

SUPREME COURT ACT.

New South Wales



ANNO UNDEVICESIMO

ELIZABETHÆ II REGINÆ

Act No. 52, 1970.

An Act to provide for the concurrent administration of law and equity in the Supreme Court; to amend and consolidate the law with respect to the administration of justice and the procedure and practice of the Supreme Court; to repeal the Common Law Procedure Act, 1899, the Equity Act, 1901, and certain other Acts; to amend the Partnership Act, 1892, and certain other Acts; and for purposes connected therewith. [Assented to, 14th October, 1970.]

BE

Supreme Court.

BE it enacted by the Queen's Most Excellent Majesty, by No. 52, 1970
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
follows :—

PART I.

PRELIMINARY.

DIVISION 1.—*General.*

1. This Act may be cited as the "Supreme Court Act, Short title.
1970".

2. (1) Except as provided in subsection two of this **Commence-**
section, this Act shall commence on a day to be appointed **ment.**
by the Governor and notified by proclamation published in
the Gazette.

(2) Part IX of this Act shall commence on the date
upon which the assent of Her Majesty to this Act is signified.

3. (1) Subject to this and any other Act, the Crown is **The Crown.**
bound by, and has the benefit of, this Act and the rules.

(2) In subsection one of this section, "Crown" includes
not only the Crown in right of New South Wales but also the
Crown in all its other capacities.

4. This Act is divided as follows :—

**Division
of Act.**

PART I.—PRELIMINARY—ss. 1–21.

DIVISION 1.—*General*—ss. 1–9.

DIVISION 2.—*Abolition of Certain Matters*—ss.
10–12.

DIVISION

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DIVISION 3.—*Transition*—ss. 13–16.DIVISION 4.—*Savings*—ss. 17, 18.DIVISION 5.—*Interpretation*—ss. 19–21.

PART II.—THE COURT—ss. 22–46.

DIVISION 1.—*Continuance and Jurisdiction*—ss. 22–24.DIVISION 2.—*The Judges generally*—ss. 25–30.DIVISION 3.—*Judges of Appeal*—ss. 31–34.DIVISION 4.—*Acting and additional Appointments*—ss. 35–37.DIVISION 5.—*Organisation*—ss. 38–41.DIVISION 6.—*The Court of Appeal*—ss. 42–46.

PART III.—DISTRIBUTION OF BUSINESS—ss. 47–56.

DIVISION 1.—*Distribution between Court of Appeal and Divisions*—ss. 47–51.DIVISION 2.—*Distribution amongst Divisions*—ss. 52–55.DIVISION 3.—*Commercial List*—s. 56.

PART IV.—LAW AND EQUITY—ss. 57–64.

PART V.—POWERS GENERALLY—ss. 65–76.

PART VI.—PROCEDURE—ss. 77–100.

DIVISION 1.—*General*—ss. 77–84.DIVISION 2.—*Trial*—ss. 85–90.DIVISION 3.—*Judgments and Orders*—ss. 91–97.DIVISION 4.—*Enforcement of Judgments and Orders*—ss. 98–100.

PART VII.—APPEAL TO THE COURT OF APPEAL—ss. 101–110.

PART

*Supreme Court.***PART VIII.—OFFICERS—ss. 111–121.**

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DIVISION 1.—*Masters*—ss. 111–118.DIVISION 2.—*Registrars and other Officers*—ss.
119–121.**PART IX.—RULES OF COURT—ss. 122–126.****SCHEDULES.**

5. Each Act mentioned in the First Schedule to this Act Repeals.
is, to the extent therein expressed, hereby repealed.

6. Any Act in force immediately before the commence- Inconsis-
ment of this Act which is inconsistent with the rules shall be tency with
superseded to the extent of such inconsistency and while such rules.
inconsistency continues to exist.

7. Each Act specified in the First Column of the Second Amend-
Schedule to this Act is amended as specified opposite that ments.
Act in the Second Column of that Schedule.

8. (1) In any Act, rule of court or regulation in force Construc-
immediately before the commencement of this Act— tion of
references.

- (a) a reference to the Court in Banco or to the Full Act No.
Court or to the Court as a court consisting of two 35, 1900,
or more Judges shall be construed as a reference s. 21F (2).
to the Court of Appeal;

(b)

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- (b) a reference to the Court or to a Judge in any of the jurisdictions specified in the First Column of the Table below or to the practice or procedure of the Court in any of those jurisdictions shall be construed as a reference to the Division specified opposite that jurisdiction in the Second Column of that Table or, as the case may be, to the practice or procedure in that Division—

TABLE

| <i>First Column</i> | <i>Second Column</i> |
|---------------------|----------------------|
| <i>Jurisdiction</i> | <i>Division</i> |
| Common Law. | Common Law Division. |
| Equity. | Equity Division. |
| Probate. | Probate Division. |
| Matrimonial Causes. | Divorce Division. |
| Protective. | Protective Division. |
| Admiralty. | Admiralty Division. |

- (c) a reference to the Judge exercising the matrimonial causes jurisdiction of the Court or appointed to exercise that jurisdiction shall be construed as a reference to the Chief Judge in Divorce:
- (d) a reference to a writ, whether of prohibition, mandamus, or certiorari or of any other description by which the Court formerly had jurisdiction to grant any relief or remedy shall, subject to subsection two of this section, be construed as a reference

to

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to the judgment or order by which the Court may grant that relief or remedy under this Act and the rules; No. 52, 1970

- (e) a reference to the Master in Equity or to the Master in the protective jurisdiction of the Court shall, subject to the rules, be construed as a reference to the master assigned to the Equity Division or, as the case may be, to the master assigned to the Protective Division or, where two or more masters are so assigned, to the senior master so assigned;
- (f) a reference to the holder of an office named in the First Column of the Table below shall, subject to the rules, be construed as a reference to the holder of the office named in the Second Column of that Table opposite to the name of the firstmentioned office—

TABLE

| <i>First Column</i> | <i>Second Column</i> |
|--|---------------------------------------|
| Prothonotary. | Prothonotary. |
| Deputy Master and Registrar in Equity. | Registrar in Equity. |
| Registrar of Probates. | Registrar in Probate. |
| Registrar in Divorce. | Registrar in Divorce. |
| Deputy Master in the Protective Jurisdiction of the Supreme Court. | Registrar in the Protective Division. |
| Registrar in Admiralty. | Registrar in Admiralty. |
| Registrar of the Court of Appeal. | Registrar of the Court of Appeal. |

(g)

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Act No. 49,
1900,
s. 5 (1);
Act No. 32,
1965, s. 5
(3) (a).

(g) a reference to the verdict or finding of a jury in any proceedings or on any issue in any proceedings on a trial with a jury shall, unless the context or subject matter otherwise indicates or requires, extend, in the case of proceedings on a common law claim tried without a jury pursuant to this Act, to the determination of the Court in the proceedings or on any such issue on a trial without a jury; and

(h) a reference to an action of ejectment in the Court shall be construed as a reference to proceedings in the Court for possession of land.

(2) Paragraph (d) of subsection one of this section does not apply to a reference to—

(a) the writ of habeas corpus ad subjiciendum;

(b) any writ of execution for the enforcement of a judgment or order of the Court; or

(c) any writ in aid of any such writ of execution.

Non-
revivor.
52 & 53
Vict. c. 63,
s. 38 (2) (a).

9. A repeal made by section five of this Act or an amendment made by section seven of this Act shall not revive anything not in force or existing immediately before the commencement of this Act.

DIVISION 2.—Abolition of Certain Matters.

Arrest on
mesne
process.

10. Notwithstanding section sixty-nine of this Act, no person shall be arrested under the jurisdiction of the Court formerly exercised by writ of capias ad respondendum or by writ of ne exeat, or otherwise on mesne process.

Distinction
between
court and
chambers.

11. (1) The distinction between court and chambers is abolished.

(2) The business of the Court, whether conducted in court or otherwise, shall be taken to be conducted in court.

12.

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12. Informations in the nature of quo warranto are **No. 52, 1970** abolished.

Quo
warranto.
1 & 2 Geo. 6,
c. 63, s. 9
(1).

DIVISION 3.—Transition.

13. A person who immediately before the commence- **Judges.**
ment of this Act held any office specified in the Table below
shall subject to this Act continue to hold that office under this
Act.

TABLE

Chief Justice.
President of the Court of Appeal.
Judge of Appeal.
Chief Judge in Equity.
Judge exercising the matrimonial causes jurisdiction of
the Court.
Probate Judge.
Judge.

14. (1) Notwithstanding section one hundred and eleven **Masters.**
and section one hundred and sixteen of this Act, the holder
immediately before the commencement of this Act of the
office of Master in Equity is hereby—

- (a) appointed to be a master under this Act; and
- (b) assigned to the Equity Division and to the
Protective Division.

(2) Notwithstanding section one hundred and
sixteen of this Act—

- (a) the assignment by paragraph (b) of subsection one
of this section shall not be revoked without the
consent of the master concerned; and

(b)

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- (b) the master assigned to the Equity Division and to the Protective Division by that paragraph shall not be assigned to any other Division without his consent.

(3) The holder immediately before the commencement of this Act of the office of Master in Equity and any previous holder of that office and the widow of any of them shall, notwithstanding anything in this Act, have the rights as to salary, pension or otherwise which he or she would have had if this Act had not passed, but this subsection shall not prevent the making of any agreement under section one hundred and twelve of this Act.

**Registrars
and other
officers.**

15. Notwithstanding section one hundred and twenty of this Act, the holder immediately before the commencement of this Act of each office named in the First Column in the Table in paragraph (f) of subsection one of section eight of this Act is hereby appointed to the office under this Act named in the Second Column in that Table opposite to the name of the firstmentioned office, to hold office subject to the provisions of the Public Service Act, 1902.

**Pending
proceedings.**

16. (1) Subject to the rules, and unless the Court otherwise orders, this Act does not apply to, and the repeals and amendments made by this Act do not affect, any proceedings commenced in the Court before the commencement of this Act.

(2) In particular, but without limiting the generality of subsection one of this section, subject to the rules, and unless the Court otherwise orders, in the case of any proceedings commenced in the Court before the commencement of this Act, this Act does not apply to, and the repeals and amendments made by this Act do not affect—

- (a) the completion after the commencement of this Act of any step in the proceedings taken before the commencement of this Act; or

(b)

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- (b) the taking and completion after the commencement No. 52, 1970 of this Act of any step in the proceedings.

(3) Notwithstanding subsections one and two of this section—

- (a) sections ten and ninety-eight of this Act apply to proceedings commenced in the Court before the commencement of this Act;
- (b) any person held in custody on the date of commencement of this Act under any attachment or committal (otherwise than for contempt of court) or under any writ of *capias ad respondendum* or writ of *ne exeat* or otherwise on mesne process shall, unless there is other lawful warrant for holding him in custody, be discharged from custody on the date of commencement of this Act; and
- (c) no writ of foreign attachment under Part XX of the Common Law Procedure Act, 1899, shall be issued after the commencement of this Act.

(4) For the purposes of this section—

- (a) the expression “proceedings” includes—
 - (i) any cause, suit, application or matter in or before the Court or for decision or determination by the Court or any Judge of the Court; and
 - (ii) any appeal from, or other means of review (whether by way of stated case, statutory prohibition or otherwise) of, any decision or determination of any court, tribunal or person;
- (b) the expression “judgment” includes any rule, decree or order; and
- (c) the expression “step” includes—
 - (i) the entry or other perfecting of any judgment;

(ii)

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- (ii) an appeal to the Court of Appeal;
- (iii) an application for a new trial or for judgment notwithstanding a verdict;
- (iv) a motion in arrest of judgment;
- (v) a new trial;
- (vi) the punishment of contempt in connection with the proceedings;
- (vii) any thing done or to be done by way of execution or enforcement of a judgment in the proceedings;
- (viii) interpleader by any person having the execution of a judgment in the proceedings;
- (ix) an application for a stay of proceedings;
- (x) any thing done or to be done in consequence of an appeal to Her Majesty in Council or to the High Court of Australia,

whether before or after final judgment.

(5) The Court may make orders under this section on application by a party or of its own motion.

DIVISION 4.—*Savings.*

Criminal
proceedings.
cf. 38 & 39
Vic., c. 77,
s. 19.

17. (1) Except as provided in this section this Act and the rules do not apply to any of the proceedings in the Court which are specified in the Third Schedule to this Act.

(2) In respect of any of the proceedings in the Court which are specified in the Third Schedule to this Act—

- (a) the Chief Justice and any three of the Judges may appoint times and places for sittings of the Court;
- (b) particulars of times and places appointed for sittings shall be published in the Gazette;
- (c) the Court may sit at any time and at any place notwithstanding that the time and place of the sitting has not been appointed or has not been published as provided in this subsection.

(3)

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(3) Subsection one of this section does not affect the operation of sections one, two, five, six, seven and seventy-two of this Act. No. 52, 1970

(4) This Act and the rules apply to and with respect to—

- (a) proceedings in the Court under the Supreme Court (Summary Jurisdiction) Act, 1967, in respect of which the jurisdiction of the Court under that Act may be exercised by the Court of Appeal; and
- (b) any judgment or order of the Court of Appeal given or made in the exercise of that jurisdiction.

18. (1) Subject to subsection two of this section, nothing in this Act or in the rules affects the law formerly existing concerning appeals to Her Majesty in Council. Appeal to Privy Council.

(2) The provisions of this Act and the rules apply to proceedings in the Court for leave to appeal to Her Majesty in Council and to proceedings in the Court relating to such an appeal.

(3) Subsection two of this section has effect subject to Orders in Council from time to time in force under the Australian Courts Act, 1828.

DIVISION 5.—*Interpretation.*

19. In this Act and in the rules, except in so far as the context or subject-matter otherwise indicates or requires— Inter-pretation generally

“claim for relief” includes—

- (a) a claim for the recovery of damages or other money, or for possession of land, or for delivery of goods;
- (b) a claim for a declaration of right;
- (c) a claim for the determination of any question or matter which may be determined by the Court; and
- (d) any other claim (whether legal, equitable or otherwise) justiciable in the Court.

“commencement”,

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“commencement”, in relation to this Act, means the date appointed under subsection one of section two of this Act.

“common law claim” means a claim for damages or other money, or for possession of land, or for delivery of goods, in proceedings in the Common Law Division.

R.S.C.
(Rev.)
1965 O. 62
r. 1 (1).

“costs” includes fees, charges, disbursements, expenses and remuneration.

“Court” means the Supreme Court of New South Wales.

15 & 16
Geo. 5,
c. 49, s. 225.

“defendant” includes any person served with a statement of claim or summons, or served with notice of or entitled to attend any proceedings.

“Division” means a Division of the Court specified in paragraph (b) of section thirty-eight of this Act.

“formerly” means immediately before the commencement of this Act.

“Judge” means a Judge of the Court.

“judgment”—

(a) means, subject to the rules, a determination of any claim for relief, or a determination of any question (whether of fact or law or both) raised by any claim for relief, or a determination of any question (whether of fact or law or both) necessary for the adjudication of any claim for relief, or a declaration of right; and

(b) includes, subject to the rules, such orders for giving effect to the determination or declaration or for costs or for incidental matters as may be made by the Court on directing entry of judgment or as may be prescribed by the rules; but

(c) subject to the rules, does not include the verdict or finding of a jury or a determination stated in a certificate of a master, registrar or other officer.

“land”

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“land” includes messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate or interest therein, whether vested or contingent, whether freehold or leasehold, and whether at law or in equity. No. 52, 1970
cf. Act No. 6, 1919,
s. 7.

“party” includes any defendant and any person against whom a claim for relief is made under section seventy-eight of this Act. cf. 15 & 16
Geo. 5, c. 49,
s. 225.

“plaintiff” includes any person making any claim for relief (except a claim for relief under section seventy-eight of this Act). cf. 15 & 16
Geo. 5, c. 49,
s. 225.

“prescribed” means prescribed by the rules.

“registry”, in relation to proceedings in the Court of Appeal, means the office of the Court of Appeal and, in relation to proceedings in a Division, means the office of the Division.

“rules” means rules of the Court, and includes any schedule to rules of the Court.

“stated case” means a case stated by the Court in a Division under the rules or under any Act or a case stated under any Act by any other court or by any judge of any other court or by any justice or other person for the opinion, decision, direction or determination of the Court, and includes—

- (a) an award in the form of a special case stated under section nine of the Arbitration Act, 1902; and
- (b) a matter referred under section eighty-five of the Superannuation Act, 1916.

No. 52, 1970 **20.** (1) In the construction of this Act and of the rules, section twenty-five of the Interpretation Act, 1897, shall apply in respect of a reference to an Imperial Act or any provision thereof or a Commonwealth Act or any provision thereof as it applies in respect of a reference to an Act or any provision thereof.

Reference
to Act.

(2) In this Act and in the rules, unless the context or the subject-matter otherwise indicates or requires, a reference to an enactment in an Act, Imperial Act or Commonwealth Act shall extend to that enactment as applied or extended, with or without modification, by any other enactment.

Order on
terms.

21. Where under this Act or the rules the Court may make any order or give any direction or leave or do any other thing on terms, the Court may make the order or give the direction or leave or do the thing on such terms and conditions (if any) as the Court thinks fit.

PART II.

THE COURT.

DIVISION 1.—*Continuance and Jurisdiction.*

Continuance. **22.** The Supreme Court of New South Wales as formerly established as the superior court of record in New South Wales is hereby continued.

Jurisdiction
generally.
N.Z. Act
No. 89,
1908, s. 16.

23. The Court shall have all jurisdiction which may be necessary for the administration of justice in New South Wales.

24.

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24. (1) Where under any Act in force immediately before the commencement of this Act any power is vested in the Chief Judge in Equity, the Chief Judge in Divorce, the Probate Judge or any other Judge—

No. 52, 1970
Court to
have powers
of Judges
under Acts.

- (a) that power may be exercised in accordance with this Act and the rules by the Court in all respects as that Judge might have done;
- (b) the Court constituted in accordance with this Act and the rules shall, while so acting, have power co-ordinate with the power of that Judge; and
- (c) subject to paragraphs (a) and (b) of this subsection, that power shall not be exercised by that Judge.

Act No. 35,
1900, s. 15.

(2) Where, under any Act in force immediately before the commencement of this Act, any power is vested in the Court or in any Judge by the use of the words "the Court", "the Supreme Court or any Judge thereof", "a Judge of the Supreme Court" or by any other words referring to the Court or to any Judge of Appeal or to any Judge, that power shall be exercised by the Court in accordance with this Act and the rules.

(3) This section has effect notwithstanding that the Act vesting power in the Court or in any Judge of Appeal or in any Judge designates the Court, Judge of Appeal or Judge as the court, judge, arbitrator or person appointed to hear and determine any matter and notwithstanding that the determination is expressed to be final or without appeal, but where the determination is expressed to be final or without appeal, an appeal shall not lie from a determination of the Court pursuant to this section.

(4) This section does not affect the powers under the Land and Valuation Court Act, 1921, of the Judge of the Land and Valuation Court.

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DIVISION 2.—*The Judges generally.*Composi-
tion of
Court.

25. The Court shall be composed of a Chief Justice, a President of the Court of Appeal and such other Judges of Appeal and Judges as the Governor may from time to time appoint.

Appoint-
ment, and
qualifica-
tions: Chief
Justice and
other
Judges.Act No.
35, 1900,
ss. 6, 9.

26. (1) The Governor may, under the public seal of the State, appoint any qualified person to be Chief Justice or a Judge.

Qualifi-
cations.
Act No.
35, 1900,
ss. 5, 9.

(2) At the time of his appointment, a person so appointed shall be—

- (a) a member of the Industrial Commission of New South Wales;
- (b) a barrister of not less than five years' standing;
- (c) a solicitor of not less than seven years' standing; or
- (d) a barrister or a solicitor of less than five years' or seven years' standing respectively, where at all times during a continuous period of not less than seven years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.

Tenure.
Act No.
35, 1900,
s. 10.

27. (1) Subject to the Judges Retirement Act, 1918, the commission of the Chief Justice, the President of the Court of Appeal, every other Judge of Appeal and every other Judge shall be, continue and remain in force during his good behaviour.

(2) The Governor may remove the Chief Justice, the President of the Court of Appeal, any other Judge of Appeal or any other Judge upon the address of both Houses of Parliament.

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28. (1) There shall be a Chief Judge in Equity, a Chief Judge in Divorce, and a Probate Judge. No. 52, 1970

Special
Offices.

(2) The Judge appointed to exercise the matrimonial causes jurisdiction of the Court shall be called the Chief Judge in Divorce.

(3) Whenever the office of Chief Judge in Equity, Chief Judge in Divorce or Probate Judge becomes vacant, the Governor may appoint a Judge to the vacant office. Act No. 35,
1900, s. 6.

29. (1) The annual salaries of the Judges shall be as follows— Salaries.
Act No. 35,
1900, s. 11;
Act No. 9,
1968, s. 2.

(a) of the Chief Justice—Twenty-one thousand two hundred and seventy-five dollars;

(b) of the President of the Court of Appeal—Twenty thousand one hundred and twenty-five dollars; and

(c) of the other Judges—Nineteen thousand five hundred and fifty dollars.

(2) The salary payable to each Judge in accordance with subsection one of this section, together with any statutory allowance, shall be paid to him so long as his commission continues in force.

30. (1) The Chief Justice, a Judge of Appeal or a Judge shall not be incapable of acting in his judicial office in any proceedings, nor shall any master or registrar or other officer of the Court be incapable of acting in his office in any proceedings, by reason of his being as one of several ratepayers or as one of any other class of persons liable, in common with others, to contribute to or to be benefited by any rate or tax which may be increased, diminished or in any way affected by those proceedings. Interest
in rate
or tax.
Act No. 34,
1902, s. 14.

(2) In this section "rate or tax" means any rate, tax, duty or assessment whether public, general or local, and also any fund formed from the proceeds of any such rate, tax, duty or assessment, or applicable to the same or like purposes to which any such rate, tax, duty or assessment might be applied.

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DIVISION 3.—*Judges of Appeal.*

Appoint-
ment.
Act No. 35,
1900, s. 21c
(1), (3)–
(5).

31. (1) The Governor may, by commission under the public seal of the State, appoint any Judge to be a Judge of Appeal.

(2) A Judge may be appointed to be a Judge of Appeal either at the time of his appointment as a Judge or at any time afterwards.

(3) A Judge of Appeal shall continue to be a Judge and may from time to time sit as or exercise any of the powers of a Judge.

(4) A Judge who, at the time of his appointment as Judge of Appeal, holds the office of Chief Judge in Equity shall continue to hold that office and may sit as or exercise any of the powers and functions of the Chief Judge in Equity.

(5) A Judge of Appeal shall hold office as a Judge of Appeal so long as he holds office as a Judge.

(6) With the approval of the Governor, a Judge of Appeal may resign his office as Judge of Appeal without resigning his office as a Judge.

Appoint-
ment of
President.
Act No. 35,
1900, s. 21c
(2).

32. (1) The Governor may, by commission under the public seal of the State, appoint a Judge of Appeal to be President of the Court of Appeal.

(2) A Judge of Appeal may be appointed to be President of the Court of Appeal at the time of his appointment as a Judge of Appeal or at any time afterwards.

Seniority.
Act No. 35,
1900, s. 21c
(6).

33. (1) The Judges of Appeal shall have seniority, rank and precedence over all the Judges (including any Judge who is for the time being an additional Judge of Appeal) except the Chief Justice and over all persons who, in accordance with

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with the provisions of any Act, have the same rank, title, No. 52, 1970 status and precedence as a Judge of the Supreme Court.

(2) The President of the Court of Appeal shall have seniority, rank and precedence over the Judges of Appeal referred to in paragraph (c) of section forty-two of this Act, and those Judges of Appeal shall have seniority, rank and precedence between themselves according to the dates (whether before or after the commencement of this Act) of their commissions as Judges of Appeal.

(3) If the commissions of two or more Judges of Appeal bear the same date they shall have seniority, rank and precedence according to the seniority, rank and precedence assigned to them by their commissions, or failing such assignment according to the order of their being sworn.

(4) If a Judge of Appeal resigns his office as a Judge of Appeal without resigning his office as a Judge, he shall then have, as a Judge, the seniority, rank, status and precedence he would have had if he had not been appointed a Judge of Appeal.

34. (1) Where there is a vacancy in the office of President of the Court of Appeal or where the President is absent from New South Wales or is prevented by illness or other cause from exercising the duties of his office, the senior of the Judges of Appeal referred to in paragraph (c) of section forty-two of this Act shall have authority to act as President of the Court of Appeal and to execute the duties of that office and to exercise all powers which may lawfully be exercised by the President.

Vacancies.
Act No. 35,
1900, s. 21c
(7), (8).

(2) The jurisdiction of the Court of Appeal shall not be affected by any vacancy in the office of Chief Justice or of President.

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DIVISION 4.—*Acting and additional Appointments.*Acting Chief
Justice.Act No. 35,
1900, s. 12A.

35. (1) The Governor may, by commission under the public seal of the State, appoint the President of the Court of Appeal, any Judge of Appeal or any Judge to be Acting Chief Justice during such period as the Chief Justice may be absent from his duties.

(2) While holding office, the Acting Chief Justice shall have the powers, authorities, privileges, immunities and precedence, and shall fulfil the duties of the Chief Justice and shall receive a salary and allowance at the rate provided for the Chief Justice.

Additional
Judges of
Appeal.Act No. 35,
1900, s. 21D.

36. (1) During any absence from his duties of any Judge of Appeal (other than the Chief Justice), the Governor may, by commission under the public seal of the State, appoint any Judge to act as an additional Judge of Appeal during such period not exceeding six months as may be specified in the commission.

(2) Whenever the Chief Justice certifies that in any proceeding before the Court of Appeal it is expedient that a Judge nominated in the certificate should act as an additional Judge of Appeal, the Judge so nominated may act as an additional Judge of Appeal for the purposes of that proceeding.

(3) Every additional Judge of Appeal appointed or nominated pursuant to this section shall, while so acting, have all the powers, authorities, privileges and immunities and shall fulfil all the duties of a Judge of Appeal.

(4) The fact that any Judge sits and acts as an additional Judge of Appeal shall be sufficient evidence of his authority to do so, and no judgment or order of the Court of Appeal while he so acts shall be questioned on the ground that the occasion for his so acting had not arisen or had ceased to exist.

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(5) Every Judge who, pursuant to this section, has acted as an additional Judge of Appeal may attend the sittings of the Court of Appeal for the purpose of giving judgment in, or otherwise completing, any proceedings which have been heard by that Court while he so acted, notwithstanding that he is no longer an additional Judge of Appeal. No. 52, 1970

37. (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to act as a Judge for a time not exceeding six months to be specified in such commission. Acting Judges.
Act No. 35,
1900, s. 13.

(2) In subsection one of this section "qualified person" means a person qualified for appointment as a Judge.

(3) The person so appointed shall, for the time and subject to the conditions or limitations specified in his commission, have all the powers, authorities, privileges and immunities and fulfil all the duties of a Judge.

DIVISION 5.—*Organisation.*

38. For the more convenient despatch of business, the Court shall be divided into— Divisions
of Court.

- (a) the Court of Appeal; and
- (b) the following Divisions :—
 - (i) the Common Law Division;
 - (ii) the Equity Division;
 - (iii) the Admiralty Division;
 - (iv) the Divorce Division;
 - (v) the Protective Division; and
 - (vi) the Probate Division.

39.

No. 52, 1970
 Intra-curial
 arrange-
 ments.

39. (1) Intra-curial arrangements for the transaction by the Judges of Appeal of the business of the Court of Appeal shall be made by the President of the Court of Appeal with the concurrence of the Chief Justice.

(2) Intra-curial arrangements for the transaction of the business of any Division, by the Judges appointed or nominated to that Division—

- (a) may be made by all the Divisional Judges or by a majority of those of them present at a meeting summoned for that purpose and attended by at least ten of them; and
- (b) subject to any arrangement made as provided by paragraph (a) of this subsection, shall be made by the Chief Justice.

(3) For the purposes of subsection two of this section "Divisional Judges" means the Chief Justice and all the Judges except any Judge not appointed or nominated to a Division.

(4) This section has effect notwithstanding section one hundred and twenty-four of this Act.

Single
 Judge to
 constitute
 the Court.

40. (1) All proceedings in any Division and all business arising out of proceedings in a Division shall be heard and disposed of before a Judge, who shall constitute the Court.

(2) Subsection one of this section does not affect the provisions of this Act and the rules concerning the hearing and disposal of proceedings and business before a master or other officer of the Court.

Supreme Court.

41. (1) Subject to subsection two of this section, the jurisdiction of the Court shall be exercised in the Divisions as follows—

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Judges in
the Divi-
sions.

- (a) in the Common Law Division by the Chief Justice and such other Judges as may be nominated by the Chief Justice to act in that Division; Act No. 24,
1901, s. 3.
- (b) in the Equity Division by the Chief Judge in Equity and such other Judge or Judges as may be nominated by the Chief Justice to act in that Division;
- (c) in the Probate Division by the Probate Judge and such other Judge or Judges as may be nominated by the Chief Justice to act in that Division;
- (d) in the Divorce Division by the Chief Judge in Divorce and such other Judge or Judges as may be nominated by the Chief Justice to act in that Division;
- (e) in the Protective Division by the Chief Judge in Equity and such other Judge or Judges as may be nominated by the Chief Justice to act in the Equity Division.

(2) Any Judge may exercise the jurisdiction of the Court in any Division with all the power and authority of a Judge appointed or nominated under this or any other Act to act in that Division. Act No. 35,
1900, s. 15.

(3) A Judge so appointed or nominated may be appointed or nominated to act concurrently in any other Division.

(4) Where a Judge has been so appointed or nominated he shall not thereafter be transferred, without his consent, to act in another Division.

DIVISION

Supreme Court.

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DIVISION 6.—*The Court of Appeal.*Composition.
Act No. 35,
1900, s. 21B
(2).**42.** Subject to this Part, the Court of Appeal shall consist of—

- (a) the Chief Justice who shall, by virtue of his office, be a Judge of Appeal and the senior member of the Court of Appeal;
- (b) the President of the Court of Appeal; and
- (c) not more than nine other Judges of Appeal.

Sittings.

Act No. 35,
1900, ss.
21E, 21G
(1), 21H.**43.** (1) Any three or more Judges of Appeal may exercise all the powers of the Court of Appeal.

(2) At a sitting of the Court of Appeal at which the Chief Justice is present he shall preside.

(3) In the absence of the Chief Justice, the President of the Court of Appeal shall preside.

(4) In the absence of both the Chief Justice and the President, the senior Judge of Appeal present shall preside.

(5) Two Courts of Appeal, each of three or more Judges of Appeal, may sit at the same time.

(6) When more than one Court of Appeal is sitting at the same time, each may exercise the jurisdiction of the Court of Appeal.

Jurisdiction.

44. The Court of Appeal may, in proceedings before it, exercise every power, jurisdiction or authority of the Court, whether at law or in equity or under any Act, Imperial Act or Commonwealth Act.

Decision.

Act No. 35,
1900, s. 21G
(2), (3).**45.** (1) The judgment of the Court of Appeal shall be in accordance with the opinion of the majority of the Judges of Appeal present.

(2)

Supreme Court.

(2) If the Judges of Appeal present are equally divided in opinion the decision of the Court of Appeal shall be in accordance with the opinion of the Chief Justice or other the Judge of Appeal presiding. No. 52, 1970

46. (1) A Judge of Appeal may, in vacation, exercise the powers of the Court of Appeal— Powers of Judge of Appeal.
- (a) in proceedings for a writ of habeas corpus ad subjiciendum; and Act No. 21, 1899, s. 254A (3).
 - (b) in any proceedings, so far as concerns any interim order to preserve the rights of the parties. 15 & 16 Geo. 5, c. 49, s. 69 (1).

(2) A Judge of Appeal may, in vacation, exercise the powers of the Court of Appeal formerly exercisable by rules or orders for writs of prohibition, mandamus or certiorari. Act No. 35, 1900, s. 20 (2), (3).

- (3) A Judge of Appeal may exercise the powers of the Court of Appeal to make any order or give any direction— 15 & 16 Geo. 5, c. 69 (1).
- (a) concerning the institution of an appeal or other proceedings in the Court of Appeal;
 - (b) incidental to any appeal or other proceedings pending in the Court of Appeal; or
 - (c) as prescribed,
- not being an order or direction involving the decision of the appeal or proceedings.

(4) A Judge of Appeal may exercise the powers of the Court of Appeal—

- (a) to direct the entry of any judgment or make any order by consent; or
- (b) to dismiss an appeal or other proceedings for want of prosecution.

(5)

Supreme Court.

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(5) The Court of Appeal may discharge or vary any judgment directed to be entered or any order made by a Judge of Appeal under this section.

cf. 15 & 16
Geo. 5, c. 49,
s. 69 (2);
Act No. 21,
1899, s. 254A
(3); Act No.
35, 1900,
s. 20 (3);
Court of
Appeal
Rules, r. 23.

(6) Subject to subsection five of this section, a judgment directed to be entered or an order made by a Judge of Appeal under this section shall have effect as a judgment or order of the Court of Appeal.

PART III.

DISTRIBUTION OF BUSINESS.

DIVISION 1.—*Distribution between Court of Appeal and Divisions.*

47. This Division has effect subject to this Act and to the rules.

Business of
the Court
of Appeal.
Act No.
35, 1900,
s. 21F (3)
(a).

48. (1) Subject to subsection two of section forty-nine of this Act, every power formerly exercisable by the Court of Appeal but not by a Judge and, without limiting the generality of the foregoing, the powers of the Court formerly exercisable by rules or orders for writs of prohibition, mandamus or certiorari—

- (a) may be exercised by the Court of Appeal; but
- (b) except as provided by section fifty-one of this Act, may not be exercised by the Court in a Division.

(2) The powers of the Court or of the Judges collectively in respect of the proceedings mentioned in subsection three of this section—

- (a) may be exercised by the Court of Appeal; but
- (b) except as provided by section fifty-one of this Act, may not be exercised by the Court in a Division.

(3)

Supreme Court.

(3) The proceedings referred to in subsection two No. 52, 1970 of this section are—

- (a) applications under section seventy of this Act;
- (b) proceedings in the Court for the punishment of contempt of the Court or of any other Court; cf. Act No. 35, 1900, s. 21F (3) (c).
- (c) the admission of barristers and solicitors; cf. Act No. 35, 1900, s. 21F (3) (e).
- (d) the exercise of the disciplinary powers of the Court with respect to barristers and solicitors; cf. Act No. 35, 1900, s. 21F (3) (f).
- (e) appeals under section 40G, 40J, 40K or seventy-eight of the Legal Practitioners Act, 1898;
- (f) cases stated under section 131A of the Justices Act, 1902;
- (g) appeals under section one hundred and sixty-seven of the Mining Act, 1906;
- (h) proceedings on a stated case under Division Two of Part VIII of the Mining Act, 1906;
- (i) appeals under Part VI of the District Courts Act, 1912;
- (j) proceedings under section one hundred and forty-seven of the District Courts Act, 1912, concerning any act relating to the duties of a judge of a District Court;
- (k) appeals under section forty-six of the Local Government Act, 1919, from any order of a District Court;
- (l) stated cases under section one hundred and twenty-four of the Stamp Duties Act, 1920;
- (m) stated cases under section seventeen of the Land and Valuation Court Act, 1921;
- (n) appeals and stated cases under subsection four of section thirty-seven of the Workers' Compensation Act, 1926;

(o)

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- (o) applications under section nineteen of the Medical Practitioners Act, 1938;
- (p) appeals under subsection three of section twenty-six or subsection four of section twenty-nine of the Medical Practitioners Act, 1938;
- (q) cases stated under section eighteen of the Supreme Court (Summary Jurisdiction) Act, 1967;
- (r) applications under section twenty-one of the Supreme Court (Summary Jurisdiction) Act, 1967; and
- (s) appeals under section twenty-four of the Supreme Court (Summary Jurisdiction) Act, 1967.

cf. Act No.
35, 1900,
s. 21F
(3) (c);
H.C.R.
O. 56, r. 1
(1).

(4) This section does not affect the powers of the Court in a Division in relation to punishment for—

- (a) contempt in the face of the Court in that Division or in the hearing of the Court in that Division;
- (b) disobedience to a judgment or order of the Court in that Division; or
- (c) breach of an undertaking given to the Court in that Division.

Concurrent
business.

49. (1) Subject to subsections two and three of section forty-eight of this Act, every power formerly exercisable either by the Court of Appeal or by a Judge may be exercised either by the Court of Appeal or by the Court in a Division.

(2) The powers of the Court or of the Judges collectively in respect of the following proceedings may be exercised either by the Court of Appeal or by the Court in a Division—

cf. Act No.
21, 1899,
s. 252.

- (a) proceedings for a writ of habeas corpus ad subjiciendum;
- (b) appeals under section seventy-two of the Legal Practitioners Act, 1898;

cf. Act No.
49, 1900,
s. 6.

- (c) proceedings on a stated case under section twenty-seven, section one hundred and twenty-two or section one hundred and twenty-three of the Real Property Act, 1900;

(d)

Supreme Court.

- (d) proceedings under Part V of the Justices Act, 1902, No. 52, 1970 except cases stated under section 131A of that Act; —
- (e) proceedings under section one hundred and thirty-four of the Justices Act, 1902;
- (f) proceedings on a stated case under section nine or section nineteen of the Arbitration Act, 1902;
- (g) proceedings under section forty-seven of the District Courts Act, 1912;
- (h) proceedings under section one hundred and forty-seven of the District Courts Act, 1912, concerning any act relating to the duties of an officer of a District Court;
- (i) proceedings under section forty-four or section forty-five of the Local Government Act, 1919;
- (j) appeals under section forty-six of the Local Government Act, 1919, from an order of a court of petty sessions; and
- (k) appeals under subsection eight of section fourteen of the Motor Vehicles (Third Party Insurance) Act, 1942.

50. Subject to sections forty-eight and forty-nine of this Act, every power of the Court or of the Judges collectively or of a Judge— Business of Divisions.

- (a) may be exercised by the Court in a Division; but
- (b) except as provided by section forty-four or section fifty-one of this Act, may not be exercised by the Court of Appeal.

51. (1) Where proceedings are commenced in a Division but ought, under this or any other Act or under the rules, to have been commenced in the Court of Appeal— Removal and remission.

- (a) the proceedings shall be for all purposes well commenced on the date of commencement in the Division,

Supreme Court.

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Division, notwithstanding that the proceedings ought to have been commenced in the Court of Appeal;

- (b) the Court of Appeal or the Court in the Division in which the proceedings are pending may, in either case on application by a party or of its own motion, order that the proceedings be removed into the Court of Appeal;
- (c) upon an order for removal being made under paragraph (b) of this subsection, the proceedings may be continued and disposed of in the Court of Appeal; and
- (d) subject to any order under paragraph (b) of this subsection, the proceedings may be continued and disposed of in a Division.

(2) Where proceedings are commenced in the Court of Appeal but ought, under this or any other Act or under the rules, to have been commenced in a Division—

- (a) the proceedings shall be for all purposes well commenced on the date of commencement in the Court of Appeal, notwithstanding that the proceedings ought to have been commenced in a Division;
- (b) the Court of Appeal may, on application by a party or of its own motion, order that the proceedings be remitted to a Division;
- (c) upon an order for remission being made under paragraph (b) of this subsection, the proceedings may be continued and disposed of in a Division: and
- (d) subject to any order under paragraph (b), the proceedings may be continued and disposed of in the Court of Appeal.

(3) Where, under this or any other Act or under the rules, but apart from subsections one and two of this section, proceedings of any description may be commenced either in

the

Supreme Court.

the Court of Appeal or in a Division, the Court of Appeal No. 52, 1970
may, on application by a party or of its own motion—

- (a) if proceedings of that description are commenced in the Court of Appeal, order that the proceedings be remitted to a Division; or
- (b) if proceedings of that description are commenced in a Division, order that the proceedings be removed into the Court of Appeal.

(4) Where any proceedings are pending before the Court of Appeal, the Court of Appeal may, on application by a party or of its own motion, order that the whole or any part of the proceedings be remitted to a Division for the determination by trial or otherwise of the proceedings or any question arising in the proceedings. Act No. 35, 1900, s. 211.

(5) Where proceedings by way of appeal or otherwise under any Act other than this Act or proceedings on a stated case, other than a case stated by the Court in a Division, are commenced in a Division—

- (a) the Court in the Division in which the proceedings are pending, if satisfied that special circumstances exist which render it desirable so to do, may, on application by a party or of its own motion, order that the proceedings be removed into the Court of Appeal; and
- (b) upon an order being made under paragraph (a) of this subsection, the proceedings may be continued and disposed of in the Court of Appeal.

(6) Proceedings may be removed into the Court of Appeal under this section notwithstanding that the determination in the proceedings is expressed by any Act to be final or without appeal.

(7) None of the foregoing subsections limits the operation of any of the others.

(8)

No. 52, 1970 (8) This section does not limit the provision which may be made by the rules for removal or remission of proceedings.

DIVISION 2.—*Distribution amongst Divisions.*

52. The business of the Court, other than the Court of Appeal, shall, for convenient despatch, be assigned in accordance with this Division.

Assignment of business. 53. (1) Subject to the rules, there shall be assigned to each Division all proceedings—

15 & 16
Geo. 5, c. 49,
s. 56.

- (a) which are required by or under any Act from time to time in force to be commenced, heard or determined in that Division or in the corresponding former jurisdiction; or
- (b) which would have been commenced in the corresponding former jurisdiction if this Act had not been passed.

(2) In subsection one of this section, the expression “corresponding former jurisdiction” means, in relation to any Division specified in the Second Column in the Table in paragraph (b) of subsection one of section eight of this Act, the former jurisdiction specified opposite that Division in the First Column of that Table.

(3) Without affecting the generality of subsection one of this section in relation to the Equity Division, there shall, subject to the rules, be assigned to the Equity Division all proceedings for the following purposes—

- (a) the administration of the estates of deceased persons;
- (b) the dissolution of partnerships or the taking of partnership or other accounts;
- (c) the redemption or foreclosure of mortgages;
- (d) the raising of portions or other charges on land;

(e)

Supreme Court.

- (e) the sale and distribution of the proceeds of property No. 52, 1970 which is subject to any lien or charge;
- (f) the execution of trusts, charitable or private;
- (g) the rectification or setting aside or cancellation of deeds or other written instruments;
- (h) the specific performance of contracts;
- (i) the partition or sale of land; or
- (j) the wardships of infants and the care of infants' estates.

(4) Subject to the rules, there shall be assigned to the Common Law Division all proceedings not assigned to another Division by subsection one or subsection three of this section.

54. (1) The Court in a Division, on application by a party or of its own motion, may, on terms, order that the whole or any part of any proceedings in that Division be transferred to another Division.

Transfer and retention.
15 & 16
Geo. 5, c. 49,
s. 59.

(2) Proceedings may be retained in a Division whether or not the proceedings are assigned to that Division by this Act or by the rules.

55. Any step taken, order made, judgment given or other thing done in any proceedings in any Division shall be as valid in every way as if taken, made, given or done in the Division to which the proceedings are assigned by this Act or by the rules.

Validity of proceedings in any Division.
15 & 16
Geo. 5, c. 49,
s. 58,
proviso (3).

DIVISION 3.—*Commercial List.*

56. (1) A commercial list shall be kept in the registry of the Common Law Division.

Commercial list.
Act No. 19,
1903, s. 4.

(2).

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Act No. 19,
1903, ss. 3,
4, 5.

(2) Where proceedings in the Common Law Division arise out of the ordinary transactions of merchants and traders, or relate to the construction of mercantile documents, export or import of merchandise, affreightment, insurance, banking, mercantile agency, or mercantile usages, the Court may, on application by any party, order that the proceedings be entered in the commercial list.

Act No.
19, 1903,
ss. 5, 6.

(3) Where the Court orders that any proceedings be entered in the commercial list, the Court may, at the same time or afterwards, give such directions as the Court thinks fit (whether or not consistent with the rules) for the speedy determination of the real questions between the parties.

PART IV.

LAW AND EQUITY.

Concurrent
administra-
tion.15 & 16 Geo.
5, c. 49,
s. 36.

57. The Court shall administer concurrently all rules of law, including rules of equity.

Equities of
plaintiff.15 & 16 Geo.
5, c. 49,
s. 37.

58. Where a plaintiff claims to be entitled to any equitable estate or right or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim whatsoever asserted by any defendant in the proceedings, or to any relief founded upon a legal right which formerly could only have been given by a court of equity, the Court shall give to the plaintiff the same relief as ought formerly to have been given by a court of equity in proceedings for the like purpose.

59.

Supreme Court.

59. Where a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract or against any right, title or claim asserted by any plaintiff in the proceedings, or alleges any ground of equitable defence to any claim of the plaintiff, the Court shall give to every equitable estate, right or ground of relief so claimed, and every equitable defence so alleged, the same effect by way of defence against the claim of the plaintiff as a court of equity ought formerly to have given if the like matters had been relied on by way of defence in any proceedings instituted for the like purpose.

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Equitable
defences.
15 & 16 Geo.
5, c. 49,
s. 38.

60. The Court shall recognise and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any proceedings, in the manner in which a court of equity would have recognised and taken notice of those matters in any proceedings instituted therein.

Incidental
equities.
15 & 16 Geo.
5, c. 49,
s. 40.

61. (1) The Court shall not restrain any proceedings in the Court by injunction.

Defence or
stay instead
of injunction.
15 & 16 Geo.
5, c. 49,
s. 41.

(2) Every matter of equity on which an injunction against the prosecution of proceedings in the Court might formerly have been obtained, whether on terms or conditions or not, may be relied on by way of defence in the proceedings.

(3) Where any person, whether a party to proceedings in the Court or not—

(a) would formerly have been entitled to apply to the Court to restrain the prosecution of the proceedings; or

(b)

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(b) is entitled to enforce by attachment or otherwise any judgment or order in contravention of which the proceedings are taken,

the Court may, on application by him, stay the proceedings either generally or to such extent as the Court thinks fit.

(4) This section does not affect the powers of the Court to stay proceedings otherwise than pursuant to this section.

Common
law and
statutory
rights and
duties.
15 & 16 Geo.
5, c. 49,
s. 42.

62. Subject to the provisions of this Act for giving effect to equitable rights and other matters of equity, the Court shall give effect to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by the common law or by any custom, or created by any statute.

Final deter-
mination.
15 & 16 Geo.
5, c. 4,
s. 42.

63. The Court shall grant, either absolutely or on terms, all such remedies as any party may appear to be entitled to in respect of any legal or equitable claim brought forward in the proceedings so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.

Equity to
prevail.
15 & 16,
Geo. 5,
c. 49, s. 44.

64. In all matters in which there was formerly or is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

PART V.

POWERS GENERALLY.

Order to
fulfil duty.
Act No. 21,
1899, s. 165.

65. (1) The Court may order any person to fulfil any duty in the fulfilment of which the person seeking the order is personally interested.

(2)

Supreme Court.

(2) The Court may, on terms, make an interlocutory order under subsection one of this section in any case where it appears to the Court just or convenient so to do.

No. 52, 1970
15 & 16
Geo. 5,
c. 49, s. 45.

(3) The powers of the Court under this section are in addition to any other powers of the Court.

66. (1) In proceedings for breach of contract or other injury, the powers of the Court shall extend to the restraint, at any stage of the proceedings, by interlocutory or other injunction, of—

Injunction.
Act No. 21,
1899, ss. 176,
178, 179.

- (a) the repetition or continuance of the breach of contract or other injury; and
- (b) the commission of any breach of contract or injury of a like kind or arising out of the same contract or relating to the same property or right.

(2) The Court may, at any stage of proceedings, by interlocutory or other injunction, restrain any threatened or apprehended waste or trespass.

Act No. 24,
1901, s. 16
(2).

(3) The Court may grant an injunction pursuant to subsection two of this section—

Act No. 24,
1901, s. 16
(2).

- (a) whether the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and
- (b) whether the estate claimed by any party is legal or equitable.

(4) The Court may, at any stage of proceedings, on terms, grant an interlocutory injunction in any case in which it appears to the Court to be just or convenient so to do.

Act No. 24,
1901, s. 16
(1).

No. 52, 1970
Receiver.
Act No. 24,
1901, s. 16
(1).

67. The Court may, at any stage of proceedings, on terms, appoint a receiver by interlocutory order in any case in which it appears to the Court to be just or convenient so to do.

Damages in
case for
equitable
relief.
Act No. 24,
1901, s. 9.

68. Where the Court has power—

- (a) to grant an injunction against the breach of any covenant, contract or agreement, or against the commission or continuance of any wrongful act; or
- (b) to order the specific performance of any covenant, contract or agreement,

the Court may award damages to the party injured either in addition to or in substitution for the injunction or specific performance.

Proceedings
in lieu of
writs.

69. (1) Where formerly—

- (a) the Court had jurisdiction to grant any relief or remedy or do any other thing by way of writ, whether of prohibition, mandamus, certiorari or of any other description; or
- (b) in any proceedings in the Court for any relief or remedy any writ might have issued out of the Court for the purpose of the commencement or conduct of the proceedings, or otherwise in relation to the proceedings, whether the writ might have issued pursuant to any rule or order of the Court or of course,

then, after the commencement of this Act—

- (c) the Court shall continue to have jurisdiction to grant that relief or remedy or to do that thing; but
- (d) shall not issue any such writ; and
- (e) shall grant that relief or remedy or do that thing by way of judgment or order under this Act and the rules; and

(f)

Supreme Court.

- (f) proceedings for that relief or remedy or for the doing of that thing shall be in accordance with this Act and the rules. No. 52, 1970

(2) Subject to the rules, this section does not apply to—

- (a) the writ of habeas corpus ad subjiciendum;
- (b) any writ of execution for the enforcement of a judgment or order of the Court; or
- (c) any writ in aid of any such writ of execution.

70. Where any person acts in an office in which he is not entitled to act and an information in the nature of quo warranto would, but for section twelve of this Act, lie against him, the Court may grant an injunction restraining him from so acting and may (if the case so requires) declare the office to be vacant. Ouster of office.
1 & 2 Geo. 6,
c. 63, s. 9
(2), (3).

71. (1) The Court may, on an application for a writ of habeas corpus, direct the entry of such judgment or make such order disposing of the proceedings as the nature of the case requires. Habeas corpus.
Act No. 21,
1899,
s. 254A (2).

(2) Where an application for a writ of habeas corpus has been made in respect of any person, no application for a writ of habeas corpus shall again be made in respect of that person on the same grounds, whether to the same Judge or to any other Judge or to the Court of Appeal, unless fresh evidence is adduced in support of the application. 8 & 9 Eliz. 2,
c. 65,
s. 14 (2).

(3) Subsection two of this section applies notwithstanding anything in any Act or rule of law. 8 & 9 Eliz. 2, c. 65,
s. 14 (2).

(4) In this section, "writ of habeas corpus" means a writ of habeas corpus ad subjiciendum.

No. 52, 1970 **72.** Where any prisoner or person is confined in any prison or place, under any sentence or under commitment for trial or otherwise, the Court may make orders for bringing him before any court, judge, justice or other judicature, or before any referee, arbitrator or umpire, or before any person authorised to take the examination of any witness (whether so authorised for the purpose of proceedings in the Court or for any other purpose), to be examined as a witness, and for returning him to confinement.

Production
of person
confined.
16 & 17
Vict., c. 30,
s. 9; Act No.
29, 1902,
s. 18 (2);
Act No. 30,
1969, s. 42.

**Relief
against
forfeiture.** **73.** In proceedings for a forfeiture for non-payment of rent, the Court may, on terms, give relief and, if the lessee is so relieved, he shall hold the demised premises according to the terms of the lease, and without the necessity of any new lease.

15 & 16
Geo. 5,
c. 49, s. 46.

Discharge
of lien or
security.
R.S.C.
(Rev.)
1965, O. 29,
r. 6.

74. Where, in any proceedings—

- (a) a party claims the recovery of specific property other than land, and
- (b) the party from whom recovery is sought claims to be entitled to retain the property by virtue of a lien or otherwise as security for money but does not otherwise dispute the title of the party claiming the recovery,

the Court may order—

- (c) that the party claiming the recovery be at liberty to pay into Court, to abide the event of the proceedings, the amount of money in respect of which the lien or other security is claimed and such further sum, if any, for interest and costs as the Court may direct; and
- (d) that, upon payment into Court, such judgment be entered for recovery of the property as the nature of the case may require.

75.

Supreme Court.

75. No 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 declarations of right whether any consequential relief is or could be claimed or not.

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Declaratory relief.

Act No. 24, 1901, s. 10; R.S.C. (Rev.) 1965, O. 15, r. 16.

76. (1) Subject to this Act and the rules and subject to any other Act—

Costs.

15 & 16 Geo. 5, c. 49, s. 50; Act No. 24, 1901, s. 20.

- (a) costs shall be in the discretion of the Court;
- (b) the Court shall have full power to determine by whom and to what extent costs are to be paid; and
- (c) the Court may order costs to be taxed or otherwise ascertained on a party and party basis or on any other basis.

(2) In subsection one of this section the expression “costs” includes—

15 & 16 Geo. 5, c. 49, s. 50; R.S.C. (Rev.) 1965, O. 62, r. 4 (2).

- (a) costs of or incidental to proceedings in the Court, including the administration of estates and trusts;
- (b) in the case of an appeal to the Court, the costs of or incidental to the proceedings giving rise to the appeal, as well as the costs of or incidental to the appeal; and
- (c) in the case of proceedings transferred to or removed into the Court, the costs of or incidental to the whole proceedings, both before and after the transfer or removal.

(3) The powers of the Court under this section apply in relation to a married woman, whether as party, next friend, guardian ad litem, relator or otherwise, and this section has effect notwithstanding anything in the Married Women’s Property Act, 1901.

PART

PART VI.

PROCEDURE.

DIVISION 1.—*General.*

Procedures
under other
Acts
superseded.

77. Where, under any Act in force immediately before the commencement of this Act by which power is vested in the Court or in any Judge of Appeal or in any Judge, provision is made concerning procedure, then, notwithstanding that provision, that power shall be exercised in accordance with this Act and the rules.

Claim by
defendant.
15 & 16
Geo. 5,
c. 49, s. 39.

78. (1) Subject to subsection three of this section, the Court may grant to the defendant in any proceedings (in this section called the first proceedings) all such relief against any person as the Court might grant against that person if he were a defendant in separate proceedings commenced by the defendant for that purpose.

(2) The relief which the Court may grant under this section shall include relief in respect of any equitable estate or right, or other matter of equity, or in respect of any legal estate, right or title claimed or asserted by the defendant.

(3) The Court may not, under this section, grant against a person not a plaintiff in the first proceedings relief not relating to or connected with the subject of the first proceedings.

(4) Subject to the rules, a person against whom relief is claimed under this section—

- (a) shall, if not a party to the first proceedings, become a party to the first proceedings; and
- (b) shall have the same rights in respect of his defence against the claim as if he were a defendant in separate proceedings commenced by the defendant for the purpose of that claim.

Supreme Court.

79. Where, if this Act had not been passed, any person No. 52, 1970 might have brought an action of ejectment, he may commence proceedings and claim judgment for possession of land and, subject to the rules, claim such other relief as the nature of the case requires.

Possession
of land.

80. Subject to any Act, the business of the Court may be conducted in the absence of the public—

Business
in the
absence
of the
public.

- (a) on the hearing of an interlocutory application, except while a witness is giving oral evidence;
- (b) where the presence of the public will defeat the ends of justice;
- (c) where the business concerns the guardianship, custody or maintenance of an infant;
- (d) where the proceedings are not before a jury and are formal or non-contentious;
- (e) where the business does not involve the appearance before the Court of any person;
- (f) in proceedings in the Equity, Probate or Protective Division, where the Court thinks fit; or
- (g) where the rules so provide.

81. (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 is, by reason of anything done or left undone, a failure to comply with the requirements of this Act or of the rules whether in respect of time, place, manner, form or content or in any other respect—

Irregularity.
R.S.C.
(Rev.)
1965, O. 2,
r. 1 (1),
(2).

- (a) the failure shall be treated as an irregularity and shall not nullify the proceedings, or any step taken in the proceedings, or any document, judgment or order in the proceedings; and
- (b) subject to subsections two and three of this section, the Court may, on terms, set aside wholly or in part the proceedings or any step taken in the proceedings

No. 52, 1970
—

or any document, judgment or order in the proceedings or exercise its powers under this Act and the rules to allow amendments and to make orders dealing with the proceedings generally.

R.S.C.
(Rev.)
1965, O. 2,
r. 1 (3).

(2) The Court shall not wholly set aside any proceedings or the originating process by which the proceedings were commenced on the ground that the proceedings were required by the rules to be commenced by an originating process other than the one employed.

R.S.C.
(Rev.)
1965, O. 2,
r. 2 (1).

(3) The Court shall not set aside any proceedings or any step taken in any proceedings or any document, judgment or order in any proceedings on the ground of a failure to which subsection one of this section applies on the application of any party unless the application is made within a reasonable time and before the applicant has taken any fresh step after becoming aware of the irregularity.

Informal
proof;
admissions.
Act No. 19,
1903, s. 6.

82. (1) The Court may at any stage of the proceedings—

- (a) dispense with the rules of evidence for proving any matter which is not bona fide in dispute, also with such rules as might cause expense and delay arising from any commission to take evidence or arising otherwise; and, without limiting the generality of this power, dispense with the proof of handwriting, documents, the identity of parties or parcels, or of authority; and
- (b) require any party to the proceedings, not being an infant or person of unsound mind, to make admissions with respect to any document or to any question of fact; and in case of refusal or neglect to make the admissions may, unless the Court is of opinion that the refusal or neglect is reasonable, order that the costs of proof occasioned by the refusal or neglect shall be paid by that party.

(2)

Supreme Court.

(2) An admission made under paragraph (b) of No. 52, 1970 subsection one of this section—

- (a) shall be for the purpose of the proceedings in which it is made and for no other purpose;
- (b) shall be subject to all just exceptions; and
- (c) may, with the leave of the Court, be amended or withdrawn.

(3) The Court may give leave for the purposes of paragraph (c) of subsection two of this section on terms.

83. (1) Any person authorised by this Act or the rules Examination on oath. or by any order of the Court to take the examination of any witness shall take the examination on the oath of the witness, Act No. 34, 1900, s. 9. to be administered by the person so authorised or by a Judge.

(2) Any witness who, upon an oath administered under subsection one of this section, wilfully and corruptly gives any false evidence shall be deemed to be guilty of perjury.

84. (1) If, on an application made by the Attorney-General under this section, the Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the Court or in any inferior court, and whether against the same person or against different persons, the Court may order that he shall not, without leave of the Court, institute any legal proceedings in any court and that any legal proceedings instituted by him in any court before the making of the order shall not be continued by him without leave of the Court. Vexatious litigant. 15 & 16 Geo. 5, c. 49, s. 51.

(2) Leave under subsection one of this section shall not be given unless the Court is satisfied that the proceedings are not an abuse of process and that there is prima facie ground for the proceedings.

(3)

Supreme Court.

No. 52, 1970

(3) If the person against whom an order is sought under subsection one of this section is unable on account of poverty to retain counsel, the Court shall assign counsel to him.

(4) The Court may from time to time rescind or vary any order made by it under subsection one of this section.

(5) This section does not affect the Court's inherent jurisdiction in cases of abuse of process.

DIVISION 2.—*Trial.*

Generally.

85. (1) Subject to sections eighty-six, eighty-seven and eighty-eight of this Act, proceedings in any Division shall be tried without a jury, unless the Court otherwise orders.

(2) The Court may order that any questions of fact in any proceedings be tried before any other questions of fact in the proceedings.

Common
law claim
—general.

86. (1) In proceedings on a common law claim, except proceedings to which either of sections eighty-seven and eighty-eight of this Act applies, issues of fact shall, if any party files a requisition for trial with a jury, be tried with a jury.

(2) The rules may prescribe the time within which a requisition must be filed for the purposes of subsection one of this section.

Common
law claim
—running
down cases.

87. (1) In any proceedings to which this section applies, the Court may, on the application of any party, and shall, on the application of all parties, order that the proceedings be tried with a jury.

(2)

Supreme Court.

(2) Subject to subsection four of this section, this section applies to proceedings on a common law claim in which—

No. 52, 1970
Act No. 32,
1965, s. 4
(1).

(a) damages are claimed in respect of—

- (i) the death of or bodily injury to any person and the claim is based upon any act, neglect or default involving the use of a motor vehicle where that death or bodily injury, or an injury leading to that death, or that act, neglect or default, occurred on a public street;
- (ii) damage to property caused by or arising out of the use of a motor vehicle; or
- (iii) any other matter in which the liability incurred is caused by or arises out of the use of a motor vehicle; or

(b) contribution is claimed under Part III of the Law Reform (Miscellaneous Provisions) Act, 1946, in respect of damages of the nature referred to in paragraph (a) of this subsection.

(3) In subsection two of this section—

“motor vehicle” means any motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include any vehicle used on a railway or tramway.

Act No. 15,
1942, s. 5
(1).

“public street” means any street, road, lane, thoroughfare, footpath, or place open to or used by the public, and includes any place at the time open to or used by the public on the payment of money or otherwise.

Act No. 5,
1909, s. 2.

(4) This section does not apply to proceedings for damages in respect of the death of or bodily injury to any person where the proceedings are based upon an act, neglect

Act No. 32,
1965, s. 5
(1).

or

No. 52, 1970 or default of the defendant for which, if proved, he would, as the employer of that person and not otherwise, incur liability to the plaintiff.

Common
law claim
—fraud,
defamation,
etc.

23 & 24
Geo. 5,
c. 36,
s. 6 (1).

88. Proceedings on a common law claim in which there are issues of fact—

- (a) on a charge of fraud against a party; or
- (b) on a claim in respect of defamation, malicious prosecution, false imprisonment, seduction or breach of promise of marriage,

shall be tried with a jury.

Common
law claim
—special
exceptions.

23 & 24
Geo. 5,
c. 36,
s. 6 (1);
Act No. 49,
1900, s. 3
(1);
Act No. 19,
1903, s. 6
(g).

89. (1) In any proceedings on a common law claim the Court may order, notwithstanding sections eighty-six and eighty-eight of this Act, that all or any issues of fact be tried without a jury where—

- (a) any prolonged examination of documents or scientific or local investigation is required and cannot conveniently be made with a jury;
- (b) the proceedings are entered in the commercial list; or
- (c) all parties consent to the order.

(2) Notwithstanding sections eighty-five, eighty-six, eighty-seven and eighty-eight of this Act, in any proceedings on a common law claim, issues of fact on a defence arising under—

- (a) subsection five of section sixty-three of the Workers' Compensation Act, 1926; or
- (b) paragraph (c) of subsection one of section sixty-four of that Act,

shall be tried without a jury.

Special
verdict.

90. It shall be the duty of a jury to answer any question of fact that may be left to the jury by the presiding Judge at the trial.

DIVISION

*Supreme Court.*DIVISION 3.—*Judgments and Orders.*

No. 52, 1970

91. (1) The Court shall, at or after trial or otherwise as the nature of the case requires, direct judgment to be entered as it thinks fit, and judgment shall thereupon be entered accordingly in the registry. Entry of judgment.
R.S.C. 1883,
O. 36, r. 39.

(2) Where there is a claim by a plaintiff and a claim under section seventy-eight of this Act by a defendant, the Court may direct judgment to be entered for the balance only of the sums of money awarded on the respective claims or it may direct that separate judgments be entered in respect of each claim; and the Court may order judgments to be entered similarly where several claims arise between plaintiffs, defendants and any other parties.

92. Judgment for possession of land shall take the place of the judgment for the claimant in ejectment given under the practice of the Court existing immediately before the commencement of this Act. Possession
of land.

93. (1) In proceedings for the detention of goods judgment may be given for delivery of the goods, without giving the defendant the option of retaining the goods upon paying the value assessed, if any. Detention
of goods.
17 & 18 Vic.,
c. 125, s. 78.

(2) In proceedings for the detention of goods, where judgment has been given for delivery of goods or payment of the value assessed, the Court may make an order for delivery of the goods, without giving the defendant the option of retaining the goods upon paying the value assessed.

(3) Subsections one and two of this section apply whether or not the value of the goods has been assessed.

94. (1) In any proceedings for the recovery of any money (including any debt or damages or the value of any goods), the Court may order that there shall be included, in the sum for which judgment is given, interest at such rate as it thinks fit on the whole or any part of the money for the whole or any part of the period between the date when the cause of action arose and the date when the judgment takes effect. Interest
up to
judgment.
24 & 25 Geo.
5, c. 41, s. 3.

(2)

No. 52, 1970

(2) This section does not—

- (a) authorise the giving of interest upon interest;
- (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
- (c) affect the damages recoverable for the dishonour of a bill of exchange.

Interest on debt under judgment or order.

Act No. 21, 1899, s. 143 (1), (3).

Act No. 21, 1899, s. 143A (a).

95. (1) Where judgment is given or an order is made for the payment of money, interest shall, unless the Court otherwise orders, be payable at the prescribed rate from the date when the judgment or order takes effect on so much of the money as is from time to time unpaid.

(2) Notwithstanding subsection one of this section, where, in proceedings on a common law claim, the Court directs the entry of judgment for damages, and the damages are paid within twenty-one days after the date of the direction, interest on the judgment debt shall not be payable under subsection one of this section unless the Court otherwise orders.

Act No. 21, 1899, s. 143A (b).

(3) Notwithstanding subsection one of this section, where, in proceedings for damages on a common law claim, the Court makes an order for the payment of costs and the costs are paid within twenty-one days after ascertainment of the amount of the costs by taxation or otherwise, interest on the costs shall not be payable under subsection one of this section unless the Court otherwise orders.

Effect of judgment or order.

Act No. 8, 1901, s. 3 (1).

Act No. 8, 1901, s. 3 (1), (4).

96. (1) Any judgment or order of the Court for the payment of money shall have the effect of a judgment at law.

(2) Subject to sections ninety-eight and ninety-nine of this Act and subject to the rules, a person to whom money is payable under a judgment or order of the Court—

- (a) may have execution on the judgment or order; and
- (b) shall be entitled to the remedies given to a judgment creditor by the Judgment Creditors' Remedies Act. 1901.

(3)

Supreme Court.

(3) Subject to the rules, the effect of a judgment No. 52, 1970 for the possession of land shall be the same as the effect of a judgment for the claimant in ejectment immediately before the commencement of this Act. Act No. 21, 1899, s. 249.

97. (1) In this section, "liability" includes a liability in contract, a liability in tort and a liability under a statute. Joint liability. Model Joint Obligations Act (U.S.A.) s. 1.

(2) Where two or more persons have a joint liability and, in proceedings in the Court, judgment on the liability is given against one or more but not all of them—

- (a) the liability of the other or others of them shall not be discharged by the judgment or by any step taken for the enforcement of the judgment; Model Joint Obligations Act (U.S.A.) s. 2.
- (b) after the judgment takes effect, those of them against whom the judgment is given and the other or others of them shall, as between those of them against whom the judgment is given on the one hand and the other or others of them on the other hand, be liable severally but not jointly;
- (c) if there are two or more such persons against whom the judgment is not given, they shall, after the judgment takes effect, remain jointly liable amongst themselves; and
- (d) if the judgment is satisfied wholly or in part by payment or by recovery under execution, the liability of the persons against whom the judgment is not given shall be satisfied in the amount of the payment or recovery.

(3) This section does not affect any right of any person to contribution or indemnity in respect of the satisfaction by him wholly or in part of a liability which he has jointly or severally or jointly and severally with one or more other persons.

(4)

No. 52, 1970

(4) This section does not apply to a judgment to which paragraph (a) of subsection one of section five of the Law Reform (Miscellaneous Provisions) Act, 1946, applies.

DIVISION 4.—*Enforcement of Judgments and Orders.*

Attach-
ment of the
person and
committal.

98. A judgment or order of the Court for the payment of money shall not be enforceable by attachment of the person or committal but this section does not affect the power of the Court to commit for contempt of court.

Attachment
of wage or
salary.
Act No. 21,
1899, s. 181
(3); Act No.
23, 1912,
s. 117 (2).

99. The wage or salary of a servant or employee payable for any period shall not be attached or made liable in the enforcement against the servant or employee of a judgment or order except to the extent of the amount (if any) remaining after deducting from the wage or salary an amount calculated for the same period at a rate eight dollars per week less than the basic wage for the time being in force within the meaning of the Industrial Arbitration Act, 1940, being the basic wage appropriate for the servant or employee.

Appointment
to execute
instrument.
15 & 16
Geo. 5, c. 49,
s. 47.

100. Where any person does not comply with a judgment or order directing him to execute any conveyance, contract or other document, or to indorse any negotiable instrument, the Court may, on terms, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be indorsed by such person as the Court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or indorsed shall operate and be for all purposes available as if it had been executed or indorsed by the person originally directed to execute or indorse it.

Supreme Court.

PART VII.

No. 52, 1970

APPEAL TO THE COURT OF APPEAL.

101. (1) Subject to this and any other Act and subject to the rules, an appeal shall lie to the Court of Appeal from— Appeal in proceedings in the Court generally. 15 & 16 Geo. 5, c. 49, s. 31.

- (a) every judgment or order of the Court in a Division; and
- (b) without limiting the generality of paragraph (a) of this subsection—
 - (i) every opinion, decision, direction or determination of the Court in a Division on a stated case; and
 - (ii) every determination of the Court in a Division in proceedings remitted under subsection four of section fifty-one of this Act.

(2) No appeal shall lie—

- (a) from an order in proceedings in the Court directing an amendment of a judgment or order correcting a clerical mistake therein or an error arising from an accidental slip or omission;
- (b) from a decision in proceedings in the Court where it is agreed between the parties that the decision is to be final; or
- (c) from an order that proceedings be entered in the commercial list.

(3) Subject to subsection two of this section, no appeal shall lie, except by leave of the Court of Appeal—

- (a) from a judgment given or order made in proceedings in the Court with the consent of the parties or as to costs only which are in the discretion of the Court;
- (b) from an order made in proceedings in the Court on an application for review of taxation of costs;

(c)

Supreme Court.

No. 52, 1970

- (c) from an interlocutory judgment or order in proceedings in the Court;
- (d) from a judgment or order in proceedings in the Court on an interpleader issue decided in a summary way pursuant to the rules;
- (e) from an order refusing leave for the institution or continuance of legal proceedings by a person who is the subject of an order for the time being in force under section eighty-four of this Act; or
- (f) from an opinion, decision, direction or determination of the Court in a Division pursuant to section one hundred and six or section one hundred and twelve of the Justices Act, 1902.

cf. Act No.
21, 1899,
s. 254B.

(4) Subsection three of this section does not apply to a judgment given or order made on an application for a writ of habeas corpus ad subjiciendum or to an order for the committal or arrest of any person.

Appeal after
jury trial.
cf. 15 & 16
Geo. 5, c. 49,
s. 30 (1).

102. Where, in any proceedings in the Court, there is a trial of the proceedings or of any issue in the proceedings with a jury, an application for—

- (a) the setting aside of a verdict or judgment;
- (b) a new trial; or
- (c) the alteration of a verdict by increasing or reducing any amount of debt, damages or other money,

shall be by appeal to the Court of Appeal.

Appeal from
separate
decision.

103. An appeal shall, by leave of the Court of Appeal, lie to the Court of Appeal from a decision in proceedings in the Court of any question or issue ordered to be decided separately from any other question or issue.

Supreme Court.

104. Subject to the rules, an appeal shall not lie to the Court of Appeal from any decision, judgment, order, opinion, direction or determination of the Court in a Division constituted by a master, registrar or other officer.

No. 52, 1970
Exclusion
of appeal
from
master, etc.

105. Sections one hundred and six and one hundred and seven of this Act apply to an appeal to the Court of Appeal where the appellant seeks a new trial or the setting aside of a verdict, finding, assessment or judgment—

Application
of sections
106, 107.

- (a) after a trial with a jury in proceedings in the Court;
or
- (b) after a trial with or without a jury in proceedings in a District Court.

106. (1) Where, in an appeal to which this section applies, it appears to the Court of Appeal that, because of matters which have occurred since the trial, the amount of damages awarded at the trial is manifestly too high or too low, the Court of Appeal may set aside the verdict, finding, assessment or judgment and may order a new trial on the issue of damages.

New trial
because of
subsequent
matters.

(2) The Court of Appeal may, if satisfied that special circumstances exist which render it desirable so to do, receive evidence as to matters which have occurred since the trial and which are relevant to the exercise by the Court of Appeal of its powers under subsection one of this section and may make findings of fact as to what has occurred since the trial.

(3) The findings of fact made under subsection two of this section shall not be binding on the parties except for the purposes of orders under this section or under section one hundred and seven of this Act and for the purposes of any judgment directed to be entered under section one hundred and seven of this Act.

(4)

No. 52, 1970

(4) The powers of the Court of Appeal under this section are in addition to its other powers to set aside a verdict, finding, assessment or judgment or to order a new trial on an issue of damages or otherwise.

Substituted
verdict.

Act No.
21, 1899,
s. 160A;
R.S.C. (Rev.)
1965, O. 59,
r. 11.

107. Where, in an appeal to which this section applies—

- (a) the Court of Appeal would, but for this section set aside the verdict, finding, assessment or judgment and order a new trial on an issue of the amount of debt or damages or of the value of goods;
- (b) the Court of Appeal is satisfied that—
 - (i) without seeing or hearing the plaintiff or defendant or other witnesses; or
 - (ii) without seeing or hearing the plaintiff or defendant or other witnesses further than it has seen or heard them for the purpose of receiving evidence under section one hundred and six of this Act,

it is fully able to assess the amount of debt or damages or the value of the goods on perusal of the evidence contained in the documents before it and on the facts (if any) admitted and on the facts (if any) found by it under section one hundred and six of this Act; and

- (c) (i) the parties consent to the exercise of the powers given by this section;
- (ii) it appears to the Court of Appeal to be desirable to exercise the powers for the purpose of avoiding a multiplicity of trials; or
- (iii) it appears to the Court of Appeal that, as a result of an error of law on the part of the trial judge or (where there has been a trial with a jury) a manifest error on the part of
the

Supreme Court.

the jury, some item of debt or damages or valuation has been wrongly included in or excluded from the assessment, No. 52, 1970

the Court of Appeal may draw inferences and make findings of fact, assess the amount of debt or damages or the value of goods in such sum as in the opinion of the Court of Appeal the debt or damages or value ought to be assessed if a new trial were had forthwith and substitute that sum for the sum awarded in the Court below and direct the entry of such judgment and make such order as the nature of the case requires.

108. (1) This section applies to an appeal to the Court of Appeal in proceedings in the Court in which there has been a trial with a jury. Nonsuit or
verdict
after jury
trial.

Act No.
49, 1900,
s. 7 (1).

(2) Where it appears to the Court of Appeal that on the evidence given at the trial a verdict for the plaintiff could not be supported and that, pursuant to any provision of the rules, an order ought to have been made for the dismissal of the proceedings either wholly or so far as concerns any cause of action in the proceedings, the Court of Appeal may make an order of dismissal accordingly.

(3) Where it appears to the Court of Appeal that upon the evidence the plaintiff or the defendant is, as a matter of law, entitled to a verdict in the proceedings or on any cause of action, issue or claim for relief in the proceedings, the Court of Appeal may direct a verdict and the entry of judgment accordingly.

109. (1) This section does not apply to any appeal to which sections one hundred and six and one hundred and seven of this Act apply. Powers
generally.

Act No. 49,
1900, s. 5;
Act No. 24,
1901, ss. 82,
84;
Act No. 32,
1965, s. 5.

(2)

No. 52, 1970

(2) Subject to subsection one of this section, each of the provisions of subsection three of this section applies to any appeal to the Court of Appeal from a decision, judgment, order, opinion, direction or determination of the Court in a Division and, except insofar as the application of the provision would be inconsistent with any Act, applies to any other appeal to the Court of Appeal.

(3) Subject to subsections one and two of this section, in an appeal to the Court of Appeal—

- (a) the appeal shall be by way of re-hearing;
- (b) the Court of Appeal shall have all the powers and duties as to amendment or otherwise of the court, judge, justice or person whose decision is under appeal, including power to draw inferences and make findings of fact and to assess damages and other money sums;
- (c) the Court of Appeal may receive further evidence, but in the case of an appeal from a judgment after a trial or hearing on the merits, the Court of Appeal shall not receive further evidence, other than evidence as to matters which have occurred after the date of the trial or hearing, except on special grounds; and
- (d) the Court of Appeal may make any finding or assessment, make any direction for entry of judgment, or make any order which ought to have been made or which the nature of the case may require.

(4) Subsection three of this section does not apply to proceedings in the Court of Appeal on a stated case.

Disquali-
fication of
Judge of
Appeal.
Act No. 35,
1900, s. 18
(1).

110. (1) A Judge of Appeal, or a Judge appointed or nominated under section thirty-six of this Act to act as an additional Judge of Appeal, shall not sit on the hearing of an appeal from a judgment given or an order made by himself.

(2) Subsection one of this section does not apply to a judgment given or order made pro forma by consent of the parties.

PART

Supreme Court.

PART VIII.

No. 52, 1970

OFFICERS.

DIVISION 1.—*Masters.*

111. (1) The Governor may appoint one or more masters. Appointment.

(2) The Governor may appoint one or more acting masters.

(3) Each person so appointed shall be a barrister or solicitor of five years' standing. Act No. 24, 1901, s. 71.

(4) For the purposes of subsection three of this section "barrister" and "solicitor" include, respectively, a barrister or solicitor of less than five years' standing where during a continuous period of not less than five years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.

(5) A registrar may, if qualified in accordance with subsections three and four of this section, be appointed an acting master and, if so appointed, may retain his office as registrar.

112. The appointment of a person to the office of master or acting master shall, subject to this Division, be on such terms and conditions (as to salary pension or otherwise) as may be specified in the instrument of his appointment or as may be agreed by the Governor and the officer. Terms of appointment.

113. (1) Subject to subsection two of this section, the Public Service Act, 1902, shall not apply to a master. Public Service Act, 1902.

(2)

No. 52, 1970

(2) Where the Public Service Act, 1902, applies to a person immediately before his appointment as master, he shall be entitled to receive any deferred or extended leave and any privileges as if he had remained an officer within the meaning of that Act.

(3) The Public Service Act, 1902, shall not apply to an acting master unless that Act applies to him immediately before his appointment as acting master.

Super-annuation Act, 1916.

114. (1) The Superannuation Act, 1916, shall not apply to a master.

(2) Where a master is at the time of his appointment as master a contributor or pensioner under the Superannuation Act, 1916—

- (a) there shall be paid to him out of the State Superannuation Fund a sum equal to the contributions paid by him to the fund after deducting the sum of any payments to him of pension under that Act, but without interest; and
- (b) he shall not, nor shall any widow or child of his, be entitled to receive any other payment or pension under that Act.

(3) The Superannuation Act, 1916, shall not apply to an acting master unless that Act applies to him immediately before his appointment as acting master.

Resignation, removal and tenure.

115. (1) A master or an acting master may—

- (a) resign his office by writing under his hand; or
- (b) be removed from his office by the Governor on account of misbehaviour or inability to perform the duties of his office.

(2) A master shall, subject to subsection one of this section, hold office during good behaviour, but shall retire on the day on which he attains the age of seventy years.

(3)

Supreme Court.

(3) An acting master shall, subject to subsection one **No. 52, 1970** of this section, hold office for such term (not extending beyond the day on which he attains the age of seventy years) as the Governor may specify in the instrument of his appointment.

116. The Governor may—

Assignment
to Divisions.

- (a) assign a master or acting master to any one or more Divisions; and
- (b) revoke an assignment of a master or acting master to any Division.

117. Where two or more masters are assigned to any **Seniority.** Division, they shall, subject to the terms of any instrument of assignment, have seniority amongst themselves in accordance with the order of their assignments to that Division.

118. (1) A master or acting master assigned to any **Powers.** Division may exercise such powers, functions and jurisdiction of the Court as may be conferred upon or granted or delegated to a master in that Division by or under this or any other Act.

(2) A master or acting master assigned to any Division may, at the direction of the Chief Justice, exercise such powers, functions and jurisdiction of the Court as may be conferred upon or granted or delegated to a master in any other Division by or under this or any other Act.

(3) A master or acting master shall, for the purpose of the exercise of the powers, functions and jurisdiction mentioned in subsections one and two of this section, constitute the Court.

DIVISION

No. 52, 1970

DIVISION 2.—Registrars and other Officers.Offices of
registrars.**119.** (1) There shall be a registrar of the Court of Appeal and of each Division.

(2) The registrar of the Common Law Division shall be called the Prothonotary.

Appoint-
ment.**120.** The Governor may, under and subject to the Public Service Act, 1902—

- (a) appoint persons to fill the offices mentioned in section one hundred and nineteen of this Act;
- (b) appoint persons to act temporarily in any of those offices;
- (c) appoint persons to be deputies or assistants to any of those officers; and
- (d) appoint such other officers as may be necessary for the carrying out of the provisions of this Act and the rules and of any other Act, regulations or rules relating to the Court.

Powers.**121.** (1) A registrar or other officer (including a taxing officer) may exercise such powers, functions and jurisdiction of the Court as may be conferred upon or granted or delegated to him by or under this or any other Act.

(2) A registrar or other officer (including a taxing officer) shall, for the purpose of the exercise of the powers, functions and jurisdiction mentioned in subsection one of this section, constitute the Court.

Supreme Court.

PART IX.

No. 52, 1970

RULES OF COURT.

122. (1) The rules in the Fourth Schedule to this Act shall come into operation on the commencement of this Act, but subject to and together with rules made by the Rule Committee. Rules in the Fourth Schedule.

(2) Upon the expiry of six months after the commencement of this Act, or on such earlier date as may be appointed by the Governor and notified by proclamation published in the Gazette, the Fourth Schedule to this Act shall, by force of this subsection, be repealed.

(3) On and after the repeal to be effected by subsection two of this section the rules in the Fourth Schedule to this Act shall have effect as rules made by the Rule Committee, but subject to and together with rules made by the Rule Committee.

123. (1) Rules may be made under this Act by a Rule Committee consisting of— Rule Committee.
15 & 16
Geo. 5,
c. 49, s. 99
(4).

- (a) the Chief Justice;
- (b) the President of the Court of Appeal or a Judge of Appeal appointed on the nomination of the President of the Court of Appeal;
- (c) the Chief Judge in Equity or a Judge appointed on the nomination of the Chief Judge in Equity;
- (d) three other appointed Judges (one of whom shall be a Judge of Appeal); and
- (e) an appointed practising barrister and an appointed practising solicitor.

(2) In this section, "appointed" means appointed to the Rule Committee by the Chief Justice in writing under his hand.

(3)

Supreme Court.

No. 52, 1970

(3) A person appointed shall hold office for the time specified in the appointment but may resign by writing under his hand addressed to the Chief Justice.

(4) At a meeting of the Rule Committee the chairman shall be—

- (a) the Chief Justice, if he is present;
- (b) if the Chief Justice is not present but the President of the Court of Appeal is a member of the Rule Committee and is present, the President of the Court of Appeal; or
- (c) in the absence of the Chief Justice and the President of the Court of Appeal, one of the members present, chosen by the meeting.

(5) In case of equality of voting, the chairman shall have a casting as well as a deliberative vote.

(6) Any four members of the Rule Committee shall constitute a quorum.

(7) There shall be a secretary of the Rule Committee who shall be a person approved by the Chief Justice.

Rule-making
power.
15 & 16
Geo. 5,
c. 49, s. 99.

124. (1) Subject to subsection three of this section any of the rules contained in the Fourth Schedule to this Act or any rules for the time being in force may be altered or added to or rescinded, and any further or additional rules may be made, by the Rule Committee for the purpose of carrying this Act into effect and, without limiting the generality of the foregoing, for the following purposes—

- (a) for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Court in all proceedings in, or

with

Supreme Court.

with respect to which, the Court has for the time being jurisdiction (including the procedure and practice to be followed in the offices of the Court), and any matters incidental to, or relating to, any such procedure or practice, including the manner and time of making any applications which under this or any other Act are to be made to the Court; No. 52, 1970

- (b) for regulating and prescribing the form and contents of any case stated to the Court by or from any court or person and the time within which and the manner in which proceedings thereon are to be instituted in the Court and the practice and procedure thereafter to be followed in the Court and the notification of the decision of the Court;
- (c) for regulating and prescribing the practice and procedure to be followed in connection with the institution of any appeal from any inferior court or from any person to the Court, including the time within which, and the manner in which, the appeal is to be instituted, and the practice and procedure thereafter to be followed in the Court;
- (d) for regulating and prescribing the practice and procedure to be followed in connection with the transfer of any proceedings from any inferior court to the Court or from the Court to any inferior court, and, where proceedings are transferred to the Court, the practice and procedure thereafter to be followed in the Court;
- (e) for regulating and prescribing any matter which, under any Act, may be regulated or prescribed by rules of the Court or by rules made by the Judges or any Judges or the Chief Judge in Equity or any other Judge identified by description of his office (other than the Judge of the Land and Valuation Court) or the Judges of Appeal or any Judges of Appeal;

(f)

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—

- (f) for altering, adding to or rescinding any rules in force immediately before the commencement of this Act, which regulate or prescribe any matter which, under any Act, might, immediately before the commencement of this Act, be regulated or prescribed by rules of the Court or by rules made by the Judges or any Judges or the Chief Judge in Equity or any other Judge identified by description of his office (other than the Judge of the Land and Valuation Court) or the Judges of Appeal or any Judges of Appeal;
- (g) for regulating the sittings and order of business of the Court and for regulating the vacations and holidays to be observed by the Court and in the offices of the Court and for the hearing of proceedings during vacation;
- (h) for prescribing what powers, functions and jurisdiction of the Court may be exercised by any of the masters, acting masters, registrars and other officers of the Court;

Act No. 6,
1904, s. 3.

- (i) for authorising and regulating the issue at places distant more than thirty miles from the General Post Office, Sydney, of subpoenas for the purpose of proceedings in the Court and the filing of originating process at places so distant;
- (j) for regulating any matters relating to the costs of proceedings in the Court;
- (k) for regulating any matters relating to the taxation or other ascertainment of costs, under the inherent jurisdiction of the Court or under any Act;
- (l) for prescribing means for, and the practice and procedure to be followed in, the enforcement and execution of judgments and orders;
- (m) for regulating the means by which particular facts may be proved, and the mode in which evidence may be given (including the administration of oaths to and the taking of the evidence of witnesses in or
out

Supreme Court.

out of New South Wales), in any proceedings, or on any application in connection with, or at any stage of, any proceedings; No. 52, 1970

- (n) for prescribing the cases in which security may be required, and the form of such security, and the manner in which, and the person to whom, it is to be given;
- (o) for regulating and prescribing any matter concerning or in relation to which provision is made by the rules in the Fourth Schedule to this Act, notwithstanding that that Schedule may have been repealed by subsection two of section one hundred and twenty-two of this Act;
- (p) for fixing the fees and percentages (other than fees within the application of section fifty-four of the Mental Health Act, 1958) to be taken in the Court, in the registry or in any office (other than the Sheriff's office) which is connected with the Court or in which any business connected with the Court is conducted or by any officer paid wholly or partly out of public moneys who is attached to the Court;
- (q) for fixing the scale of fees to be chargeable in the Sheriff's office in respect of all matters pending at any time in the Court; Act No. 16,
1900, s. 9
- (r) for regulating the payment or transfer into or out of Court and, subject to the consent of the Treasurer, the custody, management and investment of moneys, securities and effects;
- (s) for prescribing and regulating the duties of the masters, registrars and other officers of the Court in relation to or for the purpose of any proceedings; and
- (t) for repealing or modifying any provisions of any Act in force immediately before the commencement of this Act which relate to matters with respect to which rules may be made under this section.

(2)

No. 52, 1970

(2) In paragraph (i) of subsection one of this section, "subpoena" includes any order or process requiring the attendance of any person to testify or requiring the attendance of any person and production by him of any document or thing.

(3) The Rule Committee shall not make any rule—

(a) affecting the practice or procedure of the Court of Appeal; or

(b) affecting any of the provisions of Division One of Part III of this Act or Part VII of this Act,

except with the concurrence of the Chief Justice and the President of the Court of Appeal.

Act No. 35,
1900, s. 39A
(1) (a).

(4) The rules may authorise a master to punish contempt in the face of the Court or in the hearing of the Court where the Court is constituted by that master and to punish the breach of an undertaking given to the Court constituted by that master, but otherwise the rules shall not authorise a master, registrar or other officer to make an order for the committal, attachment or arrest of any person.

Act No. 4,
1897, s. 6.

(5) Where the rules in the Fourth Schedule to this Act or any rule made under this Act rescinds a rule by which a previous rule was rescinded, then, unless the contrary intention appears, the previous rule shall not be revived.

52 & 53
Vic., c. 63,
s. 38 (2)
(a).

(6) Where the rules in the Fourth Schedule to this Act or any rule made under this Act rescinds or amends a previous rule, then, unless the contrary intention appears, the rescission or amendment shall not revive anything not in force or existing immediately before the rescission or amendment takes effect.

(7) After the commencement of this Act no power by any Act conferred upon the Judges or any Judge or the Chief Judge in Equity or any other Judge identified by description of his office (other than the Judge of the Land and

Valuation

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Valuation Court) or the Judges of Appeal or any Judges of Appeal to make rules as to any matter shall be exercised otherwise than by the Rule Committee making in respect of that matter rules under and in accordance with this Act. No. 52, 1970

(8) Rules made by the Rule Committee under this Act shall, so far as inconsistent with rules made (whether before or after the commencement of this Act) under any other Act, prevail over the latter rules while the inconsistency exists.

125. (1) A rule made under this Act shall—

Gazetted
and Parlia-
mentary
review.

- (a) be published in the Gazette;
- (b) take effect on and from the date of publication or a later date to be specified in the rule; and
- (c) be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.

(2) If either House of Parliament passes a resolution, of which notice has been given at any time within fifteen sitting days of that House after a rule referred to in subsection one of this section has been laid before it, disallowing the rule or any part thereof, the rule or part thereupon ceases to have effect.

(3) For the purposes of subsections one and two of this section, sitting days shall be counted, whether or not they occur during the same session.

126. The rules in the Fourth Schedule to this Act, and rules made by the Rule Committee, shall, both before and after the repeal to be effected by subsection two of section one hundred and twenty-two of this Act, have effect notwithstanding anything in any Act in force immediately before the passing of this Act. Rules to
prevail
over Acts.

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Sec. 5

FIRST SCHEDULE.

REPEAL OF ACTS.

| Reference to Act. | Subject. | Extent of Repeal. |
|-------------------|--|---|
| No. 21, 1899 .. | Common Law Procedure | The unrepealed portion. |
| No. 35, 1900 .. | Supreme Court and Circuit Courts. | The unrepealed portion. |
| No. 49, 1900 .. | Supreme Court Procedure | The unrepealed portion. |
| No. 7, 1901 .. | Interpleader | The whole. |
| No. 24, 1901 .. | Equity | The unrepealed portion. |
| No. 42, 1901 .. | Negotiable Instruments Procedure. | The whole. |
| No. 44, 1901 .. | Prohibition and Mandamus. | The whole. |
| No. 24, 1902 .. | Arrest on Mesne Process | The unrepealed portion. |
| No. 34, 1902 .. | General Legal Procedure | The unrepealed portion. |
| No. 19, 1903 .. | Commercial Causes .. | The whole. |
| No. 6, 1904 .. | Legal Process Facilitation | The whole. |
| No. 14, 1906 .. | Administration Amending | Section 2. |
| No. 27, 1906 .. | Judges' Pensions Amendment. | The unrepealed portion. |
| No. 9, 1912 .. | Supreme Court and Circuit Courts (Amendment). | The unrepealed portion. |
| No. 19, 1913 .. | Public Trustee | Paragraph (b) of section 60. |
| No. 3, 1921 .. | Real Property (Amendment). | Subsections (1) and (2) of section 10. |
| No. 15, 1925 .. | Administration of Justice | Subsection 2 of section 2. |
| No. 9, 1927 .. | Supreme Court and Circuit Courts (Amendment). | The whole. |
| No. 7, 1928 .. | Supreme Court and District Courts (Judges). | Sections 2 and 3. |
| No. 49, 1930 .. | Landlord and Tenant (Distress Abolition). | Paragraph (c) of section 3. |
| No. 49, 1932 .. | Wills, Probate and Administration (Amendment). | Sections 3 and 4. |
| No. 14, 1935 .. | Supreme Court and Circuit Courts (Prothonotary) Amendment. | Sections 2 and 3. |
| No. 35, 1937 .. | Statute Law Revision .. | So much of Second Schedule as amends Acts No. 21, 1899, No. 7, 1901 and No. 24, 1901. |
| No. 30, 1938 .. | Conveyancing, Trustee and Probate (Amendment). | Paragraphs (i) and (k) of section 6. |
| No. 44, 1940 .. | Attachment of Wages Limitation. | Subsection (1) of section 2. |
| No. 37, 1941 .. | Supreme Court and Circuit Courts (Amendment). | Subsection (2) of section 1 and section 2. |
| No. 41, 1947 .. | Jury (Amendment) .. | Subsections (1) and (2) of section 8. |

FIRST

*Supreme Court.***FIRST SCHEDULE—continued.****No. 52, 1970**

| Reference to Act. | Subject. | Extent of Repeal. |
|-------------------|--|---|
| No. 22, 1948 .. | Supreme Court and Circuit Courts (Prothonotary) Amendment. | Subsection (1) of section 2 and section 3. |
| No. 18, 1954 .. | Supreme Court, Industrial Arbitration and Workers' Compensation (Amendment). | Subsection (2) of section 1 and section 2. |
| No. 40, 1954 .. | Administration of Estates | Paragraphs (b), (c), (d), (f) and (l) of section 3. |
| No. 13, 1957 .. | Supreme Court Procedure | Sections, 3, 4, 5, paragraphs (d), (e) and (h) of section 6, sections 7 and 9, subsection (1) of section 14 and so much of First Schedule as amends Acts No. 21, 1899, No. 35, 1900, No. 49, 1900, No. 24, 1902 and No. 29, 1902. |
| No. 10, 1958 .. | Common Law Procedure and Landlord and Tenant (Amendment). | Subsection (2) of section 1 and section 2. |
| No. 55, 1960 .. | Landlord and Tenant (Amendment). | Paragraph (a) of subsection (1) of section 2. |
| No. 29, 1961 .. | Industrial Arbitration (Basic Wage) Amendment. | So much of First Schedule as amends Act No. 21, 1899, and so much of Second Schedule as refers to Act No. 21, 1899. |
| No. 1, 1962 .. | Common Law Procedure (Amendment). | The whole. |
| No. 37, 1964 .. | Industrial Arbitration (Amendment). | So much of First Schedule as amends Act No. 21, 1899, and so much of Second Schedule as refers to Act No. 21, 1899. |
| No. 52, 1964 .. | Judges' Pensions and Equity (Amendment). | Subsection (3) of section 1 and section 3. |
| No. 66, 1964 .. | Workers' Compensation (Amendment). | Section 9. |
| No. 12, 1965 .. | Supreme Court and Circuit Courts (Amendment). | Sections 2, 3, 4, paragraphs (a), (c), (d) and (g) of subsection (1) of section 5, subsection (2) of section 5, sections 6, 7, 12 and 15 and so much of Schedule as refers to Acts No. 35, 1900, No. 49, 1900, No. 24, 1901, No. 19, 1903 and No. 42, 1924. |
| No. 11, 1967 .. | Common Law Procedure and Supreme Court and Circuit Courts (Amendment). | The whole. |
| No. 29, 1967 .. | Legal Practitioners (Amendment). | Paragraph (b) of section 5 and so much of section 9 as amends Act No. 22, 1898, by inserting sections 65J and 65R. |

FIRST

Supreme Court.

No. 52, 1970

FIRST SCHEDULE—*continued.*

| Reference to Act. | Subject. | Extent of Repeal. |
|-------------------|--|---|
| No. 86, 1967 .. | Industrial Arbitration (Basic Wage) Amendment. | So much of First Schedule as amends the Common Law Procedure Act, 1899, and so much of Second Schedule as refers to the Common Law Procedure Act, 1899. |
| No. 58, 1968 .. | Landlord and Tenant (Amendment). | Section 8. |
| No. 4, 1969 .. | Judges' Pensions and Equity (Amendment). | Subsection (3) of section 1 and section 3. |
| No. 5, 1969 .. | Supreme Court and Circuit Courts (Amendment). | The whole. |

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Supreme Court.

No. 52, 1970

SECOND SCHEDULE.

Sec. 7.

AMENDMENT OF ACTS.

| First Column. | | Second Column. | |
|-------------------|--|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| 55 Vic. No. 12 | Partnership .. | Subsection (III) of section 2. | Omit "busines"; insert "business". |
| | | Subsection (II) of section 23. | Omit "or a Judge thereof". Omit "by summons". |
| | | Section 35 .. | Omit "decree"; insert "order". |
| | | Section 38 .. | Omit "effect"; insert "affect". |
| | | Section 40 .. | Omit "as"; insert "has". |
| 60 Vic. No. 23 | Municipal Council of Sydney Electric Lighting. | Section 38 .. | After "defendant may" insert "except in the Supreme Court,". |
| No. 11, 1898 | Evidence .. | Paragraph (a) of subsection (1) of section 13. | Omit "call upon him to show cause"; insert "order him to show cause before the Court at the then sittings or at some future sitting". |
| | | Section 14 .. | Omit the section; insert the following section:— 14. On the return of any such order to show cause as aforesaid the Court may deal with the case as the Supreme Court might and would have done upon an order to like effect made by that Court. |
| | | Subsection (1) of section 20. | Omit "in any jurisdiction". Omit "in such jurisdiction". |
| | | Subsection (2) of section 20. | Omit "The proper"; insert "In respect of any copy certified before the commencement of the Supreme Court Act, 1970, the proper". |
| | | Section 20 .. | Insert next after subsection (2) the following new subsection:— (3) Subject to subsection two of this section the proper officer within the meaning of this section is the prothonotary or any registrar or deputy registrar of such Court. |
| | | Subsection (2) of section 23. | Omit the subsection. |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--|------------------------|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| Signatures of Judges and officers of Supreme Court. 13 Vic. No. 16, s. 3. | Evidence— <i>cont.</i> | Section 24 .. | Omit the section; insert the following section:— 24. (1) Judicial notice shall be taken of the signature of any Judge, prothonotary, master, registrar or deputy registrar of the Supreme Court which purports to be attached or appended to a judgment, decree, order, certificate or other judicial or official document. (2) Judicial notice shall be taken of the signature of any chief clerk of the Supreme Court or chief clerk in bankruptcy of that Court provided that it does not appear that the signature was made after the commencement of the Supreme Court Act, 1970, and provided further that the signature purports to be attached or appended to a judgment, decree, order, certificate or other judicial or official document. |
| | | Paragraph (b) of subsection (5) of section 29. | Omit "its probate jurisdiction, or by the Probate Judge"; insert "the Probate Division". |
| | | Subsection (1) of section 43B. | Omit "Rules of court of the Supreme Court or of the District Court may be made"; insert "A majority of the District Court judges may make rules of court of the District Court". |
| | | Subsection (3) of section 43B. | Omit the subsection. |
| | | Subsection (1) of section 43C. | Omit "of more"; insert "or more". |
| | | Section 49 .. | Omit the section; insert the following section:— 49. (1) A banker, or officer of a bank, shall not, in any legal proceeding to which the bank is not a party, be compellable— (a) to produce any banker's book, the contents of which can be proved under this Part of this Act; or |
| Order to produce book or to appear. 55 Vic. No. 4, ss. 2, 7. | | | |

SECOND

Supreme Court.

SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|------------------------------------|-------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment |
| No. 11, 1898 — <i>cont.</i> | Evidence— <i>cont.</i> | Section 49— <i>cont.</i> | (b) to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order made for special cause. (2) An order under subsection one of this section may be made— (a) by the Supreme Court in respect of any legal proceeding in any Court; and (b) by the Chairman of a Court of Quarter Sessions in respect of any legal proceeding in any Court of Quarter Sessions; and (c) by the Judge of a District Court in respect of any legal proceeding in any District Court— and not otherwise. Omit “a Judge of”. |
| | | Subsection (1) of section 50. | Omit “Judge”; insert “the Supreme Court”. |
| | | Subsection (2) of section 50. | Omit the section. |
| No. 13, 1898 | Wills, Probate and Administration. | Section 52 .. | |
| | | Section 1 .. | Omit “ <i>Supreme Court in probate jurisdiction, and appointment of officers—ss. 33–43</i> ”; insert “ <i>Court—ss. 33–42</i> ”. Omit “ <i>Procedure—ss. 138–150</i> ”; insert “ <i>Caveats and Orders to Produce—ss. 144–150</i> ”. Omit “155”; insert “152”. In definition of “Administration” omit “, and orders to the Curator to collect”. In definition of “The Court” omit “in its probate jurisdiction, or the Probate Judge”; insert “of New South Wales”. Omit “Judge” or “Judges” means Judge or Judges of the Supreme Court of New South Wales”; insert “Judge” means Judge of the Court”. In definition of “Probate Judge” omit “for the time being authorised to administer this Act, |
| | | Section 3 .. | |
| | | | |

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—continued.

| First Column. | | Second Column. | |
|------------------------|---|-----------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 13, 1898 —cont. | Wills, Probate and Administration— cont. | Section 3— cont. | or any Judge acting as such"; insert "appointed to such office by the Governor". Insert next after the definition of "Personal estate" the following new definitions:— "Registrar" means Registrar in Probate appointed by or pursuant to the Supreme Court Act, 1970. "Rules" mean rules made or in force by or under the Supreme Court Act, 1970. "Seal of the Court" means seal of the Probate Division of the Court as provided for by the Rules. |
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| | | | |
| "Registrar." | | | |
| "Rules." | | | |
| "Seal of the Court." | | | |
| | | Section 30 .. | Omit "Probate Judge may direct shall be preserved under the control of the Court in such manner as the Probate Judge may direct"; insert "Court may direct or the rules may provide shall be preserved under the control of the Court". |
| | | Section 31 .. | Omit "to the rules of Court"; insert "to the rules". Omit "Probate Judge"; insert "Court". Omit "rules of Court"; insert "rules". |
| | | Subsection (1) of section 32. | Omit "office of the Registrar of Probates"; insert "registry of the Court". Omit "said office in the custody of the Registrar of Probates"; insert "registry". Omit "death the Registrar of Probates"; insert "death the Registrar". Omit "or a Judge". |
| | | Subsection (2) of section 32. | Omit "Rules of court"; insert "The rules". |
| | | Heading to Division I of Part II. | Omit "Supreme Court in Probate Jurisdiction, and appointment of officers"; insert "Court". |
| | | Section 33. | Omit the section; insert the following section:— 33. The jurisdiction and authority, prior to the coming into operation of the Probate |

Jurisdiction.
54 Vic. No.
25, s. 4.

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Supreme Court.

SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|---|--------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 13, 1898 — <i>cont.</i> | Wills, Probate and Administration— <i>cont.</i> | Section 33— <i>cont.</i> | Act of 1890, vested in or exercised by the Court or by the Primary Judge in Equity in respect of the estates of deceased persons, shall be vested in and exercised by the Court. |
| | | Section 34 .. | Omit the section. |
| | | Section 35 .. | Omit the section. |
| | | Section 36 .. | Omit the section. |
| | | Section 38 .. | Omit the section. |
| | | Subsection (1) of section 40A. | Omit "court" wherever occurring; insert "Court". |
| | | Subsection (3) of section 40B. | Omit "court" wherever occurring; insert "Court". |
| | | Subsection (4) of section 40B. | Omit "court" wherever occurring; insert "Court". Omit "registrar"; insert "Registrar". |
| | | Subsection (5) of section 40B. | Omit "rules of court, and the Probate Judge"; insert "the rules, and the Court". Omit "he"; insert "it". |
| | | Subsection (1) of section 40C. | Omit "court" wherever occurring; insert "Court". |
| | | Subsection (2) of section 40C. | Omit "The proceedings may be by suit or otherwise as prescribed by rules of court." |
| | | Subsection (3) of section 40C. | Omit "court" wherever occurring; insert "Court". |
| | | Subsection (2) of section 40D. | Omit "court"; insert "Court". |
| | | Subsection (5) of section 40D. | Omit "court"; insert "Court". |
| | | Subsection (1) of section 42. | Omit "by motion". Omit "rules of Court"; insert "the rules". |
| | | Subsection (2) of section 42. | Omit "rules of Court"; insert "the rules". |
| | | Subsection (3) of section 42. | Omit "No probate of any will not deposited as in section thirty-two hereof provided, and no administration in any case shall be granted unless the application"; insert "Application for probate |

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Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|---|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 13, 1898 — <i>cont.</i> | Wills, Probate and Administration— <i>cont.</i> | Subsection (3) of section 42— <i>cont.</i> | of a will not deposited as in section thirty-two hereof provided or for letters of administration shall”. |
| | | Section 42 .. | Insert next after subsection (3) the following new subsections:— (4) The Court may by order direct that any partial or total failure to comply with the requirements of subsections two and three of this section shall not bar the granting of probate or letters of administration. (5) The Court may refuse to revoke a grant of probate or letters of administration notwithstanding that in respect of the application for the grant there was any partial or total failure to comply with the requirements of subsections two and three of this section. |
| | | Section 43 .. | Omit the section. |
| | | Section 54 .. | Omit the section. |
| | | Section 60 .. | Omit the section. |
| | | Section 62 .. | Omit “of Court”. |
| | | Section 65 .. | Omit “of Court”. |
| | | Section 66 .. | Omit “motion”; insert “application”. |
| | | Subsection (1) of section 67. | Omit “on application made on motion in a summary way, and” |
| | | Section 68 .. | Omit “motion”; insert “application”. |
| | | Subsection (1) of section 75. | Omit “grant an order <i>nisi</i> calling upon the executor to show cause why probate of the said will should not be granted to such executor, or in the alternative why administration with such will annexed should not be granted to the applicant”; insert “order that probate of the said will be granted to such executor or order that administration with such will annexed be granted to the applicant or make such other order for the administration of the estate as appears just”. |
| | | Subsection (2) of section 75. | Omit the subsection. |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|--|---|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 13, 1898 — <i>cont.</i> | Wills, Probate and Administration— <i>cont.</i> | Subsection (5) of section 75A. | After “prescribed” insert “by the rules”. |
| | | Paragraph (a) of subsection (6) of section 75A. | After “prescribed” insert “by the rules”. |
| | | Subsection (9) of section 75A. | Omit “office of the Registrar of Probates”; insert “registry of the Court”. |
| | | Subsection (1) of section 78. | Omit “by petition”. |
| | | Subsection (2) of section 78. | Omit “on the hearing of such petition”. |
| | | Subsection (1) of section 81. | Omit “Court”; insert “court”. |
| | | Subsection (2) of section 81. | Omit “Court”; insert “court”. |
| | | Subsection (1) of section 83. | Omit “of the Court”. |
| | | Section 84 .. | Omit the section; insert the following section:— 84. If the executor or administrator, after request in writing, neglects or refuses to— (a) sign such acknowledgment; or (b) execute a conveyance of land devised to the devisee; or (c) pay or hand over to the person entitled any legacy or residuary bequest, the Court may, on the application of such devisee or person, make such order in the matter as it may think fit. |
| | | Subsection (1) of section 85. | Omit “of Court”. Omit “specially”. |
| | | Subsection (1A) of section 85. | Omit “of Court”. Omit “specially”. |
| | | Subsection (2) of section 85. | Omit “special”. Omit “motion”; insert “application”. |
| | | | Application for legacy, &c. 56 Vic. No. 30, s. 21. |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|--|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 13, 1898 — <i>cont.</i> | Wills, Probate and Administration— <i>cont.</i> | Subsection (2) of section 86. | Omit "or a special order of a Judge". Omit "any general or special rule or"; insert "the rules or an". Omit "Registrar"; insert "Court". |
| | | Subsection (3) of section 86. Section 87 .. | Omit the section; insert the following section:— 87. (1) In case any such executor or administrator neglects to file such inventory, or to file or file and pass such accounts as aforesaid, or in case any such trustee neglects to file or file and pass such accounts as aforesaid, in either case for the space of one month after the expiration of the period fixed, the Registrar shall cause such executor, administrator or trustee to be notified of such neglect. (2) In case of further neglect for a period of one month, the Court may, of its own motion, order such executor, administrator or trustee to show cause before the Court why, in the case of an executor or administrator, he should not be ordered to file such inventory or file and pass such accounts in the Court forthwith or, in the case of a trustee, he should not be ordered to file or file and pass such accounts in the Court forthwith. (3) If such executor, administrator or trustee does not within the prescribed time, or within such further time as is allowed him by the Court, file, pass or exhibit such inventory or account in manner aforesaid, he shall be liable to punishment for contempt of court. |
| | | Subsection (1) of section 92. | Omit "Supreme Court in its equitable jurisdiction in an administration suit"; insert "Court in proceedings for the administration of the estate of a deceased person". |

If accounts not exhibited, administrator or trustee may be ordered to show cause before the Court which may inflict penalty.
54 Vic. No. 25, s. 59.

If accounts not exhibited, administrator or trustee may be ordered to show cause before the Court which may inflict penalty.
54 Vic. No. 25, s. 59.

SECOND

Supreme Court.

SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|---|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 13, 1898 — <i>cont.</i> | Wills, Probate and Administration— <i>cont.</i> | Paragraph (a) of subsection (1) of section 97. | Omit "Court"; insert "court". |
| | | Section 98 .. | Omit the section; insert the following section:— 98. (1) For the purpose of District receiving applications for probate agents. or administration under this 56 Vic. No. division of this Part of this Act, 30, s. 8. a person may be appointed, as provided by the rules, in any town beyond thirty miles from Sydney, where a Court of Petty Sessions is held, to act as district agent for the Registrar. (2) Any person holding the office of district registrar immediately prior to the commencement of the Supreme Court Act, 1970, shall be deemed to have been appointed as provided by the rules. |
| | | Paragraph (c) of subsection (1) of section 99. | Omit "Supreme". |
| | | Subsection (2) of section 99. | Omit "Supreme". |
| | | Subsection (3) of section 102. | Omit "of Court". |
| | | Subsection (1) of section 107. | Omit "any Court"; insert "any court". |
| | | Heading to Division 7 of Part II. | Omit " <i>Procedure</i> "; insert " <i>Caveats and Orders to Produce</i> ". |
| | | Section 138 .. | Omit the section. |
| | | Section 139 .. | Omit the section. |
| | | Section 140 .. | Omit the section. |
| | | Section 141 .. | Omit the section. |
| | | Section 142 .. | Omit the section. |
| | | Section 143 .. | Omit the section. |
| | | Subsection (1) of section 144. | Omit "with the Registrar"; insert "in the registry of the Court". |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|---|---|--------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| <p>No. 13, 1898 —<i>cont.</i></p> <p>Application may proceed on notice. 54 Vic. No. 25, ss. 66, 104, 106. 56 Vic. No. 30, s. 17.</p> <p>Court may order application to proceed.</p> <p>Caveats may be withdrawn. 56 Vic. No. 30, s. 17.</p> | Wills, Probate and Administration— <i>cont.</i> | Subsection (2) of section 144. | Omit "within the city of Sydney at which notices may be served on him"; insert "for service in accordance with the rules". |
| | | Section 145 .. | Omit the section; insert the following section:— 145. In every case where a caveat is lodged against an application the applicant may, subject to the giving of such notice to the caveator as the rules may require or the Court may direct, proceed, in accordance with the rules or as the Court may direct, with the application. |
| | | Section 146 .. | Omit the section; insert the following section:— 146. The Court, on the application of the caveator, may order that the application for grant or sealing, as the case may be, proceed and may give directions relating thereto. |
| | | Section 147 .. | Omit the section. |
| | | Section 148 .. | Omit the section; insert the following section:— 148. A caveat may be withdrawn at any time with the leave of the Court, subject to such order as to costs or otherwise as it may direct. |
| | | Section 149 .. | Omit the section. |
| | | Subsection (1) of section 150. | Omit "motion, or petition, or otherwise, in a summary way"; insert "the application of any person". |
| | | Subsection (3) of section 150. | Omit "suit or other proceeding"; insert "proceedings". |
| | | Subsection (4) of section 150. | Omit "the like process of"; insert "punishment for". |
| | | Section 151 .. | Omit "as he would have been subject to in case he had been a party to a suit in the Court and had made such default". |
| | | | Omit the subsection. |
| | | | Omit "Supreme". |

SECOND

Supreme Court.

SECOND SCHEDULE—*continued*.

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|---|---|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 13, 1898 — <i>cont.</i> | Wills, Probate and Administration— <i>cont.</i> | Section 153 .. Section 154 .. Section 155 .. | Omit the section. Omit the section. Omit the section. |
| No. 22, 1898 | Legal Practitioners. | Section 3 Section 4 Subsection (2) of section 21. Section 22 .. Section 23 .. Section 24 .. Subsection (1) of section 25. Subsection (2) of section 25. Section 26 .. Section 27 .. Section 28 .. | Omit "senior puisne judge of the Court"; insert "President of the Court of Appeal". Omit "Judge" means a Judge of the Court". After "Judges" insert "of the Court". Omit "a Judge"; insert "the Court". Omit "the Judge"; insert "the Court". Omit the section; insert the following section:— 22. Upon the application of the party chargeable with a bill for taxation within such month, the bill shall be taxed in accordance with rules of the Court. Omit the section; insert the following section:— 23. Such bill and demand of the solicitor thereupon shall be taxed without any money being brought into Court. Omit "or a Judge". Omit "action or suit"; insert "action or other proceedings". Omit "or a Judge". Omit "or Judge" wherever occurring. Omit "by the taxing officer"; insert "in accordance with rules of the Court". After "judgment has been" insert "entered or". Omit "or Judge". Omit "or a Judge". Omit "suit"; insert "other proceedings". Omit "or Judge". Omit the section. Omit the section; insert the following section:— 28. (1) This section applies to— (a) the costs of proceedings |

Application for taxation.

Money not to be brought into Court.

11 Vic. No. 33, s. 1.

Costs of taxation.
Ibid. s. 3.

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|--------------------------------------|-------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 22, 1898 — <i>cont.</i> | Legal Practitioners— <i>cont.</i> | Section 28— <i>cont.</i> | under section twenty-two of this Act including the costs of the taxation of a bill of a solicitor pursuant to that section; and (b) the costs of proceedings under section twenty-five of this Act, including the costs of the taxation of a bill of a solicitor pursuant to that section, except where the proceedings are brought by the solicitor and the party chargeable does not attend upon the taxation. (2) Subject to subsection three of this section, the costs shall, unless the Court otherwise orders, be paid by the party chargeable with the bill. (3) Where the bill when taxed is less by a sixth part than the bill delivered, sent or left, the costs shall, unless the Court otherwise orders, be paid by the solicitor. |
| | | Section 29 .. | Omit "or a Judge". |
| | | Subsection (2) of section 32. | Omit "or Judge to whom such application is made". |
| | | Subsection (1) of section 33. | Omit "a Judge may, in his"; insert "the Court may, in its". |
| | | | Omit "by the taxing officer"; insert "in accordance with rules of the Court". |
| | | | Omit "Judge thinks"; insert "Court thinks". |
| | | Subsection (2) of section 33. | Omit "Judge"; insert "Court". |
| | | Subsection (3) of section 33. | Omit "Judge"; insert "Court". |
| | | Section 34 .. | Omit "or a Judge". |
| | | Subsection (1) of section 35. | Omit "or a Judge". |
| Review of taxation. | | Subsection (2) of section 35. | Omit the subsection; insert the following subsection:— (2) Provided nevertheless that where a bill of costs has been taxed the taxation may be reviewed in accordance with rules of the Court. |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|--------------------------------------|---|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 22, 1898 — <i>cont.</i> | Legal Practitioners— <i>cont.</i> | Subsection (3) of section 35. | Omit the subsection. |
| | | Section 36 .. | Omit “or Judge” wherever occurring. |
| | | Section 37 .. | Omit the section. |
| | | Section 38 .. | Omit the section. |
| | | Subsection (1) of section 39. | Omit “order, decree, or rule of”; insert “the”. |
| | | Subsection (2) of section 39. | Omit “or a Judge”. Omit “or Judge”. |
| | | Subsection (5) of section 40K. | Omit the subsection. |
| | | Paragraph (b) of subsection (2) of section 56. | Omit “or a judge thereof”. |
| | | Subsection (3) of section 56. | Omit “or a Judge thereof”. Omit “or such Judge”. |
| | | Section 60 .. | Omit “by action at law”; insert “by proceedings in the Court”. Omit “action all defences”; insert “proceedings all defences”. Omit “Society, and in any such action all questions of costs shall be in the discretion of the Court or the presiding Judge.”; insert “Society.”. |
| | | Subsection (1) of section 65C. | Omit the subsection. |
| | | Subsection (2) of section 65C. | Omit the subsection. |
| | | Subsection (3) of section 65C. | Omit “any such application”; insert “an application under this Division for the appointment of a receiver”. Omit “in Court, or if the proceedings are heard in chambers, in chambers,”. |
| | | Paragraph (a) of subsection (3) of section 65C. | Omit “to whom the application is being made”; insert “who constitutes the Court”. |

SECOND

*Supreme Court.***No. 52, 1970****SECOND SCHEDULE—continued.**

| First Column. | | Second Column. | |
|--|--------------------------------------|-------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| Application for directions. cf. Vic. No. 6291, 1958, s. 104κ. | Legal Practitioners— <i>cont.</i> | No. 22, 1898— <i>cont.</i> | |
| | | Section 65j .. | Omit the section; insert the following section:— 65j. The receiver, the solicitor, any member of the firm of which the solicitor is or was a partner or the personal representative of a deceased solicitor, or any person who has submitted to the receiver a claim in respect of any property may apply to the Court for directions as to the manner in which the receiver shall exercise or perform the powers or duties conferred or imposed on him by this Division either generally or in respect of any particular matter specified in the application, whereupon the Court may make such order as to the Court seems fit. |
| | | Section 65R | Omit the section. |
| | | Section 72 .. | Omit “or to a judge in chambers, who”; insert “and the Court”. Omit “or judge”. |
| | | Subsection (1) of section 76. | Omit “, or a judge,”. Omit “, judge”. |
| | | Subsection (1) of section 77. | Omit “rules to be made”; insert “rules made”. |
| | | Section 78 .. | Omit “Every such appeal shall be in the nature of a rehearing and shall be made within such time and in such form and shall be heard in such manner as shall be prescribed by rules of court in that behalf to be made under the authority of this Act.” Omit “court or a judge”; insert “Court”. |
| | | Section 81 .. | Omit the section; insert the following section:— 81. (1) Rules of the Court may be made under the Supreme Court Act, 1970, for regulating the taxation of costs awarded by the Statutory Committee and the recovery of the same by execution or otherwise; and rules so made may, under that Act, be amended or rescinded. |
| | | | |
| | | | |
| Rules of Court. | | | |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|--------------------------------------|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 22, 1898 — <i>cont.</i> | Legal Practitioners— <i>cont.</i> | Section 81— <i>cont.</i> | <p>(2) Rules of the Court may, on the recommendation of the council, be made under the Supreme Court Act, 1970—</p> <p>(a) for regulating the practice and proceedings of the Statutory Committee, including the awarding of costs by such committee;</p> <p>(b) for conferring upon the Statutory Committee any further powers necessary or convenient for the due fulfilment of its functions;</p> <p>(c) for carrying into effect the provisions of this Act relating to the Statutory Committee and its functions,</p> <p>and rules so made may, on the recommendation of the council, be amended or rescinded under that Act.</p> <p>(3) Subsections one and two of this section do not limit the rule-making powers conferred by the Supreme Court Act, 1970.</p> |
| No. 18, 1899 | Landlord and Tenant. | Section 1 | <p>Omit "<i>Facilitation of leases—ss. 3-6</i>"; insert "<i>General—ss. 2A-2D</i>".</p> <p>Omit "<i>by ejectment</i>".</p> <p>Omit "<i>7-15</i>"; insert "<i>6A-14</i>".</p> <p>Omit "<i>PART V.—Distress for rent and replevin—ss. 34-56.</i>"</p> <p>Omit "<i>PART VI.—Restriction of effect of waiver and license by lessor—ss. 57-61.</i>"</p> <p>Insert next after section 1 the following new section:</p> <p>1A. In this Act "<i>land</i>" means Definition land, houses, or other corporeal or "<i>land</i>". hereditaments.</p> <p>Insert next before section 2A the following new heading:</p> <p>PART I. <i>General.</i></p> |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|---|---|-------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| <p>Restrictions upon recovery of possession.</p> <p>No. 18, 1899—<i>cont.</i></p> | <p>Landlord and Tenant—<i>cont.</i></p> | <p>Section 2A ..</p> | <p>Omit the section; insert the following section:—</p> <p>2A. (1) No proceedings in the Supreme Court for possession, or action of ejectment in a District Court or proceedings under section seventeen of this Act, for recovery of any land or part of any land from the tenant or any person claiming under him who is actually occupying such land or part shall be commenced by the landlord if the land is or includes a dwelling-house and—</p> <p>(a) where the term or interest of such tenant or person has not expired or been determined, if—</p> <p>(i) such tenant or person is liable to the payment of rent; and</p> <p>(ii) such rent does not exceed twenty-five dollars twenty cents per week, or an equivalent sum calculated in respect of any other period; or</p> <p>(b) where the term or interest of such tenant or person has expired or been determined, if—</p> <p>(i) such tenant or person was immediately before the expiration or determination of such term or interest liable to the payment of rent; and</p> <p>(ii) such rent did not immediately before such expiration or determination exceed twenty-five dollars twenty cents per week, or an equivalent sum calculated in respect of any other period.</p> |

SECOND

Supreme Court.

SECOND SCHEDULE—continued.

No. 52, 1970

| First Column. | | Second Column. | |
|------------------------|-------------------------------|-------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 18, 1899 —cont. | Landlord and Tenant— cont. | Section 2A— cont. | <p>(2) In any case where by reason only of the provisions of subsection one of this section a landlord is precluded from commencing any action or proceedings, referred to in that subsection, he may take proceedings under Part IV of this Act for the recovery of possession of the land concerned and the provisions of that Part shall where applicable apply, mutatis mutandis, to any such proceedings.</p> <p>(3) A writ of possession to enforce a judgment for possession of land which is or includes a dwelling-house shall not be issued out of the Supreme Court until such time as the Court having regard to any hardship that will be caused to the defendant by the enforcement of the judgment shall order.</p> |
| | | Section 2B .. | <p>Omit "any dwelling-house"; insert "any land which is or which includes a dwelling-house".</p> <p>Omit "the dwelling-house" wherever occurring; insert "the land".</p> <p>Omit "such dwelling-house"; insert "such land".</p> |
| | | Section 2c .. | <p>Omit "premises"; insert "land".</p> <p>Omit the section; insert the following section:—</p> <p>2c. Where any demised land consists partly of prescribed premises within the meaning of the Landlord and Tenant (Amendment) Act, 1948, and partly of other land, the lease may be determined in so far as it applies to the other land by a notice to quit or demand of possession and proceedings under this Act may, subject to this Act, be taken in respect of the other land.</p> |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—continued.

| First Column. | | Second Column. | |
|--|-------------------------------|--------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 18, 1899 —cont. | Landlord and Tenant— cont. | .. .. | Omit the heading “PART I. Facilitation of leases.” |
| | | Heading to Part II. Part II | Omit “by ejectment”. |
| | | Section 7 .. | Insert next before section 7 the following new section:— 6A. In the construction of this part of this Act the term “tenancy” includes a lease, the term “landlord” includes a lessor and the term “tenant” includes a lessee. |
| | | Section 8 .. | Omit the section; insert the following section:— 7. Every tenant to whom any originating process in proceedings in the Supreme Court for recovery of land is delivered, or to whose knowledge any such originating process comes, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years’ improved or rack rent of the land demised or held in the possession of such tenant to the person of whom he holds to be recovered by proceedings in the Supreme Court. |
| Definition of “tenancy”, “landlord” and “tenant”. | | | |
| Tenants to give notice to landlord of proceedings for possession. 17 Vic. No. 21, s. 160. | | | |
| Proceedings for possession when rent half-year in arrears. 17 Vic. No. 21, s. 161. | | | |

SECOND

Supreme Court.

SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|-------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 18, 1899 — <i>cont.</i> | Landlord and Tenant— <i>cont.</i> | Section 8— <i>cont.</i> | <p>(2) If half a year's rent was due before the originating process was served and the landlord had power to re-enter, the landlord may recover judgment and execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made.</p> <p>(3) If the tenant, or his assignee or other person claiming or deriving under the tenancy, suffers judgment to be entered in such proceedings for possession and execution to be executed thereon, without paying the rent and arrears the recovery of which by action was not, on the date when the proceedings for possession were brought, barred by the Limitation Act, 1969, together with full costs, and without proceeding for relief against forfeiture within six months after such execution executed, such tenant, assignee, and all other persons claiming and deriving under the said tenancy shall be barred and foreclosed from all relief or remedy in law or equity, and the said landlord shall from thenceforth hold the said demised land discharged from such tenancy.</p> <p>(4) Nothing herein contained shall extend to bar the right of any mortgagee of such tenancy, or any part thereof, who is not in possession, provided that, within six months after such judgment obtained and execution executed, he pays all rent in arrear the recovery of which by action was not, on the date when the proceedings for possession were brought, barred by the Limitation Act, 1969, and all costs and damages sustained by such landlord, and performs</p> <p>Landlord to recover judgment.</p> <p>Relief against forfeiture to be applied for within six months.</p> <p>Rights of mortgagee not in possession unprejudiced for six months after judgment.</p> |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--|-----------------------------------|---|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| <p>No. 18, 1899—<i>cont.</i></p> <p>In proceedings for relief against forfeiture payment into Court of rent, arrears and costs may be ordered.</p> <p>17 Vic. No. 21, s. 162.</p> <p>Proceedings may be dismissed if payment not made.</p> | Landlord and Tenant— <i>cont.</i> | <p>Section 8—<i>cont.</i></p> <p>Section 9 ..</p> | <p>all the covenants and agreement which on the part and behalf of the first tenant are and ought to be performed.</p> <p>Omit the section; insert the following section:—</p> <p>9. (1) If proceedings for relief against forfeiture are taken within the time mentioned in subsection three of section eight of this Act the Court may, on the application of the landlord in such proceedings, order the applicant for such relief to pay into Court such sum of money in respect of rent and arrears the recovery of which by action was not, on the date when the proceedings for possession were brought, barred by the Limitation Act, 1969, and the costs of the proceedings for possession as it thinks fit and by the same or other order it may order that such money, if paid into Court, shall be paid out to the landlord on such terms, if any, as to security or otherwise as it thinks fit.</p> <p>(2) If the applicant for relief against forfeiture has been ordered to pay money into Court but fails to do so within the time ordered or within such extended time as may be allowed, the Court may direct entry of judgment against the applicant.</p> <p>(3) If such proceedings for relief against forfeiture are taken within the time aforesaid and after execution is executed, the landlord shall be accountable only for so much as he shall really and bona fide, without fraud, deceit, or wilful neglect, make of the demised land from the time of his entering into the actual possession thereof, and if what is so made by the landlord be less than the rent reserved on</p> |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|-------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 18, 1899 — <i>cont.</i> | Landlord and Tenant— <i>cont.</i> | Section 9— <i>cont.</i> | the said tenancy, then the said tenant or his assignee, before he is restored to his possession, shall pay to such landlord the difference between the money so made by him and the reserved rent for the time such landlord held the said land. |
| | | Section 10 .. | Omit the section; insert the following section:— 10. Where a landlord has Before commenced such proceedings for judgment possession the Court may, on the Court may application of the tenant or his stay pro- assignee and upon payment by ceedings for such tenant or assignee of rent possession and arrears the recovery of on payment which by action was not, on the of all rent date when the proceedings for and costs. possession were brought, barred by the Limitation Act, 1969, and costs, stay permanently, at any time before judgment for possession has been entered, such proceedings. |
| | | Section 11 .. | Omit the section. |
| | | Section 12 .. | Omit the section; insert the following section:— 12. (1) Where, in proceedings Recovery of in the Supreme Court by a mesne landlord, a claim for mesne profits in profits is joined with a claim for proceedings possession of land, and the for entitlement of the landlord to possession. possession of the whole or of any part of the land is established, the landlord, notwithstanding that he has not recovered possession of the whole of or that part of the land, may— (a) unless the proceedings are tried with a jury, have judgment for mesne profits up to the time of delivery of possession of the land for which he obtains judgment for possession; and (b) if the proceedings are tried with a jury, have judgment for mesne profits up to the time of the verdict of the jury. |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|--------------------------------------|-------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 18, 1899 — <i>cont.</i> | Landlord and Tenant— <i>cont.</i> | Section 12— <i>cont.</i> | (2) A judgment for possession and for mesne profits under this section shall not bar any such landlord from bringing proceedings for mesne profits which shall accrue from the time up to which mesne profits are included in the judgment down to the day of delivery of possession of the land for which judgment for possession is obtained. |
| | | Section 13 .. | Omit the section. |
| | | Section 14 .. | Omit "of action or remedy"; insert "to take proceedings or other remedy". |
| | | Section 15 .. | Omit the section. |
| | | Section 16 .. | Omit "premises"; insert "land". |
| | | | Omit "property"; insert "land". |
| | | | Omit "premises"; insert "land". |
| | | Subsection (1) of section 17. | |
| | | Subsection (2) of section 17. | Omit "possession of the premises" wherever occurring; insert "possession of the land". |
| | | | Omit "a dwelling-house is situated on the premises mentioned in the plaint"; insert "the land mentioned in the plaint is or includes a dwelling-house". |
| | | Subsection (3) of section 17. | Omit "premises"; insert "land". |
| | | Subsection (1) of section 18. | Omit "corporeal hereditaments"; insert "land". |
| | | | Omit "premises" wherever occurring; insert "land". |
| | | Subsection (3) of section 18. | Omit "premises" wherever occurring; insert "land". |
| | | Subsection (4) of section 18. | Omit "premises"; insert "land". |
| | | Subsection (5) of section 18. | Omit "premises"; insert "land". |
| | | Subsection (6) of section 18. | Omit "premises are or include"; insert "land is or includes". |
| | | Subsection (1) of section 19. | Omit "premises"; insert "land". |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|--------------------------------------|-------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 18, 1899 — <i>cont.</i> | Landlord and Tenant— <i>cont.</i> | Subsection (2) of section 19. | Omit “premises”; insert “land”. |
| | | Subsection (1) of section 20. | Omit “premises” wherever occurring; insert “land”. |
| | | Subsection (2) of section 20. | Omit “premises”; insert “land”. |
| | | Subsection (1) of section 21. | After “he may” insert “, except in the Supreme Court,”. |
| | | Subsection (2) of section 21. | After “If” insert “any such action is brought in a District Court and”. |
| | | Paragraph (a) of section 22. | Omit the paragraph. |
| | | Paragraph (d) of section 22A. | Omit “upon the land”; insert “which is or which is part of the land”. |
| | | Section 24 .. | Omit “a dwelling-house is situated on”. |
| | | Subsection (1) of section 26. | After “the adjudication relates” insert “is or includes a dwelling-house”. |
| | | Subsection (3) of section 26. | Omit “an action of ejectment or other appropriate action against him for recovery of”; insert “proceedings against him for”. |
| | | Subsection (2) of section 27. | After “Supreme Court or” insert “an action of ejectment or other appropriate action against him for recovery of the said land in”. |
| | | Subsection (3) of section 27. | Omit “there is situated on the land in question a dwelling-house”; insert “the land in question is or includes a dwelling-house”. |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|--------------------------------------|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 18, 1899 — <i>cont.</i> | Landlord and Tenant— <i>cont.</i> | Subsection (3) of section 27— <i>cont.</i> | Omit “, or any Judge thereof,”. After “in case no such” insert “proceedings or”. |
| | | | After “entertain any such” insert “proceedings or”. |
| | | | Omit “or any Judge of any such Court,”. |
| | | Subsection (4) of section 27. | Omit “a rule or”; insert “an”. |
| | | | Omit “or Judge”. |
| | | | Omit “rule or”. |
| | | Section 29 .. | Omit “on the case”; insert “for damages”. |
| | | Subsection (2) of section 31. | Omit the subsection; insert the following subsection:— (2) An appeal from any determination, order, adjudication or warrant made or issued under the provisions of this Part of this Act shall lie to the Supreme Court and shall be made and determined in the same manner as an appeal from the conviction or order of justices in the exercise of their summary jurisdiction. |
| | | | Omit the subsection. |
| | | Subsection (3) of section 31. | |
| | | Subsection (4) of section 31. | Omit the subsection; insert the following subsection:— (4) At any stage of such an appeal the Supreme Court may, either as a term of granting a stay of proceedings or otherwise, from time to time extend for such period as it thinks fit the period named in any warrant for the execution thereof (whether the warrant has expired or not). |
| | | PART V .. | Omit the Part. |
| | | | Omit the heading “PART VI.— <i>Restriction of effect of waiver and license by lessor.</i> ”. |
| Appeal to Supreme Court. | | Schedule D .. | Omit the schedule. |
| | | Schedule F .. | Omit the schedule. |
| | | Schedule G .. | Omit the schedule. |
| | | Schedule H .. | Omit the schedule. |
| | | Schedule I .. | Omit the schedule. |
| | | Schedule K .. | Omit the schedule. |
| | | Schedule L .. | Omit the schedule. |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 18, 1899 — <i>cont.</i> | Landlord and Tenant— <i>cont.</i> | Schedule M. Paragraph (a) of Schedule N. | <p>Omit the schedule.</p> <p>Omit the paragraph; insert the following paragraph:—</p> <p>(a) (i) by inserting next after subsection one of section 2A the following new subsections:—</p> <p>(1A) No proceedings in the Supreme Court for possession, or action of ejectment in a District Court or proceedings under section seventeen of this Act, for the recovery of any land or part of any land from the tenant or person claiming under him who is actually occupying such land or part shall be commenced by the landlord if—</p> <p>(a) the land is or includes excluded premises; and</p> <p>(b) the excluded premises are actually occupied by the person who on the first day of January, one thousand nine hundred and sixty-nine, was the tenant or by some person claiming under him,</p> <p>and where—</p> <p>(c) the term or interest of such tenant or person has not expired or been determined, if—</p> <p>(i) such tenant or person is liable to the payment of rent; and</p> <p>(ii) such rent does not exceed twenty-five dollars twenty cents per week, or</p> |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|---|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 18, 1899 — <i>cont.</i> | Landlord and Tenant— <i>cont.</i> | Paragraph (a) of Schedule N— <i>cont.</i> | <p>an equivalent sum calculated in respect of any other period; or</p> <p>(d) the term or interest of such tenant or person has expired or been determined, if—</p> <p>(i) such tenant or person was immediately before the expiration or determination of such term or interest liable to the payment of rent; and</p> <p>(ii) such rent did not immediately before such expiration or determination exceed twenty-five dollars twenty cents per week, or an equivalent sum calculated in respect of any other period.</p> <p>(1b) Subsection (1A) of this section applies notwithstanding the provisions of subsection one of this section.</p> <p>(ii) by omitting from subsection two of the same section the words “provisions of subsection one” and by inserting in lieu thereof the words “foregoing provisions”;</p> |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|---|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 18, 1899 — <i>cont.</i> | Landlord and Tenant— <i>cont.</i> | Paragraph (a) of Schedule N— <i>cont.</i> | (iii) by inserting next after subsection three of section 2A the following new subsection:— (4) A writ of possession to enforce a judgment for possession of land which is or includes excluded premises shall not be issued out of the Supreme Court until such time as the Court having regard to any hardship that will be caused to the defendant by the enforcement of the judgment shall order. |
| | | Paragraph (b) of Schedule N. | Omit “an action of ejectment in the Supreme Court or a District Court”; insert “proceedings in the Supreme Court for possession, or action of ejectment in a District Court”. Omit “on which excluded premises, not being premises the subject of a lease for a fixed term, are situated”; insert “which is or includes excluded premises, not being premises the subject of a lease for a fixed term”. |
| | | Paragraph (c) of Schedule N. | Omit “inserting in subsection two of section seventeen after the words “dwelling-house is” the words “or excluded premises are””; insert “omitting subsection two of section seventeen and by inserting in lieu thereof the following subsection:— (2) If the defendant does not at the time named in the summons show good cause to the contrary, then, on proof of such neglect or refusal to deliver up possession of the land and of the holding and of the expiration or other determination of the tenancy with the time and manner thereof (and of the service of the summons if the defendant does not appear thereto), the judge of the court may order that possession of the land mentioned in |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 18, 1899 — <i>cont.</i> | Landlord and Tenant— <i>cont.</i> | Paragraph (c) of Schedule N.— <i>cont.</i> | the plaint be given to the plaintiff either forthwith or on or before such day, as the judge thinks fit to name. Where the land mentioned in the plaint is or includes a dwelling-house or excluded premises, the judge of the court, when making any order under this subsection, shall have regard to any hardship that will be caused to the defendant by the making of the order." |
| | | Paragraph (d) of Schedule N. | Omit "inserting in subsection six of section eighteen after the word "dwelling-house" the words "or excluded premises" "; insert "omitting subsection six of section eighteen and by inserting in lieu thereof the following subsection:— (6) This section does not apply where the land is or includes a dwelling-house or excluded premises." |
| | | Paragraph (e) of Schedule N. | Omit "inserting in section twenty-four after the words "dwelling-house is" the words "or excluded premises are" "; insert "omitting section twenty-four and by inserting in lieu thereof the following section:— 24. The justices by whom such adjudication is made may postpone the issuing of such warrant and other proceedings under such adjudication, or suspend the execution of such warrant and other proceedings for any period not exceeding one month from the day of such adjudication, either upon such terms as to security or otherwise, or absolutely without imposing any terms, as to such justices seems meet. Provided that where the land to which the adjudication relates is or includes a dwelling-house or excluded premises, the justices, |

Power of justices to suspend proceedings on adjudication for one month.
17 Vic. No. 10, s. 3.

SECOND

Supreme Court.

SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|---|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 18, 1899 — <i>cont.</i> | Landlord and Tenant— <i>cont.</i> | Paragraph (e) of Schedule N— <i>cont.</i> | having regard to any hardship that will be caused to the tenant or occupier by the issuing of the warrant and other proceedings or the execution of the warrant and other proceedings, may postpone the issuing of such warrant and other proceedings under the adjudication, or suspend the execution of such warrant and other proceedings, for such period exceeding one month as the justices shall order." |
| | | Paragraph (f) of Schedule N. | Omit "inserting in subsection three of section twenty-six after the word "dwelling-house" the words "or excluded premises" "; insert "omitting subsection three of section twenty-six and by inserting in lieu thereof the following subsection:— (3) This section does not apply where the land in question is or includes a dwelling-house or excluded premises and the rent payable in respect of the land does not exceed twenty-five dollars twenty cents per week, or an equivalent sum calculated in respect of any other period." |
| No. 24, 1899 | Stage-carriages. | Subsection (1) of section 14. | Omit "or suit". After "defendant may" insert "except in the Supreme Court,". |
| | | Subsection (2) of section 14. | Omit "evidence, and"; insert "evidence; and in any such action the defendant may plead". Omit "If the defendant obtains a verdict in such action, or if the plaintiff is nonsuited, or after the defendant has appeared, discontinues his action, or if upon demurrer judgment is given against the plaintiff"; insert "In any such action in a District Court, if the defendant obtains a verdict in the action, or if the plaintiff is non-suited, or discontinues his action after the defendant has duly filed notice of intention to defend the action or notice of special defence to the action". |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--|------------|-------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| <p>Sheriff may effect service.</p> <p>Fees. cf. 50 Vic. No. 31.</p> <p>Direction of process to person other than the sheriff. cf. 7 Vic. No. 13, s. 2.</p> | Sheriff .. | Subsection (1) of section 7. | Omit "Judges of the". |
| | | Section 8 .. | Omit "Circuit Courts,". Next after section 8 insert the following new section:— 8A. The sheriff or any of his officers may serve any judgment, order, pleading, affidavit, notice or other document in any proceedings in the Supreme Court. |
| | | Section 9 .. | Omit the section; insert the following section:— 9. The scale of fees to be chargeable in the sheriff's office in respect of all matters pending at any time in the Supreme Court may be fixed by rules of the Supreme Court made under the Supreme Court Act, 1970. |
| | | Section 10 .. | Omit the section; insert the following section:— 10. In all cases where, notwithstanding the direction of any process of the Supreme Court to the sheriff, the said Court is by clause thirteen of the Charter of Justice required to direct by what person and in what manner such process shall be executed, the process may if the said Court sees fit, be directed to such person instead of to the sheriff. |
| | | Section 11 .. | Omit "In any such case the fees"; insert "In any case where the Supreme Court— (a) pursuant to clause twelve of the Charter of Justice, nominates and appoints some person other than the sheriff as the person to whom the process of the said Court shall be directed; or (b) pursuant to clause thirteen of the Charter of Justice, notwithstanding the direction of any process of the said Court to the sheriff, directs by what |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|-----------------------|-------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 16, 1900 — <i>cont.</i> | Sheriff— <i>cont.</i> | Section 11— <i>cont.</i> | person and in what manner such process shall be executed; or (c) pursuant to section ten of this Act directs process to a person other than the sheriff— |
| | | Section 12 .. | the fees". Omit "In any such case"; insert "In any of the cases mentioned in section eleven of this Act". |
| No. 25, 1900 | Real Property | Section 15 .. | Omit the section; insert the following section:— 15. The Supreme Court may, Supreme on the application of any person Court may seeking to bring land under this order Act, order any specified person production who has in his possession or of deeds for under his control any deeds, purposes of instruments, or evidences of title application relating to or affecting the land, 41 Vic. No. to produce the same at the office 18, s. 5. of the Registrar-General, on a day to be named in such order, there to be left for the perusal of the examiners, upon such terms and subject to such conditions as to costs or otherwise as to the Court may seem fit. |
| | | Section 27 .. | Omit the section; insert the following section:— 27. (1) Where a caveat against Stated an application to bring land case. under the provisions of this Act 41 Vic. No. has been lodged by a caveator 18, s. 4. claiming such land or a portion thereof or an interest therein adversely to the applicant, the applicant may state a case for the opinion and direction of the Supreme Court upon the matter, and the caveator may under the last preceding section apply for an injunction until the further order of the Court, and the Court may direct the caveator to |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|---------------------------------|-------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 25, 1900 — <i>cont.</i> | Real Property — <i>cont.</i> | Section 27— <i>cont.</i> | lodge with the Court, on or before a certain day, a case on his own behalf, stating whether he claims in his own right or under another person, together with such other particulars (if any) as the Court thinks fit to order. (2) The Court shall determine any facts in contest and may add to or alter the stated case in accordance with any such determination. (3) The Court shall decide the stated case or, if the stated case has been added to or altered in accordance with subsection two of this section, the stated case as added to or altered, and the decision of the Court finally upon the matter shall be conclusive on the parties and on the Registrar-General. |
| | | Section 28 .. | Omit "writ or". |
| | | Subsection (3) of section 29. | Omit "a Judge of". |
| | | Subsection (1) of section 40. | Omit "of law and equity". |
| | | Subsection (3) of section 40. | Omit "of law or equity". |
| | | Section 44 .. | Omit "suit"; insert "proceedings". Omit "of law or equity". Omit "a decree"; insert "judgment". |
| | | Subsection (2) of section 52. | Omit "of Equity". |
| | | Subsection (6) of section 56. | Omit "decree"; insert "judgment". |
| | | Section 60 .. | Omit "an action of ejectment"; insert "proceedings in the Supreme Court for possession, or an action of ejectment in a District Court of competent jurisdiction,". Omit "such action"; insert "such proceedings or action". |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|---------------------------------|---|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 25, 1900 — <i>cont.</i> | Real Property — <i>cont.</i> | Subsection (3) of section 63. Subsection (4) of section 69. Section 84 .. | <p>Omit "rule, order, or judgment"; insert "judgment or order".</p> <p>Omit "of law or equity".</p> <p>Omit the section; insert the following section:—</p> <p>84. (1) Upon the transfer of any land, estate or interest under the provisions of this Act to two or more persons as joint proprietors, to be held by them as trustees, the transferor may insert in the memorandum of transfer or other instrument the words "no survivorship", and the Registrar-General shall in such case include such words in the memorial of such instrument to be entered by him in the register-book as hereinbefore directed, and shall also enter the said words upon any certificate of title issued to such joint proprietors pursuant to such memorandum of transfer.</p> <p>(2) Any two or more persons registered as joint proprietors of any land, estate, or interest under the provisions of this Act held by them as trustees, may by writing under their hand authorise the Registrar-General to enter the words "no survivorship" upon the grant, certificate of title, or other instrument evidencing their title to such estate or interest, and also upon the duplicate of such instrument in the register-book or filed in his office, and after such entry has been made and signed by the Registrar-General in either such case as aforesaid, it shall not be lawful for any less number of joint proprietors than the number then registered to transfer or otherwise deal with the said</p> |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|---------------------------------|--------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 25, 1900 — <i>cont.</i> | Real Property — <i>cont.</i> | Section 84— <i>cont.</i> | land, estate, or interest without obtaining the sanction of the Supreme Court. |
| | | Subsection (1) of section 85. | Omit “or Judge” wherever occurring. |
| | | Subsection (1) of section 86. | Omit “or to make”; insert “or make”. |
| | | Subsection (1) of section 87. | Omit “or a Judge thereof”. |
| | | Subsection (1) of section 87. | Omit “any action of ejectment in his own name for recovering the possession”; insert “in his own name proceedings in the Supreme Court for possession, or an action of ejectment in a District Court, for recovery”. |
| | | Subsection (2) of section 87. | Omit “such action”; insert “such proceedings or action”. |
| | | Subsection (1) of section 97. | Omit “action or proceeding”; insert “proceedings or action”. |
| | | Subsection (2) of section 97. | Omit “under provisions”; insert “under the provisions”. |
| | | Subsection (2) of section 97. | Omit the subsection; insert the following subsection:— (2) Such applicant or registered proprietor or any person claiming under any memorandum of transfer or other instrument registrable under this Act and signed by such registered proprietor or otherwise according to law may apply to the Supreme Court for an order that the caveat be removed. |
| | | Subsection (3) of section 97. | Omit the subsection; insert the following subsection:— (3) The Court, on such application made to it, may make such order in the premises as to it may seem fit. |
| Removal of caveat. | | Section 98 .. | Omit “in an action at law”; insert “in proceedings in any Court of competent jurisdiction”. |
| | | Subsection (1) of section 105. | Omit “direction, decree, or order” wherever occurring; insert “direction, judgment, or order”. |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1972

| First Column. | | Second Column. | |
|--------------------------------|---------------------------------|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 25, 1900 — <i>cont.</i> | Real Property — <i>cont.</i> | Subsection (2) of section 115. Section 121 .. | Omit "of Justice". Omit the section; insert the following section:— 121. (1) If upon the application of any proprietor to have land brought under the provisions of this Act, or to have any dealing or transmission registered or recorded, or to have any certificate of title, registration, abstract, foreclosure, order, or other instrument issued, or to have any act or duty done or performed which, by this Act, is prescribed to be done or performed by the Registrar-General, the Registrar-General refuses so to do, or if such proprietor is dissatisfied with the direction upon his application given by the Registrar-General as hereinbefore provided, such proprietor may require the Registrar-General to set forth in writing under his hand the grounds of his refusal or the grounds upon which such direction was given, and such proprietor may, if he thinks fit, apply to the Supreme Court for relief under this section. |
| | | Section 122 .. | (2) The Supreme Court shall, if any question of fact be involved, decide such fact, and shall make such order in the premises as in its judgment the circumstances of the case may require, and the Registrar-General shall obey such order. Omit the section; insert the following section:— 122. (1) If any objection to the title of land sought to be brought under the provisions of this Act is made by the Registrar-General, which the applicant deems not well founded, he may state a case for the decision of the Supreme Court. |

Stated case when applicant dissatisfied with objection of Registrar-General.
11 Vic. No. 48, s. 10.

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|---------------------------------|--------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 25, 1900 — <i>cont.</i> | Real Property — <i>cont.</i> | Section 122— <i>cont.</i> | (2) Such decision shall be binding upon the Registrar-General, but shall not affect the claim of any person against the assurance fund under this Act, or the right of the applicant to proceed under the last preceding section of this Act. |
| | | | (3) To every such case there shall be annexed such observations as the Registrar-General may think proper to make. |
| | | Section 123 .. | Omit "Court of Appeal"; insert "Supreme Court". |
| | | Section 123A | Omit "said Court"; insert "Court". |
| | | | Omit "summons or" wherever occurring. |
| | | | Omit "Court of Appeal"; insert "Supreme Court". |
| | | Section 124 .. | Omit "action of ejectment or other action"; insert "proceedings in the Supreme Court for possession, or action of ejectment in a District Court, or other proceedings or action". |
| | | Subsection (1) of section 125. | Omit "an action is"; insert "any proceedings in the Supreme Court for possession, or an action of ejectment in a District Court, or other proceedings or action for the recovery of land are". |
| | | Subsection (2) of section 125. | Omit the subsection; insert the following subsection:— (2) If the title of the plaintiff is admitted or proved, the value of the improvements shall be assessed, and the value which the land would have possessed if the improvements had not been made shall be separately assessed. |
| | | Subsection (3) of section 125. | Omit "action"; insert "proceedings or action". |
| | | Subsection (4) of section 125. | Omit "verdict"; insert "assessment". |
| | | | Omit "suit"; insert "the proceedings or action". |
| | | Subsection (6) of section 125. | Omit "action"; insert "proceedings or action". |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|---------------------------------|--------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 25, 1900 — <i>cont.</i> | Real Property — <i>cont.</i> | Subsection (7) of section 125. | Omit "action"; insert "proceedings or action". |
| | | Subsection (1) of section 126. | Omit "an action at law"; insert "in any Court of competent jurisdiction an action". |
| | | Subsection (1) of section 127. | Omit "an action of ejectment or other action"; insert "proceedings in the Supreme Court for possession, or an action of ejectment in a District Court, or other proceedings or action". Omit "such action"; insert "such proceedings or action". |
| | | Subsection (1) of section 129. | Omit "or Judge before whom"; insert "by which". |
| | | Subsection (1) of section 132. | Omit "or a Judge thereof". |
| | | Subsection (2) of section 132. | Omit "signed"; insert "entered or signed". |
| | | Section 134 .. | Omit "an adverse suit"; insert "adverse proceedings". |
| | | Section 134 .. | Omit "action, suit, or proceeding"; insert "action or other proceedings". |
| | | Section 135 .. | Omit "action of ejectment"; insert "proceedings in the Supreme Court for possession or action of ejectment in a District Court or other proceedings or action for the recovery of land". |
| | | Section 136 .. | Omit the section; insert the following section:— 136. (1) In case it appears to the satisfaction of the Registrar-General that— (a) any certificate of title or other instrument has been issued in error or contains any misdescription of land or of boundaries; or (b) any entry or endorsement has been made in error on any grant, certificate of title, or other instrument; or Proceedings for delivery up of title for cancellation or correction. 26 Vic. No. 9 s. 126. |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|---------------------------------|-------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 25, 1900 — <i>cont.</i> | Real Property — <i>cont.</i> | Section 136— <i>cont.</i> | <p>(c) any such grant, certificate, instrument, entry, or endorsement has been fraudulently or wrongfully obtained; or</p> <p>(d) any such grant, certificate or instrument is fraudulently or wrongfully retained—he may, if he thinks fit, by notice in writing to the person to whom that grant, certificate or instrument has been so issued or by whom it has been so obtained or is retained, require such person to deliver up the grant, certificate or instrument for the purpose of it being cancelled or corrected as the case may require.</p> <p>(2) If such person—</p> <p>(a) cannot be found for the giving to him of such notice of requirement; or</p> <p>(b) having been given such notice does not comply with the requirement—</p> <p>the Registrar-General may, if he thinks fit, commence proceedings in the Supreme Court for an order that such person deliver up to the Registrar-General such grant, certificate, or instrument to be cancelled or corrected as aforesaid.</p> |
| | | Section 137 .. | <p>Omit the section; insert the following section:—</p> <p>137. (1) In any proceedings under section one hundred and thirty-six of this Act the Court may, if it thinks fit, order the personal attendance before it of the person against whom the proceedings have been brought and may, if it thinks fit, examine him upon oath.</p> <p>(2) In any such proceedings the Court, whether or not it has ordered the personal attendance before it of such person and whether or not it has examined him, may, if it thinks fit, order such person to deliver</p> |

Powers of
Court.
Ibid. ss.
126, 127.

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|---------------------------------|----------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 25, 1900 — <i>cont.</i> | Real Property — <i>cont.</i> | Section 137— <i>cont.</i> | up to the Registrar-General, within such time as the Court may fix, such grant, certificate of title or other instrument to be cancelled or corrected as aforesaid. |
| | | | (3) If the grant, certificate of title or other instrument is not delivered up to the Registrar-General within the time fixed by such order, the Registrar-General shall, if the circumstances of the case require it, issue to the proprietor of the said land such certificate of title or other instrument as is herein provided to be issued in the case of any grant or certificate of title being lost, mislaid, or destroyed, and shall enter in the register-book notice of the issuing of the said certificate of title or other instrument and the circumstances under which the same was issued and such other particulars as he may consider necessary. |
| | | Section 138 .. Section 140 .. | Omit "or Judge". Omit the section. |
| No. 34, 1900 | Witnesses Examination. | Section 4 .. | Omit the section. |
| | | Section 5 .. | Omit the section. |
| | | Section 6 .. | Omit the section; insert the following section:— 6. (1) In any criminal proceeding, if any witness is out of the jurisdiction of the Court or commission, above two hundred miles from the intended place of trial or is from age or infirmity unable to attend the trial or if the testimony of any witness is in danger of being lost by reason of his age or infirmity or by reason of his being about to depart out of the jurisdiction or to some place beyond the said distance of two hundred miles, the Court or a Judge may, on the application or with the consent of the Attorney- |

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Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|---|--------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 34, 1900 — <i>cont.</i> | Witnesses Examination — <i>cont.</i> | Section 6— <i>cont.</i> | General or the Crown Prosecutor as well as the prisoner, but not otherwise, direct— (a) that any such witness within the jurisdiction of the Court be examined on oath, either viva voce or upon interrogatories or otherwise, before a specified officer of the Court or other specified person; or (b) that a commission do issue for the examination of such witness on oath, either viva voce or upon interrogatories or otherwise, at any place in or out of the jurisdiction. (2) The Court or Judge may, at the same time or subsequently, give all such directions touching the time, place, and manner of such examination, as well within the jurisdiction as without, and all other matters and circumstances connected with such examination as appear reasonable and just. |
| | | Section 7 .. | Omit the section. |
| | | Section 8 .. | Omit the section. |
| | | Section 10 .. | Omit the section. |
| | | Section 12 .. | Omit the section. |
| No. 40, 1900 | Crimes .. | Section 172 .. | Omit “ or a Judge thereof,”. |
| | | Subsection (1) of section 178. | Omit “in equity”. |
| | | Section 277 .. | Omit “the Master in Equity”; insert “a master in any Division of the Supreme Court”. |
| | | Subsection (1) of section 358. | Omit “thinks”; insert “think”. Omit “by action of debt in the name of the Attorney-General”; insert “in the name of the Attorney-General in any court of competent jurisdiction as a debt or liquidated demand”. |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|----------------------|--------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 40, 1900 — <i>cont.</i> | Crimes— <i>cont.</i> | Subsection (1) of section 457. | After “Prothonotary” insert “or such other officer of the Supreme Court as may be designated by the rules of that Court”. Omit “to be kept at his office”. Omit “at law”. Omit the section. |
| | | Section 469 .. | Omit “a judge of”. |
| | | Subsection (1) of section 475. | Omit “his own”; insert “its own”. |
| | | Subsection (4) of section 475. | Omit “Judge directing the inquiry”; insert “Supreme Court, if the inquiry was directed by the Supreme Court”. Omit “such Judge”; insert “the Supreme Court, if the inquiry was directed by the Supreme Court,”. |
| | | Subsection (1) of section 563. | After “such action” insert “other than an action in the Supreme Court”. |
| | | Subsection (3) of section 563. | Omit “If a verdict passes for the defendant, or the plaintiff becomes nonsuit, or discontinues his action after issue joined, or if upon demurrer, or otherwise, judgment is given against the plaintiff”; insert “In any such action in a District Court, if judgment is given against the plaintiff, or the plaintiff is nonsuited, or discontinues his action after the defendant has duly filed notice of intention to defend the action or notice of special defence to the action”. |
| | | Section 567 .. | Omit “The Judges”; insert “Notwithstanding the Supreme Court Act, 1970, the Judges”. |
| No. 5, 1901 .. | Police Offences | Subsection (3) of section 114. | After “action” insert “other than an action in the Supreme Court”. |
| | | Subsection (5) of section 114. | Omit “if a verdict is given for the defendant, or the plaintiff becomes nonsuited or discontinues after issue joined, or if upon demurrer or otherwise judgment |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|---------------------------|-------------------------------|---|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 5, 1901— <i>cont.</i> | Police Offences— <i>cont.</i> | Subsection (5) of section 114— <i>cont.</i> | is given against the plaintiff"; insert "in a District Court if a verdict or judgment is given for the defendant, or the plaintiff becomes nonsuited or discontinued after the defendant has duly filed notice of intention to defend the action or notice of special defence to the action". |
| No. 8, 1901.. | Judgment Creditors' Remedies. | Section 1 .. | Omit "PART II— <i>Supreme Court Rules, Decrees, and Orders—s. 3.</i> " |
| | | PART II .. | Omit "ss. 19–26"; insert "ss. 23–25". |
| | | Section 4 .. | Omit the Part. |
| | | | Omit " <i>feri facias</i> "; insert " <i>feri facias</i> (howsoever described whether as a writ for levy of property or otherwise)". |
| | | Section 10 .. | Omit "to whom any writ of <i>feri facias</i> issued out of the Supreme Court is directed"; insert "or other officer having the execution of any writ of execution against property issued out of the Supreme Court". |
| | | Subsection (2) of section 13. | Omit " <i>feri facias</i> "; insert "execution against property". |
| | | Section 14 .. | Omit "Judges of the Supreme Court from time to time direct"; insert "rules made by or under the Supreme Court Act, 1970, provide". |
| | | Subsection (1) of section 17. | Omit "When a writ against the lands or goods of a party to any suit issues out of the Supreme Court, and a warrant or writ of execution against the lands or goods of the same party"; insert "Where a writ of execution against the lands or goods of any person issues out of the Supreme Court and a warrant or writ of execution against the lands or goods of the same person". |
| | | Section 19 .. | Omit the section. |
| | | Section 20 .. | Omit the section. |
| | | Section 21 .. | Omit the section. |
| | | Section 22 .. | Omit the section. |
| | | Section 23 .. | Omit "sheriff,". |

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Supreme Court.

SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|------------------------------|---|-------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 8, 1901— <i>cont.</i> | Judgment Creditors' Remedies— <i>cont.</i> | Subsection (1) of section 24. | Omit "sheriff" wherever occurring; insert "bailiff". |
| | | Subsection (1) of section 25. | Omit "sheriff"; insert "bailiff". Omit "the Supreme Court or". Omit "Judge in Bankruptcy"; insert "Supreme Court". Omit "said Judge"; insert "Supreme Court". |
| | | Subsection (2) of section 25. | Omit "said Judge"; insert "Supreme Court". |
| | | Subsection (3) of section 25. | Omit "sheriff"; insert "bailiff". |
| | | Section 26 .. | Omit the section. |
| | | Subsection (1) of section 27. | Omit "any person against whom any judgment has been entered up in the Supreme Court or in"; insert "a judgment debtor under a judgment of the Supreme Court or". Omit "a Judge of the Supreme Court or"; insert "the Supreme Court or a Judge of". Omit "he thinks"; insert "the Supreme Court or the Judge of the District Court, as the case may be, thinks". |
| | | Section 31 .. | Omit "a Judge of the Supreme Court or"; insert "the Supreme Court or a Judge of". |
| | | Section 32 .. | Omit "Any such Judge"; insert "The Supreme Court or a Judge of the District Court, as the case may be,". Omit "he thinks"; insert "the Supreme Court or the Judge of the District Court, as the case may be, thinks". |
| | | | Omit "or suit". |
| | | | |
| No. 9, 1901 | Anatomy .. | Subsection (1) of section 20. | |
| | | Subsection (2) of section 20. | Omit "or suit"; insert "other than an action in the Supreme Court". |
| No. 28, 1901 | Hawkers and Pedlars. | Section 26 .. | After "action the defendant" insert "except in the Supreme Court,". Omit "there is a verdict for the defendant, or the plaintiff is nonsuited or discontinues such action after issue joined, or if |

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Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|-------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 28, 1901 — <i>cont.</i> | Hawkers and Pedlers— <i>cont.</i> | Section 26— <i>cont.</i> | upon demurrer or otherwise judgment is given against the plaintiff"; insert "any such action is in a District Court and judgment is given against the plaintiff or the plaintiff is non-suited or discontinues such action after the defendant has duly filed notice of intention to defend the action or notice of special defence to the action". |
| No. 33, 1901 | Inclosed Lands Protection. | Section 9 .. | After "any such action" insert "other than an action in the Supreme Court". |
| No. 27, 1902 | Justices .. | Section 1 .. | Omit "PART V.—PROCEEDINGS IN THE NATURE OF APPEAL FROM THE DECISIONS OF JUSTICES—ss. 101–133."; insert "PART V.—APPEAL AND REVIEW— DIVISION 1.— <i>Stated case to Supreme Court—ss. 101–111.</i> DIVISION 2.— <i>Restraint of proceedings by the Supreme Court—ss. 112–115.</i> DIVISION 3.— <i>Habeas corpus and proceedings in the Supreme Court for setting aside conviction or order—ss. 118–121.</i> DIVISION 4.— <i>Appeal to Quarter Sessions—ss. 122–131A.</i> DIVISION 5.— <i>Absconding Appellants—s. 131B.</i> DIVISION 6.— <i>General—ss. 132–133.</i> |
| | | Section 26 .. | Omit "duces tecum"; insert "for production". |
| | | Section 44 .. | Omit " , or, in vacation, of a Judge thereof". |
| | | Section 61 .. | Omit "duces tecum"; insert "for production". |
| | | Section 79 .. | Omit "in an action at law". |
| | | Heading to PART V. | Omit the heading; insert the following heading:— APPEAL AND REVIEW. |
| | | PART V .. | Omit "1. <i>Appeal to Supreme Court by way of special case.</i> " next before section 101; insert the following new heading:— DIVISION 1.— <i>Stated case to Supreme Court.</i> |

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*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|------------------------|--------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 27, 1902 — <i>cont.</i> | Justices— <i>cont.</i> | Section 104 .. | Omit the section; insert the following section:— 104. Where the Justice or Supreme Justices refuses or refuse to state a case, the Supreme Court may, on application by the appellant, order the Justice or Justices to state the case subject to the appellant entering into the recognizance mentioned in subsection one of section one hundred and two of this Act. |
| | | Paragraph (a) of section 105. | After "Prothonotary of the Supreme Court" insert "or such other officer of the Supreme Court as may be designated by those rules". |
| | | Section 107 .. | Omit the section; insert the following section:— 107. The practice and proceedings in reference to the stating of cases as herein provided shall be as prescribed by rules of the Supreme Court made under the Supreme Court Act, 1970. |
| | | Section 107A | Omit the section. |
| | | Subsection (1) of section 108. | Omit "or by the Court of Appeal on appeal thereto". |
| | | Section 109 .. | Omit the section; insert the following section:— 109. No order shall be required for the removal of any conviction, order or other determination in relation to which a case is stated under this Act in order to obtain the judgment or determination of the Supreme Court on such case. |
| | | Subsection (2) of section 111. | Omit "a writ"; insert "an order". |
| | | PART V .. | Omit "2. <i>Prohibition.</i> " next before section 112; insert the following new heading:— DIVISION 2.— <i>Restraint of proceedings by the Supreme Court.</i> |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|---|------------------------|-------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 27, 1902 <i>—cont.</i> Restraint of proceedings. 17 Vic. No. 39, ss. 3, 4, 5, 9; 14 Vic. No. 43, s. 12. | Justices— <i>cont.</i> | Section 112 .. | Omit the section; insert the following section:— 112. (1) Any person aggrieved by any summary conviction or order of any Justice or Justices may commence proceedings in the Supreme Court for relief in accordance with this section. (2) Proceedings for relief under this section in respect of any conviction or order shall be commenced within such period after the date of the conviction or order as may be prescribed by rules of the Supreme Court. (3) For the purposes of subsection two of this section the date of any conviction or order shall be the date of final adjudication as announced whether orally or in writing. (4) A person aggrieved by any conviction or order may commence proceedings under this section whether or not the conviction or order has been drawn up in form. (5) Where, in proceedings under this section, it appears to the Supreme Court after inquiry and consideration of the evidence adduced before the Justice or Justices that the conviction or order cannot be supported, the Supreme Court may, subject to section one hundred and fifteen of this Act— (a) by order restrain the Justice or Justices and the prosecutor or person interested in maintaining the conviction or order from proceeding or further proceeding, as the case may be, upon or in respect of such conviction or order; and (b) make such further order as the nature of the case requires. |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|------------------------|-------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 27, 1902 — <i>cont.</i> | Justices— <i>cont.</i> | Section 112— <i>cont.</i> | (6) This section does not affect any other power of the Supreme Court to prohibit or restrain any person from proceeding or further proceeding upon or in respect of any conviction or order of any Justice or Justices. |
| | | | (7) A reference in any Act to proceedings under this Act for prohibition shall be construed as a reference to proceedings under this section. |
| | | Section 113 .. | Omit the section. |
| | | Section 114 .. | Omit the section. |
| | | Section 115 .. | Omit the section; insert the following section:— 115. (1) In proceedings under section one hundred and twelve of this Act, if any mistake or error made by the Justice or Justices appears to be amendable, the Supreme Court shall allow the conviction or order to be forthwith amended accordingly, and from and after such amendment the conviction or order may be enforced or dealt with in all respects as if the same had so stood originally. (2) The power of amendment referred to in subsection one of this section shall or may be exercised in every case where— (a) the facts or evidence appearing by the depositions in substance support the adjudication of the Justice or Justices, and such adjudication does not extend beyond the charge or complaint; (b) such facts or evidence would have justified or justify any necessary allegation or finding omitted in such adjudication or in the formal conviction or order, or any warrant issued in pursuance of such adjudication. |

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Supreme Court.

No. 52, 1970

SECOND SCHEDULE—continued.

| First Column. | | Second Column. | |
|---|----------------|-------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 27, 1902 —cont. | Justices—cont. | Section 115— cont. | (3) Where a conviction is had in respect of some excess which may consistently with the merits of the case be corrected, the conviction shall be amended accordingly, and shall stand good for the remainder. |
| | | Section 116 .. | Omit the section. |
| | | Section 117 .. | Omit the section. |
| | | Section 117A | Omit the section. |
| | | PART V .. | Omit "3. <i>Special provisions regarding appeals by way of writ of habeas corpus or of certiorari.</i> " next before section 118; insert the following new heading:— DIVISION 3.— <i>Habeas corpus and proceedings in the Supreme Court for setting aside conviction or order.</i> |
| Notice to Justice, &c. 14 Vic. No. 43, ss. 9, 10, 11; 17 Vic. No. 39, s. 7. | | Section 118 .. | Omit the section; insert the following section:— 118. (1) Where— (a) in proceedings in the Supreme Court an order is sought for the setting aside of a conviction or order of a Justice or Justices; or (b) in proceedings in the Supreme Court for a writ of habeas corpus an order is sought for the discharge from custody of a person in custody under a warrant of commitment pursuant to a conviction or order of a Justice or Justices— the Supreme Court shall not make the order on the ground of any defect or error in the conviction or order or in the warrant (if any) until the Justice or Justices or any one of them or the prosecutor or party interested in supporting the conviction or order or warrant (if any)— (c) has or have had notice of the intention to apply for the order; and |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|------------------------|---------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 27, 1902 — <i>cont.</i> | Justices— <i>cont.</i> | Section 118— <i>cont.</i> | (d) has or have been required to transmit, or has or have had the opportunity of transmitting or causing to be transmitted to the Court the conviction or order and the information (if any) and depositions intended to be relied on in support of the conviction or order or certified copies thereof. (2) Subject to the rules of the Supreme Court, the notice mentioned in paragraph (c) of subsection one of this section may be given at any stage of the proceedings in the Supreme Court. (3) Where copies of the conviction or order and of the depositions are produced to the Court, the Court may dispense with the notice. (4) This section does not apply to an order of the Supreme Court under Division One or Division Two of this Part. |
| | | Subsection (1) of section 119. | Omit “or Judge” wherever occurring. |
| | | Section 120 .. | Omit “or Judge” wherever occurring. |
| | | Section 121 .. | Omit “or Judge” wherever occurring. |
| | | PART V .. | Omit “4. <i>Appeal to Quarter Sessions.</i> ” next before section 122; insert the following new heading:— DIVISION 4.— <i>Appeal to Quarter Sessions.</i> |
| | | Subsection (2) of section 131A. | Omit the subsection. |
| | | PART V .. | Omit “4A. <i>Provision applicable to appeals to Supreme Court by way of special case and to Quarter Sessions.</i> ” next before section 131B; insert the following new heading:— DIVISION 5.— <i>Absconding Appellants.</i> |
| | | | |
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| | | | |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|---|----------------|--------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 27, 1902 —cont. | Justices—cont. | PART V .. | Omit “5. <i>General provisions applicable to all proceedings by way of appeal.</i> ” (a) <i>As to amendment.</i> ” next before section 132; insert the following new heading:— DIVISION 6.— <i>General.</i> |
| | | Section 132 .. | Omit “or before a Judge thereof”. Omit “or Judge” wherever occurring. |
| Direction to Justice to act. | | PART V .. | Omit “(b) <i>As to want of information or of distribution of penalty.</i> ” next before section 133. |
| | | Section 134 .. | Omit the section; insert the following section:— 134. (1) The Supreme Court may, on application by any person, by order direct a Justice to do any act relating to the duties of his office. (2) No action or proceeding shall be commenced or prosecuted against such Justice for having obeyed such order and done the act thereby required. |
| Action for act done within jurisdiction. 11 & 12 Vic. c. 44, s. 1. | | Section 135 .. | Omit the section; insert the following section:— 135. (1) Every action brought against a Justice for an act done by him in the execution of his duty as a Justice with respect to a matter within his jurisdiction as a Justice shall be an action as for a tort. (2) An action shall not lie against a Justice for any such act referred to in subsection one of this section unless the act was done maliciously and without reasonable and probable cause. |
| | | Subsection (1) of section 136. | Omit “in the same form and”. |
| | | Subsection (2) of section 136. | Omit “the declaration”; insert “such an action”. |
| | | Paragraph (e) of section 137. | After “allege” insert “or prove”. Omit the paragraph. |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|------------------------|--------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 27, 1902 — <i>cont.</i> | Justices— <i>cont.</i> | Section 138 .. | Omit the section; insert the following section:— 138. (1) Where an action is brought against a Justice in respect of any matter in respect of which it is by this Act enacted that no action shall be brought, the Court in which such action may be set is brought may, upon the application of the defendant, set aside the proceedings in such action, with or without costs. (2) Where proceedings in the Supreme Court have been commenced under section one hundred and twelve of this Act in respect of any conviction or order of any Justice or Justices and, before or after the commencement of those proceedings, an action is brought in any Court against that Justice or those Justices or any of them, as the case may be, in respect of any proceedings taken under, or matter arising out of, that conviction or order, the Supreme Court may by order stay proceedings in the action pending determination of the proceedings under section one hundred and twelve of this Act. (3) Subsection two of this section does not restrict the exercise by any Court of any other power of that Court to stay any action brought in that Court. |
| | | Section 140 .. | Omit “, or in the Circuit Court nearest to which the act complained of was committed,”. |
| | | Subsection (3) of section 141. | Omit “any Judge of”. |
| | | Section 142 .. | After “is brought may” insert “, unless the action is brought in the Supreme Court,”. |
| | | Subsection (1) of section 145. | After “action” insert “, other than an action in the Supreme Court,”. |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|------------------------|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 27, 1902 — <i>cont.</i> | Justices— <i>cont.</i> | Paragraph (b) of subsection (1) of section 145. Subsection (2) of section 145. | Omit "declaration or". After "action" insert "other than an action in the Supreme Court,". |
| No. 29, 1902 | Arbitration .. | Section 146 .. Section 3 .. Section 4 .. Section 6 .. Section 7 .. Section 8 .. Section 9 .. Section 10 .. Section 11 .. Subsection (1) of section 12. Section 14 .. | Omit "writ or". Omit "or a Judge thereof". Omit "'Judge" means a Judge of the Supreme Court.". Omit "or a Judge". Omit "Court" wherever occurring; insert "court". Omit "after appearance, and". Omit "proceedings, apply"; insert "proceedings, other than appearing in the proceedings, apply". Omit "or a Judge". Omit "or a Judge". Omit "or a Judge". Omit "special case"; insert "case stated". Omit the section; insert the following section:— 10. (1) The Court may, on the application of any party to a submission, order the issue of a subpoena for testimony, or a subpoena for production or a subpoena for both testimony and production. (2) Every person upon whom any such subpoena is served shall be entitled to like payment to meet his expenses of carrying out the requirements of the subpoena as upon a trial of proceedings in the Court. Omit "or a Judge". Omit "or a Judge". Omit the section; insert the following section:— 14. (1) Subject to subsection two of this section, an award on a submission may, by leave of the Court, be enforced in the same manner as a judgment or order of the Court to the same effect. |

Court may
issue sub-
poenas.
55 Vic. No.
32, s. 7.

Enforcing
award.
55 Vic. No.
32, s. 11;
37 Vic. No.
11, s. 6.

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|------------------------------|-------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 29, 1902 — <i>cont.</i> | Arbitration— <i>cont.</i> | Section 14— <i>cont.</i> | (2) Non-compliance with any award on a submission as to payment of any money, costs or expenses shall not be contempt of court. |
| | | Section 15 .. | Omit “or a Judge” wherever occurring. |
| | | | Omit “before a jury or conducted by the Court through its other ordinary officers”; insert “by the Court”. |
| | | | Omit “whole cause or matter”; insert “proceedings”. |
| | | Subsection (1) of section 16. | Omit “or a Judge”. |
| | | Subsection (2) of section 16. | Omit “or a Judge”. |
| | | Subsection (3) of section 16. | Omit “jury”; insert “jury given in proceedings triable with a jury”. |
| | | Section 17 .. | Omit “or a Judge” wherever occurring. |
| | | Section 18 .. | Omit the section. |
| | | Section 19 .. | Omit “or a Judge”. |
| | | | Omit “in the form of a special”; insert “a”. |
| | | Section 20 .. | Omit the section; insert the following section:— 20. Rules of Court may be Rules of made under the Supreme Court Court, Act, 1970, for carrying the purposes of this Act into effect. |
| | | Section 21 .. | Omit “, or a Judge thereof,”. Omit “or issue a commission”. Omit “such Court or Judge”; insert “the Court”. Omit “or commission” wherever occurring. Omit “or issued”. Omit “or commissions issued”. |
| | | Section 22 .. | Omit “cause in the said Court in its common law jurisdiction”; insert “proceedings in the Court”. |
| | | Section 23 .. | Omit the section. Omit “or commission” wherever occurring. Omit “or issued”. Omit “or a Judge”. |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|------------------------------|--------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 29, 1902 — <i>cont.</i> | Arbitration— <i>cont.</i> | Section 23— <i>cont.</i> | Omit “a cause”; insert “proceedings”. |
| No. 66, 1902 | Pawnbrokers | Section 46 .. | Omit “such cause”; insert “the proceedings”. |
| No. 74, 1902 | Vagrancy .. | Subsection (2) of section 15. | After “sued” insert “in any court other than the Supreme Court”. |
| No. 49, 1906 | Mining .. | Subsection (3) of section 15. | After “may” insert “, except in the Supreme Court,”. |
| | | Subsection (1) of section 167. | Omit “issue, and”; insert “issue and”. |
| | | Subsection (2) of section 167. | After “action” insert “other than an action in the Supreme Court”. |
| | | | Omit “Court: |
| | | | Provided that the party so appealing shall, within such time and in such manner as may be prescribed by the rules, give notice of such appeal to the other party, or his attorney, and also give security (to be approved of by the registrar of the said mining appeal court) for costs of the appeal and the amount of the judgment, or in lieu of giving such security, deposit in the hands of such registrar the amount of the judgment, together with sixty dollars in addition to such amount, to answer the costs of the appeal if such appeal be dismissed.”; insert “Court.”. |
| | | Subsection (3) of section 167. | Omit “Such orders shall be final, and such appeal shall be in such manner and form, and subject to such regulations in all respects as the judges of the Supreme Court may by general rules in that behalf prescribe.” |
| | | Subsection (1) of section 168. | Omit the subsection. |
| | | Section 169 .. | Omit “prescribed time”; insert “time prescribed by rules of the Supreme Court”. |
| | | | Omit “and the sum of forty dollars, or such less sum as the warden may order, to abide the costs of the appeal,”. |

SECOND

Supreme Court.

SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|----------------------|--------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 49, 1906 — <i>cont.</i> | Mining— <i>cont.</i> | Section 171 .. | Omit the section; insert the following section:— 171. Where the warden refuses Supreme to state a case, the Supreme Court may, on application by direct case the appellant, order the warden to be stated. to state the case subject to the appellant lodging the fees and giving the security mentioned in section one hundred and sixty-nine of this Act. |
| | | Section 172 .. | After “Court” insert “or such other officer of the Supreme Court as may be designated by rules of the Supreme Court”. |
| | | Section 174 .. | Omit the section; insert the following section:— 174. The practice and proceed- Rules of ings in reference to the stating practice. of cases as herein provided shall be as prescribed by rules of the Supreme Court made under the Supreme Court Act, 1970. |
| | | Subsection (2) of section 176. | Omit “writ”; insert “order”. |
| | | Subsection (2) of section 181. | Omit “, or any judge thereof,”. |
| | | Heading to Section 183 | Omit “ <i>No certiorari.</i> ” next before section 183; insert the following heading:— “ <i>No removal into Supreme Court.</i> ”. |
| | | Section 183 .. | Omit the section; insert the following section:— 183. No proceedings under No removal this Act shall be removed or into removable into the Supreme Supreme Court. Court. |
| | | | |
| No. 9, 1909 | Fire Brigades | Section 47 .. | Omit “plea”; insert “defence to the action”. Omit “amends, and may give this Act and the special matter in evidence.”; insert “amends.”. |

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Supreme Court.

No. 52, 1970

SECOND SCHEDULE—continued.

| First Column. | | Second Column. | |
|--|-----------------|-------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| <p>Ordinary jurisdiction of the Courts.</p> <p>24 & 25 Geo. 5, c. 53, ss. 40, 41; Act No. 6320 (Vic.), s. 37</p> <p>24 & 25 Geo. 5, c. 53, s. 41.</p> <p>Removal of action to Supreme Court.</p> <p><i>Ibid.</i></p> | District Courts | Section 1 .. | Omit "PART IV.—OTHER JURISDICTIONS— DIVISION 1.— <i>Issues equity, probate, and matrimonial.</i> —ss. 132–135. DIVISION 2.— <i>Procedure in matrimonial matters.</i> —ss. 136–138." |
| | | Section 3 .. | Omit "proceeding."; insert "proceeding, including proceedings taken pursuant to Part IIIA of this Act." |
| | | Section 41 .. | Omit the section; insert the following section:— 41. (1) Subject to any Act, the jurisdiction of the District Courts shall extend to— (a) any action founded on contract or tort; (b) any action, founded on breach of statutory duty, for recovery of damages; (c) any action for the recovery of any penalty, expenses, contribution or other money recoverable by virtue of any Act; and (d) any other personal action at law— in which the property sought to be recovered does not exceed six thousand dollars in value or in which the amount claimed, whether on balance of account or after admitted set-off or otherwise, does not exceed six thousand dollars. (2) In subsection one of this section "penalty" does not include a fine to which any person is liable on conviction upon indictment or on summary conviction. |
| | | Subsection (2) of section 44. | Omit the subsection; insert the following subsection:— (2) Where difficult questions of law or fact are likely to arise in such action, the Supreme Court, may, on the application of the defendant or his landlord, order that the action be tried in the |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 23, 1912 — <i>cont.</i> | District Courts — <i>cont.</i> | Subsection (2) of section 44— <i>cont.</i> | Supreme Court as proceedings for possession of land and may make such orders, if any, as to procedure in the Supreme Court as it thinks fit. |
| | | Subsection (3) of section 44. | Omit the subsection; insert the following subsection:— (3) Where the Supreme Court has ordered the action to be tried in the Supreme Court, the action shall be so tried, and all proceedings in the District Court in the action shall be discontinued. |
| | | Subsection (4) of section 44. | Omit “, and the costs of all proceedings subsequent to the making of the said order shall be allowed and recovered in the Supreme Court according to the scale of costs in the Supreme Court”. |
| | | Subsection (1) of section 47. | Omit “by writ of certiorari into the Supreme Court by order of any judge thereof”; insert “into the Supreme Court by order of the Supreme Court”. |
| | | Subsection (2) of section 47. | Omit “such judge”; insert “the Supreme Court”. |
| | | Section 48 . . | Omit “such judge”; insert “the Supreme Court”. |
| | | | Omit the section; insert the following section:— 48. (1) Where an application is Action pending in the Supreme Court may be for an order of removal or stayed prohibition relating to an action during in a District Court, the Supreme pendency of Court may make orders for a application stay of proceedings in the action for order of until the determination of the removal or application or until the Supreme prohibition. Court otherwise orders. (2) Where an order for a stay of proceedings in an action has been made under subsection one of this section, the judge of the District Court shall from time to time adjourn the hearing of the action to such day as he thinks fit until the determination of the |

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Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|---|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 23, 1912 — <i>cont.</i> | District Courts — <i>cont.</i> | Section 48— <i>cont.</i> | application or until the Supreme Court otherwise orders; but if a copy of the order for stay of proceedings is not served by the party who obtained it on the opposite party and on the registrar of the District Court within a reasonable time, not being less than two clear days before the day fixed for hearing of the action, the judge of the District Court may order the party who obtained the order for stay of proceedings to pay all the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court has made some order respecting such costs. |
| | | Section 49 .. | Omit the section; insert the following section:— 49. Where an order of removal or of prohibition relating to an action in a District Court has been made by the Supreme Court on an ex parte application, and the party who obtained the order does not serve upon the registrar a copy of the order and give notice to the opposite party that the order has been made, within a reasonable time, not being less than two clear days before the day fixed for the hearing of the action, the judge of the District Court may order the party who obtained the order of the Supreme Court to pay all the costs of the day, or so much thereof as he thinks fit, unless the Supreme Court has made some order respecting such costs. |
| | | Section 50 .. Subsection (2) of section 75. | Omit the section. Omit the subsection; insert the following subsection:— (2) Subject to any rules of court, all matters which may be made the subject of a cross action between the parties, shall be pleadable by way of set-off, provided the like notice thereof is |

Registrar to be served with copy of order of certiorari or prohibition.

Cross action.
No. 4, 1901,
s. 62 (2).

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*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 23, 1912 — <i>cont.</i> | District Courts — <i>cont.</i> | Subsection (2) of section 75— <i>cont.</i> | given as is required in respect of the special defences hereinbefore mentioned. |
| | | Subsection (1) of section 80. | After “otherwise, to be examined as a witness in any proceeding pending in such court” insert “and for returning him to confinement”. |
| | | | Omit “; and the person required by such order to be brought before the court shall be so brought under the same care and custody, and be dealt with in the same manner in all respects as a prisoner required by writ of habeas corpus awarded by the Supreme Court to be brought before such court to be examined as a witness in any proceeding pending in such court, is by law required to be dealt with”. |
| | | Subsection (1) of section 95. | Omit “, except an issue in any proceeding under the Matrimonial Causes Act, 1899,”. |
| | | Section 105 .. | Omit the section; insert the following section:— 105. (1) Except as provided in this section or prescribed by rules of court, execution upon any judgment in any District Court may be issued without the leave or order of a judge and without any revival of the judgment. (2) Where more than twenty years have elapsed since any judgment was pronounced in any District Court, execution upon the judgment shall not be issued without the leave of a judge of a District Court. (3) Nothing in this section shall affect the powers of a judge of a District Court to order a stay of execution. |
| | | Subsection (1) of section 114. | Omit “of the Supreme Court or”. |
| | | Subsection (1) of section 131A. | Omit “actions or matters”; insert “proceedings”. |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 23, 1912 — <i>cont.</i> | District Courts — <i>cont.</i> | Paragraph (d) of subsection (1) of section 131A. Subsection (2) of section 131A. Subsection (3) of section 131A. | Omit “actions”; insert “proceedings”. Omit “actions or matters” wherever occurring; insert “proceedings”. Omit “of the Chief Judge in Equity”; insert “of the Supreme Court”. Omit “of the said Chief Judge in Equity”; insert “of the Supreme Court”. Omit “practice of the Supreme Court in Equity”; insert “practice of the Supreme Court”. Omit “rules or”. Omit the subsection; insert the following subsection:— (3) If during the progress of any proceedings under subsection one of this section it shall be made to appear to the judge that the subject-matter exceeds the limit in point of amount or value to which the jurisdiction of the court is therein limited, it shall not affect the validity of any order already made, but it shall be the duty of the judge to direct that the proceedings be transferred to the Supreme Court, and, after such direction, the proceedings shall be continued in the Supreme Court, subject to any orders of the Supreme Court as to procedure, as if they had been commenced in that Court: Provided always that, notwithstanding such excess in the amount or value of the limit to which equitable jurisdiction is given by subsection one of this section, the Supreme Court may, on the application of any of the parties, order that the proceedings be carried on and prosecuted in the District Court. |

SECOND

Supreme Court.

SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 23, 1912 — <i>cont.</i> | District Courts — <i>cont.</i> | Subsection (4) of section 131A. | Omit the subsection; insert the following subsection:— (4) Where any proceedings which might have been commenced under this section in a District Court are pending in the Supreme Court, the Supreme Court may, on the application of any of the parties, order that the proceedings be transferred to the District Court in which the proceedings might have been commenced, and thereupon the proceedings shall be carried on in the District Court to which it is ordered they be transferred, and the parties shall have the same right of appeal as they would have had if the proceedings had been commenced in that District Court. |
| | | Subsection (5) of section 131A. | Omit the subsection; insert the following subsection:— (5) If during the progress of any proceedings under subsection one of this section (not being proceedings transferred pursuant to subsection four of this section) it shall be made to appear to the judge that for any sufficient reason the proceedings should be transferred to the Supreme Court, then without prejudice to the validity of any order already made the judge may direct that the proceedings be transferred accordingly, and, after such direction, the proceedings shall be continued in the Supreme Court, subject to any orders of the Supreme Court as to procedure, as if they had been commenced in that Court. |
| | | PART IV .. Subsection (1) of section 139. | Omit the Part. Omit the subsection; insert the following subsection:— (1) Where any proceedings which might have been commenced, otherwise than under subsection one of section 131A of this Act, in a District Court Supreme Court may remit proceedings to a District Court. |

SECOND No. 22, 1905,
s. 26.

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—continued.

| First Column. | | Second Column. | |
|------------------------|---------------------------|-------------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 23, 1912 —cont. | District Courts —cont. | Subsection (1) of section 139—cont. | are pending in the Supreme Court, and pleadings in the Supreme Court have closed, and the claim in the proceedings— (a) does not exceed one thousand dollars; or (b) though it originally exceeded one thousand dollars, is reduced by payment, an admitted set-off or otherwise to a sum not exceeding one thousand dollars, and the whole or part of the demand of the plaintiff is contested, the Supreme Court may, on the application of either party, order such proceedings to be tried in such District Court as it thinks fit. |
| | | Section 141 .. | Omit the section; insert the following section:— 141. (1) Where proceedings are remitted to a District Court under section one hundred and thirty-nine of this Act, the plaintiff shall lodge with the registrar of such court a copy of the order and of the pleadings and the judge of such court shall appoint a day for the trial of the proceedings, notice whereof shall be sent in the prescribed manner by the registrar to both parties or their attorneys. Thereafter the proceedings shall be continued in such court as if they had been originally commenced therein: Provided that on failure of the plaintiff to lodge a copy of the order and pleadings as aforesaid within ten days of the entry of the said order, then the defendant may lodge a copy thereof. (2) The costs of all proceedings subsequent to the making of the said order shall be allowed according to the scale of costs in the District Courts; and |

**Procedure
where
proceedings
remitted.
No. 22, 1905,
s. 28.**

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|--------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 23, 1912 — <i>cont.</i> | District Courts — <i>cont.</i> | Section 141 — <i>cont.</i> | the costs of the order and all proceedings previously thereto shall, subject to any order of the Supreme Court, be allowed according to the scale of costs in the Supreme Court. |
| | | Section 142 .. | Omit the section; insert the following section:— 142. An appeal shall lie to the Supreme Court from the ruling, order, direction or decision of the judge in point of law, or upon the admission or rejection of any evidence, in any action in a District Court or in any proceedings in interpleader in a District Court— (a) where the appeal involves directly or indirectly any claim, demand or question to or respecting any property or any civil right amounting to or of the value of one thousand dollars or upwards—as of right; or (b) in any case—by leave of the Supreme Court. |
| | | Section 143 .. | Omit the section. |
| | | Section 144 .. | Omit the section. |
| | | Subsection (1) of section 145. | After “section” insert “or as directed by the Supreme Court”. |
| | | Subsection (3) of section 145. | Omit the subsection; insert the following subsection:— (3) In any such appeal— (a) the Supreme Court, if it is of opinion that a non-suit should have been ordered at the trial, may order a non-suit; (b) the Supreme Court, if it is of opinion that upon the evidence any party is as a matter of law entitled to a verdict in the action or proceedings or upon any issue therein, may give that |

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Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|-----------------------------------|---|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 23, 1912 — <i>cont.</i> | District Courts — <i>cont.</i> | Subsection (3) of section 145— <i>cont.</i> | verdict and may order such judgment to be entered as is appropriate to that verdict; |
| | | (c) the Supreme Court may order a new trial of the action or proceedings or of any issue therein. | (c) the Supreme Court may order a new trial of the action or proceedings or of any issue therein. |
| | | Section 147 .. | Omit the section; insert the following section:— 147. If a judge or an officer of any District Court refuses to do any act relating to the duties of his office, the Supreme Court may, on the application of any party requiring such act to be done, by order direct the judge or officer to do the act. |
| | | Subsection (2) of section 149. | Omit the subsection; insert the following subsection:— (2) Whenever the manner or form of procedure for taking any step in any civil action or matter in a District Court is not prescribed by the Act under which such step is to be taken or by rules of court or by the practice of the court, a judge of the court may direct what manner or form of procedure is to be followed, and any step taken in accordance with the direction given shall be deemed to be regular and sufficient. |
| No. 30, 1912 | Government Railways. | Paragraph (c) of section 26. | Omit the paragraph; insert the following paragraph:— (c) recover any such tolls as a debt or liquidated demand in a court of competent jurisdiction. |
| | | Paragraph (c) of subsection (4) of section 100b. | Omit the paragraph; insert the following paragraph:— (c) where any payment is made under the indemnity and, at the time of the payment, the officer has not obtained judgment for damages against the person paying |

Supreme Court may order a judge or officer to act.

Supreme Court.

| SECOND SCHEDULE— <i>continued.</i> | | | | No. 52, 1970 |
|------------------------------------|--|--|---|--------------|
| First Column. | | Second Column. | | |
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. | |
| No. 30, 1912 — <i>cont.</i> | Government Railways— — <i>cont.</i> | Paragraph (c) of subsection (4) of section 100B.— <i>cont.</i> | under the indemnity, the payment shall, to the extent of its amount, be a defence to proceedings by the worker against that person for damages. | |
| | | Paragraph (b) of subsection (4) of section 100D. | Omit the paragraph; insert the following paragraph:— (b) any payment made to the officer before the date of the election by way of salary at the rate so ascertained, after making due allowance, in the case where the officer returns to duty before the date of the election, for any salary properly payable to him in respect of the duties of the classification in which he is employed after his return to duty and before the date of the election, shall, to the extent of its amount— (i) be a defence to a claim against the Commissioner for Railways for damages; and (ii) be set off against any sum which becomes payable by such Commissioner as compensation (including the cost of medical or hospital treatment or ambulance service). | |
| | | Subsection (4) of section 144. | After “action” insert “other than an action in the Supreme Court”. | |
| No. 31, 1912 | Jury | Section 3 .. | Omit “actions at law”; insert “civil proceedings in the Supreme Court”. | |
| | | Section 29 .. | Omit “actions at law and civil issues of fact”; insert “issues of fact in civil proceedings”. | |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--|--------------------|-------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| Order for summoning jury. No. 67, 1901, s. 43. | Jury— <i>cont.</i> | Section 29 — <i>cont.</i> | Omit "action after judgment by default or upon demurrer"; insert "proceedings". |
| | | Section 30 .. | Omit "any action"; insert "civil proceedings in the Supreme Court". |
| | | Section 41 .. | Omit "issue joined"; insert "the pleadings are closed". |
| | | | Omit the section; insert the following section:— 41. The Supreme Court may make all such orders upon the sheriff or other person as may be necessary to secure the attendance of a jury for the trial of any proceedings or matter pending in such court at such time and place and in such manner as the court thinks fit. |
| | | Subsection (1) of section 42. | Omit "or to a judge thereof". Omit "or judge". |
| | | Subsection (3) of section 50. | Omit "the judges of the Supreme Court"; insert "rules made under the Supreme Court Act, 1970." |
| | | Subsection (1) of section 60. | Omit "attorney" wherever occurring; insert "solicitor". |
| | | Section 63 .. | Omit "attorney"; insert "solicitor". |
| | | Subsection (1) of section 67. | Omit "any judge of". |
| | | | Omit "any cause"; insert "any civil proceedings". |
| | | | Omit "the cause"; insert "the proceedings". |
| | | Subsection (2) of section 67. | Omit "such judge"; insert "the court". |
| | | | Omit "said judge"; insert "court". |
| | | Subsection (1) of section 75. | Omit "cause"; insert "proceedings". |
| | | Subsection (2) of section 75. | Omit "every action"; insert "any civil proceedings". |
| | | Section 77 .. | Omit "cause"; insert "proceedings". |
| | | Section 78 .. | Omit "The judges of the Supreme Court may make general rules"; insert "Rules may be made under the Supreme Court Act, 1970". |
| | | | Omit "action of debt"; insert "civil proceedings". |
| | | Section 86 .. | Omit "or by a judge thereof". |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|-------------------|----------------------------|----------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 33, 1912 | Small Debts Recovery. | Section 47 .. | Omit the section; insert the following section:— 47. Where more than six years have elapsed since a judgment was recovered in a court of petty sessions, execution upon the judgment shall not be issued without the leave of the court. |
| | | Section 71 .. | After "person may" insert "except in the Supreme Court,". Omit "if the plaintiff be nonsuited or discontinue his action, or a verdict pass against him or judgment be had for the defendant upon demurrer"; insert "in any such action brought in a District Court if a verdict pass against the plaintiff or the plaintiff be nonsuited or discontinue his action after the defendant has duly filed notice of intention to defend the action or notice of special defence to the action". |
| No. 73, 1912 | Irrigation .. | Subsection (4) of section 17c. | After "action" insert "other than an action in the Supreme Court". |
| No. 7, 1913.. | Crown Lands Consolidation. | Subsection (2) of section 129. | Omit "in its equitable jurisdiction, which may be obtained in the manner prescribed by rules of court, or until such rules are made, by summons at chambers". |
| | | Subsection (6B) of section 145A. | Omit "in its equitable jurisdiction, which may be obtained in the manner prescribed by rules of court, or until such rules are made by summons at chambers". |
| | | Subsection (2) of section 234. | Omit "by way of scire facias"; insert "in the Supreme Court". Omit "of the Supreme Court"; insert "of the Court". |
| | | Section 249 .. | After "in every such proceeding" insert "other than a proceeding in the Supreme Court,". Omit "upon demurrer or otherwise". |

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|------------------------------|---|---------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 7, 1913— <i>cont.</i> | Crown Lands Consolidation— <i>cont.</i> | Subsection (3) of section 265. | Omit "in its equitable jurisdiction which may be obtained in the manner prescribed by rules of court, or until such rules are made, by summons at chambers". |
| | | Subsection (1) of section 270. | After "decree" wherever occurring insert "judgment". |
| | | Subsection (4) of section 272. | Omit "in its equitable jurisdiction, which may be obtained in the manner prescribed by rules of court, or until such rules are made by summons at chambers". |
| | | Section 280 . . | Omit "(d) any remedy by writ of scire facias where a grant"; insert "(d) any right of the Crown to proceed in the Supreme Court for the repeal of a grant which". |
| No. 41, 1919 | Local Government. | Subsection (10) of section 15i. | Omit "No writ of prohibition or certiorari shall lie"; insert "The Supreme Court shall not make any order of prohibition or of removal or quashing". |
| | | Subsection (1) of section 43. | Omit "or a judge thereof". |
| | | Subsection (2) of section 44. | Omit "grant a rule or"; insert "make an". |
| | | Subsection (3) of section 44. | Omit "or judge". |
| | | Subsection (3A) of section 44. | Omit "rule or" wherever occurring. |
| | | Subsection (4) of section 44. | Omit "or judge". |
| | | Subsection (5) of section 44. | Omit "or judge" wherever occurring. |
| | | Subsection (6) of section 44. | Omit "rule or". |
| | | Subsection (1) of section 45. | Omit "rule or". |
| | | | Omit "or a judge thereof". |
| | | | Omit "or judge" wherever occurring. |

SECOND

Supreme Court.

SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|-------------------------------------|-------------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 41, 1919 — <i>cont.</i> | Local Govern- ment— <i>cont.</i> | Subsection (2) of section 45. | Omit "or any judge thereof". |
| | | Subsection (3) of section 45. | Omit the subsection; insert the following subsection:— (3) Where the court has made an order that an inquiry be held by a person named in the order— (a) the court may by the same or any subsequent order— (i) give all such directions touching the time, place, and manner of holding the inquiry as appear reasonable and just; (ii) give all such directions touching all matters and circumstances connected with the holding of the inquiry as appear reasonable and just; (iii) command the attendance of any person named therein for the purpose of being examined, or the production of any writing mentioned therein; (iv) command any person to be sworn; (v) command any person to answer any lawful question; (b) every person whose attendance is commanded by order of the court shall be entitled to the same conduct money and payment for expenses and loss of time as upon the hearing of proceedings in the court; (c) no person shall be compelled to produce any writing in respect of which he has sufficient lawful objection to production on any ground of privilege; |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|-------------------------------------|---|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 41, 1919 — <i>cont.</i> | Local Govern- ment— <i>cont.</i> | Subsection (3) of section 45 — <i>cont.</i> | (d) wilful disobedience of any order of the court commanding the attendance of any person named therein for the purpose of being examined, or the production of any writing mentioned therein, or commanding any person to be sworn, or commanding a person to answer a question or questions shall be contempt of court; (e) the person named in the order as the person to hold the inquiry shall take the evidence of any witness upon the oath of such witness administered by the person so named; (f) any witness who, upon oath so administered by the person named in the order, wilfully and corruptly gives any false evidence shall be deemed guilty of perjury. |
| | | Subsection (1) of section 46. | Omit "rule or" wherever occurring. |
| | | Paragraph (a) of subsection (3) of section 192. | Omit "or a judge thereof". Omit the paragraph; insert the following paragraph:— (a) it has been established to the satisfaction of the Supreme Court that the debenture has been lost or accidentally burnt or otherwise destroyed before it has been paid off; |
| | | Paragraph (b) of subsection (3) of section 192. | Omit "judge"; insert "court". |
| | | Subsection (2) of section 192c. | Omit "Master in Lunacy"; insert "Master in the Protective Division". |
| | | Subsection (1) of section 193. | Omit "in its equitable jurisdiction". |
| | | Paragraph (c) of subsection (1) of section 243. | Omit "plea, notice of defence or statement of defence as the case may be is duly filed"; insert "statement of defence or notice |

SECOND

Supreme Court.

SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|--------------------------------|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 41, 1919 — <i>cont.</i> | Local Government— <i>cont.</i> | Paragraph (c) of subsection (1) of section 243— <i>cont.</i> | of defence, as the case may be, has been duly filed or, where a statement of defence or notice of defence is not in accordance with the practice of the court, reasonable notice in writing of intention to rely on the defence has been given to the council". |
| | | Subsection (3) of section 273. | Omit "a judge of". |
| | | Subsection (4) of section 273. | Omit "Such judge"; insert "The court". |
| | | Subsection (5) of section 273. | Omit "he"; insert "it". Omit "such judge"; insert "the court". |
| | | Paragraph (a) of subsection (1) of section 341k. | Omit "he" wherever occurring; insert "it". Omit "(i)". |
| | | Subsection (8) of section 342AC. | Omit "definition" where secondly occurring; insert "definitions". |
| | | Subsection (2) of section 384. | Omit "(ii) by omitting from the same section the definition of "Judge" and by inserting in lieu thereof the following definition:—". |
| | | | Omit "made by the judges of that Court or any two of them"; insert "of the Supreme Court". Omit "either party may refer the matter to the Chief Judge in Equity, and such judge may summon witnesses, hear evidence, and determine the matter, and make such order with respect thereto and to the costs of such reference as having regard to the circumstances of the case he thinks just"; insert "the Supreme Court, on the application of either party, may determine the matter and make such orders with respect thereto as having regard to the circumstances of the case it thinks just". Omit "The order of such judge shall be final."; insert "No appeal shall lie to the Court of Appeal from the orders.". Omit "shall be binding"; insert "The orders shall be binding". |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—continued.

| First Column. | | Second Column. | |
|----------------------------|--------------------------------|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 41, 1919— <i>cont.</i> | Local Government— <i>cont.</i> | Subsection (2) of section 384.— <i>cont.</i> | Omit “as an order”; insert “as orders”. |
| | | Subsection (3) of section 392. | Omit “of law or equity”. |
| | | Subsection (5) of section 561. | Omit “in its equitable jurisdiction which may be applied for by summons in Chambers and in respect to the application the court may make such order as to costs as it thinks proper”. |
| | | Subsection (5) of section 564. | Omit “in its equitable jurisdiction which may be applied for by summons in Chambers and in respect to the application the court may make such order as to costs as it thinks proper”. |
| | | Subsection (1) of section 580. | Omit “A writ or other process”; insert “Proceedings”. |
| | | Subsection (5) of section 580. | Omit “sued out or served upon”; insert “commenced against”. |
| | | Subsection (6) of section 580. | Omit “or any judge of the court”. Omit “or judge” wherever occurring. |
| | | | Omit “a judge of”. |
| | | | Omit “in accordance with rules of court”. |
| | | | Omit “judge may, if he”; insert “court may, if it”. |
| | | | Omit “Any person who is dissatisfied with the decision of the judge on any such application may appeal to the Supreme Court and that court may on the appeal make any order which ought to have been made in the first instance. Every such appeal shall be made in accordance with rules of court.”. |
| | | Subsection (7) of section 580. | Omit “in bar”; insert “as a defence to the action”. |
| | | Subsection (8) of section 580. | After “action” insert “other than an action in the Supreme Court”. |
| | | Subsection (1) of section 590. | After “debt” insert “or liquidated demand”. |
| | | Subsection (2) of section 590. | Omit the subsection. |

SECOND

Supreme Court.

SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|-------------------------------------|---|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 41, 1919 — <i>cont.</i> | Local Govern- ment— <i>cont.</i> | Subsection (1) of section 597. | Omit the subsection. |
| | | Subsection (1A) of section 597. | Omit the subsection. |
| | | Subsection (2) of section 597. | Omit "or suit". |
| | | Section 597 .. | Insert next after subsection (4) the following new subsection:— (5) Proceedings for the recovery of any rate by the enforcement of the charge on the land shall not be taken in any court. |
| | | Subsection (6) of section 598. | Omit "plea notice of defence or statement of defence, as the case may be, is duly filed"; insert "defence or notice of defence, as the case may be, has been duly filed or, where a defence or notice of defence is not in accordance with the practice of the court, reasonable notice in writing has been given to the plaintiff that the matter is in dispute". |
| | | Subsection (1) of section 599. | Omit "plea notice of defence or statement of defence, as the case may be, is duly filed"; insert "defence or notice of defence, as the case may be, has been duly filed or, where a defence or notice of defence is not in accordance with the practice of the court, reasonable notice in writing of intention to rely on the defence has been given to the plaintiff". |
| | | Paragraph (b) of subsection (1) of section 610. | Omit "in its equitable jurisdiction". |
| | | Subsection (3) of section 611. | Omit "in its equitable jurisdiction". |
| | | Subsection (3) of section 654. | Omit the subsection; insert the following subsection:— (3) Any such order may, upon the application of the Minister or of either council, by leave of |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|-------------------------------------|---|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 41, 1919 — <i>cont.</i> | Local Govern- ment— <i>cont.</i> | Subsection (3) of section 654— <i>cont.</i> | the Supreme Court, be enforced in the same manner as a judgment or order of the said court to the same effect. |
| No. 47, 1920 | Stamp Duties | Section 5 .. | Omit "action or suit"; insert "proceedings". |
| | | Subsection (1) of section 13. | Omit the subsection; insert the following subsection:— (1) Any fine incurred for any offence referred to in the pro- visions of subsection three of section ninety-one of this Act may be recovered with costs by any person whomsoever in a summary way before any two justices of the peace and any other fine incurred under this Act may be recovered with costs in a summary way before any two justices of the peace or may be recovered by proceedings in the Supreme Court in the name of the Commissioner or of the Attorney-General for recovery of the fine as a debt. |
| | | Section 65 .. | Omit "decree or order" wherever occurring; insert "decree, judg- ment or order". |
| | | Subsection (2) of section 117. | Omit "of the Probate Jurisdiction"; insert "in Probate". |
| | | Subsection (1) of section 124. | Omit "Court of Appeal"; insert "Supreme Court". |
| | | Subsection (3) of section 124. | Omit the subsection; insert the following subsection:— (3) The appellant shall within seven days after receiving the case commence in the court proceedings on the case. |
| | | Subsection (4) of section 124. | Omit "Court of Appeal"; insert "court". |
| | | Subsection (5) of section 124. | Omit "Court of Appeal" wherever occurring; insert "court". |
| | | Subsection (6) of section 124. | Omit the subsection; insert the following subsection:— (6) On the hearing of the case the appellant may dispute any fact or document stated in the case. |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|--------------------------------|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 47, 1920 — <i>cont.</i> | Stamp Duties — <i>cont.</i> | Subsection (7) of section 124. | Omit the subsection. |
| | | Subsection (8) of section 124. | Omit the subsection; insert the following subsection:— (8) In deciding the question of costs the court shall have regard to the evidence furnished to the Commissioner and to the extent to which the Commissioner's assessment exceeds the amount admitted by the appellant before the appeal was commenced and the extent to which the Commissioner's assessment is sustained or otherwise. |
| | | Subsection (9) of section 124. | Omit "set down such case for hearing"; insert "commence in the court proceedings on the case". |
| | | Paragraph (b) of subsection (1) of section 124A. | Omit "by way of action or suit"; insert "in proceedings in a court". |
| | | Section 132 .. | Omit "suit is"; insert "proceedings are". Omit "such suit"; insert "such proceedings". |
| | | Subsection (1) of section 133. | Omit the subsection; insert the following subsection:— (1) If any person makes default in delivering to the Commissioner any account or statement required by this Act to be so delivered for the purpose of any duty under this Act the Supreme Court, on the application of the Commissioner, may order the person in default to deliver the account or statement within such period as the court may order. |
| | | Section 134 .. | Omit the section; insert the following section:— 134. The Supreme Court, on the application of the Commissioner, may order any person who has received money payable by way of duty or fine under this Act or the administrator of such |

Supreme Court may enforce payment of moneys received for duty or fine.
1898, No. 27, s. 24.

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|--------------------------------|---|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 47, 1920 — <i>cont.</i> | Stamp Duties — <i>cont.</i> | Section 134— <i>cont.</i> | person to deliver to the Commissioner an account on oath of such duty or money and to pay the same to the Commissioner. |
| | | Subsection (3) of section 140. | Omit "action or suit"; insert "proceedings". |
| | | Subsection (4) of section 140. | Omit "action or suit"; insert "proceedings". |
| No. 10, 1921 | Land and Valuation Court. | Paragraph (a) of subsection 6 of section 4. | Omit the paragraph; insert the following paragraph:— (a) Where a practising barrister is appointed a judge under this section he shall, by virtue of such appointment, become a judge of the Supreme Court for all purposes and in all respects as if at the date of such appointment he had been appointed a judge of the Supreme Court in accordance with the law for the time being in force relating to the appointment of judges of the Supreme Court. |
| | | Paragraph (b) of subsection 6 of section 4. | Omit "puisne". |
| | | Subsection (2) of section 9. | Omit "proceeding"; insert "proceedings". |
| | | Subsection (3) of section 9. | Omit "by action". |
| | | Subsection (3) of section 9. | Omit the subsection; insert the following subsection:— (3) The Prothonotary shall remit the proceedings to the court for determination, but, if there are pleadings, he shall not remit the proceedings until the pleadings are closed. |
| | | Subsection (4) of section 9. | Omit "hearing of the action"; insert "hearing of the proceedings". |
| | | | Omit "Provided that the judge shall not be bound to appoint a place for the hearing in accordance with the venue laid in the action." |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|--|-------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 10, 1921 — <i>cont.</i> | Land and Valuation Court— <i>cont.</i> | Subsection (5) of section 9. | Omit "action"; insert "proceedings". |
| | | Subsection (6) of section 9. | Omit "action"; insert "proceedings". |
| | | Subsection (2) of section 14. | Omit "a summons"; insert "process of the court requiring his appearance". |
| | | Subsection (1) of section 17. | Omit "Court of Appeal"; insert "Supreme Court". |
| | | Subsection (2) of section 17. | Omit the subsection. |
| | | Subsection (3) of section 17. | Omit the subsection. |
| | | Subsection (4) of section 17. | Omit "Court of Appeal"; insert "Supreme Court". |
| | | Subsection (1) of section 19. | Omit "at common law". |
| | | Subsection (2) of section 19. | Omit "order, and to have execution for such amount and costs issued and enforced in the same way as may be done upon judgments at common law:"; insert "order:". |
| | | | Omit "DIVISION 3.— <i>Supreme Court Procedure Act</i> , 1900— <i>ss. 11–14.</i> ". |
| No. 42, 1924 | Administration of Justice. | Section 2 .. | Omit "DIVISION 4.— <i>Interpleader Act</i> , 1901— <i>s. 15.</i> ". |
| | | | Omit " <i>Common Law Procedure Act</i> , 1899, and". |
| | | | Omit " <i>ss. 16, 17.</i> "; insert " <i>s. 17.</i> ". |
| | | | Omit "DIVISION 6.— <i>Equity Act</i> , 1901— <i>s. 18.</i> ". |
| | | | Omit "SCHEDULE.". Omit the subsection. |
| | | Subsection (2) of section 3. | |
| | | Subsection (1) of section 5. | Omit "in manner prescribed by rules of court or, until so prescribed, by motion". |
| | | Section 7 .. | Omit the section; insert the following section:— 7. (1) Rules of court may be made under the <i>Supreme Court Act</i> , 1970, regulating the practice and procedure (including scales of fees and evidence) in respect of proceedings of any kind under this Part of this Act. |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—continued.

| First Column. | | Second Column. | |
|----------------------------|---|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 42, 1924— <i>cont.</i> | Administration of Justice— <i>cont.</i> | Section 7— <i>cont.</i> | |
| | | PART III .. | (2) Subsection one of this section does not limit the rule-making powers conferred by the Supreme Court Act, 1970. Omit the heading "DIVISION 3. <i>Supreme Court Procedure Act, 1900.</i> ". |
| | | Section 11 .. | Omit the section. |
| | | Section 12 .. | Omit the section. |
| | | Section 13 .. | Omit the section. |
| | | PART III .. | Omit the heading "DIVISION 4.— <i>Interpleader Act, 1901.</i> ". |
| | | Section 15 .. | Omit the section. |
| | | PART III .. | Omit the heading "DIVISION 5.— <i>Common Law Procedure Act, 1899, and Interest on Judgments Amendment Act, 1900.</i> "; insert "DIVISION 5.— <i>Interest on Judgments Amendment Act, 1900.</i> ". |
| | | Section 16 .. | Omit the section. |
| | | PART III .. | Omit the heading "DIVISION 6.— <i>Equity Act, 1901.</i> ". |
| | | Section 18 .. | Omit the section. |
| No. 15, 1926 | Workers' Compensation. | Section 19 .. | Omit the section. |
| | | Section 20 .. | Omit "suit, action, or other matter which is"; insert "action or other proceedings". |
| | | Section 18D | Omit "in its equitable jurisdiction". |
| | | Paragraph (c) of subsection (3) of section 29. | Omit "in its equitable jurisdiction". |
| | | Paragraph (d) of subsection (3) of section 29. | Omit "in its equitable jurisdiction". |
| | | Paragraph (e) of subsection (3) of section 29. | Omit the paragraph. |
| | | Subsection (1) of section 37. | Omit "of judicature". |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|-------------------------------------|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 15, 1926 — <i>cont.</i> | Workers' Compensation— <i>cont.</i> | Subsection (2) of section 37. | Omit "writ of prohibition or certiorari shall lie"; insert "order of prohibition or order of removal into the Supreme Court shall be made". |
| | | Paragraph (a) of subsection (4) of section 37. | Omit the paragraph; insert the following paragraph:— (a) If any party to any proceedings before the Commission is aggrieved by any award, order, ruling, direction or decision of the Commission in point of law or in relation to the admission or rejection of any evidence, such party may appeal from the same to the Supreme Court. |
| | | Paragraph (b) of subsection (4) of section 37. | Omit "under this Act"; insert "by the Commission". |
| | | Paragraph (c) of subsection (4) of section 37. | Omit "Court of Appeal"; insert "Supreme Court". |
| | | Paragraph (d) of subsection (4) of section 37. | Omit the paragraph. |
| | | Paragraph (e) of subsection (4) of section 37. | Omit "Court of Appeal"; insert "Supreme Court". |
| | | Paragraph (f) of subsection (4) of section 37. | Omit the paragraph. |
| | | Paragraph (g) of section 38. | Omit "The Commission"; insert "Subject to any order of the Supreme Court, the Commission". |
| | | Subsection (2) of section 63. | Omit "such order"; insert "a stay of proceedings ordered by the Supreme Court or by the Commission". |
| | | | Omit "in its common law jurisdiction" wherever occurring; insert "in the Common Law Division". |
| | | | Omit "he obtains judgment against his employer independently of this Act"; insert "in proceedings independently of this |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|-------------------------------------|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 15, 1926 — <i>cont.</i> | Workers' Compensation— <i>cont.</i> | Subsection (2) of section 63— <i>cont.</i> | Act he accepts money brought into court by his employer or he obtains judgment against his employer". Omit "such judgment"; insert "such acceptance or judgment". |
| | | Paragraph (a) of subsection (3) of section 63. | Omit "a judge of". Omit "in accordance with rules of court". Omit "judge may, if he"; insert "court may, if it". |
| | | | Omit "Any person who is dissatisfied with the decision of the judge on any such application may appeal to the Supreme Court and that court may on the appeal make any order which ought to have been made in the first instance. Every such appeal shall be made in accordance with rules of court." |
| | | Subsection (5) of section 63. | Omit the subsection; insert the following subsection:— (5) Where any payment by way of compensation under this Act has been made, the payment shall, to the extent of its amount, be a defence to proceedings against the employer independently of this Act in respect of the injury. |
| | | Subsection (6) of section 63. | Omit "injury, but any sum so"; insert "injury and "proceedings against the employer" does not include proceedings in which any such order or direction is made or given, but any sum". |
| | | Paragraph (c) of subsection (1) of section 64. | Omit the paragraph; insert the following paragraph:— (c) where any payment is made under the indemnity and, at the time of the payment, the worker has not obtained judgment for damages against the person paying under the indemnity, the payment shall, to the extent of its amount, be a defence to proceedings by the worker against that person for damages; |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|-------------------|-----------|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 18, 1930 | Transport | Paragraph (c) of subsection (4) of section 60. | Omit "at law" insert "in a court of competent jurisdiction". |
| | | Paragraph (c) of subsection (4) of section 124. | Omit the paragraph; insert the following paragraph:— (c) where any payment is made under the indemnity and, at the time of the payment, the officer has not obtained judgment for damages against the person paying under the indemnity, the payment shall, to the extent of its amount, be a defence to proceedings by the officer against that person for damages. |
| | | Subsection (1) of section 124B. | Omit "for Road Transport and Tramways" wherever occurring. Omit "such Commissioner"; insert "the Commissioner". |
| | | Subsection (2) of section 124B. | Omit "for Road Transport and Tramways". |
| | | Paragraph (b) of subsection (4) of section 124B. | Omit the paragraph; insert the following paragraph:— (b) any payment made to the officer before the date of the election by way of salary at the rate so ascertained, after making due allowance, in the case where the officer returns to duty before the date of the election, for any salary properly payable to him in respect of the duties of the classification in which he is employed after his return to duty and before the date of the election, shall, to the extent of its amount— (i) be a defence to a claim against the Commissioner for damages; and |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|----------------------------|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 18, 1930 — <i>cont.</i> | Transport— <i>cont.</i> | Paragraph (b) of subsection (4) of section 124B.— <i>cont.</i> | (ii) be set off against any sum which becomes payable by the Commissioner as compensation (including the cost of medical or hospital treatment or ambulance service). |
| | | Section 124B. . | Insert next after subsection (5) the following new subsection:— (6) In this section, except in subsection five, “the Commissioner” means the Commissioner for Government Transport or the Commissioner for Motor Transport, as the case may require, by whom the officer is employed. |
| | | Section 125 . . | Omit “of law”. |
| | | Subsection (6) of section 154. | Omit “a judge of”. |
| | | | Omit “in manner prescribed by rules of court”. |
| | | | Omit “Such judge”; insert “The court”. |
| | | Paragraph (a) of subsection (3) of section 194. | Omit “as to him”; insert “as to it”. Omit the paragraph; insert the following paragraph:— (a) it has been established to the satisfaction of the Supreme Court that the debenture has been lost or destroyed before it has been paid off; |
| | | Paragraph (b) of subsection (3) of section 194. | Omit “judge”; insert “court”. |
| | | Subsection (1) of section 195. | Omit “in its equitable jurisdiction, in accordance with rules of court,”. |
| | | Subsection (3) of section 233. | Omit “judge before whom”; insert “court before which”. |
| | | Subsection (4) of section 233. | After “action” insert “other than an action in the Supreme Court”. |
| | | Section 252 . . | Omit “the court of appeal”; insert “a court of appeal”. |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|-------------------|------------------------------------|---|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 3, 1932 | Ministry of Transport. | Subsection (4) of section 17. | After "action" insert "other than an action in the Supreme Court". |
| No. 31, 1932 | Transport (Division of Functions). | Subsection (4) of section 28. | After "action" insert "other than an action in the Supreme Court". |
| No. 47, 1935 | Maritime Services. | Paragraph (a) of subsection (3) of section 24p. | Omit the paragraph; insert the following paragraph:— (a) it has been established to the satisfaction of the Supreme Court that the debenture has been lost or destroyed before it has been paid off; |
| | | Paragraph (b) of subsection (3) of section 24p. | Omit "judge"; insert "court". |
| | | Subsection (1) of section 40. | Omit "a judge of". Omit "in accordance with rules of court". Omit "judge may, if he"; insert "court may, if it". |
| | | | Omit "Any person who is dissatisfied with the decision of the judge on any such application may appeal to the Supreme Court and that court may on the appeal make any order which ought to have been made in the first instance. Every such appeal shall be made in accordance with rules of court." |
| | | Subsection (4) of section 40. | Omit "judge before whom"; insert "court before which". |
| | | Subsection (5) of section 40. | After "action" insert "other than an action in the Supreme Court". |
| No. 11, 1940 | Administration of Justice. | Section 2 .. | Omit "PART II—AMENDMENTS OF SUPREME COURT AND CIRCUIT COURTS ACT, 1900-1935." |
| | | PART II .. PART IV .. | Omit "PART IV—AMENDMENTS OF EQUITY ACT, 1901." Omit the Part. Omit the Part. |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|----------------------|--|--------------------------------------|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 28, 1944 | Law Reform (Miscellaneous Provisions). | Subsection (2) of section 4. | Omit "court and the court"; insert "Supreme Court and that Court". Omit "court thinks"; insert "Court thinks". Omit "The jurisdiction conferred by this subsection may be exercised by any judge of the court sitting in its Common Law Jurisdiction.". |
| | | Subsection (3) of section 4. | Omit "court"; insert "Court". Omit "jury may give such damages as they"; insert "Court may give such damages as it". Omit "as the jury by their verdict find and direct"; insert "as the Court finds and directs". |
| No. 33, 1946 | Law Reform (Miscellaneous Provisions). | Section 4 | Insert next after subsection (3) the following new subsection:— (3A) Where any case to which subsection three of this section applies is tried by a judge sitting with a jury, the jury shall find the shares of damages and the judge shall direct in accordance with the finding. |
| | | Subsection (2) of section 1. Part II | Omit "ss. 2-4"; insert "ss. 1A-4". Next before section 2 insert the following new section:— 1A. This Part applies to all courts of competent jurisdiction other than the Supreme Court. |
| Application of Part. | | Subsection (1) of section 2. | After "Any court" insert "to which this Part applies". |
| | | Subsection (1) of section 3. | After "any court" insert "to which this Part applies". |
| | | Subsection (3) of section 4. | Omit the subsection; insert the following subsection:— (3) The power to make rules of court conferred by this section may be exercised— (a) in relation to proceedings in the District Courts, by a majority of the District Court judges; |

SECOND

Supreme Court.

SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|---|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 33, 1946 — <i>cont.</i> | Law Reform (Miscellaneous Provisions)— <i>cont.</i> | Subsection (3) of section 4 — <i>cont.</i> | (b) in relation to proceedings in courts of petty sessions exercising jurisdiction under the Small Debts Recovery Act, 1912, by the Governor. |
| No. 22, 1950 | Electricity Commission. | Paragraph (a) of subsection (3) of section 45. | Omit the paragraph; insert the following paragraph:— (a) it has been established to the satisfaction of the Supreme Court that the debenture has been lost or destroyed before it has been paid off; |
| | | Paragraph (b) of subsection (3) of section 45. | Omit "judge"; insert "Court". |
| | | Subsection (1) of section 46. | Omit "in its equitable jurisdiction, in accordance with rules of court,". |
| | | Section 96 .. | Omit the section; insert the following section:— 96. Any charge, fee or money Recovery of due to the Commission under the charges, etc. provisions of this Act or any cf. Act No. by-law may be recovered as a 20, 1938, debt or liquidated demand in a s. 128. court of competent jurisdiction. |
| | | Subsection (1) of section 100. | Omit "A writ or other process"; insert "Proceedings". |
| | | Subsection (4) of section 100. | Omit "sued out or served upon"; insert "commenced against". |
| | | Subsection (5) of section 100. | Omit "or any judge of the court". |
| | | | Omit "or judge" wherever occurring. |
| | | | Omit "a judge of". |
| | | | Omit "in accordance with rules of court". |
| | | | Omit "judge may, if he"; insert "court may, if it". |
| | | | Omit "Any person who is dissatisfied with the decision of the judge on any such application may appeal to the Supreme Court and that court may on the appeal make any order which ought to have been made in the first instance. |

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|--|---|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 22, 1950 — <i>cont.</i> | Electricity Commission — <i>cont.</i> | Subsection (5) of section 100— <i>cont.</i> Subsection (6) of section 100. Subsection (7) of section 100. | Every such appeal shall be made in accordance with rules of court.” Omit “in bar”; insert “as a defence to the action”. After “action” insert “other than an action in the Supreme Court”. |
| No. 11, 1951 | Sydney Harbour Transport. | Paragraph (a) of subsection (3) of section 15. Paragraph (b) of subsection (3) of section 15. Subsection (1) of section 16. Section 31 .. Subsection (1) of section 34. Subsection (4) of section 34. Subsection (5) of section 34. | Omit the paragraph; insert the following paragraph:— (a) it has been established to the satisfaction of the Supreme Court that the debenture has been lost or destroyed before it has been paid off; Omit “judge”; insert “Court”. Omit “in its equitable jurisdiction, in accordance with rules of court,”. Omit the section; insert the following section:— 31. Any charge fee or money due to the Board under the provisions of this Act or any regulation may be recovered as a debt or liquidated demand in a court of competent jurisdiction. Omit “A writ or other process”; insert “Proceedings”. Omit “sued out or served upon”; insert “commenced against”. Omit “or any judge of the court”. Omit “or judge” wherever occurring. Omit “a judge of”. Omit “in accordance with rules of court”. Omit “judge may, if he”; insert “court may, if it”. Omit “Any person who is dissatisfied with the decision of the judge on any such application may appeal to the Supreme Court and that court may on the |

Recovery of charges, etc.
cf. Act No. 20, 1938, s. 128.

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|--|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 11, 1951 — <i>cont.</i> | Sydney Harbour Transport— <i>cont.</i> | Subsection (5) of section 34— <i>cont.</i> | appeal make any order which ought to have been made in the first instance. Every such appeal shall be made in accordance with rules of court.”. |
| | | Subsection (6) of section 34. | Omit “in bar”; insert “as a defence to the action”. |
| | | Subsection (7) of section 34. | After “action” insert “other than action in the Supreme Court”. |
| No. 9, 1952 | Prisons | PART VIII | Insert next after section 40 the following new section:— 40A. (1) Every governor of a prison shall, at the times prescribed by regulations made under this Act, make returns in writing to the Supreme Court as to all persons detained in such prison, otherwise than in pursuance of a sentence, giving the particulars prescribed by such regulations. (2) If any governor of a prison fails to make such returns, he may be ordered by the Court to pay a fine not exceeding one thousand dollars. (3) After the receipt of such returns with respect to a prison, the Court, sitting in open court in the exercise of the criminal jurisdiction of the Court, shall deliver such prison. (4) Except as aforesaid, it shall not be obligatory on the Court to deliver any prison, or for a governor of a prison, unless so directed by the Court, to make any such returns. (5) For any of the purposes aforesaid the Court shall be constituted by any one Judge of the Court. |
| | | Paragraph (k) of subsection (1) of section 50. | Omit “prisoners.”; insert “prisoners;”. |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*Continuity
of judicial
office in the
Supreme
Court.

| First Column. | | Second Column. | | | | | | | | | | | | | | | | | |
|-----------------------------------|-----------------------------------|--|---|-------|--|--------------|---------------|----------------|----------------|-----------------------------------|-----------------------------------|------------------|------------------|-----------------------------|-----------------------------|---------------|--------|---------------|---------------|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. | | | | | | | | | | | | | | | | |
| No. 9, 1952— <i>cont.</i> | Prisons— <i>cont.</i> | Subsection (l) of section 50. | Insert next after paragraph (k) the following two new paragraphs:— (l) the times for the making of returns to the Supreme Court for gaol delivery; (m) the particulars to be given in returns to the Supreme Court for gaol delivery. | | | | | | | | | | | | | | | | |
| No. 41, 1953 | Judges' Pensions. | | Insert next after section 2 the following new section:— 2A. Each judicial office in the Supreme Court appearing in the First Column of the Table below, as that office was constituted immediately before the commencement of the Supreme Court Act, 1970, other than of Part IX of that Act, shall, for the purposes of this Act, be identical with the office under the Supreme Court Act, 1970, named in the Second Column of the Table opposite to the name of the firstmentioned office— <table><tr><th colspan="2">TABLE</th></tr><tr><th>First Column</th><th>Second Column</th></tr><tr><td>Chief Justice.</td><td>Chief Justice.</td></tr><tr><td>President of the Court of Appeal.</td><td>President of the Court of Appeal.</td></tr><tr><td>Judge of Appeal.</td><td>Judge of Appeal.</td></tr><tr><td>Additional Judge of Appeal.</td><td>Additional Judge of Appeal.</td></tr><tr><td>Puisne judge.</td><td>Judge.</td></tr><tr><td>Acting judge.</td><td>Acting judge.</td></tr></table> | TABLE | | First Column | Second Column | Chief Justice. | Chief Justice. | President of the Court of Appeal. | President of the Court of Appeal. | Judge of Appeal. | Judge of Appeal. | Additional Judge of Appeal. | Additional Judge of Appeal. | Puisne judge. | Judge. | Acting judge. | Acting judge. |
| TABLE | | | | | | | | | | | | | | | | | | | |
| First Column | Second Column | | | | | | | | | | | | | | | | | | |
| Chief Justice. | Chief Justice. | | | | | | | | | | | | | | | | | | |
| President of the Court of Appeal. | President of the Court of Appeal. | | | | | | | | | | | | | | | | | | |
| Judge of Appeal. | Judge of Appeal. | | | | | | | | | | | | | | | | | | |
| Additional Judge of Appeal. | Additional Judge of Appeal. | | | | | | | | | | | | | | | | | | |
| Puisne judge. | Judge. | | | | | | | | | | | | | | | | | | |
| Acting judge. | Acting judge. | | | | | | | | | | | | | | | | | | |
| | | Subparagraph (i) of paragraph (a) of subsection (1) of section 13. | Omit the subparagraph. | | | | | | | | | | | | | | | | |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|--------------------------------------|---|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 41, 1953 — <i>cont.</i> | Judges' Pen- sions.— <i>cont.</i> | Paragraph (b) of sub- section (1) of section 13. | Omit the paragraph. |
| No. 36, 1954 | Grain Eleva- tors. | Paragraph (a) of sub- section (3) of section 40. | Omit the paragraph; insert the following paragraph:— (a) it has been established to the satisfaction of the Supreme Court that the debenture has been lost or destroyed before it has been paid off; |
| | | Paragraph (b) of sub- section (3) of section 40. | Omit "judge"; insert "Court". |
| | | Subsection (1) of section 41. | Omit "in its equitable jurisdiction, in accordance with rules of court,". |
| | | Subsection (2) of section 53. | After "debt" insert "or liquidated demand". |
| | | Subsection (3) of section 53. | Omit the subsection. |
| | | Subsection (1) of section 56. | Omit "A writ or other process"; insert "Proceedings". |
| | | Subsection (4) of section 56. | Omit "sued out or served upon"; insert "commenced against". |
| | | Subsection (5) of section 56. | Omit "or any judge of the court". |
| | | | Omit "or judge" wherever occurring. |
| | | | Omit "a judge of". |
| | | | Omit "in accordance with rules of court". |
| | | | Omit "judge may, if he"; insert "Court may, if it". |
| | | | Omit "Any person who is dissatisfied with the decision of the judge on any such application may appeal to the Supreme Court and that Court may on the appeal make any order which ought to have been made in the first instance. |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|-------------------------------|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 36, 1954 — <i>cont.</i> | Grain Elevators— <i>cont.</i> | Subsection (5) of section 56— <i>cont.</i> Subsection (6) of section 56. Subsection (7) of section 56. | Every such appeal shall be made in accordance with rules of court.” Omit “in bar”; insert “as a defence to the action”. After “action” insert “other than an action in the Supreme Court”. |
| No. 59, 1963 | State Planning Authority. | Paragraph (a) of subsection (3) of section 51. Paragraph (b) of subsection (3) of section 51. Subsection (1) of section 52. Section 67 . . Subsection (1) of section 70. Subsection (4) of section 70. Subsection (5) of section 70. | Omit the paragraph; insert the following paragraph:— (a) it has been established to the satisfaction of the Supreme Court that the debenture has been lost or destroyed before it has been paid off; Omit “judge”; insert “court”. Omit “in its equitable jurisdiction”. Omit the section; insert the following section:— 67. Any charge, fee or money due to the Authority under the provisions of this Act may be recovered as a debt or liquidated demand in a court of competent jurisdiction. Omit “A writ or other process”; insert “Proceedings”. Omit “sued out or served upon”; insert “commenced against”. Omit “or any judge of the court”. Omit “or judge” wherever occurring. Omit “a judge of”. Omit “in accordance with rules of court”. Omit “judge may, if he”; insert “court may, if it”. Omit “Any person who is dissatisfied with the decision of the judge on any such application may appeal to the Supreme Court and that court may on the |

Recovery of charges, etc.

SECOND

Supreme Court.

SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|--|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 59, 1963 — <i>cont.</i> | State Planning Authority — <i>cont.</i> | Subsection (5) of section 70— <i>cont.</i> | appeal make any order which ought to have been made in the first instance. Every such appeal shall be made in accordance with rules of court." |
| | | Subsection (6) of section 70. | Omit "in bar"; insert "as a defence to the action". |
| | | Subsection (7) of section 70. | After "action" insert "other than an action in the Supreme Court". |
| No. 32, 1965 | Law Reform (Miscellaneous Provisions). | Section 3 .. | Omit "HEARING AND DETERMINATION OF CIVIL ACTIONS"; insert "TRIAL BY JURY IN DISTRICT COURTS". Omit "PART V.—DECLARATORY ORDERS—ss. 15, 16." Omit "PART VI.—POWER TO ENTER SUBSTITUTED VERDICT—s. 17." Omit "ss. 18, 19."; insert "s. 19." Omit "ss. 23-27."; insert "ss. 26-27". |
| | | PART II .. | Omit the heading "HEARING AND DETERMINATION OF CIVIL ACTIONS"; insert the following heading:— "TRIAL BY JURY IN DISTRICT COURTS" |
| | | Subsection (1) of section 4. | Omit "in the Supreme Court or". |
| | | Section 5 .. | Omit the section; insert the following section:— 5. In any action to which this Amendment Part applies the court may on the of procedure application of any party made as to trials by not later than such time before jury. the trial as may be limited by rules of court, upon being satisfied that circumstances exist which render it desirable to do so and shall— (a) where both parties so apply; or (b) where the action is for damages in respect of the death of or bodily injury to any person and is based upon any act, neglect or |
| | | | |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|--|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 32, 1965 — <i>cont.</i> | Law Reform (Miscellaneous Provisions)— <i>cont.</i> | Section 5— <i>cont.</i> | default of the defendant for which, if proved, he would, as the employer of that person and not otherwise, incur liability to the plaintiff, order that the action be tried with a jury; but save as aforesaid, any action to which this Part applies shall, notwithstanding section ninety of the District Courts Act, 1912, be tried by a judge without a jury: Provided that the provisions of this section shall be without prejudice to the power of the court to order, in accordance with rules of court, that different questions of fact arising in any action be tried by different modes of trial, and where any such order is made the provisions of this section shall have effect accordingly. |
| | | Subsection (1) of section 5A. | Omit "in the Supreme Court or". |
| | | Subsection (2) of section 5A. | Omit "in the Supreme Court or". |
| | | Paragraph (c) of subsection (1) of section 10. | Omit "as a satisfaction of the judgment obtained"; insert "to any extent as a defence to the proceedings". Omit "be a satisfaction of the judgment"; insert "be a defence". |
| | | Section 12 .. | Omit the section. |
| | | Section 14 .. | Omit "of the Supreme Court or". |
| | | PART V .. | Omit the Part. |
| | | PART VI .. | Omit the Part. |
| | | Section 18 .. | Omit the section. |
| | | Paragraph (a) of section 22. | Omit the paragraph. |
| | | Paragraph (c) of section 22. | Omit the paragraph. |
| | | Paragraph (d) of section 22. | Omit the paragraph. |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|---|-------------------------------|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 32, 1965 — <i>cont.</i> | Law Reform (Miscellaneous Provisions)— <i>cont.</i> | Paragraph (g) of section 22. | Omit the paragraph. |
| | | Paragraph (h) of section 22. | Omit the paragraph. |
| | | Paragraph (i) of section 22. | Omit the paragraph. |
| | | Paragraph (j) of section 22. | Omit the paragraph. |
| | | Paragraph (k) of section 22. | Omit the paragraph. |
| | | Section 23 .. | Omit the section. |
| | | Section 24 .. | Omit the section. |
| No. 72, 1967 | Supreme Court (Summary Jurisdiction). | Section 25 .. | Omit the section. |
| | | SCHEDULE | Omit so much as refers to Acts No. 21, 1899, No. 35, 1900, No. 49, 1900, No. 24, 1901 and No. 19, 1903. |
| | | Section 2 .. | Omit the section; insert the following section:— 2. In this Act, unless in- Interpretation. consistent with the context or subject-matter— “Court” means the Supreme Court of New South Wales. “Court of Appeal” means the Court of Appeal as constituted by the Supreme Court Act, 1970, exercising, pursuant to that Act, the jurisdiction of the Court. “Judge” means Judge of the Court. |
| | | Section 8 .. | Omit “of court”; insert “of court made under this Act”. |
| | | Section 10 .. | Omit “of court”; insert “of court made under this Act”. |
| | | Section 15 .. | Omit the section; insert the following section:— 15. (1) The payment of any Enforce- moneys ordered by a Judge ment of fines exercising summary jurisdiction and orders under this Act to be paid as a for payment penalty may be enforced, subject of moneys. to any order in respect thereof made under section sixteen of this |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | | |
|--------------------------------|--|--|---|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. | |
| No. 72, 1967 — <i>cont.</i> | Supreme Court (Summary Jurisdiction) — <i>cont.</i> | Section 15— <i>cont.</i> | Act, as if the order for payment were an order of the Court, made under the Supreme Court Act, 1970, for payment of the moneys to Her Majesty. (2) The payment of any moneys ordered by a Judge exercising summary jurisdiction under this Act to be paid for costs may be enforced, subject to any order made in respect thereof under section sixteen of this Act, as if the order for payment were an order of the Court, made under the Supreme Court Act, 1970, for the payment of the moneys to the person to whom the costs are ordered to be paid. | |
| | | Subsection (2) of section 16. | Omit “of court”; insert “of court made under this Act”. | |
| | | Subsection (1) of section 18. | Omit “special”. | |
| | | Subsection (3) of section 18. | Omit “of the Court of Appeal”; insert “of court made under this Act”. | |
| | | Subsection (1) of section 19. | Omit “special”; insert “stated”. Omit “that Court”; insert “the Court of Appeal”. Omit “rules of the Court of Appeal”; insert “rules of court made under this Act”. | |
| | | Section 20 .. | Omit “special” wherever occurring. | |
| | | Section 21 .. | Omit the section; insert the following section:— 21. Where the Judge refuses to state a case, the Court of Appeal may, on the application of the appellant, order the Judge to state the case subject to the appellant entering into the recognizance mentioned in subsection one of section nineteen of this Act. | |
| | | Section 22 .. | Omit the section; insert the following section:— 22. Where the appellant has received the case or has been notified in writing that it has | |
| | | Court may direct case to be stated. | | |
| | | Appellant to commence proceedings on case. | | |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|--|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 72, 1967 — <i>cont.</i> | Supreme Court (Summary Jurisdiction) — <i>cont.</i> | Section 22— <i>cont.</i> | been stated and signed and is available, he shall commence, under the Supreme Court Act, 1970, proceedings thereon in the Court. |
| | | Section 23 .. | Omit the section; insert the following section:— 23. (1) The Court of Appeal shall hear and determine the question or questions of law arising on any case and shall— (a) reverse, affirm or amend the determination in respect of which the case was stated; (b) remit the matter to the Judge with the opinion of the Court of Appeal thereon; or (c) make such other order in relation to the matter as seems fit. (2) The decision of the Court of Appeal on the hearing of any such case shall be binding on the Judge and upon all parties to the proceedings in which the determination was made. |
| | | Subsection (1) of section 24. | Omit “, within twenty-one days after the conviction or order,”. |
| | | Subsection (3) of section 24. | Omit “and shall have power to make such order as to the costs of the Appeal as to the Court of Appeal seems fit”. |
| | | Section 25 .. | Omit “special”. |
| | | Section 26 .. | Omit “by any of the means authorised by rules of the Court”. |
| | | Section 27 .. | Omit the section. |
| | | Subsection (1) of section 29. | Omit “The”; insert “Subject to the Supreme Court Act, 1970, the”. |
| | | Subsection (2) of section 29. | Omit “general rules”; insert “rules of court under this Act”. |
| | | Paragraph (f) of subsection (2) of section 29. | Omit “subsection may”; insert “subsection may, subject to the Supreme Court Act, 1970,”. |
| | | | Omit “of the Court”; insert “of court made under this Act”. |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—continued.

| First Column. | | Second Column. | |
|-------------------|--|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 3, 1968 | Administration of Justice. | Section 3 .. | Omit "PART III.—AMENDMENT OF COMMON LAW PROCEDURE ACT, 1899–1967—s. 5." Omit "PART IV.—AMENDMENT OF SUPREME COURT AND CIRCUIT COURTS ACT, 1900–1967—s. 6." Omit "PART V.—AMENDMENT OF EQUITY ACT, 1901–1965—s. 7." Omit the paragraph. |
| | | Paragraph (b) of section 4. | Omit the paragraph. |
| | | PART III .. | Omit the Part. |
| | | PART IV .. | Omit the Part. |
| | | PART V .. | Omit the Part. |
| | | SCHEDULE | Omit so much as refers to Acts No. 21, 1899, No. 35, 1900 and No. 24, 1901. |
| No. 11, 1968 | Sydney Farm Produce Marketing Authority. | Paragraph (a) of subsection (3) of section 31. | Omit the paragraph; insert the following paragraph:— (a) it has been established to the satisfaction of the Supreme Court that the debenture or bond has been lost or destroyed before it has been paid off; |
| | | Paragraph (b) of subsection (3) of section 31. | Omit "judge"; insert "court". |
| | | Section 41 .. | Omit the section; insert the following section:— 41. Any charge, fee, remuneration or money due to the Authority under the provisions of this Act or the regulations may be recovered as a debt or liquidated demand in a court of competent jurisdiction. |
| | | Subsection (1) of section 44. | Omit "A writ or other process"; insert "Proceedings". |
| | | Subsection (4) of section 44. | Omit "sued out or served upon"; insert "commenced against". |
| | | Subsection (5) of section 44. | Omit "or any judge of the court". Omit "or judge" wherever occurring. Omit "a judge of". Omit "in accordance with rules of court". Omit "judge may, if he"; insert "court may, if it". |

Recovery of charges, etc.

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|--------------------------------|---|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 11, 1968 — <i>cont.</i> | Sydney Farm Produce Marketing Authority— <i>cont.</i> | Subsection (5) of section 44— <i>cont.</i> | Omit "Any person who is dissatisfied with the decision of the judge on any such application may appeal to the Supreme Court and that Court may on the appeal make any order which ought to have been made in the first instance. Every such appeal shall be made in accordance with rules of court." |
| | | Subsection (6) of section 44. | Omit "in bar"; insert "as a defence to the action". |
| | | Subsection (7) of section 44. | After "action" insert "other than an action in the Supreme Court". |
| No. 56, 1968 | Sydney Cove Redevelopment Authority. | Paragraph (a) of subsection (3) of section 40. | Omit the paragraph; insert the following paragraph:— (a) it has been established to the satisfaction of the Supreme Court that the debenture or bond has been lost or destroyed before redemption; |
| | | Paragraph (b) of subsection (3) of section 40. | Omit "judge"; insert "court". |
| | | Section 51 .. | Omit the section; insert the following section:— 51. Any charge, fee, re- Recovery of muneration or money due to the charges, etc. Authority under the provisions of this Act or the regulations may be recovered as a debt or liquidated demand in a court of competent jurisdiction. |
| | | Subsection (1) of section 53. | Omit "A writ or other process"; insert "Proceedings". |
| | | Subsection (5) of section 53. | Omit "sued out or served upon"; insert "commenced against". |
| | | | Omit "or any judge of the court". |
| | | Subsection (7) of section 53. | Omit "or judge" wherever occurring. Omit "a judge of". Omit "in accordance with rules of court". |

SECOND

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|--------------------------------|--|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 56, 1968 — <i>cont.</i> | Sydney Cove Redevelopment Authority. — <i>cont.</i> | Subsection (7) of section 53. — <i>cont.</i> | Omit "judge may, if he"; insert "court, if it". Omit "Any person who is dissatisfied with the decision of the judge on any such application may appeal to the Court of Appeal and that court may on the appeal make any order which ought to have been made in the first instance. Every such appeal shall be made in accordance with rules of court." |
| No. 8, 1969 | Credit Union | Subsection (8) of section 53. Subsection (9) of section 53. Subsection (3) of section 32. Subsection (4) of section 32. Subsection (12) of section 66. Subsection (13) of section 66. | Omit "in bar"; insert "as a defence to the action". After "action" insert "other than an action in the Supreme Court". Omit the subsection; insert the following subsection:— (3) The Supreme Court may determine any question of fact and may make such order as is proper in the circumstances. Omit the subsection; insert the following subsection:— (4) Rules may be made under the Supreme Court Act, 1970, for the practice and procedure of applications under this section. Omit "in its equitable jurisdiction". Omit "by a judge". Omit "the judge"; insert "the presiding judge at the trial". |
| No. 28, 1969 | Consumer Protection. | Subsection (3) of section 53. | Omit "in its common law jurisdiction". |
| No. 30, 1969 | Imperial Acts Application. | Section 3 .. Division 9 of Part III. Section 31 .. Heading to Division 15 of Part III. Subsection (1) of section 40. Subsection (2) of section 40. | Omit " <i>Sheriff</i> "; insert " <i>Bailiff</i> ". Omit the heading " <i>Use and Occupation.</i> 11 George II c. 19—The Distress for Rent Act, 1737—s. 14." Omit the section. Omit " <i>Sheriff</i> "; insert " <i>Bailiff</i> ". Omit "sheriff". Omit "sheriff". |

SECOND

*Supreme Court.*SECOND SCHEDULE—*continued.*

No. 52, 1970

| First Column. | | Second Column. | |
|-------------------|---------------|--|--|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 31, 1969 | Limitation .. | Paragraph (a) of subsection (1) of section 53. | Omit "Master in the Protective Jurisdiction" wherever occurring; insert "master assigned to the Protective Division". |
| | | Section 53 .. | Next after subsection (1) insert the following new subsection:— (1A) In this section "the master assigned to the Protective Division of the Supreme Court" means, where two or more masters are so assigned, the senior master so assigned. |
| | | Subsection (6) of section 53. | Omit "the Master in the Protective Jurisdiction"; insert "the master assigned to the Protective Division". |
| | | Subsection (7) of section 53. | Omit "office of the Master"; insert "office of the master". |
| | | Subsection (9) of section 53. | Omit "Master in the Protective Jurisdiction"; insert "master assigned to the Protective Division". |
| | | Subsection (1) of section 77. | Omit "may be made". Omit "of this Act."; insert "of this Act may be made— (a) in relation to proceedings in the District Courts, by a majority of the District Court judges; and (b) in relation to proceedings in courts of petty sessions exercising jurisdiction under the Small Debts Recovery Act, 1912, by the Governor." |
| | | Subsection (4) of section 77. | Omit the subsection; insert the following subsection:— (4) The practice and procedure in the Supreme Court in reference to proceedings under sections 22, 58, 59, 60 and 73 of this Act shall be as prescribed by rules made under the Supreme Court Act, 1970. |

Supreme Court.

No. 52, 1970

SECOND SCHEDULE—*continued.*

| First Column. | | Second Column. | |
|-------------------|------------------|--|---|
| Reference to Act. | Subject. | Section, etc., to be amended. | Amendment. |
| No. 37, 1969 | Apprentices .. | Subsection (3) of section 20. | Omit "writ of prohibition or certiorari shall lie"; insert "order of prohibition or of removal into the Supreme Court shall be made". |
| No. 38, 1969 | Banana Industry. | Subsection (1) of section 22. Subsection (2) of section 22. | Omit "debt"; insert "debt or liquidated demand". Omit the subsection. |
| No. 53, 1969 | Wheat Quotas | Subsection (1) of section 44. | Omit "writ of injunction or mandamus"; insert "proceeding for an injunction or for a judgment or order commanding the doing of an act". |

THIRD

Supreme Court.

THIRD SCHEDULE.

No. 52, 1970

EXCLUDED CRIMINAL PROCEEDINGS.

Sec. 17
(1).

(a) Proceedings in the Court for the prosecution of offenders on indictment ("indictment" including any information presented or filed as provided by law for the prosecution of offenders) including the sentencing or otherwise dealing with persons convicted;

(b) gaol delivery;

(c) proceedings in the Court under the Crimes Act 1900, other than proceedings under section eighty-eight, section four hundred and sixty-seven, section four hundred and seventy-five, section five hundred and sixty-three, section five hundred and seventy-three or section five hundred and seventy-seven of that Act, applications for leave to institute a prosecution under section one hundred and seventy-two of that Act and proceedings in respect of the enforcement by execution of a direction entered in accordance with section four hundred and fifty-seven of that Act;

(d) proceedings in the Court under the Criminal Appeal Act of 1912;

(e) proceedings in the Court under subsection one of section eleven of the Inebriates Act, 1912, or for the making of an order pursuant to section sixteen of that Act;

(f) proceedings in the Court under Part XIV of the Child Welfare Act, 1939;

(g) proceedings in the Court under the Habitual Criminals Act, 1957;

(h) proceedings in the Court under section twenty-three or section twenty-six of the Mental Health Act, 1958;

(i) proceedings in the Court for the grant of a certificate under the Costs in Criminal Cases Act, 1967;

(j) proceedings in the Court for the granting of a certificate under section four of the Criminal Injuries Compensation Act, 1967;

(k) proceedings in the Court under the Supreme Court (Summary Jurisdiction) Act, 1967, other than proceedings in respect of which the jurisdiction of the Court under that Act may be exercised by the Court of Appeal.

FOURTH

FOURTH SCHEDULE.

Sec. 122
(1).

SUPREME COURT RULES, 1970.

PART 1.

PRELIMINARY.

Short
title.

1. These rules may be cited as the "Supreme Court Rules, 1970".

Commence-
ment.

2. These rules shall commence on the commencement of the Act.

Division
of rules.

3. These rules are divided as follows—

PART 1.—PRELIMINARY.

PART 2.—TIME.

PART 3.—DISCOVERY BEFORE SUIT.

PART 4.—COMMENCEMENT OF PROCEEDINGS.

PART 5.—PROCEEDINGS BY SUMMONS.

PART 6.—CROSS-CLAIMS.

PART 7.—ORIGINATING PROCESS.

PART 8.—CAUSES OF ACTION AND PARTIES.

PART 9.—SERVICE: GENERAL.

PART 10.—SERVICE OUTSIDE THE STATE.

DIVISION 1.—*General*—rr. 1-6.DIVISION 2.—*Service in Foreign Country*—rr. 7-13.

PART 11.—APPEARANCE.

PART 12.—TRANSFER AND CONSOLIDATION.

PART 13.—SUMMARY DISPOSAL.

DIVISION 1.—*Summary Judgment*—rr. 1-4.DIVISION 2.—*Summary Stay or Dismissal*—r. 5.DIVISION 3.—*General*—r. 6.

FOURTH

*Supreme Court.*FOURTH SCHEDULE—*continued.*

No. 52, 1970

PART 14.—COMMERCIAL LIST.

Part 1.

PART 15.—PLEADING.

DIVISION 1.—*Preliminary*—rr. 1, 2.DIVISION 2.—*Particular Pleadings*—rr. 3–5.DIVISION 3.—*Form and Manner of Pleading*—rr. 6–19.DIVISION 4.—*Progress of Pleading*—rr. 20–22.DIVISION 5.—*General*—rr. 23–27.

PART 16.—PARTICULARS.

PART 17.—DEFAULT JUDGMENT.

PART 18.—ADMISSIONS.

PART 19.—MOTIONS.

PART 20.—AMENDMENT.

PART 21.—WITHDRAWAL AND DISCONTINUANCE.

PART 22.—PAYMENT INTO COURT.

PART 23.—DISCOVERY AND INSPECTION OF DOCUMENTS.

DIVISION 1.—*Discovery*—rr. 1–8.DIVISION 2.—*Inspection*—rr. 9–13.DIVISION 3.—*General*—rr. 14–16.

PART 24.—INTERROGATORIES.

PART 25.—MEDICAL EXAMINATION ; INSPECTION OF PROPERTY,
ETC.DIVISION 1.—*Medical Examination*—rr. 1–7.DIVISION 2.—*Inspection of Property, etc.*—rr. 8, 9.DIVISION 3.—*Default*—r. 10.

PART 26.—DIRECTIONS.

PART 27.—EVIDENCE BY DEPOSITION.

PART 28.—INTERIM PRESERVATION, ETC.

PART 29.—RECEIVERS.

PART 30.—DISPOSAL OF LAND.

PART 31.—SEPARATE DECISION OF QUESTIONS.

PART 32.—STATED CASES.

DIVISION 1.—*External Stated Case*—rr. 1–3.DIVISION 2.—*Stated Cases Generally*—rr. 4–8.

FOURTH

Supreme Court.

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FOURTH SCHEDULE—*continued.*

Part 1.

PART 33.—SETTING DOWN FOR TRIAL.

PART 34.—TRIAL.

PART 35.—ASSESSMENT.

PART 36.—EVIDENCE: GENERAL.

PART 37.—SUBPOENAS.

PART 38.—AFFIDAVITS.

PART 39.—COURT EXPERT.

PART 40.—JUDGMENTS AND ORDERS: GENERAL.

PART 41.—JUDGMENTS AND ORDERS: MINUTES AND ENTRY.

DIVISION 1.—*Common Law Division*—*r. 1.*DIVISION 2.—*Settlement Generally*—*rr. 2-8.*DIVISION 3.—*Review*—*r. 9.*DIVISION 4.—*Entry*—*rr. 10-14.*DIVISION 5.—*Copies and Service*—*rr. 15, 16.*

PART 42.—JUDGMENTS AND ORDERS: ENFORCEMENT.

PART 43.—DISCOVERY IN AID OF ENFORCEMENT.

PART 44.—WRITS OF EXECUTION: GENERAL.

PART 45.—LEVY OF PROPERTY.

PART 46.—GARNISHMENT.

PART 47.—CHARGING AND STOP ORDERS.

PART 48.—ACCOUNTS AND INQUIRIES: GENERAL.

PART 49.—ACCOUNTS, INQUIRIES, ETC.: EQUITY DIVISION.

DIVISION 1.—*General*—*rr. 1-9.*DIVISION 2.—*Administration Accounts and Inquiries, etc.*—*rr. 10-19.*

PART 50.—FUNDS IN COURT.

PART 51.—COURT OF APPEAL.

DIVISION 1.—*Preliminary*—*rr. 1, 2.*DIVISION 2.—*Appeals*—*rr. 3-18.*DIVISION 3.—*Appeal Papers*—*rr. 19-25.*DIVISION 4.—*Written submissions*—*rr. 26-30.*DIVISION 5.—*General*—*rr. 31-34.*

FOURTH

*Supreme Court.*FOURTH SCHEDULE—*continued.*

No. 52, 1970

Part 1.

PART 52.—COSTS.

DIVISION 1.—*Preliminary*—rr. 1–10.DIVISION 2.—*Entitlement*—rr. 11–21.DIVISION 3.—*Party and Party Basis*—rr. 22–28.DIVISION 4.—*Common Fund and Trustee Bases*—rr. 29–31.DIVISION 5.—*Solicitor and Client Basis*—rr. 32, 33.DIVISION 6.—*Taxing Officers*—rr. 34–41.DIVISION 7.—*Taxation*—rr. 42–63.DIVISION 8.—*General*—rr. 64–66.

PART 53.—SECURITY.

DIVISION 1.—*Security for Costs*—rr. 1–5.DIVISION 2.—*Security for Future Conduct, and Recognizances*—rr. 6–8.

PART 54.—PREROGATIVE AND OTHER ORDERS.

DIVISION 1.—*Proceedings in lieu of Statutory Orders Nisi, etc.*—rr. 1, 2.DIVISION 2.—*General*—rr. 3, 4.

PART 55.—CONTEMPT.

DIVISION 1.—*Preliminary*—r. 1.DIVISION 2.—*Contempt in the Face or Hearing of the Court*—rr. 2–4.DIVISION 3.—*Motion or Proceedings for Punishment*—rr. 5–11.DIVISION 4.—*General*—rr. 12–14.

PART 56.—INTERPLEADER.

DIVISION 1.—*Preliminary*—r. 1.DIVISION 2.—*Stakeholder's Interpleader*—rr. 2–4.DIVISION 3.—*Sheriff's Interpleader*—rr. 5–8.DIVISION 4.—*General*—rr. 9–14.

PART 57.—SERVICE OF EXTERNAL PROCESS.

PART 58.—EVIDENCE FOR EXTERNAL TRIBUNAL.

PART 59.—ENFORCEMENT OF EXTERNAL JUDGMENTS.

PART 60.—MASTERS.

DIVISION 1.—*General*—rr. 1–4.DIVISION 2.—*Reference and Removal to Judge*—rr. 5–8.DIVISION 3.—*Appeal to Judge*—rr. 9–16.DIVISION 4.—*Appeal to the Court of Appeal*—r. 17.

PART 61.—REGISTRARS.

FOURTH

No. 52, 1970

FOURTH SCHEDULE—*continued.*

Part 1.

PART 62.—SHERIFF.

DIVISION 1.—*General*—rr. 1–4.DIVISION 2.—*Fees*—rr. 5–10.

PART 63.—DISABILITY.

PART 64.—BUSINESS NAMES.

PART 65.—DOCUMENTS.

PART 66.—SOLICITORS.

PART 67.—DEFAMATION.

PART 68.—ADMINISTRATION OF ESTATES; EXECUTION OF TRUSTS.

PART 69.—INFANTS' CUSTODY AND SETTLEMENTS ACT RULES.

PART 70.—TRUSTEE ACT RULES.

DIVISION 1.—*Investment*—rr. 1, 2.DIVISION 2.—*Judicial Advice*—rr. 3–6.DIVISION 3.—*New Trustees*—rr. 7–9.DIVISION 4.—*Payment into Court*—rr. 10–15.

SCHEDULES.

Amend-
ment and
contin-
uance of
rules.

4. (1) The rules specified in the first column of Schedule A to these rules—

- (a) are amended to the extent and in the manner specified opposite those rules in the second column of that Schedule; and
- (b) subject to those amendments, remain in force.

(2) The rules specified in Schedule B to these rules remain in force.

(3) The Conveyancing Act Rules, 1902, promulgated on the 5th September, 1902, remain in force.

Rescission
of rules.

5. (1) The rules specified in Schedule C to these rules are rescinded.

(2) The rules made on the 18th March, 1908, relating to section 14 of the District Courts (Amendment) Act, 1905, are rescinded.

FOURTH

*Supreme Court.*FOURTH SCHEDULE—*continued.*

No. 52, 1970

6. (1) The amendments and rescissions made by rules 4 and 5 do not, unless the Court otherwise orders, affect any proceedings commenced in the Court before the commencement of the Act or affect any of the matters mentioned in paragraph (a) or paragraph (b) of subsection (2) of section 16 of the Act.

Part 1.
Pending
proceed-
ings.

(2) The Court may make orders under subrule (1) on application by a party or of its own motion.

(3) Where the Court makes an order under section 16 of the Act or under subrule (1) of this rule, the Court may make such orders as it thinks fit as to amendment or otherwise in relation to the conduct of the proceedings.

7. (1) An amendment made by rule 4 or a rescission made by rule 5 shall not revive anything not in force or existing immediately before the commencement of these rules.

Non-revivor.
cf. 52 & 53
Vict. c. 63,
s. 38 (2) (a).

(2) The rescission by rule 5 of any rules by which previous rules were rescinded shall not have the effect of reviving the previous rules.

cf. Act No. 4
1897, s. 6.

8. (1) In these rules, unless the context or subject matter otherwise indicates or requires—

“convention” means a convention made between Her Majesty or any of her predecessors and the king or other head of state of a foreign country regarding legal proceedings in civil and commercial matters.

Interpreta-
tion.

“convention country” means a foreign country to which a convention applies.

“corporation” includes any artificial person.

“cross-claim” means a claim for relief under section 78 of the Act.

“curator” means—

(a) in respect of a person—

Act No. 31,
1969, s. 53

(i) who is a patient within the meaning of the Mental Health Act, 1958, including a person detained in a mental hospital under Part VII of that Act;

FOURTH

Supreme Court.

No. 52, 1970

FOURTH SCHEDULE—*continued.*

Part 1.

(ii) who is a voluntary patient within the meaning of that Act whose estate has been taken in charge under section 22 of that Act by the Master in the Protective Division; or

(iii) to whose property section 101 of that Act applies—

the Master in the Protective Division;

(b) in respect of a protected person within the meaning of that Act, where a committee of his estate is appointed under section 38 of that Act—the committee;

(c) in respect of an incapable person within the meaning of that Act, where a manager of his property is appointed under section 39 of that Act—the manager; and

(d) in respect of a person of whose estate a committee is appointed under section 48 of that Act—the committee.

“disable person” means an infant or a mentally disable person.

“document” includes any record of information, whether legible by eye or not.

“examiner” means an officer of the Court or other person appointed under Part 27 for the examination on oath before him of any person.

“folio” means 100 words, five figures being counted as one word.

cf. Cost
Rules, r. 2.
Rules of the
Supreme
Court
(Revised)
1965 (Eng.)
O. 1, r. 4
(1).

“funds” includes money, debentures, stock, shares and other securities and investments.

“master” includes an acting master.

“mentally disable person” means, in relation to any proceedings—

(a) a person who is not an infant and who, owing to mental illness, is incapable of managing his affairs in respect of those proceedings; or

(b) an infant who has a curator.

FOURTH

*Supreme Court.*FOURTH SCHEDULE—*continued.*

No. 52, 1970

“notice” means notice in writing.

Part I.

cf. R.S.C.
(Rev.) 1965,
O. 66, r. 2
(5).

“officer”, in relation to a corporation, includes a director and any person having (whether alone or with others) powers of management, direction or control of the corporation.

“originating process” means a statement of claim, a summons or, where a cross-claim is made against a person not previously a party to the proceedings in which the cross-claim is made, the cross-claim.

“pay”, in relation to funds, includes transfer, deposit and deliver.

“person bound”, in relation to a judgment or order, means a person required by the judgment or order—

- (a) to pay money ;
- (b) to give possession of land ;
- (c) to deliver goods (with or without the alternative of paying the assessed value of the goods) ;
- (d) to do any other act; or
- (e) to abstain from doing any act.

“pleading” includes a statement of claim and a cross-claim and subsequent pleadings, but does not include a summons or a notice of motion.

“registrar”—

- (a) means, in relation to proceedings in the Court of Appeal, the registrar of the Court of Appeal and, in relation to proceedings in a Division, the registrar of the Division ; and
- (b) includes an acting, deputy or assistant registrar.

“the Act” means the Supreme Court Act, 1970.

“tutor” means a next friend or guardian ad litem of a disable person.

“writing” includes, subject to Part 65 (which relates to documents cf. Act No. 4, 1897, s. 19, generally), any mode of representing or reproducing words in a visible form.

FOURTH

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FOURTH SCHEDULE—*continued.***Part 1.**

(2) The following provisions of the Interpretation Act of 1897 apply to these rules as if these rules were an Act—

- (a) section 16 (which relates to the mention of an officer in general terms) ;
- (b) section 17 (which concerns the relationship of references to New South Wales) ;
- (c) sections 20, 21 and 23 (which relate to the meaning of words and expressions) ;
- (d) section 24 (which relates to references to statutes) ;
- (e) section 30 (which relates to powers implicit in a power to make appointments) ; and
- (f) sections 31 and 32 (I) (which relate to the exercise of powers and the performance of duties).

cf. R.S.C.

(Rev.) 1965

O. 1, r. 5

(1).

(3) In these rules, unless the context or subject matter otherwise indicates or requires—

- (a) a reference to a Part or to a Schedule is a reference to that Part of, or Schedule to these rules ;
- (b) a reference in a Part to a Division (not being a Division of the Court) or to a rule is a reference to that Division or rule in that Part ;
- (c) a reference in a rule to a subrule is a reference to that subrule in that rule ;
- (d) a reference in a rule or subrule to a paragraph is a reference to that paragraph of that rule or subrule as the case may be.

cf. R.S.C.

(Rev.) 1965,

O. 13, r. 1

(2).

(4) For the purposes of these rules, a claim for a liquidated demand together with interest is a claim for a liquidated demand, whether or not—

- (a) the claim includes interest accruing after the date of the claim ; or
- (b) a rate of interest is specified.

FOURTH

*Supreme Court.*FOURTH SCHEDULE—*continued.*

No. 52, 1970

Part 1.

9. (1) There shall be the seals mentioned in the first column in the table below, which shall be impressed seals and respectively shall have the wording mentioned in the second column of the table and shall be in the custody of the officer mentioned in the third column of the table.

| Column 1 Seal | Column 2 Wording | Column 3 Custody |
|-----------------------------|--|----------------------------------|
| General seal of the Court | Supreme Court of New South Wales | Prothonotary |
| Seal of the Court of Appeal | Supreme Court of New South Wales: Court of Appeal | Registrar of the Court of Appeal |
| Seal of each Division | Supreme Court of New South Wales: (name of the Division) | Registrar of the Division |

(2) Each of the seals mentioned in subrule (1) shall have effect as the seal of the Court.

(3) Except where the rules otherwise provide, but subject to subrule (4), the seal of the Court of Appeal shall be used for the purpose of proceedings in the Court of Appeal and the seal of each Division shall be used for the purpose of proceedings in that Division.

(4) A rubber stamp facsimile of any seal may be used instead of the seal for any purpose.

cf. P.J.R.
r. 11 (3).

10. (1) The first document filed in any proceedings shall have a serial number assigned to it in the registry and that and each other document in the proceedings shall bear that number together with a reference to the calendar year in which the first document is filed.

Serial
number.
cf. P.J.R.,
r. 10.

(2) A new series of numbers shall be commenced at the beginning of each calendar year.

11. It shall be sufficient compliance with any requirement of the Act or the rules as to the form of any document if the document is substantially in accordance with the requirement or has only such variations as the nature of the case requires.

Forms.
cf. R.S.C.
(Rev.) 1965,
O. 1, r. 9.

12. The Court may dispense with compliance by a party with any of the requirements of the rules, either before or after the occasion for compliance arises.

Relief
from rules.
cf. Court
of Appeal
Rules, r. 57.

FOURTH

Supreme Court.

No. 52, 1970

FOURTH SCHEDULE—*continued.*

Part 2.

Procedure
wanting or
in doubt.
cf. High
Court
Rules, O. 72,
r. 1 (1).

13. (1) Where a person desires to commence proceedings or take any step in any proceedings, and the manner or form of procedure is not prescribed by the Act or the rules or by or under any other Act or that person is in doubt as to the manner or form of procedure, the Court may, on application by that person, give directions.

cf. H.C.R.
O. 72, r. 1
(2).

(2) Proceedings commenced in accordance with the directions of the Court shall be well commenced.

cf. H.C.R.
O. 72, r. 1
(2).

(3) A step taken in accordance with the directions of the Court shall be regular and sufficient.

Saving as
to discovery.
cf. Act No.
24, 1901,
s. 45.

14. These rules do not affect the right of any person to commence proceedings for discovery.

PART 2.

TIME.

“Month”
cf. R.S.C.
(Rev.)
1965,
O. 3, r. 1.

1. In any judgment or order and in any document in any proceedings, unless the context or subject matter otherwise indicates or requires, “month” means calendar month.

Reckoning.
cf. R.S.C.
(Rev.)
1965,
O. 3, r. 2
(1).

2. (1) Any period of time fixed by rules or by any judgment or order or by any document in any proceedings, shall be reckoned in accordance with this rule.

(2) Where a time of one day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event shall not be counted.

(3) Where, apart from this subrule, the period in question, being a period of 5 days or less, would include a day on which the registry is closed, that day shall be excluded.

(4) Where the last day for doing a thing is a day on which the registry is closed, the thing may be done on the next day on which the registry is open.

Extension
and abridg-
ment.
cf. R.S.C.
(Rev.) 1965,
O. 3, r. 5
(1).

3. (1) The Court may, on terms, by order extend or abridge any time fixed by the rules or by any judgment or order.

FOURTH

*Supreme Court.*FOURTH SCHEDULE—*continued.*

No. 52, 1970

Part 2.

(2) The Court may extend time under subrule (1) as well after cf. R.S.C. (Rev.) 1965, O. 3, r. 5 (2).
as before the time expires whether or not an application for the extension is made before the time expires.

(3) The period within which a person is required by rules or by cf. R.S.C. (Rev.) 1965, O. 3, r. 5 (3).
any order to serve, file or amend any pleading or other document may be extended by consent without an order for extension.

4. Where no time is fixed by the rules or by any judgment or order Fixing
of the Court for the doing of any thing in or in connection with any times.
proceedings, the Court may, by order, fix the time within which the cf. R.S.C. (Rev.) 1965, O. 62, r. 16 (1) (b);
thing is to be done. Court of Appeal Rules, r. 22.

5. (1) In the period from the beginning of the day on which the Vacation.
summer vacation begins until the end of the 14th of January next cf. General Rules of the Court, O. 3, r. 1.
following, time shall not, unless the Court otherwise orders, run so as to put any party in default in respect of any act for the doing of which a time is fixed by the rules or by any judgment or order of the Court but, subject to subrule (2), business may be done during that period.

(2) A hearing or trial shall not be held in vacation, unless the cf. G.R.C., O. 1, r. 1.
Court otherwise orders.

(3) Subrule (1) does not apply to the time limited for any person to enter an appearance.

6. (1) The registries shall be open to the public for business Registry hours.
between 9.30 in the morning and 4 in the afternoon, except on Saturdays, Sundays and other holidays. cf. G.R.C., O. 2, r. 1.

(2) A registry or part of a registry may be opened at other times cf. G.R.C., O. 2, r. 1, proviso.
for urgent business.

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FOURTH SCHEDULE—*continued.*

Part 3.

PART 3.

DISCOVERY BEFORE SUIT.

Examina-
tion and
production.

1. (1) Where, on application by any person, it appears to the Court that—

- (a) the applicant has a prima facie case for relief in proceedings in the Court against any person (in this rule called the person concerned);
- (b) the applicant, having made reasonable inquiries, does not know the name, or does not know the description, of the person concerned, or is otherwise unable to identify the person concerned sufficiently for the purpose of commencing proceedings against the person concerned; and
- (c) some person has or may have knowledge of facts, or has or may have in his possession, custody or power any document or thing, tending to assist in the ascertainment of the name or description or other identification of the person concerned,

the Court may order that person—

- (d) to attend before the Court or an officer of the Court and be orally examined on any matter relating to the name or description or other identification of the person concerned; or
- (e) to produce any document or thing in his possession, custody or power relating to the name or description or other identification of the person concerned.

(2) Where, on the application of any person, the matters mentioned in paragraphs (a) and (b) of subrule (1) appear to the Court and it further appears to the Court that a corporation has or may have in its possession, custody or power any document or thing tending to assist in the ascertainment of the name or description or other identification of the person concerned the Court may order the corporation or any officer of the corporation to produce any document or thing in the possession, custody or power of the corporation relating to the name or description or other identification of the person concerned.

(3) In this rule, “description” includes the place of residence, place of business, occupation and sex of the person concerned.

Procedure.

2. (1) A person may apply for orders under rule 1 by summons without making any person a defendant.

FOURTH

*Supreme Court.*FOURTH SCHEDULE—*continued.*

No. 52, 1970

(2) An order under rule 1 must be served personally on the person ordered to attend or to produce any document or thing.

Part 4.

3. (1) An order under rule 1 shall not require a person to attend or to produce any document or thing on any day on which his attendance, or production by him, is required, unless a sum sufficient to meet his reasonable expenses of carrying out the requirements of the order in relation to that day is paid or tendered to him at the time of service of the order or not later than a reasonable time before that day.

(2) Where an order under rule 1 requires a corporation to produce any document or thing, the sum mentioned in subrule (1) may be paid or tendered to any person apparently in the service of the corporation and apparently of or above the age of sixteen years.

4. Where any person incurs expense or loss in complying with an order under rule 1 in an amount exceeding any sum paid under rule 3, the Court may order the applicant to pay to that person an amount sufficient to make good the expense or loss.

PART 4.

COMMENCEMENT OF PROCEEDINGS.

1. Notwithstanding the provisions of any Act, rule or regulation in force immediately before the commencement of the Act, proceedings in the Court shall be commenced by statement of claim or by summons.

Two modes only.
cf. R.S.C.
(Rev.)
1965, O. 5,
r. 1.

2. (1) Proceedings shall be commenced by statement of claim—

(a) where a claim is made by the plaintiff for any relief or remedy for any tort;

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

(c) where 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), and

Where statement of claim required.
cf. R.S.C.
(Rev.)
1965, O. 5,
r. 2.

FOURTH

No. 52, 1970

FOURTH SCHEDULE—*continued*.

Part 4.

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; and

- (d) where a claim is made by the plaintiff for damages for breach of promise of marriage.

cf. R.S.C.
(Rev.)
1965, O. 5,
r. 2.

- (2) In subrule (1) "personal injuries" includes any disease and any impairment of a person's physical or mental condition.

cf. Act No.
24, 1901,
4th Schedule,
r. 8A (1).

- (3) Subrule (1) does not apply to proceedings commenced by a person who desires to apply for—

- (a) a declaration of right;
- (b) an immediate injunction;
- (c) an immediate appointment of a receiver; or
- (d) immediate orders under Part 28 rule 2 (which relates to the preservation of property).

Where
plaintiff
may choose.
cf. R.S.C.
(Rev.)
1965, O. 5,
r. 4 (1).

3. (1) Except in the case of proceedings which by the rules or by or under any Act are required to be commenced by statement of claim, proceedings may be commenced either by statement of claim or by summons as the plaintiff considers appropriate.

cf. R.S.C.
(Rev.)
1965, O. 5,
r. 4 (2).

(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 a substantial dispute of fact,

are amongst those which are appropriate to be commenced by summons unless the plaintiff considers the proceedings more appropriate to be commenced by statement of claim.

Suit in
person.
cf. R.S.C.
(Rev.)
1965, O. 5,
r. 6 (1).

4. (1) Subject to subrule (2) and rule 5 (1) and subject to rule 3 (2) of Part 63 (which relates to disability), any person may proceed in the Court by a solicitor or in person.

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(2) Except as provided by or under any Act, a corporation may not commence or carry on any proceedings otherwise than by a solicitor.

cf. R.S.C.
(Rev.)
1965, O. 5,
r. 6 (2).

5. (1) A relator must act by a solicitor.

Relator.
cf. R.S.C.
(Rev.)
1965, O. 15,
r. 11.

(2) A solicitor may not act for a relator in any proceedings unless the relator has authorised the solicitor in writing to act for him in the proceedings and the authority has been filed.

cf. R.S.C.
(Rev.)
1965, O. 15,
r. 11.

(3) The authority may be written on the originating process.

(4) A married woman may be a relator.

PART 5.

PROCEEDINGS BY SUMMONS.

1. This Part applies only to proceedings commenced by summons.

Application.
cf. R.S.C.
(Rev.)
1965, O. 7,
r. 1;
O. 28, r. 1.

2. (1) A party claiming relief by summons shall be called a plaintiff.

Parties.
cf. R.S.C.
(Rev.)
1965, O. 7,
r. 2 (2).

(2) A party against whom relief is claimed by summons shall be called a defendant.

cf. R.S.C.
(Rev.)
1965, O. 7,
r. 2 (2).

3. Where the plaintiff wishes to move for—

(a) an immediate injunction;

(b) the immediate appointment of a receiver;

(c) the continuance of an injunction or of an appointment of a receiver; or

(d) an order under Part 28 rule 2 (which relates to the preservation of property),

Urgent
relief.
cf. Act No.
24, 1901,
Sch. 4, r. 8A.

he may include notice of the motion in the summons.

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Part 5.

Appoint-
ment for
hearing.

cf. R.S.C.
(Rev.)
1965, O. 28,
r. 2 (1).

4. (1) Where any defendant has entered an appearance or has made default in appearance, the plaintiff may obtain from the registry an appointment for hearing.

cf. R.S.C.
(Rev.)
1965, O. 28,
r. 2 (3).

(2) Where a plaintiff does not obtain an appointment under subrule (1) within seven days after becoming entitled to do so, a defendant may obtain from the registry an appointment for hearing.

cf. R.S.C.
(Rev.)
1965, O. 28,
r. 2 (2).

(3) Where there is no defendant, or where the plaintiff is entitled under these rules to proceed without service of the summons on the defendant, the plaintiff may, at or after the time of filing the summons, obtain from the registry an appointment for hearing.

(4) Where the proceedings are not disposed of altogether on the first date appointed for hearing, a party may, unless the Court otherwise orders, obtain from the registry an appointment for further hearing.

(5) The Court may, by notice given to each party who has an address for service in the proceedings, make an appointment for hearing or further hearing.

(6) An appointment for hearing or further hearing shall be for a date not less than three days after the day on which the appointment is made.

(7) Nothing in this rule affects the powers of the Court as to adjournment.

Notice of
hearing.

cf. R.S.C.
(Rev.) 1965,
O. 28, r. 3
(1).

5. (1) A party obtaining an appointment for hearing shall, on the day on which he obtains the appointment, file notice of the appointment and serve the notice on each other party who has an address for service in the proceedings.

(2) This rule does not apply where there is no defendant, or where the plaintiff is entitled to proceed without service of the summons on the defendant.

Affidavits:
filing and
service.

cf. R.S.C.
(Rev.) 1965,
O. 28, r. 3.

6. A party proposing to use an affidavit on the hearing shall, not less than three days before the date appointed for the hearing, file the affidavit and (where there is a defendant) serve it on each other interested party who has an address for service in the proceedings.

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7. (1) The Court may exercise its powers under this rule on the first or any later day of hearing.

Part 5.

Directions.

cf. R.S.C.
(Rev.) 1965,
O. 28, r. 4.

(2) The Court shall deal at the earliest opportunity with such of the matters mentioned in this rule as are necessary for the just, quick and cheap disposal of the proceedings.

(3) The Court may—

- (a) give directions for the further conduct of the proceedings ;
- (b) give any directions which it may give on a hearing for directions under Part 26 ;
- (c) direct that the whole or any part of the evidence be taken orally ;
- (d) make any order relating to the conduct of the proceedings which it might make on notice of motion by a party.

8. The Court may, on the first or any later day of hearing—

Determination.

- (a) hear and determine the proceedings or any claim in the proceedings ; and
- (b) make such order or direct the entry of such judgment as the nature of the case requires.

cf. R.S.C.
(Rev.) 1965,
O. 28, r. 4
(1).

9. The Court may proceed with a hearing in the absence of—

Absence of party.

- (a) a plaintiff, where he has had due notice of the hearing ;
- (b) a defendant, where—
 - (i) he is in default of appearance ; or
 - (ii) he has had due notice of the hearing.

cf. R.S.C.
(Rev.) 1965,
O. 28, r. 4
(1).

10. (1) A defendant may, with the leave of the Court, cross-claim for relief which the Court may grant under section 78 of the Act.

Cross-claim.
cf. R.S.C.
(Rev.) 1965,
O. 28, r. 7
(1).

(2) A defendant who wishes to cross-claim shall, at as early a stage as is practicable, tell the Court the nature of the cross-claim.

cf. R.S.C.
(Rev.) 1965,
O. 28, r. 7
(2).

(3) A cross-claim shall be made in such manner as the Court may direct under rule 7 or rule 11 or under rule 1 (2) of Part 6.

cf. R.S.C.
(Rev.) 1965,
O. 28, r. 7
(2).**FOURTH**

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Part 6.

Continua-
tion on
pleadings.cf. R.S.C.
(Rev.) 1965,
O. 28, r. 8
(1).

11. (1) The Court may order that the proceedings continue on pleadings.

cf. R.S.C.
(Rev.) 1965,
O. 28, r. 8
(2).

(2) Where the Court decides to make an order under subrule (1), the proceedings shall be before the Court for directions under Part 26.

cf. R.S.C.
(Rev.) 1965, (1)—
O. 28, r. 8
(1).

(3) The Court may, on or after making an order under subrule

(a) order that any affidavits stand as pleadings; or

(b) make orders for the filing of a statement of claim or other pleadings.

cf. R.S.C.
(Rev.) 1965,
O. 28, r. 8
(4).

(4) The provisions of the rules concerning proceedings commenced by statement of claim shall, except so far as the Court otherwise orders, and except so far as the context or subject matter otherwise indicates or requires, apply to proceedings ordered under this rule to continue on pleadings.

Want of
prosecution.
cf. R.S.C.
(Rev.) 1965,
O. 28, r. 10
(1).

12. (1) Where a plaintiff makes default in complying with any order or direction as to the conduct of the proceedings, or does not prosecute the proceedings with due despatch, the Court may stay or dismiss the proceedings.

cf. R.S.C.
(Rev.) 1965,
O. 28, r. 10
(2).

(2) Subrule (1) applies, with any necessary modifications, in relation to a cross-claimant as it applies in relation to a plaintiff.

cf. R.S.C.
(Rev.) 1965,
O. 28, r. 10
(2).

(3) Where, by an order under rule 11, the proceedings are to continue on pleadings, subrules (1) and (2) do not apply to the proceedings after the making of the order.

PART 6.

CROSS-CLAIMS.

Application. 1. (1) This Part applies to proceedings commenced by statement of claim.

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(2) This Part applies to proceedings commenced by summons to such extent and with such modifications as the Court may direct. *cf. R.S.C. (Rev.) 1965, O. 16, r. 1 (2).*

2. (1) A party against whom a claim is made in proceedings and who claims relief under section 78 of the Act (whether by way of counter-claim, cross-action, set-off, third party claim or otherwise) may make his claim by filing a pleading by way of cross-claim in those proceedings. *Commence-ment. cf. R.S.C. (Rev.) 1965, O. 15, rr. 2 (1), 3 (1); O. 16, rr. 1 (1), 8 (1) (2), 9 (1), 11.*

(2) A cross-claimant may file a cross-claim within the time fixed for filing his defence. *cf. R.S.C. (Rev.) 1965, O. 15, rr. 2 (1), 3 (2) (3); O. 16, r. 1 (2).*

(3) A defendant to a cross-claim shall, by virtue of his being a defendant to the cross-claim, be a party to the proceedings. *cf. R.S.C. (Rev.) 1965, O. 15, r. 3 (2); O. 16, r. 1 (3).*

3. (1) A cross-claim shall be in the prescribed form.

Form. cf. R.S.C. (Rev.) 1965, O. 15, r. 3 (6).

(2) A cross-claim shall be intituled in the proceedings with an addition showing the names of the parties to the cross-claim. *cf. R.S.C. (Rev.) 1965, O. 15, r. 3 (2).*

(3) Where a cross-claimant cross-claims solely against a party who claims in the proceedings against the cross-claimant, the cross-claimant may add the cross-claim to his defence and, if he does, the addition required by subrule (2) shall not be made. *cf. R.S.C. (Rev.) 1965, O. 15, r. 2 (1).*

(4) Where there are two or more cross-claims, the second cross-claim to be filed shall be called the second cross-claim, the third to be filed shall be called the third cross-claim, and so on.

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Part 6.

(5) Subject to Part 15 rule 26 (which relates to embarrassing pleadings and the like), a cross-claimant may, in his cross-claim, plead all or any of the facts on which he relies by reference to the prior pleadings in the proceedings.

(6) A cross-claimant shall, in addition to pleading any other facts on which he relies, plead the facts showing that the claim is one which, under section 78 of the Act, may be made in the proceedings.

(7) Part 7 rule 1 (which relates to claims for relief in originating process) applies to a cross-claim whether or not the cross-claim is an originating process.

Title.

4. On a cross-claim being filed, a document afterwards filed or used in the proceedings shall be intitled in the manner in which the cross-claim is intitled.

Directions.

cf. R.S.C.
(Rev.)
1965, O. 16,
rr. 4 (1)
(2), 8 (3)
(4).

5. (1) A party to the proceedings may, at any time after the filing of a cross-claim, move for directions.

(2) On a motion for directions under this rule, or on the trial of the cross-claim, the Court may, on such terms as it thinks fit—

(a) make any order or direction which it may make under Part 26 (which relates to directions generally);

cf. R.S.C.
(Rev.)
1965, O. 15,
r. 5 (2);
O. 16, r. 4
(3) (b).

(b) order that any claim question or issue in or arising on the cross-claim be tried in such manner as the Court may direct;

cf. R.S.C.
(Rev.)
1965, O. 16,
r. 4 (4).

(c) give to a defendant to the cross-claim leave to defend the claim on the statement of claim or any other cross-claim in the proceedings, either alone or in addition to any other party;

cf. R.S.C.
(Rev.)
1965, O. 16,
r. 4 (4).

(d) give to a defendant to the cross-claim leave to appear at the trial of the claim on the statement of claim or on any other cross-claim in the proceedings and to take such part in the trial as the Court thinks fit;

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- (e) dismiss the cross-claim ;
- (f) determine the extent to which the cross-claimant and a defendant to the cross-claim shall be bound as between themselves by a judgment (including a judgment by consent or by default) or decision (including a decision by consent) on the claim on the statement of claim or any other cross-claim in the proceedings ;
- (g) direct the entry of such judgment as the nature of the case may require ; and
- (h) give such directions as the Court thinks fit for having the rights and liabilities of the parties determined and enforced, including any order or direction which may be made or given under this Part.
- (3) Part 26 rules 3 to 8 apply to a motion for directions under this rule.
- (4) This rule does not affect the power of the Court on an appointment under Part 26 rule 1.
6. (1) Where a defendant to a cross-claim has, on the date of filing the cross-claim, an address for service in the proceedings, the cross-claimant shall, on that date, serve the cross-claim on that defendant to the cross-claim.
- (2) Where a defendant to a cross-claim has an address for service in the proceedings, personal service of the cross-claim on him is not required.
- (3) Part 9 rule 12 (which relates to cases where filing operates as service) does not apply to the service of a cross-claim.

Part 6.
cf. R.S.C.
(Rev.)
1965, O. 15,
r. 5 (2);
O. 16, rr. 4
(3) (c),
6, 7 (1).

cf. R.S.C.
(Rev.)
1965, O. 16,
r. 4 (4).

cf. R.S.C.
(Rev.)
1965, O. 16,
rr. 4 (3)
(a), 5 (1)
(b), 7 (1).

cf. R.S.C.
(Rev.)
1965, O. 16,
r. 4 (4).

Service.
cf. R.S.C.
(Rev.)
1965, O. 15,
rr. 2 (1),
3 (2) (3).

cf. R.S.C.
(Rev.)
1965, O. 15,
r. 3 (5).

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Part 6.

Service of
prior
pleadings.
cf. R.S.C.
(Rev.)
1965, O. 16,
r. 3 (2).

7. (1) Where a defendant to a cross-claim is made a party to the proceedings by the filing of the cross-claim, he may, by notice filed and served on the cross-claimant, require the cross-claimant to serve on him all or any of the pleadings in the proceedings filed before the filing of the cross-claim.

(2) A defendant to a cross-claim may add a notice under subrule (1) to his notice of appearance.

(3) Where a notice under subrule (1) is served on a cross-claimant then, unless the Court otherwise orders, he shall, within three days after service of the notice or such longer time as may be specified in the notice, serve on the defendant to the cross-claim giving the notice each pleading mentioned in the notice.

Conduct
of pro-
ceedings
generally.
cf. R.S.C.
(Rev.)
1965, O. 15,
r. 3 (2);
O. 16, r. 3
(4).

8. (1) Subject to this Part, the proceedings on a cross-claim shall follow as nearly as may be the course of proceedings on a statement of claim.

(2) Subject to this Part, and without limiting the generality of subrule (1), these rules apply to a cross-claim and the proceedings arising from it as they apply to a statement of claim and the proceedings arising from it.

cf. R.S.C.
(Rev.) 1965,
O. 15, r. 3
(5); O. 16
r. 3 (4).

(3) Subrules (1) and (2) apply as if—

- (a) the cross-claim were a statement of claim ;
- (b) the cross-claimant were a plaintiff ; and
- (c) the defendant to the cross-claim were a defendant.

cf. R.S.C.
(Rev.) 1965,
O. 16, r. 8
(3).

(4) A plaintiff in a statement of claim need not enter an appearance to a cross-claim in the same proceedings.

cf. R.S.C.
(Rev.) 1965,
O. 16, r. 8
(3).

(5) An appearance entered by a party to the proceedings shall, upon service of a cross-claim on him, operate as an appearance to the cross-claim.

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(6) Subject to this Part, the trial and all other steps in the proceedings on the cross-claim shall as far as practicable be carried on together with the trial and similar steps in the proceedings on the statement of claim. **Part 6.**

9. Where a defendant to a cross-claim does not enter an appearance or file a defence as required by these rules, or does not file a defence in accordance with an order to do so, a judgment (including a judgment by default or by consent) or decision (including a decision by consent) on any claim question or issue in the proceedings on the statement of claim or on any other cross-claim in the proceedings shall, unless the Court otherwise orders, be binding as between the cross-claimant and the defendant to the cross-claim so far as the judgment or decision is relevant to any claim question or issue in the proceedings on the cross-claim. **Default of defendant to cross-claim. cf. R.S.C. (Rev.) 1965, O. 16, r. 5 (1) (a).**

10. Where judgment on a cross-claim is entered in default of appearance or defence or in consequence of default in compliance with an order or direction of the Court, the Court may, on terms set aside or vary the judgment. **Setting aside default judgment. cf. R.S.C. (Rev.) 1965, O. 16, r. 5 (3).**

11. A cross-claim may proceed notwithstanding that judgment is entered on the statement of claim or any other cross-claim in the proceedings or that the proceedings on the statement of claim or any other cross-claim are stayed, dismissed or discontinued. **Separate prosecution. cf. R.S.C. (Rev.) 1965, O. 15, r. 2 (3).**

12. Where a defendant makes a cross-claim for contribution or indemnity in respect of a claim against him in the proceedings— **Contribution or indemnity.**

(a) a defence to the cross-claim or subsequent pleading on the cross-claim shall not be filed or served unless the Court so directs;

(b) judgment for the claimant on the cross-claim shall not be entered except by direction of the Court; **cf. R.S.C. (Rev.) 1965, O. 16, r. 5 (1) (b).**

(c) judgment for the claimant on the cross-claim shall not, unless the Court otherwise orders, be enforced by execution until satisfaction of any judgment in the proceedings against the cross-claimant. **cf. R.S.C. (Rev.) 1965, O. 16, r. 5 (1) (b), 7 (2).**

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Part 7.

Offer of
contribution.
cf. R.S.C.
(Rev.) 1965,
O. 16, r. 10.

13. Where in any proceedings—

- (a) a party (in this rule called the first party) stands to be held liable to another party (in this rule called the second party) to contribute towards any debt or damages which may be recovered against the second party in the proceedings; and
- (b) the first party, before the trial, makes an offer to the second party to contribute to a specified extent to the debt or damages,

then, if the first party makes the offer without prejudice to his defence, the offer shall not be brought to the attention of the Court until all questions of liability or amount of debt or damages have been decided.

PART 7.

ORIGINATING PROCESS.

Relief
claimed.
cf. R.S.C.
(Rev.)
1965, O. 7,
r. 3 (1);
O. 16, rr. 1
(1), 8 (1);
O. 18, r. 15
(1).

- 1. (1) An originating process shall state specifically the relief claimed by the plaintiff.

cf. R.S.C.
(Rev.)
1965, O. 7,
r. 3 (1);
O. 16, rr. 1
(1), 8 (1).

- (2) Where the claim for relief includes a claim for the determination or direction of the Court on any question, the originating process shall state the question.

cf. R.S.C.
(Rev.)
1965, O. 18,
r. 15 (1).

- (3) Costs need not be specifically claimed.

Name,
address,
etc.

- 2. (1) An originating process must have subscribed to it—

- (a) the name, address and occupation of the plaintiff;
- (b) where the plaintiff sues by a solicitor, the name, address and telephone number of the solicitor;

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- (c) where the plaintiff sues by a solicitor and that solicitor has another solicitor as agent for him in the proceedings, the name, address and telephone number of the agent; and Part 7.
- (d) an address for service.

(2) Where it appears from any originating process that the plaintiff sues by a solicitor— cf. R.S.C. (Rev.) 1965, O. 6, r. 5 (3).

- (a) the solicitor shall, on request in writing by a defendant, declare in writing whether the originating process was filed by him; and (4).
- (b) if the solicitor declares in writing that the originating process was not filed by him, the Court may, on application by a defendant, stay the proceedings.

3. An originating process shall bear a note requiring the defendant to enter an appearance and stating that, if the defendant does not appear, file a notice of appearance within the prescribed time, judgment against him may be entered, or an order against him may be made, in his absence. Notice to appear.

4. (1) Where a plaintiff, by his originating process, claims against a defendant for debt, damages or other money, but makes no claim of any other kind, the defendant— Money claim: stay on payment.

- (a) may, within the time limited for appearance, pay to the plaintiff the sum of— cf. R.S.C. (Rev.) 1965, O. 6, r. 2 (1) (b).
- (i) the amount claimed (other than costs);
- (ii) the prescribed amount for costs; and
- (b) may file notice of the payment.

(2) Where payment is to be made under this rule on a claim for a liquidated demand together with interest, interest shall be paid for the period from the date of the claim until payment at the rate specified in the claim or, if no rate is specified, at the rate of 5 per cent yearly.

(3) A defendant filing notice of payment under subrule (1) shall, on the date of filing, serve the notice on the plaintiff.

(4) Upon the filing of a notice of payment under subrule (1), further proceedings shall be stayed.

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Part 7.

(5) An originating process to which this rule applies shall bear a note to the effect of subrules (1), (3) and (4) and, where subrule (2) applies, of subrule (2) and shall specify the prescribed amount for costs.

Time for appearance.

5. (1) The time to be limited in an originating process for the appearance of a defendant shall be—

(a) in the case of service within the State—14 days ;

(b) in the case of service outside the State—three months or such other time as the Court may order.

(2) Subrule (1) has effect subject to the Service and Execution of Process Act 1901 and the rules under that Act.

Filing and copies.

6. (1) Proceedings shall be commenced by the filing of the originating process.

(2) Originating process may be filed in the registry or, in the case of a statement of claim or summons, in the office of the clerk of petty sessions in such places as may be designated by the Chief Justice.

(3) The officer receiving the originating process on filing shall, on request by the plaintiff, sign and mark with the seal of the registry or the stamp of the clerk of petty sessions a sufficient number of copies of the originating process for service and proof of service.

(4) Where an originating process is filed in the office of a clerk of petty sessions, he shall send the originating process, together with the filing fee, to the registry.

Validity for service.

7. (1) For the purposes of service an originating process shall be valid for two years from the date on which it is filed.

(2) The Court shall not extend the period of two years mentioned in subrule (1).

(3) Nothing in this rule prevents the plaintiff from commencing fresh proceedings by filing another originating process.

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*Supreme Court.*FOURTH SCHEDULE—*continued.*

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Part 8.

8. (1) Where, on the date on which proceedings for recovery of land are commenced, a person (in this rule called the occupier) not joined as a defendant is in occupation of the whole or any part of the land, the plaintiff shall either—

Recovery of land—
notice to occupier.
cf. General Rules of the Court, O. 21, r. 4.

- (a) state in the originating process that he does not seek to disturb the occupation of the occupier ; or
- (b) serve the originating process on the occupier together with a notice that he may apply to the Court for an order that he be added as a defendant and that, if he does not so apply within 10 days after service, he may be evicted pursuant to a judgment entered in his absence.

(2) Documents may be served on an occupier for the purposes of subrule (1) personally or by leaving the documents on the land in his occupation addressed to him by name or addressed to "the occupier".

PART 8.

CAUSES OF ACTION AND PARTIES.

1. A plaintiff may, in any proceedings, claim relief against the same defendant in respect of more than one cause of action—

Joinder of causes of action.
cf. R.S.C. (Rev.) 1965, O. 15, r. 1 (1).

- (a) where the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action ;
- (b) where the plaintiff claims, or the defendant is alleged to be liable, in the capacity of executor of the will of a deceased person or administrator of the estate of a deceased person in respect of one or more of the causes of action, and in his personal capacity but with reference to the estate of the same deceased person, in respect of all other causes of action ; or
- (c) where the Court gives leave so to do.

2. Two or more persons may be joined as plaintiffs or defendants in any proceedings—

Joinder of parties generally.

(a) where—

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

cf. R.S.C. (Rev.) 1965, O. 15, r. 4 (1).

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FOURTH SCHEDULE—*continued.*

Part 8.

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

(b) where the Court gives leave so to do.

Joint right.

3. (1) Where, in any proceedings, the plaintiff claims relief to which any other person is entitled jointly with him—

cf. R.S.C. (Rev.) 1965, O. 15, r. 4 (2).

(a) all persons so entitled shall be parties to the action; and

(b) any of them who does not consent to being joined as a plaintiff shall be made a defendant.

cf. R.S.C. (Rev.) 1965, O. 15, r. 4 (2).

(2) Subrule (1) applies subject to any Act and subject to section 62 of the Bankruptcy Act 1966 and applies unless the Court gives leave to the contrary.

Leave under rules 1, 2 and 3.

4. (1) The Court may grant leave under rule 1 or rule 2 before or after the joinder and may grant leave under rule 3 (2) before or after the non-joinder.

cf. R.S.C. (Rev.) 1965, O. 15, r. 1 (2).

(2) A plaintiff may apply for leave under rule 1 or rule 2 or rule 3 (2) either before or after filing his originating process and may apply without serving notice of the motion on any person on whom the originating process has not been served.

Common liability.

5. (1) Where, in any proceedings, relief is claimed 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 proceedings.

cf. R.S.C. (Rev.) 1965, O. 15, r. 4 (3).

cf. R.S.C. (Rev.) 1965, O. 15, r. 4 (3).

(2) Where persons are jointly, but not severally, liable under a contract, and relief is claimed against some but not all of those persons in proceedings in respect of that contract, the Court may, on the application of any defendant to the proceedings, by order stay the proceedings until the other persons so liable are added as defendants.

Inconvenient joinder.

6. Where any joinder of parties or of causes of action may embarrass or delay trial of the proceedings or is otherwise inconvenient, the Court may order separate trials or make such other order as the Court thinks fit.

cf. R.S.C. (Rev.) 1965, O. 15, r. 5 (1).

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Part 8.

7. (1) Proceedings shall not be defeated by reason of the misjoinder of a party or the non-joinder of any person as a party.

Misjoinder and non-joinder of parties.
cf. R.S.C. (Rev.) 1965, O. 15, r. 6 (1).

(2) The Court may in any proceedings determine the issues or questions in dispute so far as they affect the rights and interests of the parties.

cf. R.S.C. (Rev.) 1965, O. 15, r. 6 (1).

8. (1) Where a person who is not a party—

Addition of parties.

(a) ought to have been joined as a party; or

cf. R.S.C. (Rev.) 1965, O. 15, r. 6 (2).

(b) is a person whose joinder as a party is necessary to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon,

the Court, on application by him or by any party or of its own motion, may, on terms, order that he be added as a party and make orders for the further conduct of the proceedings.

(2) A person shall not be added as a plaintiff without his consent.

cf. R.S.C. (Rev.) 1965, O. 15, r. 6 (2).

(3) Without limiting the generality of subrule (1), where a person not a party to proceedings for possession of land is in possession (by himself or by a tenant) of the whole or any part of the land, the Court, on application by him, may, on terms, order that he be added as a defendant and make orders for the further conduct of the proceedings.

cf. R.S.C. (Rev.) 1965, O. 15, r. 10 (1).

9. Where a party—

Removal of parties.

(a) has been improperly or unnecessarily joined; or

cf. R.S.C. (Rev.) 1965, O. 15, r. 6 (2).

(b) has ceased to be a proper or necessary party,

the Court, on application by any party or of its own motion, may, on terms, order that he cease to be a party and make orders for the further conduct of the proceedings.

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Death,
transmis-
sion, etc.
cf. R.S.C.
(Rev.) 1965,
O. 15, r. 7
(1).

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

cf. R.S.C.
(Rev.) 1965,
O. 15, r. 7
(2).

(2) Where the interest or liability of a party passes by assignment transmission devolution or otherwise to another person, the Court may make orders for the addition, removal or re-arrangement of parties and may make orders for the further conduct of the proceedings.

(3) The Court may act under subrule (2) on application by a party or by a person to whom the interest or liability passes or of its own motion.

Further
conduct of
proceedings.
cf. R.S.C.
(Rev.) 1965,
O. 15, rr. 7
(2) (3)
(4), 8, 10
(3).

11. (1) Without limiting the generality of the powers of the Court under rules 8, 9 and 10, orders under those rules for the further conduct of the proceedings may include orders relating to—

- (a) service of the order and other documents in the proceedings ;
- (b) amendment ;
- (c) appearance of added parties ; and
- (d) substitution of one party for another party or a former party.

cf. R.S.C.
(Rev.)
1965, O. 15,
r. 8 (4).

(2) Where the Court orders that a party be substituted for another party or a former party, all things done in the proceedings before the making of the order shall, unless the Court otherwise orders, have effect in relation to the new party as those things had effect in relation to the old, but entry of appearance by the old party shall not dispense with entry of appearance by the new.

cf. R.S.C.
(Rev.)
1965, O. 15,
r. 8 (4).

(3) Subject to subrule (2), where a party is added pursuant to an order under rule 8 or rule 10, the date of commencement of the proceedings so far as concerns him shall be the date of filing of the originating process amended so as to add him as a party or, where an amended originating process is not filed, the date of the amendment adding him as a party.

Failure to
proceed
after death
of party.
cf. R.S.C.
(Rev.)
1965, O. 15,
r. 9.

12. (1) Where—

- (a) A party dies but a cause of action in the proceedings survives his death ; and

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- (b) an order under rule 10 for the addition of a party in substitution for the deceased party is not made within three months after the death—

the Court may, on application by a party or by a person to whom liability on the cause of action survives on the death, order that, unless, within a specified time after service of the order in accordance with subrule (2), a party is added in substitution for the deceased party, the proceedings be dismissed so far as concerns relief on the cause of action for or against the person to whom the cause of action or the liability thereon, as the case may be, survives on the death.

(2) On making an order under subrule (1), the Court shall give such directions as it thinks fit for service of the order on the persons (whether parties or not) interested in continuing the proceedings. cf. R.S.C. (Rev.) 1965, O. 15, r. 9.

13. (1) Where numerous persons have the same interest in any proceedings the proceedings may be commenced, 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. Representation: concurrent interests. cf. R.S.C. (Rev.) 1965, O. 15, r. 12 (1).

(2) At any stage of proceedings pursuant to this rule the Court, on the application of the plaintiff, may, on terms, 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. cf. R.S.C. (Rev.) 1965, O. 15, r. 12 (2).

(3) Where, under subrule (2), the Court appoints a person who is not a defendant, the Court shall make an order under rule 8 adding him as a defendant. cf. R.S.C. (Rev.) 1965, O. 15, r. 12 (2).

(4) A judgment entered or order made in proceedings pursuant to 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. cf. R.S.C. (Rev.) 1965, O. 15, r. 12 (3).

(5) An application for leave under subrule (4) shall be made by motion, notice of which shall be served personally on the person against whom it is sought to enforce the judgment or order. cf. R.S.C. (Rev.) 1965, O. 15, r. 12 (4).

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cf. R.S.C.
(Rev.)
1965, O. 15,
r. 12 (5).

(6) Notwithstanding that a judgment or order to which an application under subrule (5) 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 the liability.

cf. R.S.C.
(Rev.)
1965, O. 15,
r. 12 (1).

(7) This rule does not apply to proceedings concerning—
(a) the administration of the estate of a deceased person ; or
(b) property subject to a trust.

Representa-
tion: ad-
ministration
cases, etc.
cf. R.S.C.
(Rev.)
1965, O. 15,
r. 13 (1).

14. (1) In any proceedings concerning—

- (a) the administration of the estate of a deceased person ;
- (b) property subject to a trust ; or
- (c) the construction of a written instrument, including an Act,

the Court, if satisfied that one or more of the conditions specified in subrule (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.

cf. R.S.C.
(Rev.)
1965, O. 15,
r. 13 (2).

(2) The conditions for the exercise of the power conferred by subrule (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.

cf. R.S.C.
(Rev.) 1965,
O. 15, r. 13
(3).

(3) Where in any proceedings the Court exercises the power conferred by subrule (1), a judgment or order entered or made in the proceedings shall be binding on the person or class represented as if he or they were parties.

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(4) Where, in any such proceedings as are mentioned in subrule (1), 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 a party in the same interest 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 subrule (1) and he so assents,

the Court, if satisfied that the compromise will be for the benefit of the absent persons, 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.

15. (1) Where any proceedings, including proceedings to enforce a security by way of foreclosure or otherwise, are brought by or against a trustee, executor or administrator—

- (a) it shall not be necessary to join as a party any of the persons having a beneficial interest under the trust or in the estate;
- (b) a judgment or order in the proceedings shall, subject to subrule (2), be as binding on those persons as it is on the trustee, executor or administrator.

(2) Where a judgment is entered or an order is made in proceedings to which subrule (1) applies and it appears to the Court that in those proceedings the trustee, executor or administrator could not or did not in fact represent the interests of the persons having a beneficial interest under the trust or in the estate, the Court may, in those or other proceedings, order, on terms, that the judgment so entered or the order so made shall not be binding on those persons.

(3) Subrule (1) does not limit the power of the Court to order the addition of parties under rule 8.

16. (1) Where in any proceedings it appears to the Court that a deceased person was interested, or that the estate of a deceased person is interested, in any matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party—

- (a) order that the proceedings continue in the absence of a person representing the estate of the deceased person; or

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(b) by order (with the consent of the person appointed) appoint a person to represent that estate for the purposes of the proceedings.

cf. R.S.C. (2) An order under subrule (1), and any judgment or order
(Rev.) 1965, subsequently entered or made in the proceedings, shall bind the
O. 15, r. 15 estate of the deceased person to the same extent as the estate would
(1). have been bound had a personal representative of the deceased person
been a party to the proceedings.

cf. R.S.C. (3) Before making an order under this rule, the Court may
(Rev.) 1965, require notice of the application for the order to be given to such
O. 15, r. 15 (if any) of the persons having an interest in the estate as it thinks fit
(2).

Conduct. 17. The Court may give the conduct of the whole or any part
cf. R.S.C. of any proceedings to such person as it thinks fit.
(Rev.) 1965,
O. 15, r. 17.

PART 9.

SERVICE: GENERAL.

Mode of service. 1. Any document required or permitted to be served in any
cf. R.S.C. proceedings may be served personally, but need not be served per-
(Rev.) 1965, sonally, unless personal service is required by the rules or by order.
O. 65, r. 1
(1).

Originating process. 2. (1) Subject to any Act, originating process shall be served
cf. R.S.C. personally on each defendant.
(Rev.) 1965,
O. 10, r. 1 (2) The copy for service shall be signed and sealed or signed
(1); O. 15, and stamped as mentioned in Part 7 rule 6.
r. 3 (5);
O. 16, r. 3
(4).

cf. R.S.C. (3) Where a defendant to any originating process files notice
(Rev.) 1965, of an unconditional appearance, the originating process shall be taken
O. 10, r. 1 to have been served on him personally on the date on which his
(3). notice of appearance is filed or on such earlier date as may be proved

Personal service: how effected. 3. (1) Personal service of a document may be effected by leaving a
cf. General Rules of the Court, copy of the document with the person to be served or, if he does
O. 6, r. 2. not accept the copy, by putting the copy down in his presence and
telling him the nature of the document.

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(2) Personal service of a document on a corporation may be effected by serving the document in accordance with subrule (1) on the mayor, chairman or president of the corporation, or on the town clerk, clerk, secretary, treasurer or other similar officer of the corporation. cf. R.S.C. (Rev.) 1965, O. 65, r. 3.

(3) Subrule (2) applies in addition to any provision for service on a corporation made by or under any Act.

4. (1) Where personal service of a document is not required, the document may be served— Ordinary service: how effected.

(a) by leaving a copy of the document at the proper address of the person to be served between the hours of nine in the morning and five in the afternoon on any day on which the registry is open; or cf. R.S.C. (Rev.) 1965, O. 65, r. 5 (1).

(b) by sending a copy of the document by pre-paid post addressed to the person to be served at his proper address.

(2) For the purposes of subrule (1), the proper address of a person shall be the address for service of that person in the proceedings but if, at the time when the copy is left or posted pursuant to subrule (1), he has no address for service in the proceedings, his usual or last known place of business or of abode shall be his proper address. cf. R.S.C. (Rev.) 1965, O. 65, r. 5 (2).

5. (1) Where, in proceedings for possession of land, the Court is satisfied— Possession of land.

(a) that it appears that no person is in possession of the land; and cf. R.S.C. (Rev.) 1965, O. 10, r. 4 (a).

(b) that there is a defendant on whom the originating process cannot, apart from this rule, be served without undue delay or expense,

the Court may authorise service of the originating process on that defendant by affixing a copy of the originating process to a conspicuous part of the land.

(2) Where, in proceedings for possession of land, the Court is satisfied— cf. R.S.C. (Rev.) 1965, O. 10, r. 4 (b).

(a) that a copy of the originating process has been affixed to a conspicuous part of the land;

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(b) that at the time when the copy was so affixed it appeared that no person was in possession of the land; and

(c) that there is a defendant on whom the originating process could not, apart from this rule, be served without undue delay or expense,

the Court may order that the affixing of the copy have effect as service on that defendant.

cf. R.S.C. (Rev.) 1965, O. 10, r. 4. (3) A party may apply for an order under this rule without filing or serving notice of the motion.

(4) This rule has effect notwithstanding that the defendant is outside the State at the time of affixing the copy of the originating process.

Address
for service.

6. (1) An address for service shall be the address of a place within two miles of the General Post Office, Sydney, at which documents in the proceedings may, during ordinary business hours, be left for the person whose address for service it is and to which documents in the proceedings may be posted for that person.

(2) The address for service of a person represented by a solicitor shall be the office of the solicitor or of his Sydney agent.

(3) A person may change his address for service by filing a notice of the change showing his new address for service.

(4) A person who files a notice of a change of his address for service shall, on the date of filing, serve the notice on each party to the proceedings.

Acceptance
by solicitor.
cf. R.S.C.
(Rev.) 1965,
O. 10, r. 1
(2).

7. (1) This rule applies to—

(a) any originating process; and

(b) any document required or permitted to be served in any proceedings, but not required to be served personally.

cf. R.S.C.
(Rev.) 1965,
O. 10, r. 1
(2).

(2) Where a solicitor makes on a copy of a document to which this rule applies a note that he accepts service of the document on behalf of any person, the document shall be taken to have been duly served on that person on the date on which the solicitor makes the note or on such earlier date of service as may be proved.

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Part 9.
Service on
solicitor in
court
below.

8. (1) This rule applies where—
- (a) a decision is given or a stated case is stated in proceedings in any court other than the Supreme Court or in proceedings before any judge, justice or person other than a Judge of the Supreme Court acting as such Judge (in this rule called the proceedings below) ;
 - (b) on the date on which the decision is given or the stated case is stated a party to the proceedings below has a solicitor and an address for service for the purposes of the proceedings below ;
 - (c) that address for service is a place within two miles of the General Post Office in Sydney and is the office of the solicitor or his agent ;
 - (d) proceedings are commenced in the Court—
 - (i) instituting an appeal from the decision in the proceedings below ; or
 - (ii) for an extension of time for instituting an appeal from that decision,
 or proceedings on the stated case are commenced in the Court ;
 - (e) that party to the proceedings below is a defendant in the proceedings in the Court ; and
 - (f) the plaintiff in the proceedings in the Court has not, before the date on which those proceedings are commenced, received notice that that solicitor has ceased to act for that defendant or that that address for service has ceased to be applicable.
- (2) In a case to which this rule applies—
- (a) the plaintiff in the proceedings in the Court shall file and serve with the originating process a statement showing, in respect of the defendant mentioned in subrule (1), the name of his solicitor and his address for service for the purposes of the proceedings below ;
 - (b) the solicitor shown in the statement shall be the solicitor for that defendant for the purposes of the proceedings in the Court, subject to change under Part 66 ;
 - (c) the address for service shown in the statement shall be the address for service of that defendant for the purposes of the proceedings in the Court, subject to change under rule 6 ;
and

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Part 9.

(d) the originating process need not be served personally on that defendant, unless the Court otherwise orders.

(3) The statement required by subrule (2) may be subscribed to the originating process.

(4) Where there are two or more defendants to whom subrule (1) applies, the matters mentioned in subrule (2) (a) shall be put in a single statement for all of them.

Service
under
contract.

cf. R.S.C.
(Rev.) 1965,
O. 10, r. 3.

9. Where a defendant in any proceedings has, before or after the commencement of the proceedings, agreed that originating process or any other document in the proceedings may be served on the defendant or on some other person on behalf of the defendant in a manner or at a place (whether in or outside the State) specified in the agreement, service in accordance with the agreement shall be sufficient service on the defendant.

Substituted
service.

cf. R.S.C.
(Rev.) 1965,
O. 65, rr. 4
(1) (3),
5 (1) (c).

10. (1) Where the service of any document is required or permitted in any proceedings and it is impracticable for any reason to serve the document or to serve the document in the manner required by or under any Act or by the rules, the Court may, by order, direct that, instead of service, such steps be taken as are specified in the order for the purpose of bringing the document to the notice of the person to be served.

(2) Where the Court makes an order under subrule (1), the Court may order that the document be taken to have been served on the happening of any specified event, or on the expiry of any specified time.

Informal
service:
confirmation.

11. Where the service of any document on any person is required or permitted in any proceedings and it is impracticable for any reason to serve the document or to serve the document in the manner required by or under any Act or by the rules, but steps have been taken for the purpose of bringing, or having a tendency to bring, the document to the notice of that person, the Court may, by order, direct that the document be taken to have been served on that person on a date specified in the order.

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Part 10.

12. Where the service of any document on any person is required or permitted in any proceedings, but personal service is not required, and that person is in default of appearance or has entered an appearance but has no address for service in the proceedings, the filing of the document shall, unless the Court otherwise orders, have effect as service of the document on that person.

Service by filing.
cf. Consolidated Equity Rules of 1902, r. 40; R.S.C. (Rev.) 1965, O. 65, r. 9.

13. Subject to the rules, where husband and wife are parties to proceedings, service on the husband shall not have effect as against the wife.

Husband and wife.
cf. G.R.C. O. 6, r. 4.

14. Where, under the rules or under an order, any notice or other document is to be given to or served on any party by the Court or any officer of the Court, the notice or document shall, unless the rules otherwise provide or the Court otherwise orders, be sufficiently given or served if served in any manner in which a document not requiring personal service may be served under this Part.

Notice, etc. by the Court.

PART 10.

SERVICE OUTSIDE THE STATE.

DIVISION 1.—*General.*

1. Subject to rule 2, originating process may be served outside the State in the following cases—

Cases for service of originating process.

(a) where the proceedings are founded on a cause of action arising in the State;

cf. Act No. 21, 1899, s. 18 (4) (a).

(b) where the proceedings are founded on a breach in the State of a contract wherever made, whether or not the breach is preceded or accompanied by a breach wherever occurring that renders impossible the performance of any part of the contract which ought to be performed in the State;

cf. Act No. 21, 1899, s. 18 (4) (a); Act No. 24, 1901, s. 30 (f); R.S.C. (Rev.) 1965, O. 11, r. 1 (1) (g); Cth Act No. 11, 1901, s. 11 (1) (c).

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Part 10.

cf. Act No.
21, 1899,
s. 18 (4)
(a);
R.S.C.
(Rev.) 1965,
O. 11, r. 1
(f); Cth Act
No. 11,
1901, s. 11
(1) (b).

(c) where the proceedings are for the enforcement, rescission, dissolution, rectification or annulment of a contract, or otherwise affect a contract, or are for damages or other relief in respect of the breach of a contract, and the contract—

(i) is made in the State ;

(ii) is made on behalf of the person to be served by or through an agent carrying on business or residing in the State ; or

(iii) is governed by the law of the State ;

cf. Act No.
21, 1899,
s. 18 (4)
(a); R.S.C.
(Rev.) 1965,
O. 11, r. 1
(1) (h);
Cth Act No.
11, 1901, s.
11 (1) (d).

(d) where the proceedings are founded on a tort committed in the State ;

(e) where the proceedings are founded on, or are for the recovery of, damage suffered wholly or partly in the State caused by a tortious act or omission wherever occurring ;

(f) where the proceedings are for contribution or indemnity in respect of a liability enforceable by proceedings in the Court ;

cf. Act No.
24, 1901,
s. 30 (d)
(e1); R.S.C.
(Rev.) 1965,
O. 11, r. 1
(1) (c).

(g) where the person to be served is domiciled or ordinarily resident in the State ;

cf. R.S.C.
(Rev.) 1965,
O. 11, r. 2.

(h) where the proceedings are proceedings in respect of which the person to be served has submitted to the jurisdiction of the Court;

cf. Act No.
24, 1901,
s. 30 (g);
R.S.C.
(Rev.) 1965,
O. 11, r. 1
(1) (j).

(i) where the proceedings are properly brought against a person served or to be served in the State and the person to be served outside the State is properly joined as a party to the proceedings ;

(j) where, in respect of a person other than the person to be served—

(i) the proceedings are proceedings to which any of paragraphs (a) to (f) of subsection (1) of section 11 of the Service and Execution of Process Act 1901 applies ;

(ii) the proceedings are properly brought against him ;
and

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- (iii) originating process in the proceedings has been or is to be served on him under that Act or he has entered an appearance to originating process in the proceedings or liberty to proceed against him has been given in the proceedings under section 11 of that Act; Part 10.
- (k) where the subject matter of the proceedings, so far as concerns the person to be served, is property in the State; cf. Act No. 24, 1901, s. 30 (a), (e1); R.S.C. (Rev.) 1965, O.11, r. 1 (1) (a); Cth Act No. 11, 1901, s. 11 (1) (a).
- (l) where the proceedings are for the perpetuation of testimony relating to property in the State; cf. R.S.C. (Rev.) 1965, O.11, r. 1 (1) (a).
- (m) where the proceedings concern the construction, effect or enforcement of an Imperial Act or Commonwealth Act, or a regulation or other instrument having or purporting to have effect under such an Act, affecting property in the State; cf. Act No. 24, 1901, s. 30 (b); R.S.C. (Rev.) 1965, O.11, r. 1 (1) (b).
- (n) where the proceedings are for the construction, rectification, setting aside or enforcement of a deed, will or other instrument, or of a contract, obligation or liability, affecting property in the State; cf. *Ibid.*
- (o) where the proceedings are for an injunction as to anything to be done in the State or against the doing of any act in the State, whether damages are also sought or not; cf. Act No. 24, 1901, s. 30 (g); R.S.C. (Rev.) 1965, O.11, r. 1 (1) (i); Cth Act No. 11, 1901, s. 11 (1) (d).
- (p) where the proceedings are for the administration of the estate of a person who dies domiciled in the State or are for relief which might be granted in proceedings for administration of such an estate; cf. Act No. 24, 1901, s. 30 (e); R.S.C. (Rev.) 1965, O.11, r. 1 (1) (d).

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Part 10.

cf. Act No.
24, 1901,
s. 30 (e);
R.S.C.
(Rev.) 1965,
O.11, r. 1
(1) (e).

- (q) where the proceedings are for the execution of trusts which are governed by the law of the State, or are for relief which might be granted in proceedings for the execution of such trusts ;

cf. Act No.
24, 1901,
s. 30 (i).

- (r) where the proceedings affect the person to be served in respect of his membership of a corporation incorporated in the State or of an association formed or carrying on any part of its affairs in the State ;

cf. Act No.
24, 1901,
s. 30 (b)
(e2); R.S.C.
(Rev.) 1965,
O.11, r. 1
(1) (b).

- (s) where the proceedings concern the construction, effect or enforcement of an Act or a regulation or other instrument having or purporting to have effect under an Act ;

cf. Act No.
24, 1901,
s. 30 (e2).

- (t) where the proceedings concern the effect or enforcement of an executive, ministerial or administrative act done or purporting to be done under an Act or regulation or other instrument having or purporting to have effect under an Act ;

cf. R.S.C.
(Rev.) 1965,
O. 73, r. 7.

- (u) where the proceedings relate to an arbitration held in the State ; or

- (v) where the proceedings, so far as concerns the person to be served, fall partly within one of the foregoing paragraphs and fall, as to the residue, within one or more of the others of the foregoing paragraphs.

Leave or
confirmation.

2. (1) Service outside the State of originating process is not valid under this Part unless—

cf. R.S.C.
(Rev.) 1965,
O.11, r. 1
(1).

- (a) the service is in accordance with the prior leave of the Court given under subrule (2) ;
(b) the Court confirms the service under subrule (4) ; or
(c) the person served waives objection by entering an appearance.

cf. R.S.C.
(Rev.) 1965,
O. 11, r. 4
(1) (2).

- (2) Where the Court is satisfied on the following matters—

- (a) that the proceedings are proceedings to which rule 1 applies ;
and

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- (b) that the applicant has a prima facie case for the relief which he seeks,

cf. Act No.
24, 1902,
s. 5 (a).

the Court may, by order, grant leave to serve originating process in the proceedings outside the State under this Part.

- (3) The evidence on a motion for leave under subrule (2) shall include evidence showing in what country or place the person to be served is, or probably may be found.

cf. R.S.C.
(Rev.) 1965,
O. 11, r. 4
(1).

(4) Where originating process has been served outside the State without a prior motion for leave under subrule (2), and the Court is satisfied—

- (a) on the matters mentioned in subrule (2); and

(b) that the failure to apply for leave is sufficiently explained, the Court may, on terms, by order confirm the service.

3. Service outside the State of a document other than originating process is valid if the service is in accordance with the prior leave of the Court or is confirmed by the Court.

Other
documents.

4. Subject to this Part and subject to any convention, the rules apply to service outside the State under this Part as they apply to service inside the State.

Rules as to
service
generally.
cf. R.S.C.
(Rev.) 1965,
O. 11, r. 5
(1).

5. A document which is to be served outside the State 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.

Mode of
service.
cf. R.S.C.
(Rev.) 1965,
O. 11, r. 5
(3) (a).

6. Nothing in this Division affects the operation of the Service and Execution of Process Act 1901 or any other law of the Commonwealth or requires the leave of the Court for any service or other thing which may be effected or done under that Act or any other law of the Commonwealth.

Common-
wealth
laws.

DIVISION 2.—*Service in Foreign Country.*

7. This Division applies to the service of any document for the purpose of proceedings in the Court—

Applica-
tion.

- (a) in a convention country pursuant to a convention; or

cf. R.S.C.
(Rev.) 1965,
O. 11, r. 6
(2) (3).

- (b) in such other country as the Attorney General, by instrument filed in the proceedings, may direct.

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Requisite documents.

cf. R.S.C. (Rev.) 1965, O. 11, r. 6 (4) (5).

8. A person (in this Division called the applicant) requiring a document to be served in another country may—

(a) lodge with the registrar—

- (i) the document to be served;
- (ii) unless English is an official language of the country concerned, a translation of the document in accordance with rule 9;
- (iii) a copy of the document and of the translation;
- (iv) such further copies of the document and of the translation as the registrar may direct; and
- (v) if any special manner of service is required, a request for service in that manner and, unless English is an official language of the country concerned, a translation of the request; and

(b) file—

- (i) a copy of each of the documents mentioned in paragraph (a); and
- (ii) a request and undertaking in accordance with rule 10.

Translation.

cf. R.S.C. (Rev.) 1965, O. 11, r. 6 (5).

9. A translation of a document lodged under rule 8 shall—

- (a) be a translation into an official language of the country in which service is required; and
- (b) bear a certificate, in that language, of the translator, stating his qualifications and certifying that it is a translation of the document.

Request and undertaking.

10. A request and undertaking filed under rule 8 shall contain—

- (a) a request by the applicant to the Prothonotary that a sealed copy of the document to be served be transmitted to the country concerned for service on a specified person;
- (b) if the applicant requires service pursuant to a convention, a reference to the convention; and
- (c) an undertaking by the applicant or his solicitor to pay to the Prothonotary an amount equal to the sum of all expenses incurred in consequence of the request for service.

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11. (1) Where documents are filed and lodged under rule 8 in the registry of the Court of Appeal or of a Division other than the Common Law Division, the registrar shall deliver the documents to the Prothonotary.

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Procedure
on filing
and lodg-
ment.

(2) The Prothonotary shall seal the documents lodged with the seal of the Court and shall send them to the Under Secretary of Justice for transmission for service, together with such letter of request (if any) as may be necessary.

cf. R.S.C.
(Rev.)
1965, O. 11,
r. 6 (7).

12. Where the Prothonotary has sent documents to the Under Secretary of Justice as mentioned in rule 11 and afterwards a certificate purporting to be a certificate of a judicial authority or other responsible person in the country concerned or of a British or Australian consular authority in that country as to service or attempted service or non-service is filed, the certificate shall be evidence of the matters stated in the certificate.

Evidence
of service.
cf. R.S.C.
(Rev.)
1965, O. 11,
r. 5 (5).

13. Where a person has given an undertaking as mentioned in rules 8 and 10 and does not, within 7 days after service on him of an account of expenses incurred in consequence of the request for service, pay to the Prothonotary the amount of the expenses, the Court may, on application by the Prothonotary—

Order for
payment of
expenses.

- (a) order the applicant to pay the amount of the expenses to the Prothonotary; and
- (b) stay the proceedings until payment so far as concerns the whole or any part of any claim for relief by the applicant.

PART 11.

APPEARANCE.

1. (1) A defendant may enter an appearance and may defend proceedings by a solicitor or in person.

Appear-
ance by
solicitor or
in person.
cf. R.S.C.
(Rev.)
1965, O. 12,
r. 1 (1).

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cf. R.S.C. (Rev.) 1965, O. 12, r. 1 (1). (2) Where a defendant is a disable person subrule (1) has effect subject to Part 63 rules 2 and 3.

cf. R.S.C. (Rev.) 1965, O. 12, r. 1 (2). (3) Notwithstanding subrule (1), but subject to any Act, a corporation may not enter an appearance or defend any proceedings except by a solicitor.

No step without appearance. cf. Consolidated Equity Rules of 1902, r. 96A. 2. Subject to these rules, a person shall not, except by leave of the Court, take any step in any proceedings unless, before taking the step, he has filed originating process in the proceedings or has entered an appearance in the proceedings.

Mode of entry. cf. R.S.C. (Rev.) 1965, O. 12, r. 1 (3). 3. (1) An appearance shall be entered by filing a notice of appearance or posting a notice of appearance to the registry.

cf. R.S.C. (Rev.) 1965, O. 12, r. 1 (4). (2) Two or more persons entering an appearance by the same solicitor on the same date may do so by a single notice of appearance.

(3) The date of entry of an appearance shall be the date when notice of the appearance is received in the registry.

Notice of appearance. cf. R.S.C. (Rev.) 1965, O. 12, r. 3 (3), (4). 4. (1) A notice of appearance shall show—

- (a) the name, address and occupation of the person entering the appearance;
- (b) where the person entering the appearance appears by a solicitor, the name, address and telephone number of the solicitor;
- (c) where the person entering the appearance appears by a solicitor and that solicitor has another solicitor as agent for him in the proceedings, the name, address and telephone number of the agent; and
- (d) an address for service.

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(2) A notice of appearance shall be signed by the solicitor of the person entering the appearance or, if he appears in person, by him.

cf. R.S.C.
(Rev.) 1965,
O. 12, r. 3
(2).

(3) Where any address shown in a notice of appearance by which a defendant enters an appearance is not genuine, the plaintiff may, with the leave of the Court, continue the proceedings as if the appearance had not been entered.

cf. R.S.C.
(Rev.) 1965,
O. 12, r. 3
(5).

5. (1) A defendant may, when filing a notice of appearance, tender one or two copies of the notice and request that the copies be dealt with in accordance with subrule (3).

Copies and
service.
cf. R.S.C.
(Rev.) 1965,
O. 12, r. 4.

(2) A defendant may, when posting a notice of appearance to the registry, send one or two copies of the notice and request that the copies be dealt with in accordance with subrule (3).

cf. R.S.C.
(Rev.) 1965,
O. 12, r. 4.

(3) Where a notice of appearance is received in the registry together with one or two copies and a request that the copies be dealt with in accordance with this subrule—

cf. R.S.C.
(Rev.) 1965,
O. 12, r. 4.

- (a) the copies shall be marked by an officer with the date of receipt of the notice of appearance;
- (b) a copy shall be posted by an officer to the plaintiff at his address for service;
- (c) the second copy (if any) shall be posted by an officer to the defendant at his address for service.

(4) Unless a copy of a notice of appearance is tendered with a request for postage in accordance with subrule 3 (b), the defendant shall, on the date of entry of his appearance, serve the notice of appearance on the plaintiff.

cf. R.S.C.
(Rev.) 1965,
O. 12, r. 4.

6. (1) A defendant may enter an appearance at any time without leave.

Late
appearance.
cf. R.S.C.
(Rev.) 1965,
O. 12, r. 6
(1).

(2) Where a defendant enters an appearance after the time limited for appearing, he shall not, unless the Court otherwise orders, be entitled to file a defence or do any other thing later than if he had entered an appearance within that time.

cf. R.S.C.
(Rev.) 1965,
O. 12, r. 6
(2).

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Part 12.

Conditional
appearance.cf. R.S.C.
(Rev.) 1965,
O. 12, r. 7
(1).

7. (1) A defendant may, with the leave of the Court, enter a conditional appearance.

cf. R.S.C.
(Rev.) 1965,
O. 12, r. 7
(2).

(2) A conditional appearance shall have effect for all purposes as an unconditional appearance, unless the Court otherwise orders or the defendant applies under and in accordance with rule 8 and the Court makes an order under that rule.

Setting
aside
originating
process, etc.cf. R.S.C.
(Rev.) 1965,
O. 12, r. 8
(1).

8. (1) The Court may, on application made by a defendant to any originating process on notice of motion filed within the time fixed by subrule (2), by order—

- (a) set aside the originating process ;
- (b) set aside the service of the originating process on the defendant ;
- (c) declare that the originating process has not been duly served on the defendant ;
- (d) discharge any order giving leave to serve the originating process outside the State or confirming service of the originating process outside the State.

cf. R.S.C.
(Rev.) 1965,
O. 12, r. 8
(1).

(2) Notice of a motion under subrule (1) may be filed by a defendant before he enters an appearance or within fourteen days after the date of entry of a conditional appearance by him.

PART 12.

TRANSFER AND CONSOLIDATION.

Transfer.

1. The Court in any Division may order that the whole or any part of any proceedings in that Division be transferred to any other Division.
cf. R.S.C. (Rev.) 1965,
O. 4, r. 3
(1).Consolida-
tion, etc.cf. R.S.C.
(Rev.) 1965,
O. 4, r. 10.

2. Where several proceedings are pending in the same Division, then, if it appears to the Court—

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

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- (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, on terms, order those proceedings to be consolidated 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.

PART 13.

SUMMARY DISPOSAL.

DIVISION 1.—*Summary Judgment.*

1. This Division applies to all proceedings except proceedings within the application of section 88 of the Act (which relates to cases of fraud and other matters).
Application.
cf. R.S.C.
(Rev.) 1965,
O. 14, r. 1
(2).

2. (1) Where, on application by the plaintiff in relation to any claim for relief or any part of any claim for relief of the plaintiff—
Summary judgment.
cf. R.S.C.
(Rev.) 1965,
O. 14, rr. 1
(1), 2 (1),
3 (1).
(a) there is evidence of the facts on which the claim or part is based ; and
(b) there is evidence given by the plaintiff or by some responsible person that, in the belief of the person giving the evidence, the defendant has no defence to the claim or part, or no defence except as to the amount of any damages claimed,

the Court may, by order, direct the entry of such judgment for the plaintiff on that claim or part as the nature of the case requires.

- (2) Without limiting subrule (1), the Court may, under that subrule, direct the entry of judgment for the plaintiff for damages to be assessed.

3. (1) A party may apply under this Division notwithstanding that, by rule 1, this Division does not apply to the proceedings in claim. Cross-
relation to a claim made by some other party.

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cf. R.S.C.
(Rev.) 1965,
O. 14, r. 3
(2).

(2) Where the Court directs the entry of judgment against a party under this Division, and that party claims relief against the party obtaining the direction, the Court may, on terms, stay execution on, or other enforcement of, the judgment until determination of the claim by the party against whom the judgment is directed to be entered.

Setting
aside
judgment.cf. R.S.C.
(Rev.) 1965,
O. 14, r. 11.

4. Where a direction for entry of judgment against a party is made under this Division in the absence of the party, the Court may, on terms, set aside or vary the judgment.

DIVISION 2.—*Summary Stay or Dismissal.*Frivolity,
etc.

5. (1) Where in any proceedings it appears to the Court that in relation to the proceedings generally or in relation to any claim for relief in the proceedings—

(a) no reasonable cause of action is disclosed;

(b) the proceedings are frivolous or vexatious; or

(c) the proceedings are an abuse of the process of the Court, the Court may order that the proceedings be stayed or dismissed generally or in relation to any claim for relief in the proceedings.

(2) The Court may receive evidence on the hearing of an application for an order under subrule (1).

DIVISION 3.—*General.*Residue of
proceed-
ings.cf. R.S.C.
(Rev.) 1965,
O. 14, rr. 6
(1), 8.

6. Where, in any proceedings—

(a) a party applies under this Part for—

(i) a direction for entry of judgment pursuant to Division 1; or

(ii) an order for stay or dismissal pursuant to Division 2; and

(b) the proceedings are not wholly disposed of by judgment or dismissal or the proceedings are not wholly stayed, the proceedings—

(c) may be continued as regards any claim or part of a claim not disposed of by judgment or dismissal and not stayed; and

(d) if commenced by statement of claim, shall, on the hearing of the application, be before the Court for directions under Part 26.

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PART 14.

Part 14.

COMMERCIAL LIST.

1. A party who wants an order for entry of proceedings in the commercial list may move for the order at any time after any defendant has entered an appearance and shall do so as promptly as the nature of the case admits.

Time for motion for entry.
cf. Commercial Causes Rules, 1965, r. 2.

2. (1) A party may move for orders by consent for entry of proceedings in the commercial list and for the conduct of the proceedings by leaving at the registry a form of order bearing the consent of the other party and filing an affidavit showing facts establishing that the proceedings are proceedings to which section 56 (2) of the Act applies.

Motion by consent.
cf. C.C.R., 1965, r. 4.

(2) A party moving under subrule (1) need not file or serve notice of the motion.

3. (1) Where an order for entry in the commercial list has been made, the applicant shall, and any party may, enter the order.

Order for entry.
cf. C.C.R., 1965, rr. 8, 9.

(2) On entry of the order, the proceedings shall be entered in the commercial list.

cf. C.C.R., 1965, r. 8.

(3) If, within seven days after the making of an order for entry in the commercial list, the applicant does not enter the order, the Court, on motion by any other party for dismissal for want of prosecution, may, on terms, dismiss the proceedings or make such other order as the Court thinks fit.

cf. C.C.R., 1965, r. 9.

4. Upon the making of an order by consent under rule 2 or the filing of notice of a motion for entry in the commercial list, all times for pleading shall, unless the Court otherwise orders, cease to run and no pleading shall thereafter be filed or served except so far as the Court may direct.

Pleadings.
cf. C.C.R., 1965, rr. 7, 10.

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Directions.
cf. C.C.R.,
1965, r. 16.

5. (1) A party moving on notice for an order for entry in the commercial list shall, as far as practicable, move at the same time for such other directions and orders relating to the conduct of the proceedings as he may require.

(2) Where a party moves on notice for entry in the commercial list, the proceedings shall be before the Court for directions under Part 26.

(3) The Court may, at any time after proceedings are entered in the commercial list, appoint a date for directions under Part 26 and shall give notice of the appointment to each party who has an address for service in the proceedings.

(4) A party to proceedings entered in the commercial list may, at any time after the entry, move on notice for a hearing for directions under Part 26.

PART 15.

PLEADING.

DIVISION 1.—*Preliminary.*

Application. 1. This Part applies to proceedings commenced by statement of claim but, subject to these rules, not to proceedings commenced by summons.

Trial with-
out further
pleadings.
cf. R.S.C.
(Rev.) 1965,
O. 18, r. 21
(1) (2).

2. (1) Where, in the opinion of the Court—

- (a) the issues between the parties can be defined without further pleadings; or
- (b) for any other reason the proceedings can properly be tried without further pleadings,

the Court may, on application by a party, order that the proceedings be so tried.

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- (2) Where the Court makes an order under subrule (1)—
 (a) the Court may direct the parties to prepare a statement of the issues or, if the parties do not agree, a statement of the issues, may settle the statement itself; and
 (b) the proceedings shall, on the hearing of the application for an order under subrule (1), be before the Court for directions under Part 26.
- (3) Where the Court dismisses an application for an order under subrule (1), the Court may, on application by any party or of its own motion, order that the proceedings be before the Court for directions under Part 26, either forthwith or on such date as the Court may direct.

cf. R.S.C.
 (Rev.) 1965,
 O. 18, r. 21
 (2) (3).

DIVISION 2.—*Particular Pleadings.*

3. (1) Subject to subrule (2), a defendant shall, unless the Court otherwise orders, file and serve his defence before the expiry of 14 days after the date of expiry of the time limited for his appearance.
- (2) Where, before the date on which a defendant files his defence, a plaintiff serves on that defendant notice of a motion under Part 13 rule 2 for summary judgment on any claim for relief or part of any claim for relief—

Defence.
 cf. R.S.C.
 (Rev.) 1965,
 O. 18, r. 2
 (1).

cf. R.S.C.
 (Rev.) 1965,
 O. 18, r. 2
 (2).

- (a) subrule (1) shall not apply to that defendant; but
- (b) if, on the motion for summary judgment, the Court does not dispose of all the claims for relief against that defendant, the Court may order him to file and serve his defence before the expiry of a time fixed by the Court.

- (3) This rule does not apply to proceedings on a cross-claim for contribution or indemnity to which Part 6 rule 12 applies.

4. (1) Where a defendant serves a defence on a plaintiff and a reply is needed for compliance with rule 13 or Part 67 rule 5 (which relates to defamation), the plaintiff shall file and serve the reply before the expiry of 14 days after the date of service on him of the defence.

Reply.
 cf. R.S.C.
 (Rev.) 1965,
 O. 18, r. 3
 (1) (4).

- (2) Where a plaintiff files both a reply and a defence to a cross-claim, he shall put them in one document.

cf. R.S.C.
 (Rev.) 1965,
 O. 18, r. 3
 (3).

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Rejoinder,
etc.cf. R.S.C.
(Rev.) 1965,
O. 18, r. 4.

5. A party shall not, except with the leave of the Court, file any pleading subsequent to a reply.

DIVISION 3.—*Form and Manner of Pleading.*

Paragraphs.

cf. R.S.C.
(Rev.) 1965,
O. 18, r. 6
(2).

6. Where a pleading alleges or otherwise deals with several matters—

- (a) the pleading shall be divided into paragraphs ;
- (b) each matter shall, so far as convenient, be put in a separate paragraph ; and
- (c) the paragraphs shall be numbered consecutively.

Facts, not
evidence.cf. R.S.C.
(Rev.) 1965,
O. 18, r. 7
(1).

7. (1) A pleading of a party shall contain, and contain only, a statement in a summary form of the material facts on which he relies, but not the evidence by which those facts are to be proved.

(2) Subrule (1) has effect subject to this Part and to Part 7 (which relates to originating process) and to Part 16 (which relates to particulars).

Brevity.

cf. R.S.C.
(Rev.) 1965,
O. 18, r. 7
(1).

8. A pleading shall be as brief as the nature of the case admits.

Documents
and spoken
words.cf. R.S.C.
(Rev.) 1965,
O. 18, r. 7
(2).

9. Where any document or spoken words are referred to in a pleading—

- (a) the effect of the document or of the spoken words shall, so far as material, be stated; and
- (b) the precise terms of the document or spoken words shall not be stated, except so far as those terms are themselves material.

Presumed
facts.cf. R.S.C.
(Rev.) 1965,
O. 18, r. 7
(3).

10. A party need not plead a fact if—

- (a) the fact is presumed by law to be true ; or

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(b) the burden of disproving the fact lies on the other party, except so far as may be necessary to meet a specific denial of that fact by the other party in his pleading.

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11. Where it is a condition precedent necessary for the case of a party in any pleading that a thing has been done or an event has happened, a statement that the thing has been done or that the event has happened shall be implied in the pleading.

Conditions precedent.
cf. R.S.C.
(Rev.) 1965,
O. 18, r. 7
(4).

12. (1) This rule applies where the plaintiff claims money payable by the defendant to the plaintiff for—

Money
claims.

- (a) goods sold and delivered by the plaintiff to the defendant;
- (b) goods bargained and sold by the plaintiff to the defendant;
- (c) work done and materials provided by the plaintiff for the defendant at his request;
- (d) money lent by the plaintiff to the defendant;
- (e) money paid by the plaintiff for the defendant at his request;
- (f) money had and received by the defendant for the use of the plaintiff;
- (g) interest upon money due from the defendant to the plaintiff and forborne at interest by the plaintiff to the defendant at his request; or
- (h) money found to be due from the defendant to the plaintiff on accounts stated between them.

(2) Subject to subrules (3) and (4), it shall be sufficient to plead the facts in the manner appearing in subrule (1).

(3) The defendant may, within the time limited for filing his defence, file and serve on the plaintiff a notice that the defendant requires the plaintiff to plead the facts on which he relies in accordance with this Part other than this rule.

(4) Where a defendant files and serves a notice pursuant to subrule (3)—

- (a) the plaintiff shall amend his statement of claim so as to plead the facts on which he relies in accordance with this Part other than this rule; and

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- (b) the time for the defendant to file his defence shall not **expire** before the lapse of 14 days after service on him of the amended statement of claim or of notice of the amendments to the statement of claim.

(5) Part 20 rules 7, 8 and 9 (which relate to the mode of amendment and to service after amendment) apply to an amendment under this rule.

(6) A plaintiff may amend his statement of claim under Part 20 rule 2 notwithstanding that he has amended it under this rule.

(7) This rule does not affect the provisions of Part 16 concerning particulars.

Matters for specific pleading.
cf. R.S.C. (Rev.) 1965, O. 18, r. 8 (1).

13. In a defence or subsequent pleading the party pleading shall plead specifically any matter, for example, performance, release, any statute of limitation, fraud, or any fact showing illegality—

- (a) which he alleges makes any claim, defence or other case of the opposite party not maintainable;
- (b) which, if not pleaded specifically, may take the opposite party by surprise; or
- (c) which raises matters of fact not arising out of the preceding pleading.

Contributory negligence.
cf. General Rules of the Court, O. 30, r. 31A.

14. A defendant who relies on contributory negligence shall plead the contributory negligence.

Possession of land: defence.
cf. R.S.C. (Rev.) 1965, O. 18, r. 8 (2).

15. In proceedings for the possession of land—

- (a) a defendant shall plead specifically every ground of defence on which he relies; and
- (b) it shall not be sufficient for a defendant to state that he is in possession of the land by himself or his tenant.

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16. A party may plead any matter notwithstanding that the matter has arisen after the commencement of the proceedings. New matter.
cf. R.S.C. (Rev.) 1965, O. 18, r. 9.
17. (1) A party shall not in any pleading make an allegation of fact, or raise any ground or claim, inconsistent with a previous pleading of his. Departure.
cf. R.S.C. (Rev.) 1965, O. 18, r. 10 (1).
- (2) Subrule (1) does not affect the right of a party to make allegations of fact or raise grounds or claims, in the alternative. cf. R.S.C. (Rev.) 1965, O. 18, r. 10 (2).
18. A party may by his pleading raise any point of law. Points of law.
cf. R.S.C. (Rev.) 1965, O. 18, r. 11.
19. (1) Where a pleading is settled by counsel it shall be signed by him. Signature.
cf. R.S.C. (Rev.) 1965, O. 18, r. 6 (5).
- (2) Where a pleading of a party is not settled by counsel, it shall be signed by the party's solicitor or, if he has no solicitor, by the party. cf. R.S.C. (Rev.) 1965, O. 18, r. 6 (5).

DIVISION 4.—*Progress of Pleading.*

20. (1) Subject to subrule (3), an allegation of fact made by a party in his pleading shall stand admitted by any opposite party required to plead to that pleading unless it is traversed by that opposite party in his pleading or a joinder of issue under rule 21 operates as a denial of it. Admissions and traverse.
cf. R.S.C. (Rev.) 1965, O. 18, r. 13 (1).
- (2) A traverse may be made either by a denial or by a statement of non-admission, and either expressly or by necessary implication, and either generally or as to any particular allegation. cf. R.S.C. (Rev.) 1965, O. 18, r. 13 (2).

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Part 15.

cf. R.S.C.
(Rev.)
1965, O. 18,
r. 13 (4).

(3) Where a pleading makes an allegation of the suffering of damage, or an allegation of an amount of damages, a pleading to that pleading by an opposite party shall be taken to traverse the allegation, unless the allegation is specifically admitted.

Joinder of
issue.cf. R.S.C.
(Rev.)
1965, O. 18,
r. 14 (1).

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

cf. R.S.C.
(Rev.)
1965, O. 18,
r. 14 (2).

(2) Subject to subrule (3)—

(a) there shall be, at the close of pleadings, an implied joinder of issue on the pleading last filed; and

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

cf. R.S.C.
(Rev.)
1965, O. 18,
r. 14 (3).

(3) There shall be no joinder of issue on a statement of claim.

cf. R.S.C.
(Rev.)
1965, O. 18,
r. 14 (4).

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

Close of
pleadings.

22. (1) The pleadings on a statement of claim shall, unless the Court otherwise orders, be closed, as between any plaintiff and any defendant, on the date of expiry of the last of the times fixed by or under these rules for filing a defence or reply or other pleading between those parties on the statement of claim.

cf. R.S.C.
(Rev.) 1965,
O. 18, r. 20
(2).

(2) Subrule (1) shall have effect notwithstanding that, on the date mentioned in that subrule, a request or order for particulars has been made but has not been complied with.

DIVISION 5.—*General*.Defence:
verification.

23. (1) Where a plaintiff, by his statement of claim, makes a claim against a defendant for a liquidated demand, but no other claim, and the statement of claim bears a note requiring the defendant to verify

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his defence, the defendant shall verify his defence, that is to say, he shall, within the time limited for filing his defence, file an affidavit verifying his defence to the claim in accordance with this rule. **Part 15.**

(2) Subject to subrule (4), the deponent making an affidavit verifying a defence shall, in the affidavit, swear that the defence is true in substance and in fact.

(3) An affidavit verifying a defence may be made as follows—

- (a) by the defendant;
- (b) where the defendant is a Minister or officer of the Crown sued in his official capacity or a nominal defendant under the Claims against the Government and Crown Suits Act, 1912—by some officer of the Crown having knowledge of the facts;
- (c) where the defendant is a corporation or a body of persons which, by law, may be sued (whether in its own name or in the name of any officer or other person)—by some member or officer of the corporation or body having knowledge of the facts;
- (d) where the defendant is a disable person—by his tutor.

(4) The Court may, by order, give leave to a defendant to file, instead of an affidavit in accordance with subrules (2) and (3), an affidavit by such deponent and as to such facts in or towards verification of his defence, or instead of verification of his defence, as the Court may determine.

(5) A defendant may apply for an order under subrule (4) without filing or serving notice of the motion.

(6) A defendant filing an affidavit verifying his defence shall, on the day of filing, serve the affidavit and, where the affidavit is filed pursuant to an order under subrule (4), serve the order, on the plaintiff.

24. Where in any proceedings a defence of tender before the **Tender.** commencement of the proceedings is pleaded, the defendant shall **cf. R.S.C.** bring into Court in accordance with Part 22 the amount alleged to **(Rev.) 1965,** have been tendered, and the tender shall not be available as a defence **O. 18, r. 16.** unless and until the amount has been brought into Court.

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Part 16.

Set-off.

cf. R.S.C.
(Rev.) 1965,
O. 18, r. 17.

25. 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 a plaintiff, it may be included in the defence and set off against the plaintiff's claim, whether or not the defendant also cross-claims for that sum of money.

Embarrassment, etc.

cf. R.S.C.
(Rev.) 1965,
O. 18, r. 19
(1).

26. (1) Where a pleading—

(a) discloses no reasonable cause of action or defence or other case appropriate to the nature of the pleading;

(b) has a tendency to cause prejudice, embarrassment or delay in the proceedings; or

(c) is otherwise an abuse of the process of the Court,

the Court may at any stage of the proceedings, on terms, order that the whole or any part of the pleading be struck out.

(2) The Court may receive evidence on the hearing of an application for an order under subrule (1).

General issue abolished.

27. (1) A party shall not plead the general issue.

(2) Subrule (1) has effect notwithstanding anything in any Act.

PART 16.

PARTICULARS.

General.

cf. R.S.C.
(Rev.) 1965,
O. 18, r. 12
(1).

1. (1) A party pleading shall give the necessary particulars of any claim, defence or other matter pleaded by him.

cf. R.S.C.
(Rev.) 1965,
O. 18, r. 12
(1).

(2) Rules 2 to 5 do not affect the generality of subrule (1).

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2. A party pleading shall give particulars of any fraud, misrepresentation, breach of trust, wilful default or undue influence on which he relies.

Fraud, etc.
cf. R.S.C.
(Rev.) 1965,
O. 18, r. 12
(1) (a).

3. (1) A party pleading any condition of mind shall give particulars of the facts on which he relies.

Condition
of mind.
cf. R.S.C.
(Rev.) 1965,
O. 18, r. 12
(1) (b).

(2) In subrule (1) "condition of mind" includes any disorder or disability of mind, any malice and any fraudulent intention, but does not include knowledge.

cf. R.S.C.
(Rev.) 1965,
O. 18, r. 12
(1) (b).

4. (1) In proceedings on a common law claim for damages in tort, a party pleading negligence (whether contributory or otherwise) or breach of statutory duty shall give particulars of the matter pleaded.

Negligence;
breach of
statutory
duty.
cf. General
Rules of
the Court,
O. 10, r. 7A.;
O. 30, r. 31B.

(2) The particulars required by subrule (1) shall be a statement of the facts, but not of the evidence by which the facts are to be proved, on which the party relies as constituting the negligent act or omission or the breach of statutory duty alleged in the pleading.

cf. G.R.C.
O. 10, r. 7A.;
O. 30, r. 31B.

(3) If the party relies on more than one negligent act or omission or breach of statutory duty, the particulars required by subrule (1) shall, so far as practicable, state separately each negligent act or omission or breach of statutory duty on which he relies.

cf. G.R.C.
O. 10, r. 7A.;
O. 30, r. 31B.

5. Where, in proceedings on a common law claim, a party pleading claims damages which include moneys which he has paid or is liable to pay, he shall give particulars of those moneys.

Out of
pocket
expenses.
cf. G.R.C.
O. 10, r. 7.

6. (1) Where any of rules 1 to 5 require particulars of any pleading to be given, the particulars shall be set out in the pleading or, if that is inconvenient, shall be set out in a separate document referred to in the pleading and that document shall be filed and served with the pleading.

Manner of
giving
particulars.
cf. R.S.C.
(Rev.) 1965,
O. 18, r. 12
(1) (2).

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Part 17.

cf. R.S.C. (Rev.) 1965, O. 18, r. 12 (2). (2) Notwithstanding subrule (1), where the necessary particulars of debt, expenses or damages exceed three folios and have, before the date on which the pleading is filed, been given to the party on whom the pleading is required to be served, and the pleading shows the date on which the particulars were given—

- (a) subrule (1) shall not require that the particulars be filed or served; but
- (b) the Court may order that a copy of the particulars be filed and served.

Order for particulars.

cf. R.S.C. (Rev.) 1965, O. 18, r. 12 (3).

7. (1) The Court may, on terms, order a party to file and serve on any other party—

- (a) particulars of any claim, defence or other matter stated in his pleading, or in any affidavit ordered to stand as his pleading; or
- (b) a statement of the nature of the case on which he relies.

cf. R.S.C.

(Rev.) 1965, O. 18, r. 12 (4).

(2) Without limiting the generality of subrule (1), where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, the Court may, on terms, order that party to file and 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.

cf. R.S.C.

(Rev.) 1965, O. 18, r. 12 (5).

(3) The Court shall not make an order under this rule before the filing 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.

PART 17.

DEFAULT JUDGMENT.

Applica-
tion.

1. This Part applies to proceedings commenced by statement of claim.

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*Supreme Court.*FOURTH SCHEDULE—*continued.*

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Part 17.

2. A defendant shall be in default for the purposes of this Part—

Default.

- (a) where he is required to enter an appearance and the time for him to enter his appearance has expired but he has not entered his appearance;
- (b) where he is required to file a defence and the time for him to file his defence has expired but he has not filed his defence; or
- (c) where he is required under Part 15 rule 23 to verify his defence and the time for him to verify his defence in accordance with that rule has expired but he has not so verified his defence.

cf. R.S.C.
(Rev.) 1965,
O. 13, rr.
1-6;
O. 19, rr.
2-7.

3. Where a defendant is in default, the plaintiff may—

Procedure
on default.

- (a) take the steps mentioned in rules 4 to 10 according to the nature of his claim for relief against the defendant in default; and
- (b) carry on the proceedings against any other party to the proceedings.

cf. R.S.C.
(Rev.) 1965,
O. 13, rr.
1-5;
O. 19, rr.
2-6.

4. (1) Where the plaintiff's claim for relief against a defendant in default is for a liquidated demand only, the plaintiff may enter judgment against that defendant for a sum not exceeding the sum claimed in the statement of claim on that demand and for costs.

Liquidated
demand.
cf. R.S.C.
(Rev.) 1965,
O. 13, r. 1
(1); O. 19,
r. 2 (1).

(2) Where a claim for a liquidated demand includes interest at an unspecified rate, interest accruing after the date of filing the statement of claim to the date of entry of judgment shall, for the purposes of judgment under this Part, be reckoned at the rate of 5 per cent yearly.

cf. R.S.C.
(Rev.) 1965,
O. 13, r. 1
(2); O. 19,
r. 2 (2).

5. Where the plaintiff's claim for relief against a defendant in default is for unliquidated damages only, the plaintiff may enter judgment against that defendant for damages to be assessed and for costs.

Unliqui-
dated
damages.
cf. R.S.C.
(Rev.) 1965,
O. 13, r. 2;
O. 19, r. 3.

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Part 17.

Detinue. 6. Where the plaintiff's claim for relief against a defendant in default relates to the detention of goods only, the plaintiff may enter judgment against that defendant, within the limits of the plaintiff's claim for relief, either—

cf. R.S.C. (Rev.) 1965,
O. 13, r. 3;
O. 19, r. 4.

(a) for delivery of the goods or their value to be assessed and for costs; or

(b) for the value of the goods to be assessed and for costs,
at the option of the plaintiff.

Possession of land. 7. (1) Where the plaintiff's claim for relief against a defendant in default is for possession of land only, the plaintiff may, subject to this rule, enter judgment for possession of the land as against that defendant and for costs.

cf. R.S.C. (Rev.) 1965,
O. 13, r. 4
(1); O. 19,
r. 5 (1).

cf. General
Rules of
the Court.

O. 21, r. 7
(c).

(2) A plaintiff shall not enter judgment under subrule (1) unless he files an affidavit—

(a) showing whether any and, if so, what persons, other than parties to the proceedings, were, on the date of filing the statement of claim, in occupation of the whole or any part of the land; and

(b) proving, as to each of those persons (other than any person whose occupation he does not seek to disturb), either that the statement of claim and a notice pursuant to Part 7 rule 8 has been served on him on a date not less than 10 days before the date on which the plaintiff seeks to enter judgment, or that he has ceased to be in occupation of any part of the land.

(3) Where, before entry of judgment under subrule (1), any person has filed notice of motion for his addition as a defendant, a plaintiff shall not enter judgment under that subrule until the motion is disposed of.

cf. G.R.C.
O. 21, r. 7
(d).

(4) A plaintiff shall not enter judgment under subrule (1) unless he files an affidavit showing facts establishing—

(a) that the commencement of the proceedings is not in contravention of section 2A of the Landlord and Tenant Act, 1899 (which section relates to cases of a rent not exceeding 25 dollars 20 cents per week); and

(b) that the taking or continuance of the proceedings is not in contravention of Part III of the Landlord and Tenant (Amendment) Act, 1948 (which Part relates to the recovery of possession of prescribed premises).

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Part 17.

(5) Where a plaintiff claims possession of land against more than one defendant, judgment entered under this Part shall not, unless the Court otherwise orders, be enforced against any defendant until judgment for possession of the land is entered against each defendant against whom the claim is made.

cf. R.S.C.
(Rev.)
O. 13, r. 4
(2); O. 19,
r. 5 (2).

8. Where the plaintiff's claims for relief against a defendant in default include two or more of the claims for relief mentioned in rules 4 to 7, and no other claim, the plaintiff may enter such judgment against that defendant on any of those claims for relief as he would be entitled to enter under those rules if that were the plaintiff's only claim for relief against that defendant.

Mixed
claims.
cf. R.S.C.
(Rev.) 1965,
O. 13, r. 5;
O. 19, r. 6.

9. (1) Whatever claims for relief are made by a plaintiff, where a defendant is in default, the Court may, on application by the plaintiff, direct the entry of such judgment against that defendant as the plaintiff appears to be entitled to on his statement of claim.

General.
cf. R.S.C.
(Rev.) 1965,
O. 13, r. 6
(1); O. 19,
r. 7 (1).

(2) Notwithstanding subrule (1), the Court shall not, under that subrule, direct the entry of judgment for the possession of land unless satisfied of the matters mentioned in subrules (2) and (4) of rule 7.

10. (1) Where, under any of rules 4 to 8, a plaintiff is entitled to enter judgment against a defendant in default for any relief and for costs, but it appears by affidavit that by reason of the defendant having satisfied the claims of the plaintiff it is unnecessary for the plaintiff to continue the proceedings against that defendant, the plaintiff may enter judgment against that defendant for costs alone.

Judgment
for costs
alone.

(2) Whatever claims for relief are made by a plaintiff, where a defendant satisfies the claims of the plaintiff or complies with the demands of the plaintiff or for some other reason it becomes unnecessary for the plaintiff to continue the proceedings against that defendant, but the defendant is in default, the Court may, on application by the plaintiff, direct the entry of judgment against that defendant for costs.

cf. R.S.C.
(Rev.) 1965,
O. 13, r. 6
(2).

(3) Part 9 rule 12 (which relates to service by filing) does not apply to service of notice of a motion for judgment under subrule (2).

cf. R.S.C.
(Rev.) 1965,
O. 13, r. 6
(3).

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Part 18.

PART 18.

ADMISSIONS.

Voluntary
admission.
cf. R.S.C.
(Rev.) 1965,
O. 27, r. 1.

1. (1) A party to proceedings may, by notice served on another party, admit, in favour of the other party, but for the purpose of the proceedings only, the facts specified in the notice.

(2) A party may, with the leave of the Court, withdraw an admission under subrule (1).

Notice to
admit facts.
cf. R.S.C.
(Rev.) 1965,
O. 27, r. 2
(1).

2. (1) A party to proceedings may, by notice served on another party, require him to admit, for the purpose of the proceedings only, the facts specified in the notice.

(2) If, as to any fact specified in the notice, the party on whom the notice is served does not, within 14 days after service, serve, on the party serving the notice to admit facts, a notice disputing that fact, that fact shall, for the purpose of the proceedings, be admitted by the party on whom the notice to admit facts is served in favour of the party serving the notice.

(3) A party may, with the leave of the Court, withdraw an admission under subrule (2).

Judgment
on admis-
sions.
cf. R.S.C.
(Rev.) 1965,
O. 27, r. 3.

3. (1) Where admissions are made by a party, whether by his pleading or otherwise, the Court may, on the application of any other party, direct the entry of any judgment or make any order to which the applicant is entitled on the admissions.

cf. R.S.C.
(Rev.) 1965,
O. 27, r. 3.

(2) The Court may exercise its powers under subrule (1) notwithstanding that other questions in the proceedings have not been determined.

Admission
of docu-
ments
discovered.
cf. R.S.C.
(Rev.) 1965,
O. 27, r. 4
(1).

4. (1) Where a list of documents is served on a party under Part 23 (which relates to discovery and inspection of documents), and inspection of any document specified in the list is permitted to that party under that Part, then, subject to subrule (2), the following

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admissions by that party in favour of the party serving the list shall have effect unless the Court otherwise orders—

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- (a) that the document, if described in the list as an original document, is an original document and was printed, written, signed or executed as it purports to have been ; or
- (b) that the document, if described in the list as a copy, is a true copy.

(2) Where a party—

cf. R.S.C.
(Rev.) 1965,
O. 27, r. 4
(1) (2).

- (a) has by his pleading denied the authenticity of a document ; or
- (b) within 14 days after the time limited under Part 23 for inspection of a document, serves on the party giving inspection a notice that he disputes the authenticity of the document,

subrule (1) does not work an admission by the firstmentioned party as to that document.

(3) Where a party serves on another party a list of documents pursuant to Part 23, those parties shall be in the position that they would be in if the latter party had, on the date of service of the list, served on the party serving the list a notice requiring production at the trial of such of the documents specified in the list as are in the possession, custody or power of the party serving the list.

cf. R.S.C.
(Rev.) 1965,
O. 27, r. 4
(3).

(4) Subrules (1), (2) and (3) apply in relation to an affidavit made in compliance with an order under Part 23 rule 7 (which relates to discovery of particular documents) as they apply in relation to a list of documents served under that Part.

cf. R.S.C.
(Rev.) 1965,
O. 27, r. 4
(4).

5. (1) A party to proceedings may, by notice served on another party, require him to admit, for the purpose of those proceedings only, the authenticity of the documents specified in the notice.

Notice
to admit
documents.
cf. R.S.C.
(Rev.) 1965,
O. 27, r. 5
(1).

(2) If, as to any document specified in the notice, the party on whom the notice is served does not, within 14 days after service, serve, on the party serving the notice to admit documents, a notice disputing the authenticity of the document, the document shall, for the purpose of the proceedings, be admitted by the party on whom the notice to admit documents is served.

cf. R.S.C.
(Rev.) 1965,
O. 27, r. 5
(2) (3).

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Part 19.

cf. R.S.C. (3) A party may, with the leave of the Court, withdraw an
(Rev.) 1965, admission under subrule (2).
O. 27, r. 5
(3).

Restricted effect of admission. 6. An admission under this Part for the purpose of any proceedings shall not be used—

- cf. R.S.C. (a) against the admitting party in any other proceedings; or
(Rev.) 1965, (b) in favour of any person other than the party in whose
O. 27, r. 2 favour the admission is made.
(2).

PART 19.

MOTIONS.

Applica- 1. An interlocutory or other application, in or for the purposes of
tion. or in relation to proceedings commenced or to be commenced by
statement of claim or by summons, shall be made by motion.

Notice. 2. (1) Subject to subrule (2), a person shall not move the Court
cf. R.S.C. for any order unless before moving he has filed notice of the motion
(Rev.) 1965, and has served the notice on each interested party who has an
O. 8, r. 2 address for service in the proceedings.
(1).

cf. R.S.C. (2) A person may move the Court without previously filing or
(Rev.) 1965, serving notice of the motion—
O. 8, r. 2
(1).

- (a) where the preparation of the notice, or the filing or service (as the case may be) of the notice would cause undue delay or other mischief to the applicant;
- (b) where each party interested, other than the applicant, consents to the order;
- (c) where under these rules or the practice of the Court for the time being the motion may properly be made without the prior filing or service (as the case may be) of notice of the motion; or
- (d) where the Court dispenses with the requirements of subrule (1).

(3) Notice of a motion shall—

- (a) state the date and time when, and the place where, the motion is to be made:

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Part 19.

(b) where the time for service has been shortened under rule 3, state that fact ; cf. R.S.C. (Rev.) 1965, O. 8, r. 3 (1).

(c) state concisely the nature of the order which is sought ; and cf. R.S.C. (Rev.) 1965, O. 8, r. 3 (2).

(d) be addressed to the Court and to the parties to be served.

3. Where notice of a motion is required to be served, it shall, unless the Court otherwise orders, be served not less than three days before the date fixed for the motion.

Time for service of notice.
cf. R.S.C. (Rev.) 1965, O. 8, r. 2 (2); O. 32, r. 3.

4. Where notice of a motion is to be served on a person who has not entered an appearance and is not in default of appearance, the notice shall be served personally.

Service.

5. The Court may hear and dispose of a motion in the absence of any party—

Absence of party.

- (a) where service of notice of the motion on the absent party is not required by the rules or by an order ;
- (b) where notice of the motion has been duly served on the absent party.

6. Where notice of a motion is required to be served, no affidavit shall be used on the hearing of the motion unless it has been served on the parties interested or unless the Court otherwise orders.

Affidavits.

7. Where notice of motion has been served for any date or the hearing of a motion has been adjourned to any date and, before that date, any party files a request, bearing the consent of each other party to the motion, for an adjournment in accordance with this rule, the hearing of the motion shall stand adjourned to the date specified in the notice or to such later date as the Court may appoint.

Notice of adjournment.

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Part 20.

Further
hearing.

8. (1) Where notice of a motion for any day has been filed or served, and the motion is not disposed of on that day—

- (a) the Court may hear and dispose of the motion on any later day fixed by the Court; and
- (b) subject to subrule (2), filing or service of further notice of motion shall not be required.

(2) Subrule 1 (b) shall not have effect—

- (a) where the Court directs the filing or service of a further notice of motion; or
- (b) where service is required on a party on whom notice of the motion has not previously been served.

PART 20.

AMENDMENT.

General.

cf. R.S.C. (Rev.) 1965, O. 20, rr. 5 (1), 8 (1). 1. (1) The Court may, at any stage of any proceedings, on application by any party or of its own motion, order, on terms, that any document in the proceedings be amended, or that any party have leave to amend any document in the proceedings, in either case in such manner as the Court thinks fit.

cf. 15 & 16 Geo. 5, c. 49, s. 43; R.S.C. (Rev.) O. 20, r. 8 (1); Cth Act No. 7, 1903, s. 23.

(2) All necessary amendments shall be made for the purpose of determining the real questions raised by or otherwise depending on the proceedings, or of correcting any defect or error in any proceedings, or of avoiding multiplicity of proceedings.

(3) Where there has been a mistake in the name of a party, subrule (1) applies to the person intended to be made a party as if he were a party.

cf. R.S.C. (Rev.) 1965, O. 20, r. 8 (2). (4) This rule does not apply to the amendment of a minute of a judgment or order.

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2. (1) A party may, without leave, amend any pleading of his once at any time before the pleadings are closed.

Amendment
of pleading
without
leave.

cf. R.S.C.
(Rev.) 1965,
O. 20, r. 3
(1).

(2) Where a plaintiff amends his statement of claim—

(a) if the defendant has filed his defence, he may amend his defence; and

cf. R.S.C.
(Rev.) 1965,
O. 20, r. 3
(2).

(b) the time for filing his defence or amended defence, as the case may be, shall be either the time fixed by or under these rules for filing his defence or 14 days after service on him under rule 9, whichever expires later.

(3) Where a defendant amends his defence—

cf. R.S.C.
(Rev.) 1965,
O. 20, r. 3
(3).

(a) if the plaintiff has filed a reply, he may amend his reply; and

(b) the time for filing his reply or amended reply, as the case may be, shall be either the time fixed by or under these rules for filing his reply or 14 days after service on him under rule 9, whichever expires later.

(4) The rights to amend under subrule (2) (a) and subrule

(3) (a) are in addition to the right to amend under subrule (1).

(5) Where the following is the order of events—

cf. R.S.C.
(Rev.) 1965,
O. 20, r. 3
(6).

(a) a party (in this rule called the first party) files a pleading (in this rule called the first pleading);

(b) an opposite party files a pleading (in this rule called the second pleading) in answer (whether by way of defence, reply or otherwise) to the first pleading;

(c) the first party amends the first pleading;

(d) the opposite party does not amend the second pleading within the time allowed by this rule,

then—

(e) the second pleading shall have effect as a pleading in answer to the amended first pleading; and

(f) Part 15 rule 21 (2) (a) shall not apply, but, if no further pleading between those parties is filed, there shall be, at the close of pleadings, an implied joinder of issue on the second pleading.

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Part 20.

Disallow-
ance of
amendment. 3. (1) Where a party amends his pleading under rule 2 (1), the Court, on application by an opposite party, may, on terms, but subject to subrule (2), by order disallow the amendment.

cf. R.S.C.
(Rev.) 1965,
O. 20, r. 4
(1) (3).

cf. R.S.C.
(Rev.) 1965,
O. 20, r. 4
(1). (2) Notice of a motion under subrule (1) shall be filed and served within 14 days after the date of service on the applicant under rule 9.

cf. R.S.C.
(Rev.) 1965,
O. 20, r. 4
(2). (3) Where, on the hearing of an application under subrule (1), the Court is satisfied that, if an application for leave to make the amendment had been made under rule 1 (1) on the date on which the amendment was made under rule 2 (1) the Court would not have given leave to make the whole or some part of the amendment, the Court shall disallow the amendment or that part, as the case may be.

Statutes of
limitation.
cf. R.S.C.
(Rev.) 1965,
O. 20, r. 5
(2). 4. (1) Where any relevant period of limitation expires after the date of filing of a statement of claim and after that expiry an application is made under rule 1 for leave to amend the statement of claim by making the amendment mentioned in any of subrules (2), (3), (4) and (5), the Court may in the circumstances mentioned in that subrule make an order giving leave accordingly, notwithstanding that that period has expired.

(2) Where notice of a motion for leave to make an amendment is filed within 14 days after the date of filing the statement of claim, the Court may give leave to make the amendment, whatever the nature of the amendment may be.

cf. R.S.C.
(Rev.) 1965,
O. 20, r. 5
(3). (3) Where there has been a mistake in the name of a party and the Court is satisfied that the mistake was not misleading nor such as to cause reasonable doubt as to the identity of the person intended to be made a party, the Court may make an order for leave to make an amendment to correct the mistake, whether or not the effect of the amendment is to substitute a new party.

cf. R.S.C.
(Rev.) 1965,
O. 20, r. 5
(4). (4) Where, on the date of filing a statement of claim, the plaintiff is entitled to sue in any capacity, the Court may order that the plaintiff have leave to make an amendment having the effect that he sues in that capacity.

cf. R.S.C.
(Rev.) 1965,
O. 20, r. 5
(5). (5) Where a plaintiff, in his statement of claim, makes a claim for relief on a cause of action arising out of any facts, the Court may order that he have leave to make an amendment having the effect

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*Supreme Court.*FOURTH SCHEDULE—*continued.*

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of adding or substituting a new cause of action arising out of the same or substantially the same facts and a claim for relief on that new cause of action. **Part 20.**

(6) This rule has effect in relation to an originating summons as it has effect in relation to a statement of claim.

5. Subject to Part 2 rule 3 (which relates to the extension and abridgment of time), where the Court makes an order under this Part giving a party leave to amend a document, then, if the 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, before the expiration of 14 days after the date on which the order is made, the order shall cease to have effect. **Duration of leave. cf. R.S.C. (Rev.) 1965, O. 20, r. 9.**

6. (1) Where the Court orders, or gives leave for, the making of an amendment, the Court may give such directions as it thinks fit concerning the mode of amendment and consequential service of the amended document or of notice of the amendment. **Mode of amendment—directions.**

(2) Rules 7, 8 and 9 have effect subject to subrule (1).

7. (1) Where the amendments authorised under this Part to be made to a document are not so numerous or lengthy or otherwise of such nature as to render the document difficult or inconvenient to read, the amendments may be made by— **Mode of amendment—simple amendments.**

- (a) filing a notice specifying the amendments and the matters mentioned in subrule (2); and
- (b) where the document to be amended has been filed, writing the alterations in the document.

(2) A filed document amended under this rule shall be marked with a statement specifying the date of the amendment and also, if made pursuant to an order, the date of the order or, if not made pursuant to an order, a reference to the rule authorising the amendment.

8. Subject to rule 7 (1), amendments authorised under this Part to a filed document shall be made by filing a fresh document, amended as so authorised, and bearing a statement specifying the matters mentioned in rule 7 (2). **Mode of amendment—fresh document.**

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Part 21.

Service
after
amendment.

9. Where a document has been served and is afterwards amended, the party making the amendment shall, on the day on which the amendment is made, serve on the parties on whom the document was served—

- (a) if the amendment is made under rule 7—the notice mentioned in rule 7 (1); or
- (b) if the amendment is made under rule 8—the fresh document.

Minute
of judgment
or order.cf. R.S.C.
(Rev.) 1965,
O. 20, r. 11.

10. (1) Where there is a clerical mistake in a minute of a judgment or order, or an error in a minute of a judgment or order arising from an accidental slip or omission, the Court, on application by a party or of its own motion, may, at any time, correct the mistake or error.

(2) Rules 7, 8 and 9 do not apply to a correction made under subrule (1).

PART 21.

WITHDRAWAL AND DISCONTINUANCE.

Withdrawal
of
appearance.cf. R.S.C.
(Rev.) 1965,
O. 21, r. 1.

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

Discon-
tinuance.cf. R.S.C.
(Rev.) 1965,
O. 21, rr. 2
(1) (2)
(b) (3)
(4), 3 (1).

2. (1) A party making a claim by statement of claim may discontinue proceedings so far as concerns the whole or any part of any claim for relief by him—

- (a) where the pleadings are not closed—without leave or consent;
- (b) where judgment has not been entered—with the consent of all other parties; and
- (c) at any time—with the leave of the Court.

cf. R.S.C.

(Rev.) 1965,
O. 21, r. 3
(1).

(2) A party making a claim by originating summons may, with the leave of the Court, discontinue the proceedings at any time so far as concerns the whole or any part of the claim.

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Part 21.

3. (1) A party raising any matter in a defence or subsequent pleading may withdraw that matter at any time. Withdrawal of defence, reply, etc.

(2) Subrule (1) does not enable a party to withdraw, without the consent of another party or the leave of the Court, an admission or any other matter operating for the benefit of that other party. cf. R.S.C. (Rev.) 1965, O. 21, r. 2 (2) (a).

4. The Court may give leave under rule 2 or rule 3 on terms. Terms of leave. cf. R.S.C. (Rev.) 1965, O. 21, r. 3 (1).

5. (1) A discontinuance or withdrawal under rule 2 or rule 3 shall be made by filing a notice stating the extent of the discontinuance or withdrawal. Mode of discontinuance or withdrawal. cf. R.S.C. (Rev.) 1965, O. 21, r. 2 (1) (2) (4).

(2) Where the discontinuance or withdrawal is by consent, the notice under subrule (1) must bear the consent of each consenting party. cf. R.S.C. (Rev.) 1965, O. 21, r. 2 (4).

6. A party filing a notice under rule 5 shall, on the day of filing, serve the notice on each other party. Service. cf. R.S.C. (Rev.) 1965, O. 21, r. 2 (1) (2).

7. A discontinuance under this Part as to any cause of action shall not, subject to the terms of any leave to discontinue, be a defence to proceedings for the same, or substantially the same, cause of action. Effect of discontinuance. cf. R.S.C. (Rev.) 1965, O. 21, r. 4.

8. Where—

- (a) a party discontinues proceedings so far as concerns the whole or any part of any claim for relief; Stay to secure costs. cf. R.S.C. (Rev.) 1965, O. 65, r. 5 (1).
- (b) he is, by reason of the discontinuance, liable to pay the costs of another party occasioned by the proceedings; and

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Part 22.

- (c) before payment of the costs, he brings against that other party further proceedings on the same or substantially the same cause of action as that on which the discontinued proceedings were brought,

the Court may stay the further proceedings until those costs are paid

PART 22.

PAYMENT INTO COURT.

Interpretation.

1. In this Part, unless the context or subject matter otherwise indicates or requires—

cf. R.S.C.
(Rev.) 1965,
O. 22, rr. 1
(1), 2.

“cause of action” means a cause of action for the recovery of debt or damages; and

“trial” includes the hearing of a motion for judgment.

Bringing money into Court.

2. (1) A defendant may from time to time—

(a) bring money into Court in answer to any one or more causes of action on which a plaintiff claims; and

cf. R.S.C.
(Rev.) 1965,
O. 22, r. 1
(1).

(b) bring money into Court in addition to money previously brought in under this rule.

cf. R.S.C.
(Rev.) 1965,
O. 22, r. 1
(3).

(2) A defendant may bring money into Court under this Part by paying the money into Court or by filing a security in accordance with rule 14.

Defendant to cross-claim.

3. A defendant to a cross-claim may not bring money into Court in answer to a cause of action in respect of which he may, before the trial, make an offer of contribution as mentioned in Part 6 rule 13.

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Part 22.

4. (1) On bringing money into Court under this Part, the defendant shall file a notice of deposit in the prescribed form.

Notice of deposit.
cf. R.S.C.
(Rev.) 1965,
O. 22, r. 1
(2).

(2) Where a plaintiff claims on two or more causes of action and a defendant brings money into Court under this Part, the defendant shall, in his notice of deposit—

cf. R.S.C.
(Rev.) 1965,
O. 22, r. 1
(4).

(a) specify the cause or causes of action in answer to which the money is brought in; and

(b) if the defendant allots part of the money to any cause or causes of action, specify the amount of that part and the cause or causes of action to which he allots that part.

5. (1) Where, before the beginning of the trial, a defendant brings money into Court or allots money under this Part in answer to two or more causes of action, the Court may order the defendant to allot the money distributively amongst the causes of action and to file an amended notice of deposit accordingly.

Order to allot.
cf. R.S.C.
(Rev.) 1965,
O. 22, rr. 1
(5), 3 (3).

(2) For the purposes of subrule (1), a cause of action arising under the Compensation to Relatives Act of 1897 on the death of a person and a cause of action surviving under Part II of the Law Reform (Miscellaneous Provisions) Act, 1944, on the death of the same person shall be a single cause of action.

cf. R.S.C.
(Rev.) 1965,
O. 22, r. 1
(6).

6. Where a defendant—

(a) cross-claims against a plaintiff on any cause of action;

(b) brings money into Court under this Part; and

(c) in bringing the money into Court, takes into account his cause of action against the plaintiff on the cross-claim with a view to its abandonment in case the plaintiff accepts the money,

Abandon-
ment of
cross-claim.
cf. R.S.C.
(Rev.) 1965,
O. 22, r. 2.

the defendant shall, in his notice of deposit, specify the cause of action on the cross-claim thus taken into account.

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FOURTH SCHEDULE—*continued.*

Part 22.

Withdrawal
by
defendant.cf. R.S.C.
(Rev.) 1965,
O. 22, r. 1
(3).

7. (1) Subject to subrule (2) a defendant may, with the leave of the Court—

(a) withdraw the whole or any part of money paid into Court by him under this Part; or

(b) withdraw a security filed by him under this Part.

(2) A defendant may not make a withdrawal in respect of any money after the money has been accepted by the plaintiff.

(3) A defendant making a withdrawal under subrule (1) shall file a notice of withdrawal of deposit.

cf. R.S.C.
(Rev.) 1965,
O. 22, r. 3
(6).

(4) On the filing of a notice of withdrawal of deposit under subrule (1) the defendant shall be entitled to receive payment of the money or delivery of the security as the case may be.

Acceptance
by plaintiff.cf. R.S.C.
(Rev.) 1965,
O. 22, r. 3
(1).

8. (1) A plaintiff may, within the time fixed by subrules (2), (3) and (4), accept money brought into Court in satisfaction of the cause of action in answer to which the money is brought in, as against the defendant bringing the money into Court.

(2) Where the notice of deposit, or last notice of deposit, in answer to a cause of action is filed before the beginning of the trial, the plaintiff may accept the money in satisfaction of the cause of action within 14 days after service on him of the notice of deposit, or last notice of deposit, but before the beginning of the trial, by filing a notice of acceptance in the prescribed form.

(3) Where the notice of deposit, or last notice of deposit, in answer to a cause of action is filed after the beginning of the trial, or a defendant, by notice served on the plaintiff after the trial begins, confirms a notice of deposit, the plaintiff may, subject to subrule (4), accept the money in satisfaction of the cause of action within two days after service on him of the notice or the last notice, by announcement to the Court during the trial or by filing a notice of acceptance in the prescribed form.

cf. R.S.C.
(Rev.) 1965, rule
O. 22, r. 3
(2).

(4) A plaintiff shall not accept money in a case to which subrule (3) applies—

(a) where the trial is before a jury—after the Judge begins to sum up to the jury; or

(b) in any other case—after the Judge gives his decision or begins to give his reasons for decision.

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(5) A defendant who serves notice of confirmation under sub-rule (3) shall file the notice on the day of service. Part 22.

(6) A plaintiff who accepts money by announcement to the Court under subrule (3) shall file a notice of acceptance in the prescribed form on the day of the announcement.

(7) Where a plaintiff claims on more than one cause of action and he accepts money brought into Court in answer to some one or more but not all of the causes of action, he may, by filing a notice (which may be combined with his notice of acceptance), abandon all his causes of action other than the cause of action to which the acceptance relates. cf. R.S.C. (Rev.) 1965, O. 62, r. 10 (2)-(4).

(8) Where a plaintiff claims against two or more defendants on a cause of action against them jointly, and he accepts money brought into Court by one or more but not all of those defendants in answer to that cause of action, he may, by filing a notice (which may be combined with his notice of acceptance), abandon his cause of action against the other or all the others of those defendants.

9. (1) On a plaintiff accepting money under rule 8 in satisfaction of a cause of action as against any defendant bringing money into Court, the proceedings shall be stayed in relation to— Effect of acceptance. cf. R.S.C. (Rev.) 1965, O. 22, r. 3 (4) (5).

- (a) that cause of action, as against that defendant;
- (b) any alternative cause of action against that or any other defendant;
- (c) any cause of action abandoned under rule 8 (7) or rule 8 (8); and
- (d) where the defendant, in bringing the money into Court, has taken into account a cause of action on a cross-claim by him as mentioned in rule 6, that cause of action on the cross-claim, as against the plaintiff.

(2) Where a defendant brings money into Court in answer to a cause of action, and the plaintiff accepts the money in satisfaction of the cause of action as against that defendant, the liability of any other person (whether a party to the proceedings or not) jointly with that defendant on the cause of action— cf. R.S.C. (Rev.) 1965, O. 82, r. 4 (1).

- (a) shall be satisfied in the amount of the money accepted; but
- (b) shall not be discharged by the acceptance except to the extent of that satisfaction.

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Part 22.

cf. R.S.C. (Rev.) 1965, O. 22, r. 3 (6). (3) A plaintiff who accepts money under rule 8 shall, subject to rule 11, be entitled to receive payment of the money, without any order.

Withdrawal of acceptance.

cf. Act No. 21, 1899, s. 83A (2).

10. (1) A plaintiff may, by filing a notice in the prescribed form, withdraw his acceptance of money brought into Court—

(a) where all or any of the money has been brought into Court by the filing of a security and the money accepted is not paid into Court within 7 days after service of notice of the acceptance on the defendant filing the security; or

(b) where the Court gives leave so to do.

(2) On withdrawal of an acceptance all steps in the proceedings taken in consequence of the acceptance shall have such effect only as the Court may direct.

(3) On withdrawal of an acceptance or on the motion for leave to withdraw an acceptance, the Court may—

(a) give directions under subrule (2);

(b) give directions for restoring the parties as nearly as may be to their positions at the time of the acceptance; and

(c) give directions for the further conduct of the proceedings.

Order for payment out after acceptance.

11. (1) Where a plaintiff accepts money in satisfaction of a cause of action, the money shall not be paid out except by order of the Court in the following cases—

cf. R.S.C. (Rev.) 1965, O. 22, r. 4 (1) (a) (2).

(a) if the plaintiff claims on the cause of action against two or more defendants and any of those defendants does not join in bringing the money into Court and does not consent to the payment out;

cf. R.S.C. (Rev.) 1965, O. 22, r. 4 (1) (a) (2).

(b) if the plaintiff claims on an alternative cause of action against a defendant who does not join in bringing the money into Court and does not consent to the payment out;

cf. R.S.C. (Rev.) 1965, O. 22, r. 4 (1) (b).

(c) if the money is brought into Court in answer to a cause of action to which the defendant bringing the money into Court pleads or otherwise properly raises a defence of tender before the commencement of the proceedings;

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- (d) if the plaintiff accepts the money in satisfaction of a cause of action arising under the Compensation to Relatives Act (Rev.) of 1897 on the death of a person and in satisfaction of a cause of action surviving under Part II of the Law Reform (Miscellaneous Provisions) Act, 1944, on the death of the same person; cf. R.S.C. (Rev.) 1965, O. 22, r. 4 (1) (d).
- (e) if the plaintiff accepts the money in satisfaction of a cause of action arising under the Compensation to Relatives Act (Rev.) of 1897 and that cause of action is wholly or in part for the benefit of a person other than the plaintiff and that person does not consent to the payment out; cf. R.S.C. (Rev.) 1965, O. 22, r. 4 (1) (d).
- (f) if the plaintiff accepts the money after the beginning of the trial; or cf. R.S.C. (Rev.) 1965, O. 22, r. 4 (3).
- (g) if the plaintiff is a disable person.
- (2) On motion for an order under subrule (1), the Court shall, so far as practicable, deal with all the costs of the proceedings. cf. R.S.C. (Rev.) 1965, O. 22, r. 4 (1) (3).
12. Where money brought into Court by a defendant is not accepted in accordance with rule 8, the money shall be paid out to the defendant. Money not accepted.
cf. R.S.C. (Rev.) 1965, O. 22, r. 5.
13. (1) Subject to subrules (2) and (3), the fact that money has been brought into Court— Non-disclosure.
cf. R.S.C. (Rev.) 1965, O. 22, r. 7.
- (a) shall not be pleaded; and
- (b) shall not be disclosed to the Court at the trial or hearing of any question of liability or amount of debt or damages until all such questions have been decided.

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(2) Subrule (1) does not apply where the money has been brought into Court in answer to a cause of action to which the defendant pleads or otherwise properly raises a defence of tender before commencement of the proceedings.

(3) Subrule 1(b) does not apply—

(a) where the plaintiff accepts the money pursuant to rule 8 ;

(b) where the disclosure is necessary for the purpose of an application under this Part.

Security.
cf. Act No.
21, 1899,
s. 83A (1).

14. (1) A security filed for the purpose of bringing money into Court under this Part shall be an instrument in the prescribed form by which an authorised person (whether a party to the proceedings or not)—

(a) promises to observe the requirements of this Part with respect to a specified sum of money (in this rule called "the money secured") ; and

(b) gives an address for service.

cf. Act No.
21, 1899,
s. 83A (1).

(2) A person who is a licensed insurer under the Workers' Compensation Act, 1926, or an authorised insurer under the Motor Vehicles (Third Party Insurance) Act, 1942, shall, unless the Court otherwise orders, be an authorised person for the purposes of this rule.

(3) A person approved by the Court shall be an authorised person for the purposes of this rule.

(4) A person giving security under this rule may pay the money secured into Court and thereupon—

(a) subject to any order or judgment for interest under this rule, or for costs, he shall have no further liability on the security in the proceedings ; and

(b) the money paid in shall, unless the Court otherwise orders, be dealt with as if brought into Court in place of the security by the party filing the security.

cf. Act No.
21, 1899,
s. 83A (2)
(a) (b).

(5) Where a security has been filed, the Court may order the person giving the security to pay, within a time specified in the order, the whole or any part of the money secured into Court or to such person as the Court may direct.

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(6) If a person giving a security fails to comply with an order under subrule (5), the Court may— Part 23.

- (a) order the person giving the security to pay into Court, or pay to such person as the Court may direct, interest on the money unpaid until payment at such rate not exceeding 5 per cent yearly as the Court may determine;
- (b) in addition to any other order as to costs which the Court may make, order the person giving the security to pay the costs of any party incurred or thrown away by reason of failure to comply with the order under subrule (5).

(7) The Court may direct the entry of such judgment as the nature of the case may require in favour of any party against the person giving the security for the whole or any part of any money secured or interest or costs the subject of an order under subrule (5) or subrule (6) or for costs. cf. Act No. 21, 1899, s. 83A (2) (c).

(8) A party moving for an order or direction under any of subrules (5), (6) and (7) shall serve notice of the motion on the person giving the security and may serve the notice at the address for service specified in the security.

15. A party filing a notice under this Part shall, on the day of filing, serve the notice on each other party on whom the notice has not previously been served. Service.

PART 23.

DISCOVERY AND INSPECTION OF DOCUMENTS.

DIVISION 1.—*Discovery.*

1. (1) Subject to this rule, where the pleadings between any parties are closed, any of those parties may, by notice for discovery filed and served on any other of those parties, require the party served to give discovery of documents, with or without verification. Notice for discovery. cf. R.S.C. (Rev.) 1965, O. 24, r. 2 (1) (7).

(2) A party may not require discovery under subrule (1) after an appointment has been made for directions under Part 26 or after notice has been filed of a motion for directions under Part 26. cf. R.S.C. (Rev.) 1965, O. 24, r. 2 (1) (7).

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Part 23.

(3) A party may require another party to give discovery with verification notwithstanding that he has previously required the same party to give discovery without verification.

cf. R.S.C. (Rev.) 1965, claim for damages arising out of the death of, or bodily injury to, any person or for contribution in respect of damages so arising.
O. 24, r. 2 (2).

Discovery on notice. 2. (1) A party required under rule 1 to give discovery shall, subject to rule 3, give discovery within such time, not being less than 14 days after service on him of the notice for discovery, as may be specified in the notice for discovery.
cf. R.S.C. (Rev.) 1965, O. 24, r. 2 (1).

cf. R.S.C. (Rev.) 1965, verification shall, subject to rule 3, give discovery by filing and serving on the party giving the notice for discovery a list in accordance with rule 6 of documents relating to any matter in question between him and the party giving the notice for discovery.
O. 24, r. 2 (1).

cf. R.S.C. (Rev.) 1965, (3) A party required under rule 1 to give discovery with verification shall, subject to rule 3, give discovery by filing and serving on the party giving the notice for discovery—
O. 24, r. 2 (7).

(a) an affidavit verifying such a list as is mentioned in subrule (2) ; and

(b) the list so verified, unless the list has already been filed and served on that party.

cf. R.S.C. (Rev.) 1965, (4) Where a claim is made against a party—
O. 24, r. 2 (3).

(a) for the recovery of any penalty recoverable by virtue of any Act or Commonwealth Act ; or

(b) for the enforcement of a forfeiture,

he need not include in a list of documents under this rule any document relating only to a matter in question on that claim.

Limitation of discovery on notice. 3. (1) The Court may, before or after any party has been required under rule 1 to give discovery, order that discovery under rule 2 by any party shall not be required or shall be limited to such documents or classes of documents, or to such of the matters in question in the proceedings, as may be specified in the order.
cf. R.S.C. (Rev.) 1965, O. 24, r. 2 (5).

cf. R.S.C. (Rev.) 1965, (2) The Court shall, on application, make such orders under subrule (1) as are necessary to prevent unnecessary discovery.
O. 24, r. 2 (5).

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4. Where a plaintiff claims relief against two or more defendants, Co-
and requires any defendant to give discovery under rule 2, that defendants.
defendant shall serve his list of documents and affidavit if any not cf. R.S.C.
only on the plaintiff but also on each other defendant who has filed (Rev.) 1965,
a defence. O. 24, r. 6
(1) (4).

5. The Court may, at any stage of any proceedings, order any Order for
party to file and serve on any other party— general
discovery.

- (a) a list in accordance with rule 6 of documents relating to cf. R.S.C.
any matter in question in the proceedings; or (Rev.) 1965,
O. 24, r. 3
(1).
- (b) a list as mentioned in paragraph (a), verified by affidavit.

6. (1) A list of documents required by or under this Part shall, Contents of
unless the Court otherwise orders, conform to the requirements of list.
this rule.

(2) A list of documents shall enumerate the documents which cf. R.S.C.
are or have been in the possession, custody or power of the party (Rev.) 1965,
making the list. O. 24, rr. 2
(1), 3 (1).

(3) A list of documents shall enumerate the documents in a cf. R.S.C.
convenient sequence and as shortly as possible, but shall describe (Rev.) 1965,
each document or, in the case of a group of documents of the same O. 24, r. 5
nature, shall describe the group, sufficiently to enable the document (1).
or group to be identified.

(4) Where a party making a list of documents claims that cf. R.S.C.
any document in his possession, custody or power is privileged from (Rev.) 1965,
production, he shall, in the list, sufficiently state the grounds of the O. 24, r. 5
privilege. (2).

(5) A list of documents shall distinguish those documents which cf. R.S.C.
are in the possession, custody or power of the party making the list (Rev.) 1965,
from those that have been but are not in his possession, custody or O. 24, r. 5
power. (1);
Appendix A
No. 26.

(6) A list of documents shall, as to any document which has cf. R.S.C.
been but is not then in the possession, custody or power of the party (Rev.) 1965,
making the list, state when he parted with the document and what O. 24, r. 5
has become of it. (1);
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Part 23.

cf. R.S.C. (Rev.) 1965, O. 24, r. 9. (7) A list of documents shall appoint a time within 7 days after service of the list when, and a place where, the documents in the list may be inspected.

(8) Where a party making a list of documents has a solicitor in the proceedings, the solicitor shall certify on the list that, according to his instructions, the list and the statements in the list are correct.

Order for
particular
discovery.

cf. R.S.C.
(Rev.) 1965,
O. 24, r. 7
(1) (3).

7. Where, at any stage of the proceedings, it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed in the proceedings that there are grounds for a belief that some document or class of document relating to any matter in question in the proceedings may be or may have been in the possession, custody or power of a party, the Court may order that party—

(a) to file an affidavit stating whether that document or any document of that class is or has been in his possession, custody or power and, if it has been but is not then in his possession, custody or power, when he parted with it and what has become of it; and

(b) to serve the affidavit on any other party.

Deponent.

8. (1) Subject to subrule (2), an affidavit verifying a list of documents of a party or an affidavit to be filed by a party pursuant to an order under rule 7 may be made as follows—

(a) by the party;

(b) where the party is a disable person, by his tutor;

(c) where the party is a corporation, by a member or officer of the corporation;

(d) where the party is a body of persons lawfully suing or being sued in the name of the body or in the name of any officer or other person, by a member or officer of the body;

(e) where the party is the Crown, an officer of the Crown suing or sued in his official capacity, or a nominal defendant sued under the Claims against the Government and Crown Suits Act, 1912, by an officer of the Crown.

(2) Where the party is a person to whom any of paragraphs (c), (d) and (e) of subrule (1) applies and the affidavit is to be filed and served pursuant to an order, the Court may—

(a) specify by name or otherwise the person to make the affidavit; or

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- (b) specify by description or otherwise the persons from whom the party may choose the person to make the affidavit. **Part 23.**

(3) Subject to subrule (2), where the party is a person to whom any of paragraphs (c), (d) and (e) of subrule (1) applies, the party shall choose a person to make the affidavit who is qualified under the relevant paragraph and has knowledge of the facts.

DIVISION 2.—*Inspection.*

9. (1) Where a pleading or affidavit filed by a party refers to a document, any other party may, by notice to produce served on him, require him to produce the document for inspection. **Document referred to in pleading or affidavit.**
cf. R.S.C. (Rev.) 1965, O. 24, r. 10 (1).

(2) Where a notice to produce a document is served on a party under subrule (1), he shall, within 4 days after that service, serve on the party requiring production a notice— **cf. R.S.C. (Rev.) 1965, O. 24, r. 10 (2).**

- (a) appointing a time within 7 days after service of the notice under this subrule when, and a place where, the document may be inspected;
- (b) claiming that the document is privileged from production and sufficiently stating the grounds of the privilege; or
- (c) stating that the document is not in his possession, custody or power and stating to the best of his knowledge information and belief where the document is and in whose possession, custody or power it is.

10. (1) Where—

- (a) it appears from a list of documents filed by a party under this Part that any document is in his possession, custody or power; **Order for production.**
cf. R.S.C. (Rev.) 1965, O. 24, rr. 10, 14 (1).
- (b) a pleading or affidavit filed by a party refers to any document; or
- (c) it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed in the proceedings that there are grounds for a belief that any document relating to any matter in question in the proceedings is in the possession, custody or power of a party,

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Part 23. the Court may, unless the document is privileged from production, order the party—

(d) to produce the document for inspection by any other party at a time and place specified in the order; or

(e) to file and serve on any other party a copy of the whole or any part of the document, with or without an affidavit verifying the copy made by a person who has examined the document and the copy.

cf. R.S.C. (2) An affidavit made pursuant to an order under subrule (Rev.) 1965, (1) (e) shall, unless the Court otherwise orders, state whether there O. 24, r. 14 are in the document copied any and, if so, what erasures, interlineations or alterations. (2).

Power to take copies. 11. A party to whom a document is produced for inspection under this Part may make copies of the document.

cf. R.S.C. (Rev.) 1965, O. 24, rr. 9, 10 (1).

Production to the Court. 12. (1) The Court may, at any stage of any proceedings, order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the proceedings.

cf. R.S.C. (Rev.) 1965, O. 24, r. 12.

cf. R.S.C. (2) Upon production of a document to the Court pursuant (Rev.) 1965, to an order under subrule (1), the Court may deal with the document in such manner as the Court thinks fit. O. 24, r. 12.

Inspection to decide objection. 13. Where an application is made for an order under rule 10 for the production of any document for inspection by another party or for an order under rule 12 for the production of any document to the Court and a claim is made that the document is privileged from production or an objection to production is made on any other ground, the Court may inspect the document for the purpose of deciding the validity of the claim or objection. cf. R.S.C. (Rev.) 1965, O. 24, r. 13 (2).

DIVISION 3.—*General.*

Order only if necessary. 14. The Court shall not make an order under this Part for the filing or service of any list of documents or affidavit or other document or for the production of any document unless satisfied that the order is necessary at the time when the order is made.

cf. R.S.C. (Rev.) 1965, O. 24, rr. 8, 13 (1).

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Part 24.

15. (1) Where a party makes default in filing or serving a list of documents or affidavit or other document or in producing any document as required by or under this Part, the Court may make such order as it thinks fit, including—

Default.
cf. R.S.C.
(Rev.) 1965,
O. 24, r. 16
(1).

- (a) if the party in default is a plaintiff, an order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by him in the proceedings; or
- (b) if the proceedings were commenced by statement of claim and the party in default is a defendant, an order that his defence be struck out and that judgment be entered accordingly.

(2) Where a party has a solicitor—

cf. R.S.C.
(Rev.) 1965,
O. 24, r. 16
(3).

- (a) an order under any of the foregoing rules of this Part need not, for the purposes of enforcement of the order by committal or sequestration, be served personally; but
- (b) if the order has not been served personally, the order shall not be enforced by committal of any person or by sequestration of the property of any person if that person shows that he did not have notice or knowledge of the order within sufficient time for compliance with the order.

(3) Where a party has a solicitor, and an order under this Part against the party is served on the party by leaving a copy of the order at the office of, or posting it to, the solicitor or his agent, the solicitor shall, if he fails without reasonable cause to notify the party of the order, be guilty of professional misconduct.

cf. R.S.C.
(Rev.) 1965,
O. 24, r. 16
(4).

16. This Part does not affect any rule of law which authorises or requires the withholding of any document on the ground that its disclosure would be injurious to the public interest.

Public
cf. 10 & 11
Geo. 6,
c. 44, s. 28
(1).

PART 24.

INTERROGATORIES.

1. (1) Subject to subrules (3) and (4), where the pleadings between any parties are closed, any of those parties may file and serve on any other of those parties a notice requiring the party served to answer specified interrogatories relating to any matter in question between the interrogating party and the party served.

Interroga-
tories by
notice.
cf. R.S.C.
(Rev.) 1965,
O. 26, r. 1
(1).

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cf. R.S.C.
(Rev.) 1965,
O. 26, r. 1
(1).

(2) The notice may require that the answers be verified, and may so require notwithstanding that the interrogating party has previously required all or any of the interrogatories to be answered without requiring the answers to be verified.

(3) A party may not require answers to interrogatories under subrule (1) after an appointment has been made for directions under Part 26 or after notice has been filed of a motion for directions under Part 26.

(4) This rule does not apply to proceedings on a common law claim for damages arising out of the death of, or bodily harm to, any person or for contribution in respect of damages so arising.

Answers
pursuant
to notice.

2. (1) A party who is required under rule 1 to answer interrogatories shall, subject to rule 3, answer the interrogatories within such time, not being less than 14 days after service on him of the notice under rule 1, as may be specified in the notice.

(2) A party who is required under rule 1 to answer interrogatories but is not required to verify his answers shall, subject to rule 3, answer the interrogatories by filing and serving on the party requiring the answers a statement in accordance with rule 6.

(3) A party who is required under rule 1 to answer interrogatories and to verify his answers shall, subject to rule 3, answer the interrogatories by filing and serving on the party requiring the answers—

(a) an affidavit verifying a statement in accordance with rule 6; and

(b) the statement so verified, unless the statement has already been filed and served.

Limitation
of interro-
gatories by
notice.

3. (1) The Court may, before or after any party has been required under rule 1 to answer interrogatories, order that answers to interrogatories under rule 2 by any party shall not be required, or shall be limited to such interrogatories or classes of interrogatories, or to such of the matters in question in the proceedings, as may be specified in the order.

(2) Where any party has been required under rule 1 to answer any interrogatory, the Court may, on application by him, order that an answer to that interrogatory shall not be required or may limit the extent to which an answer shall be required.

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(3) The Court shall, on application, make such orders under subrules (1) and (2) as are necessary to prevent unnecessary interrogatories or unnecessary answers to interrogatories.

cf. R.S.C.
(Rev.) 1965,
O. 26, r. 1
(3).

4. Where a plaintiff claims relief against two or more defendants, and requires any defendant to answer interrogatories under rule 2, that defendant shall serve his statement in answer and affidavit if any not only on the plaintiff but also on each other defendant who has filed a defence.

Co-
defendants.

5. (1) The Court may, at any stage of any proceedings, order any party to file and serve on any other party (whether the interrogating party or not)—

Order to
answer.
cf. R.S.C.
(Rev.) 1965,
O. 26, r. 1
(1).

- (a) a statement in accordance with rule 6 in answer to interrogatories specified or referred to in the order relating to any matter in question in the proceedings; or
- (b) a statement as mentioned in paragraph (a) verified by affidavit.

(2) The Court shall not make an order under subrule (1) unless satisfied that the order is necessary at the time when the order is made.

cf. R.S.C.
(Rev.) 1965,
O. 26, r. 1
(3).

6. (1) A statement in answer to interrogatories required by or under this Part shall, unless the Court otherwise orders, conform to the requirements of this rule.

Contents of
statement.

(2) A statement in answer to interrogatories shall deal with each interrogatory specifically either—

- (a) by answering the substance of the interrogatory without evasion; or
- (b) by objecting to answer the interrogatory on one or more of the grounds mentioned in subrule (3) and briefly stating the facts on which the objection is based.

(3) Subject to subrule (4), a party may object to answer any interrogatory on the following grounds but no other—

- (a) where the answer is not required by an order, that the interrogatory does not relate to any matter in question between him and the party requiring the answer;

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Part 24.

- (b) that the interrogatory is vexatious or oppressive ; and
- (c) privilege.

(4) On an application under rule 3 (2) or rule 5 in respect of any interrogatory, the Court may require the applicant to specify on what grounds he objects to answer that interrogatory and may determine the sufficiency of the objection and, if the Court determines that the objection is not sufficient, the applicant shall not be entitled to object to answer that interrogatory in a statement in answer to interrogatories.

Deponent.

7. (1) Subject to subrule (2), an affidavit verifying a statement of a party in answer to interrogatories may be made as follows—

- (a) by the party ;
- (b) where the party is a disable person, by his tutor ;
- (c) where the party is a corporation, by a member or officer of the corporation ;
- (d) where the party is a body of persons lawfully suing or being sued in the name of the body or in the name of any officer or other person, by a member or officer of the body ;
- (e) where the party is the Crown, an officer of the Crown suing or sued in his official capacity, or a nominal defendant sued under the Claims against the Government and Crown Suits Act, 1912, by an officer of the Crown.

(2) Where the party is a person to whom any of paragraphs (c), (d) and (e) of subrule (1) applies, and the affidavit is to be filed and served pursuant to an order, the Court may, in relation to any or all of the interrogatories—

- (a) specify by name or otherwise the person to make the affidavit ; or
- (b) specify by description or otherwise the persons from whom the party may choose the person to make the affidavit.

(3) Subject to subrule (2), where the party is a person to whom any of paragraphs (c), (d) and (e) of subrule (1) applies, the party shall, in relation to each interrogatory, choose a person to make the affidavit who is qualified under the relevant paragraph and has knowledge of the facts.

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Part 24.

8. (1) Where a party fails to answer an interrogatory sufficiently, the Court may—

Insufficient answer.

- (a) if he has made an insufficient answer, order him to make a further answer verified by affidavit in accordance with rule 7; or
- (b) order him or any of the persons mentioned in paragraphs (b) to (d) of rule 7 (1), as the nature of the case requires, to attend to be orally examined.

cf. R.S.C. (Rev.) 1965, O. 26, r. 5.

(2) Subrule (1) does not limit the powers of the Court under rule 9.

9. (1) Where a party makes default in compliance with an order under rule 5 or rule 8 to file or serve a statement or affidavit, the Court may make such order as it thinks fit, including—

Default. cf. R.S.C. (Rev.) 1965, O. 26, r. 6 (1).

- (a) if the party in default is a plaintiff, an order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by him in the proceedings; or
- (b) if the proceedings were commenced by statement of claim and the party in default is a defendant, an order that his defence be struck out and that judgment be entered accordingly.

(2) Where a party has a solicitor—

cf. R.S.C. (Rev.) 1965, O. 26, r. 6 (3).

- (a) an order under rule 5 or rule 8 need not, for the purposes of enforcement of the order by committal or sequestration, be served personally; but
- (b) if the order has not been served personally, the order shall not be enforced by committal of any person or by sequestration of the property of any person if that person shows that he did not have notice or knowledge of the order within sufficient time for compliance with the order.

(3) Where a party has a solicitor, and an order under rule 5 or rule 8 against the party is served on the party by leaving a copy of the order at the office of, or posting it to, the solicitor or his agent, the solicitor shall, if he fails without reasonable cause to notify the party of the order, be guilty of professional misconduct.

cf. R.S.C. (Rev.) 1965, O. 26, r. 6 (4).

10. (1) A party may tender as evidence—

Answers as evidence.

- (a) one or more answers to interrogatories without tendering the others;

cf. R.S.C. (Rev.) 1965, O. 26, r. 7.

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Part 25.

- (b) part of an answer to an interrogatory without tendering the whole of the answer.

cf. R.S.C.

(2) Where the whole or part of an answer to an interrogatory is tendered as evidence, the Court may—

O. 26, r. 7.

- (a) look at the whole of the answers; and
- (b) if it appears to the Court that any other answer or any part of an answer is so connected with the matter tendered that the matter tendered ought not to be used without that other answer or part, the Court may reject the tender unless that other answer or part is also tendered.

Public interest.

cf. 10 & 11 Geo. 6, c.

44, s. 28

(1).

11. This Part does not affect any rule of law which authorises or requires the withholding of any matter on the ground that its disclosure would be injurious to the public interest.

PART 25.

MEDICAL EXAMINATION; INSPECTION OF PROPERTY, ETC.

DIVISION 1.—*Medical Examination.*Applica-
tion and
interpre-
tation.

1. (1) This Division applies to proceedings in which—
- (a) the physical or mental condition of a person is relevant to any matter in question; and
- (b) either—
- (i) that person is a party; or
- (ii) a party claims relief for the benefit of that person pursuant to the Compensation to Relatives Act of 1897.

(2) In this Division—

“first party” means the party mentioned in subrule (1) (b).

“person concerned” means the person mentioned in subrule (1) (a).

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Part 25.

2. (1) Any party other than the first party may serve on the first party a notice in accordance with this rule for the medical examination of the person concerned.

Notice for examination.
cf. General Rules of the Court, O. 14, r. 10; Rules of the Supreme Court (W.A.), O. 25, r. 12 (1) (a).

(2) A notice for medical examination shall be a request by the party giving the notice that the person concerned submit to examination by a specified doctor at a specified time and place.

cf. G.R.C. O. 14, r. 10; R.S.C. (W.A.), O. 25, r. 12 (1) (a).

3. A party who serves a notice for medical examination shall, on request by the first party, pay to the first party a reasonable sum to meet the travelling and other expenses of the person concerned and incidental to the medical examination including the expenses of having a doctor chosen by him attend his examination pursuant to rule 6.

Expenses.
cf. R.S.C. (W.A.), O. 25, r. 12 (2).

4. (1) Where a notice for medical examination of a person concerned is served pursuant to rule 2 and the person concerned does not submit to examination in accordance with the notice, the Court may, on terms, stay the proceedings as to any claim for relief by or for the benefit of the person concerned.

Non-compliance with notice.
cf. G.R.C., O. 14, rr. 10, 11, 12; R.S.C. (W.A.), O. 25, r. 12 (3).

(2) Where, before the proceedings are set down for trial under Part 33 rule 8, a party files notice of a motion for a stay of proceedings under subrule (1), the proceedings shall, unless the Court otherwise orders, be stayed pending disposal of the motion.

cf. G.R.C., O. 14, r. 11.

5. (1) The Court may, on terms, make orders for the medical examination of a person concerned, including an order that a person concerned submit to examination by a specified doctor at a specified time and place.

Order for examination.

(2) Where the Court orders that a person concerned submit to examination by a doctor, the person concerned shall do all things reasonably requested and answer all questions reasonably asked of him by the doctor for the purposes of the examination.

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Part 25.

Doctor for
person con-
cerned.

cf. R.S.C.
(W.A.),
O. 25, r. 15
(1) (a).

6. The person concerned may have a doctor chosen by him attend his examination.

Report.

cf. R.S.C.
(W.A.),
O. 25, r. 12
(4).

7. (1) The examining doctor shall make a written report of his examination of the person concerned and shall give his report to the party serving the notice for medical examination or obtaining the order for medical examination.

cf. R.S.C.
(W.A.),
O. 25, r. 12
(4).

(2) A party to whom a report is given under subrule (1) shall serve the report on the first party.

DIVISION 2.—*Inspection of Property, etc.*

Inspection
of pro-
perty, etc.

cf. Act No.
21, 1899,
s. 104;
R.S.C.
(Rev.) 1965,
O. 29, rr. 2
(1) (4),
3 (1).

8. (1) The Court may, for the purpose of enabling the proper determination of any matter in question in any proceedings, make orders, on terms, for—

- (a) the inspection of any property;
- (b) the taking of samples of any property;
- (c) the making of any observation of any property;
- (d) the trying of any experiment on or with any property; or
- (e) the observation of any process.

cf. R.S.C.
(Rev.) 1965,
O. 29, rr. 2
(2), 3 (2).

(2) An order under subrule (1) may authorise any person to enter any land or to do any other thing for the purpose of getting access to the property.

(3) A party applying for an order under this rule shall, so far as practicable, serve notice of the motion on each person who would be affected by the order if made.

(4) In this rule "property" includes any land and any document or other chattel, whether in the ownership, possession, custody or power of a party or not.

View.

cf. R.S.C.
(Rev.) 1965,
O. 35, r. 8.

9. The Court may inspect, or, at a trial, may authorise a jury to inspect, any place, process or thing with respect to which any question arises in the proceedings.

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*Supreme Court.*FOURTH SCHEDULE—*continued.*

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DIVISION 3.—*Default.*

Part 26.

10. (1) Where a party makes default in compliance with an order under this Part, or in compliance with rule 5 (2), the Court may make such order as it thinks fit, including—
- (a) if the party in default is a plaintiff, an order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by him in the proceedings; or
- (b) if the proceedings were commenced by statement of claim and the party in default is a defendant an order that his defence be struck out and that judgment be entered accordingly.

(2) Where a person concerned, not being a party, makes default in compliance with an order under this Part, or in compliance with rule 5 (2), the Court may order that the proceedings be stayed or dismissed as to any relief claimed for the benefit of the person concerned.

(3) This rule does not limit the powers of the Court to punish for contempt.

PART 26.

DIRECTIONS.

1. (1) In proceedings commenced by statement of claim, the Court may appoint a date for a hearing for directions under this Part.
- (2) The appointed date shall be—
- (a) not less than two months after the pleadings are closed; and
- (b) not less than 14 days after the expiration of the time within which any party is required to give discovery by notice under Part 23 rule 1.
- (3) The Court shall, not less than one month before the appointed date, give notice of the appointment to each party who has an address for service in the proceedings.
- (4) This rule does not apply to proceedings entered in the commercial list.

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FOURTH SCHEDULE—*continued.*

Part 26.

Motion.

2. (1) In proceedings commenced by statement of claim, a party may, after the pleadings are closed, move on notice for a hearing for directions under this Part.

cf. R.S.C. (Rev.) 1965, O. 25, r. 1

(1) (4).

(2) This rule does not apply to proceedings entered in the commercial list.

Despatch.

3. (1) Where proceedings are before the Court for directions under this Part, the Court shall, so far as practicable, deal, without adjournment, with all matters required to be dealt with under this Part.

cf. R.S.C. (Rev.) 1965, O. 25, r. 2

(1)–(3).

(2) Where the hearing for directions has been adjourned, the proceedings may be restored for further hearing for directions—

(a) by the Court, by notice given to each party who has an address for service in the proceedings; or

(b) unless the Court otherwise orders, by a party.

cf. R.S.C.

(3) A party may restore proceedings under subrule (2) by motion on notice or by such other means as the Court may approve.

cf. R.S.C. (Rev.) 1965, O. 25, r. 2

(7).

(4) Subrule (2) has effect notwithstanding that the Court has adjourned the further hearing for directions to a named date.

Directions and orders.

4. (1) The Court shall, where proceedings are before it for directions under this Part—

cf. R.S.C. (Rev.) 1965, O. 25, r. 1

(1).

(a) consider the preparations for the trial;

(b) so far as possible, deal with all matters which may be dealt with on application to the Court before the trial;

(c) give such directions for the conduct of the proceedings as appear best adapted for the just, quick and cheap disposal of the proceedings.

cf. R.S.C.

(2) Without limiting the generality of subrule (1), the Court shall, where proceedings are before it for directions under this Part, make such orders as may be appropriate—

cf. R.S.C. (Rev.) 1965, O. 25, rr. 3

(b), 4.

(a) relating to admissions, under section 82 of the Act;

(b) relating to evidence, under section 82 of the Act, under section 14B of the Evidence Act, 1898, or under Part 36; or

(c) relating to amendment, under Part 20 rule 1.

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*Supreme Court.*FOURTH SCHEDULE—*continued.*

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Part 26.

5. (1) Subject to subrule (2), the Court shall endeavour to secure Agreement. that the parties make all agreements as to the conduct of the proceedings which ought reasonably to be made by them.

cf. R.S.C.
(Rev.) 1965,
O. 25, r. 4.

(2) Subrule (1) does not extend to an agreement to exclude or limit any right of appeal.

cf. R.S.C.
(Rev.) 1965,
O. 25, r. 5.

(3) The Court may, by order, record any agreement made by the parties as to the conduct of the proceedings.

cf. R.S.C.
(Rev.) 1965,
O. 25, rr. 4,
5.

(4) The Court may, by order, record any refusal to make an agreement as to the conduct of the proceedings which ought reasonably to have been made so that the refusal may later be taken into account on questions of costs.

cf. R.S.C.
(Rev.) 1965,
O. 25, r. 4.

6. On the hearing for directions each party shall, so far as practicable, move for any order or direction which he wants and which may be made before the trial.

Interlocutory orders.
cf. R.S.C.
(Rev.)
1965, O. 25,
r. 7.

7. (1) Subject to subrule (2), a party shall not adduce evidence on the hearing for directions, except by the leave or direction of the Court.

Evidence.

(2) Where a party moves on the hearing for directions for an order which, if made otherwise than on the hearing for directions, ought not to be made except on evidence, a party may adduce evidence for the purpose of supporting or opposing the motion.

cf. R.S.C.
(Rev.)
1965, O. 25,
r. 6 (2).

8. (1) Subject to subrule (2), on the hearing for directions each party shall give all such information and produce all such documents to the Court as the Court requires for the purposes of this Part.

Information and documents.
cf. R.S.C.
(Rev.)
1965, O. 25,
r. 6 (1).

(2) A party shall not be required to give any information or produce any document which is privileged from disclosure except with the consent of the person entitled to the privilege.

cf. R.S.C.
(Rev.)
1965, O. 25,
r. 6 (4).

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cf. R.S.C.
(Rev.)
1965, O. 25,
r. 6 (1).

(3) A party who gives information or produces a document to the Court on the hearing for directions shall, unless the Court otherwise orders, give the information or produce the document to the other parties appearing on the hearing for directions.

(4) Where the Court requires a party to give information or to produce a document for the purposes of this Part, and the party defaults in compliance with the requirement, the Court may—

cf. R.S.C.
(Rev.)
1965, O. 25,
r. 6 (3)
(a) (b).

- (a) record the requirement and default in its order so that they may later be taken into account on questions of costs;
- (b) strike out the whole or any part of the pleadings of the party in default; or
- (c) stay or dismiss the proceedings so far as concerns any claim for relief by the party in default.

PART 27.**EVIDENCE BY DEPOSITION.**

Order for
examina-
tion of
witness.
cf. R.S.C.
(Rev.)
1965, O. 39,
rr. 1, 2.

1. The Court may, for the purpose of proceedings in the Court, make orders—

- (a) for the examination of any person on oath before a judge or an officer of the Court or before such other person as the Court may appoint as examiner at any place whether in or out of the State; or
- (b) for the sending of a letter of request to the judicial authorities of another country to take, or cause to be taken, the evidence of any person.

Letter of
request.
cf. R.S.C.
(Rev.)
1965, O. 39,
r. 3 (1)-
(4), (6).

2. (1) Upon the making of an order under rule 1 (b) for the sending of a letter of request, the party obtaining the order shall—

- (a) lodge with the registrar—
 - (i) a form of the appropriate letter of request;
 - (ii) the interrogatories (if any) and cross-interrogatories (if any) to accompany the letter of request; and

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- (iii) where English is not an official language of the country to whose judicial authorities the letter of request is to be sent, a translation of each of the documents mentioned in subparagraphs (i) and (ii) in an official language of that country appropriate to the place where the evidence is to be taken; and

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(b) file—

- (i) a copy of each of the documents mentioned in paragraph (a); and
- (ii) an undertaking by the party obtaining the order or his solicitor to be responsible for all expenses incurred by the Court or by any person at the request of the Court in respect of the letter of request and, on being given notice of the amount of any such expenses, to pay the amount to the registrar.

(2) A translation lodged under subrule (1) (a) (iii) must be certified by the person making it to be a correct translation; and the certificate must state his full name and address and his qualifications for making the translation.

cf. R.S.C.
(Rev.)
1965, O. 39,
r. 3 (5).

3. (1) The party obtaining an order for examination before an examiner under rule 1 (a) shall furnish the examiner with copies of such of the documents in the proceedings as are necessary to inform the examiner of the questions to which the examination is to relate.

Documents
for ex-
aminer.
cf. R.S.C.
(Rev.)
1965, O. 39,
r. 7.

(2) Where the documents in the proceedings are not sufficient to inform the examiner of the questions to which the examination is to relate the Court shall, in the order for examination or in a later order, state the questions to which the examination is to relate.

4. (1) The examiner shall appoint a place and time for the examination.

Appoint-
ment for
examina-
tion.
cf. R.S.C.
(Rev.) 1965,
O. 39, r. 6
(1).

(2) The time appointed shall, having regard to the convenience of the person to be examined, and to the circumstances, be as soon as practicable after the making of the order.

cf. R.S.C.
(Rev.) 1965,
O. 39, r. 6
(1).

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cf. R.S.C. (3) The examiner shall give notice of an appointment under (Rev.) 1965, this rule to the party obtaining the order and that party shall give notice of the appointment to each other party.
O. 39, r. 6
(1) (2).

Conduct of examination. 5. (1) The examiner shall permit each party, his counsel and solicitor to attend the examination.

cf. R.S.C. (2) A person examined before an examiner may, unless the (Rev.) 1965, Court otherwise orders, be cross-examined and re-examined.
O. 39, r. 8
(1) (a).

cf. R.S.C. (3) The examination, cross-examination and re-examination of (Rev.) 1965, a person before an examiner shall, unless the Court otherwise orders, be conducted in like manner as at a trial.
O. 39, r. 8
(1) (b).

cf. R.S.C. (4) The examiner may put any question to a person examined (Rev.) 1965, before him as to—
O. 39, r. 8
(2).

- (a) the meaning of any answer made by that person ; or
- (b) any matter arising in the course of the examination.

cf. R.S.C. (5) The examiner may adjourn the examination from time to (Rev.) 1965, time or from place to place.
O. 39, r. 8
(3).

Examination of additional persons. 6. The examiner may, with the consent in writing of each party to the proceedings, take the examination of any person in addition to the person named or provided for in the order for examination and, if he does so, he shall annex to the deposition of that person the consent of each of the parties.
cf. R.S.C. (Rev.) 1965,
O. 39, r. 9.

Objection. 7. Where objection is taken to a question put to a person being examined before an examiner, or a person being so examined takes objection to answering a question put to him or to produce any document or thing—
cf. R.S.C. (Rev.) 1965,
O. 39, r. 10.

- (a) the examiner shall state to the parties his opinion on, but shall not decide, the validity of the ground for the objection ;
- (b) the question, the ground for the objection, the opinion of the examiner, and the answer (if any) must be set out in the deposition of that person or in a statement attached to the deposition ;

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(c) the Court may, on motion by any party, decide the validity of the ground for the objection; Part 27.

(d) if the Court decides against the objector, the Court may order him to pay the costs occasioned by the objection.

8. (1) The deposition of a person examined before an examiner must be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner.

Taking of
deposi-
tions.
cf. R.S.C.
(Rev.) 1965,
O. 39, r. 11
(1).

(2) The deposition must contain as nearly as may be the statement of the person examined.

cf. R.S.C.
(Rev.) 1965,
O. 39, r. 11
(1).

(3) The examiner may direct that the words of any question and the answer to the question be set out in the deposition.

cf. R.S.C.
(Rev.) 1965,
O. 39, r. 11
(2).

(4) Subject to subrules (2) and (3) and subject to rule 7 (b), the deposition need not set out every question and answer.

cf. R.S.C.
(Rev.) 1965,
O. 39, r. 11
(1).

9. (1) The deposition of a person examined (or the shorthand notes of his examination) shall be read to him.

Authenti-
cation
and filing.
cf. R.S.C.
(Rev.) 1965,
O. 39, r. 11
(3).

(2) The examiner shall, if any party so requests, ask the person examined to sign his deposition.

cf. R.S.C.
(Rev.) 1965,
O. 39, r. 11
(3).

(3) The examiner shall authenticate the deposition by his signature.

cf. R.S.C.
(Rev.) 1965,
O. 39, r. 11
(3).

(4) The examiner shall make on, or attach to, the deposition a note signed by him of the time occupied in the examination and the fees received by him in respect of the examination.

cf. R.S.C.
(Rev.) 1965,
O. 39, r. 12.

(5) The examiner shall send the deposition to the registrar and the registrar shall file it in the proceedings.

cf. R.S.C.
(Rev.) 1965,
O. 39, r. 11
(4).

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Part 27. (6) The examiner shall, unless the Court otherwise orders, send the exhibits to the registrar and the registrar shall deal with the exhibits in such manner as the Court may direct.

Special report. 10. (1) The examiner may make to the Court a special report with regard to an examination before him and with regard to the absence of any person from, or the conduct of any person at, the examination.
cf. R.S.C. (Rev.) 1965, O. 39, r. 13.

cf. R.S.C. (Rev.) 1965, O. 39, r. 13. (2) The Court may direct such proceedings to be taken, or make such order, on the report as the Court thinks fit.

Default of witness. 11. (1) Where a person has been required by subpoena to attend before an examiner, and he refuses to be sworn for the purposes of the examination or to answer any lawful question, or to produce any document or thing, the examiner shall, at the request of any party, give to that party a certificate, signed by the examiner, of the refusal.
cf. R.S.C. (Rev.) 1965, O. 39, r. 5 (1).

cf. R.S.C. (Rev.) 1965, O. 39, r. 5 (1) (3). (2) The Court may, upon the certificate being filed, and on motion by any party—
(a) order that person to be sworn, or to answer the question or to produce the document or thing as the case may be; and
(b) order that person to pay any costs occasioned by his refusal.

Order for payment of expenses. 12. Where a party has given an undertaking as mentioned in rule 2 (1) (b) (ii) and does not, within 7 days after service on him of notice of the amount of the expenses concerned, pay the amount of the expenses to the registrar, the Court may, on application by the registrar—
(a) order the party to pay the amount of the expenses to the registrar; and
(b) stay the proceedings until payment so far as concerns the whole or any part of any claim for relief by that party.

Perpetuation of testimony. 13. (1) Witnesses shall not be examined to perpetuate testimony unless proceedings have been commenced for the purpose.
cf. R.S.C. (Rev.) 1965, O. 39, r. 15 (1).

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(2) Any person who would, in the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any property, the right or claim to which cannot be tried before the happening of the future event, may commence proceedings to perpetuate any testimony which may be material for establishing the right or claim.

cf. R.S.C.
(Rev.) 1965,
O. 39, r. 15
(2).

(3) Proceedings to perpetuate the testimony of witnesses shall not be set down for trial.

cf. R.S.C.
(Rev.) 1965,
O. 39, r. 15
(3).

(4) Where proceedings to perpetuate testimony touch any matter or thing in which the Crown may have an interest, the Attorney-General may be made a defendant.

cf. R.S.C.
(1883),
O. 37, r. 36.

(5) Where, pursuant to subrule (4), the Attorney-General is made a defendant to proceedings to perpetuate testimony, a deposition taken in those proceedings shall not be inadmissible in other proceedings by reason that the Crown was not a party to the proceedings to perpetuate testimony.

cf. R.S.C.
(1883),
O. 37, r. 36.

(6) Subrule (2) does not affect the right of any person to commence proceedings to perpetuate testimony in cases to which that subrule does not apply.

PART 28.

INTERIM PRESERVATION, ETC.

1. In an urgent case, the Court may, on the application of a person who intends to commence proceedings—

- (a) grant an injunction;
- (b) appoint a receiver; or
- (c) make orders under rule 2,

to the same extent as if the applicant had commenced the proceedings and the application were made in the proceedings.

Order before commencement of proceedings.
cf. R.S.C.
(Rev.) 1965,
O. 29, r. 1
(3).

2. (1) In proceedings concerning any property, or in proceedings in which any question may arise as to any property, the Court may make orders for the detention, custody or preservation of the property.

Preservation of property.
cf. R.S.C.
(Rev.) 1965,
O. 29, r. 2
(1).

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cf. R.S.C. (2) An order under subrule (1) may authorise any person to
(Rev.) 1965, enter any land or to do any other thing for the purpose of giving
O. 29, r. 2 effect to the order.
(2).

cf. R.S.C. (3) In proceedings concerning the right of any party to a
(Rev.) 1965, fund, the Court may order that the fund be paid into Court or other-
O. 29, r. 2 wise secured.
(3).

Disposal of 3. Where, in proceedings concerning any property (other than
personal land) or in proceedings in which any question may arise as to any
property. property (other than land), it appears to the Court that—

cf. R.S.C. (a) the property is of a perishable nature or is likely to deterio-
(Rev.) 1965, rate; or
O. 29, r. 4
(1).

(b) for any other reason it is desirable that the property should
be sold or otherwise disposed of,

the Court may make an order for the sale or other disposal of the
whole or any part of the property by such person, in such manner,
and upon such terms (if any) as the Court may direct.

Interim dis- 4. Where, in proceedings concerning property, it appears to the
tribution. Court that the property is more than sufficient to answer the claims
cf. R.S.C. on the property for which provision ought to be made in the pro-
(Rev.) 1965, ceedings, the Court may allow any part of the property to be con-
O. 29, r. 8. veyed, transferred or delivered to any person having an interest in
the property.

Interim 5. Where, in proceedings concerning property, it appears to the
income. Court that the whole or any part of the income of the property is not
cf. R.S.C. required to answer the claims on the property or its income for which
(Rev.) 1965, provision ought to be made in the proceedings, the Court may allow
O. 29, r. 8. that income or part to be paid, during such period as the Court may
determine, to all or any of the persons having an interest in the
income.

Payment 6. Where two or more persons are entitled to share in a fund, the
before ascer- Court may order or allow immediate payment to any of those persons
tainment of of his share without reserving any part of his share to meet the subse-
all persons quent costs of ascertaining any other of those persons.
interested.

cf. R.S.C.
(Rev.) 1965,
O. 43, r. 8.

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Part 29.

7. Where, in proceedings commenced by statement of claim, a party applies for any order under rule 2 or rule 3, the Court may order that the proceedings be before the Court for directions under Part 26 either forthwith or on such date as the Court may appoint.

Directions.
cf. R.S.C.
(Rev.) 1965,
O. 29, r. 7.

8. The Court may make orders under this Part on terms and at any stage of the proceedings.

Terms; time
for order.
cf. R.S.C.
(Rev.) 1965,
O. 29, rr. 1
(3), 2 (4),
8.

PART 29.

RECEIVERS.

1. A receiver shall, within 7 days after his appointment, file a notice specifying an address for service.

Address
for service.

2. (1) Where the Court appoints a receiver, the Court may give directions for the filing by the receiver of security in accordance with this rule.

Security.
cf. R.S.C.
(Rev.) 1965,
O. 30, r. 2
(2).

(2) Where the Court directs the appointment of a receiver, then, unless the Court otherwise orders, a person shall not be appointed receiver pursuant to the direction until he has filed a security in accordance with this rule.

cf. R.S.C.
(Rev.) 1965,
O. 30, r. 2
(1).

(3) Subrules (1) and (2) have effect subject to any provision for the time being in force made by or under any Act.

(4) A security to be filed in accordance with this rule shall be a security approved by the Court that the receiver will account for what he receives as receiver and will deal with what he receives as the Court may direct.

cf. R.S.C.
(Rev.) 1965,
O. 30, r. 2
(2).

(5) Where a security has been filed under this rule, the Court may make orders for the vacation of the security.

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

Remunera-
tion.

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Part 29.

Accounts.
cf. R.S.C.
(Rev.) 1965,
O. 30, r. 4
(1).

4. (1) A receiver shall file accounts at such intervals or on such dates as the Court may direct.

(2) The receiver shall, on the day on which he files an account, obtain an appointment to pass the account and serve the account, with a note of the appointment, on each party interested who has an address for service in the proceedings.

(3) The receiver shall, unless the Court otherwise orders, attend on the appointment to pass the account.

Default.
cf. R.S.C.
(Rev.) 1965,
O. 30, r. 6
(1).

5. (1) Where a receiver—

(a) is required by these rules or by an order or direction of the Court—

(i) to file any account or affidavit;

(ii) to attend on an appointment to pass his account;
or

(iii) to do any other thing; and

(b) does not carry out the requirement,

the Court may make such orders and give such directions as the Court thinks fit, including orders and directions for—

(c) the discharge of the receiver;

(d) the appointment of another receiver; and

(e) the payment of costs.

cf. R.S.C.
(Rev.) 1965,
O. 30, r. 6
(2).

(2) Without limiting subrule (1), where a receiver is required by these rules or by an order or direction of the Court to pay into Court any sum shown by his account as due from him, and he does not carry out the requirement, the Court may charge him with interest at the rate of 5 per cent yearly on that sum while in his possession as receiver.

(3) This rule does not limit the powers of the Court as to the enforcement of orders or as to the punishment of contempt.

Powers.

6. (1) The Court may authorise a receiver to do (either in his own name or in the name of the parties or any of them and either generally or in any particular instance) any act or thing which the parties or any of them might do if of full age and capacity.

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(2) Subrule (1) has effect notwithstanding that the parties or any of them are not of full age and capacity. Part 30.

(3) This rule does not limit the powers of the Court apart from this rule to authorise a receiver to do any act or thing.

7. (1) Where a receiver in any proceedings dies, the Court may, Account on motion in the proceedings, make such orders as the Court thinks on death. fit for the filing and passing of accounts by the representatives of the deceased receiver and for the payment into Court of any amount shown to be due.

(2) The Court shall not make any order under subrule (1) unless notice of the motion has been served on the representatives.

(3) Notice of a motion under this rule may be served in any manner in which a statement of claim may be served.

PART 30.**DISPOSAL OF LAND.**

1. In this Part "land" includes any interest in or right over land. Interpretation.
cf. R.S.C.
(Rev.) 1965,
O. 31, r. 1.
2. In proceedings relating to land, other than proceedings in the Common Law Division for possession of land, the Court may, at any stage of the proceedings— Power to
order sale.
cf. R.S.C.
(Rev.) 1965,
O. 31, r. 1.
 - (a) order that the whole or any part of the land be sold; and
 - (b) order that any party in receipt of the rents or profits of the land or otherwise in possession of the land deliver possession to such person as the Court may direct.
3. (1) This rule applies where the Court has made an order under rule 2 that land be sold. Manner of
sale.
cf. R.S.C.
(Rev.) 1965,
O. 31, r. 2
(1).

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cf. R.S.C. (2) The Court may appoint a party or other person to have
(Rev.) 1965, the conduct of the sale.

O. 31, r. 2

(4) (a).

cf. R.S.C. (3) The Court may permit the person having the conduct of
(Rev.) 1965, the sale to sell the land in such manner as he thinks fit.

O. 31, r. 2

(1).

cf. R.S.C. (4) The Court may direct any party to join in the sale and
(Rev.) 1965, conveyance or transfer or in any other matter relating to the sale.

O. 31, r. 2

(1).

cf. R.S.C. (5) The Court may give such further directions as it thinks fit
(Rev.) 1965, for the purpose of effecting the sale, including directions—

O. 31, r. 2

(4) (b)–

(g).

(a) fixing the manner of sale, that is to say, whether sale is to be by contract conditional on approval of the Court, by private treaty, by public auction, by tender, or by some other manner;

(b) fixing a reserve or minimum price;

(c) requiring payment of the purchase money into Court or to trustees or other persons;

(d) for settling the particulars and conditions of sale;

(e) for obtaining evidence of value; or

(f) fixing the remuneration to be allowed to any auctioneer, real estate agent or other person.

Certificate of sale. 4. (1) Where, pursuant to this Part, land is sold by public auction, the auctioneer shall, unless the Court otherwise orders, certify the result of the sale.

cf. R.S.C. (Rev.) 1965,

O. 31, r. 3

(1).

cf. R.S.C. (2) Where, pursuant to this Part, land is sold otherwise than
(Rev.) 1965, by public auction, the solicitor of the person having the conduct of
O. 31, r. 3 the sale shall, unless the Court otherwise orders, certify the result of
(1). the sale.

cf. R.S.C. (3) The Court may require that the certificate be verified by
(Rev.) 1965, affidavit of the person certifying.

O. 31, r. 3

(1).

cf. R.S.C. (4) The person having the conduct of the sale shall file the
(Rev.) 1965, certificate and affidavit if any.

O. 31, r. 3

(2).

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5. Where the Court makes an order for the mortgage, exchange or partition of land, rules 3 and 4, so far as applicable and with the necessary modifications, apply to the mortgage, exchange or partition as those rules apply to a sale under this Part.

Mortgage, exchange or partition.
cf. R.S.C.
(Rev.) 1965,
O. 31, r. 4.

PART 31.

SEPARATE DECISION OF QUESTIONS.

1. In this Part, "question" includes any question or issue in any proceedings, whether of fact or law or partly of fact and partly of law, and whether raised by pleadings, agreement of parties or otherwise.

Interpretation.
cf. R.S.C.
(Rev.) 1965,
O. 33, r. 3.

2. The Court may make orders for—

- (a) the decision of any question separately from any other question, whether before, at or after any trial or further trial in the proceedings; and
- (b) the statement of a case and the question for decision.

Order for decision.
cf. R.S.C.
(Rev.) 1965,
O. 33, r. 3.

3. Where the Court makes an order under rule 2 for the decision of a question of law, the Court may further order that the proceedings be removed into the Court of Appeal.

Removal into Court of Appeal.

4. (1) Any parties to proceedings in which a case is stated under rule 2 may, with the leave of the Court, agree that, on any question being decided in the sense specified in the agreement, a specified direction for entry of judgment or a specified order shall be made.

Agreed result.

(2) On that question being so decided, the Court may make the agreed direction or order.

cf. Court of Appeal Rules, r. 35 (2).

(3) Where an agreement is made pursuant to subrule (1) before a case is stated, the terms of the agreement shall be set out in the stated case.

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Record, etc. of decision. 5. Where any question is decided under this Part, the Court shall, subject to rule 6, either—

- (a) cause the decision to be recorded; or
- (b) direct the entry of such declaratory judgment, or make such declaratory order, as the nature of the case requires.

Disposal of proceedings. cf. R.S.C. (Rev.) 1965, O. 33, r. 7.

6. Where the decision of a question under this Part—

- (a) substantially disposes of the proceedings or of the whole or any part of any claim for relief in the proceedings; or
- (b) renders unnecessary any trial or further trial in the proceedings or on the whole or any part of any claim for relief in the proceedings,

the Court may, as the nature of the case requires—

- (c) dismiss the proceedings or the whole or any part of any claim for relief in the proceedings; or
- (d) direct the entry of any judgment; or
- (e) make any other order.

PART 32.

STATED CASES.

DIVISION 1.—*External Stated Cases.*

Application. 1. This Division applies to stated cases not stated in the Court and to stated cases under section eighteen of the Supreme Court (Summary Jurisdiction) Act, 1967.

Commencement of proceedings. 2. (1) Proceedings in the Court on a stated case shall be commenced by summons claiming the decision or determination of the questions and matters stated for decision or determination in the stated case.

(2) The plaintiff shall file and serve the stated case with the summons.

Removal into Court of Appeal. 3. Where a stated case is before the Court in a Division, the Court in that Division may order that the proceedings be removed into the Court of Appeal.

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*Supreme Court.***FOURTH SCHEDULE—continued.****No. 52, 1970****DIVISION 2.—Stated Cases Generally.****Part 32.**

4. A stated case shall—

Form and
contents.

(a) be divided into paragraphs numbered consecutively ;

cf. Court
of Appeal
Rules,
r. 33 (1).

(b) state concisely the facts and documents necessary to enable the Court to decide the questions arising or otherwise to hear and determine the proceedings on the stated case ; and

(c) state the questions and matters to be decided or determined.

5. The Court and the parties may refer to the whole contents of a document stated in a stated case.

Documents.
cf. C.A.R.,
r. 33 (2).

6. The Court may draw inferences from the facts and documents stated in a stated case.

Inferences.
cf. C.A.R.,
r. 33 (3).

7. (1) Where it appears to the Court that a stated case does not state the facts and documents sufficiently to enable the Court to decide the questions arising or otherwise to hear and determine the proceedings on the stated case, the Court may—

Insufficient
case.

(a) with the consent of all parties interested, add to or otherwise alter the stated case ;

(b) send the stated case back to the Division or court in which it is stated or to the judge, justice or person by whom it is stated for the purpose of addition or other alteration ; or

(c) receive evidence, make findings of fact, and add to the stated case in accordance with the findings of fact of the Court.

(2) The Court shall not exercise its powers under subrule (1) (c) in respect of a stated case in any criminal proceedings.

8. (1) This rule applies to proceedings on a stated case in which any party is entitled to dispute any fact or document stated in a stated case, including a stated case under section 27 of the Real Property Act, 1900, or under section 124 of the Stamp Duties Act, 1920.

Disputed
facts.

(2) The Court may receive evidence, make findings of fact, and add to or alter the stated case in accordance with the findings of fact of the Court.

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PART 33.

SETTING DOWN FOR TRIAL.

Application. 1. (1) This Part applies to proceedings commenced by statement of claim.
cf. R.S.C. (Rev.) 1965,
O. 34, r. 1
(1).

(2) This Part applies to proceedings commenced by summons to such extent and with such modifications as the Court may direct.

Place of trial. 2. (1) Subject to subrule (2), Sydney shall, unless the Court otherwise orders, be the place of trial.

(2) Where, in proceedings in the Common Law Division, the plaintiff, by his statement of claim, names a place for trial, that place shall, unless the Court otherwise orders, be the place of trial.

(3) The Court may fix separate places of trial for any questions or issues.

Mode of trial. 3. Subject to the Act, the Court may order that any question or issue be tried with a jury and that any other question or issue be tried without a jury.

Extent of trial. 4. Proceedings shall, unless the Court otherwise orders, be set down for trial generally, that is to say, for trial of all the questions and issues arising on every claim for relief in the proceedings.

Notice to set down for trial. 5. (1) A party may, after the pleadings are closed, file a notice to set down for trial, that is to say, a notice requesting that the proceedings be set down for trial.

(2) The notice to set down for trial shall state—

(a) the place for trial as fixed by or under rule 2;

(b) whether the proceedings are to be set down for trial generally or for the trial of specified issues;

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(c) whether the trial is to be with a jury ; and

Part 34.

(d) whether (in the case of proceedings in the Common Law Division) the proceedings are entered in the commercial list.

(3) A party filing notice to set down for trial shall, on the day of filing, serve the notice on each other party who has an address for service in the proceedings.

6. Where a plaintiff does not, within six weeks after the pleadings are closed, set the proceedings down for trial, the Court, on motion by any other party, may, on terms, dismiss the proceedings or make such other order as the Court thinks fit.

Want of prosecution.
cf. R.S.C. (Rev.) 1965, O. 34, r. 2 (1).

7. Where notice to set down for trial has been filed, but the Court considers that the proceedings are not ready for trial, the Court may give directions as to the steps to be taken to make the proceedings ready for trial.

Directions before setting down.

8. (1) Where notice to set down for trial has been filed, and the Court considers that the proceedings are ready for trial, the Court shall set the proceedings down for trial in accordance with this rule.

Setting down for trial.

(2) The Court shall set the proceedings down—

(a) for trial at the place fixed by or under rule 2 ;

(b) for trial on a specific date ; and

(c) either for trial generally or for the trial of specific issues, in accordance with rule 4.

9. The Court shall, not less than 14 days before the date for which the proceedings are set down for trial, give notice of trial to each party who has an address for service in the proceedings.

PART 34.

TRIAL.

1. For the purposes of this Part—

(a) where the burden of proof on any issue lies on the plaintiff, he shall be the beginning party and the defendant shall be the opposite party ; and

Interpretation.
cf. R.S.C. (Rev.) 1965, O. 35, r. 7 (2) (6).

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- (b) where the burden of proof on all the issues lies on the defendant, he shall be the beginning party and the plaintiff shall be the opposite party.

Applica-
tion.

2. (1) This Part applies to proceedings commenced by statement of claim.

(2) Subject to rule 3, this Part applies to proceedings commenced by summons to such extent and with such modifications as the Court may direct.

Requisition
for jury.

3. (1) A requisition for trial with a jury for the purposes of section 86 of the Act shall be filed—

- (a) if the proceedings are commenced by statement of claim—within 14 days after the pleadings are closed ;
- (b) if the proceedings are commenced by summons and the requisition is filed by a plaintiff—within 14 days after the filing of the summons ; or
- (c) if the proceedings are commenced by summons and the requisition is filed by a defendant—within 14 days after the expiration of the time limited for his appearance.

(2) A party filing a requisition for trial with a jury shall, on the day of filing, serve the requisition on each other party.

Time and
place of
trial.

4. (1) Where proceedings have been set down for trial under Part 33 for a specified date, the trial may be held on that or any later date.

(2) Notwithstanding subrule (1) and notwithstanding the setting down of any proceedings for trial under Part 33, the Court may make such orders as it thinks fit for fixing the time and place of trial.

Absence
of party.

5. (1) If, when a trial is called on, any party is absent, the Court may, on terms—

- (a) order that the trial be not had unless the proceedings are again set down for trial, or unless such other steps are taken as the Court may direct ;

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(b) proceed with the trial generally or so far as concerns any Part 34.
claim for relief in the proceedings; or

(c) adjourn the trial.

(2) Where the Court proceeds with a trial in the absence of a party, and at or at the conclusion of the trial a verdict is given or a finding or assessment is made, the Court, on motion by that party, may, on terms, set aside or vary the verdict, finding or assessment, and may give directions for the further conduct of the proceedings.

(3) Subrule (2) does not enable the Court to vary the verdict, finding or assessment of a jury at a trial except with the consent of each interested party present at the trial.

(4) A motion under subrule (2) must be made on notice and the notice must be filed and served not more than 7 days after giving of the verdict or the making of the finding or assessment.

6. (1) The Court may give directions as to the order of evidence and addresses and generally as to the conduct of the trial.

Conduct
of the trial.
cf. R.S.C.
(Rev.) 1965,
O. 35, r. 7
(1).

(2) Subject to subrule (1)—

(a) where the only parties are one plaintiff and one defendant, and there is no cross-claim, the order of evidence and addresses shall be as provided by the following subrules of this rule; and

cf. R.S.C.
(Rev.) 1965,
O. 35, r. 7
(1).

(b) in any other case, the order of evidence and addresses shall be as provided by the following subrules of this rule, subject to such modifications as the nature of the case may require.

(3) The beginning party may make an address opening his case and may then adduce his evidence.

cf. R.S.C.
(Rev.) 1965,
O. 35, r. 7
(2).

(4) Where, at the conclusion of the evidence for the beginning party, no document or thing has been admitted in evidence on tender by the opposite party, the opposite party may elect to adduce evidence or not to adduce evidence.

cf. R.S.C.
(Rev.) 1965,
O. 35, r. 7
(3).

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cf. R.S.C. (Rev.) 1965, O. 35, r. 7 (3). (5) If, pursuant to subrule (4), the opposite party elects not to adduce evidence, the beginning party may make an address closing his case and then the opposite party may make an address stating his case.

cf. R.S.C. (Rev.) 1965, O. 35, r. 7 (4). (6) If, pursuant to subrule (4), the opposite party elects to adduce evidence, the opposite party may make an opening address before adducing his evidence and after adducing his evidence he may make an address closing his case and thereupon the beginning party may make an address closing his case.

Nonsuit. 7. (1) This rule applies to a trial with a jury of a common law claim.

(2) Where the plaintiff is the beginning party, a defendant may, at any time after the conclusion of the evidence for the plaintiff in his case in chief and before verdict, move for an order of dismissal of the proceedings, or dismissal of the proceedings so far as concerns any cause of action on which the plaintiff claims against that defendant, on the ground that, on the evidence given, a verdict for the plaintiff could not be supported.

(3) The plaintiff may decline to argue the question raised by the defendant's motion under subrule (2).

(4) Unless the plaintiff declines to argue the question pursuant to subrule (3), the Court shall, if the ground of the motion of the defendant is established, make an order of dismissal of the proceedings, or of dismissal of the proceedings so far as concerns the cause of action in question, as the nature of the case requires.

(5) If the plaintiff declines to argue the question, or if the motion of the defendant is refused, the defendant may adduce evidence or further evidence.

No case
to
answer.

8. (1) This rule applies to a trial to which rule 7 does not apply.

(2) Where the plaintiff is the beginning party, a defendant may, at any time after the conclusion of the evidence for the plaintiff in his case in chief, move the Court for an order directing the entry of judgment for that defendant in the proceedings generally or on any claim for relief in the proceedings on the ground that, on the evidence given, an order directing the entry of judgment for the plaintiff could not be supported.

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(3) Where the ground of a defendant's motion under subrule (2) is established, the Court may direct the entry of judgment for the defendant accordingly. Part 35.

(4) Where a defendant's motion under subrule (2) is refused, the defendant may not, without leave of the Court, adduce evidence in the proceedings or on the claim for relief in question, as the case may be.

9. The associate, or other proper officer present at the trial, shall be clerk at the trial and shall maintain and complete a record of the trial. Record.
cf. General
Rules of
the Court,
O. 2, r. 3;
R.S.C.
(Rev.) 1965,
O. 35, r. 10.

10. (1) Where a party dies after the verdict or finding on the issues of fact, the Court may by order direct the entry of judgment, and judgment may be entered, notwithstanding the death. Death
before
judgment.
cf. R.S.C.
(Rev.) 1965,
O. 35, r. 9.

(2) Subrule (1) does not affect the power of the Court to make orders under Part 8 rule 10 (which relates to change of parties by reason of death, etc.). cf. R.S.C.
(Rev.) 1965,
O. 35, r. 9.

PART 35.**ASSESSMENT.**

1. (1) Subject to subrule (2), where judgment is entered for damages to be assessed, the proceedings shall, unless the Court otherwise orders, be set down in accordance with Part 33 for trial for assessment of damages under the judgment. Damages
under
judgment.

(2) Where judgment is entered against any party for damages to be assessed and the proceedings are carried on against that party on any claim for relief not determined by the judgment or against any other party, the trial for assessment of damages under the judgment shall, unless the Court otherwise orders, be held together with any other trial in the proceedings and the proceedings shall be set down for trial accordingly. cf. R.S.C.
(Rev.) 1965,
O. 37, r. 3.

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Value of
goods
under
judgment.
cf. R.S.C.
(Rev.) 1965,
O. 37, r. 5.

2. Rule 1 applies in relation to a judgment for the value of goods to be assessed, with or without damages to be assessed, as it applies to a judgment for damages to be assessed, and references in rule 1 to the assessment of damages shall be construed accordingly.

Damages
to time
of assess-
ment.
cf. R.S.C.
(Rev.) 1965,
O. 37, r. 6;

3. (1) Where damages are to be assessed in respect of—

(a) any continuing cause of action ;

(b) repeated breaches of recurring obligations ; or

(c) intermittent breaches of a continuing obligation,

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Coal
Board v.
Galley*
[1958] 1
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the damages shall be assessed down to the time of assessment, including damages for breaches occurring after the commencement of the proceedings.

cf. R.S.C.
(Rev.) 1965, this Part or otherwise.
O. 37. r. 6.

(2) Subrule (1) applies to the assessment of damages under

PART 36.

EVIDENCE: GENERAL.

Interpre-
tation.

1. In this Part, unless the context or subject matter otherwise indicates or requires—

“issue at a trial” means an issue of fact at a trial arising on any claim for relief in the proceedings, and includes a question of fact at a trial arising on the assessment of damages or of the value of goods.

“trial” means a trial in proceedings commenced by statement of claim, and includes an assessment of damages or of the value of goods in the Common Law Division in proceedings commenced by statement of claim.

Witnesses
at a trial.
cf. R.S.C.
(Rev.) 1965,
O. 38, r. 1.

2. (1) Subject to subrules (2) and (3), the evidence of any witness on any issue at a trial shall be given orally before the Court.

cf. Act
No. 24,
1901,
s. 57 (1).

(2) The Court may, on terms, order that evidence of particular facts may be given by affidavit.

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(3) Subrule (1) applies subject to the Act and to the rules and subject to any provision for the time being made by or under any other Act and subject to any agreement between the parties. cf. R.S.C. (Rev.) 1965, O. 38, r. 1.

3. (1) Subject to rule 2, the evidence in chief of any witness may, unless the Court otherwise orders, be given by affidavit. Witnesses on other occasions. cf. R.S.C. (Rev.) 1965, O. 38, r. 2 (3).

(2) Where, under subrule (1), the evidence in chief of a witness may be given by affidavit, his evidence in chief shall not, unless the Court otherwise orders, be given orally.

4. (1) Subject to subrule (4), subrules (2) and (3) apply where undue delay or hardship would otherwise be caused. Hearsay and copies. cf. General Rules of the Court, O. 27, r. 1A.

(2) Where a statement on information and belief is made by a deponent in an affidavit, or by a witness being examined orally, and the deponent or witness gives the source and ground of the information, the statement shall not be inadmissible on the ground that it is hearsay. cf. R.S.C. (Rev.) 1965, O. 14, r. 2 (2); O. 41, r. 5 (2).

(3) Where a deponent swears in an affidavit, or a witness being examined orally states, that a document is a copy of an original, the document shall not be inadmissible as evidence of the contents of the original on the ground that the original is not produced. cf. *Spencer v. Bailey* (1892) 93 L.T.Jo. 223.

(4) This rule does not apply to evidence on an issue at a trial. cf. R.S.C. (Rev.) 1965, O. 41, r. 5 (2).

5. (1) Subject to subrule (2), evidence taken in proceedings may be used subsequently in the proceedings. Earlier evidence in the proceedings. cf. R.S.C. (Rev.) 1965, O. 38, r. 12

(2) Subrule (1) does not enable the use, as evidence on any issue at a trial, of evidence taken before the trial, but—

(a) evidence at a trial may be used on an assessment of damages or of the value of goods in the same proceedings; and

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- (b) evidence taken in proceedings may, with the leave of the Court, be used as evidence on any issue at a trial in the proceedings in relation to the proof of particular facts.

Depositions. 6. (1) Subject to this Part, a deposition taken in any proceedings is not admissible in evidence in the proceedings unless taken pursuant to Part 27.
 cf. R.S.C. (Rev.) 1965, O. 38, r. 9
 (1) (a).

cf. R.S.C. (Rev.) 1965, O. 38, r. 9
 (1) (b). (2) Subject to subrule (3), and subject to section 82 of the Act, a deposition taken in any proceedings is not admissible in evidence on any issue at a trial in the proceedings unless—

- (a) the party against whom the deposition is tendered consents to the admission; or
 (b) the deponent is dead or cannot be compelled or is unable through sickness or other infirmity to attend the trial.

(3) The Court may admit a deposition in evidence on any issue at a trial in relation to the proof of particular facts.

(4) Except as evidence on any issue at a trial, a deposition taken in any proceedings is admissible in evidence in the proceedings but the Court may direct that the deposition be not admissible unless the party tendering it produces the deponent for cross-examination.

Evidence in other proceedings. 7. (1) A party may, with the leave of the Court, but saving all just exceptions, read evidence taken, or an affidavit filed, in other proceedings.
 cf. R.S.C. (1883), O. 37, r. 3.

cf. R.S.C. (1883), O. 37, r. 3. (2) Subrule (1) does not enable evidence taken, or an affidavit filed, in other proceedings to be read as evidence on any issue at a trial, except in relation to the proof of particular facts.

Plans, photographs and models. 8. (1) Where a party intends to tender any plan, photograph or model at a trial or hearing, he shall, not less than 7 days before the commencement of the trial or hearing, give the other parties an opportunity to inspect it and to agree to its admission without proof.
 cf. R.S.C. (Rev.) 1965, O. 38, r. 5.

(2) Non-compliance with subrule (1) shall not affect the admissibility of a plan, photograph or model.

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9. (1) A document purporting to be marked with a seal of the Court is admissible in evidence without further proof.

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Proof of
Court
documents.
cf. R.S.C.
(Rev.) 1965,
O. 38, r. 10
(2).

(2) An office copy of a document filed in or issued out of the Court is admissible in evidence in all proceedings and between all parties to the same extent as the original document would be admissible.

cf. R.S.C.
(Rev.) 1965,
O. 38, r. 10
(1).

(3) A document purporting to be marked with a seal of the Court and to be a copy of a document filed in or issued out of the registry is admissible as an office copy of the latter document without further proof.

cf. R.S.C.
(Rev.) 1965,
O. 38, r. 10
(2).

10. Where, for the purpose of any proceedings, a person, by request in writing, requires a registrar to produce to the Court or to a judge or officer of the Court any document in the custody of the registrar, the registrar shall, unless the Court otherwise orders, produce the document in accordance with the request.

Production
of Court
documents.

11. (1) A document purporting to contain the written consent of a person to act as tutor of a disable person, to act as trustee, to act as receiver, or to act in any other office on appointment by the Court, and purporting to be executed and authenticated in accordance with subrule (2), is evidence of the consent.

Consent of
person, etc.
cf. R.S.C.
(Rev.) 1965,
O. 38, r. 11.

(2) A document is sufficiently executed and authenticated for the purposes of subrule (1)—

- (a) where the consenting person is not a corporation, if the document is signed by the consenting person and the signature is verified by some other person; or
- (b) where the consenting person is a corporation, if the seal of the corporation is affixed to the document in the presence of and attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, council or other governing body of the corporation.

cf. R.S.C.
(Rev.) 1965,
O. 38, r. 11.

cf. Act No.
6, 1919,
s. 51A (1).

12. (1) The Court may make orders for—

- (a) the attendance of any person for the purpose of being examined; or

Attendance
and
production.
cf. R.S.C.
(Rev.)
1965, O. 38,
r. 13 (1).

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- (b) the attendance of any person and production by him of any document or thing specified or described in the order.

cf. R.S.C.

(2) An order under subrule (1) may be made for the attendance of any person before, and production by him to, the Court or a Judge or any officer of the Court, examiner, arbitrator, or other person authorised to take evidence, on any trial, hearing or other occasion.

(Rev.) 1965, O. 38, r. 13 (1).

- (3) Subrules (1) and (2) apply whether or not the person for whose attendance the order is made has been required to attend by subpoena.

Privilege.

cf. R.S.C.

(Rev.) 1965, O. 38, r. 13 (2).

13. (1) Where the Court, by subpoena or otherwise, orders any person to produce any document or thing, and any person makes and substantiates sufficient lawful objection to production on grounds of privilege, the Court shall not compel production of that document or thing except production to the Court for the purpose of ruling on the objection.

(2) Where a question is put to a person in the course of examination, and any person makes and substantiates sufficient lawful objection on grounds of privilege to the question being answered, the Court shall not compel an answer to the question.

(3) Subrule (1) applies where an order is made for production to, and subrule (2) applies where a question is put to a person in the course of examination before, the Court or a Judge or any officer of the Court, or any examiner, arbitrator or other person authorised to receive evidence, whether on a trial or hearing or on any other occasion.

cf. 10 & 11, Geo. 6, c. 44, s. 28 (1).

(4) This rule does not affect any rule of law which authorises or requires the withholding of any document or thing or the refusal to answer any question on the ground that the disclosure of the document or thing or the answering of the question would be injurious to the public interest.

(5) This rule does not apply to an objection to produce any document or thing or to answer any question on the ground mentioned in subrule (4).

Attendance of prisoner in proceedings in the Court.

14. (1) This rule applies to an application for an order under section 72 of the Act for the purpose of the examination of a person in proceedings in the Court.

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(2) The applicant shall, not less than two days before moving for the order, give to the Crown Solicitor, by letter or otherwise, notice in writing of his intention to apply for the order. *cf. General Rules of the Court, O. 16, r. 11 (2).*

(3) The applicant may apply for the order by filing an affidavit of the facts on which he relies and leaving with the registrar a form of the order which he wants. *cf. G.R.C., O. 16, r. 11 (1).*

(4) The applicant need not, unless the Court otherwise directs, file or serve notice of motion for the order. *cf. G.R.C., O. 16, r. 11 (1).*

15. (1) The procedure for obtaining an order under section 72 of the Act for the purpose of the examination of a person otherwise than in proceedings in the Court shall be as stated in this rule. *Attendance of prisoner in other cases.*

(2) The person seeking the order shall, not less than two days before commencing proceedings for the order, give to the Crown Solicitor, by letter or otherwise, notice in writing of his intention to commence the proceedings. *cf. G.R.C., O. 16, r. 11 (2).*

(3) Proceedings for the order shall be commenced in the Common Law Division by summons without joining any person as defendant.

(4) The plaintiff shall file with the summons an affidavit of the facts on which he relies and shall leave with the Prothonotary a form of minute of order which he wants. *cf. G.R.C., O. 16, r. 11 (1).*

(5) The Court may make the order at any time after the filing of the summons and affidavit under subrule (4) and without attendance of the plaintiff or any other person. *cf. G.R.C., O. 16, r. 11 (1).*

16. Where a party to any proceedings serves on another party notice requiring the party served to produce any document or thing for the purpose of evidence at any trial or hearing in the proceedings, or before any judge, officer, examiner or other person having authority to take evidence in the proceedings and the document or thing is in the possession, custody or power of the party served, the party served shall, unless the Court otherwise orders, produce the document or thing in accordance with the notice, without the need for any subpoena for production. *Production on notice.*

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Part 37.

PART 37.

SUBPOENAS.

- Interpretation.**
cf. General Rules of the Court, O. 16, r. 2.
1. In this Part, unless the context or subject matter otherwise indicates or requires—
- “issuing officer” means the registrar or a clerk of petty sessions in a place designated by the Chief Justice under Part 7 rule 6 (2).
- “person named” means, in relation to a subpoena, the person to whom the subpoena is addressed.
- “subpoena for production” means an order in writing requiring the person named to attend as directed by the order and produce a document or thing for the purpose of evidence.
- “subpoena for testimony” means an order in writing requiring the person named to attend as directed by the order for the purpose of giving evidence.
- Power to issue.**
2. The Court may, in any proceedings, issue a subpoena for testimony or a subpoena for production in the prescribed form or in such other form as the Court may direct for the attendance on any trial or other occasion of the person named before the Court or before any Judge, officer, examiner or other person having authority to take evidence.
- Conduct money.**
cf. G.R.C., O. 16, r. 6 proviso (a).
3. A subpoena shall not require the person named to attend or testify or produce any document or thing on any day on which his attendance is required unless a sum sufficient to meet the reasonable expenses of the person named of carrying out the requirements of the subpoena in relation to that day is paid or tendered to him at the time of service of the subpoena or not later than a reasonable time before that day.
- Production by non-party.**
cf. G.R.C., O. 16, r. 9.
4. (1) Where the person named in a subpoena for production of any document or thing, being a subpoena requiring attendance before the Court or a Judge or officer of the Court, is not a party to the proceedings, the subpoena shall, unless the Court otherwise orders, permit him to produce the document or thing to the registrar not later than the day before the first date on which his attendance is required, instead of attending and producing the document or thing as required by the subpoena.

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(2) Where a document or thing is produced to the registrar pursuant to subrule (1), the registrar shall— *cf. G.R.C., O. 16, r. 10.*

- (a) give a receipt to the person producing the document or thing; and
- (b) produce the document or thing as the nature of the case requires or as the Court may direct.

(3) This rule does not apply to so much of a subpoena as requires the person named to attend to testify in any proceedings.

5. (1) Where, in any proceedings, the person named in a subpoena for production is an officer of a bank, and the bank is not a party to the proceedings, and the subpoena requires the officer to produce any banker's book the contents of which can be proved under Part IV of the Evidence Act, 1898, the subpoena shall, unless the Court for special cause otherwise orders, permit the officer to produce proof of the relevant entries in the banker's book in accordance with that Part, instead of producing the banker's book.

(2) In subrule (1) each of the expressions "officer of a bank", "bank" and "banker's book" has the meaning which it has in Part IV of the Evidence Act, 1898.

(3) An issuing officer who is requested to issue a subpoena for production shall not be concerned to inquire whether subrule (1) applies to the subpoena, but the Court may set aside as irregular a subpoena which does not comply with subrule (1).

6. (1) On request by a party, an issuing officer shall, unless the Court otherwise orders, issue a subpoena for testimony or a subpoena for production or a subpoena for both testimony and production.

(2) A subpoena issued by the registrar shall be issued under seal.

(3) A subpoena issued by a clerk of petty sessions shall bear the stamp of the court of petty sessions of which he is clerk.

(4) Subject to subrule (5) a party requesting the issue of a subpoena shall file with the issuing officer a copy of the proposed subpoena and produce a form of the subpoena.

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(5) Where a party requests the issue of several subpoenas for testimony in similar terms but addressed to different persons, he need file only one copy, but that copy must contain the name of each person to whom any of the subpoenas is addressed.

(6) Where a clerk of petty sessions issues a subpoena, he shall note the date of issue on the copy filed with him and shall send the copy to the registrar.

(7) A copy of a subpoena filed under this rule shall not be open to inspection by any person except by leave of the Court.

Service.

7. (1) Service of a subpoena shall be effected in accordance with this rule and not otherwise.

cf. G.R.C.,
O. 16, r. 6.

(2) Service of a subpoena may be effected by handing it to the person named.

cf. G.R.C.,
O. 16, r. 6

(3) If, on tender of a subpoena to the person named, he refuses to accept it, the subpoena may be served by putting it down in his presence after he has been told of the nature of the subpoena.

(4) Where the person named in a subpoena is a party and has a solicitor in the proceedings, the subpoena may, with the consent of the solicitor, be served on the person named by leaving it at his address for service.

Setting
aside.

8. (1) The Court may, on motion by the person named in a subpoena, set aside the subpoena wholly or in part.

(2) Notice of a motion under subrule (1) must be filed and must be served on the party on whose request the subpoena was issued.

PART 38.

AFFIDAVITS.

Time for
swearing.
cf. Consoli-
dated
Equity
Rules of
1902, r. 19A.

1. An affidavit for use in any proceedings may be sworn before or after the commencement of the proceedings.

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2. (1) An affidavit shall be made in the first person.

Form.

cf. R.S.C.
(Rev.) 1965,
O. 41, r. 1
(4).

- (2) The body of an affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

cf. R.S.C.
(Rev.) 1965,
O. 41, r. 1
(6).

- (3) Where it appears to the person before whom an affidavit is sworn that the deponent is illiterate or blind, he must certify in or below the jurat that—

cf. R.S.C.
(Rev.) 1965,
O. 41, r. 3.

- (a) the affidavit was read in his presence to the deponent; and
(b) the deponent seemed to understand the affidavit.

- (4) Where an affidavit is made by an illiterate or blind deponent and a certificate in accordance with subrule (3) does not appear on the affidavit, the affidavit may not be used unless the Court is satisfied that the affidavit was read to the deponent and that he seemed to understand it.

cf. R.S.C.
(Rev.) 1965,
O. 41, r. 3.

- (5) Each page of an affidavit shall be signed by the deponent and by the person before whom it is sworn.

cf. General
Rules of
the Court,
O. 27, r. 5.

- (6) An affidavit shall be endorsed with the name of the deponent and the date of swearing.

cf. G.R.C.,
O. 27, r. 8.

3. (1) Where there is any interlineation, erasure or other alteration in the jurat or body of an affidavit—

Alterations.

cf. R.S.C.
(Rev.)

- (a) the affidavit may nevertheless be filed, unless the Court otherwise orders; but

1965, O. 41,
r. 7 (1).

- (b) the affidavit may not be used without the leave of the Court unless the person before whom the affidavit is sworn initials the alteration and, in the case of an erasure, re-writes in the margin of the affidavit any words or figures written on the erasure and signs or initials them.

- (2) Subrule (1) applies to an account verified by affidavit as if the account were part of the affidavit.

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Part 38.

Annexures
and ex-
hibits.cf. R.S.C.
(Rev.)
1965, O. 41,
r. 11 (1).

4. (1) A document to be used in conjunction with an affidavit shall, where convenient, be annexed to the affidavit.

cf. R.S.C.
(Rev.)
1965,
O. 41, r. 11
(1).

(2) Where annexure is inconvenient, the document may be made an exhibit to the affidavit.

cf. R.S.C.
(Rev.)
1965, O. 41,
r. 11 (2).

(3) An exhibit to an affidavit must be identified by a certificate entitled in the same manner as the affidavit and made by the person before whom the affidavit is sworn.

Irregu-
larity.cf. R.S.C.
(Rev.)
1965, O. 41,
r. 4.

5. (1) An affidavit may, unless the Court otherwise orders, be filed notwithstanding any irregularity in form.

cf. R.S.C.
(Rev.)
1965, O. 41,
r. 4.

(2) An affidavit may, with the leave of the Court, be used notwithstanding any irregularity in form.

Filing.

cf. R.S.C.
(Rev.)
1965, O. 41,
r. 10 (1).

6. An affidavit may not be used without leave of the Court unless it has been filed.

Service.

7. The Court may give directions concerning the service of affidavits.

Scandal, etc.

cf. R.S.C.
(Rev.)
1965, O. 41,
r. 6.

8. Where there is scandalous, irrelevant or otherwise oppressive matter in an affidavit, the Court may order that—

- (a) the matter be struck out; or
- (b) the affidavit be taken off the file.

Cross-
examina-
tion.cf. G.R.C.,
O. 27, r. 12.

9. (1) A party may require the attendance for cross-examination of a person making an affidavit.

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(2) A requirement under subrule (1) shall be made to the party filing or proposing to use the affidavit. **Part 39.**

(3) Where the attendance of a person is required under subrule (1) and he does not attend, his affidavit shall not be used without the leave of the Court.

(4) Where a person making an affidavit is cross-examined, the party using the affidavit may re-examine him.

PART 39.

COURT EXPERT.

1. This Part does not apply to a question or matter to be tried before a jury.

Application.
cf. R.S.C.
(Rev.)
1965, O. 32,
r. 16; O. 40,
r. 1 (1).

2. (1) Where a question for an expert witness arises in any proceedings the Court may, at any stage of the proceedings, on application by a party, on terms—

Appoint-
ment.

- (a) appoint an expert as court expert to inquire into and report upon the question;
- (b) authorise the court expert to inquire into and report upon any facts relevant to his inquiry and report on the question;
- (c) direct the court expert to make a further or supplemental report or inquiry and report; and
- (d) give such instructions as the Court thinks fit relating to any inquiry or report of the court expert.

cf. R.S.C.
(Rev.)
1965, O. 40,
rr. 1 (1)
(3), 2 (2),
5 (2).

(2) In subrule (1), "expert", in relation to any question, means a person who has such knowledge or experience of, or in connection with, that question, or questions of the character of that question, that his opinion on that question would be admissible in evidence.

cf. R.S.C.
(Rev.)
1965,
O. 40, r. 1
(4).

(3) Instructions pursuant to subrule (1) (d) may include provision concerning any experiment or test for the purposes of any inquiry or report of a court expert.

cf. R.S.C.
(Rev.) 1965,
O. 40, r. 3.

3. (1) The court expert shall send his report to the registrar, together with so many copies of the report as the Court may direct.

Report.
cf. R.S.C.
(Rev.) 1965,
O. 40, r. 2

FOURTH (1).

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cf. R.S.C. (Rev.) 1965, O. 40, r. 2 (1). (2) The registrar shall send a copy of the report to each party interested in the question.

cf. R.S.C. (Rev.) 1965, O. 40, r. 2 (3). (3) The report shall, unless the Court otherwise orders, be admissible in evidence on the question on which it is made, but shall not be binding on any party except to the extent to which that party agrees to be bound by it.

Cross-examination. cf. R.S.C. (Rev.) 1965, O. 40, r. 4. 4. Upon application made by any party within 14 days after receiving a copy of a court expert's report, the Court shall make an order for the cross-examination of the court expert by all the parties, either—

- (a) before the Court, at the trial or at some other time ; or
- (b) before an examiner.

Remuneration. cf. R.S.C. (Rev.) 1965, O. 40, r. 5 (1). 5. (1) The remuneration of the court expert shall be fixed by the Court and shall include—

- (a) a fee for his report ; and
- (b) a proper sum for each day during which he is required to attend before the Court or before an examiner.

cf. R.S.C. (Rev.) 1965, O. 40, r. 5 (2). (2) The parties shall be jointly and severally liable to the court expert to pay the amount fixed by the Court for his remuneration.

(3) The Court may, on application by any party or by the court expert, make orders in the proceedings for payment in or towards discharge of the liability of any party under subrule (2).

cf. R.S.C. (Rev.) 1965, O. 40, r. 5 (2). (4) Subrules (2) and (3) do not affect the powers of the Court as to costs.

Further expert evidence. 6. Where, pursuant to this Part, a court expert has made a report on any question—

- (a) any party may adduce evidence on the same question of one other expert but only if he has, at a reasonable time before the commencement of the trial, hearing or examination at which he adduces the evidence, given to the other interested parties notice of his intention to do so ; but

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- (b) subject to paragraph (a), a party shall not adduce evidence on the same question of any other expert, except with the leave of the Court. Part 40.

7. The Court may, in any proceedings in the Equity Division, obtain the assistance of any person specially qualified to advise on any matter arising in the proceedings, may act upon his opinion, and may make orders for his remuneration. Experts in Equity Division.

cf. Act No.
24, 1901,
s. 7 (1);
R.S.C.
(Rev.) 1965,
O. 32, r. 16.

PART 40.

JUDGMENTS AND ORDERS: GENERAL.

1. The Court may, at any stage of any proceedings, on the application of any party, direct the entry of such judgment or make such order as the nature of the case requires, notwithstanding that the applicant does not make a claim for relief extending to that judgment or order in any originating process. General relief. cf. R.S.C. (Rev.) 1965, O. 29, r. 1 (1).

2. Where the Court directs the entry of any judgment or makes any order and the opinion of the Court or of any Judge or officer of the Court is reduced to writing, it shall be sufficient to state orally the opinion of the Court, Judge or officer without stating the reasons for the opinion, but the written opinion shall be then given by delivering it to an associate or to the registrar or to an officer of the registry. Written opinion. cf. Court of Appeal Rules, r. 54.

3. (1) Where a judgment is entered pursuant to a direction of the Court the judgment shall take effect as of the date of the direction. Date of effect.

(2) Where a judgment is entered otherwise than pursuant to a direction of the Court the judgment shall take effect as of the date of entry.

(3) Subject to subrules (1) and (2) an order shall take effect as of the date on which it is made.

(4) Notwithstanding subrules (1), (2) and (3), the Court may order that a judgment or order take effect as of a date earlier or later than the date fixed by those subrules.

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Time for compliance. 4. (1) Subject to subrules (3) and (4), a judgment or order which requires a person to do an act shall specify the time within which he is required to do the act.
cf. Consolidated Equity Rules of 1902, r. 192.

cf. C.E.R., r. 192. (2) The time shall, unless the Court otherwise orders, be 14 days after the date of service of a minute of the judgment or order on the person required to do the act.

(3) Subrules (1) and (2) apply to a judgment or order which requires a person to pay money into Court, but otherwise do not apply to so much of a judgment or order as requires a person to pay money.

(4) Subrules (1) and (2) do not apply to a judgment for possession of land or for delivery of goods in proceedings in the Common Law Division.

cf. R.S.C. (Rev.) 1965, O. 45, r. 6 (1). (5) Where a judgment or order requires a person to do an act within a specified time, the Court may, by order, require him to do the act within another specified time.

cf. R.S.C. (Rev.) 1965, O. 45, r. 6 (2). (6) Where a judgment or order requires a person to do an act but does not specify a time within which he is required to do the act, the Court may, by order, require him to do the act within a specified time.

Payment to the registrar. 5. (1) Where there is a case for ordering a person to pay money into Court, the Court may, instead of ordering payment into Court, order the person to pay the money to the registrar.

(2) Where the Court has ordered a person to pay money into Court, and the whole or any part of the money remains unpaid, the Court may order the person to pay to the registrar so much of the money as remains unpaid and thereupon discharge the order for payment into Court so far as concerns the money which remains unpaid.

Fine. 6. (1) Where the Court imposes a fine, the Court shall order that the person on whom the fine is imposed pay the fine to the registrar.
cf. Fines and Forfeited Recognizances Rules, Form 2.

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(2) The registrar shall pay into the Consolidated Revenue Fund all moneys paid to him on account of any fine imposed by the Court. *cf. Fines and Forfeited Recognizances Rules, r. 4.*

7. (1) Where the Court directs the entry of judgment for the payment of money and makes an order under section 94 of the Act for the payment of interest, interest shall, unless the order otherwise provides, be payable on so much only of the money as is from time to time unpaid. *Interest. cf. Act No. 21, 1899, s. 142 (1) proviso.*

(2) The prescribed rate of interest for the purposes of section 95 of the Act is 5 per cent yearly.

8. (1) Where under the Act or under these rules the Court makes an order for the dismissal of proceedings or for the dismissal of proceedings so far as concerns any cause of action or the whole or any part of any claim for relief, the order for dismissal shall not, subject to any terms or conditions on which the order for dismissal is made, prevent the plaintiff or claimant from bringing fresh proceedings or claiming the same relief in fresh proceedings. *Dismissal.*

(2) Where—

- (a) the Court makes an order for the dismissal of proceedings so far as concerns any cause of action or the whole or any part of any claim for relief by any party;
- (b) the Court orders that party to pay any costs; and
- (c) before payment of the costs, that party brings against a party to whom the costs are payable further proceedings on the same or substantially the same cause of action or for the same or substantially the same relief,

the Court may stay the further proceedings until those costs are paid.

9. (1) The Court may, on terms, set aside or vary a direction for entry of judgment where notice of motion for the setting aside or variation is filed before entry of the judgment. *Setting aside or varying judgment or order.*

- (2) The Court may, on terms, set aside or vary a judgment—*cf. R.S.C. (Rev.) 1965,*
- (a) where the judgment has been entered pursuant to Part 17 *O. 13, r. 9;*
- (which relates to default judgment); or *O. 19, r. 9;*
- O. 35, r. 2*

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(b) where the judgment has been entered pursuant to a direction given in the absence of a party, whether or not the absent party had notice of trial or of any motion for the direction.

(3) The Court may, on terms, set aside or vary an order—

(a) where the order has been made in the absence of a party, whether or not the absent party is in default of appearance or otherwise in default, and whether or not the absent party had notice of motion for the order; or

(b) where notice of motion for the setting aside or variation is filed before entry of the order.

(4) In addition to its powers under subrules (1), (2) and (3), the Court may, on terms, set aside or vary any order (whether or not part of a judgment) except so far as the order determines any claim for relief or determines any question (whether of fact or law or both) arising on any claim for relief and excepting an order for dismissal of proceedings or for dismissal of proceedings so far as concerns the whole or any part of any claim for relief.

(5) Nothing in this rule affects any other power of the Court to set aside or vary a judgment or order.

Judicial
notice
of order.

10. (1) In any proceedings, the Court may take judicial notice of any order of the Court in the proceedings.

(2) In any proceedings, the Court may be informed of an order of the Court in the proceedings by (amongst other things) reference to a note made by the Judge making the order or by his clerk or to a note made by the master or other officer making the order.

PART 41.

JUDGMENTS AND ORDERS: MINUTES AND ENTRY.

DIVISION 1.—*Common Law Division.*Signature
and
settlement.

1. Where, in proceedings in the Common Law Division, the entry of a judgment or order is authorised by the Act or by the rules or by a direction of the Court, and a party lodges a minute of the judgment

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or order with the registrar for signature, then, subject to any direction under rule 2, the registrar may either—

- (a) sign the minute ; or
- (b) treat the minute as a draft, require it to be settled before signature and give directions for the purpose of settlement.

DIVISION 2.—*Settlement generally.*

2. (1) This Division applies to proceedings in the Equity Division Application and to proceedings in the Court of Appeal.

(2) This Division applies to proceedings in any Division other than the Equity Division to such extent and with such modifications as the Court may direct.

3. Where the entry of a judgment or order is authorised by the rules or by a direction of the Court, a party may lodge a draft minute of the judgment or order with the registrar.

4. Where a party lodges a draft minute of a judgment or order with the registrar, the registrar may settle the draft without an appointment for the attendance of the parties.

5. (1) Subject to rule 4, where a party lodges a draft minute of a judgment or order with the registrar, the registrar shall appoint a time and place for attendance of the parties on settlement of the minute and shall notify the appointment to the party lodging the draft minute.

(2) The party lodging the draft minute shall, not less than two days before the appointed date, serve notice of the appointment on the other party.

6. (1) Where a party has been served with notice of an appointment to settle a draft minute of a judgment or order, but does not attend on the appointment, or where the party lodging the draft does not attend on the appointment, the registrar may settle the draft minute in the absence of that party.

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(2) The registrar shall, on or after the appointment, settle the draft minute.

Settlement
without
lodgment.

7. (1) Where the entry of a judgment or order is authorised by the rules or by a direction of the Court, the registrar may, subject to subrule (3), draw and settle a minute of the judgment or order.

(2) The registrar may exercise his powers under subrule (1)—

(a) notwithstanding that no party has lodged a minute or draft minute with him; and

(b) without appointing any time or place for attendance of the parties on settlement.

(3) The registrar shall not exercise his powers under subrule (1) unless—

(a) the Court so directs, or

(b) a party so requests.

cf. Court of
Appeal
Rules, r. 43.

(4) Subrule (3) does not apply to the Registrar of the Court of Appeal.

Signature.

8. The registrar shall, on settling a draft minute of a judgment or order, sign the draft or a fair copy of it.

DIVISION 3.—*Review.*Review.
cf. C.A.R.,
r. 50.

9. (1) Where the registrar has signed a minute of a judgment or order, but the judgment or order has not been entered, the Court may review the minute and give such directions as it thinks fit for varying the form and content of the minute.

(2) Where the Court of Appeal makes a direction for entry of a judgment, or makes an order, the powers of the Court under subrule (1) in respect of a minute of the judgment or order shall not be exercised except by the Court of Appeal.

DIVISION 4.—*Entry.*Authority
for entry.

10. (1) A judgment shall not be entered unless entry is authorised by the rules or by a direction of the Court.

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(2) Subject to subrule (1), an order may be entered by authority of this subrule and without any direction of the Court.

11. (1) An order shall be entered in the following cases—
- (a) where the order is made by the signing of a minute of the order;
Order: where entry required.
 - (b) where a minute of the order is to be served;
 - (c) where the order is to be enforced;
 - (d) where there is an appeal from the order; and
 - (e) where the Court so directs.

(2) Subject to subrule (3), an order shall, unless the Court otherwise directs, be entered where some step is to be taken under the order.

- (3) Subrule (2) does not apply to an order which (in addition to any provision as to costs) merely—
- (a) makes an extension or abridgment of time; or
 - (b) grants leave or makes a direction—
 - (i) to amend any document other than a minute of a judgment or order;
 - (ii) to file any document; or
 - (iii) to do any act to be done by an officer of the Court other than a solicitor; or
 - (c) gives directions concerning the conduct of proceedings.

cf. R.S.C.
(Rev.)
1965, O. 42,
r. 4 (2)
(3).

12. Where the registrar has settled a minute of a judgment or order, the judgment or order shall not, unless the Court otherwise directs, be entered until seven days after the date on which the registrar signs the minute.

Time for entry after settlement.

13. (1) Where the entry of a judgment or order is authorised by the rules or by a direction of the Court, a party or, subject to subrule (2), the registrar may enter the judgment or order by filing a minute of it signed by the registrar or, in the case of an order, signed by the Judge, master or officer making the order.

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Part 42.

(2) The registrar shall not exercise his powers under sub-rule (1) unless—

(a) the Court so directs; or

(b) a party so requests.

(3) Subrule (2) does not apply to the registrar of the Court of Appeal.

Sealing.

14. Upon entry of a judgment or order the registrar shall seal the minute of the judgment or order with a seal of the Court.

DIVISION 5.—*Copies and service.*

Copies.

15. (1) The registrar shall, upon payment of the prescribed fee, furnish to any party to any proceedings a certified or office copy of the minute of any judgment or order entered in the proceedings.

(2) The registrar may, upon payment of the prescribed fee, furnish to any person appearing to have a sufficient interest in any judgment or order entered in any proceedings a certified or office copy of the minute of the judgment or order.

Service.

16. A minute of a judgment or order need not be served unless the rules require service or the Court directs service.

PART 42.

JUDGMENTS AND ORDERS: ENFORCEMENT.

Interpretation.

1. In this Part, unless the context or subject matter otherwise indicates or requires—

(a) “judgment” includes an order; and

cf. R.S.C.
(Rev.)
1965, O. 45,
r. 1 (4).

(b) a reference to a writ or other means for the enforcement of a judgment extends to any further writ or other means in aid of the firstmentioned writ or means.

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Part 42.

2. (1) A judgment for the payment of money (not for the payment of money into Court) may be enforced by one or more of the following means—

Payment of money.
cf. R.S.C.
(Rev.) 1965,
O. 45, r. 1
r. 1 (1).

- (a) levy of property ;
- (b) attachment of debts ;
- (c) charging order ;
- (d) appointment of a receiver ; and
- (e) in a case in which rule 6 applies, but subject to rule 8—
 - (i) committal ; and
 - (ii) sequestration.

(2) A judgment for the payment of money into Court may be enforced by one or more of the following means—

cf. R.S.C.
(Rev.) 1965,
O. 45, r. 1
(2).

- (a) appointment of a receiver ; and
- (b) in a case in which rule 6 applies, but subject to rule 8—
 - (i) committal ; and
 - (ii) sequestration.

(3) Subrules (1) and (2) do not affect any other means for enforcement of a judgment for the payment of money.

cf. R.S.C.
(Rev.) 1965,
O. 45, r. 1
(3).

3. (1) Notwithstanding rule 2 (2), a judgment for the payment of money to the registrar may be enforced by any of the means mentioned in rule 2 (1).

Payment
to the
registrar.

(2) Subject to subrule (3), the registrar may take all such steps for the enforcement of a judgment for the payment of money to the registrar as a party may take for the enforcement of a judgment for the payment of money to that party.

(3) A judgment for the payment of money to the registrar shall not be enforced otherwise than by levy of property, without the leave of the Court.

(4) The registrar shall take such steps authorised by this rule as the Court may by order direct for the enforcement of any judgment for the payment of money to the registrar.

4. (1) A judgment for possession of land may be enforced by one or more of the following means—

Possession
of land.

- (a) writ of possession ; and

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Part 42.

- (b) in a case in which rule 6 applies, but subject to rule 8—
- (i) committal; and
 - (ii) sequestration.

cf. R.S.C. (Rev.) 1965, O. 45, r. 3 (2). (2) A writ of possession to enforce a judgment for possession of land shall not be issued without the leave of the Court.

cf. R.S.C. (Rev.) 1965, O. 45, r. 3 (3) (a). (3) An applicant for leave for the issue of a writ of possession must show who was in occupation of each part of the land at the time of the commencement of the proceedings and who has been served with notice under Part 7 rule 8.

(4) Where a person is, on the date of commencement of proceedings for possession of land, in occupation of the whole or any part of the land and he is not a party to the proceedings and notice under Part 7 rule 8 is not served on him, the Court shall, when giving leave for the issue of a writ of possession, direct that the writ be restricted so as not to authorise disturbance of the occupation of that person.

cf. R.S.C. (Rev.) 1965, O. 45, r. 3 (4). (5) A writ of possession may include provision for enforcing the payment of money required to be paid by the judgment to be enforced by the writ.

Delivery of goods. cf. R.S.C. (Rev.) 1965, O. 45, r. 4 (1) (a). 5. (1) In this rule, "writ of specific delivery" means a writ of delivery without alternative provision for recovery of the assessed value of the goods.

cf. R.S.C. (Rev.) 1965, O. 45, r. 4 (1). (2) A judgment for the delivery of goods which does not give a person bound the alternative of paying the assessed value of the goods may be enforced by one or more of the following means—

- (a) writ of specific delivery; and
- (b) in a case in which rule 6 applies, but subject to rule 8—
 - (i) committal; and
 - (ii) sequestration.

cf. R.S.C. (Rev.) 1965, O. 45, r. 4 (2). (3) A judgment for the delivery of goods or payment of their assessed value may be enforced by one or more of the following means—

- (a) writ of delivery to recover the goods or their assessed value;

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(b) with the leave of the Court, writ of specific delivery ; and Part 42.

(c) in a case in which rule 6 applies, but subject to rule 8, sequestration.

(4) A writ of specific delivery, and a writ of delivery to recover goods or their assessed value, may include provision for enforcing the payment of money required to be paid by the judgment to be enforced by the writ. cf. R.S.C. (Rev.) 1965, O. 45, r. 4 (3).

(5) A judgment for the payment of the assessed value of goods may be enforced by the same means as any other judgment or order for the payment of money (other than a judgment for the payment of money into Court). cf. R.S.C. (Rev.) 1965, O. 45, r. 4 (4).

6. (1) This rule applies—

(a) where—

(i) a judgment requires a person to do an act within a time specified in the judgment ; and

(ii) he refuses or neglects to do the act within that time or, if that time has been extended or abridged under Part 2 rule 3, within that time as so extended or abridged ; and

Doing or abstaining from doing an act.
cf. R.S.C. (Rev.) 1965, O. 45, r. 5 (1).

(b) where—

(i) a judgment requires a person to abstain from doing an act ; and

(ii) he disobeys the judgment.

(2) In a case in which this rule applies, a judgment may, subject to rule 8, be enforced by one or more of the following means— cf. R.S.C. (Rev.) 1965, O. 45, r. 5 (1).

(a) committal of the person bound ;

(b) sequestration of the property of the person bound ; and

(c) where the person bound is a corporation—

(i) committal of any officer of the person bound ; and

(ii) sequestration of the property of any officer of the person bound.

(3) Subrule (2) has effect subject to section 98 of the Act (which restricts the enforcement, by attachment or committal, of a judgment for the payment of money). cf. R.S.C. (Rev.) 1965, O. 45, r. 5 (1) (b) (iii).

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cf. R.S.C. (Rev.) 1965, O. 45, r. 5
 (3). (4) Where there is a judgment for the delivery of goods or payment of their assessed value—

- (a) the judgment shall not be enforced by committal under subrule (2); but
- (b) the Court may order the person bound to deliver the goods within a specified time; and
- (c) an order under paragraph (b) may be enforced by committal under subrule (2).

Attendance. 7. (1) Where the Court, by subpoena or otherwise, makes an order in any proceedings for the attendance of a person—

- cf. Act No. 11, 1898, s. 13 (1) (a);
 Act No. 25, 1900, s. 136 (3); High Court Rules, O. 56, rr. 1 (1) (3), 6.
- (a) for the purpose of giving evidence;
 - (b) for the production of any document or thing;
 - (c) to answer a charge of contempt; or
 - (d) for any other purpose,
- and the person defaults in attendance in accordance with the order, the Court may, on application by a party or of its own motion—

- (e) issue, or make an order for the issue of, a warrant to the Sheriff or such other person as the Court may appoint for the arrest of the person in default and for the production of the person in default before the Court or before an examiner or other person for the purpose of the proceedings and for his detention in custody in the meantime; and
- (f) order the person in default to pay any costs occasioned by the default.

(2) Subrule (1) does not affect—

- (a) the powers of the Court to punish for contempt; or
- (b) the provisions of Part 55 (which relates to contempt).

Service before committal or sequestration. 8. (1) Subject to the rules, a judgment shall not be enforced by committal or sequestration unless—

- cf. R.S.C. (Rev.) 1965, O. 45, r. 7 (1) (2).
- (a) a minute of the judgment is served personally on the person bound; and
 - (b) if the judgment requires the person bound to do an act within a specified time, the minute is so served before that time expires.

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(2) Subject to the rules, where the person bound by a judgment is a corporation the judgment shall not be enforced by commitment of an officer of the person bound or by sequestration of the property of an officer of the person bound unless, in addition to service under subrule (1) on the person bound—

Part 42.

cf. R.S.C.
(Rev.) 1965,
O. 45, r. 7
(1) (3).

- (a) a minute of the judgment is served personally on the officer; and
- (b) if the judgment requires the person bound to do an act within a specified time, the minute is so served before that time expires.

(3) A minute of a judgment served under this rule must bear a notice (naming the persons concerned) that the person served is liable to process of execution to compel the person bound to obey the judgment if—

cf. R.S.C.
(Rev.) 1965,
O. 45, r. 7
(4).

- (a) where the judgment requires the person bound to do an act within a specified time, the person bound refuses or neglects to do the act within that time; or
- (b) where the judgment requires the person bound to abstain from doing an act, the person bound disobeys the judgment or order.

(4) Subject to the rules, where—

cf. R.S.C.
(Rev.) 1965,
O. 45, r. 7
(5).

- (a) a judgment requires the person bound to do an act; and
- (b) an order is made—

(i) under Part 40 rule 4 (5) or (6), requiring the person bound to do the act within a specified time; or

(ii) under rule 6 (4) (b) requiring the person bound to deliver goods within a specified time; and

- (c) a minute of the order mentioned in paragraph (b) is served on a person pursuant to this rule,

a minute of the judgment mentioned in paragraph (a) must be served on that person before the expiry of that time.

(5) Subject to the rules, where—

cf. R.S.C.
(Rev.) 1965,
O. 45, r. 7
(5).

- (a) a judgment requires the person bound to do an act within a specified time;
- (b) an order is made under Part 2 rule 3 extending or abridging that time; and
- (c) a minute of the judgment mentioned in paragraph (a) is served on a person pursuant to this rule,

a minute of the order under Part 2 rule 3 must be served on that person before the expiry of that time as so extended or abridged.

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Part 42.

cf. R.S.C.
(Rev.) 1965,
O. 45, r. 7
(6) as
amended
1967.

(6) Where a person liable to committal or sequestration of his property by way of enforcement of a judgment has notice of the judgment—

(a) by being present when the judgment is directed to be entered or when the order is made; or

(b) by being notified of the terms of the judgment whether by telephone, telegram or otherwise,

the judgment may be enforced by committal of that person or by sequestration of his property notwithstanding that service has not been effected in accordance with this rule.

cf. R.S.C.
(Rev.) 1965,
O. 45, r. 7
(7) as
amended
1967.

(7) The Court may dispense with service under this rule.

Substituted
perform-
ance.

9. (1) Where a judgment requires the person bound to do an act and the person bound does not do the act, the Court may—

cf. R.S.C.
(Rev.) 1965,
O. 45, r. 8.

(a) direct that the act be done by a person appointed by the Court; and

(b) order the person bound to pay the costs incurred pursuant to the direction.

cf. R.S.C.
(Rev.) 1965,
O. 45, r. 8.

(2) Subrule (1) does not affect—

(a) the powers of the Court under section 100 of the Act (which relates to the execution of instruments by order of the Court); or

(b) the powers of the Court to punish for contempt.

Enforce-
ment by
or against
non-party.

10. (1) Where, in any proceedings, a person who is not a party obtains an order, or an order is made in favour of a person who is not a party, he may enforce the order by the same means as if he were a party.

cf. R.S.C.
(Rev.) 1965,
O. 45, r. 9
(1).

cf. R.S.C.

(2) Where, in any proceedings, obedience to a judgment may be enforced against a person who is not a party, the judgment may be enforced against him by the same means as if he were a party.

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(3) Where, in any proceedings, obedience to a judgment may be enforced against a corporation which is not a party, an officer of the corporation shall be liable to the same process of enforcement as if the corporation were a party. Part 43.

11. Where a person is entitled under a judgment subject to the Non-fulfilment of a condition, and there is a failure to fulfil the condition, then, unless the Court otherwise orders— performance of condition.

- (a) he shall lose the benefit of the judgment; and cf. R.S.C. (Rev.) 1965,
- (b) any other person interested may take any steps which— O. 45, r. 10.
 - (i) are warranted by the judgment; or
 - (ii) might have been taken if the judgment had not been entered or the order had not been made.

12. (1) A person bound by a judgment may move the Court for a stay of execution of the judgment, or for some other order, on the ground of matters occurring after the date on which the judgment takes effect and the Court may, on terms, make such order as the nature of the case requires. Matters occurring after judgment. cf. R.S.C. (Rev.) 1965, O. 45, r. 11.

(2) Subrule (1) does not affect the powers of the Court under Part 44 rule 5 (which relates to stay of execution). cf. R.S.C. (Rev.) 1965, O. 45, r. 11.

13. A person shall not be committed except by or under an order of the Court. Committal.

PART 43.**DISCOVERY IN AID OF ENFORCEMENT.**

1. (1) The Court may, on motion by a person entitled to enforce a judgment or order, order a person bound by the judgment or order to— Order for examination or production.
- (a) attend before an officer of the Court and be orally examined on the material questions; and cf. R.S.C. (Rev.) 1965, O. 48, rr. 1
 - (b) produce any document or thing in the possession, custody or power of the person bound relating to the material questions. (1), 2.

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Part 44.

cf. R.S.C.
(Rev.) 1965, are—
O. 48, rr. 1
(1), 2.

- (2) For the purposes of subrule (1), the material questions
- (a) as to so much of a judgment or order as requires the person bound to pay money—
- (i) whether any and, if so, what debts are owing to the person bound; and
- (ii) whether the person bound has any and, if so, what other property or means of satisfying the judgment or order; and
- (b) as to so much of the judgment or order as does not require the person bound to pay money, such questions concerning or in aid of the enforcement or satisfaction of the judgment or order as may be specified in the order for examination or production.

Corporation. 2. Where the person bound is a corporation the Court may make cf. R.S.C. orders as mentioned in rule 1 for the examination of, or production (Rev.) 1965, by, an officer or former officer of the corporation. O. 48, r. 1 (1).

Procedure. 3. (1) A person may move for an order under rule 1 or rule 2 cf. R.S.C. without filing or serving notice of the motion. (Rev.) 1965, O. 48, r. 1 (1).

cf. R.S.C. (2) An order under rule 1 or rule 2 must be served personally (Rev.) 1965, on the person ordered to attend or to produce any document or thing. O. 48, r. 1 (2).

Conduct money. 4. An order under rule 1 or rule 2 shall not require a person to attend or to produce any document or thing on any day on which his attendance, or production by him, is required, unless a sum sufficient to meet his reasonable expenses of carrying out the requirements of the order in relation to that day is paid or tendered to him at the time of service of the order or not later than a reasonable time before that day.

PART 44.

WRITS OF EXECUTION: GENERAL.

Interpretation. 1. In this Part, unless the context or subject matter otherwise indicates or requires—

cf. R.S.C. “judgment” includes an order;
(Rev.) 1965,
O. 46, r. 1.

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“writ of execution” means—

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- (a) a writ for levy of property, a writ of possession, a writ of delivery, a writ of sequestration; or
- (b) a writ in aid of a writ mentioned in paragraph (a).

2. (1) Notwithstanding Part 42, a writ of execution to enforce a judgment shall not be issued without the leave of the Court in the following cases—

Leave for issue:
general.
cf. R.S.C.
(Rev.) 1965,
O. 46, rr. 2
(1), 3.

- (a) where 10 years or more have elapsed since the date of taking effect of the judgment;
cf. Act No. 21, 1899, s. 134 proviso.
- (b) where any change has taken place, whether by assignment, death or otherwise, in the persons entitled or liable to execution under the judgment;
cf. General Rules of the Court, O. 19, r. 5.
- (c) where the judgment is against the assets of a deceased person coming to the hands of his executor or administrator after the date of taking effect of the judgment, and the writ is against assets of that description;
- (d) where under the judgment a person is entitled subject to fulfilment of a condition;
- (e) where the writ is against property in the hands of a receiver appointed by the Court or of a sequestrator; or
- (f) where the writ is in aid of another writ of execution.

(2) Subrule (1) does not affect any provision for the time being made by or under an Act which provision requires leave for the issue of a writ of execution.

cf. R.S.C.
(Rev.) 1965,
O. 46, r. 2
(2).

(3) A person may, unless the Court otherwise orders, move for leave for the purposes of this rule without filing or serving notice of the motion.

cf. R.S.C.
(Rev.) 1965,
O. 46, r. 4
(1).

- (4) The motion must be supported by evidence showing—
- (a) where the judgment is for the payment of money, the amount due on the date of the motion;
cf. R.S.C.
(Rev.) 1965,
O. 46, r. 4
(2).
- (b) where subrule 1 (a) applies, the reasons for the delay;
- (c) where subrule 1 (b) applies, the change which has taken place;

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Part 44.

- (d) where subrule (1) (c) or (d) applies, that a demand to satisfy the judgment has been made on the person liable to satisfy it and that he has not satisfied it;
- (e) that the applicant is entitled to proceed to execution on the judgment; and
- (f) that the person against whom execution is sought to be issued is liable to execution on the judgment.

Leave for issue: sequestration. 3. (1) Notwithstanding Part 42, a writ of sequestration shall not be issued without the leave of the Court.

cf. R.S.C.
(Rev.) 1965,
O. 45, r. 5
(1) (b)
(i) (ii);
O. 46, r. 5.

cf. R.S.C.
(Rev.) 1965,
O. 46, r. 5
(2).

- (2) An applicant for leave for the purposes of this rule must—
 - (a) file notice of the motion; and
 - (b) serve the notice and any affidavit in support of the motion personally on the person whose property is sought to be sequestered.

cf. R.S.C.
(Rev.) 1965, (2) (b).
O. 46, r. 5
(3).

Terms of leave. 4. The Court may grant leave for the purposes of rule 2 or rule 3 on terms.

cf. R.S.C.
(Rev.) 1965,
O. 46, r. 4
(3).

Stay of execution. 5. The Court may, on terms, stay execution of a judgment or order.

cf. R.S.C.
(Rev.) 1965,
O. 47, r. 1
(1) (5).

Separate execution for costs.

6. Where—

- (a) there is a judgment for the payment of money and for the payment of costs (whether the judgment is for any other matter or not); and

cf. R.S.C.
(Rev.) 1965,
O. 47, r. 3
(1).

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- (b) when the money (other than costs) becomes payable under the judgment the costs have not become payable (because the costs have not been taxed or for any other reason),

Part 44.

a person entitled to enforce the judgment may—

- (c) have execution to enforce payment of the money (other than costs); and
- (d) when the costs become payable, have execution separately to enforce payment of the costs.

7. (1) A person requiring the issue of a writ of execution shall—

Issue.

- (a) produce to the registrar a form of the writ;

cf. R.S.C.
(Rev.) 1965,
O. 46, r. 6.

- (b) file a copy of the writ; and

- (c) where the writ is to enforce a judgment for the payment of money, file an affidavit, sworn not more than 14 days before the requirement, containing and verifying a statement of—

- (i) the date of taking effect of the judgment;
- (ii) the amount of money originally payable under the judgment;
- (iii) the date and amount of each payment made on account of the judgment;
- (iv) the interest (if any) due on the date of swearing of the affidavit;
- (v) such other particulars as are necessary to calculate the amount payable under the judgment on the date of swearing of the affidavit;
- (vi) the amount payable under the judgment on the date of swearing of the affidavit; and
- (vii) the daily amount of interest (if any) which (subject to any future payment on account of the judgment) will accrue after the date of swearing of the affidavit.

- (2) A writ of execution shall be issued under seal and shall bear the date of its issue.

cf. R.S.C.
(Rev.) 1965,
O. 46, r. 6;
Execution
against
Property
Rules, r. 8.

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Duration. 8. (1) For the purpose of execution, a writ of execution is valid
cf. R.S.C. in the first instance for 12 months beginning with the date of its
(Rev.) 1965, issue.
O. 46, r. 8
(1).

cf. R.S.C. (2) The Court may, on motion made while a writ of execution
(Rev.) 1965, is valid for the purpose of execution, from time to time extend the
O. 46, r. 8 validity of the writ for the purpose of execution for a period of not
(2). more than 12 months beginning with the date on which the order is
made.

(3) A person may move for an order under subrule (2) with-
out the prior filing or service of notice of the motion.

cf. R.S.C. (4) An order under subrule (2) must be entered and a minute
(Rev.) 1965, of it must be delivered to the Sheriff.
O. 46, r. 8
(3).

cf. R.S.C. (5) Where the validity of a writ for the purpose of execution
(Rev.) 1965, has been extended under this rule, the priority of the writ shall be
O. 46, r. 8 determined by reference to the date on which it was originally
(4). delivered to the Sheriff.

Return. 9. A person at whose request a writ of execution is issued may
cf. Sheriff's deliver a notice to the Sheriff requiring him, within the time speci-
Rules, r. 9; fied in the notice, to make on the writ a statement of the manner
R.S.C. (Rev.) in which he has executed the writ and to send to that person a copy
1965, O. 46, of the statement.
r. 9 (1).

Costs of 10. The amount for which a writ of execution may be issued
prior execu- shall, unless the Court otherwise orders, include the costs of any
tion. prior writ of execution on the same judgment, whether the prior writ
cf. Execution was or was not productive.
against
Property
Rules, r. 10.

PART 45.

LEVY OF PROPERTY

Interpre- 1. In this Part, unless the context or subject matter otherwise
tation. indicates or requires—

“Sheriff” includes any person to whom a writ is directed ;

“writ” means a writ for levy of property.

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Part 45.

2. The writ formerly called a writ of fieri facias shall be called **Name.**
a writ for levy of property.

3. (1) Not more than one writ shall be issued on a judgment, **Two or**
unless the Court otherwise orders. **more writs.**

(2) Subrule (1) has effect subject to Part 44 rule 6 (which **cf. Execu-**
relates to separate execution for costs). **tion against**
Property
Rules, r. 7.

4. (1) Where it appears to the Sheriff that the property subject to **Order of**
levy under a writ is more than sufficient to satisfy the money to be **realisation.**
levied, he shall first take or realise so much of the property as appears **cf. E.A.P.R.,**
to him to be sufficient. **rr. 13, 14,**
15.

(2) In taking or realising property under subrule (1), the **cf. E.A.P.R.,**
Sheriff shall take or realise the property— **rr. 13, 14,**
15.

(a) in such order as seems to him best for the speedy execution
of the writ without undue expense ;

(b) subject to paragraph (a), in such order as the debtor may
direct ; and

(c) subject to paragraphs (a) and (b), in such order as seems
to the Sheriff best for minimising hardship to the debtor
and other persons.

(3) This rule does not affect any liability of the Sheriff to the
execution creditor.

5. Subject to rule 4, the Sheriff shall put up for sale all property **Time of**
liable to sale under the writ as early as may be with due regard to the **sale.**
interests of the parties and to the avoidance of sacrifice of the reason- **cf. E.A.P.R.,**
able value of the property. **r. 16 (1).**

6. The Sheriff shall put up for sale property liable to sale under a **Place of**
writ at the place which seems to him best for a beneficial realisation of **sale.**
the property. **cf. E.A.P.R.,**
r. 17.

7. The Sheriff shall, before putting property up for sale under a **Advertise-**
writ, give notice of the time and place of sale and of particulars of the **ment**
property in the manner which seems to him best to give due publicity **of sale.**
to the sale. **cf. E.A.P.R.,**
r. 18.

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Part 46.

Account.
cf. Execu-
tion against
Property
Rules, r. 20.

8. The Sheriff shall give to any party interested an account of all proceeds of sale and other money received by him under a writ and of his charges and the manner of disposal of the money.

PART 46.

GARNISHMENT.

Interpre-
tation.

cf. R.S.C.
(Rev.) 1965,
O. 49, r. 1
(1).

1. In this Part, unless the context or subject matter otherwise indicates or requires—

“garnishee” means a person from whom a judgment creditor claims that a debt is due or accruing to the judgment debtor ;

“judgment creditor” means a person entitled to enforce a judgment or order for the payment of money (not into Court) ;

“judgment debtor” means a person required by a judgment or order to pay money (not into Court).

Bank
account.

2. (1) A sum standing to the credit of a judgment debtor in an account in a bank shall, for the purpose of this Part, be a sum due or accruing to the judgment debtor, notwithstanding that any condition relating to demand of payment is unsatisfied.

cf. 4 & 5
Eliz. 2,
c. 46, s. 38
(1); R.S.C.
(Rev.) 1965,
O. 49, r. 1
(3).

(2) A sum standing to the credit of a judgment debtor in a deposit account in a bank shall, for the purposes of this Part, be a sum due or accruing to the judgment debtor, notwithstanding that any of the following conditions applicable to the account has not been satisfied—

(a) a condition that notice is required before money is withdrawn ;

(b) a condition that a personal application must be made before money is withdrawn ;

(c) a condition that a deposit book must be produced before money is withdrawn ; or

(d) a condition that a receipt for money deposited in the account must be produced before money is withdrawn.

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3. (1) A judgment creditor may, with the leave of the Court, but subject to any Act, file and serve on the garnishee a garnishment notice—

Garnish-
ment
notice.

(a) of attachment, to the extent of an amount specified in the notice, of debts due or accruing to the judgment debtor from the garnishee; and

cf. R.S.C.
(Rev.)
1965, O. 49,
r. 1 (1)
(2).

(b) of motion for payment under this Part.

(2) A judgment creditor may move for leave under subrule (1) without filing or serving notice of the motion.

cf. R.S.C.
(Rev.)
1965, O. 49,
r. 2.

(3) The Court shall not give leave under subrule (1) unless it appears to the Court that—

cf. R.S.C.
(Rev.)
1965, O. 49,
r. 2.

(a) the judgment or order is unsatisfied; and

(b) there is a debt due or accruing to the judgment debtor from the garnishee.

(4) The Court shall, in giving leave under subrule (1), fix the amount for specification in the garnishment notice pursuant to subrule (1) (a).

cf. R.S.C.
(Rev.)
1965, O. 49,
r. 1 (1).

(5) The amount to be fixed by the Court for specification in the garnishment notice shall be the sum of—

cf. R.S.C.
(Rev.)
1965, O. 49,
r. 1 (1).

(a) the amount due under the judgment or order on the date on which leave is given;

(b) such amount as the Court may determine having regard to—

(i) interest on the judgment debt accruing after the date on which leave is given; and

(ii) costs of the garnishment proceedings.

(6) A garnishment notice shall include such particulars of the debt attached as are known to, or reasonably capable of ascertainment by, the judgment creditor and as are necessary to enable the garnishee to identify the debt, including, where the garnishee is a

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Part 46.

banker or other person carrying on business at more than one place, the place of keeping of account on which the debt is due or accruing, so far as that place is known to, or reasonably capable of ascertainment by, the judgment creditor.

Service of
garnish-
ment
notice.

cf. R.S.C.
(Rev.)
1965, O. 49,
r. 3 (1).

4. (1) Subject to subrule (2), the judgment creditor shall, not less than three days before the date fixed by the garnishment notice for the motion for payment under this Part, serve the garnishment notice and each affidavit used on the motion for leave under rule 3 on the garnishee personally and on the judgment debtor.

cf. R.S.C.
(Rev.)
1965, O. 49,
rr. 1 (1),
2 (b).

(2) Service on a garnishee under subrule (1) may not be effected outside the State.

Attach-
ment
of debts.

cf. R.S.C.
(Rev.)
1965, O. 49,
rr. 1 (2),
3 (2).

5. (1) Upon service of a garnishment notice on a garnishee all debts mentioned in the garnishment notice and due or accruing to the judgment debtor from the garnishee shall, subject to subrule (2), be attached and bound in the hands of the garnishee to the extent of the amount specified in the garnishment notice.

(2) Where, after service of a garnishment notice on the garnishee, the garnishee acts with reasonable diligence for the purpose of giving effect to the attachment but nevertheless pays to the judgment debtor the whole or any part of the debt attached or otherwise deals with the debt attached so as to satisfy, as between the garnishee and the judgment debtor, the whole or any part of the debt attached, the Court may order that for the purposes of the garnishee proceedings the debt attached be reduced to the extent of the payment or satisfaction.

Payment
into Court.
cf. Act No.
21, 1899,
s. 183 (1).

6. (1) A garnishee may pay into Court all debts attached under this Part to the extent of the attachment.

(2) If a garnishee pays money into Court pursuant to subrule (1) before the day fixed by the garnishment notice for the motion for payment under this Part—

(a) he may retain out of the debts attached the prescribed sum for his costs; and

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- (b) he shall not, unless he takes some further step in the proceedings, be liable for any costs of the garnishee proceedings. Part 46.

(3) For the purposes of subrule (2), a garnishee shall be taken to pay money into Court pursuant to subrule (1) notwithstanding that the amount paid in is calculated on the footing that the amount of the debts attached is reduced by the prescribed sum for his costs.

7. Subject to rules 9 and 10, where a garnishee pays money into Court, the Court shall, on motion pursuant to the garnishment notice, order payment out of Court to the judgment creditor of the money paid in or so much of that money as is required to satisfy the judgment or order out of which the garnishee proceedings arise together with interest and such costs of the garnishee proceedings as may be payable to the judgment creditor out of the debt attached. Payment out of Court.

8. Subject to rules 9 and 10, the Court may, on motion pursuant to the garnishment notice, order the garnishee to pay to the judgment creditor the debt attached to the extent specified in the garnishment notice or so much of the debt attached to the extent so specified as is required to satisfy the judgment or order on which the garnishee proceedings are taken together with interest and such costs of the garnishee proceedings as may be payable to the judgment creditor out of the debt attached. Payment to judgment creditor.
cf. R.S.C. (Rev.) 1965, O. 49, r. 4.

9. Where, on the hearing of a motion by the judgment creditor pursuant to the garnishment notice, the garnishee disputes liability to pay the debt attached, the Court may hear and determine the questions in dispute and direct the entry of such judgment, or make such order, as the nature of the case requires. Dispute of liability by garnishee.
cf. R.S.C. (Rev.) 1965, O. 49, r. 5.

10. Where it appears to the Court that any person other than the judgment debtor is, or claims to be, entitled to money paid into Court under rule 6 or to the debt attached or to any charge or lien on, or other interest in that money or debt, the Court may make orders for giving to that person notice of the proceedings and may hear and determine his claim and may direct the entry of such judgment, or make such order in respect of the claim, as the nature of the case requires. Claim by other person.
cf. R.S.C. (Rev.) 1965, O. 49, r. 6.

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Discharge
of
garnishee.
cf. R.S.C.
(Rev.) 1965,
O. 49, r. 8.

11. (1) Where—

- (a) a garnishee pays money into Court under this Part ;
- (b) a garnishee pays money in compliance with an order made in the garnishment proceedings; or
- (c) execution is levied against a garnishee in pursuance of an order made in the garnishment proceedings,

the payment or levy shall be a discharge of the liability of the garnishee to the judgment debtor to the extent of the amount paid or levied.

cf. R.S.C. (Rev.) 1965, O. 49, r. 8. (2) Subrule (1) shall have effect notwithstanding that the garnishment proceedings are subsequently set aside or that the judgment or order from which the garnishment proceedings arise is subsequently reversed.

(3) Subrule (1) does not apply to a payment or levy on account of costs which the garnishee is ordered to pay.

Costs.
cf. R.S.C.
(Rev.) 1965,
O. 49, r. 10.

12. (1) The costs of the judgment creditor of garnishment proceedings shall, unless the Court otherwise directs, be retained by the judgment creditor out of the money recovered by him in the garnishment proceedings and in priority to the debt under the judgment or order from which the garnishment proceedings arise.

(2) Where the garnishee incurs trouble or expense in giving effect to the attachment of a debt under this Part, or in doing anything required of or permitted to the garnishee in the garnishment proceedings—

- (a) the Court may order the judgment creditor to pay to the garnishee such sum as the Court thinks fit by way of recompense for the trouble or expense; and
- (b) any sum paid by the judgment creditor under paragraph (a) shall, unless the Court otherwise orders, be included in the costs of the judgment creditor of the garnishment proceedings.

(3) Subrule (2) does not limit the general powers of the Court in relation to costs.

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PART 47.

Part 47.

CHARGING AND STOP ORDERS.

1. An application under Part V of the Judgment Creditors' Remedies Act, 1901 (which relates to charging orders on stock, shares and other interests), by a creditor under a judgment or order in proceedings in the Court shall be made by motion in the proceedings. Charge on stock, etc.

2. (1) An application under section 23 of the Partnership Act, 1892 (which relates to procedure against partnership property by a judgment creditor of a partner) shall be made— Charge on partnership interest.

(a) if the judgment is a judgment in proceedings in the Court, by motion on notice in the proceedings; or cf. R.S.C. (Rev.) 1965, O. 81, r. 10 (1).

(b) if the judgment is not a judgment in proceedings in the Court, by summons joining the judgment debtor and his partners as defendants.

(2) An application under that section made by a partner of the judgment debtor in consequence of an application by the judgment creditor shall be made by motion on notice in the proceedings in which the judgment creditor applies. cf. R.S.C. (Rev.) 1965, O. 81, r. 10 (1).

(3) A summons or notice of motion filed under this rule and an order made on an application under that section shall be served on the following persons (other than the applicant)— cf. R.S.C. (Rev.) 1965, O. 81, r. 10 (3) (4).

- (a) the judgment creditor;
- (b) the judgment debtor; and
- (c) such of the partners of the judgment debtor as are within the State.

(4) A summons, notice of motion or order served in accordance with this rule shall have effect as if served on all the partners. cf. R.S.C. (Rev.) 1965, O. 81, r. 10 (5).

3. (1) Where there are funds in Court and—

- (a) the interest of any person in the funds has been mortgaged, charged or assigned; or Stop orders. cf. R.S.C. (Rev.) 1965, O. 50, r. 10 (1).

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- (b) a person having an interest in the funds is a debtor under a judgment or order of the Court,

the Court may, on application by the mortgagee, chargee, assignee or creditor under the judgment or order, make an order prohibiting the transfer, sale, delivery out, payment or other dealing with the whole or any part of the funds or of the income of the funds, without notice to the applicant.

cf. R.S.C.
(Rev.) 1965,
O. 50, r. 10
(2) (3).

- (2) An application under subrule (1) shall be made—
- (a) if there are any proceedings in the Court relating to the funds in Court, by motion on notice in the proceedings; or
- (b) if there are no proceedings in the Court relating to the funds in Court, by summons joining as defendants all persons whose interests may be affected by the application.

cf. R.S.C.
(Rev.) 1965,
O. 50, r. 10
(3).

- (3) The notice of motion or summons—
- (a) shall be served on each person whose interest may be affected by the application; but
- (b) shall not be served on any other person.

(4) The Court may, on terms, dispense with the joinder of any person as defendant and dispense with service on any person.

(5) The Court may order the applicant for an order under subrule (1) to pay the costs of any party to any proceedings in which the funds are in Court, or of any person interested in the funds.

cf. R.S.C.
(Rev.) 1965,
O. 50, r. 10
(4).

- (6) Subrule (5) does not affect the general powers of the Court as to costs.

cf. Supreme
Court Funds
Rules, 1927,
(Eng.),
r. 3 (1).

- (7) In this rule, "funds" includes effects.

PART 48.

ACCOUNTS AND INQUIRIES: GENERAL.

Account:
summary
order.

1. (1) Subject to subrule (2), where a party claims an account or makes a claim which involves taking an account, the Court may, on application by that party at any stage of the proceedings—

cf. R.S.C.
(Rev.) 1965,
O. 43, r. 1
(1) (3).

- (a) order that an account be taken; and

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- (b) order that any amount certified on taking the account to be due to any party be paid to him. **Part 48.**

- (2) The Court shall not make an order under subrule (1) (a)— **cf. R.S.C. (Rev.) 1965, O. 43, r. 1 (1) (3).**
- (a) as against a defendant who has not filed an appearance unless he is in default of appearance; or
- (b) if it appears that there is some preliminary question to be determined.

2. The Court may, on application by a party at any stage of proceedings, make orders for the taking of any account or the making of any inquiry. **Account or inquiry at any stage.**

cf. R.S.C. (Rev.) 1965, O. 43, r. 2 (1).

3. Where the Court makes an order for the taking of an account, the Court, by the same or a subsequent order— **Account: directions.**

- (a) may give directions concerning the manner of taking or vouching the account; and **cf. R.S.C. (Rev.) 1965, O. 43, r. 3.**
- (b) without limiting paragraph (a), may direct that in taking the account the relevant books of account shall be evidence of the matters contained in them.

4. (1) The items on each side of an account shall be numbered consecutively. **Account: form and verification.**

cf. R.S.C. (Rev.) 1965, O. 43, r. 4 (2).

(2) An accounting party shall, unless the Court otherwise orders, verify his account by affidavit and the account shall be made an exhibit to the affidavit. **cf. R.S.C. (Rev.) 1965, O. 43, r. 4 (1).**

5. An accounting party shall, unless the Court otherwise orders— **Account: filing and service.**

- (a) file his account and verifying affidavit;
- (b) serve the account and affidavit on each other party on the date of filing. **cf. R.S.C. (Rev.) 1965, O. 43, r. 4 (3).**

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Account:
notice of
charge or
error.

cf. R.S.C.
(Rev.) 1965,
O. 43, r. 5.

6. (1) Where a party seeks to charge an accounting party with an amount beyond that of which the accounting party by his account admits receipt, he shall give to the accounting party notice of the charge, stating, so far as he is able, the amount which he seeks to charge, with brief particulars.

cf. R.S.C.
(Rev.) 1965,
O. 43, r. 5.

(2) Where a party alleges that any item in the account of an accounting party is erroneous in amount or otherwise, he shall give to the accounting party notice of the allegation, stating the grounds for alleging the error.

Account:
allowances.

cf. R.S.C.
(Rev.) 1965,
O. 43, r. 6.

7. In taking an account under a judgment or order, all just allowances shall be made.

Delay.

cf. R.S.C.
(Rev.) 1965,
O. 43, r. 7
(1).

8. Where it appears to the Court that there is delay in the prosecution of any account, inquiry or other matter under a judgment or order, the Court may make such orders as it thinks fit for staying or expediting the proceedings or for the conduct of the proceedings.

PART 49.

ACCOUNTS, INQUIRIES, ETC.: EQUITY DIVISION.

DIVISION 1.—*General*.

Application. 1. (1) This Part applies only to proceedings in the Equity Division.

cf. R.S.C.

(2) This Part applies to accounts, inquiries and other matters under an order as it applies to accounts, inquiries and other matters under a judgment.

cf. R.S.C.

(3) In the application of this Part to accounts, inquiries and other matters under an order—

(a) references in this Part to a judgment extend to an order; and

(b) references in this Part to the making of a direction for entry of judgment extend to the making of an order.

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2. Where a judgment contains directions as to any account, inquiry or other matter under the judgment, any party may, after entry of the judgment, move the Court to proceed under the judgment. *Motion to proceed. cf. R.S.C. (Rev.) 1965, O. 44, r. 2.*
3. (1) This rule applies to a judgment in proceedings for—
- (a) the administration of the estate of a deceased person ;
 - (b) the execution of a trust ; or
 - (c) the sale of property.
- (2) Where the Court makes a direction for entry of a judgment—
- (a) affecting the rights or interests of a person who is not a party ; or
 - (b) for the taking of an account or the making of an inquiry—
- the Court may, by the judgment or by subsequent order—
- (c) give directions for service of notice of the judgment on any person interested ; or
 - (d) if it appears to be impracticable to serve notice of the judgment on any person interested, dispense with service on him.
- (3) Without limiting subrule (2) (c), the Court may direct that notice be served personally or in some other manner. *cf. R.S.C. (Rev.) 1965, O. 44, r. 3 (2).*
- (4) Where, under this rule, notice of a judgment is served on a person, or the Court dispenses with service of notice of a judgment on a person—
- (a) subject to paragraph (b), he shall be bound by the judgment to the same extent as if he were a party at the time when the direction for entry of judgment was made, except where the judgment has been obtained by fraud or non-disclosure of material facts ;
 - (b) the Court may, on application by him on notice of motion filed within the time limited by subrule (5), discharge or vary the judgment or order ;
 - (c) he may attend the accounts, inquiries or other matters under the judgment.

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cf. R.S.C.
(Rev.) 1965,
O. 44, r. 3
(5).

- (5) Notice of a motion under subrule 4 (b) must be filed—
- (a) if notice of the judgment has been served on the applicant, within 28 days after the date of service; and
 - (b) if the Court has dispensed with service of notice of the judgment on him, within 28 days after the date of the order dispensing with service.

Directions.

cf. R.S.C.
(Rev.) 1965,
O. 44, r. 4
(1).

4. The Court shall, on the hearing of a motion to proceed under a judgment, give directions as to the conduct of the proceedings, including directions as to the material which may be used as evidence.

Representation of parties.

cf. R.S.C.
(Rev.) 1965,
O. 44, rr. 5,
6.

5. The Court may, on the hearing of a motion to proceed under a judgment or subsequently—
- (a) require parties whose interests are similar to be represented by the same solicitor and nominate a solicitor to represent them; or
 - (b) require that parties represented by the same solicitor be separately represented.

Costs of attendance.

cf. R.S.C.
(Rev.) 1965,
O. 44, r. 7.

6. The Court may order, on terms, that the costs to be incurred by any party of and incidental to his attendance on the account, inquiry or other matter under the judgment shall be paid out of the estate or property to which the proceedings relate.

Settlement of instrument.

cf. R.S.C.
(Rev.) 1965,
O. 44, r. 8.

7. Where the judgment directs the settlement of an instrument, the Court may give directions for the preparation and service of a draft instrument and of objections to the draft.

Interest on debts.

cf. R.S.C.
(Rev.) 1965,
O. 44, r. 18
(1).

8. (1) This rule applies to the taking of an account of the debts of a deceased person pursuant to a direction in a judgment.

cf. R.S.C.
(Rev.) 1965,
O. 44, r. 18
(1) (a).

- (2) Where any of the debts carries interest at any rate, interest shall be allowed on that debt at that rate.

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(3) In the case of a debt to which subrule (2) does not apply, cf. R.S.C. (Rev.) 1965, interest shall be allowed on the debt at the rate of 5 per cent yearly O. 44, r. 18 from the date when the judgment takes effect. (1) (b).

(4) Subrules (2) and (3) do not apply where the estate is cf. R.S.C. (Rev.) 1965, insolvent or where the Court otherwise orders. O. 44, r. 18 (1).

(5) Where a creditor establishes his debt and the debt does not cf. R.S.C. (Rev.) 1965, carry interest, interest shall be allowed on the debt at the rate of 5 O. 44, r. 18 per cent yearly from the date when the judgment takes effect, out (2). of any assets which may remain after satisfying—

- (a) the costs of the proceedings;
- (b) the debts which have been established; and
- (c) the interest on such of those debts as by law carry interest.

9. (1) Where an account of legacies is directed by any judgment, Interest on legacies. interest shall be allowed on each legacy at the rate of 5 per cent cf. R.S.C. (Rev.) 1965, yearly from a date one year after the date of the testator's death. O. 44, r. 19.

(2) Subrule (1) has effect subject to any directions in the will cf. R.S.C. (Rev.) 1965, and unless the Court otherwise orders. O. 44, r. 19.

DIVISION 2.—*Administration Accounts and Inquiries, etc.*

10. (1) This Division applies where, in proceedings for the Application. administration of the estate of a deceased person, the Court by cf. R.S.C. (Rev.) 1965, judgment directs— O. 44, r. 9

- (a) the taking of any account of debts or other liabilities of (a). the estate of the deceased; or
- (b) the making of any inquiry for persons entitled to any interest in the estate on intestacy or otherwise.

(2) This Division applies where, in proceedings for the execu- cf. R.S.C. (Rev.) 1965, tion of a trust, the Court by judgment directs— O. 44, r. 9

- (a) the taking of any account of debts or other liabilities of the (b). trust; or
- (b) the making of any inquiry for persons entitled to any interest in the trust property.

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cf. R.S.C. (3) Subject to subrules (1) and (2), this Division applies,
(Rev.) 1965, with the necessary modifications, where, in any proceedings, the Court
O. 44, r. 9. by judgment directs—

(a) the taking of any account of debts or other liabilities of the trust; or

(b) the making of any inquiry.

Advertisements. 11. (1) On the hearing of the motion to proceed or subsequently
cf. R.S.C. the Court may direct the issue of advertisements for creditors and
(Rev.) 1965, other claimants.
O. 44, r. 10
(1).

cf. R.S.C. (2) The Court shall, for the purposes of determining what
(Rev.) 1965, direction, if any, to make under subrule (1), have regard to any
O. 44, r. 10 advertisement previously issued.
(1).

cf. R.S.C. (3) Where the Court directs the issue of advertisements for
(Rev.) 1965, creditors or other claimants, the Court shall specify the time within
O. 44, r. 10 which, and the person on whom, a claimant must serve particulars
(3). of his claim.

cf. R.S.C. (4) An advertisement for creditors or other claimants shall
(Rev.) 1965, state the time and name of the person specified under subrule (3) and
O. 44, r. 10 an address for service of that person and shall contain such other
(3). matters as the Court may direct.

cf. R.S.C. (5) An advertisement for creditors or other claimants shall
(Rev.) 1965, be prepared by the party prosecuting the judgment and shall be
O. 44, r. 10 signed by the registrar.
(2).

Particulars of claim. 12. (1) Subject to such provisions as may appear in the advertise-
cf. R.S.C. ment, particulars of a claim served in response to an advertisement
(Rev.) 1965, shall specify the nature and extent of the claim, and full particulars
O. 44, rr. 10 of it, and shall state the name and an address for service of the
(3), 11. claimant.

cf. R.S.C. (2) A claimant who does not serve particulars of claim, in
(Rev.) 1965 accordance with the advertisement and in accordance with subrule
O. 44, r. 11. (1), on the person and within the time stated in the advertisement
shall not be entitled to prove his claim except with the leave of the
Court.

cf. R.S.C. (3) The Court may give leave under subrule (2) on terms.
(Rev.) 1965,
O. 44, r. 11.

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13. (1) Where a claimant serves particulars of his claim in response to an advertisement under a judgment, the person on whom judgment it is served shall, within 7 days after service of the particulars of claim, serve notice of the judgment on the claimant. Notice of judgment.
cf. R.S.C.
(Rev.) 1965,
O. 44, r. 15
(1).

(2) Upon service of notice of a judgment under subrule (1), subrules (4) and (5) of rule 3 shall apply as if the notice had been served under rule 3. cf. R.S.C.
(Rev.) 1965,
O. 44, r. 15
(2)-(4).

14. The Court may—

- (a) appoint a person to examine and list claims for the purposes of an account or inquiry under a judgment; and
 - (b) fix a date for adjudication on the claims.
- Examination
of claims.
cf. R.S.C.
(Rev.) 1965,
O. 44, r. 12
(1) (2).

15. (1) In the case of an account of debts or other liabilities, the person appointed under rule 14 shall—

- (a) examine the claim of each claimant and consider whether it ought to be allowed; and
 - (b) at least 7 days before the date for adjudication on the claims, file lists of—
 - (i) claims served in response to any advertisement;
 - (ii) other claims received by any of the personal representatives or trustees concerned; and
 - (iii) debts and liabilities for which claims have not been received but which are or may still be due and which have come to the knowledge of any of the personal representatives or trustees concerned.
- Account:
list of
claims.
cf. R.S.C.
(Rev.) 1965,
O. 44, r. 12
(1).

(2) A list filed under subrule (1) shall specify, in relation to each alleged debt or liability included in the list, whether, in the belief of the party making the list, the debt or liability ought to be allowed, and the reasons for the belief. cf. R.S.C.
(Rev.) 1965,
O. 44, r. 12
(3).

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Inquiry:
list of
claims.

cf. R.S.C.
(Rev.) 1965,
O. 44, r. 12
(2).

16. (1) In the case of an inquiry for persons entitled to any interest in the estate of a deceased person on intestacy or otherwise, or entitled to any interest in trust property, the person appointed under rule 14 shall—

- (a) examine the claim of each claimant and consider whether it is valid; and
- (b) at least 7 days before the date for adjudication on the claims, file lists of—
 - (i) claims served in response to any advertisement; and
 - (ii) other claims received by, or which have come to the knowledge of, any of the personal representatives or trustees concerned.

cf. R.S.C.

(Rev.) 1965,
O. 44, r. 12
(3).

(2) A list filed under subrule (1) shall specify, in relation to each claim included in the list, whether, in the belief of the party making the list, the claim is valid, and the reasons for the belief.

Verifica-
tion of list.

cf. R.S.C.
(Rev.) 1965,
O. 44, r. 12.

Adjudica-
tion.

cf. R.S.C.
(Rev.) 1965,
O. 44, r. 13
(1) (6).

17. The Court may direct a person appointed under rule 14, and any of the personal representatives or trustees concerned, to verify by affidavit a list filed under rule 15 or rule 16.

18. (1) The Court may, on the adjudication on the claims—

- (a) allow any claim, with or without proof;
- (b) direct that any claim be investigated in such manner as the Court thinks fit;
- (c) require any claimant to attend and prove his claim or to furnish further particulars or evidence of his claim or to produce any security relating to his claim;
- (d) disallow any claim.

cf. R.S.C.

(Rev.) 1965,
O. 44, r. 13
(5).

(2) A claimant need not make an affidavit or attend in support of his claim, unless the Court so directs under subrule (1) (c).

cf. R.S.C.

(Rev.) 1965,
O. 44, r. 16
(2).

(3) A party shall, if the Court so directs, file a list of the claims allowed.

cf. R.S.C.

(Rev.) 1965,
O. 44, r. 13
(7).

(4) In this rule, "claim" includes part of a claim.

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19. (1) This rule applies where the Court requires a claimant to attend and prove his claim pursuant to rule 18 (1) (c). Notice to prove claim.

(2) The Court shall appoint a party to give notice in accordance with subrule (3) and shall determine the times and documents to be specified in the notice. cf. R.S.C. (Rev.) 1965, O. 44, r. 13 (2).

(3) The party appointed under subrule (2) shall serve on the claimant a notice requiring him— cf. R.S.C. (Rev.) 1965, O. 44, r. 13 (2) (4).

(a) to file and serve on the party serving the notice an affidavit in support of his claim within such time, not less than 7 days after the date of service of the notice, as may be specified in the notice ;

(b) to attend before the Court for adjudication on the claim at such time as may be specified in the notice ; and

(c) to produce to the Court at such time as may be specified in the notice such documents as may be specified or described.

(4) Where a claimant does not comply with a notice served on him under subrule (3), the Court may disallow his claim. cf. R.S.C. (Rev.) 1965, O. 44, r. 13 (3).

(5) In this rule, "claim" includes part of a claim.

cf. R.S.C. (Rev.) 1965, O. 44, r. 13 (7).

PART 50.

FUNDS IN COURT.

1. (1) Subject to rule 5, where money is paid into Court, the Deposit registrar shall, within one day after the date of payment into Court, deposit the money to the credit of the Treasurer in such bank as the Governor may appoint. cf. Consolidated Equity Rules of 1902, r. 286.

(2) Money deposited under subrule (1) shall be deposited at such rate of interest (if any) as may be arranged between the Chief Justice and the Treasurer. cf. C.E.R., r. 286.

(3) Separate arrangements may be made under subrule (2) for money paid into the Court in any Division or for money paid into Court in specified classes of circumstances.

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(4) Where money is deposited in the appointed bank under this rule, the Treasurer or an officer of the Treasury or of the appointed bank, authorised by the Treasurer, shall give to the officer making the deposit duplicate receipts for the money deposited.

(5) The officer making the deposit shall give one of the duplicate receipts to the registrar and may keep the other.

Authority
for with-
drawal.
cf. C.E.R.,
r. 288;
R.S.C.
(Rev.) 1965,
O. 22, r. 8
(1).

2. Money deposited in a bank under rule 1 or interest on money so deposited shall not be withdrawn or paid from the Treasury or from the bank on account of the Treasury except by the authority of the rules or of a judgment or order.

With-
drawal.
cf. C.E.R.,
rr. 289,
290.

3. (1) Money deposited in a bank under rule 1 or interest on money so deposited shall not be withdrawn or paid from the Treasury or from the bank on account of the Treasury except by authority of a direction in accordance with subrule (2).

cf. C.E.R.,
rr. 289,
290.

(2) A direction under subrule (1)—

- (a) may be in the form of a cheque;
- (b) shall be for payment to a specified person;
- (c) shall bear the title (or a shortened title) and serial number of the proceedings in which the order is made; and
- (d) shall be signed by the registrar and by such officer as the Chief Justice may appoint for that purpose.

cf. C.E.R.,
r. 288
proviso;
and r. 290
proviso.

(3) Notwithstanding subrules (1) and (2) a bank or the Treasurer shall not be bound to inquire whether the requirements of rule 2 or of paragraphs (c) and (d) of subrule (2) have been satisfied.

Account.
cf. C.E.R.,
r. 291.

4. Where money is deposited in a bank under rule 1 in any proceedings, the registrar shall keep an account in the proceedings of the deposit and of all withdrawals (including withdrawals of interest) from the bank or from the Treasury in the proceedings.

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5. The Court may direct that funds paid into Court be invested—

- (a) in any public funds or government stock or government securities of the Commonwealth or of any State of the Commonwealth or of the Territory of Papua and New Guinea ; Invest-
ment.
cf. Act No.
14, 1925,
s. 14 (2);
C.E.R.,
r. 286.
- (b) in any debentures, stock or securities guaranteed by the Government ;
- (c) in any debentures, stock or securities of any council constituted under the Local Government Act, 1919 ;
- (d) in any public funds or parliamentary stocks or government securities of the United Kingdom of Great Britain ;
- (e) in mortgage of land in the State ; or
- (f) by deposit at interest in a banking corporation carrying on business in the State.

6. (1) Where money is paid into Court as security for costs or as security on an appeal, or is paid into Court pursuant to Part 22, interest on the money shall not be paid to any party. Interest.
cf. C.E.R.,
r. 293 (a).

(2) Where money is paid into Court pursuant to an order, to abide the decision in the proceedings, interest on the money shall not be paid to any party unless the Court otherwise orders. cf. C.E.R.,
r. 293 (a).

(3) Where the registrar collects interest on funds invested under rule 5, he shall deduct and pay to the Treasurer 2.5 per cent of the amount collected. cf. C.E.R.,
r. 293 (b).

7. Subject to the rules, funds in Court shall not be paid out of Court except to the party entitled or, on his written authority or by order of the Court, to his solicitor. Authority of
recipient.
cf. R.S.C.
(Rev.) 1965,
O. 22, r. 10
(2).

8. (1) Any direction, cheque or other document for the payment of money out of Court shall, when signed by the payee, be a discharge to the registrar for the money. Discharge of
registrar.
cf. C.E.R.,
r. 295.

(2) Nothing in subrule (1)—

(a) shall prevent the registrar from requiring a receipt for any payment by him ; or cf. C.E.R.,
r. 295

(b) affects the Stamp Duties Act, 1920. proviso.

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Part 50.

Death of
payee.cf. C.E.R.,
r. 296;
Supreme
Court Funds
Rules, 1927,
r. 62.

9. (1) Where, by any judgment or order, the Court directs the payment to any person of any funds in Court, and it appears to the registrar that that person has died after the date on which the judgment or order took effect and that probate of his will or letters of administration of his estate have been granted to an executor or administrator, then, unless the judgment or order otherwise directs, the registrar may pay the funds in Court to the executor or administrator.

cf. C.E.R.,
r. 296;
S.C.F.R.,
r. 62.

(2) Where the person to whom the funds in Court are payable is entitled under a direction for payment to creditors, shareholders or debenture holders as such, the registrar may pay as mentioned in subrule (1) notwithstanding that it appears to him that that person died on or before the date on which the judgment or order took effect.

cf. C.E.R.,
r. 296;
S.C.F.R.,
r. 62.

(3) Subject to subrule (4) this rule does not authorise payment where the person to whom payment is directed appears to the registrar to have been entitled as trustee, executor, administrator or otherwise not in his own right and for his own use.

cf. S.C.F.R.,
r. 62.

(4) The registrar may, under this rule, pay funds in Court to an executor of the will of the person to whom payment is directed if it appears to the registrar that that person was entitled as sole or sole surviving executor.

Payment to
partners.
cf. C.E.R.,
r. 297;
S.C.F.R.,
r. 63 (1).

10. Where, by any judgment or order, the Court directs the payment of money in Court to any persons described in the order, or in a certificate of a master, as partners, or as trading or carrying on business in the name of a company or firm, the registrar may, unless the judgment or order otherwise directs, pay the money to any one or more of those persons or to the survivor of them.

Payment to
executors or
administra-
tors.
cf. C.E.R.,
r. 298;
S.C.F.R.,
r. 64.

11. Where, by any judgment or order, the Court directs the payment of funds in Court to persons described in the judgment or order, or in a certificate of a master, as executors or administrators, the registrar may, unless the judgment or order otherwise directs—

- (a) if it appears to him that any of them died after the date on which the judgment or order took effect, pay the funds in Court to the survivor of them;
- (b) if it appears to him that any of them died on or before the date on which the judgment or order took effect, but they are described in the judgment, order or certificate as

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executors of the will or administrators of the estate of a Part 51.
 creditor, shareholder or debenture holder, pay the funds in
 Court to the survivor of them; and

- (c) if the funds in Court are money not exceeding \$200, pay the
 money to any of them.

12. (1) Where any person is entitled to payment of any money Payment by
 in Court, he may give to the registrar a request to send to him by post.
 post at a specified address a cheque for the money in a specified form. cf. C.E.R.,
 r. 300.

(2) Where the registrar sends a cheque in accordance with a cf. C.E.R.,
 request under subrule (1), payment of the cheque shall be a discharge r. 300.
 to the registrar.

PART 51.

COURT OF APPEAL.

DIVISION 1.—*Preliminary.*

1. (1) In this Part, unless the context or subject matter otherwise Interpretation.
 indicates or requires—

“court below” means, in relation to an appeal or application for
 leave to appeal from a decision in any proceedings, the
 court in which, or the judge, justice or other person before
 whom, the proceedings were taken;

“decision” includes a judgment, order, verdict, opinion, decision,
 direction or determination;

“exhibit” includes a document or thing marked for identification,
 notwithstanding that it is not admitted in evidence;

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“material date”, in relation to an appeal or an application for leave to appeal, means—

- (a) in the case of a judgment in proceedings in the Court entered or to be entered pursuant to a direction or leave for entry, the date of the direction or leave ;
- (b) in the case of any other judgment in proceedings in the Court, the date of entry ;
- (c) in the case of an order in proceedings in the Court, the date on which the order is made ;
- (d) in the case of a verdict in proceedings in the Court, the date on which the verdict is given ; and
- (e) in the case of any other decision, whether in proceedings in the Court or not, the date on which the decision is pronounced or given ;

“verdict” includes a finding or assessment.

(2) In this Part, unless the context or subject matter otherwise indicates or requires, “appeal” includes—

- (a) an appeal from a decision in proceedings in the Court ;
- (b) an appeal under Part VI of the District Courts Act, 1912 (which relates to appeals by notice of appeal from rulings and other acts of District Court judges) ;
- (c) an appeal to the Court of Appeal under any of the following provisions of the Legal Practitioners Act, 1898, namely—
 - (i) section 40G (which relates to the employment of a person struck off the roll or suspended) ;
 - (ii) section 40J (which relates to the employment of a person convicted of an indictable offence) ;
 - (iii) section 40K (which relates to the employment by a solicitor of a person whose conduct as a clerk has led to proceedings against a solicitor) ;
 - (iv) section 72 (which relates to practising certificates) ; and
 - (v) section 78 (which relates to orders of the Statutory Committee under that Act) ;
- (d) an appeal to the Court of Appeal under section 46 of the Local Government Act, 1919 (which relates to ouster of office) ;
- (e) an application under section 19 of the Medical Practitioners Act, 1938 (which relates to the registration of medical practitioners) ;

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- (f) an appeal under section 26 (3) of the Medical Practitioners Act, 1938 (which relates to the removal of names from the register under that Act) or under section 29 (4) of that Act (which relates to orders of the disciplinary tribunal under that Act) ;
- (g) an appeal under section 167 of the Mining Act, 1906 (which relates to mining appeal courts) ;
- (h) an appeal to the Court of Appeal under section 14 (8) of the Motor Vehicles (Third Party Insurance) Act, 1942 (which relates to approval as an authorised insurer under that Act) ;
- (i) an appeal under section 24 of the Supreme Court (Summary Jurisdiction) Act, 1967 ; and
- (j) an appeal under section 37 (4) (a) of the Workers' Compensation Act, 1926 (which relates to awards and other acts of the Workers' Compensation Commission).

(3) Notwithstanding subrule (2), in this Part "appeal" does not include—

- (a) proceedings to which Part 31 (which relates to the separate decision of questions) or Part 32 (which relates to stated cases) applies, except an appeal to the Court of Appeal from the decision of the Court in a Division in proceedings to which Part 31 or Part 32 applies ;
- (b) an application for the variation or discharge of an order of a Judge of Appeal or of the registrar.

2. (1) The provisions of Parts other than this Part apply, so far as applicable, to proceedings in the Court of Appeal. Rules generally.

(2) For the purposes of subrule (1)—

- (a) a person who commences proceedings in the Court of Appeal, as appellant or otherwise, shall be a plaintiff ; and
- (b) a person against whom proceedings are commenced in the Court of Appeal, as respondent to an appeal or otherwise, shall be a defendant.

DIVISION 2.—*Appeals.*

3. (1) An application for leave to appeal to the Court of Appeal in proceedings in the Court shall be made by motion in the proceedings. Leave to appeal.

cf. Court of Appeal Rules, r. 1 (1).

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cf. C.A.R.,
r. 1 (1).

(2) In a case to which subrule (1) does not apply, proceedings for leave to appeal to the Court of Appeal shall be commenced by summons.

cf. C.A.R.,
r. 1 (1).

(3) The applicant shall file notice of the motion or file the summons within 14 days after the material date or within such extended time as the court below or the Court of Appeal may fix.

(4) The court below may extend time under subrule (3) only within 14 days after the material date or on a notice of motion or other application filed within 14 days after the material date.

(5) The Court of Appeal may extend time under subrule (3) at any time.

(6) The applicant need not serve the notice or summons unless the Court of Appeal so orders.

cf. C.A.R.,
r. 1 (2).

(7) The applicant shall file with or subscribe to the notice or summons a statement of—

- (a) the nature of the case;
- (b) the questions involved; and
- (c) the reasons why leave should be given.

cf. C.A.R.,
r. 1 (3).

(8) The applicant shall, not less than three days before the date for hearing of the application, file such number of copies as the registrar directs of the reasons for decision in the court below.

cf. C.A.R.,
r. 1 (5).

(9) The Court of Appeal may give leave to appeal on terms.

Time for
appeal.
cf. C.A.R.,
r. 5.

4. (1) Subject to subrule (2), an appeal must be instituted within 28 days after the material date or within such extended time as the court below or the Court of Appeal may fix.

cf. C.A.R.,
r. 1 (4).

(2) Where an appeal is instituted pursuant to leave to appeal given by the Court of Appeal, the appeal must be instituted within 14 days after the leave is given or within such extended time as the Court of Appeal may fix.

(3) The court below may extend time under subrule (1) only within 28 days after the material date or on a notice of motion or other application filed within 28 days after the material date.

(4) The Court of Appeal may extend time under subrule (1) or under subrule (2) at any time.

Institution
of appeal.
cf. C.A.R.
rr. 3 (1),
4 (1).

5. (1) An appeal to the Court of Appeal in proceedings in the Court shall be instituted by filing in the registry of the Court of Appeal notice of appeal in the proceedings.

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(2) Subrule (1) does not apply to an appeal in proceedings under the Supreme Court (Summary Jurisdiction) Act, 1967.

(3) Subject to subrule (1), proceedings for an appeal to the Court of Appeal shall be commenced and the appeal shall be instituted by filing in the registry of the Court of Appeal a summons and a notice of appeal. cf. C.A.R., rr. 3 (1), 4 (1).

6. (1) Each party to the proceedings in the court below who is affected by the relief sought by a notice of appeal or is interested in maintaining the decision under appeal shall be joined as a party appellant or respondent to the appeal. Parties. cf. C.A.R., r. 4 (3).

(2) The Court of Appeal may order the addition or removal of any person as a party appellant or respondent to an appeal.

(3) A person shall not be made an appellant without his consent.

7. (1) The Court of Appeal may direct that any notice of motion for appeal or cross appeal or the summons in any proceedings instituting an appeal be served on any person, whether or not a party to the proceedings in which the decision under appeal was given. Service. cf. C.A.R., rr. 4 (4), 8 (1).

(2) Where the Court of Appeal makes an order granting leave to appeal or an extension of time for appealing or for applying for leave to appeal, the Court of Appeal may, at the same time or afterwards, give directions for service other than personal service of any summons by which, pursuant to the order, proceedings are commenced for an appeal or for leave to appeal, and of any other document in the proceedings so commenced.

8. A notice of appeal shall state—

- (a) whether the appeal is from the whole or part only, and what part, of the decision in the court below; Notice of appeal: contents. cf. C.A.R., r. 3 (2).
- (b) briefly, but specifically, the grounds relied upon in support of the appeal; and
- (c) what judgment, order, verdict or determination the appellant seeks in place of the decision in the court below.

9. (1) In the case of an appeal from a decision in proceedings in a Division, the appellant shall file a copy of the notice of appeal in the registry of the Division. Notice of appeal: filing or lodgment with court below. cf. C.A.R., r. 4 (2).

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cf. C.A.R.,
r. 4 (2).

(2) In the case of an appeal from a decision other than a decision in proceedings in a Division, the appellant shall—

- (a) file a copy of the notice of appeal in the registry or office of the court below; or
- (b) if compliance with paragraph (a) is not in accordance with the practice or organisation of the court below, lodge a copy of the notice of appeal with an officer of the court below concerned with its records or process.

Stay.

cf. C.A.R.,
r. 11 (1).

10. (1) An application for leave to appeal to the Court of Appeal or an appeal to the Court of Appeal shall not—

- (a) operate as a stay of execution or of proceedings under the decision of the court below;
- (b) invalidate any intermediate act or proceeding,

except so far as the Court of Appeal may direct or, subject to any direction of the Court of Appeal, as the court below may direct.

(2) Subrule (1) has effect subject to section 25 of the Supreme Court (Summary Jurisdiction) Act, 1967.

Security
for costs.cf. C.A.R.,
r. 9 (5);
R.S.C.
(Rev.)
1965, O. 59,
r. 10 (5).

11. (1) The Court of Appeal may, in special circumstances, order that such security as the Court of Appeal thinks fit be given for the costs of an appeal to the Court of Appeal.

cf. C.A.R.,
r. 9 (5).

(2) Subject to subrule (1), no security for the costs of an appeal to the Court of Appeal shall be required.

(3) Subrules (1) and (2) do not affect the powers of the Court under Part 53 Division 1 (which relates to security for costs).

Amend-
ment of
notice of
appeal.cf. C.A.R.,
r. 7 (1)
(b).

12. (1) A notice of appeal may, before the date of the appointment made under rule 20, be amended without leave by filing a supplementary notice.

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(2) A party who files a supplementary notice under subrule (1) *cf.* C.A.R., must serve it on the other parties and must file or lodge a copy of the supplementary notice in accordance with rule 9 as if it were a notice of appeal. *r. 7 (1) (b) (2).*

13. (1) Where a respondent to an appeal from any decision wishes to appeal from the whole or any part of the decision, he shall file a notice of cross-appeal. *cf.* C.A.R., *r. 6 (1).*

(2) A notice of cross-appeal by a respondent must be filed within 21 days after service of the notice of appeal on him. *cf.* C.A.R., *r. 6 (1).*

(3) Subject to subrules (1), (2) and (4), the provisions of these rules relating to a notice of appeal apply to a notice of cross-appeal. *cf.* C.A.R., *rr. 6 (1) (2), 7 (1), 8 (2).*

(4) Rule 4 does not apply to a cross-appeal.

14. Where a respondent to an appeal wishes to contend that any matter of fact or law has been wrongly decided against him, but does not seek a discharge or variation of any part of the decision of the court below, he need not file a notice of cross-appeal, but he must, not less than three days before the hearing of the appeal, give notice of that contention to each other party to the appeal. *Notice of contention. cf. C.A.R., r. 6 (3).*

15. (1) In an appeal from any decision, the Court of Appeal may exercise its powers under the Act and under these rules notwithstanding—

- (a) that there is no appeal from some part of the decision;
- (b) that any party to the proceedings in the court below has not appealed;
- (c) that any ground for allowing or dismissing the appeal or varying the decision is not stated in any notice of appeal, notice of cross-appeal or notice of contention; or
- (d) that there has been no appeal from some other decision in the proceedings.

Notice of appeal, etc., not to limit powers. cf. C.A.R., rr. 9 (4), 20; R.S.C. (Rev.) 1965, O. 59, r. 10 (4) (6).

(2) Where a person is not a party to the proceedings in which the decision under appeal is given, but is served with a notice of appeal pursuant to a direction of the Court of Appeal, the Court of

cf. C.A.R., r. 8 (3) (b); R.S.C. (Rev.) 1965, O. 59, r. 8 (3) (b).

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Appeal may give such decision as might have been given in the court below if the person served had been a party to the proceedings in the court below.

cf. C.A.R.,
r. 9 (4);
R.S.C.
(Rev.) 1965,
O. 59, r. 10
(4).

(3) In any appeal the Court of Appeal may, on terms, make any order to ensure the determination on the merits of the real question in controversy.

cf. C.A.R.,
r. 10 (1);
R.S.C.
(Rev.) 1965,
O. 59, r. 11
(1).

(4) The Court of Appeal may, in any appeal, make any order which the Court of Appeal might make on an appeal for a new trial or for the setting aside of a verdict or judgment.

(5) This rule applies subject to the provisions of any Act.

New
trial.

cf. C.A.R.,
r. 10 (2);
R.S.C.
(Rev.) 1965,
O. 59, r. 11
(2).

16. (1) The Court of Appeal shall not order a new trial—

- (a) on the ground of misdirection;
- (b) on the ground of the improper admission or rejection of evidence; or
- (c) where there has been a trial before a jury, on the ground that the verdict of the jury was not taken upon a question which the trial judge was not asked to leave to the jury,

unless it appears to the Court of Appeal that some substantial wrong or miscarriage has been thereby occasioned.

cf. C.A.R.,
r. 10 (3);
R.S.C.
(Rev.) 1965,
O. 59, r. 11
(3); Act
No. 21,
1899,
s. 160 (b).

(2) The Court of Appeal may order a new trial on any question without interfering with the decision on any other question.

cf. C.A.R.,
r. 10 (3);
R.S.C.
(Rev.) 1965,
O. 59, r. 11
(3); Act
No. 21,
1899, s.
160 (b).

(3) Where it appears to the Court of Appeal that some ground for a new trial affects part only of the matter in controversy, or one or some only of the parties, the Court of Appeal may order a new trial as to that part only, or as to that party or those parties only.

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(4) Where the Court of Appeal makes an order under subrule (2) or subrule (3), the Court of Appeal may direct the entry of such judgment or make such order as the nature of the case requires for the disposal of the remainder of the appeal.

cf. C.A.R.,
r. 10 (3);
R.S.C.
(Rev.) 1965,
O. 59, r. 11
(3).

(5) Where the Court of Appeal orders a new trial, the Court of Appeal may—

cf. Act No.
21, 1899,
s. 160.

- (a) impose conditions on any party for the purposes of the new trial;
- (b) direct admissions to be made by any party for the purpose of the new trial;
- (c) order that the testimony of any witness examined at the former trial may be read from notes of the testimony, instead of the witness being again examined; and
- (d) for the purposes of subparagraphs (a) to (c), from time to time make such orders as the Court of Appeal thinks fit.

(6) In relation to an appeal in proceedings in a District Court, this rule has effect notwithstanding anything in the District Courts Act, 1912.

17. Where an appellant is required to do any act by or under these rules, the Court of Appeal may—

Time;
want of
prosecu-
tion.

- (a) fix a time peremptorily for the doing of the act; and
- (b) order that if he does not do the act within the time so fixed his appeal shall stand dismissed for want of prosecution.

cf. C.A.R.,
r. 22.

18. Where any step has been taken for the enforcement of a judgment or order and the Court of Appeal varies or sets aside the judgment or order, the Court of Appeal may make such orders for reinstatement as the Court of Appeal thinks fit.

Reinstatement.
ment.
cf. C.A.R.,
r. 11 (2).

DIVISION 3.—*Appeal Papers.*

19. (1) Where an appeal from a decision in any proceedings lies, by leave or without leave, to the Court of Appeal, the officer of the court below who has custody of the exhibits in the proceedings shall, unless the court below otherwise orders, retain the exhibits for 28 days after the material date.

Retention
of
exhibits.
cf. C.A.R.,
r. 12 (1).

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cf. C.A.R.,
r. 12 (2). (2) Upon filing or lodgment of a copy of a notice of appeal under rule 9, the proper officer of the court below shall make out and certify a list of the exhibits.

cf. C.A.R.,
r. 12 (3). (3) Where an exhibit is not available for delivery to the registry of the Court of Appeal, the officer certifying under subrule (2) shall, in the certificate, state the circumstances and give such information as he can to enable the registrar to cause the exhibits to be available to the Court of Appeal.

Appointment to settle.
cf. C.A.R.,
r. 13. 20. (1) The appellant shall, on filing his notice of appeal, get from the proper officer in the registry an appointment to settle the appeal papers.

cf. C.A.R.,
r. 13. (2) The appellant shall serve notice of the appointment on each person on whom the notice of appeal is served.

(3) The notice of appointment may be subscribed to the notice of appeal.

Collection of papers.
cf. C.A.R.,
r. 14 (1). 21. (1) Upon the filing of a notice of appeal, the registrar—
(a) may obtain from the Court Reporting Branch the original of the transcript (if any) of the proceedings in the court below; and
(b) shall obtain from the proper officer of the court below—
(i) the exhibits;
(ii) the list of exhibits and certificate under rule 19;
(iii) all the other documents before the court below, together with a list of them, certified by the proper officer of the court below; and
(iv) the reasons for judgment (if any) or the summing up (if any) in the court below certified by the proper officer of the court below.

cf. C.A.R.,
r. 14 (1). (2) The registrar shall retain the documents obtained under subrule (1) until disposal of the appeal and shall thereupon return them to the offices or persons from whom he obtained them.

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cf. C.A.R.,
r. 14 (2),
(3).

(3) Where oral evidence was given in the court below but was not transcribed in the Court Reporting Branch—

- (a) if notes of the evidence were taken by or for the judge, justice or other person presiding in the court below, the appellant shall, subject to any direction in the court below, obtain a copy of the notes and deliver the copy to the registry; or
- (b) if notes of the evidence are not obtainable pursuant to paragraph (a), the registrar shall obtain a report of the evidence from the associate or other proper officer of the court below.

22. (1) At the appointment to settle the papers the registrar shall—

Settlement.
cf. C.A.R.,
r. 15.

- (a) determine what documents and matter shall be included in the papers and the order of inclusion and such other matters as he thinks fit concerning the preparation of copies of the papers;
- (b) note any correction to the transcript or notes or report of evidence, unless objected to by any party;
- (c) settle the groups and indexes in accordance with rule 24;
- (d) determine the number of copies of the papers required;
- (e) where the appeal papers are to be prepared in the registry, obtain from the appellant an order for that number of copies;
- (f) obtain an estimate of the duration of the hearing of the appeal;
- (g) make a summary of the nature of the appeal, a note of the court, judge, justice or person from which the appeal is brought and a note of the points involved;
- (h) if practicable, fix a period within which the hearing may be held and a date for the hearing.

(2) If, at the appointment to settle the papers, any party objects to a proposed correction of the transcript, the registrar shall refer the question to the associate or other proper officer of the court below for the directions of the judge, justice or other person presiding in the court below.

cf. C.A.R.,
r. 15 (b).

23. (1) The registrar may direct a party to prepare the required number of copies of the papers.

Preparation
of
copies.
cf. C.A.R.,
r. 16.

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cf. C.A.R.,
r. 16.

(2) Subject to subrule (1), the registrar shall prepare, in accordance with rule 24, the required number of copies of the papers.

cf. C.A.R.,
r. 16.

(3) When the registrar has prepared the copies under subrule (2), he shall give notice to the appellant accordingly.

Manner of
preparation.cf. C.A.R.,
r. 17.
cf. C.A.R.,
r. 17.

24. (1) This rule has effect subject to any determination by the registrar under rule 22.

(2) The copies of papers for the purposes of an appeal and the grouping and order of the copies shall be as follows—

(a) Group A—

(i) the pleadings, affidavits and other documents before the court below (except the documents in Group B or Group C) ;

(ii) a list of the documents mentioned in subparagraph (i) ;

(iii) the notice of appeal ;

(iv) the decision under appeal ;

(v) the reasons for the judgment or order (if any) or the summing up (if any) in the court below ;

(b) Group B—the transcript or notes or record of evidence, with an index ; and

(c) Group C—the list of exhibits and the exhibits in the order settled by the registrar.

cf. C.A.R.,
r. 17.

(3) Each group of documents mentioned in subrule (2) shall be bound separately from the other groups.

Filing,
lodgment
and service.
cf. C.A.R.,
r. 18.

25. When the copies of papers have been prepared, the appellant shall—

(a) file one copy ;

(b) lodge with the registrar such number of copies as the registrar may direct ; and

(c) serve three copies on each other party to the appeal.

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DIVISION 4.—*Written submissions.*

Part 51.

26. (1) Subject to subrule (2), a party to an appeal may serve Notice. on the other parties a notice that he proposes to prepare and file written submissions. cf. C.A.R., r. 19 (1).

(2) Where a date for the hearing of the appeal has been fixed, a party shall not, unless the Court of Appeal otherwise orders, give a notice under subrule (1) later than 14 days before that date. cf. C.A.R., r. 19 (1).

(3) Where a notice under subrule (1) is served on any party, he may, by notice filed within 2 days after service on him of the notice under subrule (1), object to the use of written submissions. cf. C.A.R., r. 19 (8).

(4) A party filing a notice of objection under subrule (3) shall, on the day of filing, serve the notice on each other party. cf. C.A.R., r. 19 (8).

(5) Upon the filing of a notice of objection under subrule (3), the Court of Appeal may, without hearing the parties, determine whether written submissions shall be prepared and filed. cf. C.A.R., r. 19 (2), (9).

(6) The registrar shall notify the parties of a determination under subrule (5). cf. C.A.R., r. 19 (9).

27. (1) The Court of Appeal may, of its own motion, direct the preparation of written submissions. Direction.

(2) The registrar shall serve notice on the parties of a direction under subrule (1).

28. (1) Subject to any determination under rule 26 (5), upon service of a notice under rule 26 (1), each party shall prepare written submissions. Preparation. cf. C.A.R., r. 19 (2).

(2) Upon service of notice of a direction under rule 27, each party shall prepare written submissions.

(3) *Written submissions—*

(a) shall be divided into paragraphs numbered consecutively;

(b) shall state concisely—

(i) the circumstances out of which the appeal arises;

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(ii) the contentions to be urged by the party concerned ;
and

(iii) the reasons relied upon ;

(c) shall, so far as practicable, refer to matter in the copies of appeal papers by page number, and shall not extract that matter.

Filing and
lodgment.
cf. C.A.R.,
r. 19 (4).

29. (1) Each party required to prepare written submissions shall, not more than 10 days after service on him of a notice under rule 26 (1) or under rule 27 (2)—

(a) file his written submissions ; and

(b) lodge with the registrar such number of copies of the written submissions as the registrar may direct.

cf. C.A.R.,
r. 19 (5).

(2) A party filing written submissions under subrule (1) shall, on the day of filing, serve notice of the filing on each other party.

Service.
cf. C.A.R.,
r. 19 (6)
(7).

30. When all parties have filed their written submissions, each party shall serve three copies of his written submissions on each other party.

DIVISION 5.—*General.*

Motions.

31. Subject to the rules, but notwithstanding rule 32, any application to the Court of Appeal or to a Judge of Appeal in or for the purposes of or in relation to proceedings in the Court shall be made by motion in the proceedings.

Original
proceedings.

32. Subject to the rules, proceedings in the Court of Appeal shall be commenced by summons.

Papers.
cf. C.A.R.,
r. 34.

33. (1) A person filing a document in the registry shall, in addition, lodge so many copies of the document as the registrar may direct.

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(2) The provisions of Division 3 (which relates to appeal papers) shall, if the registrar so directs, apply to any proceedings in the Court of Appeal, with such modification as the registrar may direct.

cf. C.A.R.,
rr. 34, 36.

34. An application to the Court of Appeal for the variation or discharge of an order of a Judge of Appeal shall not be made except on notice of motion filed within 28 days after the date on which the order is made or within such extended time as the Court of Appeal may fix.

Review of
order of
Judge of
Appeal.

PART 52.

Costs.

DIVISION 1.—*Preliminary.*

1. In this Part, unless the context or subject matter otherwise indicates or requires—

Interpreta-
tion—
general.

“bill” means bill of costs.

cf. R.S.C.
(Rev.) 1965,
O. 62, r. 1
(1).

“certificate” includes allocatur.

“taxed costs” means costs taxed in accordance with this Part.

“trustee” includes an executor of a will and an administrator of the estate of a deceased person.

2. In this Part—

Interpreta-
tion—
“fund”.

(a) a reference to a fund, being a fund out of which costs are to be paid, or being a fund held by a trustee, extends to any property held for the benefit of any person or class of persons, or held on trust for any purpose; and

cf. R.S.C.
(Rev.) 1965,
O. 62, r. 1
(2).

(b) a reference to a fund held by a trustee extends to any property to which he is entitled as trustee, whether alone or together with any other person and whether the property is for the time being in the possession of the trustee or not.

3. The provisions of this Part apply, subject to their terms, to and in respect of costs payable or to be taxed under any order of the Court or under the rules and costs to be taxed in the Court under any Act.

Application.
cf. Costs
Rules, r. 1.

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Powers of
the Court
generally.

cf. R.S.C.
(Rev.) 1965,
O. 62, r. 2
(4).

4. (1) The powers and discretions of the Court under section 76 of the Act (which relates to costs generally) shall be exercised subject to and in accordance with this Part.

(2) Save as mentioned in subrule (1), this Part has effect subject to the Act and the rules and subject to any other Act.

Time for
dealing
with costs

cf. R.S.C.
(Rev.) 1965,
O. 14, r. 7
(1); O. 62,
r. 4 (1).

5. (1) The Court may, in any proceedings, exercise its powers and discretions as to costs at any stage of the proceedings or after the conclusion of the proceedings.

cf. R.S.C.
(Rev.) 1965,
O. 62, r. 4
(1).

(2) Where the Court makes an order in any proceedings for the payment of costs, the Court may require that the costs be paid forthwith, notwithstanding that the proceedings are not concluded.

Taxed costs
and other
provision.

cf. R.S.C.
(Rev.)
1965, O. 62,
r. 9 (1).

6. (1) Subject to this Part, where, by or under these rules or any order of the Court, costs are to be paid to any person, that person shall be entitled to his taxed costs.

cf. R.S.C.
(Rev.)
1965, O. 62,
r. 9 (4).

(2) Where the Court orders that costs be paid to any person, the Court may further order that, as to the whole or any part (specified in the order) of the costs, instead of taxed costs, that person shall be entitled to—

- (a) a proportion specified in the order of the taxed costs;
- (b) the taxed costs from or up to a stage of the proceedings specified in the order;
- (c) a gross sum specified in the order instead of the taxed costs;
or
- (d) a sum in respect of costs to be ascertained in such manner as the Court may direct.

Costs in
other
courts.

cf. R.S.C.
(Rev.)
1965, O. 62,
r. 4 (3).

7. Where, in proceedings transferred to or removed into the Court, or in proceedings on an appeal to the Court, the Court makes an order as to the costs of proceedings before another court, the Court may—

- (a) specify the amount of the costs to be allowed;

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*Supreme Court.*FOURTH SCHEDULE—*continued.*

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- (b) order that the costs be taxed in accordance with this Part ; or Part 52.
- (c) make orders for the ascertainment of the costs by taxation or otherwise in that other court.

8. Subject to this Part, a party to proceedings in the Court shall not be entitled to recover any costs of or incidental to the proceedings from any other party to the proceedings except under an order of the Court.

Order for
payment.
cf. R.S.C.
(Rev.)
1965, O. 62,
r. 3 (1).

9. (1) Where—

- (a) an order of the Court directs the payment of costs ;
- (b) proceedings are dismissed with costs ;
- (c) a motion is refused with costs ;
- (d) a party may tax costs under rule 16 on the discontinuance of proceedings ;
- (e) a party may tax costs under subrule (1) or subrule (2) of rule 17 on the acceptance of money paid into Court ; or
- (f) a party may tax costs under rule 18 on dismissal for non-suit,

Order for
taxation—
when not
required.
cf. Costs
Rules, r. 55;
cf. R.S.C.
(Rev.)
1965, O. 62,
r. 11 (1).

the costs may be taxed without any order directing taxation.

(2) Where—

- (a) proceedings are dismissed with costs; or
- (b) a motion is refused with costs—

and the costs are not paid within 4 days after the signing of a certificate of taxation of the costs, a party to whom the costs are payable may enter judgment for the taxed costs.

10. (1) Where judgment is entered for costs under Part 17 (which relates to judgment on default of appearance or of defence) the costs shall not be taxed but shall be in accordance with the prescribed scale.

Default
judgment.
cf. R.S.C.
(Rev.)
1965, O. 62,
r. 9 (3).

(2) Subrule (1) does not apply to a judgment directed to be entered under Part 17 rule 9.

DIVISION 2.—*Entitlement.*

11. If the Court makes any order as to costs, the Court shall, subject to this Part, order that the costs follow the event, except where it appears to the Court that some other order should be made as to the whole or any part of the costs.

Following
the event.
cf. R.S.C.
(Rev.)
1965, O. 62,
r. 3 (2).

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Amendment of pleading without leave.

cf. R.S.C. (Rev.) 1965, O. 62, r. 3 (3).

12. Where a party amends a pleading without leave, he shall, unless the Court otherwise orders, pay the costs of and occasioned by the amendment.

Extension of time.

cf. R.S.C. (Rev.) 1965, O. 62, r. 3 (4).

13. Where a party applies for an extension of time, he shall, unless the Court otherwise orders, pay the costs of and occasioned by the application, or any order made on or in consequence of the application.

Non-admission of fact.

cf. R.S.C. (Rev.) 1965, O. 62, r. 3 (5).

14. Where a party to any proceedings serves a notice disputing a fact under Part 18 rule 2 (2) (which relates to notices to admit facts), and afterwards that fact is proved in the proceedings, he shall, unless the Court otherwise orders, pay the costs of proof.

Non-admission of document.

cf. R.S.C. (Rev.) 1965, O. 62, r. 3 (6).

15. Where a party to any proceedings serves a notice disputing the authenticity of a document under Part 18 rule 4 (2) (which relates to the admission of documents produced on discovery) or under Part 18 rule 5 (2) (which relates to notices to admit documents), and afterwards the authenticity of the document is proved in the proceedings, he shall, unless the Court otherwise orders, pay the costs of proof.

Discontinuance.

cf. R.S.C. (Rev.) 1965, O. 62, rr. 3 (7), 10 (1).

16. (1) Where, pursuant to Part 21 rule 2, a party to any proceedings discontinues the proceedings without leave as to the whole or any part of the relief claimed by him against any other party, the discontinuing party shall, unless the Court otherwise orders, pay the costs of the party against whom the discontinued claim is made, occasioned by the discontinued claim and incurred before service of notice of the discontinuance.

cf. R.S.C. (Rev.) 1965, O. 62, r. 10 (1).

(2) A party whose costs are payable under subrule (1) may tax the costs and, if the taxed costs are not paid within 4 days after the signing of a certificate of the taxation, may enter judgment for the taxed costs.

Payment into Court.

cf. R.S.C. (Rev.) 1965, O. 62, r. 10 (2) (3) (4).

17. (1) Where, pursuant to Part 22, a plaintiff before the trial or hearing begins—

(a) accepts money brought into Court by a defendant in answer to a cause of action;

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(b) abandons that cause of action as against all other defendants (if any) sued on that cause of action jointly with the defendant bringing the money into Court; and

(c) abandons all his other causes of action (if any),

then, after payment out, he may, unless the Court otherwise orders, tax his costs of the proceedings in respect of his claims for relief against the defendant bringing the money into Court, incurred before service of notice of the deposit of the money accepted and, if the costs are not paid within 4 days after the signing of a certificate of the taxation, enter judgment against that defendant for the taxed costs.

(2) Where a cross-claimant brings money into Court and, in his notice of deposit, states pursuant to Part 22 rule 6 that he takes into account his cause of action on the cross-claim with a view to its abandonment in case the money is accepted, and the money is accepted before the trial or hearing begins, the cross-claimant may, unless the Court otherwise orders, tax his costs of the cross-claim, incurred before service of notice of the acceptance, and, if the costs are not paid within 4 days after the signing of a certificate of the taxation, enter judgment against the party accepting the money for the taxed costs.

(3) Where a party has brought money into Court, the Court may, in exercising its discretion as to costs, take into account that fact, and the amount of the money brought into Court.

18. (1) Where a party makes a claim for relief and the Court orders that the claim be dismissed under Part 34 rule 7 (which relates to nonsuit), he shall pay the costs of the party against whom the dismissed claim is made, occasioned by the dismissed claim.

(2) A party whose costs are payable under subrule (1) may tax the costs and, if the taxed costs are not paid within 4 days after the signing of a certificate of the taxation, may enter judgment for the taxed costs.

19. Where a party makes an offer of contribution within the application of Part 6 rule 13 (which relates to cross-claims), the Court may, in exercising its discretion as to costs, take the offer into account.

Offer of contribution.
cf. R.S.C. (Rev.) 1965, O. 62, r. 5 (a).

20. Where any person fails to comply with any provision of the rules or any judgment or order of the Court, the Court may order him to pay the costs of any other person occasioned by the failure.

Disobedience to rule, judgment or order.

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Part 52.

Discovery
before
suit.

21. The Court may, in proceedings in respect of any claim for relief, include in any order for costs the costs of a party to the proceedings of proceedings under Part 3 in respect of that claim for relief including payments of conduct money and payments on account of expenses and loss under that Part.

DIVISION 3.—*Party and party basis.*

Application. 22. This Division applies to costs which by or under any Act or cf. R.S.C. the rules or any order of the Court are to be paid to a party to any (Rev.) 1965, proceedings either by another party to the proceedings or out of a O. 62, r. 28 fund. (1).

Party and 23. (1) Costs shall be taxed on a party and party basis unless party basis. the costs are to be taxed on the common fund basis pursuant to rule cf. R.S.C. 30 or on the trustee basis pursuant to rule 31. (Rev.) 1965, O. 62, r. 28 (2).

cf. Costs Rules, r. 23; 24. (2) On a taxation on a party and party basis there shall be R.S.C. allowed all such costs as were necessary or proper for the attainment (Rev.) 1965, of justice or for enforcing or defending the rights of the party whose O. 62, r. 28 costs are being taxed. (2).

cf. Costs Rules, r. 30. 25. (3) On a taxation on a party and party basis, the costs of briefing more than one counsel may be allowed notwithstanding that none is one of Her Majesty's counsel.

cf. Costs Rules, r. 32. 26. (4) Subject to subrule (2), on a taxation on a party and party basis, a retaining fee to more than one counsel shall not be allowed.

Small claims for money. 24. (1) This rule applies to proceedings commenced in the Court on a common law claim. cf. 7 & 8 Eliz. 2, c. 22, s. 47 (1).

cf. Act No. 21, 1899, s. 267. 25. (2) Where a plaintiff recovers a sum not more than 300 dollars, the Court shall not make an order for the payment of his costs of the proceedings unless it appears to the Court that he had sufficient reason for commencing proceedings in the Court.

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(3) Where a plaintiff recovers a sum not more than 1,000 dollars and the Court makes an order for the payment of his costs of the proceedings, and the costs are taxed on a party and party basis, the amount of costs payable to him shall, subject to subrule (5), be only a one third part of the amount which would be payable to him apart from this subrule. cf. Costs Rules, r. 6.

(4) Where a plaintiff recovers a sum more than 1,000 dollars but not more than 2,000 dollars, and the Court makes an order for the payment of his costs of the proceedings, and the costs are taxed on a party and party basis, the amount of costs payable to him shall, subject to subrule (5), be only a two thirds part of the amount which would be payable to him apart from this subrule. cf. Costs Rules, r. 6.

(5) In a case to which subrule (3) or subrule (4) applies, the Court may order that the amount of costs payable to the plaintiff be some greater part or the whole of the amount which would be payable to him apart from those subrules. cf. Costs Rules, r. 6.

(6) Where the plaintiff recovers a sum not more than 2,000 dollars, and the Court makes an order for the payment of his costs of the proceedings, and the costs are taxed on a party and party basis, the costs of briefing more than one counsel for the plaintiff shall not be allowed unless the Court otherwise orders. cf. Costs Rules, r. 31.

(7) Where the plaintiff claims a sum not more than 2,000 dollars, and the Court makes an order for the payment of the defendant's costs of the proceedings, and the costs are taxed on a party and party basis, the costs of briefing more than one counsel for the defendant shall not be allowed unless the Court otherwise orders. cf. Costs Rules, r. 31.

(8) For the purposes of this rule, a plaintiff shall be treated as recovering the full amount recoverable in respect of his claim without regard to any deduction made in respect of contributory negligence on his part or in respect of any cross-claim by a defendant or otherwise in respect of matters not falling to be taken into account in determining whether the action should have been commenced in the Supreme Court. cf. 7 & 8 Eliz. 2, c. 22, s. 47 (1).

25. (1) Where counsel is briefed to appear on a trial or hearing, and the trial or hearing occupies more than 5 hours, and costs are taxed on a party and party basis, the taxing officer may allow refresher fees in such amount as he thinks fit for every 5 hours occupied by the trial or hearing after the first 5 hours and for the remaining duration of the trial or hearing. Refreshers. cf. Costs Rules, r. 34.

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cf. Costs Rules, r. 34. (2) The taxing officer may allow refreshers under subrule (1) whether or not witnesses are examined at the trial or hearing.

Absence of counsel. cf. Costs Rules, r. 35. 26. (1) Where counsel is briefed to appear on a trial or hearing, and costs are taxed on a party and party basis, counsel's fee on the brief shall not be allowed unless—

- (a) he is present at the trial or hearing for a substantial part of the relevant period;
- (b) he gives substantial assistance during the relevant period in the conduct of the proceedings; or
- (c) the Court otherwise orders.

cf. Costs Rules, r. 35. (2) In subrule (1) "relevant period" means the period of the trial or hearing or, if the trial or hearing lasts more than 5 hours, the first 5 hours.

cf. Costs Rules, r. 35. (3) Where counsel is briefed to appear on a trial or hearing, a refresher fee to him shall not be allowed to him for any period unless—

- (a) he is present at the trial or hearing for a substantial part of that period;
- (b) he gives substantial assistance during that period in the conduct of the proceedings; or
- (c) the Court otherwise orders.

Five hour periods. cf. Costs Rules, r. 34. 27. In reckoning the 5 hour periods mentioned in rules 25 and 26, the mid-day adjournment and any other adjournment shall not be included unless the Court or the taxing officer otherwise orders.

Counsel before registrar, etc. cf. Prothonotary (Chamber Work) Rules, r. 4; R.S.C. (Rev.) 1965, O. 62, App. 2, Pt. X, 2 (3). 28. (1) On a taxation on a party and party basis, costs in respect of counsel attending before a registrar or taxing or other officer shall not be allowed unless the registrar or other officer certifies the attendance to be proper or the Court otherwise orders.

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(2) Subrule (1) does not apply to costs in respect of counsel attending before a master. Part 52.

DIVISION 4.—*Common fund and trustee bases.*

29. This Division applies to costs which by or under the rules or any order of the Court are to be paid to a party to any proceedings either by another party to the proceedings or out of a fund. Application. cf. R.S.C. (Rev.) 1965, O. 62, r. 28 (1).

30. (1) The Court may order that costs be taxed on the common fund basis. Common fund basis. cf. R.S.C. (Rev.) 1965, O. 62, r. 28 (3).

(2) The common fund basis is a more generous basis than the party and party basis. cf. R.S.C. (Rev.) 1965, O. 62, r. 28 (4).

(3) On a taxation on the common fund basis— cf. R.S.C. (Rev.) 1965, O. 62, r. 28 (4).

(a) there shall be allowed a reasonable amount in respect of all costs reasonably incurred; and accordingly—

(b) the ordinary rules applied on a taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are interested shall be applied, whether or not the costs are in fact to be so paid.

31. (1) Where a person who is or has been a party to proceedings in the capacity of trustee is entitled to be paid costs out of any fund which he holds in that capacity, the costs shall be taxed on the trustee basis. Trustee basis. cf. R.S.C. (Rev.) 1965, O. 62, r. 31 (1).

(2) Where the Court makes an order for the payment to a person of costs out of a fund, the Court may order that the costs be taxed on the trustee basis and as if he were a trustee of the fund. cf. R.S.C. (Rev.) 1965, O. 62, r. 28 (5) (a).

(3) Where the Court makes an order for the payment to a person of costs and he is or was a party to the proceedings in the capacity of trustee, the Court may order that the costs be taxed on the trustee basis and as if the costs were to be paid out of a fund held by him. cf. R.S.C. (Rev.) 1965, O. 62, r. 28 (5) (a).

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cf. R.S.C.
(Rev.) 1965,
O. 62, r. 31
(2). (4) On a taxation on the trustee basis, no costs shall be dis-
allowed, except in so far as those costs or any part of their amount
should not, in accordance with the duty of the trustee as trustee,
have been incurred or paid, and should for that reason be borne by
him personally.

DIVISION 5.—*Solicitor and client basis.*

Application. 32. (1) Subject to subrule (2), this Division applies to any taxa-
tion under Part V of the Legal Practitioners Act, 1898.
cf. R.S.C.
(Rev.) 1965,
O. 62, r. 29
(1).

(2) This Division applies to the taxation of a bill for business
within the application of any general order under section 206 of the
Conveyancing Act, 1919 (which relates to remuneration in convey-
ancing and other non-contentious business), but applies subject to
any general order under that section.

Solicitor
and client
basis. 33. (1) All costs shall be allowed except as mentioned in the
following subrules.

cf. R.S.C.
(Rev.)
1965, O. 62,
r. 29 (1).

cf. R.S.C.
(Rev.)
1965, O. 62,
r. 29 (1)
(2). (2) Costs shall not be allowed in so far as they are of an
unreasonable amount, unless the amount has been approved by the
client.

cf. R.S.C.
(Rev.)
1965, O. 62,
r. 29 (1)
(2). (3) Costs shall not be allowed in so far as they are unreason-
ably incurred, unless incurred with the approval of the client.

cf. Costs
Rules, r. 25;
R.S.C.
(Rev.)
1965, O.
62, r. 29
(3). (4) Notwithstanding subrules (2) and (3), where costs are
incurred 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 on a party and party basis pursuant to rule 23, the costs shall
not be allowed, unless it is shown—

- (a) that the costs were reasonably incurred; or
- (b) that before the costs were incurred the solicitor expressly
warned the client that the costs might not be allowed on
a taxation of costs on a party and party basis.

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(5) An approval for the purposes of this rule may be express or implied. cf. R.S.C. (Rev.) 1965, O. 62, r. 29 (2).

(6) Where the client is a disable person, references to the client in subrules (2), (3) and (4), shall be read as references to his tutor. cf. R.S.C. (Rev.) 1965, O. 62, r. 29 (4).

DIVISION 6.—*Taxing officers.*

34. (1) The Chief Justice may appoint as many officers of the Court as he thinks fit to be taxing officers. Appointment and assignment.
cf. Costs Rules, r. 11.

(2) The Chief Justice may assign any taxing officer to be a taxing officer of any one or more Divisions or of the Court of Appeal or of the Court of Appeal and any one or more Divisions.

35. (1) Where costs become payable under these rules in the course of proceedings in the Court of Appeal, or the Court of Appeal makes an order for the payment of costs, and in either case the costs are to be taxed in the Court, the taxation shall be assigned to a taxing officer of the Court of Appeal. Assignment of business.

(2) Where costs become payable under these rules in the course of proceedings in a Division, or the Court in a Division makes an order for the payment of costs, and in either case the costs are to be taxed in the Court, the taxation shall be assigned to a taxing officer of the Division.

(3) Where costs are to be taxed under Part V of the Legal Practitioners Act, 1898, the taxation shall be assigned as follows— cf. Act No. 22, 1898, s. 22 (2).

(a) in case the whole of the business contained in the bill of costs is business transacted in the Court of Appeal—to a taxing officer of the Court of Appeal;

(b) in case the whole of the business contained in the bill of costs is business transacted in the Equity Division or conveyancing business—to a taxing officer of the Equity Division;

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(c) in case the whole of the business contained in the bill of costs is business transacted in a Division other than the Equity Division—to a taxing officer of the Division in which the business is transacted; and

(d) in any other case, including criminal business, and though the business or part of the business is not business transacted in the Court—to a taxing officer of the Common Law Division.

(4) Subject to subrules (1), (2) and (3), the taxation of costs shall be assigned to a taxing officer of the Common Law Division.

Assistance.
cf. Costs
Rules, r.
12; R.S.C.
(Rev.)
1965, O. 62,
r. 15 (2).

36. The taxing officers shall be assistant to each other.

General
powers.
cf. Costs
Rules, rr.
13, 17 pro.
(b); R.S.C.
(Rev.) 1965,
O. 62, rr. 14,
26 (2).

37. A taxing officer may, in the discharge of his functions with respect to the taxation of costs or any other functions under this Part—

(a) dispense with the filing or service of notice of a motion to proceed with taxation;

(b) require any party represented jointly with any other party in any proceedings before him to be separately represented;

(c) take evidence by the examination of witnesses or otherwise;

(d) direct the production of any document;

(e) adjourn any proceedings before him; and

(f) do such other things as the Court may by order direct.

Time.
cf. R.S.C.
(Rev.) 1965,
O. 62, r. 16.

38. A taxing officer may exercise the powers of the Court to extend times under Part 2 rule 3 and to fix times under Part 2 rule 4, in relation to the commencement of a taxation and in relation to the doing of any thing in or in connection with proceedings before him.

Absence of
party.
cf. R.S.C.
(Rev.) 1965,
O. 26, r. 1.

39. Where a party entitled to attend any matter before a taxing officer has had due notice of the time appointed for the matter, or where notice to a party has been dispensed with under rule 37, the taxing officer may proceed in his absence.

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40. (1) Costs to be taxed under an order shall, unless the order otherwise provides, include the costs of the taxation. Costs of proceedings before taxing officer.

(2) Costs to be taxed under the rules shall include the costs of the taxation.

(3) Subject to subrules (1), (2) and (4) and subject to any order of the Court, a taxing officer may make orders as to the costs of or incidental to any proceedings before him and shall include in his certificate the amount of those costs and a statement of the persons to whom and by whom those costs are to be paid or the fund out of which those costs are to be paid.

(4) Subrules (1), (2) and (3) apply subject to any Act and subject to rule 56 (2).

41. (1) A party making an application by motion before a taxing officer shall, before filing or serving notice of the motion, get from a taxing officer an appointment for the motion and shall state the appointment in the notice. Motion before taxing officer.
cf. Costs Rules, r. 17.

(2) On a motion before a taxing officer, the powers of the Court under Part 19 (which relates to motions) shall be exercisable by the taxing officer.

DIVISION 7.—*Taxation.*

42. Where an order is made for the payment of costs, and the costs are to be taxed, or a bill is referred for taxation, the costs may, unless the Court otherwise orders, be taxed, notwithstanding that the order for payment of costs or order of reference is liable to be set aside, varied or discharged on appeal or otherwise. Order subject to appeal, etc.
cf. Costs Rules, r. 18.

43. (1) This rule applies to costs of or incidental to proceedings in the Court, including— Party costs.

(a) in the case of an appeal to the Court, the costs of or incidental to the proceedings giving rise to the appeal; and

(b) in the case of proceedings transferred to or removed into the Court, the costs of or incidental to the whole proceedings, both before and after removal,

but does not apply to the taxation of costs for any business done by a solicitor, being a taxation under Part V of the Legal Practitioners Act, 1898.

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(2) Where by or under these rules costs are to be taxed and are to be paid to any party either by another party to the proceedings or out of a fund, an application to proceed with the taxation shall be made to a taxing officer by motion in the proceedings.

(3) Where by or under an order of the Court made in any proceedings costs are to be taxed and are to be paid to any party either by another party to the proceedings or out of a fund, an application to proceed with the taxation shall be made to a taxing officer by motion in the proceedings.

Costs in
account.
cf. R.S.C.
(Rev.) 1965,
O. 62, r. 19
(1);
Costs Rules,
r. 57.

44. (1) Where the Court orders that an account be taken and the account consists in part of costs, the Court may, by the same or a later order, direct that those costs be taxed by a taxing officer.

cf. R.S.C.
(Rev.) 1965,
O. 62, r. 19
(2); Costs
Rules,
r. 57.

(2) Where, in any proceedings, the Court makes an order under subrule (1), an application to proceed with the taxation shall be made to a taxing officer by motion in the proceedings.

Proceedings
for ref-
erence or
order.

45. (1) This rule applies to—

- (a) proceedings for reference by the Court of a bill of costs for taxation under any of sections 25, 32 and 33 of the Legal Practitioners Act, 1898, except an application to which rule 46 applies; and
- (b) proceedings for a reference by or order of the Court for taxation of costs under any Act or under the inherent jurisdiction of the Court, except the taxation of costs to which any of rules 43, 44, 46 and 47 applies.

(2) Proceedings for the reference or order and incidental orders shall be commenced by summons.

(3) Upon a reference or order for taxation being made in proceedings commenced pursuant to this rule, an application to proceed with the taxation shall be made to a taxing officer by motion in the proceedings.

Reference
in proceed-
ings for
recovery.

46. (1) Where proceedings have been commenced in the Court for the recovery of costs for business done by a solicitor, an application by a party to the proceedings for reference by the Court of a bill of

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those costs for taxation under any of sections 25, 32 and 33 of the Legal Practitioners Act, 1898, and incidental orders shall be made by motion in the proceedings. Part 52.

(2) Upon a reference for taxation being made on motion under subrule (1), an application to proceed with the taxation shall be made to a taxing officer by motion in the proceedings.

47. (1) Where, in an arbitration to which the Arbitration Act, 1902, applies, an award provides for the payment of costs to be taxed in the Court, or for the payment of costs in an unascertained amount and makes no provision for ascertainment of the amount, the Court may order that the costs be taxed in the Court.

(2) Upon an order for taxation being made under subrule (1), an application to proceed with the taxation shall be made to a taxing officer by motion in the proceedings in which the order is made.

48. (1) This rule applies to—

- (a) proceedings for taxation of costs pursuant to section 22 of the Legal Practitioners Act, 1898;
- (b) proceedings for taxation of costs awarded by the Statutory Committee under the Legal Practitioners Act, 1898; and
- (c) proceedings for taxation of costs under any other Act under which costs may be taxed in the Court without an order of or reference by the Court for taxation, except the taxation of costs to which rule 43 applies.

Proceedings for taxation without order or reference.

(2) Proceedings for the taxation shall be commenced by summons and shall be appointed for hearing before a taxing officer.

(3) In proceedings commenced under this rule, the powers of the Court under Part 5 (which relates to proceedings by summons), except the powers conferred by rules 8, 9, 10, 11 and 12 of Part 5, shall be exercisable by the taxing officer.

(4) The taxation shall, unless the taxing officer otherwise orders, commence on the date appointed for the hearing of the summons.

(5) Where a person is entitled to be paid costs and is entitled to commence proceedings for taxation under this rule, but does not commence proceedings within two months after service on him of a

cf. Costs Rules, r. 10.

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request in writing to do so by a person liable for the costs, the person entitled may nevertheless commence the proceedings, but shall not serve the summons on the person giving the notice, except with the leave of a taxing officer.

Bill.

49. (1) A bill shall contain—

cf. Costs
Rules,
r. 8.

- (a) a detailed statement of the work done by the solicitor, his servants and agents and the disbursements made ;
- (b) the date on which each item of work was done ;
- (c) the date on which each disbursement was made ; and
- (d) the costs claimed for each item of work done.

cf. Costs
Rules,
r. 8.

(2) Where it is a clerk who does any work included in a bill and that fact is relevant to the amount of costs allowable for the work, the name and position of the clerk shall be stated in the bill.

cf. 5 & 6
Eliz. 2,
c. 27, s. 66.
Costs
Rules,
rr. 38, 39.

(3) Where a liability to make a disbursement has been incurred or a fee to counsel has been incurred and the disbursement or fee would be properly included in a bill if paid—

- (a) the disbursement or fee may be included in the bill notwithstanding that it has not been paid ;
- (b) the bill shall state that the disbursement or fee has not been paid ; and
- (c) on taxation, the disbursement or fee shall not be included in the costs allowed unless paid before the taxation is completed.

cf. Costs
Rules, r. 9.

(4) Where a bill includes charges for work done by a lawyer practising in a place outside the State—

- (a) the charges shall be shown as a disbursement ; and
- (b) so far as practicable, the charge shall, if allowed, be allowed in an amount appropriate to the place where he practises.

(5) The Court or a taxing officer may give leave, on terms, for the amendment of a bill.

Filing and
service of
bill.
cf. Costs
Rules,
rr. 15, 17.

50. (1) A party moving to proceed with taxation of a bill shall—

- (a) file the bill on the date of filing notice of the motion, unless the bill has previously been filed in the proceedings ; and

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- (b) subject to subrule (3), serve the bill on each party on whom the notice of motion is served. Part 52.
- (2) A party commencing proceedings for taxation pursuant to rule 48 (which relates to proceedings for taxation without order or reference) shall— cf. Costs Rules, rr. 15, 17.
- (a) file the bill on the date of filing his summons; and
- (b) subject to subrule (3), serve the bill on each party who enters an appearance.
- (3) A bill need not be served on a solicitor whose bill it is. cf. Costs Rules, r. 17.
51. (1) The taxing officer may— Attendance of parties.
- (a) arrange and direct what parties should attend before him on any taxation; and cf. Costs Rules, r. 14.
- (b) disallow the costs of attendance of any party whose attendance he considers unnecessary.
- (2) Notwithstanding subrule (1), any party interested may attend any taxation.
52. Where a taxing officer adjourns a taxation, he may order any party attending before him to serve notice of the adjournment on any absent party. Notice of adjournment.
cf. Costs Rules, r. 19.
53. (1) Where costs are payable out of a fund, a taxing officer taxing a bill of the costs may— Costs out of a fund: notice to persons interested.
- (a) adjourn the taxation to a specified date; and
- (b) order the solicitor whose bill it is or the party to whom the costs are payable to send to any person interested in the fund, free of charge to that person, a copy of the whole or any part of the bill and a letter in accordance with subrule (2). cf. Costs Rules, r. 22; R.S.C. (Rev.) 1965, O. 62, r. 27 (2).
- (2) A letter ordered to be sent under subrule (1) shall state— cf. Costs Rules, r. 22; R.S.C. (Rev.) 1965, O. 62, r. 27 (2).
- (a) that the costs are payable out of the fund (identifying it) and that the bill is being taxed;
- (b) the name and address of the taxing officer;

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- (c) the adjourned date for further proceedings with the taxation ;
and
- (d) such other information as the taxing officer may direct.

Reference
to Court.
cf. Costs
Rules,
r. 20A.

54. A taxing officer may, of his own motion, refer any question arising in a taxation for the direction of the Court.

Default of
party
entitled.

cf. Costs
Rules,
r. 10;
cf. R.S.C.
(Rev.) 1965,
O. 62, r. 7
(4) (5).

55. (1) Where a party is entitled to costs and is entitled to move to proceed with taxation under this Part, but does not, within a reasonable time after service on him of a request in writing by a party liable for the costs, file and serve notice of a motion to proceed with the taxation, a taxing officer may fix a time within which the party entitled must file and serve notice of a motion to proceed with the taxation.

cf. Costs
Rules, r.
10; R.S.C.
(Rev.) 1965,
O. 62, r. 7
(4) (5).

(2) Where a party entitled to costs fails to file or serve his bill in accordance with rule 50 (2), a taxing officer may fix a time within which the party entitled must file or serve his bill.

cf. Costs
Rules, r.
10; R.S.C.
(Rev.) 1965,
O. 62, r. 7
(4) (5).

(3) Where a party entitled to costs fails to file and serve notice of a motion to proceed with taxation or fails to file or serve his bill within a time fixed under this rule, a taxing officer may certify the failure and may disallow the costs of the party entitled or allow them at such amount as he thinks fit.

cf. R.S.C.
(Rev.) 1965,
O. 62, r. 7
(5).

(4) Where a party entitled to costs defaults by failing to proceed with taxation, the taxing officer may, for the purpose of preventing any other party being adversely affected by the default, certify the default and may—

- (a) disallow the costs of the defaulting party or allow them at such amount as he thinks fit ; and
- (b) certify the costs of the other parties.

Disallowance
of fees for
taxation.
cf. R.S.C.
(Rev.) 1965,
O. 62, r. 8
(6).

56. (1) Where a solicitor—

- (a) fails to file his bill for taxation within the time fixed by or under this Part ; or
- (b) otherwise delays or impedes the taxation,

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the solicitor shall not, unless the taxing officer otherwise orders, be allowed the fees to which, apart from this subrule, he would be entitled for drawing and copying his bill of costs and for attending the taxation. Part 52.

(2) If, on the taxation of costs to be paid out of a fund, one-sixth or more of the amount of the bill for these costs is taxed off, the solicitor whose bill it is shall not, unless the taxing officer otherwise orders, be allowed the fees to which, apart from this subrule, he would be entitled for drawing and copying the bill and for attending the taxation. cf. R.S.C. (Rev.) 1965, O. 62, r. 8 (7).

57. Where, in any proceedings before a taxing officer, a solicitor for any party— Liability of solicitor.

(a) is guilty of neglect or delay; or cf. R.S.C. (Rev.) 1965, O. 62, r. 8 (6).

(b) puts any other party to unnecessary expense,

the taxing officer may order the solicitor to pay costs to any party.

58. (1) Where a party entitled to be paid costs is also liable to pay costs, the taxing officer may— Cross costs.

(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 certify the amount of the balance and the parties by and to whom the balance is payable; or cf. R.S.C. (Rev.) 1965, O. 62, r. 18.

(b) withhold his certificate for the costs which that party is entitled to be paid until that party has paid or tendered the amount he is liable to pay.

(2) Costs in any proceedings may be set off under subrule (1) (a) notwithstanding that a solicitor for a party to the proceedings has a lien for costs in the proceedings. cf. Costs Rules, r. 46.

59. (1) A taxing officer may make separate and interim certificates. Certificate. cf. Costs Rules, r. 13; R.S.C. (Rev.) 1965, O. 62, r. 17 (1).

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cf. R.S.C. (2) Where, in the course of the taxation of a solicitor's bill (Rev.) 1965, to his own client, it appears to the taxing officer that in any event O. 62, r. 17 the solicitor will be liable in connection with the bill to pay money to (2). the client, he may make an interim certificate specifying an amount which in his opinion is payable by the solicitor to the client.

(3) A taxing officer shall, after the conclusion of the taxation of any bill, make a final certificate of his disallowance of the costs in the bill or of the amount at which he allows the costs.

(4) Where a taxing officer decides to allow or disallow, wholly or in part, any item in a bill or to allow some amount in respect of any item, he shall not, except with the consent of the parties interested, make a certificate dealing finally with that item, until the expiry of 14 days after the date of the decision.

(5) A certificate made by a taxing officer in any proceedings shall, unless made on a filed bill, be filed in the proceedings.

cf. R.S.C. (6) On the making of a certificate made under subrule (2) (Rev.) 1965, the Court may order the amount specified in the certificate to be O. 62, r. 17 paid to the client or into Court. (3).

cf. R.S.C. (7) A taxing officer may make a separate or interim certi- (Rev.) 1965, cate in respect of any item in a bill notwithstanding an objection O. 62, r. 33 under rule 60 to his decision on any other item in the bill, or any (5). reconsideration or review consequent on such an objection.

Objection. 60. (1) Where a taxing officer decides to allow or disallow, wholly cf. R.S.C. or in part, any item in a bill, or to allow some amount in respect of (Rev.) 1965, any item, a party to the taxation proceedings who objects to the O. 62, r. 33 decision may apply to the taxing officer to reconsider his decision. (1).

(2) An application under subrule (1) shall be made by motion to the taxing officer on notice filed and served on the parties interested.

cf. R.S.C. (3) Notice of the motion shall be filed within 14 days after (Rev.) 1965, the date of the decision. O. 62, r. 33 (2).

cf. R.S.C. (4) An applicant under subrule (1) shall, on the date of filing (Rev.) 1965, his notice of motion, file a statement of his objections. O. 62, r. 33 (3).

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(5) A statement of objections shall specify by a list the items as to which the applicant objects to the decision of the taxing officer and must state briefly, but specifically, the nature and grounds of each objection. cf. R.S.C. (Rev.) 1965, O. 62, r. 33 (3).

(6) An applicant under subrule (1) shall, on the date of filing the notice of motion and statement of objections, serve the notice and statement on each party interested. cf. R.S.C. (Rev.) 1965, O. 62, r. 33 (3).

61. (1) Upon motion made under rule 60, the taxing officer—
- (a) shall reconsider the decision to which objection is made and shall give his certificate in accordance with his decision on reconsideration; and Reconsideration. cf. R.S.C. (Rev.) 1965, O. 62, r. 34 (1) (4).
 - (b) shall, upon request by any party, state, in his certificate or some other document, and by reference to the objections to his previous decision, his reasons for his decision on reconsideration.

(2) On the reconsideration, a party shall not, unless the taxing officer otherwise directs, raise any ground of objection not stated in a statement of objection.

(3) A request under subrule (1) (b) shall be made within 14 days after the date of the decision on reconsideration to which the request relates. cf. R.S.C. (Rev.) 1965, O. 62, r. 34 (4).

62. (1) Where a taxing officer gives a certificate in accordance with his decision on reconsideration under rule 61 and pursuant to that rule a party requests the taxing officer to state his reasons for the decision, the Court shall, on motion by any party interested, review the decision of the taxing officer on reconsideration. Review. cf. R.S.C. (Rev.) 1965, O. 62, r. 35 (1).

(2) Where, during the time within which a request may be made under rule 61, it becomes impracticable to make the request by reason of the death or incapacity of, or other matter personal to, the taxing officer, subrule (1) shall apply notwithstanding that a request under rule 61 has not been made.

(3) Notice of the motion shall be filed within 28 days after the certificate is given, but the Court, or the taxing officer when giving his certificate, may extend the time. cf. R.S.C. (Rev.) 1965, O. 62, r. 35 (2).

(4) On the review, unless the Court by order otherwise directs— cf. R.S.C. (Rev.) 1965, O. 62, r. 35 (4).

- (a) further evidence shall not be received; and

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cf. R.S.C.
(Rev.) 1965,
O. 62, r. 35
(4) (6).

- (b) a party shall not raise any ground of objection not either stated in a statement of objection or raised before the taxing officer.

(5) Subject to subrule (4), on the review, the Court may—

- (a) exercise all the powers and discretions of the taxing officer in relation to the subject matter of the review;
- (b) make orders for the alteration of the certificate;
- (c) make orders for the remission of any item to the same or any other taxing officer for taxation; and
- (d) make such other orders as the nature of the case requires.

Judgment.

63. Where the amount of any costs has been certified under this Part, the Court may, on motion by a party, direct the entry of such judgment for the costs as the nature of the case requires.

DIVISION 8.—*General.*

Costs of
solicitor
appointed
as tutor.
cf. Costs
Rules,
r. 47.

64. Where the Court appoints a solicitor to be tutor of a disable person who is a party to any proceedings, the Court may—

- (a) order that the costs to be incurred in performance of the duties of tutor be paid—
 - (i) by the parties to the proceedings or any of them;
or
 - (ii) out of any fund in Court in which the disable person is interested; and
- (b) make orders for the repayment or allowance of the costs as the nature of the case may require.

Trustee or
mortgagee.
cf. R.S.C.
(Rev.) 1965,
O. 62, r. 6
(2).

65. (1) Where a person is or has been a party to any proceedings in the capacity of trustee or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of the proceedings out of the fund held by the trustee or out of the mortgaged property, as the case may be, in so far as the costs are not paid by any other person.

cf. R.S.C.
(Rev.) 1965, only where—
O. 62, r. 6
(2).

- (2) The Court may otherwise order pursuant to subrule (1)
- (a) the trustee or mortgagee has acted unreasonably; or

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- (b) in the case of a trustee, he has in substance acted for his own benefit rather than for the benefit of the fund. Part 53.

66. (1) Where costs are incurred improperly or without reasonable cause, or are wasted by undue delay or by any other misconduct or default, and it appears to the Court that a solicitor is responsible (whether personally or through a servant or agent), the Court may, after giving the solicitor a reasonable opportunity to be heard— Liability of solicitor.
cf. R.S.C.
(Rev.) 1965,
O. 62, r. 8
(1) (2).

- (a) disallow the costs as between him and his client ;
- (b) direct the solicitor to repay to his client costs which the client has been ordered to pay to any other party ; and
- (c) direct the solicitor to indemnify any party other than his client against costs payable by the party indemnified.

(2) Without limiting the generality of subrule (1), a solicitor is responsible for default for the purposes of that subrule where any proceedings cannot conveniently proceed, or fail or are adjourned without useful progress being made, because of the failure of the solicitor— cf. R.S.C.
(Rev.) 1965,
O. 62, r. 8
(2).

- (a) to attend in person or by a proper representative ;
- (b) to file any document which ought to have been filed ;
- (c) to deliver any document which ought to have been delivered for the use of the Court ;
- (d) to be prepared with any proper evidence or account ; or
- (e) otherwise to proceed.

(3) The Court may, before making an order under subrule (1), refer the matter to a taxing officer for enquiry and report. cf. R.S.C.
(Rev.) 1965,
O. 62, r. 8
(3).

(4) The Court may order that notice of any proceedings or order against a solicitor under this rule shall be given to his client in such manner as may be specified in the order under this subrule. cf. R.S.C.
(Rev.) 1965,
O. 62, r. 8
(5).

PART 53.

SECURITY.

DIVISION 1.—*Security for Costs.*

1. In this Division—

- (a) references to a plaintiff extend to any person who makes a claim for relief in any proceedings ; and Interpretation.
cf. R.S.C.
(Rev.) 1965,
O. 23, r. 1
(3).

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- (b) references to a defendant extend to any person against whom a claim for relief is made in any proceedings.

Cases for security.

2. (1) Where, in any proceedings, it appears to the Court on the application of a defendant—

- (a) that a plaintiff is ordinarily resident outside the State ;
- (b) that a plaintiff is suing, not for his own benefit, but for the benefit of some other person and there is reason to believe that that plaintiff will be unable to pay the costs of the defendant if ordered to do so ;
- (c) subject to subrule (2), that the address of a plaintiff is not stated or is mis-stated in his originating process ;
- (d) that a plaintiff has changed his address after the commencement of the proceedings with a view to avoiding the consequences of the proceedings,

the Court may order that plaintiff to give such security as the Court thinks fit for the costs of the defendant of and incidental to the proceedings and that the proceedings be stayed until the security is given.

cf. R.S.C.
(Rev.) 1965,
O. 23, r. 1
(2).

- (2) The Court shall not order a plaintiff to give security by reason only of subrule (1) (c) if it appears to the Court that the failure to state his address or the mis-statement of his address was made without intention to deceive.

Manner of
giving
security.

cf. R.S.C.
(Rev.) 1965,
O. 23, r. 2.

3. Where the Court orders a plaintiff to give security for costs, the security shall be given in such manner, at such time, and in such terms (if any) as the Court may by order direct.

Failure to
give
security.

cf. General
Rules of
the Court,
O. 15, r. 7.

4. Where a plaintiff fails to comply with an order under this Division, the Court may, on terms, order that the proceedings on any claims by the plaintiff for relief in the proceedings be dismissed.

Saving.

cf. R.S.C.
(Rev.) 1965,
O. 23, r. 3.

5. This Division does not affect the provisions of any Act under which the Court may require security for costs to be given.

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Part 53.

DIVISION 2.—*Security for future conduct, and recognizances.*Security
for future
conduct.

6. (1) Where, for the purpose of security for future conduct, the Court—

- (a) requires any person to pay money into Court or otherwise to deposit money ;
- (b) puts any person on terms of payment into Court or other deposit of money ; or
- (c) puts any person on terms of procuring payment into Court or other deposit of money by some other person,

the Court shall, by order, specify the events in which the money so paid or deposited is to be forfeited, returned or otherwise disposed of.

(2) Where, for the purposes of security for future conduct, the Court—

- (a) requires any person to submit to an order for the payment of money ;
- (b) puts any person on terms of submitting to an order for the payment of money ; or
- (c) puts any person on terms of procuring some other person to submit to an order for the payment of money,

the Court shall, by order, specify the events in which the order for the payment of money may be made and may, by order, specify the manner in which the submission is to be made.

7. (1) In this rule “recognizance” means an instrument or memorandum of acknowledgment by the terms of which any sum of money may be made or levied by execution on any property, except execution by way of enforcement of a judgment or order of the Court. Restriction as to recognizances.

(2) Subject to any Act, the Court shall not require any person to give a recognizance and shall not put any person on terms of giving or procuring a recognizance.

(3) Where, but for subrule (2), the Court might have required a person to give a recognizance or put a person on terms of giving or procuring a recognizance, the Court may, subject to subrule (2) and to rule 6, require that person to give such security for future conduct as the Court may by order direct or, as the case may be, put him on terms of giving or procuring such security for future conduct as the Court may by order direct.

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Part 53.

Forfeited
recogn-
izance.

8. (1) Execution shall not be levied on a forfeited recognizance except upon an order for payment made under subrule (3).

(2) Where it appears to the Court that the amount of a recognizance has been deposited with any justice or other person, and the Court forfeits the recognizance, the Court shall order that the amount so deposited be paid into the Consolidated Revenue Fund.

(3) Subject to subrule (2), where the Court forfeits a recognizance, the Court shall order the recognizor to pay the amount of the recognizance to the registrar.

cf. Fines
and
Forfeited
Recog-
nizances
Rules, r. 5.

(4) Where the Court forfeits a recognizance in the absence of the recognizor, the registrar shall post to the recognizor notice of the forfeiture and of the order made under subrule (2) or subrule (3).

cf.
F.F.R.R.,
form 2.

(5) Where the Court forfeits a recognizance in the absence of the recognizor, the Court, on application by the recognizor, may, by order, revoke the forfeiture and vary or discharge any order made under subrule (2) or subrule (3).

cf.
F.F.R.R.,
form 2.

(6) The recognizor may apply for orders under subrule (5) by filing an affidavit of the facts on which he relies and, if the recognizor does so apply, the registrar shall deliver the affidavit to the Court for determination of the application.

cf.
F.F.R.R.,
form 2.

(7) An application for orders under subrule (5) shall not be made except on a notice of motion or affidavit filed within 28 days after the date of posting of a notice under subrule (4).

(8) The registrar shall not, unless the Court otherwise orders, take any step for the enforcement of an order made under subrule (3) until the expiration of 28 days after posting of a notice under subrule (4) or, if in the meantime an application is made under subrule (5), until the application is disposed of.

cf.
F.F.R.R.,
r. 4.

(9) The registrar shall pay into the Consolidated Revenue Fund all moneys received by him under an order for payment of the amount of a forfeited recognizance.

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PART 54.

Part 54.

PREROGATIVE AND OTHER ORDERS.

DIVISION 1.—*Proceedings in lieu of statutory orders nisi, etc.*

1. Where, under any Act in force immediately before the commencement of the Act, the Court is authorised to grant make or issue a rule or order nisi or a rule, summons or order to show cause why some order should not be made or some act should not be done—

Substituted
procedure.

- (a) no proceedings shall be taken for a rule or order nisi or for a rule, summons or order to show cause as the case may be ; but
- (b) proceedings may be taken for, and the Court may grant by way of judgment or order, all such relief as formerly might have been granted on an application for a rule or order absolute or on the return of a rule, summons or order to show cause.

2. (1) Where an Act to which rule 1 applies fixes a time for an application for a rule or order nisi or for a rule, summons or order to show cause, proceedings under rule 1 in substitution for such an application must, subject to any provision for extension of the time so fixed, be commenced within that time.

Limitation.

(2) Part 1 rule 12 (which enables the Court to dispense with compliance with the rules) and Part 2 rule 3 (which enables the Court to extend or abridge times fixed by the rules) do not apply to subrule (1).

DIVISION 2.—*General.*

3. (1) This Division applies to—

Application.

- (a) proceedings for any relief or remedy which formerly would have been granted by writ, whether of prohibition, mandamus, certiorari or of any other description ;
- (b) proceedings for an injunction under section 70 of the Act (which relates to ouster of office) ;
- (c) proceedings for an order for the issue of a writ of habeas corpus ad subjiciendum under section 71 of the Act ; and
- (d) proceedings under Division 1.

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Part 55.

- (2) In subrule (1) (a), "writ" does not include—
- (a) the writ of habeas corpus ad subjiciendum ;
 - (b) any writ of execution for the enforcement of a judgment or order of the Court ; or
 - (c) any writ in aid of any such writ of execution.

Commence-
ment of
proceedings.

4. Proceedings to which this Division applies shall be commenced by summons.

PART 55.

CONTEMPT.

DIVISION 1.—*Preliminary.*Interpreta-
tion.

1. In this Part "contemnor" means a person guilty or alleged to be guilty of contempt of the Court or of any other court.

DIVISION 2.—*Contempt in the face or hearing of the Court.*Arrest.
cf. High
Court
Rules, O. 56,
r. 1 (1).

2. Where it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of Court, committed in the face of the Court or in the hearing of the Court, the Court may—

- (a) by oral order direct that the contemnor be brought before the Court ; or
- (b) issue a warrant for the arrest of the contemnor.

Charge,
defence and
determina-
tion.
cf. H.C.R.,
O. 56, r. 1
(2).

3. Where the contemnor is brought before the Court, the Court shall—

- (a) cause him to be informed orally of the contempt with which he is charged ;
- (b) require him to make his defence to the charge ;
- (c) after hearing him, determine the matter of the charge ; and
- (d) make an order for the punishment or discharge of the contemnor.

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*Supreme Court.*FOURTH SCHEDULE—*continued.*

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Part 55.

4. (1) The Court may, pending disposal of the charge—

Interim
custody.

(a) direct that the contemnor be kept in such custody as the Court may determine; or

cf. H.C.R.,
O. 56, r. 1
(3).

(b) direct that the contemnor be released.

(2) The Court may make a direction under subrule 1 (b) on terms, which may include a requirement that the contemnor give security, in such sum as the Court directs, for his appearance in person to answer the charge.

cf. H.C.R.,
O. 56, r. 1
(3).DIVISION 3.—*Motion or proceedings for punishment.*

5. This Division does not apply to a case in which the Court proceeds under Division 2.

Application.
cf. H.C.R.,
O. 56, r. 2.

6. (1) Where contempt is committed in connection with proceedings in the Court, an application for punishment for the contempt must be made by motion on notice in the proceedings, but, if separate proceedings for punishment of the contempt are commenced, the proceedings so commenced may be continued unless the Court otherwise orders.

Procedure
generally.

(2) Where contempt is committed, but not in connection with proceedings in the Court, proceedings for punishment of the contempt must be commenced by summons, but, if an application for punishment of the contempt is made by motion on notice in any proceedings, the application may be heard and disposed of in the latter proceedings, unless the Court otherwise orders.

7. A statement of charge, that is, a statement specifying the contempt of which the contemnor is alleged to be guilty, shall be subscribed to, or filed with, the notice of motion or summons.

Statement
of charge.
cf. H.C.R.,
O. 56, r. 3
(a).

8. (1) Subject to subrule (2), the evidence in support of the charge shall be by affidavit.

Evidence.

(2) The Court may, on terms, permit evidence in support of the charge to be given otherwise than by affidavit.

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FOURTH SCHEDULE—*continued.*

Part 55.

Service.

cf. H.C.R.,
O. 56, rr. 4,
5.

9. The notice of motion or summons, the statement of charge, and the affidavits shall be served personally on the contemnor.

Arrest.

cf. H.C.R.,
O. 56, r. 6.

10. Where—

(a) notice of a motion for punishment of a contempt has been filed or proceedings have been commenced for punishment of a contempt; and

(b) it appears to the Court that the contemnor is likely to abscond or otherwise withdraw himself from the jurisdiction of the Court,

the Court may issue a warrant for the arrest of the contemnor and his detention in custody until he is brought before the Court to answer the charge, unless he, in the meantime, gives security in such manner and in such sum as the Court directs, for his appearance in person to answer the charge and to submit to the judgment or order of the Court.

Motion or
proceedings
by the
registrar.

11. (1) Where it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of the Court or of any other court, the Court may, by order, direct the registrar to apply by motion for, or to commence proceedings for, punishment of the contempt.

(2) Subrule (1) does not affect such right as any person other than the registrar may have to apply by motion for, or to commence proceedings for, punishment of contempt.

DIVISION 4.—*General.*

Warrant.

cf. H.C.R.,
O. 56, r. 7.

12. A warrant for the arrest or detention under this Part of a contemnor shall be addressed to the Sheriff and may be issued under the hand of the Judge or officer presiding in the Court directing the arrest or detention.

Punishment.

cf. H.C.R.,
O. 56, r. 9.

13. (1) Where the contemnor is not a corporation, the Court may punish contempt by committal to prison or fine or both.

(2) Where the contemnor is a corporation, the Court may punish contempt by sequestration or fine or both.

FOURTH

*Supreme Court.*FOURTH SCHEDULE—*continued.*

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(3) The Court may make an order for punishment on terms, including a suspension of punishment or a suspension of punishment in case the contemnor gives security in such manner and in such sum as the Court may approve for good behaviour and performs the terms of the security. Part 56.

14. Where a contemnor is committed to prison for a term, the Court may order his discharge before the expiry of the term. Discharge.
cf. H.C.R.,
O. 56, r. 11.

PART 56.

INTERPLEADER.

DIVISION 1.—*Preliminary.*

1. In this Part, unless the context or subject matter otherwise indicates or requires— Inter-
pretation.

“claimant” means a person making a claim to property in dispute ;

“execution creditor” means a person on whose behalf process is issued ;

“process” means process for execution issued by or under the authority of the Court ;

“property in dispute” means any debt or property which is the subject of proceedings under this Part ;

“sheriff” includes any officer charged with the execution of process ; cf. R.S.C.
(Rev.) 1965,
O. 17, r. 1
(2).

“stakeholder” means an applicant under rule 2.

DIVISION 2.—*Stakeholder's Interpleader.*

2. Where—

- (a) a person is under a liability (otherwise than as a sheriff) in respect of a debt or other personal property; and Case for
relief.
cf. R.S.C.
(Rev.) 1965,
O. 17, r. 1
(1) (a).
- (b) he is sued, or expects to be sued, in any court, for or in respect of the debt or property by two or more persons making adverse claims to the debt or property,

the Court may, on application by him, grant relief by way of interpleader.

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FOURTH SCHEDULE—*continued.*

Part 56.

Application in pending proceedings. 3. (1) Where a stakeholder has, in proceedings in the Court, been sued for or in respect of the property in dispute, the application shall be by motion in the proceedings.

cf. R.S.C.
(Rev.) 1965,
O. 17, r. 3
(1).

(2) A stakeholder applying pursuant to subrule (1)—

- (a) shall serve notice of the motion on each party to the proceedings who claims any interest in the property in dispute; and
- (b) shall serve notice of the motion personally on each claimant who is not a party to the proceedings.

Proceedings by Summons. 4. In a case to which rule 3 does not apply, a stakeholder applying for relief by way of interpleader shall commence proceedings by summons, joining each claimant as a defendant.

cf. R.S.C.
(Rev.) 1965,
O. 17, r. 3
(1).

DIVISION 3.—*Sheriff's Interpleader.*

Notice of claim. 5. (1) Where a sheriff takes or intends to take any personal property in execution under process, a person making a claim to or in respect of the property or the proceeds or value of the property may give notice of his claim to the sheriff.

cf. R.S.C.
(Rev.) 1965,
O. 17, r. 2
(1).

(2) A notice of claim given under this rule shall—

- (a) specify the claim;
- (b) state the name and place of abode of the claimant;
- (c) state an address for service; and
- (d) be accompanied by a copy of the notice.

(3) Where a person who is entitled to give notice under this rule does not, within a reasonable time after having knowledge of the facts, give notice under this rule, the Court may, on application by the sheriff, restrain the commencement or stay or restrain the continuance by that person of proceedings in any court against the sheriff for or in respect of anything done by the sheriff in execution of the process after the time when that person might reasonably have given notice under this rule.

(4) Subject to subrule (5), a sheriff may apply for an order under subrule (3) by motion in the proceedings in which the process is issued and, if he so applies, he shall serve notice of the motion personally on the person against whom the order is sought.

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*Supreme Court.*FOURTH SCHEDULE—*continued.*

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(5) If proceedings to which subrule (3) applies are brought in the Court against a sheriff, an application by him for an order under that subrule restraining the continuance of those proceedings shall be made by motion in those proceedings. Part 56.

6. (1) A sheriff shall, on being given notice of claim under rule 5, serve the notice on the execution creditor. Notice to execution creditor.
cf. R.S.C. (Rev.) 1965, O. 17, r. 2 (2).

(2) The execution creditor may serve on the sheriff notice that he admits the claim. cf. R.S.C. (Rev.) 1965, O. 17, r. 2 (2).

7. (1) Where an execution creditor admits a claim by notice under rule 6— Admission of claim.

(a) he shall not be liable to the sheriff for any fees or expenses incurred by the sheriff under the process after the notice under rule 6 is given; cf. R.S.C. (Rev.) 1965, O. 17, r. 2 (2) (3) (4).

(b) the sheriff shall withdraw from possession of the property claimed;

(c) the Court may, on application by the sheriff, restrain the commencement or stay or restrain the continuance by the person whose claim is admitted of proceedings in any court against the sheriff for or in respect of anything done by the sheriff in execution of the process.

(2) If proceedings to which subrule (1) (c) applies are brought in the Court against the sheriff, an application by him for an order under that paragraph restraining the continuance of those proceedings shall be made by motion in those proceedings.

(3) Subject to subrule (2), a sheriff may apply for an order under subrule (1) (c) by motion in the proceedings in which the process is issued.

8. (1) Where a sheriff has, under rule 6, served a notice of claim on the execution creditor and the execution creditor does not, within 4 days after service of the notice under rule 6, serve on the sheriff notice that he admits the claim, and the claim has not been withdrawn, the Court may, on application by the sheriff, grant relief by way of interpleader. Interpleader motion.

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FOURTH SCHEDULE—*continued.*

Part 56.

(2) An application of the sheriff under this rule shall be by motion in the proceedings in which the process is issued.

(3) A sheriff moving pursuant to this rule shall serve notice of the motion on each party to the proceedings who claims any interest in the property in dispute and on each claimant.

DIVISION 4.—*General.*

Powers
generally.
cf. R.S.C.
(Rev.) 1965,
O. 17, rr. 5
(1) (2),
6, 7, 8.

9. On application for relief by way of interpleader—

- (a) the Court may make such orders and directions as it thinks fit for the hearing and determination of all matters in dispute; and
- (b) without limiting the generality of paragraph (a), the Court may,
 - (i) where proceedings in the Court are pending in which the applicant is sued for or in respect of any of the property in dispute, order that any claimant be added as a defendant in those proceedings in addition to or in substitution for the applicant, or order that those proceedings be stayed or dismissed;
 - (ii) where proceedings in any other court are pending in which the applicant is sued for or in respect of any of the property in dispute, restrain the further continuance of those proceedings;
 - (iii) order the applicant to pay or transfer any or all of the property in dispute into Court or otherwise to dispose of any or all of the property in dispute;
 - (iv) where a claimant claims to be entitled by way of security for debt to any or all of the property in dispute, make orders for the sale of any or all of the property in dispute and for the application of the proceeds of sale;
 - (v) on request by any party, summarily determine any or all questions of fact or law in which the requesting party is interested arising on the application;
 - (vi) make orders for the settlement and trial of issues; and
 - (vii) make such order, or direct the entry of such judgment, as the nature of the case requires.

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*Supreme Court.*FOURTH SCHEDULE—*continued.*

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Part 56.

Default by claimant.

10. (1) Where—

- (a) a claimant has been given due notice of the hearing of an application for relief by way of interpleader and does not appear at the hearing; or
- (b) a claimant does not comply with an order made in the proceedings on such an application,

cf. R.S.C.
(Rev.) 1965,
O. 17, r. 5
(3).

the Court may, subject to subrule (2), order that the claimant and those claiming under him be barred from prosecuting his claim against the applicant and those claiming under him.

- (2) An order under subrule (1) shall not affect the rights of the claimants amongst themselves.

cf. R.S.C.
(Rev.) 1965,
O. 17, r. 5
(3).

11. (1) Where a stakeholder applies for relief by way of interpleader, the Court may dismiss the application or direct entry of judgment against the applicant unless the Court is satisfied on the following matters—

Neutrality
of applicant.
cf. R.S.C.
(Rev.) 1965,
O. 17, r. 3
(4).

- (a) that the applicant claims no interest in the property in dispute except for charges or costs;
- (b) that the applicant does not collude with any claimant.

(2) Where a sheriff applies for relief by way of interpleader, the Court may require the sheriff to satisfy the Court on the matters mentioned in subrule (1) and the Court may, if not satisfied on those matters, dismiss the application.

cf. R.S.C.
(Rev.) 1965,
O. 17, r. 3
(5).

(3) Nothing in this rule affects the power of the Court in other cases to dismiss the application or to direct entry of judgment against the applicant.

12. (1) Where an application for relief by way of interpleader is made and several proceedings are pending in the Court for or in respect of any or all of the property in dispute, the Court may make an order in any two or more of those several proceedings.

Order in
several
proceedings.
cf. R.S.C.
(Rev.) 1965,
O. 17, r. 9.

(2) A minute of an order made pursuant to subrule (1) shall be entitled in all the proceedings in which it is made and the order shall be binding on all the parties to them.

cf. R.S.C.
(Rev.) 1965,
O. 17, r. 9.

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FOURTH SCHEDULE—*continued.***Part 57.**

Trial. 13. Where, in proceedings for relief by way of interpleader, the Court directs the trial of any issue, Part 34 shall, with the necessary modifications, but subject to such directions as the Court may give, apply to the trial.

Disposal. 14. The Court before which an issue is tried under this Part may direct the entry of such judgment, or may make such order, as the nature of the case requires, including a judgment or order finally disposing of all questions arising in the proceedings.

PART 57.**SERVICE OF EXTERNAL PROCESS.**

Application. 1. This Part applies to the service in the State of any document required in connection with civil or commercial proceedings pending before a court or other tribunal in a place outside the State, where a letter of request from the court or tribunal is received by the Prothonotary and—

- (a) the request is for service pursuant to a convention; or
- (b) the Attorney-General certifies that effect ought to be given to the request.

Requisite documents. 2. In order that service may be effected in accordance with this Part, there must be delivered to the Prothonotary, unless he otherwise directs—

- (a) the document to be served and two copies of it;
- (b) a copy of the letter of request;
- (c) if either the document to be served or the letter of request is not in English, a translation in English of the document or letter as the case may be and a copy of the translation.

Service. 3. (1) The Prothonotary shall request the Sheriff or some other person to serve the document.

(2) The document may be served in any manner in which originating process in proceedings in the Court may be served, including substituted service pursuant to Part 9 rule 10.

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*Supreme Court.*FOURTH SCHEDULE—*continued.*

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(3) Proceedings for an order for substituted service shall be commenced by the Attorney-General by summons in the Common Law Division and the summons shall not join any person as a defendant. Part 57.

4. After the document has been served or attempts to serve the document have failed, the process server shall file an affidavit made by the person who served or attempted to serve the document stating when, where and how he did so and stating the costs incurred and shall lodge a copy of the affidavit with the Prothonotary. Affidavit of service.
cf. R.S.C. (Rev.) 1965, O. 69, rr. 2 (5), 3 (4).

5. (1) Where the request for service is made pursuant to a convention, the Prothonotary shall give either— Certificate.
cf. R.S.C. (Rev.) 1965, O. 69, r. 3 (5).

(a) a certificate—

(i) certifying that the document or a copy of it, as the case may be, was served on the person, at the time, and in the manner, specified in the certificate or, if attempts to effect service failed, certifying the failure and the reasons for the failure; and

(ii) certifying the amount of the costs incurred; or

(b) such other certificate as is appropriate to the terms of the relevant convention.

(2) Where the request for service is not made pursuant to a convention, the Prothonotary shall give either— cf. R.S.C. (Rev.) 1965, O. 69, r. 2 (6).

(a) a certificate—

(i) annexing the letter of request, a copy of the document to be served and of any translation, and a copy of the affidavit under rule 4;

(ii) identifying the annexures;

(iii) certifying that the manner of service of the document and the proof of service are such as are required by the rules of the Court regulating the service of originating process of the Court in the State or, if attempts to effect service failed, certifying the failure and the reasons for the failure; and

(iv) certifying the amount of the costs incurred; or

(b) such other certificate as is appropriate to the terms of the letter of request.

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FOURTH SCHEDULE—*continued.*

Part 58.

cf. R.S.C.
(Rev.) 1965,
O. 69, rr. 2
(7), 3 (6).

(3) The certificate shall be sealed with the seal of the Court.

cf. R.S.C.
(Rev.) 1965,
O. 69, rr. 2
(7), 3 (6).

(4) The Prothonotary shall send the certificate to the Under Secretary of Justice or, if the letter of request or any relevant convention so requires, to the appropriate consul or other authority.

PART 58.

EVIDENCE FOR EXTERNAL TRIBUNAL.

Procedure.

cf. R.S.C.
(Rev.) 1965,
O. 70, r. 2
(1).

1. (1) Proceedings for orders under the Foreign Tribunals Evidence Act, 1856, or the Evidence by Commission Act, 1859, in relation to a matter pending before a court or tribunal in a place outside the State—

- (a) may be commenced by a person nominated for that purpose by the court or tribunal concerned or, if no person is so nominated, by the Attorney-General ;
- (b) shall be commenced by summons not joining any person as a defendant ; and
- (c) shall be commenced in the Common Law Division.

cf. R.S.C.
(Rev.) 1965,
O. 70, r. 2
(3).

(2) Where proceedings have been commenced in accordance with subrule (1) in relation to a matter pending before a court or tribunal, an application for a further order in relation to the same matter shall be made by motion in the proceedings.

cf. R.S.C.
(Rev.) 1965,
O. 70, rr. 4
(2), 5.

(3) Rules 2 to 5 have effect unless the Court otherwise orders.

Provisions of Part 27 applied.

cf. R.S.C.
(Rev.) 1965,
O. 70, r. 4
(2).

2. Subject to rules 3, 4 and 5 of this Part, rules 3 to 11 of Part 27 (which relates to evidence by deposition) apply to an examination pursuant to an order under this Part as if the matter pending before the court or tribunal concerned were proceedings in the Court and as if the order were made under rule 1 (a) of Part 27 in those proceedings.

Attendance of applicant.

3. The person commencing proceedings under this Part may attend and take part in the examination.

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*Supreme Court.*FOURTH SCHEDULE—*continued.*

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Part 59.

4. (1) Subrules (5) and (6) of rule 9 of Part 27 do not apply to an examination under this Part. Deposition and exhibits.

(2) The examiner shall send the deposition to the Prothonotary. cf. R.S.C. (Rev.) 1965, O. 70, r. 5.

(3) Where the examiner receives an exhibit on production by any person, the examiner shall, on the conclusion of the examination, return the exhibit to the person producing it unless that person consents to the retention of the exhibit.

(4) Where the examiner retains an exhibit pursuant to subrule (3), he shall send the exhibit to the Prothonotary together with the deposition. cf. Convention Rules, r. 5 (h); Foreign Tribunals Evidence and Service of Process Rules, r. 5.

5. Upon receipt of a deposition taken under this Division, the Prothonotary shall— Certificate. cf. R.S.C. (Rev.) 1965, O. 70, r. 5.

- (a) give a certificate sealed with the seal of the Court annexing and identifying the letter of request, certificate or other document from the court or tribunal requesting the examination, the order of the Court for examination, the deposition, and the exhibits (if any) received from the examiner; and
- (b) send the certificate and the annexures to the Attorney-General or, where the letter or request, certificate or other document was sent to the Prothonotary by some other person pursuant to a convention, to that other person.

PART 59.

ENFORCEMENT OF EXTERNAL JUDGMENTS.

1. In this Part, unless the context or subject matter otherwise indicates or requires, each of the expressions— Interpretation.

“judgment”;

“judgment creditor”; and

“judgment debtor”,

has the meaning which it has in Part II of the Administration of Justice Act, 1924.

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FOURTH SCHEDULE—*continued*.

Part 59.

Commence- 2. (1) Proceedings for registration of a judgment under Part II
ment of of the Administration of Justice Act, 1924, shall be commenced in
proceedings. the Common Law Division by summons joining the judgment creditor
cf. R.S.C. as plaintiff and the judgment debtor as defendant.
(Rev.) 1965,
O. 71, r. 2
(1) (2).

cf. Foreign (2) The judgment creditor may, unless the Court otherwise
Judgments orders, proceed without service of the summons on the judgment
Enforcement debtor.
Rules, r. 2;
R.S.C.
(Rev.) 1965,
O. 71, r. 2
(1).

Evidence. 3. (1) The evidence in support of an application for registration
cf. of a judgment shall include—

- F.J.E.R.,
r. 3;
R.S.C.
(Rev.) 1965,
O. 71, r. 3
(1) (2).
- (a) the judgment or a verified or certified or otherwise duly authenticated copy of the judgment;
 - (b) where the judgment is not in English, a translation of the judgment in English, certified by a notary public or authenticated by evidence;
 - (c) the name and trade or business, and the usual or last known place of abode or of business of the judgment creditor and of the judgment debtor, so far as known to the deponent or witness giving the evidence;
 - (d) evidence to the best of the information or belief of the deponent or witness giving the evidence—
 - (i) that the judgment creditor is entitled to enforce the judgment;
 - (ii) of the amount in which the judgment is unsatisfied; and
 - (iii) that the judgment does not fall within section 5 (2) of the Administration of Justice Act, 1924;
 - (e) of the amounts in Australian money represented by the amount originally payable under the judgment and by the amount in which the judgment is unsatisfied, calculated at the rate of exchange on the date of the judgment;
 - (f) where proceedings for registration are not commenced within twelve months after the date of the judgment, the reasons why a longer period should be allowed pursuant to section 5 (1) of the Administration of Justice Act, 1924.

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*Supreme Court.*FOURTH SCHEDULE—*continued.*

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Part 59.

4. (1) Where the Court orders that a judgment be registered, the Court shall fix a time within which the judgment debtor may file notice of a motion for an order setting aside the registration.

Order for registration.
cf. Foreign Judgments Enforcement Rules, r.4; R.S.C. (Rev.) 1965, O. 71, r. 5 (3).

(2) The time fixed under subrule (1) shall not, save in exceptional circumstances, be less than 14 days after service on the judgment debtor of notice of the registration.

cf. F.J.E.R., r. 4.

(3) An order for registration of a judgment shall specify the amount (exclusive of costs of and incidental to the registration of the judgment) for which the judgment may be enforced.

cf. F.J.E.R., r. 4 Form 1.

5. (1) A register of external judgments shall be kept in the registry of the Common Law Division.

Registration.
cf. R.S.C. (Rev.) 1965, O. 71, r. 6.

(2) On entry of an order for registration of a judgment, the judgment shall be entered in the register.

6. (1) Notice of registration of a judgment shall be served on the judgment debtor.

Notice of registration.
cf. F.J.E.R., r. 5; R.S.C. (Rev.) 1965, O. 71, r. 7 (1).

(2) Service of the notice must be personal except where—
(a) the judgment debtor has entered an appearance or is in default of appearance; or
(b) the Court otherwise orders.

cf. F.J.E.R., r. 5; R.S.C. (Rev.) 1965, O. 71, r. 7 (1) (2).

(3) The notice of registration shall state—
(a) particulars of the judgment and of the order for registration;
(b) the right of the judgment debtor to apply for an order setting aside the registration; and
(c) the time within which the judgment debtor may file notice of a motion for an order setting aside the registration.

cf. F.J.E.R., r. 5 Form 2; R.S.C. (Rev.) 1965, O. 71, r. 7 (3).

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FOURTH SCHEDULE—*continued.*

Part 59.

cf. F.J.E.R., r. 5 Form 2; R.S.C. (Rev.) 1965, O. 71, r. 7 (3). (4) Where the summons has not been served on the judgment debtor, the notice of registration shall also state the address for service of the judgment creditor.

Setting aside registration. cf. R.S.C. (Rev.) 1965, O. 71, r. 5 (4). 7. (1) The Court may, before the expiry of time fixed by an order for registration or by an order under this subrule as the time within which the judgment debtor may file notice of a motion for an order setting aside the registration, extend the time so fixed.

cf. R.S.C. (Rev.) 1965, O. 71, r. 9 (3). (2) Subject to subrule (3), the Court may, on motion by the judgment debtor, make an order, on terms, setting aside the registration.

(3) Notice of motion for the order must be filed within the time fixed under rule 4 (1) or under subrule (1).

Enforcement. cf. Sheriff's Rules, r. 7; S.R. & O. 1920 (Eng.) No. 1250. 8. (1) Subject to this rule, upon registration of a judgment, the judgment may, to the extent of the amount for which the judgment may be enforced as specified in the order for registration, and costs, be enforced as a judgment of the Court in the proceedings in which the judgment is registered and in any of the manners in which a judgment for the payment of money (not for the payment of money into Court) may be enforced.

cf. F.J.E.R., r. 11; R.S.C. (Rev.) 1965, O. 71, r. 10 (3). (2) The judgment creditor shall not take any step for enforcement of the judgment until an affidavit of service of the notice of registration is filed or the Court is otherwise satisfied that the requirements of these rules as to service of the notice of registration have been fulfilled.

cf. F.J.E.R., r. 7 (1); R.S.C. (Rev.) 1965, O. 71, r. 10 (1). (3) During the period before the expiry of the time fixed under rule 4 (1) or under rule 7 (1) within which the judgment debtor may file notice of a motion for an order setting aside the registration—
 (a) the judgment creditor shall not apply for the issue of a writ for levy of property or for a writ of sequestration;
 (b) the judgment creditor shall not move for payment pursuant to a garnishment notice under Part 46;
 (c) the judgment creditor shall not take any proceedings to have the benefit of a charge arising under an order made under section 27 (1) of the Judgment Creditors' Remedies Act, 1901; and
 (d) the judgment creditor shall not, except by leave of the Court, take any other step for enforcement of the judgment.

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*Supreme Court.*FOURTH SCHEDULE—*continued.*

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Part 60.

(4) Where the judgment debtor files, within the time fixed under rule 4 (1) or under rule 7 (1), notice of a motion for an order setting aside the registration, the judgment creditor shall not, except by leave of the Court, take any step for enforcement of the judgment until after the disposal of the motion. cf. F.J.E.R.,
r. 7 (2);
R.S.C.
(Rev.) 1965,
O. 71, r. 10
(2).

(5) Neither of subrules (3) and (4) limits the operation of the other subrule.

PART 60.

MASTERS.

DIVISION 1.—*General.*

1. (1) A master may exercise the powers, functions and jurisdiction of the Court— Powers.

- (a) under the provisions of the Imperial Acts mentioned in column 1 of Part 1 of Schedule D;
- (b) under the provisions of the Acts mentioned in column 1 of Part 2 of Schedule D;
- (c) under the provisions of these rules mentioned in column 1 of Part 3 of Schedule D;
- (d) in respect of the matters mentioned in Part 4 of Schedule D; and
- (e) under the provisions of these rules mentioned in column 1 of Schedule E.

(2) The matter in column 2 of Parts 1, 2 and 3 of Schedule D and in column 2 of Schedule E is inserted for convenience of reference only and does not affect the operation of the rules.

(3) In relation to any provision mentioned in column 1 of Part 1 or Part 2 or Part 3 of Schedule D, subrule (1) has effect subject to the restriction (if any) appearing beside that provision in column 3.

(4) A master may exercise the powers, functions and jurisdiction of the Court in respect of applications and proceedings for, and all matters incidental to or for the purposes of, the exercise of the powers, functions and jurisdiction of the Court by the master under subrule (1) or under any Act or under any other provision of the rules.

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(5) Where a master, in purported exercise of any power, function or jurisdiction of the Court, directs the entry of any judgment or makes any order or does any other act, the direction, judgment, order or act shall, subject to any appeal, have effect as the direction, judgment, order or act of the Court, notwithstanding that, apart from this subrule, the power, function or jurisdiction has not been conferred upon or granted or delegated to him.

Distribution of business.

2. Where there are two or more masters in a Division, the distribution of business amongst the masters shall, subject to any direction of the Court, be by direction of the senior master present.

Judgment or order.

3. A master shall, on the disposal of any matter before him, give such direction for entry of judgment or make such order as the nature of the case requires, except where, by the rules or by any judgment or order, he is required to state his determination in a certificate or in some other manner.

Certificate.

4. (1) A master may give a certificate as to any matter arising or decision made in the course of proceedings before him.

cf. R.S.C.
(Rev.) 1965,
O. 44, r. 21
(2).

(2) Where proceedings are before a master pursuant to a judgment or order, the certificate of the master shall refer to so much only of the judgment or order as is necessary to show upon what the determination of the master is founded.

cf. R.S.C.
(Rev.) 1965,
O. 44, r. 21
(2).

(3) The certificate of a master shall not refer to documents or evidence except so far as is necessary to show upon what the determination of the master is founded.

cf. R.S.C.
(Rev.) 1965,
O. 44, r. 21
(2).

(4) The certificate of a master shall not, except where necessary, set out the reasons for the determination of the master.

cf. R.S.C.
(Rev.) 1965,
O. 44, r. 21
(3).

(5) The certificate of a master as to an account taken under a judgment or order shall—

- (a) specify, by reference to the numbers of the items in the account, the items (if any) disallowed or varied; and
- (b) specify the additions (if any) by way of surcharge or otherwise.

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Part 60.

DIVISION 2.—*Reference and Removal to Judge.*

5. In this Division, "Court" means the Court constituted by a Judge. Interpretation.

6. A master may, of his own motion or on application by a party, refer any proceedings before him to the Court. Reference.
cf. Prothonotary (Chamber Work) Rules, r. 8; R.S.C. (Rev.) 1965, O. 32, r. 12.

7. The Court, before the conclusion of any proceedings before a master, may, on application by a party, order that the proceedings be removed into the Court. Removal.
cf. Act No. 24, 1901, s. 80 (1); R.S.C. (Rev.) 1965, O. 44, r. 20 (1).

8. (1) Upon the reference of any proceedings to the Court under rule 6, or the removal of any proceedings into the Court under rule 7, the Court may— Disposal.
cf. P. (C.W.) R., r. 8; R.S.C. (Rev.) 1965, O. 32, r. 12.

(a) hear and determine any matter in the proceedings in respect of which matter the proceedings were before the master; or

(b) determine any question arising in the proceedings and remit the proceedings to the master with such directions as the Court thinks fit.

(2) An order of the Court determining any question and remitting proceedings to the master, with or without directions, need not be entered unless there is an appeal from the order, and the master shall act on an official copy of a note of the Judge's order. cf. R.S.C. (Rev.) 1965, O. 44, r. 20 (2).

DIVISION 3.—*Appeal to Judge.*

9. In this Division, "Court" means the Court constituted by a Judge. Interpretation.

10. An appeal shall lie to the Court from any decision, judgment, order, opinion, direction, determination or certificate of a master, except in any case where an appeal lies as of right to the Court of Appeal pursuant to rule 17. Right of appeal.
cf. Act No. 24, 1901, s. 80 (1); P. (C.W.) R., r. 9; R.S.C. (Rev.) 1965, O. 44, r. 23, O. 58, r. 1.

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No. 52, 1970**FOURTH SCHEDULE—continued.****Part 60.****Institution
of appeal.**

11. (1) An appeal under this Division shall be instituted by filing a notice of motion.

(2) The appeal shall be instituted within 28 days after the material date or within such extended time as the master or the Court may fix.

(3) The master may extend time under subrule (2) only within 28 days after the material date or on a notice of motion filed within 28 days after the material date.

(4) The Court may extend time under subrule (2) at any time.

(5) For the purposes of this rule the material date is—

- (a) in the case of an appeal from a judgment directed to be entered by the master—the date of the direction for entry;
- (b) in the case of an appeal from an order of a master—the date of the order; and
- (c) in any other case—the date of the decision, opinion, direction, determination or certificate under appeal.

**Notice of
motion for
appeal—
contents.
cf. Court of
Appeal
Rules, r. 3
(2).**

12. A notice of motion for appeal under this Division shall state—

- (a) whether the appeal is from the whole or part only, and what part, of the decision of the master;
- (b) briefly, but specifically, the grounds relied upon in support of the appeal;
- (c) what judgment, order or determination the appellant seeks in place of the decision of the master; and
- (d) a date for the hearing of the appeal.

**Service and
additional
filing.**

13. (1) On the date of instituting an appeal, the appellant shall—

- (a) serve the notice of motion on each respondent; and
- (b) file a copy of the notice of motion.

(2) The copy filed under subrule (1) (b) shall be for the use of the master.

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Part 60.

14. (1) An appeal under this Division shall not—
- (a) operate as a stay of execution or of proceedings under the decision of the master ;
- (b) invalidate any intermediate act or proceedings,
- except so far as the Court may direct or, subject to any direction of the Court, as the master may direct.
- (2) Where any step has been taken for the enforcement of a judgment or order and the Court varies or sets aside the judgment or order on appeal under this Part, the Court may make such orders for reinstatement as the Court thinks fit.
15. (1) Further evidence shall be admissible on an appeal under this Division.
- (2) Oral evidence shall not be adduced on an appeal under this Division except by leave of the Court.
- (3) An appellant who proposes to adduce further evidence on an appeal shall—
- (a) if the evidence is to be by affidavit, serve the affidavit on each respondent ; or
- (b) if the evidence is to be adduced orally, serve on each respondent a statement of the general nature of the evidence,
- not more than 7 days after the date of institution of the appeal.
16. Upon the hearing of an appeal under this Division the Court shall direct the entry of such judgment or make such decision, order, direction or determination as the nature of the case requires.

Stay and
reinstatement.
cf. C.A.R.,
r. 11;
P. (C.W.)
R., r. 14.

cf. C.A.R.,
r. 11 (2).

Disposal.
cf. P.
(C.W.)
R., r. 17.

DIVISION 4.—Appeal to the Court of Appeal.

17. An appeal shall lie to the Court of Appeal in accordance with sections 101 and 103 of the Act, subject however to the leave of the Court of Appeal in any case to which section 101 (3) applies, and except in the cases mentioned in section 101 (2), from any decision, judgment, order, opinion, direction or determination of the Court in a Division constituted by a master—

- (a) in proceedings under section 22 of the Married Women's Property Act, 1901 ;

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- (b) upon a trial of proceedings pursuant to a direction under rule 13 of Part 56 (which relates to interpleader) ;
- (c) upon a trial of proceedings pursuant to a judgment for damages to be assessed.

PART 61.

REGISTRARS.

Powers.

1. (1) A registrar may exercise the powers, functions and jurisdiction of the Court under the provisions of these rules mentioned in column 1 of Schedule E.

(2) Where a registrar, in purported exercise of any power, function or jurisdiction of the Court, directs the entry of any judgment or makes any order or does any other act, the direction, judgment, order or act shall, subject to rule 3, have effect as the direction, judgment, order or act of the Court, notwithstanding that, apart from this subrule, the power, function or jurisdiction has not been conferred upon or granted or delegated to him.

Mandatory
order.
cf. Act
No. 23,
1912, s. 147.

2. The Court may by order direct a registrar to do, in any proceedings, any act relating to the duties of his office.

Review.

3. Where a registrar gives a direction or makes an order or does any other act in any proceedings, the Court may, on application by any party, review the direction, order or act, and may make such order by way of confirmation, variation, discharge or otherwise as the Court thinks fit.

Court of
Appeal.

4. The powers of the Court under this Part may, in respect of the registrar of the Court of Appeal, be exercised by a Judge of Appeal.

PART 62.

SHERIFF.

DIVISION 1.—*General.*Interpre-
tation.

1. In this Part, unless the context or subject matter otherwise indicates or requires—

“bill” means bill of fees of the Sheriff.

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“fees” includes charges and poundage.

Part 62.

“person interested” in relation to the fees of the Sheriff in respect of the service or execution of any process, means—

- (a) a party who lodges the process with the Sheriff for service or execution;
- (b) a solicitor who gives an undertaking to pay the fees or is otherwise liable to pay the fees; or
- (c) in the case of a writ of execution authorising the Sheriff to levy the fees on any property, the person upon whose property the levy is authorised.

“process” includes a writ.

2. Where the service or execution of any process would require the Sheriff or his officer to go more than forty miles from the nearest headquarters of any of his officers, the Sheriff shall not be compellable to serve or execute the process.

Service and execution at a distance.
cf. Sheriff's Rules, r. 11.

3. (1) The Sheriff shall not suspend the execution of any process, except upon an absolute instruction in writing to that effect lodged with him by the party by whom the process is lodged.

Suspension of execution.
cf. Sheriff's Rules, r. 13;
R.S.C. (Vic.), O. 67 (A), r. 8.

(2) A party who has lodged an instruction to suspend the execution of any process may withdraw the instruction by lodging with the Sheriff an instruction to execute the process.

cf. Sheriff's Rules, r. 13;
R.S.C. (Vic.), O. 67 (A), r. 8.

4. (1) Where the Sheriff defaults by not executing any process according to its tenor, he shall be liable to punishment as if in contempt of Court.

Default.
cf. Sheriff's Rules, r. 10.

(2) Part 55 (which relates to contempt) applies to the punishment of the Sheriff under this rule as if his default were contempt of Court.

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FOURTH SCHEDULE—*continued.*

Part 62.

DIVISION 2.—*Fees.*

Security.

cf. Sheriff's
Rules, r. 3.

5. (1) Where a party to any proceedings lodges any process with the Sheriff for service or execution, the Sheriff may, upon lodgment and from time to time after lodgment—

- (a) require the party to deposit with him money in an amount fixed by him to be applied in or towards satisfaction of his fees; or
- (b) as to the whole or any part of the fees, take an undertaking by the party's solicitor to pay them instead of requiring a deposit.

(2) Where a party required to make a deposit under subrule (1) objects to the amount fixed by the Sheriff, the Court, on motion by the party, may, by order, fix the amount to be deposited.

cf. Sheriff's
Rules, r. 3.

(3) The Sheriff may defer service or execution of any process until a deposit is made or an undertaking is given in accordance with this rule.

cf. Sheriff's
Rules, r. 4.

(4) Where it appears that the amount deposited under this rule exceeds the fees of the Sheriff, the Sheriff shall repay the excess to the party depositing the money or to his solicitor.

Liability
of
solicitor.

6. Where a party, by his solicitor, lodges with the Sheriff any process for service or execution the solicitor shall be liable for the fees of the Sheriff, whether or not the solicitor has given an undertaking pursuant to rule 5 (1) (b).

Bill.

7. (1) The Sheriff shall, on the request of a person interested, furnish him with a bill.

(2) The Sheriff may serve a bill on any person interested.

Taxation.
cf. Sheriff's
Rules, r. 7;
S.R. & O.
1920 (Eng.)
No. 1250.

8. (1) Subject to subrule (2), the Court may, on motion by a person interested, order that fees be taxed.

(2) Where a bill has been served on or furnished to a person interested, he may not apply for an order for taxation of the fees, except upon notice of motion filed within 7 days after the date of service or furnishing of the bill.

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(3) Where the Court orders that fees be taxed, an application to proceed with the taxation shall be made by the Sheriff to a taxing officer by motion in the proceedings. Part 63.

(4) Division 6 of Part 52 and rules 51, 52, 54, 57, 59, 60, 61 and 62 of that Part apply to a taxation under this rule as they apply to a taxation of costs and as if the Sheriff were a party.

9. (1) Where a bill is served on or furnished to a person interested by the Sheriff, the amount of fees shown in the bill shall, unless the Court otherwise orders, be binding as between the Sheriff and the person interested unless the person interested obtains an order for taxation under rule 8. Determination.

(2) Where the fees are taxed pursuant to an application by a person interested under rule 8, the amount fixed on taxation shall, subject to any alteration on reconsideration, review or appeal, be binding as between the Sheriff and the person interested.

10. Where in any proceedings a solicitor has given an undertaking to pay, or is otherwise liable to pay, any fees of the Sheriff, and the solicitor does not pay the fees within 7 days after the amount has become binding under rule 9 as between the solicitor and the Sheriff, the Court may, on motion in the proceedings by the Sheriff, order the solicitor to pay the fees to the Sheriff. Default by solicitor. cf. Sheriff's Rules, r. 8.

PART 63.

DISABILITY.

1. Where it is necessary to refer to the office of a tutor, he shall be described as a tutor unless it is necessary to distinguish between the offices of next friend and guardian ad litem. Reference to tutor.

2. (1) Subject to subrule (3), a disable person may not, except by his next friend, bring or make a claim or carry on any proceedings for relief in the Court. Need for tutor.

cf. R.S.C.
(Rev) 1965,
O. 80, r. 2
(1).

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Part 63.

(2) Subject to subrule (3), a disable person may not, except by his guardian ad litem—

cf. R.S.C.

(Rev.) 1965,

O. 80, r. 2

(1).

(a) defend any proceedings ;

(b) intervene in any proceedings ; or

(c) appear in any proceedings under a judgment or order.

cf. R.S.C.

(Rev.) 1965,

O. 80, r. 2

(1).

(3) Where, in any proceedings, a disable person has a tutor, the disable person may, by his tutor, commence, carry on or defend any claim in those proceedings for relief under section 78 of the Act.

Conduct of proceedings by tutor.

cf. R.S.C.

(Rev.) 1965,

O. 80, r. 2

(2).

3. (1) Subject to the rules, where a disable person is a party to any proceedings, anything which would, if he were not a disable person, be required or authorised by these rules to be done by him shall or may be done by his tutor.

cf. R.S.C.

(Rev.) 1965,

O. 80, r. 2

(3).

(2) A tutor must act by a solicitor.

Appointment of tutor generally.

cf. R.S.C.

(Rev.) 1965,

O. 80, r. 3

(2).

4. (1) Subject to subrule (5) and subject to rules 5 and 7, an order appointing a tutor is not necessary.

(2) A person who has not attained the age of 21 years or who, owing to mental illness, is incapable of managing his affairs may not be a tutor and a corporation may not be a tutor, but otherwise, and subject to subrule (3), any person (including a married woman) may be a tutor.

cf. R.S.C.

(Rev.) 1965,

O. 80, r. 3

(8) (c)

(iii).

(3) A person may not be a tutor of a disable person in any proceedings in which he has an interest adverse to the interest of the disable person.

cf. R.S.C.

(Rev.) 1965,

O. 80, r. 3

(8) (a).

(4) A person shall not be made a tutor without his consent.

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Part 63.

(5) Where a person has been or is tutor for a disable person in any proceedings, no other person may, except on appointment by the Court, act as tutor for the disable person in those proceedings. cf. R.S.C. (Rev.) 1965, O. 80, r. 3 (4).

(6) A person shall not take any step in any proceedings as tutor for a disable person unless beforehand there have been filed— cf. R.S.C. (Rev.) 1965, O. 80, r. 3 (8) (a).

(a) his consent to act; and

(b) a certificate by his solicitor that the tutor has no interest in the proceedings adverse to that of the disable person.

5. (1) Where a mentally disable person has a curator and the curator has or may be given authority, under the Mental Health Act, 1958, to bring or defend proceedings on behalf of the mentally disable person, a person other than the curator shall not, unless the Court otherwise orders, act as tutor of the mentally disable person in proceedings which the curator has or may be given authority to bring or defend. Appointment of tutor of mentally disable person. *cf. R.S.C. (Rev.) 1965, O. 80, r. 3 (3).*

(2) Where, after the commencement of proceedings, a party becomes a mentally disable person, no step in the proceedings shall be taken by or against the mentally disable person until a tutor for him has been appointed by the Court. *cf. R.S.C. (Rev.) 1965, O. 80, r. 3 (5).*

(3) A person shall not take any step in any proceedings as tutor for a mentally disable person unless he has been appointed tutor by the Court or unless there has been filed (in addition to the documents mentioned in rule 4 (6))— *cf. R.S.C. (Rev.) 1965, O. 80, r. 3 (8) (b) (c).*

(a) in a case to which subrule (1) applies, a certificate by the tutor that he is curator for the mentally disable person and specifying the date on which and the manner by which he became curator; or

(b) in a case to which subrule (1) does not apply, a certificate by his solicitor that he knows or that he believes that subrule (1) does not apply and giving the grounds of his knowledge or belief.

6. (1) Where originating process in any proceedings is served on a disable person and an appearance is required to be entered by the disable person within a limited time but no appearance is entered within that time, a party to the proceedings shall not take any step in the proceedings affecting the disable person until an appearance is entered by a tutor for the disable person. Non-appearance by disable person. *cf. R.S.C. (Rev.) 1965, O. 80, r. 6.*

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Part 63.

cf. R.S.C. (Rev.) 1965, O. 80, r. 6 (4). (2) Where, in proceedings in the Equity Division, notice of a judgment or order is served on a disable person and an appearance is not entered by the disable person, the Court may stay proceedings under the judgment or order until an appearance is entered by a tutor for the disable person.

cf. R.S.C. (Rev.) 1965, O. 80, r. 6 (5) (d) (6). (3) A person moving for an appointment under this rule shall, unless the Court otherwise orders, serve notice of the motion on the disable person.

Appointment by the Court. cf. R.S.C. (Rev.) 1965, O. 80, rr. 3 (4) (5), 6. 7. (1) The Court may, on motion by a party to proceedings or any other person, appoint a tutor for a disable person for the purposes of the proceedings.

cf. R.S.C. (Rev.) 1965, O. 80, r. 6 (5) (7). (2) The evidence on a motion for an appointment under subrule (1) shall include evidence—
 (a) that the person for whom the tutor is proposed to be appointed is a disable person ;
 (b) that the proposed tutor—
 (i) consents to act ;
 (ii) is a proper person for appointment ; and
 (iii) has no interest in the proceedings adverse to the interest of the disable person ;
 (c) that the disable party is in default of appearance, if that is the fact.

Removal. 8. (1) The Court may, on motion by a party to proceedings or by any other person or of its own motion—
 (a) remove a tutor ; and
 (b) stay the proceedings until appointment of a tutor in place of the tutor removed.

(2) A person moving for an order under this rule shall, unless the Court otherwise orders, serve notice of the motion on the tutor whose removal is sought and on the disable person for whom he is tutor.

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9. Part 15 rule 20 (1) does not apply to an opposite party who is a disable person. Part 63.
No imputed admission on pleadings.
cf. R.S.C. (Rev.) 1965, O. 80, r. 8.
10. Parts 23 and 24 apply to a disable person and to his tutor. Discovery and interrogatories.
cf. R.S.C. (Rev.) 1965, O. 80, r. 9.
11. (1) Where proceedings have been commenced, and afterwards an agreement is made by the tutor in the proceedings of a disable person for the compromise or settlement of any matter in dispute in the proceedings, the Court may approve or disapprove the agreement. Com-
promise, etc.
of matter in suit.
cf. R.S.C. (Rev.) 1965, O. 80, r. 10.
- (2) An agreement approved by the Court under subrule (1) is as binding on the disable person as if the disable person were not a disable person and his tutor were his agent to make the agreement.
- (3) An agreement disapproved by the Court under subrule (1) is not binding on the disable person.
- (4) This rule does not apply to an agreement for a compromise or settlement to which the Damages (Infants and Persons of Unsound Mind) Act, 1929, applies.
12. (1) A tutor shall not, except by leave of the Court, bring money into Court under Part 22 or accept money brought into Court under that Part. Payment into Court.
cf. R.S.C. (Rev.) 1965, O. 80, r. 10.
- (2) Subrule (1) does not apply to the acceptance of money brought into Court under Part 22 where the Damages (Infants and Persons of Unsound Mind) Act, 1929, applies to that acceptance.
13. (1) Where a claim enforceable by proceedings in the Court is made by or on behalf of, or against, a disable person and, before proceedings are commenced to enforce the claim, an agreement is made by or on behalf of the disable person for the compromise or settlement of the claim, the Court may approve or disapprove the agreement. Com-
promise, etc.
before suit.
cf. R.S.C. (Rev.) 1965, O. 80, r. 11 (1) (5).

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(2) An agreement approved by the Court under subrule (1) is as binding on the disable person by or on whose behalf it is made as if the disable person were not a disable person and, where the agreement is made by another person on behalf of the disable person, as if that other person were his agent to make the agreement.

(3) An agreement disapproved by the Court under subrule (1) is not binding on a disable person by or on whose behalf it is made.

cf. R.S.C. (Rev.) 1965, O. 80, r. 11 (1). (4) Notwithstanding Part 4 rule 2 (which relates to cases where a statement of claim is required), a person may commence proceedings by summons for approval of an agreement under this rule and may, by the summons, seek enforcement of the claim in case the Court does not approve the agreement.

cf. R.S.C. (Rev.) 1965, O. 80, r. 11 (2). (5) Where, in proceedings by summons under this rule, a claim is made under the Compensation to Relatives Act of 1897, the plaintiff shall file and serve with the summons a full particular of the matters specified in section 6 of that Act.

cf. R.S.C. (Rev.) 1965, O. 80, r. 11 (1). (6) Where, in proceedings under this rule, the Court does not approve an agreement but the plaintiff seeks to enforce the claim, the Court may give directions for the further conduct of the proceedings.

Terms of approval. 14. (1) The Court may give its approval under rule 11 or rule 13 on terms.

(2) Without affecting the generality of subrule (1), the Court—

(a) may, as a term of its approval, require that any money or other property payable or applicable to or for the benefit of a disable person be dealt with by way of settlement or otherwise as the Court thinks fit for the benefit of the disable person; and

(b) may make such orders as it thinks fit for the carrying out of its requirements under paragraph (a).

Service. cf. R.S.C. (Rev.) 1965, O. 80, r. 16 (1). 15. (1) This rule applies where, in any proceedings, a document is required to be served personally on a disable person.

(2) Personal service on a disable person shall not be effected otherwise than in accordance with this rule.

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- (3) Where the disable person has a tutor in the proceedings, the document may be served on the tutor. part 63.
- (4) The document may be served on any person (including the disable person) whom the Court may, before or after service, approve. cf. R.S.C.
(Rev.) 1965,
O. 80, r. 16
(3).
- (5) Where the person to be served is an infant and has no tutor in the proceedings, the document may be served— cf. R.S.C.
(Rev.) 1965,
O. 80, r. 16
(2) (a).
- (a) if he is aged 16 years or upwards, on him;
 - (b) on a parent of his or a guardian of his person or of his estate; or
 - (c) if he has no parent and has no guardian of his person or of his estate, on a person with whom he resides or in whose care he is.
- (6) Where the person to be served is a mentally disable person and has no tutor in the proceedings, the document may be served— cf. R.S.C.
(Rev.) 1965,
O. 80, r. 16
(2) (b).
- (a) if he has a curator, on the curator; or
 - (b) if he has no curator, on a person with whom he resides or in whose care he is.
- (7) A document served pursuant to any of subrules (3) to (6) must be served in the manner required by the rules with respect to the document. cf. R.S.C.
(Rev.) 1965,
O. 80, r. 16
(2).
- (8) A judgment or order requiring a disable person to do, or refrain from doing, any act, a notice of motion for the committal of a disable person, and a writ of subpoena against a disable person, must, in addition to any other service required by these rules, and notwithstanding anything in subrules (3) to (6), be served personally on the disable person. cf. R.S.C.
(Rev.) 1965,
O. 80, r. 16
(4).
- (9) Subrule (8) does not apply to an order for interrogatories or for discovery or inspection of documents. cf. R.S.C.
(Rev.) 1965,
O. 80, r. 16
(4).
- (10) This rule does not extend the jurisdiction of the Court over a disable person absent from the State.

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FOURTH SCHEDULE—*continued.*

Part 64.

PART 64.

BUSINESS NAMES.

Interpre-
tation.
cf. Act No.
11, 1962,
ss. 4 (1),
5 (1) (a).

1. In this Part, "business name" means a name, style, title or designation under which a person carries on a business, not being a name consisting of the name of that person and the name of each other person, if any, in association with whom that person carries on business, without any addition.

Proceed-
ings in
business
name.

2. (1) Where a claim for relief is made against any person in respect of anything done or omitted or suffered in the course of, or otherwise relating to, a business carried on within the State by that person under a business name and that business name is not, on the date on which proceedings in the Court for that relief are commenced, registered under and for the purposes of the Business Names Act, 1962, in relation to that person, then, subject to this Part—

- (a) the proceedings may be commenced and prosecuted against that person in that business name;
- (b) that business name shall, for the purpose of the proceedings, be a sufficient designation of that person in any process or other legal document or instrument; and
- (c) any judgment given or order made in the proceedings may be enforced against that person or, where there are two or more such persons, against any of them.

(2) Section 14 (3) of the Business Names Act, 1962, (which subsection relates to proceedings in a business name) does not apply to proceedings in the Court.

Service.
cf. Act No.
11, 1962,
s. 31 (2).

3. (1) Where a person is carrying on business within the State under a business name not registered under and for the purposes of the Business Names Act, 1962, in relation to that person, any originating process or other document in or relating to any proceedings may be served—

- (a) by leaving it at a place within the State where the business is carried on with some person apparently engaged (whether as servant or otherwise) in the business and apparently of or above the age of 16 years; or
- (b) by sending it by certified mail addressed to the business name or to the person to be served and addressed to a place within the State where the business is carried on.

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(2) Subrule (1) applies whether the person to be served is sued in his own name or in a business name. Part 64.

(3) Service in accordance with subrule (1) shall have effect as personal service. cf. Act No. 11, 1962, s. 31 (2).

(4) Where a document is served in accordance with either of paragraphs (a) and (b) of subrule (1), the place of service shall, for the purpose of the proceedings, be the place mentioned in that paragraph, wherever (whether within the State or not) the person served may be at the time of service.

(5) This rule does not limit the operation of section 31 (2) of the Business Names Act, 1962, or of any other Act or any rule or regulation relating to service.

4. (1) Where any person is sued in a business name, he shall not enter an appearance except in his own name. Appearance.
cf. General
Rules of
the Court,
O. 28, rr. 10,
17.

(2) Where any person enters an appearance in proceedings in which he is sued in a business name, he shall file and serve with his notice of appearance a statement of the names and places of residence of all the persons carrying on business under that business name on the date of commencement of the proceedings. cf. R.S.C.
(Rev.) 1965,
O. 81, r. 2
(1) (3).

(3) Where a person fails to comply with subrule (2), the Court may order that his appearance be struck out.

5. (1) Where proceedings are commenced against any person in a business name, the plaintiff shall, as soon as practicable, take all reasonable steps (whether by way of discovery, interrogatories or otherwise) for the purpose of ascertaining the name of the defendant and shall, so far as practicable, make amendments so that the proceedings are continued against the person sued in his own name and not in his business name. Amend-
ment as to
parties.

(2) Where proceedings are commenced against any person in a business name, the plaintiff shall not, without the leave of the Court, take any step in the proceedings, except in respect of service of the originating process and except for the purpose of compliance with subrule (1), until amendments are made in accordance with subrule (1).

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(3) Where an amendment is made under this rule, the mode of amendment and service after amendment shall be in accordance with rules 7, 8 and 9 of Part 20.

(4) A party may make any amendment pursuant to rule 2 of Part 20 notwithstanding that he has made an amendment under this rule.

Execution.

6. (1) Where proceedings against a person in a business name are continued by leave given under rule 5, a judgment or order against that person in the business name shall not be enforced by execution except as mentioned in this rule.

cf. R.S.C.

(2) A judgment or order against a person in a business name may be enforced by execution against any property of the business carried on under that name and, where the judgment or order is against partners, against any other property which is property of the partnership.

cf. R.S.C.

(3) In subrule (2), the expression "property of the business", in relation to a judgment or order against a person in a business-name, means all property and rights and interests in property, originally brought into the business carried on under that name or acquired, whether by purchase or otherwise, on account of the business, or for the purposes and in the course of the business, being property, rights or interests of that person.

Variation of judgment or order.

7. (1) Notwithstanding rule 6, the Court may vary a judgment or order against a person in a business name so as to make it a judgment or order against that person in his own name and, when so varied, the judgment or order may be enforced accordingly.

(2) Notice of a motion for a variation of a judgment or order under subrule (1) shall be served personally on the person against whom the judgment was given or the order was made, and rule 3 shall not apply to that service.

Discovery in aid of rules 5 and 7.

8. (1) Where it appears to the Court that some person has or may have knowledge of facts, or has or may have in his possession, custody or power any document or thing, tending to assist in the ascertainment of the name or description or other identification of a

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defendant sued in a business name, the Court may, for the purpose of enabling amendments to be made under rule 5 or a variation of a judgment or order to be made under rule 7— **Part 65.**

- (a) order that person to attend before the Court or an officer of the Court and be orally examined on any matter relating to the name or description or other identification of the defendant;
- (b) order that person to produce any document or thing in his possession, custody or power relating to the name or description or other identification of the defendant; and
- (c) if that person is a corporation, order the corporation or any officer of the corporation to produce any document or thing in the possession, custody or power of the corporation relating to the name or description or other identification of the defendant.

(2) In subrule (1), "description", in relation to a defendant, includes the place of residence, place of business, occupation and sex of the defendant.

(3) Part 3 rules 2 (2), 3 and 4 (which relate to service, conduct money, and expense and loss) apply in relation to an order under this rule as they apply in relation to an order under Part 3 rule 1.

PART 65.

DOCUMENTS.

1. (1) A document in any proceedings shall be headed "In the **Heading** Supreme Court of New South Wales" together with a reference to the **and title.** appropriate Division or to the Court of Appeal and shall show the serial number of the proceedings.

(2) A document in any proceedings between parties shall be entitled between the parties, and not otherwise.

(3) A document in any proceedings in which there is no defendant shall be entitled "The application of" together with the name of the plaintiff, and not otherwise.

(4) Except in the case of an originating process or a minute of a final judgment or final order, a document may bear an abbreviation of the title of the proceedings sufficient to identify the proceedings. **cf. Consolidated Equity Rules of 1902, r. 4A.**

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Part 65.

Paper and
writing.cf. R.S.C.
(Rev.) 1965,
O. 66, rr. 1,
2 (1).

2. (1) This rule applies to a document prepared by a party for use in the Court, except to the extent that the nature of the document renders compliance impracticable.

cf. R.S.C.
(Rev.) 1965,
O. 66, r. 1;
High Court
Rules, O. 61,
r. 4 (1) (c).

(2) A document shall be on paper of durable quality, capable of receiving ink writing, and measuring about 13 inches long and 8 inches wide.

cf. H.C.R.,
O. 61, r. 4
(1) (d).

(3) The writing on a document shall be on one face of the paper only and a margin of not less than two inches shall be kept clear on the left hand side.

cf. H.C.R.,
O. 61, r. 4
(1) (b).

(4) There shall be a space of not less than a quarter of an inch between the lines of writing.

(5) The writing shall be clear, sharp, legible and permanent.

(6) A carbon copy shall not be filed.

cf. Court
of Appeal
Rules, r. 42
(1) (a).

(7) A document shall not be filed if it bears any blotting, erasure, or such alteration as to cause material disfigurement.

Backsheet.

3. (1) A document prepared by a party for use in the Court shall have a backsheet—

(a) headed “In the Supreme Court of New South Wales” together with a reference to the appropriate Division or to the Court of Appeal;

(b) showing—

(i) the serial number of the proceedings;

(ii) the title of the proceedings or an abbreviation of a title of the proceedings sufficient to identify the proceedings;

(iii) a description of the document;

(iv) the name, address and telephone number of the solicitor for the party and, if the solicitor acts in the proceedings by an agent, the name, address and telephone number of the agent.

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(2) Where the party preparing a document for use in the Court is not represented by a solicitor, subrule (1) (b) (iv) does not apply, but the backsheet shall show the name and address for service of the party. Part 66.

4. Dates, sums and other numbers shall be expressed in figures and not in words. Numbers.
cf. R.S.C.
(Rev.) 1965,
O. 41, r. 1
(7).

5. The Court may order to be struck out of any document any matter which is scandalous, frivolous, vexatious, irrelevant or otherwise oppressive. Scandal,
etc.
cf. R.S.C.
(Rev.) 1965,
O. 18, r. 19
(1); O. 41,
r. 6.

6. (1) The registrar of each Division shall have charge of the documents in proceedings in the Division and of the records of the Division. Charge of
documents
and
records.

(2) The registrar of the Court of Appeal shall have charge of the documents filed in proceedings in the Court of Appeal and of the records of the Court of Appeal.

7. (1) A person may not search in the registry for or inspect any document in any proceedings except with the leave of the Court. Search.
cf. General
Rules of the
Court,
O. 29, r. 8.

(2) Subrule (1) does not apply to a party to the proceedings or to the Registrar General. cf. G.R.C.,
O. 29, r. 8.

PART 66.

SOLICITORS.

1. (1) Every matter or thing which under the Act or the rules or otherwise by law is required or allowed to be done by a party may be done by his solicitor. Power to
act by
solicitor.
cf. General
Rules of
the Court,
O. 4, r. 1.

(2) Subrule (1) does not apply where the context or subject matter otherwise indicates or requires.

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FOURTH SCHEDULE—*continued*.

Part 66.

Adverse parties.
cf. Solicitors Practices Rules, r. 18.

2. Where a solicitor or his partner acts as solicitor for any party to any proceedings, or is a party to any proceedings, that solicitor shall not, without leave of the Court, act for any other party to the proceedings not in the same interest.

Change of solicitor.
cf. R.S.C. (Rev.) 1965, O. 67, r. 1 (1).

3. (1) Where a solicitor acts for a party in any proceedings, the party may change his solicitor.

cf. R.S.C. (Rev.) 1965, O. 67, r. 1 (1) (3) (4).

(2) Where a party changes his solicitor, he shall file notice of the change and serve the notice on the other parties and, where practicable, his former solicitor.

Change of agent.
cf. R.S.C. (Rev.) 1965, O. 67, r. 2.

4. Where a solicitor (in this rule called the principal solicitor) acts for a party in any proceedings and another solicitor acts as agent for the principal solicitor in the proceedings and the principal solicitor changes the solicitor acting as agent, the party shall file notice of the change and serve the notice on the other parties and on the former agent solicitor.

Appointment of solicitor.
cf. R.S.C. (Rev.) 1965, O. 67, r. 3.

5. Where a party acts for himself in any proceedings and afterwards appoints a solicitor to act for him in the proceedings, the party shall file notice of the change and serve the notice on the other parties.

Removal of solicitor.
cf. R.S.C. (Rev.) 1965, O. 67, r. 4.

6. (1) Where a solicitor acts for a party in any proceedings and afterwards the party determines the authority of the solicitor to act for him in the proceedings—

- (a) the party shall file notice of the change and serve the notice on the other parties and on his former solicitor; and
- (b) the former solicitor may file notice of the change and serve the notice on the parties.

(2) Subrule (1) does not apply to a case to which rule 3 applies.

Withdrawal of solicitor.
cf. G.R.C., O. 4, r. 5 (1).

7. (1) Where a solicitor acts for a party to any proceedings and afterwards ceases to act, the solicitor may, subject to subrule (2), file notice of the change and serve the notice on the parties.

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Part 66.

(2) A solicitor shall not file or serve notice of a change under subrule (1) without leave of the Court unless he has, not less than seven days before doing so, served on his former client notice of his intention to file and serve the notice of change. cf. G.R.C.,
O. 4, r. 5
(1).

(3) A solicitor filing a notice of change under subrule (1) shall, except where the notice is filed with the leave of the Court, file and serve with the notice an affidavit showing service in compliance with subrule (2). cf. G.R.C.,
O. 4, r. 5
(1).

(4) A solicitor may serve a notice under this rule on his former client by posting it to the former client at the residential or business address of the former client last known to the solicitor. cf. G.R.C.,
O. 4, r. 5
(2).

8. A change of which notice is required or permitted to be filed under any of rules 3, 4, 5, 6 and 7 shall not have effect as between a party or solicitor to which the change relates on the one hand and the Court or any other party on the other hand until notice of the change is filed and, as regards any other party, served on that other party. Effect of
change.
cf. R.S.C.
(Rev.) 1965,
O. 67, r. 1
(1).

9. (1) Where any signature by a solicitor is required or permitted for the purpose of any proceedings, the signature for the solicitor by any of the following persons shall, as well as the signature of the solicitor, be sufficient— Signature
for solicitor.
cf. G.R.C.,
O. 9, r. 1.

- (a) a partner of the solicitor ;
- (b) a solicitor who is Sydney agent of the solicitor for the purpose of the proceedings ;
- (c) a partner of the Sydney agent ;
- (d) a solicitor employed by the solicitor or by the Sydney agent ;
and
- (e) a signatory authorised under subrule (2).

(2) The registrar of any Division or of the Court of Appeal may authorise a clerk of a solicitor to be a signatory for the purposes of subrule 1 (e) in all or in any class of proceedings in the Division or in the Court of Appeal, as the case may be, for his master and for any solicitor of whom his master is Sydney agent and may revoke any authority given under this rule.

(3) A signature made pursuant to this rule shall be accompanied by a statement of the capacity in which the signature is made.

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Part 67.

PART 67.

DEFAMATION.

Application.

1. This Part applies to proceedings for defamation.

cf. R.S.C.
(Rev.) 1965,
O. 82, r. 1.

Particulars:
publications and
innuendo.

2. The particulars required by Part 16 rule 1 in relation to a statement of claim shall include—

cf. R.S.C.
(Rev.) 1965,
O. 82, rr. 2,
3 (1).

- (a) sufficient particulars of the publications in respect of which the proceedings are brought to enable the publications to be identified; and
- (b) where the plaintiff alleges that the matter complained of was used in a defamatory sense other than its ordinary meaning, particulars of the facts and matters on which he relies in support of that sense.

Protection,
justification and
excuse.

3. A defendant shall specifically plead any defence of protection, justification or excuse by law.

cf. General
Rules of
the Court,
O. 30,
r. 30A.

Particulars
of defence.

cf. G.R.C.,
O. 14, r.

18A (1);
R.S.C.
(Rev.) 1965,
O. 82, r. 3
(2).

4. (1) Where a defendant pleads fair comment (whether by way of rolled-up plea or otherwise), the particulars required by Part 16 rule 1 shall include—

- (a) if, as the basis or part of the basis for the comment, he relies on facts not stated in the matter complained of, particulars stating those facts;
- (b) if, as the basis or part of the basis for the comment, he relies on facts stated in the matter complained of, particulars stating which words in the matter complained of he alleges are statements of fact and on which of those alleged statements he so relies; and
- (c) particulars of the facts and matters on which he relies to establish the truth of the facts on which he relies as the basis for the comment.

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Part 67.

(2) Where a defendant pleads truth and public benefit, the powers of the Court under Part 16 rule 7 shall extend to orders in relation to particulars of the facts and matters on which he relies to establish—

cf. G.R.C.,
O. 14, r.
18A (2).

- (a) that the publication was made for the public benefit; and
- (b) that the matter complained of was true.

5. Where a plaintiff intends to meet any defence by alleging that the publication of the matter complained of was not in good faith—

Pleading
and
particulars:
want of
good
faith.

- (a) the plaintiff shall plead that allegation by way of reply;
and
- (b) the particulars required by Part 16 rule 1 in relation to the reply shall include particulars of the facts and matters from which the absence of good faith is to be inferred.

cf. R.S.C.
(Rev.) 1965,
O. 82, r. 3
(3).

6. Part 22 rule 13 (1) (which relates to non-disclosure of a payment into Court) does not apply to money brought into Court under section 22 of the Defamation Act, 1958.

Payment
into Court.
cf. R.S.C.
(Rev.) 1965,
O. 82, r. 4
(2).

7. (1) Where a plaintiff accepts money brought into Court under Part 22 in satisfaction of a cause of action for defamation he may, with the leave of the Court, make in open Court a statement approved by the Court in private.

Statement
in open
Court.
cf. R.S.C.
(Rev.) 1965,
O. 82, r. 5
(1).

(2) Where proceedings are settled before trial a party may, with the leave of the Court, make in open Court a statement approved by the Court in private.

cf. R.S.C.
(Rev.) 1965,
O. 82 r. 5
(2).

8. Interrogatories as to the sources of information or grounds of belief of the defendant shall not be allowed on an issue—

Interroga-
tories.

- (a) whether the whole or any part of the matter complained of was fair comment; or
- (b) whether the publication by the defendant of the matter complained of was in good faith.

cf. R.S.C.
(Rev.) 1965,
O. 82, r. 6.

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Part 68.

PART 68.

ADMINISTRATION OF ESTATES ; EXECUTION OF TRUSTS.

Interpreta-
tion.

1. In this Part—

cf. R.S.C.
(Rev.) 1965,
O. 85, r. 1.

“administration proceedings” means proceedings for the adminis-
tration of an estate or the execution of a trust under the
direction of the Court ;

“estate” means estate of a deceased person.

Relief
without
general
administra-
tion.2. (1) Proceedings may be brought for any relief which could be
granted in administration proceedings.cf. R.S.C.
(Rev.) 1965,
O. 85, r. 2
(1).cf. R.S.C.
(Rev.) 1965,
O. 85, r. 2
(1) (2).(2) Proceedings may be brought for the determination of any
question which could be determined in administration proceedings,
including any question—

- (a) arising in the administration of an estate or in the execution
of a trust ;
- (b) as to the composition of any class of persons having a claim
against an estate or a beneficial interest in an estate or in
property subject to a trust ; or
- (c) as to the rights or interests of a person claiming to be—
 - (i) a creditor of an estate ;
 - (ii) entitled under the will or on the intestacy of a
deceased person ; or
 - (iii) beneficially entitled under a trust.

cf. R.S.C.
(Rev.) 1965,
O. 85, r. 2
(3) (a)
(b) (c).(3) Proceedings may be brought for an order directing an
executor, administrator or trustee—

- (a) to furnish accounts ;
- (b) to verify accounts ;
- (c) to pay funds of the estate or trust into Court ; or
- (d) to do or abstain from doing any act.

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*Supreme Court.*FOURTH SCHEDULE—*continued.*

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Part 68.

- (4) Proceedings may be brought for—
 (a) an order approving any sale, purchase, compromise or other transaction by an executor, administrator or trustee; or
 (b) directing any act to be done in the administration of an estate or in the execution of a trust which the Court could order to be done if the estate were being administered, or the trust were being executed, under the direction of the Court.
- (5) None of subrules (1) to (4) limits the operation of any other of them.
- (6) In proceedings brought pursuant to this rule a claim need not be made for the administration of the estate, or the execution of the trust, under the direction of the Court.
3. Rules 4 to 9 apply to administration proceedings and to proceedings brought pursuant to rule 2.
4. (1) In proceedings relating to an estate, all the executors of the will of the deceased, or all the administrators of the estate, must be parties.
- (2) In proceedings relating to a trust, all the trustees must be parties.
- (3) Where proceedings are brought by executors, administrators or trustees, any executor, administrator or trustee who does not consent to being joined as a plaintiff shall be made a defendant.
5. (1) In proceedings relating to an estate, all the persons having a beneficial interest in or claim against the estate need not be parties.
- cf. R.S.C. (Rev.) 1965, O. 85, r. 2 (3) (d) (e).
- cf. R.S.C. (Rev.) 1965, O. 85, r. 2 (2) (3).
- cf. R.S.C. (Rev.) 1965, O. 85, r. 2 (1).
- Application of rules 4 to 9.
- Parties: executors, etc.
- cf. R.S.C. (Rev.) 1965, O. 85, r. 3 (1).
- cf. R.S.C. (Rev.) 1965, O. 85, r. 3 (1).
- cf. R.S.C. (Rev.) 1965, O. 85, r. 3 (1).
- Parties: beneficiaries and claimants.
- cf. R.S.C. (Rev.) 1965, O. 85, r. 3 (2).

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cf. R.S.C. (2) In proceedings relating to a trust, all the persons having a
(Rev.) 1965, beneficial interest under the trust need **not be parties**.
O. 85, r. 3
(2).

cf. R.S.C. (3) In proceedings relating to an estate or a trust, the plaintiff
(Rev.) 1965, may make parties such as he thinks fit of the persons mentioned in
O. 85, r. 3 subrules (1) and (2).
(2).

cf. R.S.C. (4) This rule has effect notwithstanding rule 3 of Part 8
(Rev.) 1965, (which Part relates to causes of action and parties), but does not
O. 85, r. 3 limit the powers of the Court under that Part.
(2).

Claim under judgment. 6. Where, in the taking of an account of debts or liabilities under
a judgment or order in proceedings relating to an estate or trust,
a person not a party makes a claim—

cf. R.S.C. (a) a party other than the executors or administrators of the
(Rev.) 1965, estate or trustees under the trust shall not be entitled to
O. 85, r. 3 appear in relation to that claim except by leave of the
(3). Court; and

(b) the Court may, on terms, direct or allow any party to
appear either in addition to or in substitution for the
executors, administrators or trustees.

Relief in proceedings by summons. 7. (1) The Court may make any certificate or order and grant
any relief to which the plaintiff is entitled by reason of any breach
of trust, wilful default or other misconduct of a defendant notwith-
standing that the proceedings were commenced by summons.
cf. R.S.C.
(Rev.) 1965,
O. 85, r. 4.

cf. R.S.C. (2) Subrule (1) does not affect the power of the Court under
(Rev.) 1965, Part 5 rule 11 (which relates to the continuation on pleadings of
O. 85, r. 4. proceedings commenced by summons).

General adminis- 8. (1) The Court need not direct the entry of judgment or make
tration. an order for the administration of an estate or the execution of a
trust under the direction of the Court unless the judgment or order
cf. R.S.C. is necessary for the determination of the questions arising between
(Rev.) 1965, the parties.
O. 85, r. 5
(1).

cf. R.S.C. (2) When it appears to the Court that a judgment or order for
(Rev.) 1965 the administration of an estate or the execution of a trust under the
O. 85, r. 5 **direction of the Court is necessary to prevent proceedings by creditors**
(2) (b)

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of the estate or by persons claiming to be entitled under the will or on the intestacy of the deceased or to be beneficially entitled under the trust, the Court—

- (a) may direct the entry of judgment ; and
- (b) may further order that no steps shall be taken under the judgment or order, or under any account or inquiry directed, without the leave of the Court.

9. Where the Court makes an order for the sale of property comprised in an estate, or of trust property, the executors or administrators, or the trustees, as the case may require, shall, unless the Court otherwise orders, have the conduct of the sale.

Conduct of sale.
cf. R.S.C.
(Rev.) 1965,
O. 85, r. 6.

PART 69.

INFANTS' CUSTODY AND SETTLEMENTS ACT RULES.

1. (1) This rule applies to an application for an order under section 5 of the Infants' Custody and Settlements Act of 1899 in respect of any infant.

Custody,
etc.
cf. Consolidated
Equity
Rules of
1902,
r. 319.

(2) Where proceedings under that section in respect of the infant are pending in the Court—

- (a) the application shall be made by motion in the proceedings ;
and
- (b) notice of the motion shall, unless the Court otherwise orders, be served on his parents or on the guardian of his person.

(3) Where no proceedings under that section in respect of the infant are pending in the Court—

cf. C.E.R.,
r. 319.

- (a) proceedings for the order shall be commenced by summons ;
and
- (b) his parents or the guardian of his person shall, unless the Court otherwise orders, be made defendants.

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Part 69.

Marriage
settlement.
cf. C.E.R.,
rr. 316,
317.

2. (1) This rule applies to an application for an order under Part II of the Infants' Custody and Settlements Act of 1899 for the sanction of a settlement by an infant.

cf. R.S.C.
(Rev.) 1965,
O. 91, r. 9
(1) (a).

(2) Where the infant is a ward of Court and a party to pending proceedings in the Equity Division, the application shall be made by motion in the proceedings.

cf. R.S.C.
(Rev.) 1965,
O. 91, r. 9
(1) (b).

(3) In a case to which subrule (2) does not apply, proceedings for the order shall be commenced by summons.

cf. C.E.R.
rr. 316, 317;
R.S.C.
(Rev.) 1965,
O. 91, r. 9
(2).

(4) The evidence shall include—

(a) as to the infant—

(i) his age ;

(ii) whether he has any parent living, or any guardian and, if not, what near relation he has ;

(iii) with whom he is living or under whose care he is ;

(iv) the position in life of himself and of his parents ; and

(v) the nature and amount of his property and income ;

(b) as to the person whom the infant proposes to marry—

(i) his age ;

(ii) his position in life ; and

(iii) the nature and amount of his property and income ;

(c) as to the proposed trustees—

(i) their names ;

(ii) their fitness to act ; and

(iii) their written consent to act ; and

(d) the heads of the proposed settlement.

*Supreme Court.*FOURTH SCHEDULE—*continued.*

No. 52, 1970

PART 70.

Part 70.

TRUSTEE ACT RULES.

DIVISION 1.—*Investment.*

1. The banks and corporations in which trust funds may be deposited under section 14 (2) (f) of the Trustee Act, 1925, are—

All-States Discount Limited.
 A.M.P. Discount Corporation Limited.
 Australia and New Zealand Savings Bank Limited.
 Australian Resources Development Bank Limited.
 Bank of New South Wales Savings Bank Limited.
 Capel Court Securities Limited.
 C.B.C. Savings Bank Limited.
 Delfin Discount Company Limited.
 E.S. & A. Savings Bank Limited.
 First Federation Discount Company Limited.
 National Discount Corporation Limited.
 Short Term Acceptances Limited.
 The Bank of Adelaide Savings Bank Limited.
 The Commercial Savings Bank of Australia Limited.
 The National Bank Savings Bank Limited.
 Trans City Discount Limited.
 United Discount Company of Australia Limited.

Authorised
 investments.
 cf. Consoli-
 dated
 Equity
 Rules of
 1902, r.
 314A.

2. The banks and corporations to which trust money may be paid under section 15 of the Trustee Act, 1925, are—

All-States Discount Limited.
 A.M.P. Discount Corporation Limited.
 Australia and New Zealand Bank Limited.
 Australia and New Zealand Savings Bank Limited.
 Banque Nationale de Paris.

Interim
 investment.
 cf. C.E.R.,
 r. 315.

FOURTH

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FOURTH SCHEDULE—*continued.*

Part 70.

Bank of New South Wales.
 Bank of New South Wales Savings Bank Limited.
 Bank of New Zealand.
 Capel Court Securities Limited.
 C.B.C. Savings Bank Limited.
 Commonwealth Savings Bank of Australia.
 Commonwealth Trading Bank of Australia.
 Delfin Discount Company Limited.
 English, Scottish and Australian Bank Limited.
 E.S. & A. Savings Bank Limited.
 First Federation Discount Company Limited.
 National Discount Corporation Limited.
 Reserve Bank of Australia.
 Rural Bank of New South Wales.
 Short Term Acceptances Limited.
 The Bank of Adelaide.
 The Bank of Adelaide Savings Bank Limited.
 The Commercial Banking Company of Sydney Limited.
 The Commercial Bank of Australia Limited.
 The Commercial Savings Bank of Australia Limited.
 The National Bank of Australasia Limited.
 The National Bank Savings Bank Limited.
 Trans City Discount Limited.
 United Discount Company of Australia Limited.

DIVISION 2.—*Judicial Advice.*

Statement. 3. (1) A statement under section 63 of the Trustee Act, 1925,
 cf. C.E.R., shall—
 r. 310 (2).

- (a) be divided into paragraphs numbered consecutively ;
- (b) state the facts concisely ; and
- (c) state the question for opinion, advice or direction.

FOURTH

*Supreme Court.*FOURTH SCHEDULE—*continued.*

No. 52, 1970

(2) Notwithstanding Part 7 rule 1 (2), the originating process in proceedings under section 63 of the Trustee Act, 1925, need not state the question for opinion, advice or direction. Part 70.

4. An opinion, advice or direction under section 63 of the Trustee Act, 1925, shall be given by order. Order.
cf. C.E.R.,
r. 311.

5. The time for an application under section 63 (10) of the Trustee Act, 1925, shall, subject to that subsection, be 28 days after the date of receipt by the applicant of notice under section 63 (8) of that Act or the date of entry of the order containing the opinion, advice or direction, whichever date is the later. Application by beneficiary.
cf. C.E.R.,
r. 312.

6. An appeal shall lie to the Court of Appeal from an opinion, advice, direction or order under section 63 of the Trustee Act, 1925, including an opinion, advice, direction or order given or made by a master. Appeal.
cf. C.E.R.,
r. 313 (1).

DIVISION 3.—*New Trustees.*

7. This Division applies to an application for the appointment of a new trustee under Part III of the Trustee Act, 1925. Application.
cf. C.E.R.,
r. 314 (1).

8. The evidence in support of the application shall show— Evidence generally.
cf. C.E.R.,
r. 314 (1).
- (a) the nature of the trusts still subsisting ;
 - (b) the nature and value of the trust property ;
 - (c) whether any and, if so, what part of the trust property is subject to the Real Property Act, 1900 ;
 - (d) the person beneficially entitled ;
 - (e) the fitness of the proposed new trustee ; and
 - (f) the consent of the proposed new trustee.

9. (1) Only one affidavit of the fitness of a proposed new trustee shall be required, unless the Court otherwise orders. Fitness of new trustee.
cf. C.E.R.
r. 314 (3).

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Supreme Court.

No. 52, 1970

FOURTH SCHEDULE—*continued.*

Part 70.

cf. C.E.R.,
r. 314 (3).

- (2) An affidavit of the fitness of a new trustee shall set out—
- (a) his position in life ;
 - (b) how long the deponent has known him ;
 - (c) that he is, to the knowledge of the deponent, of good credit ;
and
 - (d) that he is, to the best of the information and belief of the deponent, of good character, repute and business habits.

DIVISION 4.—*Payment into Court.*Applica-
tion.

10. This Division applies to the payment of funds into Court under Part IV of the Trustee Act, 1925, and to proceedings arising out of payment into Court under that Part.

Cases
where
proceedings
required.
cf. C.E.R.,
r. 304 (2).

11. (1) A person wishing to transfer funds (other than money) into Court shall commence proceedings by summons for directions in relation to the transfer and shall transfer the funds into Court in the proceedings in accordance with the directions of the Court.

(2) A person wishing to pay funds into Court and to obtain any order in relation to the funds shall commence proceedings by summons for the order and shall pay the funds into Court in the proceedings.

(3) A person commencing proceedings pursuant to this rule shall not, unless the Court otherwise orders, join any person as a defendant in the proceedings.

Payment
into
Court
without
proceedings.

12. (1) Subject to rule 11, a person wishing to pay funds into Court need not commence any proceedings in relation to the payment.

cf. C.E.R.,
r. 303.

(2) The affidavit required by rule 13 and any other document filed in relation to the funds paid into Court shall, subject to subrule (3), be entitled in the matter of the trust concerned, describing the trust so as to be distinguishable, and shall be assigned a serial number under Part 1 rule 10 as though the filing of the affidavit were the commencement of proceedings.

FOURTH

*Supreme Court.*FOURTH SCHEDULE—*continued.*

No. 52, 1970

Part 70.

(3) Where funds have been paid into Court without the commencement of proceedings and afterwards proceedings are commenced for any order in relation to the funds—

cf. C.E.R.,
rr. 308,
309.

- (a) documents in the proceedings shall be entitled in accordance with the rules but shall bear the serial number assigned pursuant to subrule (2); and
- (b) the affidavit filed under rule 13 may be used as if filed in the proceedings.

13. (1) A person paying funds into Court shall file an affidavit in accordance with this rule.

Affidavit.
cf. C.E.R.,
r. 303.

(2) The affidavit must be made by the person paying the funds into Court or, if that person is a corporation, by an officer of the corporation.

(3) The affidavit shall set out—

cf. C.E.R.,
r. 303;
R.S.C.
(Rev.) 1965,
O. 92, r. 2
(1).

- (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 amount and description of the funds;
- (c) the names and addresses, so far as known to the person paying the funds into Court, of the persons interested in or entitled to the funds;
- (d) where any person interested in or entitled to the funds is under the age of 16 years, the name and address, so far as known to the person paying the funds into Court, of a parent or guardian of his person or estate or, failing these, of a person with whom he resides or in whose care he is;
- (e) where any person interested in or entitled to the funds is, owing to mental illness, incapable of managing his affairs in respect of the funds, the name and address, so far as known to the person paying the funds into Court, of his curator (if any) or, if he has no curator, of a person with whom he resides or in whose care he is.
- (f) the name of the person paying the funds into Court and an address of a place within two miles of the General Post Office, Sydney at which documents for him relating to the funds paid into Court (including originating process) may be left during ordinary business hours and to which such documents may be posted.

FOURTH

No. 52, 1970**FOURTH SCHEDULE—continued.****Part 70.**

Notice. 14. A person paying funds into Court shall, unless the Court
cf. C.E.R., otherwise orders, post, not more than one day after the date of pay-
r. 305. ment into Court, notice of the payment into Court to each person
whose name and address is set out in the affidavit under rule 13 pursu-
ant to paragraphs (c), (d) and (e) of rule 13 (3).

Inquiries. 15. A person paying funds into Court shall answer all such
cf. C.E.R., inquiries relating to the application of the funds as the Court may
r. 303 (6). make or direct.

Supreme Court.

FOURTH SCHEDULE—*continued*.

No. 52, 1970

SCHEDULE A.

Pt. 1, r. 4

RULES AMENDED AND CONTINUED.

The rules described in the first column are those published in the Gazette of the number and date specified, as amended from time to time, and referred to by the title specified.

| First Column. | | Second Column. | |
|-----------------------------------|----------------------------|----------------------------------|---|
| Gazette in which rules published. | Title of rules. | Rule, etc. to be amended. | Amendment. |
| No. 65 dated 14th June 1957. | Justices Act Appeal Rules. | Rule 7 | Omit "otherwise the provisions of Order XXIV of the General Rules of Court shall apply.". |
| | | Rules 9, 10 and 11. | Omit the rules. |
| No. 114 dated 14th June 1935. | Matrimonial Causes Rules. | Rules 1 to 26 (inclusive). | Omit the rules. |
| | | Rules 34 to 146 (inclusive). | Omit the rules. |
| | | Rule 147 . . | Omit the rule; insert the following rule:— 147. When the judge in any decree or order directs that costs shall be paid by some person named but does not specify the time within which such costs are to be paid, they shall be payable within fourteen days after service of a copy of the registrar's certificate of the amount allowed on taxation. |
| | | Rules 148 to 151 (inclusive). | Omit the rules. |
| | | Rule 152 . . | Omit the rule; insert the following rule:— 152. The fees of Court to be paid in the Divorce Division shall be those set forth in the Appendix, Part II. |
| | | Rules 152A, 152B, 152C and 152D. | Omit the rules. |
| | | | After rule 152G, insert the following rule:— 152H. When on a taxation of costs, part of the work charged for had been performed prior to 1st May 1952, the bill of costs in respect of such work shall be prepared, and costs in respect of that work shall be allowed at the rates and according to the scales in force at the time the work was performed. |

FOURTH

Supreme Court.

No. 52, 1970

FOURTH SCHEDULE—*continued.*SCHEDULE A.—*continued.*

| First Column. | | Second Column. | |
|--|--|-------------------------------|---|
| Gazette in which rules published. | Title of rules. | Rule, etc. to be amended. | Amendment. |
| No. 114 dated 14th June 1935— <i>cont.</i> | Matrimonial Causes Rules— <i>cont.</i> | Rules 153 to 157 (inclusive). | Omit the rules. |
| | | Rule 157A .. | Omit the rule; insert the following rule:— 157A. Where an order is made that an application for attachment shall stand over generally, the applicant may, in the absence of an order to the contrary, amend the return day of the application and re-serve it as so amended. |
| | | Rule 158 .. | Omit the rule; insert the following rule:— 158. The Sheriff shall bring before the Court every person arrested on a writ of attachment as soon as practicable, and no later than the first day upon which the Court shall sit next after such arrest. The Court may thereupon deal with such person, or may grant him bail, with or without conditions, pending a determination. If bail is granted to such person, the Sheriff shall release him forthwith, or upon his complying with such conditions, as the case may be. |
| | | Rules 159 to 175 (inclusive). | Omit the rules. |
| | | Rules 177 to 194 (inclusive). | Omit the rules. |
| | | Rule 196 .. | Omit the rule. |
| | | Rule 197 .. | Omit the rule. |
| | | Rule 198 .. | Omit sub-rules (4) to (11) inclusive. |
| | | Rule 198A .. | Omit the rule. |
| | | Rules 199A, 200 | Omit the rules. |
| | | | After rule 201, add the following new rule:— 202. (1) Where a person desires to commence proceedings or take any step in any proceedings, and the manner or form of procedure is not prescribed by the Matrimonial Causes Act (Commonwealth) |
| | | | |

FOURTH

Supreme Court.

FOURTH SCHEDULE—*continued.*

No. 52, 1970

SCHEDULE A.—*continued.*

| First Column. | | Second Column. | |
|--|--|-------------------------------|--|
| Gazette in which rules published. | Title of rules. | Rule, etc. to be amended. | Amendment. |
| No. 114 dated 14th June 1935— <i>cont.</i> | Matrimonial Causes Rules— <i>cont.</i> | Rules 199A, 200— <i>cont.</i> | 1959–1966 or the rules promulgated under that or any other Act or by these rules, or that person is in doubt as to the manner or form of procedure, the Court may, on application by that person, give directions. (2) Proceedings commenced in accordance with the directions of the Court shall be well commenced. (3) A step taken in accordance with the directions of the Court shall be regular and sufficient. (4) Subject to subrules (2) and (3), the Court may vary or discharge a direction given under subrule (1) and may give such further or other directions as the Court thinks fit. (5) The powers of the Court under this rule may be exercised by the Registrar. |
| | | Appendix Part I (Forms). | Omit Forms 1 to 17 (inclusive). |
| | | Appendix Part II | Omit items numbered 1 to 14 (inclusive), 17 to 29 (inclusive) and 34. |
| | | Appendix Part III. | Omit the Part. |
| | | Appendix Part IV. | Omit the Part. |
| No. 148 dated 14th July 1952. | Mining Act—Appeal Rules. | Rules 2 to 19 (inclusive). | Omit the rules. |
| | | Schedule Forms Nos. 1 and 2. | Omit the forms. |
| No. 148 dated 14th July 1952. | Solicitors' Practices Rules. | Rule 18 | Omit the rule. |

Supreme Court.

No. 52, 1970

FOURTH SCHEDULE—*continued.*

Pt. 1, r. 4.

SCHEDULE B.

RULES CONTINUED.

The rules described in this Schedule are those published in the Gazette of the number and date specified, as amended from time to time, and referred to by the title specified.

| Gazette in which rules published. | Title of rules. |
|-------------------------------------|---|
| No. 190 dated 19th September 1952 | Admiralty Rules. |
| No. 1 dated 6th January 1967 .. | Adoption of Children Rules, 1966. |
| No. 148 dated 14th July 1952 .. | Arbitration Rules. |
| No. 148 dated 14th July 1952 .. | Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund Claims Rules. |
| No. 87 dated 26th May 1950 .. | Barristers Admission Rules. |
| No. 148 dated 14th July 1952 .. | Barristers and Solicitors Joint Examinations Board Rules. |
| No. 111 dated 27th August 1965 .. | Barristers and Solicitors New Examination Rules. |
| No. 148 dated 14th July 1952 .. | Barristers Seniority and Suspension from Practice Rules. |
| No. 148 dated 14th July 1952 .. | Commissioners for Affidavits Rules. |
| No. 139 dated 15th December 1967 .. | Companies Rules, 1968. |
| No. 148 dated 14th July 1952 .. | Compensation for Resumption Rules. |
| No. 148 dated 14th July 1952 .. | Court of Disputed Returns Rules. |
| No. 148 dated 14th July 1952 .. | Criminal Appeal Rules. |
| No. 148 dated 14th July 1952 .. | Damages (Infants and Persons of Unsound Mind) Act Rules. |
| No. 148 dated 14th July 1952 .. | Dormant Funds Rules. |
| No. 148 dated 14th July 1952 .. | Farmers' Relief Act Rules. |
| No. 148 dated 14th July 1952 .. | Inebriates Act Rules. |
| No. 148 dated 14th July 1952 .. | Jurors' Fines Enforcement Rules. |
| No. 148 dated 14th July 1952 .. | Legal Practitioners Act Rules. |
| No. 148 dated 14th July 1952 .. | Local Government Act—Extension of time for Commencing Proceedings Rules. |
| No. 148 dated 14th July 1952 .. | Maintenance Orders (Facilities for Enforcement) Rules. |
| No. 148 dated 14th July 1952 .. | Medical Practitioners Act—Appeal Rules. |
| No. 148 dated 14th July 1952 .. | Mental Defectives (Convicted Persons) Act—Appeal Rules. |
| No. 148 dated 14th July 1952 .. | Motor Vehicles (Third Party Insurance) Act—Appeal Rules. |
| No. 148 dated 14th July 1952 .. | Motor Vehicles (Third Party Insurance) Act—Extension of Time Rules. |
| No. 5 dated 5th January 1937 .. | Probate Rules. |
| No. 139 dated 15th December 1967 .. | Protective Jurisdiction Rules 1968. |
| No. 148 dated 14th July 1952 .. | Registration of Births Rules. |
| No. 148 dated 14th July 1952 .. | Service and Execution of Process Act Rules. |
| No. 144 dated 29th December 1967 .. | Shortening of Articles Rules. |
| No. 148 dated 14th July 1952 .. | Solicitors Admission Rules. |
| No. 148 dated 14th July 1952 .. | Solicitors' Fidelity Fund Claims Rules. |
| No. 148 dated 14th July 1952 .. | Superannuation Act—Appeal Rules. |
| No. 148 dated 14th July 1952 .. | Taxation Appeal Rules. |
| No. 148 dated 14th July 1952 .. | Transport Act Rules. |
| No. 148 dated 14th July 1952 .. | Workers' Compensation Act—Extension of time for Instituting Proceedings Rules. |

*Supreme Court.*FOURTH SCHEDULE—*continued.*

No. 52, 1970

SCHEDULE C.

Pt. 1, r. 5.

RULES RESCINDED.

The rules described in this Schedule are those published in the Gazette of the number and date specified, as amended from time to time, and referred to by the title specified.

| Gazette in which rules published. | Title of rules. |
|-------------------------------------|--|
| No. 148 dated 14th July 1952 .. | Alternative Defendants and Third Party Rules. |
| No. 148 dated 14th July 1952 .. | Arrest on Mesne Process Rules. |
| No. 109 dated 7th June 1935 .. | Charitable Collections Act Rules. |
| No. 148 dated 14th July 1952 .. | Commercial Causes Rules. |
| No. 77 dated 28th July 1965 .. | Commercial Causes Rules. |
| No. 604 dated 13th October 1902 .. | Consolidated Equity Rules of 1902. |
| No. 148 dated 14th July 1952 .. | Convention Rules. |
| No. 148 dated 14th July 1952 .. | Costs Rules. |
| No. 8 dated 21st January 1966 .. | Court of Appeal Rules. |
| No. 148 dated 14th July 1952 .. | Court of Marine Inquiry—Appeal Rules. |
| No. 148 dated 14th July 1952 .. | Dentists Act—Appeal Rules. |
| No. 148 dated 14th July 1952 .. | Deserted Wives and Children Act—Entry of Judgment Rules. |
| No. 148 dated 14th July 1952 .. | Evidence on Commission Rules. |
| No. 148 dated 14th July 1952 .. | Execution against Property Rules. |
| No. 148 dated 14th July 1952 .. | Execution against the Person Rules. |
| No. 148 dated 14th July 1952 .. | Fines and Forfeited Recognizances Rules. |
| No. 148 dated 14th July 1952 .. | Foreign Judgments Enforcement Rules. |
| No. 148 dated 14th July 1952 .. | Foreign Tribunals Evidence and Service of Process Rules. |
| No. 148 dated 14th July 1952 .. | Gaol Delivery Rules. |
| No. 148 dated 14th July 1952 .. | General Rules of the Court. |
| No. 89 dated 8th May 1953 .. | Landlord and Tenant Act—Appeal Rules. |
| No. 685 dated 20th December 1904 .. | Legal Process Facilitation Act Rules. |
| No. 148 dated 14th July 1952 .. | Prothonotary (Chamber Work) Rules. |
| No. 148 dated 14th July 1952 .. | Sheriff's Rules. |
| No. 138 dated 13th December 1946 .. | Testator's Family Maintenance and Guardianship of Infants Act Rules. |

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FOURTH SCHEDULE—*continued.*

Pt. 60, r. 1.

SCHEDULE D.

POWERS, ETC. OF MASTERS.

Part 1.

Powers, etc. under Imperial Acts

| Column 1. | Column 2. | Column 3. |
|---|-----------------------------|--------------|
| Imperial Act and provision. | Description. | Restriction. |
| 19 & 20 Vict. c. 113; The Foreign Tribunals Evidence Act, 1856— Section 1.. .. | Examination of witnesses .. | ..... |
| 22 Vict. c. 20; The Evidence by Commission Act, 1859— Section 1.. .. | Examination of witnesses .. | ..... |

Part 2.

Powers, etc. under Acts.

| Column 1. | Column 2. | Column 3. |
|--|--|--------------|
| Act and provision. | Description. | Restriction. |
| 55 Vict. No. 12; Partnership Act, 1892— Section 23 (II), (III) .. | Enforcement of separate judgment against partnership property. | ..... |
| Act No. 29, 1897; Contractors' Debts Act of 1897— Section 14 | Attachment of debts .. .. | ..... |
| Act No. 11, 1898; Evidence Act, 1898— Sections 49, 50 | Banker's books .. .. | ..... |
| Act No. 22, 1898; Legal Practitioners Act, 1898— Part V | Bills of costs, charging orders .. | ..... |
| Section 56 (2) (b) .. | Time for notice of theft, etc. .. | ..... |
| Section 56 (3) | Claim against fund although no conviction. | ..... |
| Act No. 8, 1901; Judgment Creditors' Remedies Act, 1901— Part V | Charging orders .. .. | ..... |

FOURTH

*Supreme Court.*FOURTH SCHEDULE—*continued.*

No. 52, 1970

SCHEDULE D.—*continued.*

| Column 1. | Column 2. | Column 3. |
|---|---|--|
| Act and provision. | Description. | Restriction. |
| Act No. 45, 1901; Married Women's Property Act, 1901— Section 22 | Property questions between husband and wife. | ..... |
| Act No. 29, 1902; Arbitration Act, 1902— Section 10 | Leave for subpoena .. .. | ..... |
| Section 11 | Enlargement of time for award .. | ..... |
| Act No. 24, 1912; Inebriates Act, 1912— Section 31 (2) | Leave as to time of commencement of action. | ..... |
| Act No. 45, 1912; Public Works Act, 1912— Section 102 | Time for notice of claim for compensation. | ..... |
| Act No. 41, 1919; Local Government Act, 1919— Section 580 (6) | Extension of time for action .. | ..... |
| Act No. 42, 1924; Administration of Justice Act, 1924— Section 5 | Enforcement of judgment of British dominion. | ..... |
| Act No. 14, 1925; Trustee Act, 1925— Section 63 | Judicial advice | Except where the master finds that the trust estate exceeds \$10,000 in value. |
| Part IV | Payment into Court | Except section 97 (2). |
| Act No. 15, 1926; Workers' Compensation Act, 1926— Section 63 (3) (a) .. | Extension of time for proceedings.. | ..... |
| Act No. 25, 1929; Damages (Infants and Persons of Unsound Mind) Act, 1929— Section 5 (2) | Directions etc. as to money paid to Public Trustee. | ..... |
| Act No. 47, 1935; Maritime Services Act, 1935— Section 40 (1) | Extension of time for action .. | |

Supreme Court.

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FOURTH SCHEDULE—*continued.*SCHEDULE D.—*continued.*

| Column 1. | Column 2. | Column 3. |
|--|---|--------------|
| Act and provision. | Description. | Restriction. |
| Act No. 28, 1941; Auctioneers, Stock and Station and Real Estate Agents Act, 1941— Section 74 | Claim against fund although no conviction. | ..... |
| Act No. 15, 1942; Motor Vehicles (Third Party Insurance) Act, 1942— Section 15 (2) (b) (ii) .. | Extension of time for action .. | ..... |
| Section 30 (1) third paragraph, subparagraph (b). | Extension of time for notice .. | ..... |
| Section 30 (2) (b) (ii) .. | Extension of time for action .. | ..... |
| Act No. 22, 1950; Electricity Commission Act, 1950— Section 100 (5) | Extension of time for action .. | ..... |
| Act No. 11, 1951; Sydney Harbour Transport Act, 1951— Section 34 (5) | Extension of time for action .. | ..... |
| Act No. 36, 1954; Grain Elevators Act, 1954— Section 56 (5) | Extension of time for action .. | ..... |
| Act No. 11, 1962; Business Names Act, 1962— Section 14 | Persons in default: orders for compliance or stay of proceedings. | ..... |

Part 3.

| Column 1. | Column 2. | Column 3. |
|---------------------------|-----------------------------------|--|
| Provision of these rules. | Description. | Restriction. |
| Part 2— Rule 3 (1) .. | Extension and abridgement of time | Abridgement of time excluded, except by consent. |

FOURTH

Supreme Court.

FOURTH SCHEDULE—*continued.*

No. 52, 1970

SCHEDULE D.—*continued.*

| Column 1. | Column 2. | Column 3. |
|---------------------------|--|---|
| Provision of these rules. | Description. | Restriction. |
| Part 7— | | |
| Rule 2 (2) (b) .. | Stay where solicitor's name used without authority. | ..... |
| Rule 5 (1) (b) .. | Time for appearance .. .. | ..... |
| Part 9— | | |
| Rule 5 | Possession of land: service by affixing copy of originating process. | ..... |
| Rule 10 | Substituted service .. .. | ..... |
| Rule 11 | Informal service: confirmation .. | ..... |
| Part 10— | | |
| Rules 2, 3 | Service outside the State .. .. | ..... |
| Rule 13 | Expenses of service in foreign country. | ..... |
| Part 11— | | |
| Rule 2 | Leave to take step before appearance. | ..... |
| Rule 4 (3) | Leave to continue where address in notice of appearance not genuine. | ..... |
| Rule 7 (1) | Leave to enter conditional appearance. | ..... |
| Part 15— | | |
| Rule 23 (4) | Verification of defence .. .. | ..... |
| Part 20— | | |
| Rules 1, 6 | Amendment | Amendment of a pleading excluded, except by consent. |
| Rule 10 | Correction of mistake in judgment or order. | Restricted to a judgment entered pursuant to the rules without direction for entry, a judgment directed to be entered by a master or an order made by a master. |
| Part 21— | | |
| Rule 1 | Withdrawal of appearance .. .. | ..... |
| Rule 8 | Stay to secure costs after discontinuance. | ..... |
| Part 27 | Evidence by deposition .. .. | ..... |
| Part 28— | | |
| Rules 4, 5, 6 | Interim distribution .. .. | ..... |
| Part 29— | | |
| Rule 2 (2) | Appointment of receiver pursuant to direction. | ..... |
| Rule 2 (4) (5) | Security of receiver .. .. | ..... |
| Rule 3 | Remuneration of receiver .. .. | ..... |
| Rule 4 | Accounts of receivers .. .. | ..... |
| Part 30— | | |
| Rules 3, 4, 5 | Disposal of land .. .. | ..... |

FOURTH

Supreme Court.

No. 52, 1970

FOURTH SCHEDULE—*continued.*SCHEDULE D.—*continued.*

| Column 1. | Column 2. | Column 3. |
|-----------------------------|--|---------------------------------|
| Provision of these rules. | Description. | Restriction. |
| Part 36— Rules 14, 15 .. | Attendance of person confined, for the purpose of examination. | ..... |
| Part 37— Rule 6 (1) .. | Order on request for subpoena .. | ..... |
| Part 39— Rule 5 .. | Remuneration of Court expert .. | ..... |
| Part 40— Rule 5 (2) .. | Order for payment to the registrar | ..... |
| Part 42— Rule 3 .. | Enforcement of judgment for payment of money to the registrar. | ..... |
| Part 43 .. | Discovery in aid of enforcement .. | ..... |
| Part 44— Rule 2 .. | Leave for issue of writ of execution | ..... |
| Part 45— Rule 3 (1) .. | Two or more writs for levy of property. | ..... |
| Part 46 .. | Garnishment .. .. | ..... |
| Part 47 .. | Charging and stop orders .. .. | ..... |
| Part 48 .. | Accounts and inquiries | Except rules 1 and 2. |
| Part 49 .. | Accounts and inquiries etc.: Equity Division. | Except rule 3 (4) (b). |
| Part 50— Rule 5 .. | Investment of money paid into Court. | ..... |
| Part 52— Rule 47 .. | Order for taxation of costs of arbitration. | ..... |
| Part 53— Division 1 .. | Security for costs .. .. | ..... |
| Part 56 .. | Interpleader .. .. | ..... |
| Part 58 .. | Evidence for external tribunals .. | ..... |
| Part 59 .. | Enforcement of external judgments | ..... |
| Part 62— Rule 8 (1) .. | Taxation of fees of the Sheriff .. | ..... |
| Rule 9 (1) .. | Binding effect of bill of fees of the Sheriff. | ..... |
| Part 63 .. | Disability | Except rules 11, 12, 13 and 14. |
| Part 64 .. | Business names | Except rule 8. |
| Part 66— Rule 7 (2) .. | Notice of change of solicitor .. | ..... |
| Part 68— Rule 6 .. | Appearance on claim under judgment. | ..... |
| Part 70— Rule 14 .. | Notice of payment into Court under Part IV of the Trustee Act, 1925. | ..... |
| Rule 15 .. | Inquiries concerning funds paid into Court under Part IV of the Trustee Act, 1925. | |

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SCHEDULE D.—*continued.**Part 4.***General**

1. Trial of proceedings pursuant to a judgment for damages to be assessed, where the amount of the damages is substantially a matter of calculation and the Court directs trial before a master. cf. Act No. 21, 1899, s. 129 (1).
2. Trial of proceedings pursuant to a direction under rule 9 of Part 56 (which relates to interpleader).
3. Any matter (other than a trial) referred to a master by order of a Judge or of the Court of Appeal.
4. Any order by consent or of course.
5. Any direction by consent for entry of judgment.
6. Punishment for contempt in the face of the Court or in the hearing of the Court, where the Court is constituted by the master concerned, and punishment for breach of an undertaking given to the Court constituted by a master.
7. Proceedings and applications under section 72 of the Act for the production for examination of a person confined.
8. Payment, transfer or delivery out of Court, and investment, of funds in Court in the Equity Division.
9. Proceedings for perpetuation of testimony.

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FOURTH SCHEDULE—*continued.*Pt. 60, r. 1; Pt.
61, r. 1.

SCHEDULE E.

POWERS, ETC. OF MASTERS AND REGISTRARS.

| Column 1. | Column 2. |
|---------------------------|--|
| Provision of these rules. | Description. |
| Part 19— | |
| Rule 8 | Appointment for further hearing of motion. |
| Part 26— | |
| Rule 1 | Appointment for directions. |
| Part 33— | |
| Rule 7 | Directions before setting down for trial. |
| Rule 8 | Setting down for trial. |
| Part 37— | |
| Rule 6 (7) | Inspection of copy of subpoena. |
| Part 38— | |
| Rule 5 (1) | Irregularity in affidavit. |
| Part 62— | |
| Rule 5 (2) | Deposit for Sheriff's fees. |
| Part 65— | |
| Rule 7 (1) | Search in the registry. |