any stock issued by the government of the Commonwealth of The Bahamas or any funds of or annuity granted by that government, and "stock" includes shares, debentures and debenture stock.

Application for order under r. 1 (O. 50, r. 2).

2. An application for an order under rule 1 must be made *ex parte* supported by an affidavit —

(a) identifying the judgment or order to be enforced, stating the amount unpaid under it at the date of the application, and showing that the applicant is entitled to enforce the judgment order;

(b) specifying the securities on the judgment debtor's interest in which it is sought to impose a charge and in whose name they stand;

(c) stating that to the best of the information or belief of the deponent the judgment debtor is beneficially entitled to an interest in the securities in question, describing that interest, and stating the sources of the deponent's information or the grounds for his belief.

Service of notice of order to show cause (O. 50, r. 3).

3. (1) Unless the Court otherwise directs, a copy of the order under rule 1 to show cause must, at least 7 days before the time appointed thereby for the further consideration of the matter, be served on the judgment debtor, and if he does not attend on such consideration proof of service must be given.

(2) Notice of the making of the order to show cause, with a copy of that order, must as soon as practicable after the making of the order be served —

(a) where the order relates to government stock, on the Public Treasury;

(b) where the order relates to other stock, on the company concerned.

Effect of order to show cause (O. 50, r. 4).

4. (1) No disposition by the judgment debtor of his interest in any securities to which an order under rule 1 to show cause relates made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.

(2) Until such order is discharged or made absolute the Public Treasurer or, as the case may be, a company

shall not permit any transfer of any such stock as is specified in the order, or pay to any person any dividend thereof, or interest payable thereon, except with the authority of the Court.

(3) If after notice of the making of such order is served on the Public Treasury or a company, the Public Treasury or company permits any transfer or makes any payment prohibited by paragraph (2), it shall be liable to pay the judgment creditor the value of the stock transferred or, as the case may be, the amount of the payment made or, if that value or amount is more than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.

Making and effect of charging order absolute (O. 50, r. 5).

5. (1) On the further consideration of the matter the Court shall, unless it appears that there is sufficient cause to the contrary, make the order absolute with or without modifications.

(2) Where on the further consideration of the matter it appears to the Court that the order should not be made absolute it shall discharge the order.

(3) A charge imposed by an order under rule 1 made absolute under this rule shall have the same effect, and the judgment creditor in whose favour it is made shall, subject to paragraph (4), have the same remedies for enforcing it, as if it were a valid charge effectively made by the judgment debtor.

(4) No proceedings to enforce a charge imposed by an order made absolute under this rule shall be taken until after the expiration of 6 months from the date of the order to show cause.

Discharge, etc., of charging order (O. 50, r. 6).

6. The Court, on the application of the judgment debtor or any other person interested in the securities to which an order under rule 1 relates, may at any time, whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs as it thinks just.

Money in court: charging order (O. 50, r. 7).

7. (1) The Court may for the purpose of enforcing a judgment or order for the payment of an ascertained sum of money to a person by order impose on any interest to which the judgment debtor is beneficially entitled to any money in court identified in the order a charge for securing payment of the amount due under the judgment or order and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for the further consideration of the matter and imposing the charge until that time in any event.

(3) Rules 2 and 3(1) shall, with the necessary modifications, apply in relation to an application for an order under this rule and to the order as they apply in relation to an application for an order under rule 1 and to such order.

(4) Rules 4(1), 5(1) and (2) and 6 shall, with the necessary modifications, apply in relation to an order under this rule as they apply in relation to an order under rule 1.

Jurisdiction of Registrar to grant injunction or appoint receiver to enforce charge (O. 50, r. 8).

8. The Registrar shall have power to grant an injunction if, and only so far as, it is ancillary or incidental to an order under rule 1 or 7, and an application for the appointment of a receiver or an injunction under this rule may be joined with the application for the order under rule 1 or 7 to which it relates.

Funds in court: stop order (O. 50, r. 9).

9. (1) The Court, on the application of any person —

(a) who has a mortgage or charge on the interest of any person in funds in court; or

(b) to whom that interest has been assigned; or

(c) who is a judgment creditor of the person entitled to that interest,

may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon, without notice to the applicant.

(2) An application for an order under this rule must be made by summons in the cause or matter relating to the funds in court, or, if there is no such cause or matter, by originating summons.

(3) The summons must be served on every person whose interest may be affected by the order applied for but shall not be served on any other person.

(4) Without prejudice to the Court's powers and discretion as to costs, the Court may order the applicant for an order under this rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds, occasioned by the application.

Securities not in court: stop notice (O. 50, r. 10).

10. (1) Any person claiming to be beneficially entitled to an interest in any securities to which rule 1 applies, other than securities in court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.

(2) A person claiming to be so entitled must file in the Registry —

(a) an affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises; and

(b) a notice in Form No. 80 in Appendix A, signed by the deponent to the affidavit, and annexed to it, addressed to the Public Treasury or, as the case may be, the company concerned,

and must serve an office copy of the affidavit, and a copy of the notice sealed with the seal of the Supreme Court on the Public Treasury or that company.

(3) There must be indorsed on the affidavit filed under this rule a note stating the address to which any such notice as is referred to in rule 11(1) is to be sent and, subject to paragraph (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the affidavit is filed.

(4) A person on whose behalf an affidavit under this rule is filed may change his address for service for the purpose of rule 11 by serving on the Public Treasury, or, as the case may be, the company concerned, a notice to that effect, and as from the date of service of such a notice the address stated therein shall for the purpose of that rule be the address for service of that person.

Effect of stop notice (O. 50, r. 11).

11. (1) Where a notice under rule 10 has been served on the Public Treasury or a company, then, so long as the notice is in force, the Public Treasury or company shall not register a transfer of any stock or make a payment of any dividend or interest, being a transfer or payment restrained by the notice, without serving on the person on whose behalf the notice was filed at his address for service a notice informing him of the request for such transfer or payment.

(2) Where the Public Treasury or a company receive a request for such a transfer or payment as is mentioned in

paragraph (1) made by or on behalf of the holder of the securities to which the notice under rule 10 relates, the Public Treasury or company shall not by reason only of that notice refuse to register the transfer or make the payment for longer than 8 days after receipt of the request except under the authority of an order of the Court.

Amendment of stop notice (O. 50, r. 12).

12. If any securities are incorrectly described in a notice filed under rule 10 the person on whose behalf the notice was filed may file in the office or registry in which the notice was filed an amended notice and serve on the Public Treasury or, as the case may be, the company concerned a copy of that notice sealed with the seal of that office or registry, and where he does so the notice under rule 10 shall be deemed to have been served on the Public Treasury or company on the day on which the copy of the amended notice was served on it.

Withdrawal, etc. of stop notice (O. 50, r. 13).

13. (1) The person on whose behalf a notice under rule 10 was filed may withdraw it by serving a request for its withdrawal on the Public Treasury or, as the case may be, the company on whom the notice was served.

(2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be witnessed by a practising attorney.

(3) The Court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a notice under rule 10 relates, may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made to the Court by originating summons, and the summons must be served on the person on whose behalf the notice under rule 10 was filed. No appearance need be entered to the summons.

Order prohibiting transfer, etc., of securities (O. 50, r. 14).

14. (1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any government stock or any stock of any company registered under any general Act of Parliament may by order prohibit the Public Treasury or, as the case may be, that company from registering any transfer of such part of that stock as may be specified in the order or from paying any dividend thereof or interest thereon. The name of the holder of the stock to which the order relates shall be stated in the order.

(2) An application for an order under this rule must be made by motion or summons to the Court. No appearance need be entered to an originating summons under this rule.

(3) The Court, on the application of any person claiming to be entitled to an interest in any stock to which an order under this rule relates, may vary or discharge the order on such terms (if any) as to costs as it thinks fit.

ORDER 51
RECEIVERS: EQUITABLE EXECUTION

(R.S.C. 1978)

Appointment of receiver by way of equitable execution (O. 51, r. 1).

1. (1) Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.

(2) Where on an application for the appointment of a receiver by way of equitable execution it appears to the Court that the judgment creditor is resident outside the scheduled territories, or is acting by order or on behalf of a person so resident, then, unless the permission of the Central Bank of The Bahamas required by the Exchange Control Regulations has been given unconditionally or on conditions that have been complied with, any order for the appointment of a receiver shall direct that the receiver shall pay into court to the credit of the cause or matter in which he is appointed any balance due from him after deduction of his proper remuneration.

Application of rules as to appointment of receiver, etc. (O. 51, r. 2).

2. An application for the appointment of a receiver by way of equitable execution may be made in accordance with Order 30, rule 1 and rules 2 to 6 of that Order shall apply in relation to a receiver appointed by way of equitable execution as they apply in relation to a receiver appointed for any other purpose.

ORDER 52
COMMITTAL

(R.S.C. 1978)

Committal for contempt of court (O. 52, r. 1).

1. (1) The power of the Supreme Court to punish for contempt of court may be exercised by an order of committal.

(2) Where contempt of court —

(a) is committed in connection with —

(i) any proceedings before the Supreme Court; or

(ii) criminal proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court; or

(b) is committed otherwise than in connection with any proceedings,

then, subject to paragraph (4), an order of committal may be made by the Supreme Court.

(3) Where contempt of court is committed in connection with any proceedings in the Supreme Court, then, subject to paragraph (2), an order of committal may be made by a single judge of the Supreme Court.

(4) Where by virtue of any enactment the Supreme Court has power to punish or take steps for the punishment of any person charged with having done any thing in relation to a court, tribunal or person which would, if it had been done in relation to the Supreme Court, have been a contempt of that Court, an order of committal may be made by a single judge of the Court.

Application to Supreme Court (O. 52, r. 2).

2. (1) No application to the Supreme Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made *ex parte* to the Supreme Court, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person

sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

Application for order after leave to apply granted (O. 52, r. 3).

3. (1) When leave has been granted under rule 2 to apply for an order of committal, the application for the order must be made by motion to the Supreme Court and, unless the Court or judge granting leave has otherwise directed, there must be at least 8 clear days between the service of the notice of motion and the day named therein for the hearing.

(2) Unless within 14 days after such leave was granted the motion is entered for hearing the leave shall lapse.

(3) Subject to paragraph (4), the notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 2, must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the Court or judge under Order 65, rule 4, the judge may dispense with service of the notice of motion under this rule if he thinks it just to do so.

Saving for power to commit without application for purpose (O. 52, r. 4).

4. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Supreme Court to make an order of committal of its own motion against a person guilty of contempt of court.

Provisions as to hearing (O. 52, r. 5).

5. (1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say —

(a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;

(b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act;

(c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;

(d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private,

but, except as aforesaid, the application shall be heard in open court.

(2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open court state —

(a) the name of that person;

(b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and

(c) if he is being committed for a fixed period, the length of that period.

(3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the notice of motion under rule 2. The foregoing provision is without prejudice to the powers of the Court under Order 20, rule 7.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

Power to suspend execution of committal order (O. 52, r. 6).

6. (1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended, for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

Discharge of person committed (O. 52, r. 7).

7. (1) The Court may, on the application of any person committed to prison for any contempt of court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver anything to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

Saving for other powers (O. 52, r. 8).

8. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the Supreme Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

ORDER 53
JUDICIAL ORDER

S.I. 92/1997.

Cases appropriate for application for judicial review (O. 53, r. 1).

1. (1) An application for —

(a) an order of *mandamus*, prohibition or *certiorari*; or

(b) an injunction under section 18 of the Act restraining a person from acting in any office in which he is not entitled to act,

shall be made by way of an application for judicial review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (1) (b) may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to —

(a) the nature of the matters in respect of which relief may be granted by way of an order or *mandamus*, prohibition or *certiorari*;

(b) the nature of the persons and bodies against whom relief may be granted by way of such an order; and

(c) all the circumstances of the case,

it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

Joinder of claims for relief (O. 53. r. 2).

2. On an application for judicial review any relief mentioned in rule 1(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

Grant of leave to apply for judicial review (O. 53, r. 3).

3. (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.

(2) An application for leave shall be made *ex parte* to a judge by filing in the Registry —

(a) a notice in Form A in the Schedule to this Order containing a statement of —

(i) the name and description of the applicant;

(ii) the relief sought and the grounds upon which it is sought;

(iii) the name and address of the applicant's counsel and attorney (if any); and

(iv) the applicant's address for service; and

(b) an affidavit which verifies the facts relied on.

(3) The judge may determine the application without a hearing, unless a hearing is requested in the notice of application, and need not sit in open Court and in any case, the Registry shall serve a copy of the judge's order on the applicant:

Provided that in no case shall leave be refused without giving the applicant a hearing.

(4) Where the application for leave is refused by the judge, or is granted on terms, the applicant may renew it by applying —

(a) in any criminal cause or matter, to the Court of Appeal;

(b) in any other case, to a single judge sitting in open Court:

Provided that no application for leave may be renewed in any non-criminal cause or matter in which the judge has refused leave under paragraph (3) after a hearing.

(5) In order to renew his application for leave the applicant shall, within 10 days of being served with notice of the judge's refusal, lodge in the Registry notice of his intention in Form B in the Schedule to this Order.

(6) Without prejudice to its powers under Order 20, rule 8, the Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit.

(7) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(8) Where leave is sought to apply for an order of *certiorari* to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(9) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(10) Where leave to apply for judicial review is granted, then —

(a) if the relief sought is an order of prohibition or *certiorari* and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

(11) Where leave is granted, the magistrates court or tribunal shall transmit a record of the proceeding to the Registrar within 21 days after receiving a copy of the order granting leave.

Delay in applying for relief (O. 53, r. 4).

4. (1) An application for judicial review shall be made promptly and in any event within six months from the date when grounds for the application first arose unless the

Court considers that there is good reason for extending the period within which the application shall be made.

(2) Where the relief sought is an order of *certiorari* in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.

(3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

Mode of applying for judicial review (O. 53, r. 5).

5. (1) In any criminal cause or matter, where leave has been granted to make an application for judicial review, the application shall be made by originating motion to a judge.

(2) In any other such cause or matter, the application shall be made by originating motion to a judge sitting in open Court, unless the Court directs that it shall be made —

(a) by originating summons to a judge in Chambers; or

(b) by originating motion to a judge in open court, and any direction under subparagraph (a) shall be without prejudice to the judge's powers under Order 32, Rule 13.

(3) The notice of motion or summons shall be served on all persons directly affected and where it relates to any proceedings in or before a magistrates court or tribunal and the object of the application is either to compel the magistrates court or tribunal or an officer of the magistrates court or tribunal to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons shall also be served on the Clerk or Registrar of the magistrates court or tribunal and, where any objection to the conduct of the magistrate or tribunal is to be made, on the magistrate or the president of the tribunal.

(4) Unless the Court granting leave has otherwise directed, there must be at least 10 clear days between the service of the notice of motion or summons and the hearing.

(5) A motion must be entered for hearing within 14 days after the grant of leave.

(6) An affidavit giving the names and addresses of, and the places and dates of service on all persons who have been served with the notice of motion or summons shall be filed before the motion or summons is entered for hearing and, if any person who ought to be served, under this rule has not been served, the affidavit shall state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion or summons.

(7) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.

Statements and affidavits (O. 53, r. 6).

6. (1) Copies of the statement in support of an application for leave under rule 3 shall be served with the notice of motion or summons and, subject to paragraph (2) no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may on the hearing of the motion or summons allow the applicant to amend his statement, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposal amendment to every other party.

(4) Any respondent who intends to use an affidavit at the hearing shall file it in the Registry as soon as practicable and in any event, unless the Court otherwise directs, within 6 weeks after service upon him of the documents required to be served by paragraph (1).

(5) Each party to the application shall supply to every other party on demand copies of every affidavit which he proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under rule 3.

Claim for damages (O. 53, r. 7).

7. (1) On an application for judicial review the Court may, subject to paragraph (2) award damages to the applicant if —

(a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates; and

(b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

(2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

Application for discovery, interrogatories, cross-examinations, etc. (O. 53, r. 8).

8. (1) Unless the Court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to a judge or the Registrar, notwithstanding that the application for judicial review has been made by motion and is to be heard in open court.

(2) In this paragraph "interlocutory application" includes an application for an order under Order 24 or 26 or Order 38, rule 2(3) or for an order dismissing the proceedings by consent of the parties.

(3) In relation to an order made by the Registrar pursuant to paragraph (1), Order 58, rule 1 shall, where the application for judicial review is to be heard in open court, have effect as if a reference to the Court were substituted for the reference to a judge in chambers.

(4) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

Hearing of application for judicial review (O. 53, r. 9).

9. (1) On the hearing of any motion or summons under rule 5, any person who desires to be heard in opposition to the motion or summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons.

(2) Where the relief sought is or includes an order of *certiorari* to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition

or record unless before the hearing of the motion or summons he has lodged in the Registry a copy thereof verified by affidavit of accounts for his failure to do so to the satisfaction of the Court hearing the motion or summons.

(3) Where an order for *certiorari* is made in any such case as is referred to in paragraph (2) the order shall, subject to paragraph (4) direct that the proceedings shall be quashed forthwith on their removal into the Supreme Court.

(4) Where the relief sought is an order of *certiorari* and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the Court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ; and Order 28, rule 8, shall apply as if in the case of an application made by motion, it had been made by summons.

(6) No action or proceedings shall be begun or prosecuted against any person in respect of anything done in obedience to an order of *mandamus*.

Appeal form Judge's order (O. 53, r. 10).

10. No appeal shall lie from an order made under paragraph (3) of rule 3 on an application for leave which may be renewed under paragraph (4) of that rule.

Meaning of Court (O. 53, r. 11).

11. In relation to the hearing by a judge of an application for leave under rule 3 or of an application for judicial review, any reference in this Order to "the Court" shall, unless the context otherwise requires, be construed as a reference to the judge.

SCHEDULE

FORM A (rule 3(2))

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

THE BAHAMAS
IN THE SUPREME COURT

Name address and description of applicant.....

Judgment, Order, Decision or other proceeding in respect of which relief is sought.....

Relief Sought.....

Name and address of applicant's Counsel and attorney, or if no Counsel and Attorney acting, the address for service of applicant .....

Signed..... Dated.....

Grounds and reasons therefor on which relief is sought.....

Note: Grounds must be supported by affidavit which verifies facts relied on..

FORM B (rule 3(5))

NOTICE OF RENEWAL OF APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

The Bahamas

IN THE SUPREME COURT

Name, address and description of applicant.....

The applicant intends to renew his application for leave to apply for Judicial Review.....

Signed..... Date.....

Received in the Registry of the Supreme Court.

ORDER 54
APPLICATION FOR WRIT OF *HABEAS CORPUS*

(R.S.C. 1978)

Application for writ of *habeas corpus ad subjiciendum* (O. 54, r. 1).

1. (1) An application for a writ of *habeas corpus ad subjiciendum* must be made to a judge in court except that in cases where the application is made on behalf of an infant, it must be made in the first instance to a judge otherwise than in court.

(2) An application for such writ may be made *ex parte* and, subject to paragraph (3), must be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the affidavit required by paragraph (2), the affidavit may be made by some other person on his behalf and that affidavit must state that the person restrained is unable to make the affidavit himself and for what reason.

Power of court to whom *ex parte* application made (O. 54, r. 2).

2. (1) The judge to whom an application under rule 1 is made *ex parte* may make an order forthwith for the writ to issue, or may —

(a) where the application is made to a judge otherwise than in court, direct that an originating summons for the writ be issued, or that an application therefor be made by originating motion to a judge in court;

(b) where the application is made to a judge in court, adjourn the application so that notice thereof may be given.

(2) The summons or notice of the motion must be served on the person against whom the issue of the writ is sought and on such other persons as the judge may direct, and, unless the judge otherwise directs, there must be at least 8 clear days between the service of the summons or notice and the date named therein for the hearing of the application.

Copies of affidavits to be supplied (O. 54, r. 3).

3. Every party to an application under rule 1 must supply to every other party on demand and on payment of the proper charges copies of the affidavits which he proposes to use at the hearing of the application.

Power to order release of person restrained (O. 54, r. 4).

4. Without prejudice to rule 2(1), the judge hearing an application for a writ of *habeas corpus ad subjiciendum* may in his discretion order that the person restrained be released, and such order shall be a sufficient warrant to any superintendent of a prison, constable or other person for the release of the person under restraint.

Directions as to return to writ (O. 54, r. 5).

5. Where a writ of *habeas corpus ad subjiciendum* is ordered to issue, the judge by whom the order is made shall give directions as to the judge before whom, and the date on which, the writ is returnable.

Service of writ and notice (O. 54, r. 6).

6. (1) Subject to paragraphs (2) and (3), a writ of *habeas corpus ad subjiciendum* must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to a superintendent of a prison or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) There must be served with the writ a notice (in Form No. 90 in Appendix A) stating the judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

Return to the writ (O. 54, r. 7).

7. (1) The return to a writ of *habeas corpus ad subjiciendum* must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.

(2) The return may be amended, or other return substituted therefor, by leave of the judge before whom the writ is returnable.

Procedure at hearing of writ (O. 54, r. 8).

8. When a return to a writ of *habeas corpus ad subjiciendum* is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his

counsel shall be heard first, then the counsel for the Crown, and then one counsel for the person restrained in reply.

Bringing up prisoner to give evidence etc. (O. 54, r. 9).

9. (1) An application for a writ of *habeas corpus ad testificandum* or of *habeas corpus ad respondendum* must be made on affidavit to a judge in chambers.

(2) An application for an order to bring up a prisoner, otherwise than by writ of *habeas corpus*, to give evidence in any cause or matter, civil or criminal, before any court, tribunal or justice, must be made on affidavit to a judge in chambers.

Form of writ (O. 54, r. 10).

10. A writ of *habeas corpus* must be in Form No. 89, 91 or 92 in Appendix A, whichever is appropriate.

ORDER 55
APPEALS TO SUPREME COURT FROM COURT, TRIBUNAL OR PERSON: GENERAL

(R.S.C. 1978)

Application (O. 55, r. 1).

1. (1) Subject to paragraphs (2) and (3), this order shall apply to every appeal which by or under any enactment lies to the Supreme Court from any court, tribunal or person.

(2) This Order shall not apply to an appeal by case stated.

(3) The following rules of this Order shall, in relation to an appeal to which this Order applies, have effect subject to any provision made in relation to that appeal by any other provision of these Rules or by or under any enactment.

(4) In this Order references to a tribunal shall be construed as references to any tribunal constituted by or under any enactment other than any of the ordinary courts of law.

Court to hear appeal (O. 55, r. 2).

2. An appeal to which this Order applies may be heard and determined by a single judge.

Bringing of appeal (O. 55, r. 3).

3. (1) An appeal to which this Order applies shall be by way of rehearing and must be brought by originating motion.

(2) Every notice of the motion by which such an appeal is brought must state the grounds of the appeal and, if the appeal is against a judgment, order or other decision of a court, must state whether the appeal is against the whole or a part of that decision and, if against a part only, must specify the part.

(3) The bringing of such an appeal shall not operate as a stay of proceedings on the judgment, determination or other decision against which the appeal is brought unless the court by which the appeal is to be heard or the court, tribunal or person by which or by whom the decision was given so orders.

Service of notice of motion and entry of appeal (O. 55, r. 4).

4. (1) The persons to be served with notice of the motion by which an appeal to which this Order applies is brought are the following —

(a) if the appeal is against a judgment, order or other decision of a court, the Registrar of the court and any party to the proceedings in which the decision was given who is directly affected by the appeal;

(b) if the appeal is against an order, determination, award or other decision of a tribunal, Minister of the Crown, government department or other person, the chairman of the tribunal, Minister, government department or person, as the case may be, and every party to the proceedings (other than the appellant) in which the decision appealed against was given.

(2) The notice must be served, and the appeal entered, within 28 days after the date of the judgment, order, determination or other decision against which the appeal is brought.

(3) In the case of an appeal against a judgment, order or decision of a court, the period specified in paragraph (2) shall be calculated from the date of the judgment or order or the date on which the decision was given.

(4) In the case of an appeal against an order, determination, award or other decision of a tribunal, Minister, government department or other person, the period specified in paragraph (2) shall be calculated from the date on which notice of the decision was given to the appellant by the person who made the decision or by a person authorised in that behalf to do so.

Date of hearing appeal (O. 55, r. 5).

5. Unless the Court otherwise directs, an appeal to which this Order applies shall not be heard sooner than 21 days after service of notice of the motion by which the appeal is brought.

Amendment of grounds of appeal, etc. (O. 55, r. 6).

6. (1) The notice of the motion by which an appeal to which this Order applies is brought may be amended by the appellant, without leave, by supplementary notice served not less than 7 days before the day appointed for the hearing of the appeal, on each of the persons on whom the notice to be amended was served.

(2) Within 2 days after service of a supplementary notice under paragraph (1) the appellant must lodge two copies of the notice in the Registry.

(3) Except with the leave of the Court, no grounds other than those stated in the notice of the motion by which the appeal is brought or any supplementary notice under paragraph (1) may be relied upon by the appellant at the hearing; but that Court may amend the grounds so stated or make any other order, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(4) The foregoing provisions of this rule are without prejudice to the powers of the Court under Order 20.

Powers of Court hearing appeal (O. 55, r. 7).

7. (1) In addition to the power conferred by rule 6(3), the Court hearing an appeal to which this Order applies shall have the powers conferred by the following provisions of this rule.

(2) The Court shall have power to receive further evidence on questions of fact, and the evidence may be given in such manner as the Court may direct either by oral examination in court, by affidavit, by deposition taken before an examiner or in some other manner.

(3) The Court shall have power to draw any inferences of fact which might have been drawn in the proceedings out of which the appeal arose.

(4) It shall be the duty of the appellant to apply to the judge or other person presiding at the proceedings in which the decision appealed against was given for a signed copy of any note made by him of the proceedings and to furnish that copy for the use of the Court; and in default of production of such a note, or, if such note is incomplete, in

addition to such note, the Court may hear and determine the appeal on any other evidence or statement of what occurred in those proceedings as appears to the Court to be sufficient. Except where the Court otherwise directs, an affidavit or note by a person present at the proceedings shall not be used in evidence under this paragraph unless it was previously submitted to the person presiding at the proceedings for his comments.

(5) The Court may give any judgment or decision or make any order which ought to have been given or made by the court, tribunal or person and make such further or other order as the case may require or may remit the matter with the opinion of the Court for rehearing and determination by him or it.

(6) The Court may, in special circumstances, order that such security shall be given for the costs of the appeal as may be just.

(7) The Court shall not be bound to allow the appeal on the ground merely of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court substantial wrong or miscarriage has been thereby occasioned.

Right of Minister, etc., to appear and be heard (O. 55, r. 8).

8. Where an appeal to which this Order applies is against an order, determination or other decision of a Minister of the Crown or government department, the Minister or department, as the case may be, shall be entitled to appear and be heard in the proceedings on the appeal.

ORDER 56
APPEALS, ETC., TO SUPREME COURT BY CASE STATED: APPEAL FROM MAGISTRATE'S COURT BY CASE STATED

(R.S.C. 1978)

General (O. 56, r. 1).

1. (1) All appeals from a magistrate's court by case stated shall be heard and determined by a judge of the Supreme Court.

(2) An appeal from a magistrate's court by case stated shall not be entered for hearing unless and until the case and a copy of the judgment, order or decision in respect of which the case has been stated have been lodged with the Attorney-General.

(3) No such appeal shall be entered after the expiration of 6 months from the date of the judgment, order or decision in respect of which the case was stated unless the delay is accounted for to the satisfaction of the judge of the Supreme Court. Notice of intention to apply for an extension of time for entry of the appeal must be served on the respondent at least 2 clear days before the day named in the notice for the hearing of the application.

(4) Where any such appeal has not been entered by reason of a default in complying with the provisions of this rule, the magistrate's court may proceed as if no case had been stated.

Form of case (O. 56, r. 2).

2. Where the judgment, order or decision of the magistrate's court in respect of which a case is to be stated states all the relevant facts found by that court and the questions of law to be determined by the Supreme Court, a copy of the judgment, order or decision signed by the person who presided at the hearing in the magistrate's court must be annexed to the case, and the facts so found and the questions of law to be determined shall be sufficiently stated in that case by referring to the statement thereof in the judgment, order or decision.

Notice of entry of appeal (O. 56, r. 3).

3. Within 4 days after an appeal from the magistrate's court by case stated is entered for hearing, the appellant must serve notice of the entry of the appeal on the respondent.

Appeals relating to affiliation proceedings (O. 56, r. 4).

4. Appeals from the magistrate's court by case stated which relate to affiliation proceedings shall be heard and determined by a judge of the Supreme Court, and the foregoing provisions of this Order shall accordingly apply to such appeals.

Case stated by Ministers, tribunal, etc. (O. 56, r. 5).

5. (1) The jurisdiction of the Supreme Court under any enactment to hear and determine a case stated by a Minister of the Crown, government department, tribunal or other person, or a question of law referred to that Court by such a Minister or department or tribunal or other person by way of case stated, shall be exercised by a single judge.

(2) The jurisdiction of the Supreme Court under any enactment to hear and determine an application for an order directing such a Minister or department or tribunal or other person to state a case for determination by the Supreme Court, or to refer a question of law to that Court by way of case stated, shall be exercised by a judge of the Supreme Court.

(3) The following rules of this Order shall apply to proceedings for determination of such a case, question or application and, in relation to any such proceedings, shall have effect subject to any provision made in relation to those proceedings by any other provision of these Rules by or under any enactment.

(4) In this Order references to a tribunal shall be construed as references to any tribunal constituted by or under any enactment other than any of the ordinary courts of law.

(5) In the following rules references to a Minister shall be construed as including references to a government department, and in those rules and this rule "case" includes a special case.

Application for order to state a case (O. 56, r. 6).

6. (1) An application to the Court for an order directing a Minister, tribunal or other person to state a case for determination by the Court or to refer a question of law to the Court by way of case stated must be made by originating motion; and the persons to be served with notice thereof are the Minister, secretary of the tribunal or other person, as the case may be, and every party (other than the applicant) to the proceedings to which the application relates.

(2) The notice of such motion must state the grounds of the application, the question of law on which it is sought to have the case stated and any reasons given by the Minister, tribunal or other person for his or its refusal to state a case.

(3) The motion must be entered for hearing, and the notice thereof served, within 14 days after receipt by the applicant of notice of the refusal of his request to state a case.

Signing and service of case (O. 56, r. 7).

7. (1) A case stated by a tribunal must be signed by the chairman of president of the tribunal, and a case stated by any other person must be signed by him or by a person authorised in that behalf to do so.

(2) The case must be served on the party at whose request, or as a result of whose application to the Court, the case was stated; and if a Minister, tribunal, arbitrator or other person is entitled by virtue of any enactment to state a case, or to refer a question of law by way of case stated, for determination by the Supreme Court without request being made by any party to the proceedings before that person, the case must be served on such party to those proceedings as the Minister, tribunal, arbitrator or other person, as the case may be, thinks appropriate.

(3) When a case is served on any party under paragraph (2), notice must be given to every other party to the proceedings in question that the case has been served on the party named, and on the date specified, in the notice.

Proceedings for determination of case (O. 56, r. 8).

8. (1) Proceedings for the determination by the Supreme Court of a case stated, or a question of law referred by way of case stated, by a Minister, tribunal, arbitrator or other person must be begun by originating motion by the person on whom the case was served in accordance with rule 7(2).

(2) The persons to be served with the notice of such motion are —

(a) the Minister, secretary of the tribunal, arbitrator or other person by whom the case was stated; and

(b) any party (other than the applicant) to the proceedings in which the question of law to which the case relates arose,

and a copy of the case stated must be served with the notice on any such party.

(3) The notice of such motion must set out the applicant's contentions on the question of law to which the case stated relates.

(4) The motion must be entered for hearing, and the notice thereof served, within 14 days after the case stated was served on the applicant.

(5) If the applicant fails to enter the motion within the period specified in paragraph (4), then, after obtaining a copy of the case from the Minister, tribunal, arbitrator or other person by whom the case was stated, any other party to the proceedings in which the question of law to which

the case relates arose may, within 14 days after the expiration of the period so specified, begin proceedings for the determination of the case, and paragraphs (1) to (4) shall have effect accordingly with the necessary modifications. The references in this paragraph to the period specified in paragraph (4) shall be construed as including references to that period as extended by any order of the Court.

(6) Unless the Court otherwise directs, the motion shall not be heard sooner than 7 days after service of notice of motion.

Amendment of case (O. 56, r. 9).

9. The Court hearing a case stated by a Minister, tribunal, arbitrator or other person may amend the case or order it to be returned to that person for amendment, and may draw inferences of fact from the facts stated in the case.

Right of Minister to appear and be heard (O. 56, r. 10).

10. A Minister shall be entitled to appear and be heard in proceedings for the determination of a case stated, or a question of law referred by way of case stated, by him.

ORDER 57
COURT PROCEEDINGS: SUPPLEMENTARY PROVISIONS

(R.S.C. 1978)

Application (O. 57, r. 1).

1. This Order shall apply to any proceedings under Order 53, Order 54 or any proceedings which consist of or relate to an appeal to the Supreme Court by case stated and the reference of a question of law by way of case stated.

Entry of motions (O. 57, r. 2).

2. (1) Every motion in proceedings to which this Order applies must be entered for hearing in the Registry; and entry shall be made when a copy of the notice of motion, and any other documents required to be lodged before entry, have been lodged in that office.

(2) The party entering the motion for hearing must lodge in the Registry copies of the proceedings for the use of the Court.

Filing of affidavits and drawing up of orders (O. 57, r. 3).

3. (1) Except as provided by Order 41, rule 8(1), every affidavit used in proceedings to which this Order applies must be filed with the Attorney-General.

(2) A copy of any order made by a judge in chambers in any such proceedings must be filed in that office.

ORDER 58
APPEALS FROM THE REGISTRAR

(R.S.C. 1978)

Appeals from certain decisions of the Registrar, etc., to judge in chambers (O. 58, r. 1).

1. (1) An appeal shall lie to a judge in chambers from any judgment, order or decision of the Registrar.

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

(3) Unless the Court otherwise orders, the notice must be issued within 5 days after the judgment, order or decision appealed against was given or made and served not less than 2 clear days before the day fixed for hearing the appeal.

(4) Except so far as the Court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

ORDER 59
COSTS

Preliminary

(R.S.C. 1978)

Interpretation (O. 59, r. 1).

1. (1) In this Order —

"certificate" includes *allocatur*;

"costs" includes fees, charges, disbursements, expenses and remuneration;

"the Court" means the Supreme Court or any one or more judges thereof, whether sitting in court or in chambers, or the Registrar;

"taxed costs" means costs taxed in accordance with this Order;

"taxing master" means the Registrar.

(2) In this Order references to a fund, being a fund out of which costs are to be paid or which is held by a trustee or personal representative, include any references to any estate or property, whether real or personal, held for the benefit of any person or class of persons; and references to a fund held by a trustee or personal representative include references to any fund to which he is entitled (whether alone or together with any other person) in that capacity, whether the fund is for the time being in his possession or not.

Application (O. 59, r. 2).

2. (1) Where by virtue of any Act the costs of or incidental to any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any Act, not being proceedings in the Supreme Court, are taxable in the Supreme Court, the following provisions of this Order, that is to say, rule 7(4) and (5), rule 8(5) rules 13 and 14, rule 15(1), rule 16, rule 19 (except paragraph 3), rules 20 and 24 and rules 31 and 33, shall have effect in relation to proceedings for taxation of those costs as they have effect in relation to proceedings for taxation of those costs of or arising out of proceedings in the Supreme Court.

(2) The costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that Court shall have full power to determine by whom and to what extent the costs are to be paid, and such powers and discretion shall be exercised subject to and in accordance with this order.

Entitlement to Costs

When costs to follow the event (O. 59, r. 3).

3. (1) Subject to the following provisions of this Order, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceeding except under an order of the Court.

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

(3) The costs of and occasioned by any amendment made without leave in the writ of summons or any pleading shall be borne by the party making the amendment, unless the Court otherwise orders.

(4) The costs of and occasioned by any application to extend the time fixed by these Rules, or any direction or order thereunder, for serving or filing any document or doing any other act (including the costs of any order made on the application) shall be borne by the party making the application, unless the Court otherwise orders.

(5) If a party on whom a notice to admit facts is served under Order 27, rule 2, refuses or neglects to admit the facts within 7 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts shall be paid by him, unless the Court otherwise orders.

(6) If a party —

(a) on whom a list of documents is served in pursuance of any provision of Order 24; or

(b) on whom a notice to admit documents is served under Order 27, rule 5,

gives notice of non-admission of any of the document in accordance with Order 27, rule 4(2) or 5(2), as the case may be, the costs of proving that document shall be paid by him, unless the Court otherwise orders.

(7) Where a defendant by notice in writing and without leave discontinues his counterclaim against any party or withdraws any particular claim made by him therein against any party, that party shall, unless the Court otherwise directs, be entitled to his costs of the counterclaim or his costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.

(8) Where a plaintiff accepts money paid into Court by a defendant who counterclaimed against him, then, if the notice of payment given by that defendant stated that he had taken into account and satisfied the cause of action or, as the case may be, all the causes of action in respect of which he counterclaimed, that defendant shall, unless the Court otherwise directs, be entitled to his costs of the counterclaim incurred to the time of receipt of the notice of acceptance by the plaintiff of the money paid into court.

(9) Where any person claiming to be a creditor —

(a) seeks to establish his claim to a debt under any judgment or order in accordance with order 44; or

(b) comes in to prove his title, debt or claim in relation to a company in pursuance of any such notice as is mentioned in the Companies Act,

he shall, if his claim succeeds, be entitled to his costs incurred in establishing, it, unless the Court otherwise directs, and, if his claim or any part of it fails, may be ordered to pay the costs of any person incurred in opposing it.

(10) Where a claimant is entitled to costs under paragraph (9), the amount of the costs shall be fixed by the Court unless it thinks fit to direct taxation and the amount fixed or allowed shall be added to the claimant's debt.

(11) Where a claimant (other than a person claiming to be a creditor) having established a claim to be entitled under a judgment or order in accordance with Order 44 has been served with notice of the judgment or order pursuant to rule 3 or 15 of that Order, he shall, if he enters an appearance, be entitled as part of his costs of action (if allowed) to costs incurred in establishing his claim, unless the Court otherwise directs; and where such a claimant fails to establish his claim or any part of it he may be ordered to pay the costs of any person incurred in opposing it.

Stage of proceedings at which costs to be dealt with (O. 59, r. 4).

4. Costs may be dealt with by the Court at any stage of the proceedings or after the conclusion of the proceedings; and any order of the Court for the payment of any costs may, if the Court thinks fit, require the costs to be paid forthwith notwithstanding that the proceedings have not been concluded.

Special matters to be taken into account in exercising discretion (O. 59, r. 5).

5. The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account —

(a) any such offer of contribution as is mentioned in Order 16, rule 10, which is brought to its attention in pursuance of a reserved right to do so;

(b) any payment of money, into court and the amount of such payment.

Restriction of discretion to order costs (O. 59, r. 6).

6. (1) Notwithstanding anything in this Order or in the Act —

(a) unless the Court is of opinion that there was no reasonable ground for opposing the will, no order shall be made for the costs of the other side to be paid by the party opposing a will in a probate action who has given notice with his defence to the party setting up the will that he merely insists upon the will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the will;

(b) except in special circumstances, no order shall be made giving more than one set of costs among all the opponents of a petition or originating summons for extension of the term of a patent if the Court refuses the prayer of the petition or the relief sought by the summons.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

Costs arising from misconduct or negligence (O. 59, r. 7).

7. (1) Where in any cause or matter any thing is done or omission is made improperly or unnecessarily by or on behalf of a party, the Court may direct that any costs to that party in respect of it shall not be allowed to him and that any costs occasioned by it to other parties shall be paid by him to them.

(2) Without prejudice to the generality of paragraph (1) the Court shall for the purpose of that paragraph have regard in particular to the following matters, that is to say —

(a) the omission to do any thing the doing of which would have been calculated to save costs;

(b) the doing of any thing calculated to occasion, or in a manner or at a time calculated to occasion, unnecessary costs;

(c) any unnecessary delay in the proceedings.

(3) The Court may, instead of giving a direction under paragraph (1) of this rule in relation to any thing done or omission made, direct the Registrar to inquire into it and, if it appears to him that such a direction as aforesaid should have been given in relation to it, to act as if the appropriate direction had been given.

(4) The Registrar shall, in relation to any thing done or omission made in the course of taxation and in relation to any failure to procure taxation, have the same power to disallow or to award costs as the Court has under paragraph (1) to direct that costs shall be disallowed to or paid by any party.

(5) Where a party entitled to costs fails to procure or fails to proceed with taxation, the Registrar in order to prevent any other parties being prejudiced by that failure, may allow the party so entitled a nominal or other sum for costs or may certify the failure and the costs of the other parties.

Personal liability of attorney for costs (O. 59, r. 8).

8. (1) Subject to the following provisions of this rule, where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Court may make against any attorney whom it considers to be responsible (whether personally or through a servant or agent) an order —

(a) disallowing the costs as between the attorney and his client; and

(b) directing the attorney to repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or

(c) directing the attorney personally to indemnify such other parties against costs payable by them.

(2) No order under this rule shall be made against an attorney unless he has been given a reasonable opportunity to appear before the Court and show cause why the order should not be made, except where any proceeding in Court or in chambers cannot conveniently proceed, and fails or is adjourned without useful progress being made —

(a) because of the failure of the attorney to attend in person or by a proper representative; or

(b) because of the failure of the attorney to deliver any document for the use of the Court which ought to have been delivered or to be prepared with any proper evidence or account or otherwise to proceed.

(3) Before making an order under this rule the Court may, if it thinks fit, refer the matter (except in the cases excepted from paragraph (2) or in the case of undue delay in the drawing up of, or in any proceedings under, an order or judgment as to which the Registrar has reported to the Court) to the Registrar for inquiry and report and direct the attorney in the first place to show cause before the Registrar.

(4) The Court may direct that notice of any proceedings or order against an attorney under this rule shall be given to his client in such manner as may be specified in the direction.

(5) Where in any proceedings before the Registrar the attorney representing any party is guilty of neglect or delay or puts any other party to any unnecessary expense in relation to those proceedings, the Registrar may direct the attorney to pay costs personally to any of the parties to those proceedings; and where any attorney fails to leave his bill of costs (with the documents required by this Order) for taxation within the time fixed by or under this Order or otherwise delays or impedes the taxation, then, unless the Registrar otherwise directs, the attorney shall not be allowed the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation.

(6) If, on the taxation of costs to be paid out of a fund, one-sixth or more of the amount of the bill for those costs is taxed off, the attorney whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.

(7) In any proceedings in which the party by whom the fees prescribed by the Orders as to Court fees are payable is represented by an attorney, if the fees or any part of the fees payable under the said Orders are not paid as therein prescribed, the Court may order the attorney personally to pay that amount in the manner so prescribed. *S.I. 65/1979.*

9. (1) Subject to this Order, where by or under these Rules or any order or direction of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs. Fractional or gross sum in place of taxed costs (O. 59, r. 9).

(2) Paragraph (1) shall not apply to costs which by or under any order or direction of the Court —

(a) are to be paid to a receiver appointed by the Supreme Court in respect of his remuneration, disbursements or expenses; or

(b) are to be assessed or settled by the Registrar,

but rules 26, 29 and 30 shall apply in relation to the assessment or settlement by the Registrar of costs which are to be assessed or settled as aforesaid as they apply in relation to the taxation of costs by the Registrar.

(3) Where a writ in an action is indorsed in accordance with Order 6, rule 2(1)(b), and judgment is entered in default of appearance or of defence for the amount claimed for costs (whether alone or together with any other amount claimed), paragraph (1) of this rule shall not apply to those costs; but if the amount claimed for costs as aforesaid is paid in accordance with the indorsement (or is accepted by the plaintiff as if so paid) the defendant shall nevertheless be entitled to have those costs taxed.

(4) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled —

(a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or

(b) to a gross sum so specified in lieu of taxed costs.

When a party may sign judgment for costs without an order (O. 59, r. 10).

10. (1) Where a plaintiff by notice in writing and without leave either wholly discontinues his action against any defendant or withdraws any particular claim made by him therein against any defendant, the defendant may tax his costs of the action or his costs occasioned by the matter withdrawn, as the case may be, and, if the taxed costs are not paid within 4 days after taxation, may sign judgment for them.

(2) If a plaintiff accepts money paid into court in satisfaction of the cause of action, or all the causes of action, in respect of which he claims, or if he accepts a sum or sums paid in respect of one or more specified: causes of

action and gives notice that he abandons the others, then subject to paragraph (4), he may, after 4 days from payment out and unless the Court otherwise orders, tax his costs incurred to the time of receipt of the notice of payment into court and 48 hours after taxation may sign judgment for his taxed costs.

(3) Where a plaintiff in an action for libel or slander against several defendants sued jointly accepts money paid into court by one of the defendants, he may, subject to paragraph (4), tax his costs and sign judgment for them against that defendant in accordance with paragraph (2).

(4) Where money paid into court in an action is accepted by the plaintiff after the trial or hearing has begun, the plaintiff shall not be entitled to tax his costs under paragraph (2) or (3).

When order for taxation of costs not required (O. 59, r. 11).

11. (1) Where an action, petition or summons is dismissed with costs, or a motion is refused with costs, or an order of the Court directs the payment of any costs, or any party is entitled under rule 10 to tax his costs, no order directing the taxation of those costs need be made.

(2) Where a summons is taken out to set aside with costs any proceedings on the ground of irregularity and the summons is dismissed but no direction is given as to costs, the summons is to be taken as having been dismissed with costs.

Powers of the Registrar to tax costs (O. 59, r. 12).

12. The Registrar shall have power to tax —

(a) the costs of or arising out of any cause or matter in the Supreme Court;

(b) the costs directed by an award made on a reference to arbitration or pursuant to an arbitration agreement to be paid; and

(c) any other costs the taxation of which is directed by an order of the Court.

Supplementary powers of the Registrar (O. 59, r. 13).

13. The Registrar may, in the discharge of his functions with respect to the taxation of costs —

(a) take an account of any dealings in money made in connection with the payment of the costs being taxed, if the Court so directs;

(b) require any party represented jointly with any other party in any proceedings before him to be separately represented;

(c) examine any witness in those proceedings;

(d) direct the production of any document which may be relevant in connection with those proceedings.

Extension, etc., of time (O. 59, r. 74).

14. (1) The Registrar may —

(a) extend the period within which a party is required by or under this Order to begin proceedings for taxation or to do anything in or in connection with proceedings before the Registrar;

(b) where no period is specified by or under this Order or by the Court for the doing of anything in or in connection with such proceedings, specify the period within which the thing is to be done.

(2) Where an order of the Court specifies a period within which anything is to be done by or before the Registrar then, unless the Court otherwise directs, the Registrar may from time to time extend the period so specified on such terms (if any) as he thinks just.

(3) The Registrar may extend any such period as is referred to in the foregoing provisions of this rule although the application for extension is not made until after the expiration of that period.

Interim certificates (O. 59, r. 15).

15. (1) The Registrar may from time to time in the course of the taxation of any costs by him issue an interim certificate for any part of those costs which has been taxed.

(2) If, in the course of the taxation of an attorney's bill to his own client, it appears to the Registrar that in any event the attorney will be liable in connection with that bill to pay money to the client, he may from time to time issue an interim certificate specifying an amount which in his opinion is payable by the attorney to his client.

(3) On the filing of a certificate issued under paragraph (2) the Court may order the amount specified therein to be paid forthwith to the client or into court.

Power of Registrar where party liable to be paid and to pay costs (O. 59, r. 16).

16. Where a party entitled to be paid costs is also liable to pay costs, the Registrar may —

(a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or

(b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

Taxation of bill of costs comprised in account (O. 59, r. 17).

17. (1) Where the Court directs an account to be taken and the account consists in part of a bill of costs, the Court may direct the Registrar to tax those costs and the Registrar shall tax the costs in accordance with the direction and shall return the bill of costs, after taxation thereof, together with his report thereon to the Court.

(2) The Registrar taxing a bill of costs in accordance with a direction under this rule shall have the same powers, and the same fees shall be payable in connection with the taxation, as if an order for taxation of the costs had been made by the Court.

Registrar to fix certain fees payable to conveyancing counsel, etc. (O. 59, r. 18).

18. (1) Where the Court refers any matter to the conveyancing counsel of the Court the fees payable to counsel in respect of the work done by him in connection with the reference shall be fixed by the Registrar.

(2) An appeal from the decision of the Registrar under this rule shall lie to the Court, and the decision of the Court thereon shall be final.

Procedure on Taxation

Mode of beginning proceedings for taxation (O. 59, r. 19).

19. (1) A party entitled to require any costs to be taxed must begin proceedings for the taxation of those costs by producing the requisite document and leaving a copy thereof at the Registry.

(2) The requisite document for the purposes of this rule shall be the judgment, order or directions, as the case may be.

(3) Subject to paragraph (4) where a party is entitled to require any costs to be taxed by virtue of —

(a) a judgment, direction or order given or made in proceedings in the Supreme Court; or

(b) rule 10,

he must begin proceedings for the taxation of those costs within 3 months after the judgment, direction or order was entered, signed or otherwise perfected or, as the case may be, within 3 months after service of the notice given by him under Order 21, rule 2 (where he is so entitled by virtue of rule 10(1) or given to him under Order 22, rule 3 (where he is so entitled by virtue of rule 10(2) or (3)).

(4) In relation to the taxation of costs pursuant to an order under the Bahamas Bar Act, paragraph (3) shall have effect as if for the period of 3 months first mentioned in that paragraph there shall be substituted a reference to 7 days.

(5) A party who begins proceedings for taxation must at the same time lodge in the Registry —

(a) a statement containing the following particulars, that is to say —

(i) the name of every party, and the capacity in which he is a party, to the proceeding, his position on the record of the proceedings which gave rise to the taxation proceedings and, if any costs to which the taxation proceedings relate are to be paid out of a fund, the nature of his interest in the fund; and

(ii) the address of any party to the proceedings who appears in person and the name or firm and business address of the attorney of any party who does not so appear and also (if the attorney is the agent of another) the name of firm and business address of his principal; and

(b) unless the Registrar otherwise directs, the bills of costs together with all necessary papers and vouchers.

Notification of time appointed for taxation (O. 59, r. 20).

20. (1) Where proceedings for taxation have been duly begun in accordance with rule 19, then, subject to paragraph (2) of this rule and rule 22, the Registrar shall give to the party beginning the proceedings and to any other party entitled to be heard in the taxation proceedings, not less than 7 days notice of the day and time appointed for taxation.

(2) A notice under this rule need not be given to any party who has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings:

Provided that this paragraph shall not apply where an order for the taxation of an attorney's bill of costs made under the Bahamas Bar Act at the instance of the attorney gave rise to the taxation proceedings.

Delivery of bills, etc. (O. 59, r. 21).

21. (1) Where a party has begun proceedings for taxation in accordance with rule 19 then, subject to rule 22, the Registrar shall as soon as practicable give notice to any other party whose costs are to be taxed in the proceedings of the period within which his bill of costs together with all necessary papers and vouchers are to be sent to the Registrar by whom the bill is to be taxed.

(2) A party whose costs are to be taxed in any taxation proceedings, except an attorney whose costs are to be taxed by virtue of an order made under the Bahamas Bar Act, must within 4 days after beginning the proceedings or, as the case may be, receiving notice under paragraph (1), send a copy of his bill of costs to every other party entitled to be heard in the proceedings, unless that party has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.

Short and urgent taxation proceedings (O. 59, r. 22).

22. (1) Where a party entitled to require taxation of any costs of or arising out of proceedings in the Supreme Court begins proceedings for the taxation of those costs in accordance with rule 19 then if, when he begins such proceedings, he satisfies the Registrar that the speedy completion of the taxation is necessary in the interests of any person concerned in the taxation, the Registrar shall enter the proceedings for taxation in a list kept for the purposes of this rule and shall forthwith give notice of the day and time appointed for taxation to the party whose costs are to be taxed.

(2) A party whose costs are to be taxed in proceedings entered for taxation in the list referred to in paragraph (1) must, subject to paragraph (3) not less than 2 days before the day appointed for taxation send a copy of his bill of costs to every other party entitled to be heard in the proceedings with a notice of the day and time appointed for taxation.

(3) A notice under paragraph (2) need not be given to any party who has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.

Provisions as to bills of costs (O. 59, r. 23).

23. (1) In any bill of costs the professional charges and the disbursements must be entered in separate columns and every column must be cast before the bill is left for taxation.

(2) Before a bill of costs is left for taxation it must be indorsed with the name or firm and business address of the attorney whose bill it is.

Provisions as to taxation proceedings (O. 59, r. 24).

24. (1) If any party entitled to be heard in any taxation proceedings does not attend within a reasonable time after the time appointed for the taxation, the Registrar, if satisfied by affidavit or otherwise that the party had due notice of the time appointed, may proceed with the taxation.

(2) The Registrar by whom any taxation proceedings are being conducted may, if he thinks it necessary to do so, adjourn those proceedings from time to time.

Powers of Registrar taxing costs payable out of fund (O. 59, r. 25).

25. (1) Where any costs are to be paid out of a fund the Registrar may give directions as to the parties who are entitled to attend on the taxation of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.

(2) Where the Court has directed that an attorney's bill of costs be taxed for the purpose of being paid out of a fund, the Registrar by whom the bill is being taxed may, if he thinks fit, adjourn the taxation for a reasonable period and direct the attorney to send to any person having any interest in the fund a copy of the bill, or of any part thereof, free of charge together with a letter containing the following information, that is to say —

(a) that the bill of costs, a copy of which or of part of which is sent with the letter, has been referred to the Registrar for taxation;

(b) the address of the office at which the taxation is proceeding;

(c) the time appointed by the Registrar at which the taxation will be continued; and

(d) such other information, if any, as the Registrar may direct.

Assessment of Costs

Costs payable to one party by another or out of a fund (O. 59, r. 26).

26. (1) This rule applies to costs which by or under these Rules or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative).

(2) Subject to the following provisions of this rule, costs to which this rule applies shall be taxed on the party and party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.

(3) The Court in awarding costs to which this rule applies may in any case in which it thinks fit to do so order or direct that the costs shall be taxed on the common fund basis.

(4) On a taxation on the common fund basis, being a more generous basis than that provided by paragraph (2), there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and paragraph (2) shall not apply; and accordingly in all cases where costs are to be taxed on the common fund basis the ordinary rules applicable on a taxation as between attorney and client where the costs are to be paid out of a common fund in which the client and others are interested shall be applied, whether or not the costs are in fact to be so paid.

(5) The Court in awarding costs to which this rule applies to any person may if it thinks fit and if —

(a) the costs are to be paid out of a fund; or

(b) the person to whom the costs are to be paid is or was a party to the proceedings in the capacity of trustee or personal representative,

order or direct that the costs shall be taxed as if that person were a trustee of the fund or as if the costs were to be paid out of a fund held by that person, as the case may be, and where the Court so orders or directs rule 29(2) shall have effect in relation to the taxation in substitution for paragraph (2) of this rule.

Costs payable to an attorney by his own client (O. 59, r. 27).

27. (1) On the taxation of an attorney's bill to his own client all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.

(2) For the purposes of paragraph (1), all costs incurred with the express of implied approval of the client shall, subject to paragraph (3), be conclusively presumed to have been reasonably incurred and, where the amount thereof has been expressly or impliedly approved by the client, to have been reasonable in amount.

(3) For the purpose of paragraph (1), any costs which in the circumstances of the case are of an unusual nature and such that they would not be allowed on a taxation of costs in a case to which rule 26(2) applies shall, unless the attorney expressly informed his client before they were incurred that they might not be so allowed, be presumed, until the contrary is shown, to have been unreasonably incurred.

(4) In paragraphs (2) and (3), the reference to the client shall be construed —

(a) if the client was at the material time incapable by reason of mental disorder within the meaning of the Mental Health Act, of managing and administering his property and affairs and represented by a person acting as guardian *ad litem* or next friend, as references to that person acting, where necessary, with the authority of the authority having jurisdiction under that Act;

(b) if the client was at the material time an infant and represented by a person acting as guardian *ad litem* or next friend, as references to that person.

Costs payable to attorney where money recovered by or on behalf of infant, etc. (O. 59, r. 28).

28. (1) This rule applies to —

(a) any proceedings in which money is claimed or recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person who is an infant or incapable by reason of mental disorder within the meaning of the Mental Health Act, of managing and administering his property and affairs or in which money paid into Court is accepted by or on behalf of such a person; and

(b) any proceedings under the Fatal Accidents Act, in which money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, the widow of the person whose death gave rise to the proceedings in satisfaction of a claim under the said Act or in which money paid into Court is accepted by her or on her behalf in satisfaction of such a claim, if the proceedings were for the benefit also of a person who, when the money is recovered, or adjudged or ordered or agreed to be paid, or accepted, is an infant.

(2) The costs payable to his attorney by any plaintiff in any proceedings to which this rule applies by virtue of paragraph (1)(a) or (b), being the costs of those proceedings or incident to the claim therein or consequent thereon, shall be taxed under rule 27; and no costs shall be payable to the attorney of any plaintiff in respect of those proceedings except such amount of costs as may be certified in accordance with this rule on the taxation under rule 27 of the attorney's bill to that plaintiff.

(3) On the taxation under rule 27 of an attorney's bill to any plaintiff in any proceedings to which this rule applies by virtue of paragraph 1(a) or (b) who is his own client, the Registrar shall also tax any costs payable to that plaintiff in those proceedings and shall certify —

(a) the amount allowed on the taxation under rule 27, the amount allowed on the taxation of any costs payable to that plaintiff in those proceedings and the amount (if any) by which the first mentioned amount exceeds the other; and

(b) where necessary, the proportion of the amount of the excess payable respectively by, or out of money belonging to, any party to the proceedings who is an infant or incapable, by reason of mental disorder within the meaning of the Mental Health Act, of managing and administering his property and affairs or the widow of the man whose death gave rise to the proceedings and any other party.

(4) Nothing in the foregoing provisions of this rule shall prejudice an attorney's lien for costs.

(5) The foregoing provisions of this rule shall apply in relation to —

(a) a counterclaim by or on behalf of a person who is an infant or incapable by reason of mental disorder within the meaning of the Mental Health Act, of managing or administering his property and affairs and a counterclaim consisting of or including a claim under the Fatal Accidents Act by or on behalf of the widow of the man whose death gave rise to the claim; and

(b) a claim made by or on behalf of a person who is an infant or incapable as aforesaid in an action by any other person for relief under the Merchant Shipping Act, and a claim consisting of or including a claim under the Fatal Accidents Act, made by or on behalf of that widow in such an action,

as if for references to a plaintiff there were substituted references to a defendant.

Costs payable to a trustee out of the trust fund, etc. (O. 59, r. 29).

29. (1) This rule applies to every taxation of the costs which a person who is or has been a party to any proceedings in the capacity of trustee or personal representative is entitled to be paid out of any fund which he holds in that capacity.

(2) On any taxation to which this rule applies, no costs shall be disallowed, except in so far as those costs or any part of their amount should not, in accordance with the duty of the trustee or personal representative as such, have been incurred or paid, and should for that reason be borne by him personally.

Application of general orders under Bahamas Bar Act (O. 59, r. 30).

30. Where the amount of an attorney's remuneration in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated (in the absence of agreement to the contrary) by any general orders for the time being in force under the Bahamas Bar Act, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same.

Review

Application to Registrar for review (O. 59, r. 31).

31. (1) Any party to any taxation proceeding who is dissatisfied with the allowance or disallowance in whole or in part of any item by the Registrar, or with the amount allowed by him in respect of any item, may apply to him to review his decision in respect of that item.

(2) An application under this rule for review of the Registrar's decision may be made at any time within 14 days after that decision or such shorter period as may be fixed by the Registrar:

Provided that no application under this rule for review of a decision in respect of any item may be made after the signing of the Registrar's certificate dealing finally with that item.

(3) Every applicant for review under this rule must at the time of making his application deliver to the Registrar objections in writing specifying by a list the items or parts of item the allowance or disallowance of which or the amount allowed in respect of which, is objected to and stating concisely the nature and grounds of the objection in each case, and must deliver a copy of the objection to each other party (if any) who attended on the taxation, of those items or to whom the Registrar directs that a copy of the objection shall be delivered.

(4) Any party to whom a copy of the objection is delivered under this rule may, within 14 days after delivery of the copy to him or such shorter period as may be fixed by the Registrar, deliver to the Registrar answers in writing to the objections stating concisely the grounds on which he will oppose the objections, and must at the same time deliver a copy of the answers to the party applying for review and to each other party (if any) to whom a copy of the objection has been delivered or to whom the Registrar directs that a copy of the answers shall be delivered.

(5) An application under this rule for review of the Registrar's decision in respect of any item shall not prejudice the power of the Registrar under rule 15 to issue an interim certificate in respect of items his decision as to which is not objected to.

Review by Registrar (O. 59, r. 32).

32. (1) On reviewing any decision in respect of any item, the Registrar may receive further evidence and may exercise all the powers which he might exercise on an original taxation in respect of that item, including the power to award costs of and incidental to the proceedings before him; and any costs awarded by him to any party may be taxed by him and may be added to or deducted from any other sum payable to or by that party in respect of costs.

(2) On a hearing of a review under rule 31 a party to whom a copy of objections was delivered under paragraph (4) of that rule shall be entitled to be heard in respect of any item to which the objections relate notwithstanding that he did not deliver written answers to the objections under that paragraph.

(3) The Registrar who has reviewed a decision in respect of any item shall issue his certificate accordingly and, if requested to do so by any party to the proceedings

before him, shall state in his certificate or otherwise in writing by reference to the objections to that decision the reasons for his decision on the review, and any special facts or circumstances relevant to it. A request under this paragraph must be made within 14 days after the review or such shorter period as may be fixed by the Registrar.

Review of Registrar's certificate by a judge (O. 59, r. 33).

33. (1) Any party who is dissatisfied with the decision of a Registrar to allow or to disallow any item in whole or in part on review under rule 31 or 32, or with the amount allowed in respect of any item by the Registrar on any such review, may apply to a judge for an order to review the taxation as to that item or part of an item, if, but only if, one of the parties to the proceedings before the Registrar requested him in accordance with rule 32(3) to state the reasons for his decision in respect of that item or part on the review.

(2) An application under this rule for review of a Registrar's decision in respect of any item may be made at any time within 14 days after the Registrar's certificate in respect of that item is signed, or such longer time as the Registrar at the time when he signs the certificate, or the Court at any time, may allow.

(3) An application under this rule shall be made by summons and shall, except where the judge thinks fit to adjourn into court, be heard in chambers.

(4) Unless the judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no grounds of objection shall be raised which was not raised on the review by the Registrar but, save as aforesaid, on the hearing of any such application the judge may exercise all such powers and discretion as are vested in the Registrar in relation to the subject matter of the application.

(5) On an application under this rule the judge may make such order as the circumstances require, and in particular may order the Registrar's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another Registrar for taxation.

Fees (O. 59, r. 34).

34. The fees of Court now payable under the Second Schedule to the Rules of the Supreme Court (Chapter 53 of the Subsidiary Legislation) as amended or otherwise shall

continue to be payable, except that the maximum fee payable to the Deputy Provost Marshal upon an execution and to the Admiralty Marshal upon the sale of a ship shall be two thousand dollars.

GENERAL AND ADMINISTRATIVE PROVISIONS

ORDER 60
REGISTRY OF THE SUPREME COURT

(R.S.C. 1978)

Distribution of business (O. 60, r. 1).

1. The Registry shall be divided into such departments, and the business performed in the Registry shall be distributed among the departments in such manner, as the Chief Justice may direct.

Date of filing to be marked, etc. (O. 60, r. 2).

2. (1) Any document filed in the Registry in any proceedings must be sealed with a seal showing the date on which the document was filed.

(2) Particulars of the time of delivery at the Registry of any document for filing, the date of the document and the title of the cause or matter of which the document forms part of the record shall be entered in books kept in the Registry for the purpose.

Right to inspect, etc. certain documents filed in Registry (O. 60, r. 3).

3. (1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any of the following documents filed in the Registry, namely —

(a) the copy of any writ of summons or other originating process;

(b) any judgment or order given or made in court or the copy of any such judgment or order; and

(c) with the leave of the Court, which may be granted on an application made *ex parte*, any other documents.

(2) Nothing in the foregoing provisions shall be taken as preventing any party to a cause or matter searching for, inspecting and taking or bespeaking a copy of any affidavit or other document filed in the Registry in that cause or matter but made with a view to its commencement.

Deposit of documents (O. 60, r. 4).

4. Where the Court orders any documents to be lodged in court then, the documents must be deposited in the Registry.

Restriction on removal of documents (O. 60, r. 5).

5. No document filed in or in custody of any office of the Supreme Court shall be taken out of that office without the leave of the Court unless the document is to be sent to another such office.

Enrolment of instruments (O. 60, r. 6).

6. Any deed which by virtue of any Act is required or authorised to be enrolled in the Supreme Court may be enrolled in the Registry. In this rule "deed" includes assurances and other instruments.

ORDER 61
SERVICE OF DOCUMENTS

(R.S.C. 1978)

When personal service required (O. 61, r. 1).

1. (1) Any document which by virtue of these Rules is required to be served on any person need not be served personally unless the document is one which by an express provision of these Rules or by order of the Court is required to be so served.

(2) Paragraph (1) shall not affect the power of the Court under any provision of these Rules to dispense with the requirement for personal service.

Personal service: how effected (O. 61, r. 2).

2. Personal service of a document is effected by leaving a copy of the document with the person to be served and, if so requested by him at the time when it is left, showing him —

(a) in the case where the document is a writ or other originating process, the original; and

(b) in any other case, the original or a certified copy.

Personal service on body corporate (O. 61, r. 3).

3. Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any enactment, be effected by serving it in accordance with rule 2 on the president of the body, or the secretary, treasurer or other similar officer thereof.

Substituted service (O. 61, r. 4).

4. (1) If, in the case of any document which by virtue of any provision of these Rules is required to be served personally on any person, it appears to the Court that it is impracticable for any reason to serve that document

personally on that person, the Court may make an order for substituted service of that document.

(2) An application for an order for substituted service may be made by an affidavit stating the facts on which the application is founded.

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

Ordinary service: how effected (O. 61, r. 5).

5. (1) Service of any document, not being a document which by virtue of any provision of these Rules is required to be served personally, may be effected —

(a) by leaving the document at the proper address of the person to be served; or

(b) by post; or

(c) in such other manner as the Court may direct.

(2) For the purposes of this rule, the proper address of any person on whom a document is to be served in accordance with this rule shall be the address for service of that person, but if at the time when service is effected that person has no address for service his address for the purposes aforesaid shall be —

(a) his post office box, if he has one;

(b) in any case, the business address of the attorney (if any) who is acting for him in the proceedings in connection with which service of the document in question is to be effected; or

(c) in the case of an individual, his usual or last known address; or

(d) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business of the firm within the jurisdiction; or

(e) in the case of a body corporate, the registered or principal office of the body.

(3) Nothing in this rule shall be taken as prohibiting the personal service of any document or as affecting any enactment which provides for the manner in which documents may be served on bodies corporate.

Service on Minister, etc., in proceedings which are not by or against the Crown (O. 61, r. 6).

6. Where for the purpose of or in connection with any proceedings in the Supreme Court, not being civil proceedings by or against the Crown within the meaning of Part I of the Crown Proceedings Act, any document is required by any Act or these rules to be served on the Minister of a government department which is an authorised department for the purposes of that Act, or on such a department or on the Attorney-General, section 13 of the Crown Proceedings Act and Order 69, rule 3, shall apply in relation to the service of the document as they apply in relation to the service of documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown.

Effect of service after certain hours (O. 61, r. 7).

7. Any document (other than a writ of summons or other originating process) service of which is effected under rule 2 or under rule 5(1)(b) between 12 noon on a Saturday and midnight on the following day or after 4 in the afternoon on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Saturday or on the day following that other weekday, as the case may be.

Affidavit of service (O. 61, r. 8).

8. An affidavit of service of any document must state by whom the document was served, the day of the week and date on which it was served, where it was served and how.

No service required in certain cases (O. 61, r. 9).

9. Where by virtue of these Rules any document is required to be served on any person but is not required to be served personally, and at the time when service is to be effected that person is in default as to entry of appearance or has no address for service, the document need not be served on that person unless the Court otherwise directs or any of these Rules otherwise provides.

Service of process on Sunday (O. 61, r. 10).

10. (1) No process shall be served or executed within the jurisdiction on a Sunday except, in case of urgency, with the leave of the Court.

(2) For the purpose of this rule "process" includes a writ, judgment, notice, order, petition, originating or other summons or warrant.

ORDER 62
PAPER, PRINTING, NOTICES AND COPIES

(R.S.C. 1978)

Quality and size of paper (O. 62, r. 1).

S.I. 131/2002.

1. (1) Unless the nature of the document renders it impracticable, every document prepared by a party for use in the Supreme Court must be on paper of durable quality, 11 inches long by 8½ inches wide or A4 ISO having a margin, not less than 1½ inches wide to be left blank on the left side of the face of the paper and on the right side of the reverse.

(2) In these Rules the expressions "A3", "A4" and "A5" followed by the letters "ISO" mean respectively the size of paper so referred to in the specifications of the International Standards Organisation.

Regulations as to printing, etc. (O. 62, r. 2).

2. (1) Except where these Rules otherwise provide, every document prepared by a party for use in the Supreme Court must be produced by one of the following means, that is to say, printing, writing (which must be clear and legible) and typewriting otherwise than by means of a carbon, and may be produced partly by one of those means and partly by another or others of them.

(2) For the purpose of these Rules a document shall be deemed to be printed if it is produced by type lithography or stencil duplicating.

(3) Any type used in producing a document for use as aforesaid must be such as to give a clear and legible impression and must be no smaller than 11 point type for printing or elite type for type lithography, stencil duplicating or typewriting.

(4) Any document produced by a photographic or similar process giving a positive and permanent representation free from blemishes shall, to the extent that it contains a facsimile or any printed, written or typewritten matter, be treated for the purposes of these Rules as if it were printed, written or typewritten, as the case may be.

(5) Any notice required by these Rules may not be given orally except with the leave of the Court.

Copies of documents for other party (O. 62, r. 3).

3. (1) Where a document prepared by a party for use in the Supreme Court is printed, the party by whom it was prepared must, on receiving a written request from any party entitled to a copy of that document and on payment of the proper charges, supply him with such number of copies thereof, not exceeding 10, as may be specified in the request.

(2) Where a document prepared by a party for use in the Supreme Court is written or typewritten, the party by whom it was prepared must supply any other party entitled to a copy of it, not being a party on whom it has been served, with one copy of it and, where the document in question is an affidavit, of any document exhibited to it. The copy must be ready for delivery within 48 hours after a written request for it, together with an undertaking to pay the proper charges, is received and must be supplied thereafter on payment of those charges.

Requirements as to copies (O. 62, r. 4).

4. (1) Before a copy of a document is supplied to a party under these Rules, it must be indorsed with the name and address of the party or attorney by whom it was supplied.

(2) The party by whom a copy is supplied under rule 3, or, if he sues or appears by an attorney, his attorney, shall be answerable for the copy being a true copy of the original or of an office copy, as the case may be.

ORDER 63
CHANGE OF ATTORNEY

(R.S.C. 1978)

Notice of change of attorney (O. 63, r. 1).

1. (1) A party to any cause or matter who sues or defends by an attorney may change his attorney without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are lodged and served in accordance with this rule, the former attorney shall, subject to rules 4 and 5, be considered the attorney of the party until the final conclusion of the cause or matter in the Supreme Court.

(2) Notice of a change of attorney must be filed, and a copy thereof lodged in the Registry.

(3) The party giving the notice must serve on every other party to the cause, or matter (not being a party in default as to entry of appearance) and on the former attorney a copy of the notice indorsed with a memorandum stating that the notice has been duly filed in the Registry.

(4) The party giving the notice may perform the duties prescribed by this rule in person or by his new attorney.

Notice of appointment of attorney (O. 63, r. 2).

2. Where a party, after having sued or defended in person, appoints an attorney to act in the cause or matter on his behalf, the change may be made without an order for that purpose and rules 1(2), (3) and (4) shall, with the necessary modifications, apply in relation to a notice of appointment of an attorney as they apply in relation to a notice of change of attorney.

Notice of intention to act in person (O. 63, r. 3).

3. Where a party, after having sued or defended by an attorney, intends and is entitled to act in person, the change may be made without an order for that purpose and rule 1 shall, with the necessary modification, apply in relation to a notice of intention to act in person as it applies in relation to a notice of change of attorney except that the notice of intention to act in person must contain an address for service of the party giving it.

Removal of attorney from record at instance of another party (O. 63, r. 4).

4. (1) Where —

(a) an attorney who has acted for a party in a cause or matter has died or become bankrupt or cannot be found or has been struck off the roll of attorneys or has been suspended from practising or has for any other reason ceased to practise; and

(b) the party has not given notice of change of attorney or notice of intention to act in person in accordance with the foregoing provisions of this Order,

any other party to the cause or matter may apply to the Court for an order declaring that the attorney has ceased to be the attorney acting for the first-mentioned party in the cause or matter, and the Court may make an order accordingly.

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

Court otherwise directs, be served on the party to whose attorney the application relates. The application must be supported by an affidavit stating the grounds of the application.

(3) Where an order is made under this rule the party on whose application it was made must —

(a) serve on every other party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order; and

(b) leave at the Registry a copy of the order and a certificate signed by him or his attorney that the order has been duly served as aforesaid.

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

Withdrawal of attorney who has ceased to act for party (O. 63, r. 5).

5. (1) Where an attorney who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with rule 1, or notice of intention to act in person in accordance with rule 3, the attorney may apply to the Court for an order declaring that the attorney has ceased to be the attorney acting for the party in the cause or matter, and the Court may make an order accordingly, but unless and until the attorney —

(a) serves on every party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order; and

(b) procures the order to be entered in the Registry; and

(c) leaves at that office a copy of the order and certificate signed by him that the order has been duly served as aforesaid,

he shall, subject to the foregoing provisions of this Order, be considered the attorney of the party till the final conclusion of the cause or matter in the Supreme Court.

(2) An application for an order under this rule must be made by summons and the summons must, unless the Court otherwise directs, be served on the party for whom the attorney acted. The application must be supported by an affidavit stating the grounds of the application.

(3) An order made under this rule shall not affect the rights of the attorney and the party for whom he acted as between themselves.

Address for service of party whose attorney is removed, etc. (O. 63, r. 6).

6. (1) Where —

(a) an order is made under rule 4; or

(b) an order is made under rule 5, and the applicant for that order has complied with rule 5(1),

then, unless and until the party to whose attorney or to whom, as the case may be, the order or certificate relates either appoints another attorney and complies with rule 2 or, being entitled to act in person, gives notice of his intention so to do and complies with rule 3, his last known address or, where the party is a body corporate, its registered or principal office, shall, for the purpose of the service on him of any document not required to be served personally, be deemed to be his address for service.

PROVISIONS AS TO FOREIGN PROCEEDINGS

ORDER 64
SERVICE OF FOREIGN PROCESS

(R.S.C. 1978)

Definition (O. 64, r. 1).

1. In this Order "process" includes a citation.

Service of foreign legal process (O. 64, r. 2).

2. (1) This rule applies in relation to the service of any process required in connection with civil or commercial proceedings pending before a court or other tribunal of a foreign country where a letter of request from such a tribunal requesting service on a person in The Bahamas of any such process sent with the letter is received by the appropriate Minister of the Government and is sent by him to the Supreme Court with an intimation that it is desirable that effect should be given to the request.

(2) In order that service of the process may be effected in accordance with this rule the letter of request must be accompanied by a translation thereof in English, by 2 copies of the process to be served and by 2 copies of a translation of the process in English.

(3) Subject to paragraph (4) and to any enactment which provides for the manner in which documents may be served on bodies corporate, service of the process shall be effected by leaving a copy of it and of the translation with the person to be served. Service shall be effected by the

process server appointed under rule 5 or his authorised agent.

(4) Where an application in that behalf is made by the Attorney-General the Court may make an order for substituted service of the process, and, where such an order is made, service of the process shall be effected by taking such steps as the Court may direct to bring the process to the notice of the person to be served.

(5) After service of the process has been effected or (if such be the case) attempts to effect service of it have failed, the process server shall leave with the Registrar a copy of the process, an affidavit made by the person who served, or attempted to serve, the process stating when, where and how he did or attempted to do so, a copy of that affidavit and a statement of the costs incurred in effecting, or attempting to effect, service.

(6) The Registrar shall give a certificate —

(a) identifying the documents annexed thereto, that is to say, the letter of request for service, a copy of the process received with the letter and a copy of the affidavit referred to in paragraph (5);

(b) certifying that the method of service of the process and the proof of service are such as are required by the rules of the Supreme Court regulating the service of process of that Court in The Bahamas or, if such be the case, that service of the process could not be effected for the reason specified in the certificate; and

(c) certifying that the cost of effecting, or attempting to effect, service, as certified by the Registrar, is the amount so specified.

(7) The certificate given under paragraph (6) shall be sealed with the seal of the Supreme Court and shall be sent to the appropriate Minister of the Government.

Service of foreign legal process under Civil Procedure Convention (O. 64, r. 3).

3. (1) This rule applies in relation to the service of any process required in connection with civil or commercial proceedings pending before a court or other tribunal of a foreign country, being a country with which there subsists a Civil Procedure Convention providing for service in The Bahamas of process of the tribunals of that country, where a letter of request from a consular or other authority of that country requesting service on a person in The Bahamas of any such process sent with the letter is received by the Registrar.

(2) In order that service of the process may be effected in accordance with this rule the letter of request must be accompanied by a copy of a translation of the process to be served in English.

(3) Subject to any enactment which provides for the manner in which documents may be served on bodies corporate and to any special provisions of the relevant Civil Procedure Convention, service of the process shall be effected by leaving the original process or a copy of it, as indicated in the letter of request, and a copy of the translation with the person to be served. Service shall be effected by the process server appointed under rule 5 or his authorised agent.

(4) After service of the process has been effected or (if such be the case) attempts to effect service of it have failed, the process server shall leave with the Registrar an affidavit made by the person who served, or attempted to serve, the process stating when, where and how he did or attempted to do so, and a statement of the costs incurred in effecting, or attempting to effect, service.

(5) The Registrar shall give a certificate certifying —

(a) that the process or a copy thereof, as the case may be, was served on the person, at the time, and in the manner, specified in the certificate or, if such be the case, that service of the process could not be effected for the reason so specified; and

(b) that the cost of effecting, or attempting to effect, service, as certified by the Registrar, is the amount so specified.

(6) The certificate given under paragraph (5) shall be sealed with the seal of the Supreme Court and shall be sent to the consular or other authority by whom the request for service was made.

Costs of service, etc., to be certified by Registrar (O. 64, r. 4).

4. A statement of the costs incurred in effecting, or attempting to effect, service under rule 2 or rule 3 shall be submitted to the Registrar who shall certify the amount properly payable in respect of those costs.

Appointment of process server (O. 64, r. 5).

5. The Chief Justice may appoint a process server for the purposes of this Order.

ORDER 65
OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC.

(R.S.C. 1978)

Jurisdiction of Registrar to make order (O. 65, r. 1).

1. (1) Subject to paragraph (2), the power of the Supreme Court or a judge thereof under any Act to make, in relation to a matter pending before a court or tribunal in a place outside the jurisdiction, orders for the examination of witnesses and for attendance and for production of documents and to give directions may be exercised by the Registrar.

(2) The Registrar may not make such an order if the matter in question is a criminal matter.

Application for order (O. 65, r. 2).

2. (1) Subject to paragraph (3) and rule 3, an application for an order under rule 1 must be made *ex parte* by a person duly authorised to make the application on behalf of the court or tribunal in question and must be supported by affidavit.

(2) There must be exhibited to the affidavit in support the letter of request, certificate or other document evidencing the desire of the court or tribunal to obtain for the purpose of a matter pending before it the evidence of the witness to whom the application relates or the production of any documents and, if that document is not in the English language, a translation thereof in that language.

(3) After an application for such an order as is mentioned in paragraph (1) has been made in relation to a matter pending before a court or tribunal, an application for a further order or directions in relation to the same matter must be made by summons.

Application by Attorney-General in certain cases (O. 65, r. 3).

3. Where a letter or request, certificate or other document requesting that the evidence of a witness within the jurisdiction in relation to a matter pending before a court or tribunal in a foreign country be obtained —

(a) is received by a Minister of the Government and sent by him to the Registrar with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in The Bahamas of any party to the matter pending before the court or tribunal; or

(b) is received by the Registrar in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in The Bahamas for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such a party,

the Registrar shall send the document to the Attorney-General and the Attorney-General may make an application for an order and take such other steps as may be necessary, to give effect to the request.

Person to take and manner of taking examination (O. 65, r. 4).

4. (1) Any order made in pursuance of this Order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before such other qualified person as to the Court seems fit.

(2) Subject to any special directions contained in any order made in pursuance of this Order for the examination of any witness, the examination shall be taken in manner provided by Order 39, rules 5 to 10 and 11(1) to (3), and an order may be made under Order 39, rule 14, for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications.

(3) If the examination is directed to be taken before one of the examiners of the Court, Order 39, rules 17, 18 and 19, shall apply in relation to the examination.

Dealing with deposition (O. 65, r. 5).

5. Unless any order made in pursuance of this Order for the examination of any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the Registrar, and the Registrar shall —

(a) give a certificate sealed with the seal of the Supreme Court identifying the documents annexed thereto, that is to say, the letter of request, certificate, or other document from the court or tribunal out of the jurisdiction requesting the examination, the order of the Court for examination and the deposition taken in pursuance of the order; and

(b) send the certificate with the documents annexed thereto to the appropriate Government Minister, or, where the letter of request, certificate or other document was sent to the Registrar by some other person in accordance with a Civil Procedure Convention to that other person, for transmission to that court or tribunal.

Claim to privilege (O. 65, r. 6).

S.I. 4/2001.

6. (1) The provisions of this rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in section 6(1)(b) of the Evidence (Proceedings in Other Jurisdictions) Act, 2000 is not supported or conceded as mentioned in subsection (2) of that section.

(2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so, the court may do so, on the *ex parte* application of the person who obtained the order under section 5 of the Evidence (Proceedings in Other Jurisdictions) Act, 2000.

(3) If such evidence is taken —

(a) it must be contained in a document separate from the remainder of the deposition of the witness;

(b) the examiner shall send to the Registrar with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made;

(c) on receipt of the statement the Registrar shall, notwithstanding anything in rule 5, retain the document containing the part of the witness's evidence to which the claim relates and shall send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 5;

(d) and if the claim is rejected by the foreign court or tribunal, the Registrar shall send to that court or tribunal the document containing that part of the witness's evidence to which the claim relates, but if the claim is upheld the Registrar shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under section 5 of the Evidence (Proceedings in Other Jurisdictions) Act, 2000, the court or tribunal's determination.

ORDER 66
ARBITRATION PROCEEDINGS

(R.S.C. 1978)

Matters for a judge in court (O. 66, r. 1).

1. (1) Every application to the Court —

(a) to remit an award under section 10 of the Arbitration Act; or

(b) to remove an arbitrator or umpire under section 11(1) of that Act; or

(c) to set aside an award under section 11(2) thereof,

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

(2) A special case stated for the decision of the Supreme Court by an arbitrator or umpire under section 19 of the Arbitration Act shall be heard and determined by a single judge.

(3) An application for a declaration that an award made by an arbitrator or umpire is not binding on a party to the award on the ground that it was made without jurisdiction may be made by originating motion to a single judge in court, but the foregoing provision shall not be taken as affecting the judge's power to refuse to make such a declaration in proceedings begun by motion.

Matters for judge in chambers or Registrar (O. 66, r. 2).

2. (1) Subject to the foregoing provisions of this Order, the jurisdiction of the Supreme Court or a judge thereof under the Arbitration Act may be exercised by a judge in chambers.

(2) An application for an order under section 19 of the said Act directing an arbitrator or umpire to state a case must be made by originating summons and the summons must be served on the arbitrator or umpire and the other party to the reference.

(3) No appearance need be entered to an originating summons by which an application under the said Act is made.

Special provisions as to applications to remit or set aside an award (O. 66, r. 3).

3. (1) An application to the Court —

(a) to remit an award under section 11 of the Arbitration Act; or

(b) to set aside an award under section 12(2) of that Act or otherwise,

may be made at any time within 6 weeks after the award has been made and published to the parties.

(2) In the case of every such application, the notice of motion must state in general terms the grounds of the application; and, where the motion is founded on evidence by affidavit, a copy of every affidavit intended to be used must be served with that notice.

Service out of the jurisdiction of summons, notice, etc. (O. 66, r. 4).

4. (1) Service out of the jurisdiction —

(a) of an originating summons for the appointment of an arbitrator or umpire or for leave to enforce an award; or

(b) of notice of an originating motion to remove an arbitrator or umpire or to remit or set aside an award; or

(c) of any order made on such a summons or motion as aforesaid,

is permissible with the leave of the Court provided that the arbitration to which the summons, motion or order relates is to be, or has been, held within the jurisdiction.

(2) An application for the grant of leave under this rule must be supported by an affidavit stating the grounds on which the application is made and showing in what place or country the person to be served is, or probably may be found; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for seance out of the jurisdiction under this rule.

(3) Order 11, rules 5, 6 and 7, shall apply in relation to any such summons, notice or order as is referred to in paragraph (1) as they apply in relation to notice of a writ.

Registration in Supreme Court of foreign awards (O. 66, r. 5).

5. Where an award is made in proceedings on an arbitration in any part of Her Majesty's dominions to which section 6 of the Reciprocal Enforcement of Judgments Act applies, the Rules of Court (Reciprocal Enforcement of Judgments) shall apply in relation to the award as it applies in relation to a judgment given by a court in that place, subject, however, to the following modifications —

(a) for references to the country of the original court there shall be substituted references to the place where the award was made; and

(b) the affidavit required by rule 3 of the said Rules must state (in addition to the other matters required by that rule) that to the best of the information or belief of the deponent the award has, in pursuance of the law in force in the place

where it was made, become enforceable in the same manner as a judgment given by a court in that place.

SPECIAL PROVISIONS AS TO PARTICULAR PROCEEDINGS

ORDER 67
ADMIRALTY PROCEEDINGS

(R.S.C. 1978)

Application and interpretation (O. 67, r. 1).

1. (1) This Order applies to Admiralty causes and matters, and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Order.

(2) In this Order —

"action *in rem*" means an Admiralty action *in rem*;

"caveat against arrest" means a caveat entered in the caveat book under rule 6;

"caveat against release and payment" means a caveat entered in the caveat book under rule 14;

"caveat book" means the book kept in the Registry in which caveats issued under this Order are entered;

"limitation action" means an action by shipowners or other persons under the Merchant Shipping Act for the limitation of the amount of their liability in connection with a ship or other property;

"marshal" means the Admiralty Marshal;

"ship" includes any description of vessel used in navigation.

Certain admiralty actions (O. 67, r. 2).

2. (1) Every action to enforce a claim for damage, loss of life or personal injury arising out of —

(a) a collision between ships; or

(b) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two ships; or

(c) non-compliance, on the part of one or more of two or more ships, with the collision regulation; and

(d) every limitation action, shall be heard by the Supreme Court.

(2) In this rule "collision regulations" means regulations made under section 189 of the Merchant Shipping Act, or any such rules as are mentioned in subsection (3) of section 289 of that Act.

Issue of writ and entry of appearance (O. 67, r. 3).

3. (1) An action *in rem* must be begun by writ; and the writ must be in Form No. 1 or 2 in Appendix B, whichever is appropriate.

(2) Order 6, rule 7, shall apply in relation to a writ by which an Admiralty action is begun, and Order 12 shall apply in relation to such an action.

Service of writ out of jurisdiction (O. 67, r. 4).

4. (1) Subject to the following provisions of this rule, service out of the jurisdiction of a writ, or notice of a writ, containing any such claim as is mentioned in rule 2(1) is permissible with the leave of the Court if, but only if —

(a) the defendant has his habitual residence or a place of business within The Bahamas; or

(b) an action arising out of the same incident or series of incidents is proceeding in the Supreme Court or has been heard and determined in the Supreme Court; or

(c) the defendant has submitted or agreed to submit to the jurisdiction of the Supreme Court.

(2) Order 11, rule 3 and rule 4(1), (2) and (3), shall apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.

(3) Paragraph 1 shall not apply to an action *in rem*.

(4) The proviso to rule 6(1) of Order 6 and Order 11, rule 1(2), shall not apply to a writ by which any Admiralty action is begun or to notice of any such writ.

Warrant of arrest (O. 67, r. 5).

5. (1) After a writ has been issued in an action *in rem* a warrant in Form No. 3 in Appendix B for the arrest of the property against which the action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the plaintiff or of the defendant, as the case may be.

(2) A party applying for the issue out of the Registry of a warrant to arrest any property shall procure a search to be made in the caveat book for the purpose of

ascertaining whether there is a caveat against arrest in force with respect to that property.

(3) A warrant of arrest shall not be issued until the party applying for it has filed a *praecipe* in Form No. 4 in Appendix B requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraphs (6), (7) and (8) so, however, that the Court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(4) Except with the leave of the Court, or where notice has been given under paragraph (11), a warrant of arrest shall not be issued in an action *in rem* against a foreign ship belonging to a port of a State having a consulate in the Island of New Providence, being an action for the possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.

(5) Except with the leave of the Court, a warrant of arrest shall not be issued in an action *in rem* in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the Registrar.

(6) Every affidavit must state —

(a) the name, address and occupation of the applicant for the warrant;

(b) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied; and

(c) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs.

(7) Every affidavit in an action *in rem* for possession of a ship or for wages must state the nationality of the ship against which the action is brought and that the notice (if any) required by paragraph (5) has been sent. A copy of any such notice must be annexed to the affidavit.

(8) An affidavit in such an action as is referred to in paragraph (6), must have exhibited thereto a certified copy of the bottomry bond, or of the translation thereof.

Caveat against arrest (O. 67, r. 6).

6. (1) A person who desires to prevent the arrest of any property must file in the Registry a *praecipe*, in Form No. 5 in Appendix B, signed by him or his attorney undertaking —

(a) to enter an appearance in any action that may be begun against the property described in the *praecipe*; and

(b) within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the *praecipe* or to pay the amount so specified into court; and on the filing of the *praecipe* a caveat against the issue of a warrant to arrest the property described in the *praecipe* shall be entered in the caveat book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

Remedy where property protected by caveat is arrested (without good and sufficient reason) (O. 67, r. 7).

7. Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

Service of writ in action *in rem* (O. 67, r. 8).

8. (1) Subject to paragraph (2), a writ by which an action *in rem* is begun must be served on the property against which the action is brought except —

(a) where the property is freight, in which case it must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried; or

(b) where that property has been sold and the proceeds of sale paid into court, in which case it must be served on the Registrar.

(2) A writ need not be served on the property or Registrar mentioned in paragraph (1) if the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(2) or (3).

(3) Where by virtue of this rule a writ is required to be served on any property, the plaintiff may request service of the writ to be effected by the marshal if, but only if, a warrant of arrest has been issued for service against the

property or the property is under arrest, and in that case the plaintiff must file in the Registry and lodge —

(a) the writ and a copy thereof; and

(b) an undertaking to pay on demand all expenses incurred by the marshal or his substitute in respect of the service of the writ,

and thereupon the marshal or his substitute shall serve the writ on the property described in the *praecipe*.

(4) Where the plaintiff in an action *in rem*, or his attorney, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he must serve the writ forthwith on the person at whose instance the caveat was entered.

(5) Where a writ by which an action *in rem* is begun is amended under Order 20, rule 1, after service thereof, Order 20, rule 1(2), shall not apply and, unless the Court otherwise directs on an application made *ex parte*, the amended writ must be served on any defendant who has entered an appearance in the action or, if no defendant has entered an appearance therein, on the property or Registrar mentioned in paragraph (1) of this rule.

Committal of attorney failing to comply with undertaking (O. 67, r. 9).

9. Where the attorney of a party to an action *in rem* fails to comply with a written undertaking given by him to any other party or his attorney to enter an appearance in the action, give bail or pay money into court in lieu of bail, he shall be liable to committal.

Execution, etc., of warrant of arrest (O. 67, r. 10).

10. (1) A warrant of arrest is valid for 12 months beginning with the date of its issue.

(2) A warrant of arrest may be executed only by the marshal or his substitute.

(3) A warrant of arrest shall not be executed until an undertaking in writing, satisfactory to the marshal to pay the fees and expenses of the marshal has been lodged in the marshal's office.

(4) A warrant of arrest shall be not be executed if the party at whose instance it was issued lodges a written request to that effect with the marshal.

(5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

(6) Subject to paragraph (5), a warrant of arrest must be served on the property against which it is issued.

(7) Within 7 days after the service of a warrant of arrest, the warrant must be filed in the Registry by the marshal.

Service on ships, etc.: how effected (O. 67, r. 11).

11. (1) Subject to paragraph (2), service of a warrant of arrest or writ in an action *in rem* against a ship, freight or cargo shall be effected by —

(a) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure; and

(b) on removing the warrant or writ, leaving a copy of it affixed (in the case of the warrant) in its place or (in the case of the writ) on a sheltered conspicuous part of the ship.

(2) Service of a warrant of arrest or writ in an action *in rem* against freight or cargo or both shall, if the cargo has been landed or trans-shipped, be effected —

(a) by placing the warrant or writ for a short time on the cargo, and, on removing the warrant or writ, leaving a copy of it on the cargo; or

(b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or writ with that person.

Applications with respect to property under arrest (O. 67, r. 12).

12. (1) The marshal may at any time apply to the Court for directions with respect to property under arrest in an action and may, or, if the Court so directs, shall, give notice of the application to any or all of the parties to every action against the property.

(2) The marshal shall send a copy of any order made under paragraph (1) to all the parties to every action against the property to which the order relates.

Release of property under arrest (O. 67, r. 13).

13. (1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall be released only under the authority of an instrument of release (in this rule referred to as a "release"), in Form No. 7 in Appendix B, issued out of the Registry.

(2) A party at whose instance any property was arrested may, before an appearance is entered in the action, file a notice withdrawing the warrant of arrest and, if he does so, a release shall, subject to paragraphs (3) and (5), be issued with respect to that property.

(3) Unless the Court otherwise orders, a release shall not be issued with respect to property as to which a caveat against release is in force.

(4) A release may be issued at the instance of a party interested in the property under arrest if the Court so orders, or, subject to paragraph (3), if all the other parties to the action in which the warrant of arrest was issued consent.

(5) Before a release is issued the party entitled to its issue must —

(a) if there is a caveat against release in force as to the property in question, give notice to the party at whose instance it was entered or his attorney requiring the caveat to be withdrawn; and

(b) file a *praecipe* in Form No. 8 in Appendix B requesting issue of a release.

(6) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the marshal either —

(a) pay the fees of the marshal already incurred and lodge in the marshal's office an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release; or

(b) lodge in the marshal's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.

(7) The Court, on the application of any party who objects to directions given to him by the marshal under paragraph (6), may vary or revoke the directions.

Caveat against release and payment (O. 67, r. 14).

14. (1) A person who desires to prevent the release of any property under arrest in an action *in rem* and the payment out of the court of any money in court representing the proceeds of sale of that property, must file in the Registry a *praecipe* as caveat against the issue of a release with respect to that property and the payment out of court of that money shall be entered in the caveat book.

S.I. 65/1979.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in

respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

Duration of caveats (O. 67, r. 15) *S.I. 65/1979.*

15. (1) Every caveat entered in the caveat book is valid for 6 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a *praecipe* in Form No. 10 of Appendix B.

(2) The period of validity of a caveat may not be extended but this provision shall not be taken as preventing the entry of successive caveats.

Bail (O. 67, r. 16) *S.I. 65/1979.*

16. (1) Bail on behalf of a party to an action *in rem* must be given by bond in Form No. 11 in Appendix B; and the sureties to the bond must enter into the bond before a notary public not being a notary public who, or whose partner, is acting as attorney or agent for the party on whose behalf the bail is to be given, or before the registrar or any deputy or assistant registrar.

(2) Subject to paragraph (3), a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.

(3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under paragraph (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the notary public or the registrar before whom the bail bond was entered into; and after the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) he may file the bond and must at the same time file the affidavits (if any) made under paragraph (2) and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

Interveners (O. 67, r. 17).

17. (1) Where property against which an action *in rem* is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who

has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.

(2) An application for the grant of leave under this rule must be made *ex parte* by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.

(3) A person to whom leave is granted to intervene in an action must enter an appearance therein in the Registry within the period specified in the order granting leave; and Order 12, rules 1 to 3, shall, with the necessary modifications, apply in relation to the entry of appearance by an intervener as if he were a defendant named in the writ.

(4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period as may be specified in the order, serve on every other party to the action such pleading as may be so specified.

Preliminary acts (O. 67, r. 18).

18. (1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, unless the Court otherwise orders, the plaintiff must, within 2 months after issue of the writ, and the defendant must, within 2 months after entering an appearance in the action, and before any pleading is served, lodge in the Registry a document (in these Rules referred to as a preliminary act) containing a statement of the following particulars —

(i) the names of the ships which came into collision and their ports of registry;
(ii) the date and time of the collision;
(iii) the place of the collision;
(iv) the direction and force of the wind;
(v) the state of the weather;
(vi) the state, direction and force of the tidal or other current;
(vii) the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
(viii) the lights (if any) carried by the ship;
(ix) (a) the distance and bearing of the other ship if and when her echo was first observed by radar;

(b) the distance, bearing and approximate heading of the other ship when first seen;

(x) what light or combination of lights (if any) of the other ship was first seen;

(xi) what other lights or combinations of lights (if any) of the other ship were subsequently seen before the collision, and when;

(xii) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (vii) up to the time of the collision, and when, and what measures (if any), other than alterations of course or speed, were taken to avoid the collision, and when;

(xiii) the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;

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

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

(2) Every preliminary act shall be sealed by the proper officer and shall be filed in a closed envelope (stamped with an official stamp showing the date of filing) and, unless the Court otherwise orders, no envelope shall be opened until the pleadings are closed and a consent signed by each of the parties or his attorney to the opening of the preliminary acts is filed with the proper officer.

(3) Where the Court orders the preliminary acts to be opened, the Court may further order the action to be tried without pleadings but, where the Court orders the action to be so tried, any party who intends to rely on the defence of compulsory pilotage must give notice of his intention to do so to the other parties within 7 days after the opening of the preliminary acts.

(4) Where the Court orders the action to be tried without pleadings, it may also order each party, within such period as may be specified in the order, to file a statement of the grounds on which he charges any other party with negligence in connection with the collision and to serve a copy thereof on that other party.

(5) Order 18, rule 1, shall not apply to an action in which preliminary acts are required but, unless the Court orders the action to be tried without pleadings, the plaintiff must serve a statement of claim on each defendant within

14 days after the latest date on which the preliminary act of any party to the action is filled.

Failure to lodge preliminary act: proceedings against party in default (O. 67, r. 19).

19. (1) Where in such an action as is referred to in rule 18(1) the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by summons for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

(2) Where in such an action, being an action *in personam*, a defendant fails to lodge a preliminary act within the prescribed period, Order 19, rules 2 and 3, shall apply as if the defendant's failure to lodge the preliminary act within that period was a failure by him to serve a defence on the plaintiff within the period fixed by or under these Rules for service thereof, and the plaintiff, if he has lodged a preliminary act may, subject to Order 69, rule 7, accordingly enter judgment against the defendant in accordance with the said rule 2 or the said rule 3, as the circumstances of the case require.

(3) Where in such an action, being an action *in rem*, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff, if he has lodged such an act, may apply to the Court by motion for judgment against that defendant, and it shall not be necessary for the plaintiff to file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of a motion under paragraph (3) the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgment should be given for the plaintiff provided he proves his case, it shall order the plaintiff's preliminary act to be opened and require the plaintiff to satisfy the Court that his claim is well founded. The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(5) Where the plaintiff in accordance with a requirement under paragraph (4) satisfies the Court that his claim is well founded, the Court may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into court or make such order as it thinks just.

(6) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this rule.

(7) In this rule references to the prescribed period shall be construed as references to the period within which by virtue of rule 18(1) or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

Special provisions as to pleadings in collision, etc., actions (O. 67, r. 20).

20. (1) Notwithstanding anything in Order 18 rule 3, the plaintiff in any such action as is referred to in rule 2(1) may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court.

(2) If in such an action there is a counterclaim and no defence to counterclaim by the plaintiff, then, notwithstanding Order 18, rule 14(3), but without prejudice to the other provisions of that rule, there is an a implied joinder of issue on the counterclaim, and the joinder of issue operates as a denial of every material allegation of fact made in the counterclaim.

Judgment by default (O. 67, r. 21).

21. (1) Where a writ is served under rule 8(4) on a party at whose instance a caveat against arrest was issued, then if —

(a) the sum claimed in the action begun by the writ does not exceed the amount specified in the undertaking given by that party or his attorney to procure the entry of the caveat; and

(b) that party or his attorney does not within 14 days after service of the writ fulfil the undertaking given by him as aforesaid,

the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Judgment given under paragraph (1) may be enforced by the arrest of the property against which the action was brought and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to an action *in rem* fails to enter an appearance within the time limited for appearing, then, on the expiration of 14 days after service of the writ and upon filing an affidavit proving due service of the writ, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

Where the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(2), or was served on the Registrar under rule 8 of this Order, an

affidavit proving due service of the writ need not be filed under this paragraph, but the writ indorsed as mentioned in the said rule 1(2) or indorsed by the Registrar with a statement that he accepts service of the writ must be lodged with the affidavit verifying the facts an which the action is based.

(4) Where a defendant to an action *in rem* fails to serve a defence on the plaintiff, then, after the expiration of the period fixed by or under these Rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(5) Where a defendant to a counterclaim in an action *in rem* fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (6), after the expiration of the period fixed by or under these Rules for service of the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was served on him by the first-mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgment by default.

(6) No application may be made under paragraph (5) against the plaintiff in any such action as is referred to in rule 2(1)(a).

(7) An application to the Court under this rule must be made by motion and if, on the hearing of the motion, the Court is satisfied that the applicant's claim is well founded it may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into court or may make such other order as it thinks just.

(8) In default actions *in rem* evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

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

(10) Order 13 and Order 19 (except rule 1) shall not apply to actions *in rem*.

Order for sale of ship: determination of priority of claims (O. 67, r. 22).

22. (1) Where in an action *in rem* against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may —

(a) in a case where the order for sale contains the further order referred to in paragraph (2), after the expiration of the period specified in the order under paragraph (2)(a); or

(b) in any other case, after obtaining judgment,

apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(2) Where in an action *in rem* against a ship the Court orders the ship to be sold, it may further order —

(a) that the order of priority of the claims against the proceeds of the sale of the ship shall not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into Court;

(b) that any party to the action or to any other action *in rem* against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is a party to extend the period specified in the order;

(c) that within 7 days after the date of payment into court of the proceeds of sale the marshal shall send for publication in Lloyd's List and Shipping *Gazette* and such other newspaper, if any, as the Court may direct, a notice complying with paragraph (3).

(3) The notice referred to in paragraph (2)(c) must state —

(a) that the ship (naming her) has been sold by order of the Supreme Court in an action *in rem*, identifying the action;

(b) that the gross proceeds of the sale, specifying the amount thereof, have been paid into court;

(c) that the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale; and

(d) that any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment should do so before the expiration of that period.

(4) The marshal must lodge in the Registry a copy of each newspaper in which the notice referred to in paragraph (2)(c) appeared.

(5) The expenses incurred by the marshal in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.

(6) An application to the Court to extend the period referred to in paragraph (2)(a) must be made by motion, and a copy of the notice of motion, must, at least 3 days before the day fixed for the hearing thereof, be served on each party who has begun an action *in rem* against the ship or the proceeds of sale thereof.

(7) In this rule "the Court" means a judge in person.

Appraisement and sale of property (O. 67, r. 23).

23. (1) A commission for the appraisement and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a *praecipe* in Form No. 12 in Appendix B.

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

(3) A commission for appraisement and sale shall not be executed until an undertaking in writing satisfactory to the marshal to pay the fees and expenses of the marshal on demand has been lodged in the marshal's office.

(4) The marshal shall pay into court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into court the account relating to the sale (with vouchers in support) for taxation.

(5) On the taxation of the marshal's account relating to a sale any person interested in the proceeds of the sale shall be entitled to be heard, and any decision of the Registrar made on the taxation to which objection is taken may be reviewed in the same manner and by the same persons as any decisions of the Registrar made in taxation proceedings under Order 59, and rules 31 to 33 of that Order shall apply accordingly with the necessary modifications.

Payment into and out of court (O. 67, r. 24).

24. (1) Order 22 (except rules 3, 4, 5 and 12) shall apply in relation to an Admiralty action as it applies to an action for debt or damages.

(2) Subject to paragraph (3), money paid into court shall not be paid out except in pursuance of an order of a judge in person.

(3) The Registrar may, with the consent of the parties interested in money paid into court, order the money to be paid out to the person entitled thereto in the following cases, that is to say —

(a) where a claim has been referred to the Registrar for decision and all the parties to the reference have agreed to accept the Registrar's decision and to the payment out of any money in court in accordance with that decision;

(b) where property has been sold and the proceeds of sale thereof paid into court, and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of those persons;

(c) where in any other case there is no dispute between the parties.

(4) Where in an Admiralty action money has been paid into court pursuant to an order made under Order 29, rule 12, the Registrar may make an order under paragraph (3) of that rule for the money to be paid out to the person entitled thereto.

Application of Order 25 (O. 67, r. 25).

25. (1) Order 25 shall apply to Admiralty actions (other than limitation actions and actions ordered to be tried as Admiralty short causes) as it applies to other actions, except that —

(a) the summons for directions shall be returnable in not less than seven weeks;

(b) any notice under Order 25, rule 7(1), must be served within 21 days after service of the summons for directions on the party giving the notice; and

(c) unless a judge in person otherwise directs, the summons for directions shall be heard by a judge in person. On the day on which any party serves on any other party a notice under Order 25, rule 7, he must lodge two copies of the notice in the Registry.

(2) An order made on the summons for directions shall determine whether the trial is to be without assessors or with one or more assessors, nautical assessors or other assessors.

(3) The trial shall be in the Supreme Court before a judge without a jury unless, on the ground that there are special reasons to the contrary, an order made on the summons for directions otherwise provides.

(4) An order may be made on the summons for directions, or a direction may be given at the trial, limiting the witnesses who may be called at the trial, whether they are expert witnesses or not.

(5) Any such order or direction as is referred to in paragraph (2), (3) or (4) (including an order made on appeal) may be varied or revoked by a subsequent order or direction made or given at or before the trial by a judge in person or, with the judge's consent, by the Registrar.

Fixing date for trial, etc. (O. 67, r. 26).

26. (1) The Court may at any stage of an action, either on an application made by summons by any party or by order made by virtue of rule 35, fix a date for the trial and vacate or alter any such date.

(2) Not later than 7 days after a date for the trial of the action has been fixed, the action must be set down for trial —

(a) where the date was fixed on an application made under paragraph (1), by the applicant;

(b) where the date was fixed by order made by virtue of rule 34, by the plaintiff. Where the applicant or plaintiff does not, within the period fixed by this paragraph, set the action down for trial, any other party may set it down or an application may be made to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or make such other order as it thinks just.

(3) Not less than 7 days before the date fixed for the trial, or such other period before that date as may be specified in general directions given by the Chief Justice, the party by whom the action was set down for trial must, unless the Court otherwise orders, file in the Registry —

(a) if trial with one or more assessors has been ordered, a *praecipe* for his or their attendance; and

(b) three copies or, in the case of a trial with one or more assessors, four copies (if with one assessor) and five copies (if with two) of any pleadings, preliminary acts, notices given under rule 18(3) and statements filed under rule 18(4).

(4) If an action which has been set down for trial is settled or withdrawn it shall be the duty of all the parties to notify the Registry of the fact without delay and take such steps as may be necessary to vacate the date fixed for the trial.

(5) Order 21, rule 2(4), Order 33, rule 4, and Order 34 (except rule 9) shall not apply to Admiralty actions.

Stay of proceedings in collision, etc. actions until security given (O. 67, r. 27).

27. Where an action *in rem*, being an action to enforce any such claim as is referred to in rule 2(1)(a), is begun and a cross action *in rem* arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned action, then —

(a) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest; but

(b) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim,

the Court may stay proceedings in the first-mentioned action until security is given to satisfy any judgment given in favour of that party.

Inspection of ship, etc. (O. 67, r. 28).

28. Without prejudice to its powers under Order 29, rules 2 and 3, and Order 35, rule 5, the Court may, on the application of any party, make an order for the inspection by the assessors (if the action is tried with assessors), or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

Examination of witnesses and other persons (O. 67, r. 29).

29. (1) The power conferred by Order 39, rule 1, shall extend to the making of an order authorising the examination of a witness or person on oath before a judge sitting in court as if for the trial of the cause or matter, without that cause or matter having been set down for trial or called on for trial.

(2) The power conferred by the said rule 1 shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.

(3) Where an order is made under paragraph (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect —

(a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness;

(b) any representative, being counsel or attorney, of either of the parties shall have authority to administer the oath to the witness;

(c) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the attorney for the party whose witness was examined, and that attorney shall file it in the Registry;

(d) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy thereof shall, before the transcript is filed, be made available to the counsel or other persons who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence he shall make a certificate specifying the corrections which in his opinion should be made therein, and that certificate must be filed with the transcript.

(4) In actions in which preliminary acts fall to be filed under rule 18, an order shall not be made under Order 39, rule 1, authorising any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

(5) The Chief Justice may appoint such number of attorneys as he thinks fit to act as examiners of the Court in connection with Admiralty causes and matters, and may revoke any such appointment.

(6) Order 39, rules 16 to 19, shall not apply in relation to examiners of the Court appointed under paragraph (5).

Trial as an Admiralty short cause (O. 67, r. 30).

30. (1) Where any defendant has entered an appearance in an Admiralty action, the plaintiff or that defendant may, within 7 days after the entry of the appearance, apply by summons, returnable before the Registrar for an order that the action be tried as an Admiralty short cause.

(2) The summons shall be served on every other party to the action not less than 7 days before the hearing.

(3) On the hearing of the application the Registrar may, if he decides to make an order under paragraph (1) —

(a) exercise any power which could be exercised under Order 18, rule 21, or Order 67, rule 18(4), on an application for the trial of the action without pleadings or further pleadings;

(b) abridge the period within which a person is required or authorised by these Rules to do any act in the proceedings and fix the period within which any notice under Order 38, rule 20, must be served;

(c) in the case of such an action as is referred to in rule 18(1), fix the time within which, notwithstanding the provisions of that rule, preliminary acts are to be lodged;

(d) require the parties to the action to make mutual discovery of documents notwithstanding that the action is ordered to be tried without pleadings;

(e) if the parties so agree, order that the evidence in support of their respective cases may be given in whole or in part by the production of documents or entries in books;

(f) give such directions as could be given on a summons for directions in the action; and

(g) fix a date for the trial of the action.

(4) The party taking out a summons under this rule shall include in it an application for such orders or directions as he desires the Registrar to make or give in the exercise of the powers set out in paragraph (3), and any party on whom the summons is served shall, within 3 days

after service of the summons on him, give notice to every other party of any other order or direction he desires the Registrar to make or give as aforesaid and lodge a copy of such notice in the Registry.

(5) An application for an order under Order 18, rule 21, that an Admiralty action be tried without pleadings or further pleadings shall be made by way of an application for an order under paragraph (1) and not otherwise.

(6) Where an order is made under paragraph (1), the writ or originating summons by which the action was begun shall be marked in the top left-hand corner "Admiralty Short Cause".

(7) Any application subsequent to a summons under paragraph (1) and before judgment as to any matter capable of being dealt with on an interlocutory application in the action shall be made under the summons by 2 clear days' notice to the other party stating the grounds of the application.

Further provisions with respect to evidence (O. 67, r. 31).

31. (1) Notwithstanding anything in Order 38, rule 8, rules 1, 2 and 4 of that Order shall not apply to a reference to the Registrar.

(2) Unless the Court otherwise directs, Order 38, rule 30(1), shall not apply in relation to any statement which is admissible in evidence by virtue of section 2, 4 or 5 of the Civil Evidence Act 1968 of England and which an applicant for judgment in default under rule 20 desires to give in evidence at the hearing of the motion by which the application for judgment is made.

(3) In any Admiralty action in which a summons for directions is required by virtue of rule 25 or rule 37(7) to be taken out, any notice under Order 38, rule 20, must, if given by the party who takes out that summons, be served with that summons and if, given by any other party, be served within 21 days after service of the summons for directions on him.

(4) In any proceedings on a reference to the Registrar any notice under Order 38, rule 20, must be served not less than 6 weeks before the day appointed for the hearing of the reference.

(5) On the day on which any party serves on any other party a notice under Order 38, rule 20, or a counter-notice under Order 38, rule 25, he must lodge two copies of the notice or counter-notice in the Registry.

(6) Unless the Court otherwise directs, an affidavit for the purposes of rule 19(4), 21 or 37(2) may, except in so far as it relates to the service of a writ, contain statements of information or belief with the source and grounds thereof.

Proceedings for apportionment of salvage (O. 67, r. 32).

32. (1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be begun by originating motion.

(2) The notice of such motion, together with the affidavits in support thereof, must be filed in the Registry 7 days at least before the hearing of the motion, unless the Court gives leave to the contrary, and a copy of the notice and of the affidavits must be served on all the other parties to the proceedings before the originals are filed.

(3) On the hearing of the motion the judge may exercise any of the jurisdiction conferred by the Merchant Shipping Act.

Filing and service of notice of motion (O. 67, r. 33).

33. (1) Notice of a motion in any action, together with the affidavits (if any) in support thereof, must be filed in the Registry 3 days at least before the hearing of the motion unless the Court gives leave to the contrary.

(2) A copy of the notice of motion and of the affidavits (if any) in support thereof must be served on all the other parties to the proceedings before the originals are filed.

Agreement between attorneys may be made order of court (O. 67, r. 34).

34. Any agreement in writing between the attorneys of the parties or a cause or matter, dated and signed by those attorneys, may, if the Registrar thinks it reasonable and such as a judge would under the circumstances allow, be filed in the Registry, and the agreement shall thereupon become an order of court and have the same effect as if such order had been made by a judge in person.

Originating summons procedure (O. 67, r. 35).

35. (1) An originating summons in Admiralty may be issued out of the Registry.

(2) Rule 26, (except paragraph (3)) shall, with any necessary modifications, apply in relation to an Admiralty cause or matter begun by originating summons, and Order 28, rule 9, shall not apply to such a cause or matter.

Limitation action: parties (O. 67, r. 36).

36. (1) In a limitation action the person seeking relief shall be the plaintiff and shall be named in the writ by his

name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The plaintiff must make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.

(3) At least one of the defendants to the action must be named in the writ by his name but the other defendants may be described generally and not named by their names.

(4) The writ must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.

(5) In this rule and rules 37, 38 and 39 "name" includes a firm name or the name under which a person carries on his business, and where any person with a claim against the plaintiff in respect of the casualty to which the action relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the writ and, if so described, shall be deemed for the purposes of the rules aforesaid to have been named in the writ by his name.

Limitation action: summons for decree or directions (O. 67, r. 37).

37. (1) Within 7 days after the entry of appearance by one of the defendants named by their names in the writ, or, if none of them enters an appearance, within 7 days after the time limited for appearing, the plaintiff, without serving a statement of claim, must take out a summons returnable in chambers before the Registrar, asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the action.

(2) The summons must be supported by an affidavit or affidavits proving —

(a) the plaintiff's case in the action; and

(b) if none of the defendants named in the writ by their names has entered an appearance, service of the writ on at least one of the defendants so named.

(3) The affidavit in support of the summons must state —

(a) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the writ by their names; and

(b) the address of each of those persons, if known to the plaintiff.

(4) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on any defendant who has entered an appearance.

(5) On the hearing of the summons the Registrar, if it appears to him that it is not disputed that the plaintiff has a right to limit his liability, shall make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.

(6) On the hearing of the summons the Registrar, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the plaintiff has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.

(7) If on the hearing or resumed hearing of the summons the Registrar does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 25, and, if he gives no such directions, a direction fixing the period within which any notice under Order 38, rule 20, must be served.

(8) Any defendant who, after the Registrar has given directions under paragraph (7), ceases to dispute the plaintiff's right to limit his liability must forthwith file a notice to that effect in the Registry and serve a copy on the plaintiff and on any other defendant who has entered an appearance.

(9) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under paragraph (8), the plaintiff may take out a summons returnable in chambers before the Registrar asking for a decree limiting his liability; and paragraphs (4) and (5) shall apply to a summons under this paragraph as they apply to a summons under paragraph (1).

Limitation action: proceedings under decree (O. 67, r. 38).

38. (1) Where the only defendants in a limitation action are those named in the writ by their names and all the persons so named have either been served with the writ or entered an appearance, any decree in the action limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action) —

(a) need not be advertised; but

(b) shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within paragraph (1), any decree in the action, limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action) —

(a) shall be advertised by the plaintiff in such manner and within such time as may be provided by the decree;

(b) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the action relates may enter an appearance in the action (if they have not already done so) and file their claims, and, in cases to which rule 39 applies, take out a summons if they think fit, to set the order aside.

(3) The advertisement to be required under paragraph (2)(a), shall, unless for special reasons the Registrar or judge thinks fit otherwise to provide, be a single advertisement in each of three newspapers specified in the decree, identifying the action, the casualty and the relation of the plaintiff thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the decree has been made and specifying the amounts fixed thereby as the limits of the plaintiff's liability and the time allowed thereby for the entering of appearances, the filing of claims and the taking out of summonses to set the decree aside. The plaintiff must within the time fixed under paragraph (2)(b) file in the Registry a copy of each newspaper in which the advertisement required under paragraph (2)(a) appears.

(4) The time to be allowed under paragraph (2)(b) shall, unless for special reasons the Registrar or judge thinks fit otherwise to provide, be not less than 2 months from the latest date allowed for the appearance of the

advertisements; and after the expiration of the time so allowed, no appearance may be entered, claim filed or summons taken out to set aside the decree except with the leave of the Registrar or, on appeal, of the judge.

(5) Save as aforesaid, any decree limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action) may make any such provision as is authorised by the Merchant Shipping Act.

Limitation action: proceedings to set aside decree (O. 67, r. 39).

39. (1) Where a decree limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action) fixes a time in accordance with rule 38(2), any person with a claim against the plaintiff in respect of the casualty to which the action relates, who —

(a) was not named by his name in the writ, as a defendant to the action; or

(b) if so named, neither was served with the writ nor entered an appearance,

may, within that time, after entering an appearance, take out a summons returnable in chambers before the Registrar asking that the decree be set aside.

(2) The summons must be supported by an affidavit or affidavits showing that the defendant in question has a *bona fide* claim against the plaintiff in respect of the casualty in question and that he has sufficient *prima facie* grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.

(3) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on the plaintiff and any defendant who has entered an appearance.

(4) On the hearing of the summons the Registrar, if he is satisfied that the defendant in question has a *bona fide* claim against the plaintiff and sufficient *prima facie* grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 25.

References to Registrar (O. 67, r. 40).

40. (1) Any party (hereafter in this rule referred to as the "claimant") making a claim which is referred to the Registrar for decision must, within 2 months after the

order is made, or, in a limitation action, within such other period as the Court may direct, file his claim and, unless the reference is in such an action, serve a copy of the claim on every other party.

(2) At any time after the claimant's claim has been filed or, where the reference is in a limitation action, after the expiration of the time limited by the Court for the filing of claims but, in any case, not less than 28 days before the day appointed for the hearing of the reference, any party to the cause or matter may apply to the Registrar by summons for directions as to the proceedings on the reference, and the Registrar shall give such directions, if any, as he thinks fit including without prejudice to the generality of the foregoing words, a direction requiring any party to serve on any claimant, within such period as the Registrar may specify, a defence to that claimant's claim.

(3) The reference shall be heard on a day appointed by the Registrar and, unless the reference is in a limitation action or the parties to the reference consent to the appointment of a particular day, the appointment must be made by order on an application by summons made by any party to the cause or matter.

(4) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim or, where the reference is in a limitation action, until after the expiration of the time limited by the Court for the filing of claims.

(5) Not later than 7 days after an appointment for the hearing of a reference has been made, the claimant or, where the reference is in a limitation action, the plaintiff must enter the reference for hearing by lodging in the Registry a *praecipe* requesting the entry of the reference in the list for hearing on the day appointed.

(6) Not less than 14 days before the day appointed for the hearing of the reference the claimant must file —

(a) a list, signed by him and every, other party, of the items (if any) of his claim which are not disputed, stating the amount (if any) which he and the other parties agree should be allowed in respect of each such item; and

(b) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed,

and, unless the reference is in a limitation action, he must at the same time serve on every other party a copy of every document filed under this paragraph.

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

Hearing of reference (O. 67, r. 41).

41. (1) The Registrar may adjourn the hearing of a reference from time to time as he thinks fit.

(2) At or before the hearing of a reference, the Registrar may give a direction limiting the witnesses who may be called, whether expert witnesses or not, but any such direction may, on sufficient cause being shown, be revoked or varied by a subsequent direction given at or before the hearing.

(3) Subject to paragraph (2), evidence may be given orally or by affidavit or in such other manner as may be agreed upon.

(4) When the hearing of the reference has been concluded, the Registrar shall —

(a) reduce to writing his decision on the questions arising in the reference (including any order as to costs) and cause it to be filed;

(b) cause to be filed either with his decision or subsequently such statement (if any) of the grounds of the decision as he thinks fit; and

(c) send to the parties to the reference notice that he has done so.

(5) Where no statement of the grounds of the Registrar's decision is filed with his decision and no intimation has been given up by the Registrar that he intends to file such a statement later, any party to the reference may, within 14 days after the filing of the decision, make a written request to the Registrar to file such a statement.

Objection to decision on reference (O. 67, r. 42).

42. (1) Any party to a reference to the Registrar may, by motion in objection, apply to a judge in court to set aside or vary the decision of the Registrar on the reference, but notice of the motion, specifying the points of objection to the decision must be filed within 14 days after the date on which notice of the filing of the decision was sent to that

party under rule 41(4) or, if a notice of the filing of a statement of the grounds of the decision was subsequently sent to him thereunder, within 14 days after the date on which that notice was sent.

(2) The decision of the Registrar shall be deemed to be given on the date on which it is filed, but unless he or the judge otherwise directs, the decision shall not be acted upon until the time has elapsed for filing notice of a motion in objection thereto, or while such a motion is pending or remains undisposed of.

(3) A direction shall not be given under paragraph (2) without the parties being given an opportunity of being heard, but may, if the Registrar announces his intended decision at the conclusion of the hearing of the reference, be incorporated in his decision as reduced to writing under rule 41 (4).

Drawing up and entry of judgments and orders (O. 67, r. 43).

43. (1) Every judgment given or order made in an Admiralty cause or matter shall be drawn up in the Registry and shall be entered by an officer of the Registry in the book kept for the purpose.

Inspection of documents filed in Registry (O. 67, r. 44).

44. (1) Order 60, rule 3(1) and (2), shall apply in relation to documents filed in the Registry.

(2) For the purpose of the said rule 3, as applied by paragraph (1), a decree made in chambers in a limitation action shall be deemed to have been made in court.

ORDER 68
CONTENTIOUS PROBATE PROCEEDINGS

(R.S.C. 1978)

Application and interpretation (O. 68, r. 1).

1. (1) This Order applies to probate causes and matters, and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Order.

(2) In these Rules "probate action" means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.

(3) In this Order "will" includes a codicil.

Requirements in connection with issue of writ (O. 68, r. 2).

2. (1) A probate action must be begun by writ, and the writ must be issued out of the Registry.

(2) Before a writ beginning a probate action is issued it must be indorsed with —

(a) a statement of the nature of the interest of plaintiff and of the defendant in the estate of the deceased to which the action relates; and

(b) a memorandum signed by the Registrar showing that the writ has been produced to him for examination and that two copies of it have been lodged with him.

Parties to action for revocation of grant (O. 68, r. 3).

3. Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his will or letters of administration of his grant shall be made a party to any action for revocation of the grant.

Lodgement of grant in action for revocation (O. 68, r. 4).

4. (1) Where, at the commencement of an action for the revocation of a grant of probate of the will or letters of administration of the estate of a deceased person, the probate or letters of administration as the case may be, have not been lodged in court, then —

(a) if the action is commenced by a person to whom the grant was made, he shall lodge the probate or letters of administration in the Registry within 7 days after the issue of the writ;

(b) if any defendant to the action has the probate or letters of administration in his possession or under his control, he shall lodge it or them in the Registry within 14 days after the service of the writ upon him.

(2) Any person who fails to comply with paragraph (1) may, on the application of any party to the action, be ordered by the Court to lodge the probate or letters of administration in the Registry within a specified time; and any person against whom such an order is made shall not be entitled to take any step in the action without the leave of the Court until he has complied with the order.

Affidavit of testamentary scripts (O. 68, r. 5).

5. (1) Unless the court otherwise directs, the plaintiff and every defendant who has entered an appearance in a probate action must swear an affidavit —

(a) describing any testamentary script of the deceased person, whose estate is the subject of the action, of which he has any knowledge or, if such be the case, stating that he knows of no such script; and

(b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person.

(2) Any affidavit required by this rule must be filed and an office copy thereof and any testamentary script referred to therein which is in the possession or under the control of the deponent must be lodged in the judge's chambers, within 14 days after the entry of appearance by a defendant to the action or, if no defendant enters an appearance therein and the Court does not otherwise direct, before an order is made for the trial of the action.

(3) Where any testamentary script required by this rule to be lodged in the judge's chambers or any part thereof is written in pencil, then, unless the Court otherwise directs, a facsimile copy of that script, or of the page or pages thereof containing the part written in pencil, must also be lodged in the judge's chambers and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Except with the leave of the Court, a party to a probate action shall not be allowed to inspect an affidavit filed, or any testamentary script lodged by any other party to the action under this rule, unless and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.

(5) In this rule "testamentary script" means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any documents purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

Default of appearance (O. 68, r. 6).

6. (1) Order 13 shall not apply in relation to a probate action.

(2) Where any of several defendants to a probate action fails to enter an appearance, the plaintiff, upon filing an affidavit proving due service of the writ, or notice of the writ, on that defendant may, after the time limited for appearing, proceed with the action as if that defendant had entered an appearance.

(3) Where the defendant, or all the defendants, to a probate action, fails or fail to enter an appearance, then, unless on the application of the plaintiff the Court orders the action to be discontinued, the plaintiff may after the time limited for appearing by the defendant apply to the Court for an order for trial of the action.

(4) Before applying for an order under paragraph (3) the plaintiff must file an affidavit proving due service of the writ, or notice of the writ, on the defendant and, if no statement of claim is indorsed on the writ, he must lodge a statement of claim in the judge's chambers.

(5) Where the Court grants an order under paragraph (3), it may direct the action to be tried on affidavit evidence.

Service of statement of claim (O. 68, r. 7).

7. The plaintiff in a probate action must, unless the Court gives leave to the contrary or unless a statement of claim is indorsed on the writ, serve a statement of claim on every defendant who enters an appearance in the action and must do so before the expiration of 6 weeks after entry of appearance by that defendant or of 8 days after the filing by that defendant of an affidavit under rule 5, whichever is the later.

Counterclaim (O. 68, r. 8).

8. (1) Notwithstanding anything in Order 15, rule 2(1), a defendant to a probate action who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the action must add to his defence a counterclaim in respect of that matter.

(2) If the plaintiff fails to serve a statement of claim, any such defendant may, with the leave of the Court, serve a counterclaim and the action shall then proceed as if the counterclaim were the statement of claim.

Contents of pleadings (O. 68, r. 9).

9. (1) Where the plaintiff in a probate action disputes the interest of a defendant he must allege in his statement of claim that he denies the interest of that defendant.

(2) In a probate action in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in his pleading that if the allegations made therein are proved he would be entitled to an interest in the estate.

(3) Without prejudice to Order 18, rule 6, any party who pleads that at the time when a will, the subject of the action, was alleged to have been executed the testator did not know and approve of its contents must specify the nature of the case on which he intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas, that is to say —

(a) that the will was not duly executed;

(b) that at the time of the execution of the will the testator was not of sound mind, memory and understanding; and

(c) that the execution of the will was obtained by undue influence or fraud,

shall be made by that party unless that other plea is also pleaded.

Default of pleadings (O. 68, r. 10).

10. (1) Order 19 shall not apply in relation to a probate action.

(2) Where any party to a probate action fails to serve on any other party a pleading which he is required by these Rules to serve on that other party, then unless the Court orders the action to be discontinued or dismissed, that other party may after the expiration of the period fixed by or under these Rules for service of the pleading in question, apply to the Court for an order for trial of the action; and if an order is made the Court may direct the action to be tried on affidavit evidence.

Discontinuance and dismissal (O. 68, r. 11).

11. (1) Order 21 shall not apply in relation to a probate action.

(2) At any stage of the proceedings in a probate action the Court may, on the application of the plaintiff or of any party to the action who has entered an appearance therein, order the action to be discontinued or dismissed on such terms as to costs or otherwise as it thinks just, and may

further order that a grant of probate of the will, or letters of administration of the estate, of the deceased person, as the case may be, which is the subject of the action, be made to the person entitled thereto.

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

Compromise of action: trial on affidavit evidence (O. 68, r. 12).

12. Where, whether before or after the service of the defence in a probate action, the parties to the action agree to a compromise, the Court may order the trial of the action on affidavit evidence.

Application for order to bring in will, etc. (O. 68, r. 13).

13. (1) Any application in a probate action for an order under section 26 of the Court of Probate Act, 1857 of England shall be for an order requiring a person to bring a will or other testamentary paper into the Registry or to attend in court for examination.

(2) An application under paragraph (1) shall be made by summons in the action, which must be served on the person against whom the order is sought.

(3) Any application in a probate action for the issue of a subpoena under section 23 of the Court of Probate Act, 1858 of England shall be for the issue of a subpoena requiring a person to bring into the Registry a will or other testamentary paper.

(4) An application under paragraph (3) may be made *ex parte* and must be supported by an affidavit setting out the grounds of the application.

(5) An application under paragraph (3) shall be made to the Registrar who may, if the application is granted, authorise the issue of a subpoena accordingly.

(6) Any person against whom a subpoena is issued under the said section 23 and who denies that the will or other testamentary paper referred to in the subpoena is in his possession or under his control may file an affidavit to that effect.

Administration *pendente lite* (O. 68, r. 14).

14. (1) An application under section 163 of the English Supreme Court of Judicature (Consolidation) Act, 1925 for an order for the grant of administration may be made by summons.

(2) Where an order for a grant of administration is made under the said section 163, Order 30, rules 2, 4 and 6 and (subject to subsection (2) of the said section) rule 3, shall apply as if the administrator were a receiver appointed by the court.

ORDER 69
PROCEEDINGS BY AND AGAINST THE CROWN

(R.S.C. 1978)

Application and interpretation (O. 69, r. 1).

1. (1) These Rules apply to civil proceedings to which the Crown is a party subject to the following rules of this Order.

(2) In this Order —

"civil proceedings by the Crown", "civil proceedings against the Crown" and "civil proceedings by or against the Crown" have the same respective meanings as in Part II of the Crown Proceedings Act and do not include any of the proceedings specified in section 23(1) of that Act;

"civil proceedings to which the Crown is a party" has the same meaning as it has for the purposes of section 15 of the Crown Proceedings Act;

"Order against the Crown" means any order (including an order for costs) made in any civil proceedings by or against the Crown or in connection with any arbitration to which the Crown is a party, in favour of any person against the Crown or against a Government department or against an officer of the Crown as such;

"order" includes a judgment, decree, rule, award or declaration.

Particulars to be included in indorsement of claim (O. 69, r. 2).

2. (1) In the case of a writ which begins civil proceedings against the Crown the indorsement of claim required by Order 6, rule 2, shall include a statement of the circumstances in which the Crown's liability is alleged to have arisen and as to the Government department and officers of the Crown concerned.

(2) If in civil proceedings against the Crown a defendant considers that the writ does not contain a sufficient statement as required by this rule, he may, before the expiration of the time limited for appearing, apply to the plaintiff by notice for a further and better statement containing such information as may be specified in the notice.

(3) Where a defendant gives a notice under this rule, the time limited for appearing shall not expire until 4 days after the defendant has notified the plaintiff in writing that the defendant is satisfied with the statement supplied in compliance with the notice or 4 days after the Court has, on the application of the plaintiff by summons served on the defendant not less than 7 days before the return day, decided that no further information as to the matters referred to in paragraph (1) is reasonably required.

Service on the Crown (O. 69, r. 3).

3. (1) Order 10, Order 11 and any other provision of these Rules relating to service out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the Crown are begun.

(2) Personal service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings is not requisite; but where the proceedings are by or against the Crown service on the Crown must be effected by leaving the document at the office of the Attorney-General.

(3) In relation to the service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown, Order 61, rules 5 and 9, shall not apply, and Order 61, rule 7, shall apply as if the reference therein to rules 2 and 5(1) (a) of that Order were a reference to paragraph (2) of this rule.

Counterclaim and set-off (O. 69, r. 4).

4. (1) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, a person may not in any proceedings by the Crown make any counterclaim or plead a set-off if the proceedings are for the recovery of, or the counterclaim or set off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties.

(2) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, no counterclaim may be made, or set-off pleaded, without the leave of the Court, by the Crown in proceedings against the Crown, or by any person in proceedings by the Crown —

(a) if the Crown is sued or sues in the name of a Government department and the subject-matter of the counterclaim or set-off does not relate to that department; or

(b) if the Crown is sued or sues in the name of the Attorney-General.

(3) Any application for leave under this rule must be made by summons.

Summary judgment (O. 69, r. 5).

5. (1) No application against the Crown shall be made under Order 14, rule 1, or Order 75, rule 1, in any proceedings against the Crown nor under Order 14, rule 5, in any proceedings by the Crown.

(2) Where an application is made by the Crown under Order 14, rule 1, Order 14, rule 5, or Order 75, rule 1, the affidavit required in support of the application must be made by —

(a) the attorney acting for the Crown; or

(b) an officer duly authorised by the attorney so acting or by the department concerned,

and the affidavit shall be sufficient if it states that in the deponent's belief the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed.

Judgment in default (O. 69, r. 6).

6. (1) Except with the leave of the Court, no judgment in default of appearance or of pleading shall be entered against the Crown in civil proceedings against the Crown or in third party proceedings against the Crown.

(2) Except with the leave of the Court, Order 16, rule 5(1) (a), shall not apply in the case of third party proceedings against the Crown.

(3) An application for leave under this rule may be made by summons or, except in the case of an application relating to Order 16, rule 6, by motion; and the summons or, as the case may be, notice of the motion must be served not less than 7 days before the return day.

Third party notices (O. 69, r. 7).

7. (1) Notwithstanding anything in Order 16, a third party notice (including a notice issuable by virtue of Order 16, rule 9) for service on the Crown shall not be issued

without the leave of the Court, and the application for the grant of such leave must be made by summons, and the summons must be served on the plaintiff and the Crown.

(2) Leave to issue such a notice for service on the Crown shall not be granted unless the Court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

Interpleader: application for order against crown (O. 69, r. 8).

8. No order shall be made against the Crown under Order 17, rule 5(3), except upon an application by summons served not less than 7 days before the return day.

Discovery and interrogatories (O. 69, r. 9).

9. (1) Order 24, rules 1 and 2, shall not apply in civil proceedings to which the Crown is a party.

(2) In any civil proceedings to which the Crown is a party any order of the Court made under the powers conferred by section 22(1) of the Crown Proceedings Act, shall be construed as not requiring the disclosure of the existence of any document the existence of which it would, in the opinion of a Minister of the Government, be injurious to the public interest to disclose.

(3) Where in any such proceedings an order of the Court directs that a list of documents made in answer to an order for discovery against the Crown shall be verified by affidavit, the affidavit shall be made by such officer of the Crown as the Court may direct.

(4) Where in any such proceedings an order is made under the said section 22 for interrogatories to be answered by the Crown, the Court shall direct by what officer of the Crown the interrogatories are to be answered.

Evidence (O. 69, r. 10).

10. (1) Civil proceedings against the Crown may be instituted under Order 39, rule 15, in any case in which the Crown is alleged to have an interest or estate in the honour, title, dignity or office or property in question.

(2) For the avoidance of doubt it is hereby declared that any powers exercisable by the Court in regard to the taking of evidence are exercisable in proceedings by or against the Crown as they are exercisable in proceedings between subjects.

Execution and satisfaction of orders (O. 69, r. 11).

11. (1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Crown.

(2) An application under the proviso to subsection (1) of section 19 of the Crown Proceedings Act for a direction that a separate certificate shall be issued under that subsection with respect to the costs (if any) ordered to be paid to the applicant, may be made to the Court *ex parte* without summons.

(3) Any such certificate must be in Form No. 95 or 96 in Appendix A, whichever is appropriate.

Attachment of debts, etc. (O. 69, r. 12).

12. (1) No order —

(a) for the attachment of debts under Order 49; or

(b) for the appointment of a sequestrator under Order 45; or

(c) for the appointment of a receiver under Order 30 or 51,

shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due from the Crown.

(2) Every application to the Court for an order under section 21 of the Crown Proceedings Act, restraining any person from receiving money payable to him by the Crown and directing payment of the money to the applicant or some other person must be made by summons served at least 4 days before the return day on the Crown and, unless the Court otherwise orders, on the person to be restrained or his attorney; and the application must be supported by an affidavit setting out the facts giving rise to it, and in particular identifying the particular debt from the Crown in respect of which it is made.

(3) Order 49, rules 5 and 6, shall apply in relation to such an application as is mentioned in paragraph (2) for an order restraining a person from receiving money payable to him by the Crown as those rules apply to an application under Order 49, rule 1, for an order for the attachment of a debt owing to any person from a garnishee, except that the Court shall not have power to order execution to issue against the Crown.

ORDER 70
DISABILITY

(R.S.C. 1978)

Interpretation (O. 70, r. 1).

1. In this Order —

"the Act" means the Mental Health Act;

"patient" means a person who, by reason of mental disorder within the meaning of the Act, is incapable of managing and administering his property and affairs;

"person under disability" means a person who is an infant or a patient.

Person under disability must sue, etc., by next friend or guardian *ad litem* (O. 70, r. 2).

2. (1) A person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order notice of which has been served on him, except by his guardian *ad litem*.

(2) Subject to the provisions of these Rules, anything which in the ordinary conduct of any proceedings is required or authorised by a provision of these Rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian *ad litem*.

(3) A next friend or guardian *ad litem* of a person under disability must act by an attorney.

Appointment of next friend or guardian *ad litem* (O. 70, r. 3).

3. (1) Except as provided by paragraph (3) or (4) or by rule 4, an order appointing a person next friend or guardian *ad litem* of a person under disability is not necessary.

(2) Where a person is authorised under Part VIII of the Act to conduct legal proceedings in the name of a patient or on his behalf, that person shall be entitled to be next friend or guardian *ad litem*, as the case may be, of the patient in any proceedings to which his authority extends unless, in a case to which paragraph (3) or (4) or rule 4 applies, some other person is appointed by the Court under that paragraph or rule to be next friend or guardian *ad litem*, as the case may be, of the patient in those proceedings.

(3) Where a person has been or is next friend or guardian *ad litem* of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing him such friend or guardian by substitution for the person previously acting in that capacity.

(4) Where, after any proceedings have been begun, a party to the proceedings becomes a patient, an application must be made to the Court for the appointment of a person to be next friend or guardian *ad litem*, as the case may be, of that party.

(5) Except where the next friend or guardian *ad litem*, as the case may be, of a person under disability has been appointed by the Court —

(a) the name of any person shall not be used in a cause or matter as next friend of a person under disability;

(b) an appearance shall not be entered in a cause or matter for a person under disability; and

(c) a person under disability shall not be entitled to appear by his guardian *ad litem* on the hearing of a petition, summons or motion which, or notice of which, has been served on him,

unless and until the documents listed in paragraph (6) have been filed in the Registry.

(6) The documents referred to in paragraph (5) are the following —

(a) a written consent to be next friend or guardian *ad litem*, as the case may be, of the person under disability in the cause or matter in question given by the person proposing to be such friend or guardian;

(b) where the person proposing to be such friend or guardian of the person under disability, being a patient, is authorised under Part VIII of the Act to conduct the proceedings in the cause or matter in question in the name of the patient or on his behalf, a certified copy, sealed with the official seal of the Court, of the order or other authorisation made or given under the said Part VIII by virtue of which he is so authorised; and

(c) except where the person proposing to be such friend or guardian of the person under disability, being a patient, is authorised as mentioned in subparagraph (b), a certificate made by the attorney for the person under disability certifying —

(i) that he knows or believes, as the case may be, that the person to whom the certificate relates is an infant or a patient, giving (in the case of a patient) the grounds of his knowledge or belief; and

(ii) where the person under disability is a patient, that there is no person authorised as aforesaid; and

(iii) that the person so named has no interest in the cause or matter in question adverse to that of the person under disability.

Appointment of guardian where person under disability does not appear (O. 70, r. 4).

4. (1) Where —

(a) in an action against a person under disability begun by writ, or originating summons to which an appearance is required to be entered, no appearance is entered in the action for that person; or

(b) the defendant to an action serves a defence and counterclaim on a person under disability who is not already a party to the action, and no appearance is entered for that person,

an application for the appointment by the Court of a guardian *ad litem* of that person must be made by the plaintiff or defendant, as the case may be, after the time limited (as respects that person) for appearing and before proceeding further with the action or counterclaim.

(2) Where a party to an action has served on a person under disability who is not already a party to the action a third party notice within the meaning of Order 16 and no appearance is entered for that person to the notice, an application for the appointment by the Court of a guardian *ad litem* of that person must be made by that party after the time limited (as respects that person) for appearing and before proceeding further with the third party proceedings.

(3) Where in any proceedings against a person under disability begun by petition or motion, or by originating summons to which no appearance need be entered, that person does not appear by a guardian *ad litem* at the hearing of the petition, motion, or summons, as the case may be, the Court hearing it may appoint a guardian *ad litem* of that person in the proceedings or direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian.

(4) At any stage in the proceedings under any judgment or order, notice of which has been served on a person under disability, the Court may, if no appearance is entered for that person, appoint a guardian *ad litem* of that person in the proceedings or direct that an application be made for the appointment of such a guardian.

(5) An application under paragraph (1) or (2) must be supported by evidence proving —

(a) that the person to whom the application relates is a person under disability;

(b) that the person proposed as guardian *ad litem* is willing and a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability;

(c) that the writ, originating summons, defence and counterclaim or third party notice, as the case may be, was duly served on the person under disability; and

(d) subject to paragraph (6), that notice of the application was, after the expiration of the time limited for appearing and at least 7 days before the day named in the notice for hearing of the application, so served on him.

(6) If the Court so directs, notice of an application under paragraph (1) or (2) need not be served on a person under disability.

(7) An application for the appointment of a guardian *ad litem* made in compliance with a direction of the Court given under paragraph (3) or (4) must be supported by evidence proving the matters referred to in paragraph (5) (b).

Application to discharge or vary certain orders (O. 70, r. 5).

5. An application to the Court on behalf of a person under disability served with an order made *ex parte* under Order 15, rule 7, for the discharge or variation of the order must be made —

(a) if a next friend or guardian *ad litem* is acting for that person in the cause or matter in which the order is made, within 14 days after the service of the order on that person;

(b) if there is no next friend or guardian *ad litem* acting for that person in that cause or matter, within 14 days after the appointment of such a friend or guardian to act for him.

Admission not to be implied from pleading of person under disability (O. 70, r. 6).

6. Notwithstanding anything in Order 18, rule 13(1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

Discovery and interrogatories (O. 70, r. 7).

7. Orders 24 and 26 shall apply to a person under disability and to his next friend or guardian *ad litem*.

Compromise, etc., by person under disability (O. 70, r. 8).

8. Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the Court.

Approval of settlement (O. 70, r. 9).

9. (1) Where, before proceedings in which a claim for money is made by or on behalf of a person under disability (whether alone or in conjunction with any other person) are begun, an agreement is reached for the settlement of the claim, and it is desired to obtain the Court's approval to the settlement, then, notwithstanding anything in Order 5, rule 2, the claim may be made in proceedings begun by originating summons and in the summons an application may also be made for —

(a) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or rule 10; or

(b) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this rule a claim is made under the Fatal Accidents Act, the originating summons must include the particulars mentioned in section 9 of that Act.

(3) No appearances need be entered to an originating summons under this rule.

(4) In this rule "settlement" includes a compromise.

Control of money recovered by person under disability (O. 70, r. 10).

10. (1) Where in any proceedings —

(a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability; or

(b) money paid into court is accepted by or on behalf of a plaintiff who is a person under disability,

the money shall be dealt with in accordance with directions given by the Court, and not otherwise.

(2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into the Supreme Court and invested or otherwise dealt with there.

(3) Without prejudice to the foregoing provisions of this rule, directions given under this rule may include any general or special directions that the Court thinks fit to give and, in particular, directions as to how the money is to be applied or dealt with and as to any payment to be made, either directly or out of the amount paid into court to the plaintiff, or to the next friend in respect of moneys paid or expenses incurred for or on behalf or for the benefit of the person under disability or for his maintenance or otherwise for his benefit or to the plaintiff's attorney in respect of costs.

(4) Where in pursuance of directions given under this rule money is paid into court to be invested or otherwise dealt with there, the money (including any interest thereon) shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of court, except in accordance with an order of the Court.

(5) The foregoing provisions of this rule shall apply in relation to a counterclaim by or on behalf of a person under disability, and a claim made by or on behalf of such a person in an action by any other person for relief under the Merchant Shipping Act, as if for references to a plaintiff and a next friend there were substituted references to a defendant and to a guardian *ad litem* respectively.

Proceedings under Fatal Accidents Act: apportionment by Court (O. 70, r. 11).

11. (1) Where a single sum of money is paid into court under Order 22, rule 1, in satisfaction of causes of action arising under the Fatal Accidents Act and that sum is accepted, the money shall be apportioned between the

different causes of action by the Court either when giving directions for dealing with it under rule 10 (if that rule applies) or when authorising its payment out of court.

(2) Where, in an action in which a claim under the Fatal Accidents Act is made by or on behalf of more than one person, a sum in respect of damages is adjudged or ordered or agreed to be paid in satisfaction of the claim, or sum of money paid into court under Order 22, rule 1, is accepted in satisfaction of the cause of action under the said Act, then, unless the sum has been apportioned between the persons entitled thereto by a jury, it shall be apportioned between those persons by the Court. The reference in this paragraph to a sum of money paid into court shall be construed as including a reference to part of a sum so paid, being the part apportioned by the Court under paragraph (1) to the cause of action under the said Act.

Service of certain documents on person under disability (O. 70, r. 12).

12. (1) Where in any proceedings a document is required to be served personally on any person and that person is a person under disability this rule shall apply.

(2) Subject to the following provisions of this rule and to Order 24, rule 16(3), and Order 26, rule 6(3), the document must be served —

(a) in the case of an infant who is not also a patient, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;

(b) in the case of a patient, on the person (if any) who is authorised under Part VIII of the Act to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served or, if there is no person so authorised, on the person with whom he resides or in whose care he is,

and must be served in the manner required by these Rules with respect to the document in question.

(3) Notwithstanding anything in paragraph (2), the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

(4) A judgment or order requiring a person to do, or refrain from doing, any act, a notice of motion or summons for the committal of any person, and a writ of subpoena against any person, must, if that person is a person under disability, be served personally on him unless the Court otherwise orders. This paragraph shall not apply to an order for interrogatories or for discovery or inspection of documents.

ORDER 71
PARTNERS

(R.S.C. 1978)

Actions by and against firms within jurisdiction (O. 71, r. 1).

1. Subject to the provisions of any enactment, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.

Disclosure of partners' names (O. 71, r. 2).

2. (1) Any defendant to an action brought by partners in the name of a firm may serve on the plaintiffs or their attorneys a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the plaintiffs or their attorneys to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the action be stayed on such terms as the Court may direct.

(2) When the names of the partners have been declared in compliance with a notice or order given or made under paragraph (1), the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as plaintiffs in the writ.

(3) Paragraph (1) shall have effect in relation to an action brought against partners in the name of a firm as it has effect in relation to an action brought by partners in the name of a firm but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiffs and the defendants respectively, and with the omission of the words "or may order" to the end.

Service of writ (O. 71, r. 3).

3. (1) Where by virtue of rule 1 partners are sued in the name of a firm, the writ may, except in the case mentioned in paragraph (2), be served —

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

(b) at the principal place of business of the partnership within the jurisdiction, on any person having at the time of service the control or management of the partnership business there,

and where service of the writ is effected in accordance with this paragraph, the writ shall be deemed to have been duly served on the firm, whether or not any member of the firm is out of the jurisdiction.

(2) Where a partnership has, to the knowledge of the plaintiff, been dissolved before an action against the firm is begun, the writ by which the action is begun must be served on every person within the jurisdiction sought to be made liable in the action.

(3) Every person on whom a writ is served under paragraph (1) must at the time of service be given a written notice stating whether he is served as a partner or as a person having the control or management of the partnership business or both as a partner and as such a person; and any person on whom a writ is so served but to whom no such notice is given shall be deemed to be served as a partner.

Entry of appearance in an action against firm (O. 71, r. 4).

4. (1) Where persons are sued as partners in the name of their firm, appearance may not be entered in the name of the firm but only by the partners thereof in their own names, but the action shall nevertheless continue in the name of the firm.

(2) Where in an action against a firm the writ by which the action is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may enter an appearance in the action and state in his memorandum of appearance that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time. An appearance entered in accordance with this paragraph shall, unless and until it is set aside, be treated as an appearance for the defendant firm.

(3) Where an appearance has been entered for a defendant in accordance with paragraph (2), then —

(a) the plaintiff may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;

(b) the defendant may either apply to the Court to set aside the service of the writ on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence on the plaintiff denying in respect of the plaintiff's claim either his liability as a partner or the liability of the defendant firm or both.

(4) The Court may at any stage of the proceedings in an action in which a defendant has entered an appearance in accordance with paragraph (2), on the application of the plaintiff or of that defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.

(5) Where in an action against a firm the writ by which the action is begun is served on a person as a person having the control or management of the partnership business, that person may not enter an appearance in the action unless he is a member of the firm sued.

Enforcing judgment or order against firm (O. 71, r. 5).

5. (1) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6, issue against any property of the firm within the jurisdiction.

(2) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6 and to the next following paragraph, issue against any person who —

(a) entered an appearance in the action as a partner; or

(b) having been served as a partner with the writ of summons, failed to enter an appearance in the action; or

(c) admitted in his pleading that he is a partner; or

(d) was adjudged to be a partner.

(3) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the writ of summons was issued unless he —

(a) entered an appearance in the action as a partner; or

(b) was served within the jurisdiction with the writ as a partner; or

(c) was, with the leave of the Court given under Order 11, served out of the jurisdiction with the writ, or notice of the writ, as a partner,

and, except as provided by paragraph (1) and by the foregoing provisions of this paragraph, a judgment or order given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the writ was issued.

(4) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for leave to issue execution against that person, the application to be made by summons which must be served personally on that person.

(5) Where the person against whom an application under paragraph (4) is made does not dispute his liability, the Court hearing the application may, subject to paragraph (3), give leave to issue execution against that person, and, where that person disputes his liability, the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

Enforcing judgment or order in actions between partners, etc. (O. 71, r. 6).

6. (1) Execution to enforce a judgment or order given or made in —

(a) an action by or against a firm in the name of the firm against or by a member of the firm; or

(b) an action by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common, shall not issue except with the leave of the Court.

(2) The Court hearing an application under this rule may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

Attachment of debts owed by firm (O. 71, r. 7).

7. (1) An order may be made under Order 49, rule 1, in relation to debts due or accruing due from a firm carrying on business within the jurisdiction notwithstanding that one or more members of the firm is resident out of the jurisdiction.

(2) An order to show cause under the said rule 1 relating to such debts as aforesaid must be served on a member of the firm within the jurisdiction or on some other person having the control or management of the partnership business.

(3) Where an order made under the said rule 1 requires a firm to appear before the Court, an appearance by a member of the firm constitutes a sufficient compliance with the order.

Actions begun by originating summons (O. 71, r. 8).

8. Rules 2 to 7 shall, with the necessary modifications, apply in relation to an action by or against partners in the name of their firm begun by originating summons as they apply in relation to such an action begun by writ.

Application to person carrying on business in another name (O. 71, r. 9).

9. An individual carrying on business within the jurisdiction in a name or style other than his own name, may be sued in that name or style as if it were the name of a firm, and rules 2 to 8 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

Applications for orders charging partner's interest in partnership property, etc. (O. 71, r. 10).

10. (1) Every application to the Court by a judgment creditor of a partner for an order under section 24 of the Partnership Act, 1890 (which authorises the Supreme Court to make on the application of a judgment creditor of a partner an order charging the partner's interest in the partnership property), and every application to the Court by a partner of the judgment debtor made in consequence of the first-mentioned application must be made by summons.

(2) The Registrar may exercise the powers conferred on a judge by the said section 24.

(3) Every summons issued by a judgment creditor under this rule, and every order made on such a summons,

must be served on the judgment debtor and on such of his partners as are within the jurisdiction or, if the partnership is a cost book company, on the judgment debtor and the purser of the company.

(4) Every summons issued by a partner of a judgment debtor under this rule, and every order made on such a summons, must be served —

(a) on the judgment creditor; and

(b) on the judgment debtor; and

(c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction or, if the partnership is a cost book company, on the purser of the company.

(5) A summons or order served in accordance with this rule on the purser of a cost book company or, in the case of a partnership not being such a company, on some only of the partners thereof, shall be deemed to have been served on that company or on all the partners of that partnership, as the case may be.

ORDER 72
DEFAMATION ACTIONS

(R.S.C. 1978)

Application (O. 72, r. 1).

1. These Rules apply to actions for libel or slander subject to the following rules of this Order.

Indorsement of claim in libel action (O. 72, r. 2).

2. Before a writ in an action for libel is issued it must be indorsed with a statement giving sufficient particulars of the publications in respect of which the action is brought to enable them to be identified.

Obligation to give particulars (O. 72, r. 3).

3. (1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of such sense.

(2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of

opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

(3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.

Provisions as to payment into court (O. 72, r. 4).

4. (1) Where in an action for libel or slander against several defendants sued jointly the plaintiff, in accordance with Order 22, rule 3(1), accepts money paid into court by any of those defendants in satisfaction of his cause of action against that defendant, then, notwithstanding anything in rule 3(4) of that Order, the action shall be stayed as against that defendant only, but —

(a) the sum recoverable under any judgment given in the plaintiff's favour against any other defendant in the action by way of damages shall not exceed the amount (if any) by which the amount of the damages exceeds the amount paid into court by the defendant as against whom the action has been stayed; and

(b) the plaintiff shall not be entitled to his costs of the action against the other defendant after the date of the payment into court unless either the amount of the damages awarded to him is greater than the amount paid into court and accepted by him or the judge is of opinion that there was reasonable ground for him to proceed with the action against the other defendant.

(2) Where in an action for libel a party pleads the defence for which, section 2 of the Libel Act provides, Order 22, rule 7, shall not apply in relation to that pleading.

Statement in open court (O. 72, r. 5).

5. (1) Where a party accepts money paid into court in satisfaction of a cause of action for libel or slander, the plaintiff or defendant, as the case may be, may apply to a judge in chambers by summons for leave to make in open court a statement in terms approved by the judge.

(2) Where a party to an action for libel or slander which is settled before trial desires to make a statement in open court, an application must be made to the Court for an order that the action be set down for trial, and before the date fixed for the trial the statement must be submitted for the approval of the judge before whom it is to be made.

Interrogatories not allowed in certain cases (O. 72, r. 6).

6. In an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief shall be allowed.

Evidence in mitigation of damages (O. 72, r. 7).

7. In an action for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless 7 days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

ORDER 73
MONEY-LENDING ACTIONS

(R.S.C. 1978)

Application and interpretation (O. 73, r. 1).

1. (1) These Rules apply to a money-lending action subject to the following rules of this Order.

(2) In these Rules —

"the Act" means the Money Lending Act; and

"money-lending action" means any action for the recovery of money lent or for the enforcement of any agreement or security relating to money so lent, being an action brought by the lender or an assignee, and includes any action to which section 3 of that Act applies.

Particulars to be included in a statement of claim (O. 73, r. 2).

2. Every statement of claim in a money-lender's action (whether indorsed on the writ or not) must state —

(a) the date on which the loan was made;

(b) the amount actually lent to the borrower;

(c) the rate per cent, per annum of interest charged;

(d) the date when the contract for repayment was made;

(e) the fact that a note or memorandum of the contract was made and was signed by the borrower;

(f) the date when a copy of the note or memorandum was delivered or sent to the borrower;

(g) the amount repaid;

(h) the amount due but unpaid;

(i) the date upon which such unpaid sum or sums became due; and

(j) the amount of interest accrued due and unpaid on every such sum.

Judgment in default of appearance or of defence (O. 73, r. 3).

3. (1) In a money-lender's action judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this rule must be made by summons, and the summons must, notwithstanding anything in Order 61, rule 9, be served on the defendant.

(3) If the application is for leave to enter judgment in default of appearance, the summons shall not be issued until after the time limited for appearing.

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

(a) may exercise the powers of the court under section 3 of the Money Lending Act;

(b) where it refuses leave under this rule to enter judgment on a claim or any part of a claim, may make or give any such order or directions as it might have made or given had the application been an application under Order 14, rule 1, for judgment on the claim.

Particulars to be included in originating summons (O. 73, r. 4).

4. Where a money-lender's action is begun by originating summons, the summons must contain a statement of the matters specified in rule 2.

ORDER 74
ADMINISTRATION AND SIMILAR ACTIONS

(R.S.C. 1978)

Interpretation (O. 74, r. 1).

1. In this Order "administration action" means an action for the administration under the direction of the Court of the estate of a deceased person or for the execution under the direction of the Court of a trust.

Determination of questions, etc., without administration (O. 74, r. 2).

2. (1) An action may be brought for the determination of any question or for any relief which could be determined or granted, as the case may be, in an administration action and a claim need not be made in the action for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the relief is sought.

(2) Without prejudice to the generality of paragraph (1), an action may be brought for the determination of any of the following questions —

(a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;

(b) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;

(c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.

(3) Without prejudice to the generality of paragraph (1), an action may be brought for any of the following reliefs —

(a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;

(b) an order requiring the payment into court of money held by a person in his capacity of executor, administrator or trustee;

(c) an order directing a person to do or abstain from doing a particular act in his capacity of executor, administrator or trustee;

(d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity of executor, administrator or trustee;

(e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court.

Parties (O. 74, r. 3).

3. (1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration action or such an action as is referred to in rule 2 relates must be parties to the action, and where the action is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff must be made a defendant.

(2) Notwithstanding anything in Order 15, rule 4(2), and without prejudice to the powers of the Court under that Order, all the persons having a beneficial interest under the trust, as the case may be, to which such an action as is mentioned in paragraph (1) relates need not be parties to the action; but the plaintiff may make such of those persons, whether all or any one or more of them, parties as, having regard to the nature of the relief or remedy claimed in the action, he thinks fit.

(3) Where, in proceedings under a judgment or order given or made in an action for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the action, no party other than the executors or administrators

of the estate shall be entitled to appear in any proceedings relating to that claim without the leave of the Court, and the Court may direct or allow any other party to appear either in addition to, or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

Grant of relief in action begun by originating summons (O. 74, r. 4).

4. In an administration action or such an action as is referred to in rule 2, the Court may make any certificate or order and grant any relief to which the plaintiff may be entitled by reason of any breach of trust, wilful default or other misconduct of the defendant notwithstanding that the action was begun by originating summons, but the foregoing provision is without prejudice to the power of the Court to make an order under Order 28, rule 8, in relation to the action.

Judgments and orders in administration actions (O. 74, r. 5).

5. (1) A judgment or order for the administration or execution under the direction of the Court of an estate or trust need not be given or made unless in the opinion of the Court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order.

(2) Where an administration action is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the plaintiff alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the Court may —

(a) order that proceedings in the action be stayed for a period specified in the order and that the executors, administrators or trustees, as the case may be, shall within that period furnish the plaintiff with proper accounts;

(b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate to which the action relates and include therein an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the leave of the judge in person.

Conduct of sale of trust property (O. 74, r. 6).

6. Where in an administration action an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees, as the case may be, shall have the conduct of the sale unless the Court otherwise directs.

ORDER 75
ACTIONS FOR SPECIFIC PERFORMANCE, ETC.: SUMMARY JUDGMENT

(R.S.C. 1978)

Application by plaintiff for summary judgment (O. 75, r. 1).

1. (1) In any action begun by writ indorsed with a claim —

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

(b) for recission of such an agreement; or

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

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

(2) An application may be made against a defendant under this rule whether or not he has entered an appearance in the action.

Manner in which application under rule 1 must be made (O. 75, r. 2).

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

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

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

Judgment for Plaintiff (O. 75, r. 3).

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

Leave to defend (O. 75, r. 4).

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

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

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

(a) to produce any document;

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

Directions (O. 75, r. 5).

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

Costs (O. 75, r. 6).

6. If the plaintiff makes an application under rule 1 where the case is not within this Order, or if it appears to the Court that the plaintiff knew, that the defendant relied on the contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 59, and, in particular, to rule 4 thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an assisted person, require the costs to be paid by him forthwith.

Setting aside judgment (O. 75, r. 7).

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

ORDER 76
DEBENTURE HOLDERS' ACTIONS: RECEIVER'S REGISTER

(R.S.C. 1978)

Receiver's register (O. 76, r. 1).

1. Every receiver appointed by the Court in an action to enforce registered debentures or registered debenture stock shall, if so directed by the Court, keep a register of transfers of, and other transmissions of title to, such debentures or stock (in this Order referred to as "the receiver's register").

Registration of transfers, etc. (O. 76, r. 2).

2. (1) Where a receiver is required by rule 1 to keep a receiver's register, then, on the application of any person entitled to any debentures or debenture stock by virtue of any transfer or other transmission of title, and on production of such evidence of identity and title as the receiver may reasonably require, the receiver shall, subject to the following provisions of this rule, register the transfer or other transmission of title in that register.

(2) Before registering a transfer the receiver must, unless the due execution of the transfer is proved by affidavit, send by post to the registered holder of the debentures or debenture stock transferred at his registered address a notice stating —

(a) that an application for the registration of the transfer has been made; and

(b) that the transfer will be registered unless within the period specified in the notice the holder informs the receiver that he objects to the registration,

and no transfer shall be registered until the period so specified has elapsed. The period to be specified in the notice shall in no case be less than 7 days after a reply from the registered holder would in the ordinary course of post reach the receiver if the holder had replied to the notice on the day following the day when in the ordinary course of post the notice would have been delivered at the place to which it was addressed.

(3) On registering a transfer or other transmission of title under this rule the receiver must indorse a memorandum thereof on the debenture or certificate of debenture

stock, as the case may be, transferred or transmitted, containing a reference to the action and to the order appointing him receiver.

Application for rectification of receiver's register (O. 76, r. 3).

3. (1) Any person aggrieved by any thing done or omission made by a receiver under rule 2 may apply to the Court for rectification of the receiver's register, the application to be made by summons in the action in which the receiver was appointed.

(2) The summons shall in the first instance be served only on the plaintiff or other party having the conduct of the action but the Court may direct the summons or notice of the application to be served on any other person appearing to be interested.

(3) The Court hearing an application under this rule may decide any question relating to the title of any person who is party to the application to have his name entered in or omitted from the receiver's register and generally may decide any question necessary or expedient to be decided for the rectification of that register.

Receiver's register evidence of transfers, etc. (O. 76, r. 4).

4. Any entry made in the receiver's register, if verified by an affidavit made by the receiver or by such other person as the Court may direct, shall in all proceedings in the action in which the receiver was appointed be evidence of the transfer or transmission of title to which the entry relates and, in particular, shall be accepted as evidence thereof for the purpose of any distribution of assets, notwithstanding that the transfer or transmission has taken place after the making of a certificate in the action certifying the holders of the debentures or debenture stock certificates.

Proof of title of holder of bearer debenture, etc. (O. 76, r. 5).

5. (1) This rule applies in relation to an action to enforce bearer debentures or to enforce debenture stock in respect of which the company has issued debenture stock bearer certificates.

(2) Notwithstanding that judgment has been given in the action and that a certificate has been made therein certifying the holders of such debentures or certificates as are referred to in paragraph (1), the title of any person claiming to be such a holder shall (in the absence of notice of any defect in title) be sufficiently proved by the production of the debenture or debenture stock certificate, as the case may be, together with a certificate of

identification signed by the person producing the debenture or certificate identifying the debenture or certificate produced and certifying the person (giving his name and address) who is the holder thereof.

(3) Where such a debenture or certificate as is referred to in paragraph (1) is produced in the chambers of the judge, the attorney of the plaintiff in the action must cause to be indorsed thereon a notice stating —

(a) that the person whose name and address is specified in the notice (being the person named as the holder of the debenture or certificate in the certificate of identification produced under paragraph (2) has been recorded in the chambers of the judge as the holder of the debenture or debenture stock certificate, as the case may be; and

(b) that that person will, on producing the debenture or debenture stock certificate, as the case may be, be entitled to receive payment of any dividend in respect of that debenture or stock unless before payment a new holder proves his title in accordance with paragraph (2); and

(c) that if a new holder neglects to prove his title as aforesaid he may incur additional delay, trouble and expense in obtaining payment.

(4) The attorney of the plaintiff in the action must preserve any certificates of identification produced under paragraph (2) and must keep a record of the debentures and debenture stock certificates so produced and of the names and addresses of the persons producing them and of the holders thereof, and, if the Court requires it, must verify the record by affidavit.

Requirements in connection with payments (O. 76, r. 6).

6. (1) Where in an action to enforce any debentures or debenture stock an order is made for payment in respect of the debentures or stock, the Public Treasurer shall not make a payment in respect of any such debenture or stock unless either there is produced to him the certificate for which paragraph (2) provides or the Court has in the case in question for special reason dispensed with the need for the certificate and directed payment to be made without it.

(2) For the purpose of obtaining any such payment the debenture or debenture stock certificate must be produced to the attorney of the plaintiff in the action or

to such other person as the Court may direct, and that attorney or person must indorse thereon a memorandum of payment and must make and sign a certificate certifying that the statement set out in the certificate has been indorsed on the debenture or debenture stock certificate, as the case may be, and send the certificate to the Public Treasurer.

ORDER 77
MORTGAGE ACTIONS

(R.S.C. 1978)

Application and interpretation (O. 77, r. 1).

1. (1) This Order applies to any action (whether begun by writ or originating summons) by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being an action in which there is a claim for any of the following reliefs, namely —

(a) payment of moneys secured by mortgage;

(b) sale of the mortgaged property;

(c) foreclosure;

(d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property;

(e) redemption;

(f) reconveyance of the property or its release from the security;

(g) delivery of possession by the mortgagee.

(2) In this Order "mortgagee" includes legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.

(3) An action to which this Order applies is referred to in this Order as a mortgage action.

(4) These Rules apply to mortgage actions subject to the following provisions of this Order.

Documents to be lodged on making appointment for hearing (O. 77, r. 2).

2. (1) The plaintiff in a mortgage action begun by originating summons, on applying for an appointment under Order 28, rule 2(1), must produce the originating summons and leave in chambers —

(a) a copy of the originating summons; and

(b) the copy memorandum of appearance, stamped in accordance with Order 12, rule 3, of any defendant to the action or, if any defendant has failed to enter an appearance, a certificate of his non-appearance.

(2) Not less than 2 clear days before the day fixed for the first or any adjourned hearing of the originating summons the plaintiff must leave in chambers the original or an office copy of any affidavit intended to be used by him at the hearing with the exhibits thereto.

Claim for possession: non-appearance by a defendant (O. 77, r. 3).

3. (1) Where in a mortgage action begun by originating summons, being an action in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both, any defendant fails to enter an appearance, the following provisions of this rule shall apply, and references in those provisions to the defendant shall be construed as references to any such defendant. This rule shall not be taken as affecting Order 28, rule 3, or rule 5(2), in so far as it requires any document to be served on, or notice given to, a defendant who has entered an appearance in the action.

(2) Not less than 4 clear days before the day fixed for the first hearing of the originating summons the plaintiff must serve on the defendant a copy of the notice of appointment for the hearing and a copy of the affidavit in support of the summons.

(3) Where the plaintiff claims delivery of possession there must be indorsed on the outside fold of the copy of the affidavit served on the defendant a notice informing the defendant that the plaintiff intends at the hearing to apply for an order to the defendant to deliver up to the plaintiff possession of the mortgaged property and for such other relief (if any) claimed by the originating summons as the plaintiff intends to apply for at the hearing.

(4) Where the hearing is adjourned, then, subject to any directions given by the Court, the plaintiff must serve notice of the appointment for the adjourned hearing, together with a copy of any further affidavit intended to be used at that hearing, on the defendant not less than 2 clear days before the days fixed for the hearing. A copy of any affidavit served under this paragraph must be indorsed in accordance with paragraph (3).

(5) Service under paragraph (2) or (4), and the manner in which it was effected, may be proved by a certificate signed by the plaintiff, if he sues in person, and otherwise by his attorney. The certificate may be indorsed on the affidavit in support of the summons or, as the case may be, on any further affidavit intended to be used at an adjourned hearing.

(6) A copy of any exhibit to an affidavit need not accompany the copy of the affidavit served under paragraph (2) or (4).

(7) Where the plaintiff gives notice to the defendant under Order 3, rule 5, of his intention to proceed, service of the notice, and the manner in which it was effected, may be proved by a certificate signed as mentioned in paragraph (5).

Action for possession or payment (O. 77, r. 4).

4. (1) The affidavit in support of the originating summons by which an action to which this rule applies is begun must comply with the following provisions of this rule. This rule applies to a mortgage action begun by originating summons in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both.

(2) The affidavit must exhibit a true copy of the mortgage and the original mortgage or, in the case of a registered charge, the charge certificate must be produced at the hearing of the summons.

(3) Where the plaintiff claims delivery of possession the affidavit must show the circumstances under which the right to possession arises and, except where the Court in any case or class otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of —

(a) the amount of the advance;

(b) the amount of the repayments;

(c) the amount of any interest or instalments in arrear at the date of issue of the originating summons and at the date of the affidavit; and

(d) the amount remaining due under the mortgage.

(4) Where the plaintiff claims delivery of possession, the affidavit must give particulars of every person who to the best of the plaintiff's knowledge is in possession of the mortgaged property.

(5) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and mortgagee, the affidavit must show how and when the tenancy was determined and, if by service of notice, when the notice was duly served.

(6) Where the plaintiff claims payment of moneys secured by the mortgage, the affidavit must prove that the money is due and payable and give the particulars mentioned in paragraph (3).

(7) Where the plaintiff's claim includes a claim for interest to judgment, the affidavit must state the amount of a day's interest.

Action by writ: judgment in default (O. 77, r. 5).

5. (1) Notwithstanding anything in Order 13 or Order 19, in a mortgage action begun by writ judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this rule must be made by summons and the summons must, notwithstanding anything in Order 61, rule 9, be served on the defendant.

(3) Where a summons for leave under this rule is issued in an action rule 5(2) to (7) shall apply in relation to the action subject to the modification that for references therein to the originating summons, and for the reference in paragraph (2) to the notice of appointment, there shall be substituted references to the summons.

(4) Where a summons for leave under this rule is issued in an action to which rule 6 would apply had the action been begun by originating summons, the affidavit in support of the summons must contain the information required by that rule.

Foreclosure in redemption action (O. 77, r. 6).

6. Where foreclosure has taken place by reason of the failure of the plaintiff in a mortgage action for redemption to redeem, the defendant in whose favour the foreclosure has taken place may apply by motion or summons for an order for delivery to him of possession of the mortgaged property, and the Court may make such order thereon as it thinks fit.

ORDER 78
MISCELLANEOUS PROCEEDINGS

I. Proceedings Concerning Minors

(R.S.C. 1978)

Application to make minor a ward of court (O. 78, r. 1).

1. (1) An application to make a minor a ward of court must be made by originating summons.

(2) Where there is no person other than the minor who is a suitable defendant, an application may be made *ex parte* to the Registrar for leave to issue either an *ex parte* originating summons or an originating summons with the minor as defendant thereto; and, except where such leave is granted, the minor shall not be made a defendant to an originating summons under this rule in the first instance.

Applications under the Guardianship and Custody of Infants Act (O. 78, r. 2).

2. Where there is pending any proceeding by reason of which a minor is a ward of court, any application under the Guardianship and Custody of Infants Act (hereafter in this Part of this Order referred to as "the Act") with respect to that minor may be made by summons in that proceeding, but except in that case any such application must be made by originating summons.

Defendants to guardianship summons (O. 78, r. 3).

3. (1) Where the minor with respect to whom an application under the Act is made is not the plaintiff, he shall not, unless the Court otherwise directs, be made a defendant to the summons or, if the application is made by ordinary summons, be served with the summons, but subject to paragraph (2) any other person appearing to be interested in, or affected by, the application shall be made a defendant or be served with the summons, as the case may be.

(2) The Court may dispense with service of the summons (whether originating or ordinary) on any person and may order it to be served on any person not originally served.

Guardianship proceedings may be in chambers (O. 78, r. 4).

4. Applications under the Act may be disposed of in chambers.

Jurisdiction of Registrar (O. 78, r. 5).

5. (1) In proceedings to which this Part of this Order applies the Registrar may transact all such business and exercise all such authority and jurisdiction as may be transacted and exercised by a judge in chambers.

(2) Paragraph (1) is without prejudice to the power of the judges to reserve to themselves the transaction of any such business or the exercise of any such authority or jurisdiction.

II. Other Proceedings

Application for declaration affecting matrimonial status (O. 78, r. 6).

6. (1) Where, apart from costs, the only relief sought in any proceedings is a declaration with respect to the matrimonial status of any person, the proceedings shall be begun by petition.

(2) The petition shall state —

(a) the names of the parties and the residential address of each of them at the date of presentation of the petition;

(b) the place and date of any ceremony of marriage to which the application relates;

(c) whether there have been any previous proceedings between the parties with reference to the marriage or the ceremony of marriage to which the application relates or with respect to the matrimonial status of either of them and, if so, the nature of those proceedings;

(d) all other material facts alleged by the petitioner to justify the making of the declaration and the grounds on which he alleges that the Court has jurisdiction to make it,

and shall conclude with a prayer setting out the declaration sought and any claim for costs.

(3) Nothing in the foregoing provisions shall be construed —

(a) as conferring any jurisdiction to make a declaration in circumstances in which the Court could not otherwise make it; or

(b) as affecting the power of the Court to refuse to make a declaration notwithstanding that it has jurisdiction to make it.

(4) This rule does not apply to proceedings to which rule 7 applies.

Applications with respect to funds in court (O. 78, r. 7).

7. (1) Where an application to the Supreme Court —

(a) for the payment or transfer to any person of any funds in court standing to the credit of any cause or matter or for the transfer of any such funds to a separate account or for the payment to any person of any dividend of or interest on any securities or money comprised in such funds;

(b) for the investment, or change of investment, of any funds in court;

(c) for payment of the dividends of or interest on any funds in court representing or comprising money or securities lodged in court under any enactment; or

(d) for the payment or transfer out of court of any such funds as are mentioned in subparagraph (c),

is made the application may be disposed of in chambers.

(2) Subject to paragraph (3), any such application must be made by summons, and unless the application is made in a pending cause or matter or an application for the same purpose has previously been made by petition or originating summons, the summons must be an originating summons.

(3) Where an application under paragraph 1 (d) is required to be made by originating summons, then, if the funds to which the application relates do not exceed $1,500 in value, the application may be made *ex parte* to the Registrar and the Registrar may dispose of the application or may direct it to be made by originating summons. Unless otherwise directed, *ex parte* application under this paragraph shall be made by affidavit.

(4) This rule does not apply to any application for an order under Order 22.

ORDER 79
LODGEMENT, INVESTMENT, ETC., OF FUNDS IN COURT

(R.S.C. 1978)

Payment into court under Trustee Act (O. 79, r. 1).

1. (1) Subject to paragraph (2), any trustee wishing to make a payment into court under section 42 of the Trustee Act must make and file an affidavit setting out —

(a) a short description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose;

(b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him;

(c) his submission to answer all such inquiries relating to the application of such money or securities as the Court may make or direct, and

(d) an address where he may be served with any summons or order, or notice of any proceedings, relating to the money or securities paid into court.

(2) Where the money or securities represent a legacy, or residue or any share thereof, to which an infant or a person resident outside the Bahama Islands is absolutely entitled, no affidavit need be filed under paragraph (1) and the money or securities may be paid into court.

Notice of lodgement (O. 79, r. 2.)

2. Any person who has lodged money or securities in court in accordance with rule 1 must forthwith send notice of the lodgement to every person appearing from the affidavit on which the lodgement was made to be entitled to, or to have an interest in the money or securities lodged.

Applications with respect to funds in court (O. 79, r. 3).

3. (1) Where an application to the Supreme Court —

(a) for the payment or transfer to any person of any funds in court standing to the credit of any cause or matter or for the transfer of any such funds to a separate account or for the payment to any person of any dividend of or interest on any securities or money comprised in such funds;

(b) for the investment, or change of investment, of any funds in court;

(c) for payment of the dividends of or interest on any funds in court representing or comprising money or securities lodged in court under any enactment; or

(d) for the payment or transfer out of court of any such funds as are mentioned in subparagraph (c),

is made the application may be disposed of in chambers.

(2) Subject to paragraph (3), any such application must be made by summons, and unless the application is made in a pending cause or matter or an application for the same purpose has previously been made by petition or originating summons, the summons must be an originating summons.

(3) Where an application under paragraph 1 (d) is required to be made by originating summons, then, if the funds to which the application relates do not exceed $1,500 in value, the application may be made *ex parte* to the Registrar and the Registrar may dispose of the application or may direct it to be made by originating summons. Unless otherwise directed, *ex parte* application under this paragraph shall be made by affidavit.

(4) This rule does not apply to any application for an order under Order 22.

ORDER 80
APPLICATIONS AND APPEALS TO SUPREME COURT UNDER VARIOUS ACTS

(R.S.C. 1978)

Jurisdiction of Supreme Court to quash certain orders, schemes, etc. (O. 80, r. 1).

1. (1) Where by virtue of any enactment the Supreme Court has jurisdiction, on the application of any person, to quash any order, scheme, certificate or plan, any amendment or approval of a plan, any decision of a Minister or Government department or any action on the part of a Minister or Government department, the jurisdiction may be exercisable by a single judge of the Court.

(2) The application must be made by originating motion and, without prejudice to Order 8, rule 3(2), the notice of such motion must state the grounds of the application.

Entry and service of notice of motion (O. 80, r. 2).

2. (1) Notice of a motion under rule 1 must be entered at the Registry, and served, within the time limited by the relevant enactment for making the application made by the motion.

(2) Notice of the motion must be served on the appropriate Minister or Government department, and on the Attorney-General.

(3) In paragraph (2) "the appropriate Minister or Government department" means the Minister of the Crown or Government department by whom the order, scheme, certificate, plan, amendment, approval or decision in question was made, authorised, confirmed, approved or given or on whose part the action in question was taken.

Filing of affidavits, etc. (O. 80, r. 3).

3. (1) Without prejudice to the powers of the Court under Order 38, rule 2(3), evidence at the hearing of a motion under rule 1 shall be by affidavit.

(2) Any affidavit in support of the application made by such motion must be filed by the applicant in the Registry within 14 days after service of the notice of motion and the applicant must, at the time of filing, serve a copy of the affidavit and of any exhibit thereto on the respondent.

(3) Any affidavit in opposition to the application must be filed by the respondent in the Registry within 21 days after the service on him under paragraph (2) of the applicant's affidavit and the respondent must, at the time of filing, serve a copy of his affidavit and of any exhibit thereto on the applicant.

(4) When filing an affidavit under this rule a party must leave a copy thereof and of any exhibit thereto at the Registry for the use of the Court.

(5) Unless the Court otherwise orders, a motion under rule 1 shall not be heard earlier than 14 days after the time for filing an affidavit by the respondent has expired.

Applications under section 29 of the Supreme Court Act, 1996 (O. 80, r. 4). *S.I. 92/1997.*

4. (1) Every application to the Supreme Court by the Attorney-General under section 29 of the Supreme Court Act, 1996 shall be heard and determined by a judge.

(2) The application must be made by originating motion, notice of which, together with an affidavit in support, shall be filed in the Registry and served on the person against whom the order is sought.

ORDER 81
PROCEEDS OF CRIME ACT, 2000

S.I. 30/1988.

Interpretation (O. 81, r. 1).

1. (1) In this Order "the Act" means the Proceeds of Crime Act, 2000, and a section referred to by number means the section so numbered in the Act.

(2) Expressions used in this Order which are used in the Act have the same meanings in this Order as in the Act.

Assignment of proceedings (O. 81, r. 2).

2. The jurisdiction of the Court under the Act shall be exercised by a judge of the Court in chambers.

Application for restraint order or charging order (O. 81, r. 3).

3. (1) An application for a restraint order under section 26 or for a charging order under section 27 (to either of which may be joined an application for the appointment of a receiver) may be made by the Attorney-General or on his behalf *ex parte* by originating motion.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall —

(a) state the grounds for believing that the defendant has benefited from drug trafficking;

(b) state, as the case may be, either that proceedings have been instituted against the defendant for a drug trafficking offence (giving particulars of the offence) and that they have not been concluded or that an information is to be laid that the defendant has or is suspected of having committed a drug trafficking offence and when it is intended that it would be laid;

(c) to the best of the deponent's ability, give particulars of the realisable property in respect of which the order is sought and any names of the person or persons holding such property.

(3) An originating motion under paragraph (1) shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents in the matter shall be so entitled.

(4) Unless the Court otherwise directs, an affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

Restraint order and charging order (O. 81, r. 4).

4. (1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to living expenses and legal expenses of the defendant, but the plaintiff shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made *ex parte* shall have effect until a day which shall be fixed for the hearing *inter partes* of the application and a charging order shall be an order to show cause, imposing the charge until such day.

(3) Where a restraint order is made the applicant shall serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the applicant shall, unless the Court otherwise directs, serve copies of the order and of the affidavit in support on the defendant and, where property to which the order relates is held by another person, on that person and shall serve a copy of the order on such of the persons specified in Order 50, rule 3(2) as shall be appropriate.

Discharge or variation of order (O. 81, r. 5).

5. (1) Any person or body on whom a restraint order or a charging order is served or who is notified of such an order may apply by summons to discharge or vary the order.

(2) The summons and any affidavit in support shall be lodged with the Court and served on the Attorney-General and, where he is not the applicant, on the defendant, not less than two clear days before the date fixed for the hearing of the summons.

(3) Upon the Court being notified that proceedings for the offences have been concluded or that the amount payment of which is secured by a charging order has been paid into Court, any restraint order or charging order, as the case may be, shall be discharged.

Further application (O. 81, r. 6).

6. (1) Where a restraint order or a charging order has been made the Attorney-General may apply by summons or, where the case is one of urgency, *ex parte* —

(a) to discharge or vary such order; or

(b) for a restraint order or a charging order in respect of other realisable property; or

(c) for the appointment of a receiver.

(2) An application under paragraph (1) shall be supported by an affidavit which, where the application is

for a restraint order or a charging order, shall to the best of the deponent's ability give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) The summons and affidavit in support shall be lodged with the Court and served on the defendant and, where one has been appointed in the matter, on the receiver, not less than two clear days before the date fixed for the hearing of the summons.

(4) Rule 4(3) and (4) shall apply to the service of restraint orders and charging orders respectively made under this rule on persons other than the defendant.

Realisation of property (O. 81, r. 7).

7. (1) An application by the Attorney-General under section 29 shall, where there have been proceedings against the defendant in the Court, be made by summons and shall otherwise be made by originating motion.

(2) The summons or originating motion, as the case may be, shall be served with the evidence in support of not less than 7 days before the date fixed for the hearing of the summons on —

(a) the defendant;

(b) any person holding any interest in the realisable property to which the application relates; and

(c) the receiver, where one has been appointed in the matter.

(3) The application shall be supported by an affidavit which shall, to the best of the deponent's ability, give full particulars of the realisable property to which it relates and specify the person or persons holding such property, and a copy of the confiscation order, of any certificate issued by the Court under section 19(2) and of any charging order made in the matter shall be exhibited to such affidavit.

(4) The Court may, on an application under section 29, exercise the power conferred by section 30(1) to direct the making of payments by the receiver.

Receivers (O. 81, r. 8).

8. (1) Subject to the provisions of this rule, the provisions of Order 30, rules 2 to 6 shall apply where a receiver is appointed in pursuance of a charging order or under section 26 or 29.

(2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the Act, it shall not be necessary for an affidavit of fitness to be

sworn or for the receiver to give security, unless the Court otherwise orders.

(3) Where a receiver has fully paid the amount payable under the confiscation order and any sums remain in his hands, he shall apply by summons for directions as to the distribution of such sums.

(4) A summons under paragraph (3) shall be served with any evidence in support not less than 7 days before the date fixed for the hearing of the summons on —

(a) the defendant; and

(b) any other person who held property realised by the receiver.

Compensation (O. 81, r. 9).

9. An application for an order under section 57 shall be made by summons, which shall be served, with any supporting evidence, on the Attorney-General not less than 7 days before the date fixed for the hearing of the summons.

Disclosure of information (O. 81, r. 10).

10. (1) An application by the Attorney-General under section 38 shall be made by summons, which shall state the nature of the order sought and whether material sought to be disclosed is to be disclosed to a receiver appointed under section 26 or 29 or in pursuance of a charging order or to a police officer mentioned in section 38(7).

(2) The summons and affidavit in support shall be served on the administrative head of the Government Department not less than 7 days before the date fixed for the hearing of the summons.

(3) The affidavit in support of an application under paragraph (1) shall state the grounds for believing that the conditions in section 38(4) and, if appropriate, section 38(6) are fulfilled.

ORDER 82
PRESENT PROCEDURE AND PRACTICE AND REVOCATION

S.I. 38/1996.

(R.S.C. 1978)

Present procedure and practice (O. 82, r. 1).

S.I. 38/1996

1. Where no other provision is made by the Supreme Court Act or these Rules the present procedure and practice shall remain in force.

Persons authorized to act (O. 82, r. 2).
S.I. 38/1996.

2. For the avoidance of doubt, it is hereby declared that all writs, pleadings, summonses and other proceedings of whatever nature in the Supreme Court may be taken, and documents relating thereto signed, in the name of a firm of attorneys acting for any party, by any person duly authorized so to act.

Revocation (O. 82, r. 3).
S.I. 38/1996.

3. Subject to the provisions of rule 1 all existing Rules of the Supreme Court are hereby revoked.