

CONSTITUTIONAL INSTRUMENT

Supplement to the Sierra Leone Gazette Vol. CXXXVIII, No. 25

dated 31st May, 2007

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CONSTITUTIONAL INSTRUMENT NO. 8 OF 2007

Published 31st May, 2007

THE CONSTITUTION OF SIERRA LEONE, 1991
(Act No. 6 of 1991)

THE HIGH COURT RULES, 2007

Short title.

IN exercise of the powers conferred on it by section 145 of the Constitution of Sierra Leone, 1991 the Rules of Court Committee hereby makes the following Rules:-

ORDER 1

APPLICATION AND INTERPRETATION

1. These Rules shall apply to all proceedings in the Court. Application.
2. In these Rules unless the context otherwise requires- Interpretation.

“appropriate Form” means the appropriate form in Volume 2 of the English Supreme Court Practice, 1999 with such modification as may be necessary or as the particular circumstance may require;

“cause book” means the book or record kept in the High Court Registry at Freetown and every District Registry;

“Court” means the High Court;

“District Registry” means the District Registry in Makeni, Bo or Kenema;

“Division” means the appropriate Division of the High Court;

“judgment” means any order, ruling or decree of the Court;

“Master” means the Master and Registrar and includes a Deputy Master and Registrar and a District Registrar;

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

“originating notice of motion” means every notice of motion other than a notice of motion in a pending cause or matter;

“probate action” has the meaning assigned to it by Order 55;

“Registry” means the High Court Registry in Freetown and includes a District Registry;

“signature” includes a thumb-print or mark.

Construction of references to Orders.

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

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

ORDER 2

EFFECT OF NON-COMPLIANCE

Non-compliance with Rules.

1. (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these

Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any steps taken in the proceedings or any document, judgment or order in therein.

(2) Subject to subrule (3) the Court may, on the ground that there has been such a failure as is mentioned in subrule (1) and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any steps taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments, if any, to be made and to make such order, if any, dealing with the proceedings generally as it thinks fit.

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

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

Application to set aside for irregularity.

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

ORDER 3

TIME

1. Without prejudice to subsection (1) of section 4 of the Interpretation Act, 1971, in its application to these Rules, “month”, wherever it occurs in any judgment, order, direction or other document forming part of any proceedings in the Court, means a calendar month, unless the context otherwise requires.

Definition of month. Act No. 8 of 1971.

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

Reckoning periods of time.

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

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

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

(5) Where apart from this subrule, the period in question, being a period of 7 days or less would include Saturday, Sunday or public holiday, that day shall be excluded.

Long vacations not generally to be reckoned in time for service of pleadings.

3. Unless the Court otherwise directs, the time of the long vacation in any year shall be excluded in reckoning any period prescribed by any enactment, these Rules or by any order or direction for serving, filing or amending a pleading.

Time expires on Sunday etc.

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

Extension etc. of time.

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

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

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

ORDER 4

ASSIGNMENT, TRANSFER AND CONSOLIDATION OF PROCEEDINGS

1. Every action commenced in the Court shall have as part of its title an indication of the Division of the Court to which it relates. Title of actions.

2. A cause or matter may, at any stage of the proceedings, be transferred from one Division to another by order of the Court made in the Division in which the cause or matter is proceeding. Transfer between Divisions.

3. (1) The Court or a judge may, on its own motion or on the application of any party to a cause or matter and on cause shown, transfer the cause or matter commencing from or pending in any District Registry to some other District Registry or to the High Court in Freetown. Transfer between District Registries.

(2) The Court or judge may make such order on such terms, if any, as it may think just.

4. (1) Where two or more causes or matters are pending in the Court and on an application to the Court or Judge it appears to the Court or Judge that - Consolidation etc. of causes or matters.

- (a) some common question of law or fact arises in both or all of them;
- (b) the rights to relief claimed in the causes or matters 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 subrule,

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

(2) Where the Court or judge makes an order under subrule (1) that two or more causes or matters are to be tried at the same time but no order is made for those causes or matters to be consolidated, then a party to one of those causes or matters may be treated as if he were a party to any of those causes or matters for the purpose of making an order for costs against him or in his favour.

ORDER 5

MODE OF BEGINNING CIVIL PROCEEDINGS IN THE COURT

Mode of beginning civil proceedings.

1. Subject to any enactment or these Rules, civil proceedings in the Court may be begun by writ, originating summons, originating motion or petition.

Proceedings to be begun by writ.

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

- (a) in which a claim is made by the plaintiff for any relief or remedy for any tort other than trespass to land;
- (b) in which a claim made by the plaintiff is based on an allegation of fraud;
- (c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under an enactment or such provision) where the damages claimed consist of or include damages for the death of any person or for any personal injuries or damage to any property.

Proceedings to be begun by originating summons.

3. (1) Proceedings by which an application is to be made to the Court or a judge under any enactment shall be begun by originating summons except where, by these Rules or by or under an enactment the application is expressly required or authorized to be made by some other means.

(2) Subrule (1) does not apply to an application made in pending proceedings.

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

Proceedings which may be begun by writ or originating summons.

(2) Proceedings-

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

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

are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 16 or in actions for specific performance or for any other reason considers the proceedings more appropriate to be begun by writ.

5. Proceedings may be begun by originating motion or petition if, but only if, by these Rules or by any enactment the proceedings are required or authorized to be so begun.

Proceedings to be begun by motion or petition.

6. (1) Subject to subrule (2) and to Order 14, any person (whether or not he sues as a trustee or in a personal representative capacity) may begin and carry on proceedings in the High Court by a solicitor or in person.

Right to sue person.

(2) Except as expressly provided by any enactment, a body corporate may not begin or carry on any proceedings otherwise than by a solicitor.

7. (1) Every document prepared by a party for use in court shall, unless the nature of the document renders it impracticable, be on white foolscap or A4 International Standard Organisation size paper of durable quality and shall be-

Size and colour of paper.

- (a) in black ink; and
- (b) shall have a margin of not less than 31/2 centimetres wide, to be left blank on the left side of the face of the paper and on the right side of the reverse so as to enable the sheet comprising the document to be conveniently bound bookwise.

(2) A carbon copy of a document to be filed in court shall not be accepted.

ORDER 6

WRIT OF SUMMONS - GENERAL PROVISIONS

Content of writs.

1. (1) Every writ shall be in an appropriate Form and shall be indorsed with a statement of the nature of the claim, relief or remedy sought in the action.

(2) The occupational and residential address of the parties shall be stated on the writ and the address of the plaintiff rather than the address of his solicitor shall be used in the writ.

Indorsement.

2. In the indorsement required by subrule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled.

Special indorsement.

3. In actions where the plaintiff seeks to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising-

- (a) upon a contract, express or implied (as, for instance, on a bill of exchange, promissory note or cheque, or other simple contract debt);
- (b) on a bond or contract under seal for payment of a liquidated amount or money;

- (c) on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty;
- (d) on a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand;
- (e) on a trust;
- (f) where a landlord seeks to recover possession of land, without a claim for rent or mesne profits, against a tenant whose term has expired or has been duly determined by notice to quit or has become liable to forfeiture for non-payment of rent, or against persons claiming under the tenant; or
- (g) in all other actions in the Court except actions for libel, slander, malicious prosecutions, seduction, breach of promise of marriage and actions in which fraud is alleged by the plaintiff,

the writ of summons may, at the option of the plaintiff be specially indorsed with or accompanied by a statement of his claim or of the remedy or relief which he claims to be entitled.

4. (1) Before a writ is issued it shall be indorsed -

Indorsement as to capacity.

- (a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues; or
- (b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.

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

Indorsement as to address.

- 5. (1) Before a writ is issued, it shall be indorsed -
 - (a) where the plaintiff sues by a solicitor, with the plaintiff's address and the solicitor's name or firm and his address for service which must not be more than 5 miles from the Master's Office or within 7 miles of a District Registry;
 - (b) where the plaintiff sues in person, with the address of his place of residence and, if his place of residence is not within 5 miles of the Master's Office or within 7 miles of a District Registry or if he has no place of residence, the address of a place within 5 miles from the Master's Office or within 7 miles of a District Registry at or to which documents for him may be delivered or sent.

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

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

Indorsement of claim.

- 6. Before a writ is filed by a plaintiff, it shall be indorsed-
 - (a) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun with the writ; or
 - (b) where the claim made by the plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also

with a statement that further proceedings will be stayed if within the time limited for entering appearance the defendant pays the amount so claimed to the plaintiff, his solicitor or agent.

7. (1) Every writ of summons shall be issued out of the Master's Office or a District Registry and shall be signed and sealed by the Master or District Registrar and shall thereupon be deemed to be issued. Issue of writ

(2) Every writ of summons shall bear the date of issue.

8. No writ of summons for service out of the jurisdiction or of which notice is to be given out of the jurisdiction shall be issued without the leave of the Court or a Judge. Leave to issue writ out of jurisdiction.

9. (1) At the request of the plaintiff, one or more concurrent writs may be issued at the time when the original writ is issued or at any later time after the original writ is issued and before the original writ ceases to be valid. Concurrent writs

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

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

(4) A concurrent writ shall be sealed by being marked "concurrent" with an official stamp, and with the date on which it is issued.

10. (1) For the purposes of service, a writ other than a concurrent writ shall be valid in the first instance for 12 months beginning with the date of issue, and a concurrent writ shall be valid in the first instance for a period of the validity of the original writ which is unexpired at the issue of the concurrent writ. Duration and renewal of writ.

(2) Where a writ has not been served on a defendant within the time limited for its service under this rule, the Court may by order extend its validity from time to time for a period as may be specified in the order, not exceeding 12 months at a time, beginning with the day following that on which it would otherwise expire, if an application for extension is made to the Court before that day or such later day as the Court may allow.

(3) An application for an order under subrule (2) shall be supported by an affidavit showing all the circumstances relied on, including the date of issue of the original writ if it has already been renewed the date of the last renewal, and a full explanation as to why it has not already been served.

(4) Before a writ whose validity has been extended under this rule is served, it shall be marked with an official stamp "renewed" showing the period for which its validity has been extended.

ORDER 7

ORIGINATING SUMMONSES - GENERAL PROVISIONS

Application. 1. This Order shall apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any enactment.

Form of summons, etc. 2. (1) Every originating summons or, if so authorised or required, every *ex parte* originating summons shall be in an appropriate Form.

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

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

(2) Rules 4 and 5 of Order 6 shall apply in relation to an originating summons as they apply in relation to a writ.

4. Rule 9 of Order 6 shall apply in relation to an originating summons as it applies in relation to a writ. Concurrent summonses.

5. Rule 10 of Order 6 shall apply with such modifications as may be necessary to originating summonses. Duration and renewal of summonses.

6. (1) Subrule (1) of rule 2 and subrule (1) of rule 3 shall, so far as applicable, apply to *ex parte* originating summons but save as aforesaid, the foregoing rules of the Order shall not apply to *ex parte* originating summonses. *Ex Parte* originating summonses.

(2) Rule 7 of Order 6 shall, with the necessary modifications, apply in relation to an *ex parte* originating summons as they apply in relation to a writ.

ORDER 8

ORIGINATING AND OTHER MOTIONS - GENERAL PROVISIONS

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

2. No motion or application for a rule nisi or order to show cause shall be made in any action- Restriction on rules nisi and orders to show cause.

- (a) to set aside, remit or enforce an award;
- (b) for attachment;
- (c) to answer matters in an affidavit;
- (d) to strike off the rolls; or
- (e) against a sheriff to pay money levied under an execution.

Notice of motion.

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

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

(3) Leave to serve short notice of motion shall be obtained in an *ex parte* application to the Court and the fact that short notice has been allowed shall be stated in the notice.

Form and issue of notice of motion.

4. (1) The notice of an originating motion shall be in an appropriate Form and the notice of any other motion in an appropriate Form.

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

(3) Rules 4 and 5 of Order 6 shall, with the necessary modifications, apply in relation to notice of an originating motion as it applies in relation to a writ.

(4) Every notice of an originating motion shall be issued out of the Master's office or District Registry and shall be sealed by the Master or District Registrar and upon its being sealed shall then be deemed to be issued.

Service of notice of motion with writ, etc.

5. Notice of a motion to be made in an action may be served by the plaintiff on the defendant with the writ of summons or originating summons or at any time after service of such writ or summons, whether or not the defendant has entered appearance to the action.

Adjournment of hearing

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

7. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice or any petition or summons, upon the defendant who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose.

Service of notice on defendant served with writ but not appearing.

ORDER 9

PETITIONS - GENERAL PROVISIONS

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

Application.

2. (1) Every petition shall include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun thereby and shall be signed by the petitioner.

Contents of petition.

(2) Every petition shall be issued out of the Master's office or District Registry and shall be sealed by the Master or District Registrar and upon its being sealed shall then be deemed to be issued.

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

Fixing of time for hearing petition.

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

ORDER 10

SERVICE OF ORIGINATING PROCESS - GENERAL PROVISIONS

1. Service of writs of summons, notices, petitions, pleadings, orders, summonses, warrants and all other proceedings, documents or written communication of which service is required shall be made by—

Service of process-by whom effected.

- (a) the bailiff or other officer of the court; or
- (b) a person employed to effect such service by either a solicitor of the party or solicitor acting as an agent of the first solicitor.

Personal service of process-how effected.

2. (1) Except otherwise prescribed by these Rules, an originating process shall be served personally by delivering to the person to be served a copy of the document duly certified by the Master as being a true copy of the original process filed, without exhibiting the original of the document.

(2) Where personal service of document is hindered by violence or threats or other acts of obstruction of that person or of any other person with or under that person it shall be sufficient service to leave it as near that person as may be practicable.

When process need not be served.

3. (1) No service of a writ of summons or other process on the defendant shall be necessary when the defendant, by his solicitor undertakes in writing to accept service.

(2) Where a solicitor undertakes in writing to accept service of a writ on behalf of a defendant, the writ shall be deemed to have been duly served on that defendant when served on the solicitor.

(3) Subject to rule 15 of Order 12, where a writ is not duly served on a defendant but he enters appearance to the writ, the writ shall be deemed, unless the contrary is shown, to have been duly served on him and to have been so served on the date on which he entered appearance.

Documents not served personally.

4. (1) Service of a document not required to be served personally may be effected-

- (a) by leaving it at the proper address of the person to be served;
- (b) by sending it by registered post bearing a return address and addressed to the person to be served at the address of the person; or
- (c) in such other manner as the Court may direct.

(2) For the purpose of this rule, the proper address of a person on whom a document is to be served shall be the address for service; but if at the time when service is effected the person has no address for service, the proper address of the person shall be-

- (a) in the case of an individual, his usual or last known place of residence or business;
- (b) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business of the firm in Sierra Leone;
- (c) in the case of a body corporate, its registered or principal office; or
- (d) in any other case, the business address of any solicitor who is acting for the person in the cause or matter in connection with which the document is to be served.

(3) Nothing in this rule shall be taken as prohibiting the personal service of any documents or as affecting any enactment which provides for any other manner in which documents may be served on bodies corporate.

5. (1) If a document is required to be served on any person and it appears to the Court-

Substituted service.

- (a) that three or more attempts have been made without success to effect personal service, and that any further attempt to effect personal service may result in undue delay; or
- (b) that it is otherwise impracticable for any reason to serve the document personally,

the Court may make an order for substituted service of that document.

(2) An application for an order for substituted service shall be made *ex parte* and shall be supported by an affidavit stating the facts on which the application is founded.

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

(4) Without prejudice to the generality of subrule (3), the Court may direct substituted service to be effected in any of the following ways:-

- (a) by service in accordance with rule 4;
- (b) by delivery of the document to an agent of the person to be served or some other person, if there is reasonable ground to believe that the document will, through that person, come to the knowledge of the person to be served;
- (c) by sending the document by registered post addressed to the person to be served at an address to be specified in the affidavit made under subrule (2) of rule 6 at which there is reasonable ground to believe that will reach the person;
- (d) by notice put up at the Court or some other public place near the Registry in which the cause or matter is commenced or at the usual or last known place of residence or business of the person to be served; or
- (e) by advertisement in the media within the jurisdiction of the Court.

(5) An order for substituted service may be varied at any time with respect to the method of service directed by the order.

Affidavit of service.

6. (1) Subject to subrule (2), an affidavit of service of a document must state by and on whom the document was served, the day of the week and the date and the hour on which it was served, where it was served and how it was served.

(2) An affidavit of service of a document sent by registered post in accordance with this Order shall state by whom the document was posted, the registered number of the letter and the name of the person to whom the document was posted and the address to which the document was posted; and the certificate of posting issued by the post office shall be exhibited with the affidavit.

(3) An affidavit of service signed by the person who effects service shall, on production without proof of signature, be *prima facie* evidence of service.

7. The person serving a writ of summons shall, within 3 clear days at most after the service indorse on the writ the day of the month and week of service of the writ and shall immediately after the service file a copy of the writ. Indorsement on service.

8. (1) Where a contract has been entered into within Sierra Leone by or through an agent residing or carrying on business within Sierra Leone on behalf of a principal residing or carrying on business outside Sierra Leone, a writ of summons in an action relating to or arising out of the contract may, by leave of the Court or a judge given before the determination of the agent's authority or his business relations with the principal, be served on the agent. Service on local agent.

(2) Notice of the order giving the leave and a copy of the notice and of the writ of summons shall be sent by prepaid registered post to the defendant at his address outside Sierra Leone.

(3) Nothing in this rule shall invalidate or affect any other mode of service in force at the time this rule comes into operation.

9. (1) Where – Service of writ in pursuance of contract.
- (a) a contract contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of the contract or apart from such term, the Court has jurisdiction to hear and determine such action; and
 - (b) the contract provides that in the event of any action in respect of the contract being commenced, the process by which it is

commenced may be served on the defendant or any other person on behalf of the defendant as may be specified in the contract or in such manner or at such place, whether in or outside Sierra Leone as may be specified,

then, if action in respect of the contract is commenced and the writ is served in accordance with the contract, the writ shall, subject to Order 11 , be deemed to have been duly served on the defendant.

Service of writ in certain actions for possession of land.

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

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

ORDER 11

SERVICE OF PROCESS ETC OUT OF THE JURISDICTION

Cases where leave may be granted.

1. (1) Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be effected with leave of the Court in cases where-

- (a) a relief is sought against a person domiciled in Sierra Leone;

- (b) an injunction is sought ordering the defendant to do or refrain from doing anything within Sierra Leone (whether or not damages are claimed in respect of a failure to do or the doing of that thing);
- (c) the claim is brought against a person duly served in Sierra Leone or out of it and a person out of Sierra Leone is a necessary or proper party to the action;
- (d) the claim is brought to enforce, rescind, dissolve or otherwise affect a contract, being (in either case) a contract which-
 - (i) was made in Sierra Leone;
 - (ii) was made by or through an agent trading or residing outside Sierra Leone;
 - (iii) is by its terms or by implication governed by Sierra Leone law;
- (e) the claim is brought in respect of a breach committed in Sierra Leone of a contract made in Sierra Leone and irrespective of the fact, if such is the case that the breach was preceded or accompanied by a breach committed outside Sierra Leone that rendered impossible the performance of so much of the contract as ought to have been performed in Sierra Leone;
- (f) the claim is founded on a tort and the damage was sustained or resulted from an act committed in Sierra Leone;
- (g) the whole subject matter of the action is land situate in Sierra Leone (with or without rents or profits) or the perpetuation of testimony relating to land so situate;

- (h) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate in Sierra Leone;
- (i) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights, or rights of security in or over movable property or to obtain authority to dispose of movable property in Sierra Leone;
- (j) the claim is brought to execute the trust of a written instrument, being trust that ought to be executed according to Sierra Leone law and of which the person to be served with the writ is a trustee or for any relief or remedy which might be obtained in such action;
- (k) the claim is made for the administration of the estate of a person who died domiciled in Sierra Leone or for any relief or remedy which might be obtained in such action;
- (l) if the action begun by the writ is by a mortgagee of immovable property situated within Sierra Leone and seeks the sale of the property, foreclosure of the mortgage or delivery by the mortgagor of possession of the property but not an order for payment of any moneys due under the mortgage;
- (m) if the action is by a mortgagor of immovable property situate within Sierra Leone and seeks redemption of the mortgage or delivery by the mortgagee of possession of the property but not a personal judgment; or
- (n) if the action begun by the writ is in respect of a contract which contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of the contract.

(2) In this rule-

“mortgage” includes a charge or lien;

“mortgagee” means a person entitled to or interested in a mortgage;

“mortgagor” means a person entitled to or interested in the property subject to a mortgage;

“writ” means writ of summons or notice of writ of summons.

2. In probate actions, service of a writ of summons or notice of a writ of summons may, by leave of the Court be allowed out of the jurisdiction. Probate actions.

3. (1) An application for the grant of leave under subrule (1) of rule 1 shall be supported by an affidavit stating- Application to be supported by evidence.

- (a) the grounds on which the application is made;
- (b) that in the deponent’s belief the plaintiff has a good cause of action;
- (c) in what place or country the defendant is or probably may be found; and
- (d) where the application is made under paragraph (c) of subrule (1) of rule 1, the grounds for the deponent’s belief that there is between the plaintiff and the person on whom a writ has been served a real issue which the plaintiff may reasonably ask the Court to try.

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

4. Any order giving leave to effect service or give notice shall limit a time after the service or notice within which the defendant is to enter an appearance and the time shall depend on the place or country where or within which the writ is to be served or the notice given. Order to fix time for appearance.

Non-citizen defedant out-side Sierra Leone.

5. When the defendant is a non-citizen notice of the writ, and not the writ itself, shall be served.

Service of notice in lieu of writ.

6. Where leave is given under rules 1 and 4 to serve a notice of a writ of summons out of the jurisdiction, the notice shall be served in the manner in which writs of summons are served.

Practice.

7. (1) Service out of the jurisdiction may be allowed by a judge of the following processes or notice of the processes:-

- (a) any originating summons, in any case where, if the proceedings were commenced by a writ of summons, they would be within rule 1;
- (b) any petition, notice of motion or other originating proceedings-
 - (i) in relation to any infant or lunatic person or person of unsound mind;
 - (ii) under any enactment under which proceedings can be commenced otherwise than by writ of summons;
 - (iii) under any rules whereby proceedings can be commenced otherwise than by writ of summons;
- (c) without prejudice to paragraph (b), any summons, order or notice in any interpleader proceedings or for the appointment of an arbitrator or umpire or to remit, set aside or enforce an award in an arbitration held or to be held within the jurisdiction;
- (d) any summons, order or notice in any proceedings duly instituted whether by writ of summons or any other originating process;
- (e) where the person on whom an originating summons, petition, notice or other originating proceedings or a summons, order or notice is

to be served is a non-citizen, a copy of the originating summons, petition, notice of motion or other originating proceedings or summons, order or notice shall be served, together with an intimation in writing that a process in the form of the copy has been issued or otherwise launched.

(2) Rules 3, 4 and 6 shall apply with such modifications as may be necessary to service under paragraph (e) of subrule (1).

(3) Nothing in this Order shall prejudice or affect any practice or power of the Court under which, when immovable property, monies, movable property, rights or property within the jurisdiction are sought to be dealt with or affected, the Court may, without exercising jurisdiction over any person out of the jurisdiction, cause the person to be informed of the nature or existence of the proceedings with a view to the person having an opportunity of claiming, opposing or otherwise intervening.

ORDER 12

APPEARANCE

1. Except in the cases otherwise provided for by these Rules, Appearance. a defendant shall enter his appearance in the Master's office.

2. If a writ is issued in a District Registry the defendant shall enter his appearance in the District Registry. Writ issued in a District Registry.

3. (1) A defendant shall enter his appearance to a writ of summons by delivering to the Master a memorandum in writing dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. Entering appearance.

(2) The defendant shall, at the same time deliver to the Master a duplicate of the memorandum which the Master shall seal with the official seal, showing the date on which it is sealed, and then return it to the person entering the appearance; the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal.

Notice of appearance.

4. (1) A defendant shall, on the day on which he enters appearance to a writ of summons, give notice of his appearance to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself.

(2) The notice shall, in either case be accompanied by the sealed duplicate memorandum.

Defendant's address for service.

5. The solicitor of a defendant appearing by a solicitor shall state in the memorandum his place of business and a place to be called his address for service which shall not be more than 5 miles from the Master's Office or 7 miles from a District Registry.

Defendant in person.

6. A defendant appearing in person shall state in such memorandum his address and a place to be called his address for service, which shall be not more than 5 miles from the Master's Office or 7 miles from a District Registry.

Fictitious or no address.

7. If the memorandum does not contain the address referred to in rules 5 and 6 it shall not be received but if the address is illusory or fictitious, the appearance may be set aside by the Court on the application of the plaintiff.

Form of memorandum.

8. The memorandum of appearance shall be in Form I of the Schedule with such variation as the circumstances may require.

Officer to enter memorandum.

9. Upon receipt of a memorandum of appearance, the Master shall forthwith enter the appearance in the Cause Book.

Defendants appearing by same solicitor.

10. If two or more defendants in the same action appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum.

Time limited for appearance.

11. In this Order, references to the time limited for appearance are references-

- (a) in the case of a writ served in Sierra Leone, to 14 days after the service of the writ or where that time has been extended by the Court, within that time as extended; and
- (b) in the case of a writ or notice of a writ of summons served outside Sierra Leone, to the

time limited by an order of the Court authorizing service of a defendant's agent or within such time limit as an order granting leave to serve a notice out of the jurisdiction may be granted or where that time has been extended, to the extended time.

12. Nothing in this Order shall be construed as precluding a defendant from filing appearance after the time limited for appearance, but if the defendant does so, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other thing later than if the defendant had appeared within that time.

Late appearance.

13. In probate actions, any person not named in the writ may intervene and appear in the action as provided in this Order, on filing an affidavit showing how he is interested in the estate of the deceased.

Probate intervention.

14. No conditional appearance shall be entered in any proceedings under these Rules.

Prohibition of conditional appearance.

15. The entry of appearance by a party shall not be construed as a waiver by him of any irregularity in the originating process or service thereof or in any order giving leave to serve the process out of the jurisdiction or extending the validity of the process for the purpose of service or on any other ground.

Entry of appearance not waiver.

16. A party who wishes to dispute the jurisdiction of the Court in the proceedings by reason of the irregularity referred to in rule 15 or on any other ground shall, within the time limited for service of a defence, apply to the Court for-

Dispute as to jurisdiction.

- (a) an order setting aside the process or service of the process on him;
- (b) an order declaring that the process has not been duly served on him;
- (c) the discharge of any order giving leave to serve the process on him out of jurisdiction;
- (d) the discharge of any order extending the validity of the process for the purpose of service;

- (e) the protection or release of any property of the applicant seized or threatened with seizure in the proceedings;
- (f) the discharge of any order made to prevent the dealing with any property of the applicant;
- (g) a declaration that in the circumstances of the case the Court has no jurisdiction over the applicant in respect of the subject matter of the claim or the relief or remedy sought in the action;
- (h) such other relief as may be appropriate.

ORDER 13

DEFAULT OF APPEARANCE

Default of appearance generally.

1. Where any defendant fails to appear to a writ of summons and the plaintiff is desirous of proceeding upon default of appearance under this Order or under these Rules, he shall, before taking such proceedings on default, file an affidavit of service and an affidavit of search.

Claim for liquidated demand.

2. Where the writ of summons is indorsed for a liquidated demand only and the defendant fails to enter appearance, the plaintiff may, after the time limited for appearance against the defendant enter final judgment for a sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, or if no rate is specified, at the rate of 5 per cent to the date of the judgment and costs, and proceed with the action against the other defendants, if any.

Claim for unliquidated demand.

3. Where the plaintiff's claim against a defendant is for an unliquidated demand only, and the defendant fails to file appearance, the plaintiff may, after the time limited for appearance, enter interlocutory judgment against the defendant for damages to be assessed and proceed with the action against other defendants, if any.

4. (1) Where the plaintiff's claim against a defendant relates to the detention of goods only, and the defendant fails to file appearance, the plaintiff may, after the time limited for appearance, enter judgment against the defendant-

Claim in detinue.

- (a) for the delivery of the goods or their value to be assessed and costs;
- (b) for the delivery of the goods and costs; or
- (c) for the value of the goods to be assessed and costs, and proceed with the action against the other defendants, if any.

(2) Where the plaintiff enters interlocutory judgment for damages under rule 3 or for the value of goods under this rule, on an application by the plaintiff the Court shall fix the date on which the damages or value shall be assessed and direct that notice of it shall be given to the defendant against whom the interlocutory judgment has been entered.

(3) A defendant who is served with such a notice is entitled to attend at the assessment and be heard on the issue of damages only.

5. (1) In case no appearance is entered in an action for the recovery of land, within the time limited by the writ for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

Claim for possession of immovable property.

(2) Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, double value, or damages for breach of contract, or wrong or injury to the premises claimed, upon a writ for the recovery of land, he may enter judgment as in rule 4 as for the land; and may proceed as in the other preceding rules of this Order as to such other claim so indorsed.

(3) This rule shall not apply where possession is claimed by virtue of a mortgage.

Mixed claims.

6. Where the plaintiff makes two or more of the claims to which rules 2 to 5 apply against a defendant and there is no other claim and the defendant fails to file appearance, the plaintiff may after the time limited for appearance, enter judgment against that defendant in respect of such claim as the plaintiff would be entitled to enter under those rules if that were the only claim made and proceed with the action against the other defendants, if any.

Actions not specifically provided for.

7. (1) Where the plaintiff makes a claim of a description not mentioned in rules 2 to 6 against a defendant, and the defendant fails to file appearance, the plaintiff may, after the time limited for appearance and upon filing an affidavit proving due service of the writ and statement of claim on the defendant, set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the Court shall consider the plaintiff to be entitled to.

(2) Notice of an application for leave to enter judgment under subrule (1) shall be served on the defendant against whom it is sought to enter judgment

One of the several defendants in default

8. (1) Where, in any action as mentioned in rule 7, there are several defendants, then, if one of such defendants defaults, the plaintiff may either (if the cause of action is severable) set down the action at once on motion for judgment against the defendant so defaulting, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

(2) Notice of an application for leave to enter judgment shall be served on the defendant against whom it is sought to enter judgment.

Setting aside judgment.

9. Where judgment is entered pursuant to this Order, it shall be lawful for the Court to set aside or vary such judgment upon such terms as may be just.

10. Where a defendant or respondent to an originating summons to which an appearance is required to be entered fails to appear within the time limited, the plaintiff or applicant may apply to a Judge for an appointment for the hearing of such summons, and after the filing of a certificate that no appearance has been entered, the Master shall notify the plaintiff of a time for the hearing of such summons.

Default of appearance to originating summons.

11. (1) In an action brought by a moneylender or an assignee for the recovery of money lent by the moneylender or the enforcement of any agreement or security relating to such money, an application for leave to enter judgment in default of appearance shall be made by notice of motion returnable not less than 2 clear days after service of the notice.

Action by moneylender.

(2) The notice shall not be issued until the time limited for entering appearance has expired, and a proper affidavit of service of the writ has been filed.

(3) The notice may be served personally or delivered to the defendant at his last known place of address.

(4) At the hearing of the application, whether the defendant appears or not, the Court or judge-

(a) may exercise the powers of the Court under subsections (2) to (6) of section 23 of the Moneylenders Act,

(b) if satisfied by affidavit or otherwise that the notice has been duly served, may give leave to enter final judgment for the whole or part of the claim; and

(c) as regards any part of the claim as to which leave to enter final judgment is refused, may give such directions or make such order as might have been given or made upon a summons for judgment under these Rules, if the defendant had entered an appearance, upon such terms as to notice to the defendant and otherwise as may be thought just.

12. (1) In any action in which the plaintiff claims any of the following reliefs:—

- (a) payment of moneys secured by a mortgage;
- (b) sale of property subject to a mortgage;
- (c) delivery of possession of mortgaged property to the mortgagee by the mortgagor or by any other person in, or alleged to be in possession of the property;
- (d) redemption of property subject to a mortgage;
- (e) discharge of a mortgage; or
- (f) delivery of possession of a mortgaged property by a mortgagee,

judgment shall not be entered in default of appearance except by leave of the Court.

(2) The Court may require the application for leave to be supported by evidence which entitles the applicant to relief and may direct that notice of the application shall be given to the defendant and to such other person as the Court may consider proper.

ORDER 14

PERSONS WITH DISABILITY

1. (1) For the purposes of judicial proceedings under these Rules a person with disability means a person under the age of 21 years or a person who is certified pursuant to any enactment to be incapable of managing and administering his property and affairs by reason of mental disorder or infirmity of mind.

(2) The Court may where it considers it desirable in any action, order a medical examination of the person claimed to be a person with disability.

(3) Subject to these Rules, anything which in the ordinary conduct of any proceedings is required or authorized by these Rules to be done by a party to the proceedings shall, if the party is a person with disability, be done by his next friend or guardian *ad litem*.

(4) A next friend or guardian ad litem shall act by a solicitor.

2. (1) No order for the appointment of a next friend or guardian ad litem shall be necessary except where any of these Rules provides. Appointment of next friend or guardian *ad litem*.

(2) Except where a next friend or guardian ad litem has been appointed by the Court, the name of a person shall not be used, and a person shall not be entitled to act in any cause or matter, as next friend or guardian ad litem of a person with disability unless the solicitor of the person with disability has filed in the registry—

- (a) a written consent of the person proposing to be next friend or guardian *ad litem* to act in that capacity; and
- (b) a certificate made by the solicitor for the person with disability certifying that the solicitor knows or believes the person to whom the certificate relates is a person with disability, and that the person named in the certificate as next friend or guardian *ad litem* is a proper person to act as such and has no interest in the cause or matter adverse to that of the person with disability.

(3) Where there is any doubt or dispute as to whether a person is a person with disability, the Court shall determine that issue and make an appropriate order.

(4) Where a person has been or is next friend or guardian *ad litem* of a person with disability in any proceedings, no other person shall be entitled to act as a next friend or guardian *ad litem* in those proceedings, unless the Court makes an order appointing that person as a next friend or guardian *ad litem* in substitution for the person previously acting in that capacity.

(5) The Court may for good cause remove a person acting as next friend or guardian *ad litem* and appoint another person to act as next friend or guardian *ad litem* to continue the proceedings.

(6) If a person acting as next friend or guardian *ad litem* dies or for some good reason is unable to continue the proceedings on behalf of the person with disability, the Court shall appoint another person in that person's place.

Attainment
of 21 years.

3. (1) If a party with disability by virtue only of being under the age of 21 years attains the age of 21 years before judgment, the party shall file a notice in the registry of the Court that he has attained the age of 21 years and serve a copy on the party to the suit.

(2) On attaining the age of 21 years, the party may, with the leave of the Court repudiate proceedings carried on by the next friend or guardian *ad litem*.

Mental
disorder of a
party after
proceedings
are begun

4. (1) Where a party suffers mental disorder as provided in subrule (1) after proceedings have begun, the solicitor for the party shall immediately he becomes aware of this fact, file a notice in the Court to that effect and all further proceedings shall then cease until a next friend or guardian *ad litem* is appointed by the Court to act for the person with disability.

(2) The notice to be filed under subrule (1) shall state the date on which the party suffered the disability and shall be served on the other party to the proceedings.

(3) The solicitor who files a notice under subrule (1) shall, not later than 7 days after filing the notice, apply to the Court for the appointment of a next friend or guardian *ad litem*.

(4) If the solicitor of a plaintiff with disability fails to comply with any of the provisions of subrule (1), (2) or (3), the defendant may apply to the Court to dismiss the plaintiff's action and the solicitor shall be personally liable to pay any costs incurred by the defendant in any proceedings taken in the suit without a next friend by the plaintiff after the disability occurred, but upon an application to dismiss the plaintiff's action under this subrule, the Court instead of dismissing the action may make an order for the appointment of a next friend.

(5) If the solicitor of a defendant with disability fails to comply with any of the provisions of subrule (1), (2) or (3), the plaintiff may apply to the Court to appoint a guardian *ad litem* for the defendant and the solicitor shall personally be liable to pay any costs incurred by the plaintiff in any proceedings taken in the action without a guardian *ad litem* after the defendant suffered the disability.

5. (1) Where a defendant who is a person with disability is served with a writ but no appearance is filed on the defendant's behalf within the time limited for appearance, the plaintiff shall apply to the Court for an order that a proper person be appointed guardian *ad litem* for the person with disability, and until the appointment, there shall be no further proceedings in the action.

Default of
appearance by
person with
disability

(2) An application for the appointment of a guardian *ad litem* shall be made by the defendant or the person who serves a third party notice in the action—

- (a) where a person with disability who is not already a party to an action is served with a defence and counterclaim but no appearance is filed on the person's behalf; and
- (b) where a third party notice is served on a person with disability who is not already a party to the action but no appearance is filed on behalf of the person with disability.

(3) At any stage of proceedings in any cause or matter of which notice has been served on a person with disability, the Court may, if no appearance is filed for that person, appoint a guardian *ad litem* for that person in the cause or matter or direct that an application be made for the appointment of such a guardian.

(4) An application under this rule for the appointment of a guardian *ad litem* shall be supported by an affidavit or other evidence which states—

- (a) that the person to whom the application relates is with disability;

- (b) that the person proposed as guardian *ad litem* is willing and a proper person to act as such and has no interest in the cause or matter adverse to that of the person with disability.
- (c) that the writ, defence and counterclaim or third party notice as the case may be, was duly served on the person with disability; and
- (d) subject to subrule (5), that notice of the application was served on the person with disability after the expiration of the time limited for appearance and at least 7 days before the day stated in the notice for hearing the application.

(5) The Court may direct that notice of an application for the appointment of a guardian *ad litem* under this rule need not be served on the person with disability.

Application to discharge or vary certain orders.

6. An application to the Court on behalf of a person with disability served with an order made *ex-parte* under rule 6 of Order 18, for the discharge or variation of the order shall be made-

- (a) within 14 days after service of the order if a next friend or guardian *ad litem* is acting for the person with disability; or
- (b) within 14 days after the appointment of such a friend or guardian to act for the person with disability if there is no next friend or guardian *ad litem* acting for that person in the cause or matter.

Admission by person with disability not to be implied from pleading.

7. Notwithstanding any other provision in these Rules, a person with disability shall not be taken as admitting the truth of any allegation made in the pleading of the opposite party by reason only that the person with disability has not traversed it in his own pleadings.

8. (1) Where before any proceedings are begun in which a claim is made by or on behalf of a person with disability, whether alone or jointly with any other person, an agreement is reached for the settlement or compromise of the claim, an application shall be made to the Court for the approval of the settlement or compromise and the Court may make an order approving the settlement and give directions for carrying out the settlement or alternatively for the further prosecution of the claim.

Compromise or settlement by person with disability..

(2) No settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall be valid in so far as it relates to a person with disability, unless it is approved by the Court.

(3) Where in any proceedings-

- (a) money is recovered by or on behalf of or adjudged or ordered or agreed to be paid to, or for the benefit of a person with disability; or
- (b) money paid into court is accepted by or on behalf of a person with disability,

the money shall be dealt with in accordance with the directions of the Court.

(4) The Court may give directions as to-

- (a) how the money is to be applied or dealt with; and
- (b) the payment of any sum to any person or to a next friend or guardian *ad litem* in respect of moneys paid or expenses incurred for and on behalf of the person with disability or for the benefit of the person with disability or to the solicitor of the person with disability.

(5) The Court may in giving directions, order that the whole of the money or part of it shall be invested in such manner as the Court thinks fit and may consider any proposal for investment submitted by or on behalf of the person with disability.

(6) Where money is invested by order of the Court under subrule (5), the money shall be held and applied or otherwise dealt with for the person with disability as the Court may from time to time direct.

(7) Where in pursuance of directions given under this rule, money is paid into court to be invested or otherwise dealt with, the money, including any interest on it shall not be paid out, nor shall any securities in which the money is invested be sold or transferred or the dividend on it be paid or the money be paid out of court except by order of the Court.

Service of documents on persons with disability.

9. (1) Where in any cause or matter a document is required to be served personally and the person on whom it is to be served is with disability, the document shall be deemed to have been duly served if served on the father or mother or guardian of the person with disability or the person with whom the person with disability resides or under whose care the person with disability is.

(2) Notwithstanding anything in subrule (1), the Court may order that a document which has been or is to be served on a person with disability or on a person other than a person mentioned in that subrule shall be deemed to be duly served if served on the person with disability.

(3) Notwithstanding anything in these Rules, a judgment or order that requires a person to do or refrain from doing any act, a notice or application for the committal of any person, and a writ of subpoena against any person, shall, if that person is with disability, be served personally on that person, unless the Court otherwise orders.

(4) Subrule (3) shall not apply to an order for interrogatories or for the discovery or inspection of documents.

Suing or defending as a pauper.

10. Any person may be admitted in the manner specified in this Order to sue or defend as a pauper on proof that he is not worth Le1,000,000, his wearing apparel and the subject matter of the cause or matter only excepted.

Case to be laid before counsel.

11. A person desiring to sue as a pauper shall apply to the Master to lay a case before counsel for his opinion, whether or not he has reasonable grounds for proceeding.

12. No person shall be permitted to sue as a pauper unless the case laid before the counsel for his opinion, and his opinion with an affidavit of the party or his counsel, that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, shall be produced before the Court or proper officer to whom the application is made, and no fee shall be payable by a pauper to his solicitor.

Affidavit by party or his solicitor that case is true.

13. A person admitted to sue as a pauper shall not be liable to pay any court fee.

No court fees payable.

14. Where a person is admitted to sue as a pauper, the Court may, if necessary, assign a solicitor to assist him and the solicitor so assigned shall not refuse his assistance unless he satisfies the Court that he has good reason for so refusing.

Solicitor may be assigned.

15. Whilst a person sues or defends as a pauper, no person shall take or seek to obtain from him any fee, profit or reward for the conduct of the pauper's business in court, and any person who takes or agrees to take or seeks to obtain such fee, profit or reward shall be guilty of contempt of court.

No fees to be taken from pauper.

16. If any person admitted to sue or defend as a pauper gives or agrees to give a fee, profit or reward, he shall be forthwith dispaupered and shall afterwards not be admitted again in the same cause to sue or defend as a pauper.

Person to be dispaupered.

17. No notice of motion shall be served or summons issued and no petition shall be presented on behalf of any person admitted to sue or defend as a pauper except for the discharge of his solicitor, unless it is signed by his solicitor.

Notice of motion etc.

18. A solicitor assigned to a person admitted to sue or defend as a pauper shall take care that no notice is served or summons issued or petition presented without good cause.

Duty of solicitor.

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

Costs to be taxed.

ORDER 15

ACTIONS BY AND AGAINST PARTNERS

Actions by and against firms within jurisdiction.

1. Subject to the provisions of any enactment, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.

Disclosure of partners' names.

2. (1) Any defendant to an action brought by partners in the name of a firm may serve on the plaintiffs or their solicitor a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the plaintiffs or their solicitor to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the action be stayed on such terms as the Court may direct.

(2) When the names of the partners have been declared in compliance with a notice or order given or made under subrule (1), the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as plaintiffs in the writ.

(3) Subrule (1) shall have effect in relation to an action brought against partners in the name of a firm as it has effect in relation to an action brought by partners in the name of a firm but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiff and defendants respectively, and with the omission of the words "or may order" to the end.

Service of writ.

3. (1) Where by virtue of rule 1 partners are sued in the name of a firm the writ may, except in the case mentioned in subrule (3) be served-

- (a) on any one or more of the partners; or
- (b) at the principal place of business of the partnership within the jurisdiction, on any

person having at the time of service the control or management of the partnership business there, and subject to subrule (2), where service of the writ is effected in accordance with this subrule, the writ shall be deemed to have been duly served on the firm, whether or not any member of the firm is out of the jurisdiction.

(2) Where a partnership has, to the knowledge of the plaintiff, been dissolved before an action against the firm is begun, the writ by which the action is begun shall be served on every person within the jurisdiction sought to be made liable in the action.

(3) Every person on whom a writ is served under paragraph (a) or (b) of subrule (1) shall, at the time of service be given a written notice stating whether he is served as a partner or as a person having the control or management of the partnership business or both as a partner and as such a person; and any person on whom a writ is so served but to whom no such notice is given shall be deemed to be served as a partner.

4. (1) Where persons are sued as partners in the name of their firm, appearance may not be entered in the name of the firm but only by the partners in their own names, but the action shall nevertheless continue in the name of the firm. Entry of appearance.

(2) Where in an action against a firm, the writ of summons by which the action is begun is served on a person as partner and the person denies that he was a partner or liable as such at any material time, the person may enter appearance in the action and state in the notice of appearance that he does so as a person served as a partner in the defendant firm but denies having been a partner at any material time.

(3) Where appearance has been entered for a defendant in accordance with subrule (2), the defendant may, within 14 days of entry of appearance either apply to the Court to set aside the service of the writ on him on the ground that he was not a partner or liable as such at any material time or may at the proper time serve a defence to the plaintiff's claim.

(4) The Court may at any stage of the proceedings in an action in which a defendant has entered appearance in accordance with subrule (2) on the application of the plaintiff or of the defendant order that the issue as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.

(5) Where in an action against a firm the writ of summons is served on a person as one who has the control or management of the firm, the person may not enter appearance in the action unless the person is a member of the firm sued.

Enforcing judgment or order against a firm.

5. (1) Where a judgment is given or an order is made against a firm execution of the judgment or order may, subject to rule 6 and subrule (3) issue against any person who-

- (a) entered an appearance in the action as a partner;
- (b) having been served as a partner with the writ, failed to enter an appearance in the action;
- (c) admitted in that person's pleading that, that person is a partner; or
- (d) was adjudged to be a partner.

(2) Execution of a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the writ of summons was issued unless that member-

- (a) entered appearance in the action as a partner;
- (b) was served within the jurisdiction with the writ as a partner; or
- (c) was, with leave of the Court given under Order 11, served out of the jurisdiction with notice of the writ as a partner, and except as provided by subrule (1) and this subrule, a judgment or order given or made against a

firm shall not render liable or release or otherwise affect a member of the firm who was out of the jurisdiction when the writ was issued.

(3) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for leave to issue execution against that person and notice of the application shall be served personally on that person.

(4) Where the person against whom an application under subrule (4) is made does not dispute liability, the Court hearing the application may, subject to subrule (3), give leave to issue execution against the person, and, where the person disputes liability, the Court may order that the issue or question of liability be tried and determined in any manner in which any issue or question in an action may be tried and determined.

6. (1) Execution of a judgment or order given or made in-

- (a) an action by a firm in the name of the firm against a member of the firm;
- (b) an action against a firm in the name of the firm by a member of the firm; or
- (c) an action by a firm in the name of the firm against another firm in the name of that firm where those firms have one or more members in common,

Enforcement in action between partners.

shall not issue except with leave of the Court.

(2) The Court hearing an application under this rule may give such directions, including directions as to the taking of accounts and the making of inquiries as may be just.

7. (1) An order may be made under rule 1 of Order 50 in relation to debts due to or accruing from a firm carrying on business within the jurisdiction notwithstanding that one or more members of the firm are resident out of the jurisdiction

Attachment of debts owed by a firm.

(2) An order to show cause under rule 1 of Order 50 relating to such debts shall be served on a member of the firm within the jurisdiction or on some other person who has the control or management of the partnership business.

(3) Where an order made under rule 1 of Order 50 requires a firm to appear before the Court, an appearance by a member of the firm constitutes sufficient compliance with the order.

Application of rules to person trading in another name. Actions begun by originating summons or originating notice of motion.

8. Any individual carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm; and so far as the nature of the case permits, all rules relating to proceedings against firms shall apply.

9. These Rules shall, with the necessary modifications apply in relation to an action by or against partners in the name of their firm begun by originating summons or originating notice of motion as they apply in relation to such an action begun by writ of summons.

ORDER 16

SUMMARY JUDGMENT

Application for summary judgment.

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

(2) This rule applies to every action begun by writ other than-

- (a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment or seduction; and
- (b) an admiralty action in rem

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

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

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

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

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

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

(2) Subrule (2) of rule 2 shall apply for the purposes of this rule as it applies for the purposes of that rule.

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

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

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

Application for summary judgment on counterclaim.

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

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

- (a) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;
- (b) the words in subrule (2) of rule 3 “any counterclaim made or raised by the defendant in” shall be omitted; and
- (c) the reference in subrule (3) of rule 4 to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

Directions.

6. Where the Court—

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

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

the Court shall give directions as to the further conduct of the action, and rules 2 to 6 of Order 28, shall, with the omission of so much of subrule (1) of rule 6 of Order 28 as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under rule 1 or rule 5 as the case may be, on which the order was made were a summons for directions.

7. (1) If the plaintiff makes an application under rule 1 where the case is not within this Order or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 57 and, in particular, to subrules (1) to (3) of rule 4 of that Order, the Court may dismiss the application with costs and may, if the plaintiff is not a pauper require the costs to be paid by him forthwith. Cost.

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

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

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

Judgment for delivery up of chattel.

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

Relief against forfeiture.

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

Setting aside judgment.

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

ORDER 17

DISPOSAL OF CASES ON POINT OF LAW

Determination of questions of law or construction.

1. (1) The Court may on the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that-

- (a) the question is suitable for determination without a full trial of the action; and
- (b) the determination will finally determine subject only to any possible appeal, the entire cause or matter or any claim or issue in the cause or matter.

(2) Upon the determination, the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

(3) The Court shall not determine any question under this Order unless the parties have either-

- (a) had an opportunity of being heard on the question; or

(b) consented to an order or judgment on the determination.

(4) Nothing in this Order shall limit the powers of the Court under Order 21 or any other provision of these Rules.

2. An application under rule 1 may be made by summons or motion.

Manner in which application under rule 1 may be made.

ORDER 18

CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES

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

Joinder of causes of action.

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

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

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

Counterclaim against plaintiff.

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

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

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

Counterclaim
against
additional
parties.

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

(2) Where a defendant joins a person as a party against whom he makes a counterclaim, he shall add that person's name to the title of the action and serve on him a copy of the counterclaim and, in the case of a person who is not already a party to the action, the defendant shall issue the counterclaim out of the appropriate office and serve on the person concerned a sealed copy of the counterclaim, together with a notice requiring him to enter appearance and a copy of the writ or originating summons by which the action was begun and of all other pleadings served in the action; and a person on whom a copy of a counterclaim is served under this subrule shall, if he is not already a party to the action, become a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.

(3) A defendant who is required by subrule (2) to serve a copy of the counterclaim made by him on any person who before service is already a party to the action shall do so within the period within which, by virtue of rule 2 of Order 21, he shall serve on the plaintiff the defence to which the counterclaim is added.

(4) Where by virtue of subrule (2), a copy of a counterclaim is required to be served on a person who is not already a party to the action, the following provisions of these rules, namely, Order 10, Order 11, Order 12 and rule 4 of Order 56 shall, subject to subrule (3), apply in relation to the counterclaim and the proceedings arising from it as if -

- (a) the counterclaim were a writ and the proceedings arising from it an action; and
- (b) the party making the counterclaim were a plaintiff and the party against whom it is made a defendant in that action.

(5) Where by virtue of subrule (2), a copy of a counterclaim is required to be served on any person other than the plaintiff who before service is already a party to the action, the provisions of rule 5 of Order 16 shall apply in relation to the counterclaim and the proceedings arising from it, as if the party against whom the counterclaim is made were the plaintiff in the action.

(6) A copy of a counterclaim required to be served on a person who is not already a party to the action shall be indorsed with a notice in an appropriate form addressed to that person.

4. (1) Subject to subrule (1) of rule 5 two or more persons may be joined together in one action as plaintiffs or as defendants without the leave of the Court or where -

- (a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions; and
- (b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.

(2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled shall, subject to the provisions of any enactment and unless the Court gives leave to the contrary, be parties to the action and any of

them who does not consent to being joined as a plaintiff shall, subject to any order made by the Court on an application for leave under this subrule, be made a defendant.

Court may order separate trials, etc.

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

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

Misjoinder and non-joinder of parties.

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

(2) Subject to this rule, at any stage of the proceedings in any cause or matter the Court may, on such terms as it thinks just and either of its own motion or on application -

- (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
- (b) order any of the following persons to be added as a party:-
 - (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause

or matter may be effectually and completely determined and adjudicated upon; or

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

(3) Any application by any person for an order under subrule (2) to add that person as a party shall be made by motion supported by an affidavit showing the person's interest in the matter in dispute before or at the trial.

(4) No person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

(5) No person shall be added or substituted as a party after the expiry of any relevant period of limitation unless either -

- (a) the relevant period was current at the date when proceedings were commenced and it is necessary for the determination of the action that the new party should be added or substituted; or
- (b) the relevant period arises under the Limitations Act, 1961 and the Court directs that those provisions should not apply to the action by or against the new party.

(6) In subrule (5) "any relevant period of limitation" means a time limit under the Limitation Act, 1961.

Act No. 51
of 1961.

(7) Except in a case to which the law of another country relating to limitation applies, and subject to any enactment, the addition or substitution of a new party shall be treated as necessary for the purposes of paragraph (a) of subrule (5) if, and only if, the Court is satisfied that -

- (a) the new party is a necessary party to the action in that property is vested in him at law or in equity and the plaintiff's claim in respect of an equitable interest in that property is liable to be defeated unless the new party is joined;
- (b) the relevant cause of action is vested in the new party and the plaintiff jointly but not severally;
- (c) the new party is the Attorney-General and the proceedings should have been brought by relator proceedings in his name;
- (d) the new party is a company in which the plaintiff is a shareholder and on whose behalf the plaintiff is suing to enforce a right vested in the company;
- (e) the new party is sued jointly with the defendant and is not also liable severally with him and failure to join the new party might render the claim unenforceable.

Court to appoint representative of deceased person's estate.

7. If in any cause or matter or other proceeding, it appears to the Court that any deceased person who was interested in the matter in question has no legal representative, the Court may proceed in the absence of any person representing the estate of the deceased person or may appoint a person to represent his estate for all the purposes of the cause, matter or other proceeding on such notice to such other persons as the Court thinks fit, either specially or generally by public advertisement; and the order so made and any order consequent on it shall bind the estate of the deceased in the same manner and in every respect as if a duly appointed legal representative of the deceased had been a party to the cause, matter or other proceedings.

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

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

(3) An action purporting to have been commenced against a person shall be treated, if he was dead at its commencement, as having been commenced against his estate in accordance with subrule (1), whether or not a grant of probate or letters of administration was made before its commencement.

(4) In any action as is referred to in subrule (1) or (3) -

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

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

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

(6) Where an order is made under subrule (4), appointing a person to represent the deceased's estate, the appointment shall be limited to his accepting service of the writ or originating summons by which the action was begun unless, either on making such an order or on a subsequent application, the Court, with the consent of the person, directs that the appointment shall extend to taking further steps in the proceedings.

(7) Where an order is made under subrule (4), subrule (5) of rule 9 and subrules (3) and (4) of rule 10 shall apply as if the order had been made under rule 9 on the application of the plaintiff.

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

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

(2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party.

(3) An application for an order under subrule (2) may be made *ex parte*.

Change of parties by reason of death, etc.

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

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

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

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

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

- (a) a reference to the order in pursuance of which the amendment is made, and
- (b) the date on which the amendment is made,

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

Provisions consequential on making of order rule 6 or 9.

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

(3) Together with the writ of summons served under subrule (2) shall be served a copy of all other pleadings served in the action.

(4) Where by an order under rule 6 or 9 a person is to be made a defendant, the rules as to entry of appearance shall apply accordingly to entry of appearance by him, subject, in the case of a person to be made a defendant by an order under rule 9, to the modification that the time limited for entry of appearance shall begin with the date on which the order is served on him under subrule (4) of rule 9 or, if the order is not required to be served on him, with the date on which the order is noted in the file.

(5) Where by an order under rule 6 or 9 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until -

- (a) where the order is made under rule 6, the writ has been amended in relation to him under this rule and (if he is a defendant) has been served on him; or
- (b) where the order is made under rule 9, the order has been served on him under subrule (4) of rule 9 or, if the order is not required to be served on him, the order has been noted in the file, and where by virtue of this subrule a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old, except that entry of appearance by the old party shall not dispense with entry of appearance by the new.

(6) This rule shall apply in relation to an action begun by originating summons as they apply in relation to an action begun by writ.

11. (1) If after the death of a plaintiff or defendant in any action the cause of action survives, but no order under rule 9 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the action is proceeded with within such time as may be specified in the order the action shall be struck out as against the plaintiff or defendant, as the case may be, who has died; but where it is the plaintiff who has died, the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested persons who, in the opinion of the Court, should be notified.

Failure to proceed after death of party.

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

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

Actions for possession of land.

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

(3) The affidavit shall specify the applicant's address for service and subrules (3), (4) and (6) of Order 12 shall apply as if the affidavit were an entry of appearance.

(4) A person added as a defendant by an order under this rule shall serve on the plaintiff a copy of the order giving the added defendant's address for service specified in accordance with subrule (3).

Representative
proceedings.

13. (1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 15 the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

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

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

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

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

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

14. (1) This rule applies to every action begun by one or more shareholders of a company where the cause of action is vested in the company and relief is accordingly sought on its behalf (referred to in this rule as a "derivative action").

Derivative
actions.

(2) Where a defendant in a derivative action has entered appearance, the plaintiff shall apply to the Court for leave to continue the action.

(3) The application shall be supported by an affidavit verifying the facts on which the claim and the entitlement to sue on behalf of the company are based.

(4) Unless the Court otherwise orders, the application shall be issued within 21 days after the relevant date, and shall be served, together with the affidavit in support and any exhibits to the affidavit, not less than 10 clear days before the return day on all defendants who have entered appearance and any defendant so served may show cause against the application by affidavit or otherwise.

(5) In subrule (4), "the relevant date" means the later of—

- (a) the date of service of the statement of claim;
- (b) the date when appearance was entered was given but where more than one appearance is entered that date shall be the date when the first appearance was entered.

(6) Nothing in this rule shall prevent the plaintiff from applying for interlocutory relief pending the determination of an application for leave to continue the action.

(7) In a derivative action, subrule (1) of rule 2 of Order 21 shall not have effect unless the Court grants leave to continue the action and, in that case, shall have effect as if it required the defendant to serve a defence within 14 days after the order giving leave to continue, or within such other period as the Court may specify.

(8) On the hearing of the application under subrule (2), the Court may—

- (a) grant leave to continue the action, for such period and upon such terms as the Court may think fit;
- (b) subject to subrule (11), dismiss the action;
- (c) adjourn the application and give such directions as to joinder of parties, the filing of further evidence, discovery, cross-examination of deponents and otherwise as it may consider expedient.

(9) If the plaintiff does not apply for leave to continue the action as required by subrule (2) within the time laid down in subrule (4), any defendant who has entered appearance may apply for an order to dismiss the action or any claim made in it by way of derivative action.

(10) On the hearing of such an application for dismissal, the Court may-

- (a) subject to subrule (11), dismiss the action;
- (b) if the plaintiff so requests, grant him (on such terms as to costs or otherwise as the Court may think fit) an extension of time to apply for leave to continue the action; or
- (c) make such other order as may in the circumstances be appropriate.

(11) Where only part of the relief claimed in the action is sought on behalf of the company, the Court may dismiss the claim for that part of the relief under subrules (8) and (10), without prejudice to the plaintiff's right to continue the action as to the remainder of the relief and subrule (1) of rule 2 of Order 21 shall apply as modified by subrule (7).

(12) If there is a material change in circumstances after the Court has given leave to the plaintiff to continue the action in pursuance of an application under subrule (2), any defendant who

has entered appearance may make an application by notice of motion supported by affidavit requiring the plaintiff to show cause why the Court should not dismiss the action or any claim made in it by way of derivative action, and on such application the Court shall have the same powers as it would have had upon an application under subrule (2).

(13) The plaintiff may include in an application under subrule (2) an application for an indemnity out of the assets of the company in respect of costs incurred or to be incurred in the action and the Court may grant such indemnity upon such terms as may in the circumstances be appropriate.

(14) So far as possible, any application under subrule (13) and any application by the plaintiff under Order 16 shall be made so as to be heard at the same time as the application under subrule (2).

15. (1) In any proceedings concerning-

- (a) the estate of a deceased person;
- (b) property subject to a trust, or
- (c) the construction of a written instrument, including a statute,

Representation of interested persons who cannot be ascertained, etc.

the Court, if satisfied that it is expedient to do so, and 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 at present or for any future, contingent or unascertained interest) in or affected by the proceedings.

(2) The conditions for the exercise of the power conferred by 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 purposes of saving expense.

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

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

- (a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise; or
- (b) the absent persons are represented by a person appointed under subrule (1) who so assents,

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

Notice of
action to
non-parties.

16. (1) At any stage in an action to which this rule applies, the Court may, on the application of any party or of its own motion, direct that notice of the action be served on any person who is not a party to it but who will or may be affected by any judgment given in that action.

(2) An application under this rule may be made *ex parte* and shall be supported by an affidavit stating the grounds of the application.

(3) Every notice of an action under this rule shall be in an appropriate Form and shall be issued out of the Master's office, and the copy to be served shall be a sealed copy accompanied by a copy of the originating summons or writ and of all other pleadings served in the action, and by directions for the entry of appearance.

(4) A person may, within 14 days of service on him of a notice under this rule, enter appearance to the writ or originating summons and shall then become a party to the action, but in default of such acknowledgment and subject to subrule (5) he shall be bound by any judgment given in the action as if he was a party to the action.

(5) If at any time after service of such notice on any person the writ or originating summons is amended so as substantially to alter the relief claimed, the Court may direct that the judgment shall not bind such person unless a further notice together with a copy of the amended writ or originating summons is issued and served upon him under this rule.

(6) This rule applies to any action relating to-

- (a) the estate of a deceased person; or
- (b) property subject to a trust.

(7) Order 6 shall apply in relation to a notice of an action under this rule as if the notice were a writ and the person by whom the notice is issued were the plaintiff.

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

Representation
of
beneficiaries
by trustees,
etc.

(2) Subrule (1) is without prejudice to the power of the Court to order any person having such an interest as mentioned in subrule (1) to be made a party to the proceedings or to make an order under rule 15

Representation of deceased person interested in proceedings

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

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

Conduct of proceedings.

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

Appearance.

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

(2) The Court may direct or give leave to any other party to the cause or matter to appear, either in addition to or in place of the executor or administrator upon such terms as to costs or otherwise as it thinks fit.

ORDER 19

THIRD PARTY AND SIMILAR PROCEEDINGS

Third party notice

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

- (a) claims against a person not already a party to the action any contribution or indemnity;
- (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the action,

then, subject to subrule (2), the defendant may issue a notice in an appropriate form (in this Order referred to as a “third party notice”), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

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

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

Application for leave to issue third party notice

2. (1) Application for leave to issue a third party notice may be made *ex parte* but the Court may direct that notice be given to the plaintiff or other interested party .

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

- (a) the nature of the claim made by the plaintiff in the action;
- (b) the stage which proceedings in the action have reached;
- (c) the nature of the claim made by the applicant or particulars of the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and
- (d) the name and address of the person against whom the third party notice is to be issued.

Third party directions

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

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

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

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

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

(c) dismiss the application and terminate the proceedings on the third party notice, and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.

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

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

4. (1) If a third party does not enter appearance or, having been ordered to enter appearance, fails to do so - Default of third party, etc.

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

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

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

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

Setting aside
third party
proceedings.

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

Judgment
between
defendant and
third party.

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

(2) Where judgment is given for the payment of any contribution or indemnity to a person who is under a liability to make a payment in respect of the same debt or damage, execution shall not issue on the judgment without the leave of the Court until that liability has been discharged.

(3) For the purpose of subrule (2) "liability" includes liability under a judgment in the same or other proceedings.

Claims and
issues between
a defendant
and some
other party.

7. (1) Where in any action a defendant who has entered appearance -

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

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

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

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

(3) No entry of appearance to a notice served under this Order shall be necessary if the person on whom it is served has entered appearance in the action or is a plaintiff in the action.

(4) The same procedure shall be adopted for the determination between the defendant by whom and the person on whom such a notice is served, of the claim, question or issue stated in the notice as would be appropriate under the order if the person served with the notice-

- (a) were a third party and had entered appearance to the notice ;
- (b) is a plaintiff or any other person who has entered appearance in the action.

(5) Subrule (2) of rule 3 shall have effect in relation to proceedings on a notice issued under this rule as if for the words "7 days after entering appearance" there were substituted the words "14 days after service of the notice on him".

8. (1) Where a defendant has served a third party notice and the third party makes such a claim or requirement as is mentioned in rule 1 or 7, this Order shall, with the modification mentioned in subrule (2) and any other necessary modifications, apply as if the third party were a defendant; and similarly where any further person to whom by virtue of this rule this Order applies as if he were a third party makes such a claim or requirement.

Claims by
third party
and
subsequent
parties.

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

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

Offer of contribution

9. (1) If, at any time after he entered appearance, a party to an action, who stands to be held liable in the action to another party to contribute towards any debt or damages and which may be recovered against that other party in the action, makes (without prejudice to his defence) a written offer to that other party to contribute to a specified extent to the debt or damages, then, subject to subrule (2) and notwithstanding that he reserves the right to bring the offer to the attention of the Judge at the trial, the offer shall not be brought to the attention of the Judge until after all questions of liability and amount of debt or damages have been decided.

(2) Where the question of the costs of the issue of liability falls to be decided, that issue having been tried and an issue or question concerning the amount of the debt or damages remaining to be tried separately, any party may bring to the attention of the judge the fact that a written offer under subrule (1) has or has not been made and the date (but not the amount) of such offer or of the first such offer if more than one.

Counterclaim by defendant

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

ORDER 20

INTERPLEADER

Entitlement to relief by way of interpleader

1. (1) Where -

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

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

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

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

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

Claim to goods, etc., taken in execution

(2) On receipt of a claim made under this rule the sheriff shall forthwith give notice of the claim to the execution creditor and the execution creditor shall, within 7 days after receiving the notice, give notice to the sheriff informing him whether he admits or disputes the claim.

(3) An execution creditor who gives notice in accordance with this subrule (2) admitting a claim shall only be liable to the sheriff for any fees and expenses incurred by the sheriff before receipt of that notice.

(4) Where -

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

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

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

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

Mode of application

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

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

(3) An originating summons under this rule shall be in an appropriate Form.

(4) Subject to subrule (5), a summons under this rule shall be supported by affidavit that the applicant -

- (a) claims no interest in the subject-matter in dispute other than for charges or costs,
- (b) does not collude with any of the claimants to that subject-matter, and
- (c) is willing to pay or transfer that subject-matter into Court or to dispose of as the Court may direct.

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

(6) Any person who makes a claim under rule 2 and who is served with a summons under this rule shall, within 14 days serve on the execution creditor and the sheriff an affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.

(7) Where the applicant is a sheriff a summons under this rule shall give notice of the requirement in subrule (6).

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

- (a) that any claimant be made a defendant in any action pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this Order,
- (b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which defendant.

(2) Where -

- (a) the applicant on a summons under this Order is a sheriff;
- (b) all the claimants consent or any of them so requests; or
- (c) the question at issue between the claimants is a question of law and the facts are not in dispute,

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

(3) Where a claimant, having been duly served with a summons for relief under this Order, does not appear on the hearing of the summons or, having appeared, fails or refuses to comply with an

order made in the proceedings, the Court may make an order declaring the claimant, and all persons claiming under him, forever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

Power to order sale of goods taken in execution.

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

Power to stay proceedings.

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

Other powers.

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

One order in several causes or matters.

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

Discovery.

9. Orders 27 and 29 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other cause or matter.

Trial of interpleader issue.

10. (1) Order 41 shall, with the necessary modifications, apply to the trial of an interpleader issue as it applies to the trial of an action.

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

ORDER 21

PLEADINGS

1. Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff shall serve a statement of claim on the defendant or, if there are two or more defendants, on each defendant, and shall do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 10 days after the time limited for appearance. Service of statement of claim.

2. (1) Subject to subrule (2), a defendant who appears in an action shall, unless the Court gives leave to the contrary, serve a defence on every other party to the action who may be affected thereby before the expiration of 10 days after the time limited for appearance or after the statement of claim is served on him, whichever is the later; Service of defence.

(2) If a summons under rule 1 of Order 16 is served on a defendant before he serves his defence, subrule (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within 10 days after the making of the order or within such other period as may be specified therein.

(3) Where an application is made by a defendant under Order 12, subrule (1) of rule 16 shall not have effect in relation to the defendant unless the application is dismissed or no order is made on the application and, in that case, subrule (1) shall have effect as if it required him to serve his defence within 14 days after the final determination of the application or within such other period as may be specified by the Court.

(4) Subrule (1) is subject to the provisions of Order 18 and rule 14

3. (1) A plaintiff on whom a defendant serves a defence shall serve a reply on that defendant if it is needed for compliance with rule 8; and if no reply is served, subrule (1) of rule 14 shall apply. Service of reply and defence to counterclaim.

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

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

(4) A reply to any defence shall be served by the plaintiff before the expiration of 10 days after the service on him of that defence, and a defence to the counterclaim shall be served by the plaintiff before the expiration of 10 days after the service on him of the counterclaim to which it relates.

(5) If the plaintiff is resident in the Provinces, the time for delivery and filing of the reply shall be 21 days from the delivery of the statement of claim.

Set off and counterclaim.

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

(2) The Court may, on the application of the plaintiff before trial, if in the opinion of the Court such set-off or counterclaim cannot be conveniently disposed of in the pending action or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

Pleadings subsequent to reply.

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

Pleadings: formal requirements.

6. (1) Every pleading in an action shall bear on its face -
- (a) the year in which the writ in the action was issued and the letter and number of the action,
 - (b) the title of the action;
 - (c) the division of the High Court to which the action is assigned;
 - (d) the description of the pleading; and

(e) the date on which it was filed.

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

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

(4) Every pleading of a party shall be indorsed -

- (a) where the party sues or defends in person, with his name and address;
- (b) in any other case, with the name or firm and business address of the solicitor by whom it was filed.

(5) Every pleading of a party shall be signed by counsel, if settled by him, and, if not, by the party's solicitor or by the party, if he sues or defends in person.

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

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

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

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

Matters which shall be specifically pleaded.

8. (1) A party shall in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, the expiry of any relevant period of limitation, fraud or any fact showing illegality -

- (a) which he alleges makes any claim or defence of the opposite party not maintainable; or
- (b) which, if not specifically pleaded, might take the opposite party by surprise; or
- (c) which raises issues of fact not arising out of the preceeding pleading.

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

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

(4) A party shall plead specifically any claim for interest under any enactment or otherwise.

Matter may be pleaded whenever arising.

9. Subject to subrule (1) of rule 7, rule 10 and subrule (2) of rule 15 a party may, in any pleading, plead any matter which has arisen at any time, whether before or since the issue of the writ.

Departure.

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

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

Points of law may be pleaded.

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

Particulars of pleading.

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

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

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

(c) where a claim for damages is made against a party pleading, otherwise in relation to, the amount of damages.

(2) Subject to subrule (3), a plaintiff in an action for personal injuries shall serve with his statement of claim -

(a) a medical report, and

(b) a statement of the special damages claimed.

(3) Where the documents to which subrule (2) applies are not served with the statement of claim, the Court may -

(a) specify the period of time within which they are to be provided; or

(b) make such other order as it thinks fit (including an order dispensing with the requirements of subrule (2) or staying the proceedings).

(4) For the purposes of this rule, -

“medical report” means a report substantiating all the personal injuries alleged in the statement of claim which the plaintiff proposes to adduce in evidence as part of his case at the trial;

“a statement of the special damages claimed” means a statement giving full particulars of the special damages claimed for expenses and losses already incurred and an estimate of any future expenses and losses (including loss of earnings and of pension rights).

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

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

(7) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of subrule (6), the Court may, on such terms as it thinks just, order that party to serve on any other party -

- (a) where he alleges knowledge, particulars of the facts on which he relies, and
- (b) where he alleges notice, particulars of the notice.

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

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

(10) Where particulars are given pursuant to a request, or order of the Court, the request or order shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

13. (1) Any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it. Admissions and denials.

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

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

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

(2) Subject to subrule (3) -

- (a) there is at the close of pleadings an implied joinder of issue on the pleading last served, and
- (b) a party may in his pleading expressly join issue on the next preceding pleading.

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

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

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

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

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

Defence of tender

16. Where in any action a defence of tender before action is pleaded, the defendant shall pay into Court in accordance with Order 25 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into Court has been made.

Striking out pleadings and indorsements

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

- (a) it discloses no reasonable cause of action or defence, as the case may be;
- (b) it is scandalous, frivolous or vexatious;
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the Court,

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

(2) An application under this rule shall be deemed to invoke the inherent jurisdiction though not mentioned as well as that given by this rule.

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

18. (1) The pleadings in an action are deemed to be closed - Close of pleadings.
- (a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to a counterclaim, after service of the defence to a counterclaim; or
 - (b) if neither a reply nor a defence to a counterclaim is served, at the expiration of 14 days after service of the defence.

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

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

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

(3) Where the Court makes an order under subrule (2), it shall, and where it dismisses an application for such an order, it may, give such directions as to the further conduct of the action as may be appropriate, and rules 2 to 6 of Order 28 shall, with the omission of so much of subrule (1) of rule 6 as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application under this rule were a summons for directions.

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

- (a) a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment; or
- (b) a claim by the plaintiff based on an allegation of fraud.

Saving for defence under the Merchant Shipping Act, 2003.

20. Nothing in rules 2 and 38 to 42 of Order 56 shall be taken as limiting the right of any ship owner or other person to rely by way of defence on any provision of the Merchant Shipping Act, 2003, which limits the amount of his liability in connection with a ship or other property.

ORDER 22

DEFAULT OF PLEADINGS

Default of plaintiff in filing statement of claim.

1. If the plaintiff, being bound by these Rules or an order of the Court or a judge in chambers to file a statement of claim does not file it within the period fixed for that purpose, the defendant may, at the expiration of that time apply to the Court or a judge in chambers to dismiss the action with costs for want of prosecution, and on the hearing of the application the Court or judge in chambers may, if no statement of claim has been filed, order the action to be dismissed accordingly or may make such other order on such terms as the Court or judge in chambers thinks just.

Default of defence: claim for liquidated demand.

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

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

3. Where the plaintiff's claim against the defendant is for unliquidated damages only, then, if the defendant defaults in pleading, the plaintiff may, after the expiration of the period fixed for service of defence have judgment entered against the defendant for damages to be assessed by the Court, and for costs and may proceed with the action against the other defendants, if any.

Default of defence: claim for unliquidated damages.

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

Default of defence: claim for detention of goods.

(a) at his option enter either -

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

(b) apply by summons for judgment against that defendant for delivery of the goods without giving him the alternative of paying their assessed value, and in any case proceed with the action against the other defendants, if any.

(2) A summons under paragraph (b) of subrule (1) shall be supported by affidavit and, notwithstanding rule 7 of Order 58, the summons and a copy of the affidavit shall be served on the defendant against whom judgment is sought.

5. (1) In an action for recovery of land, if the defendant defaults as mentioned in rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs.

Recovery of land etc.

(2) Where the plaintiff has indorsed a claim for mesne profits, arrears of rent or double value in respect of premises claimed or any part of the premises, or for breach of contract or wrong or injury to the premises claimed upon a writ for the recovery of land, if the defendant defaults as mentioned in rule 2 or if there is more than one defendant, some or one of the defendants default, the plaintiff

may enter judgment against the defaulting defendant or defendants and proceed in accordance with this Order.

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

(4) This rule shall not apply where possession is claimed by virtue of a mortgage.

Default of
defence:
mixed claims.

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

Default of
defence: other
claims.

7. (1) Where the plaintiff makes against a defendant or defendants a claim of a description mentioned in rules 2 to 5 then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to in his statement of claim.

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

- (a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that subrule for judgment against that defendant and proceed with the action against the other defendants; or
- (b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial or is set down on motion for judgment against the other defendants.

(3) An application under subrule (1) must be by summons or motion.

8. (1) If the plaintiff's claim is for a debt or liquidated demand, the detention of goods and pecuniary damages or for any of such matters or for the recovery of land, and the defendant files a defence which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may, by leave of the Court enter judgment, final or interlocutory, as the case may be, for the part unanswered; but the unanswered part shall consist of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand.

Where a
defence is
delivered to
part of claim
only.

(2) Where there is a counterclaim, execution on such judgment in respect of the plaintiff's claim shall not issue without leave of the Court.

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

Default of
defence to
counterclaim .

10. (1) In any action in which the plaintiff claims any of the following reliefs:-

Actions on
mortgages.

- (a) payment of moneys secured by a mortgage;
- (b) sale of property subject to a mortgage;
- (c) delivery of possession of mortgaged property to the mortgagee or person entitled to the charge by the mortgagor or by any other person in or alleged to be in possession of the property;
- (d) redemption of property subject to a mortgage;
- (e) discharge of a mortgage; or

- (f) delivery of possession of a mortgaged property by a mortgagee,

judgment shall not be entered in default of pleadings except by leave of the Court.

(2) The Court may require the application for leave to be supported by evidence which entitles the applicant to relief and may direct that notice of the application shall be given to the defendant and to such other person as the Court may consider proper.

Setting aside of judgment.

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

ORDER 23

AMENDMENTS

Amendment of writ without leave.

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

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

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

- (a) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued;
- (b) the addition or substitution of a new cause of action; or
- (c) without prejudice to subrule (1) of rule 3, an amendment of the statement of claim, if any, indorsed on the writ, unless the amendment is made before service of the writ on any party to the action.

2. (1) Subject to subrule (2), a party may amend his memorandum or notice of appearance without the leave of the Court but such amendment shall not involve the addition of a new defendant. Amendment of appearance.

(2) Where a memorandum or notice of appearance is amended under this rule, the amended memorandum or notice shall be indorsed, filed and served in the same way as the original memorandum or notice.

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

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

- (a) the defendant, if he has already served a defence on the plaintiff, may amend his defence; and
- (b) the period for service of his defence or amended defence, as the case may be, shall be either the period fixed by or under these Rules for service of his defence or a period of 14 days after the amended statement of claim is served on him, whichever expires later.

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

- (a) the plaintiff, if he has already served a reply on that defendant, may amend his reply; and
- (b) the period for service of his reply or amended reply, as the case may be, shall be 14 days after the amended defence is served on him.

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

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

(6) Where a party has pleaded to a pleading which is subsequently amended and served on him under subrule (1), then, if that party does not amend his pleading under this rule, he shall be taken to rely on it in answer to the amended pleading, and subrule (2) of Order 21, shall have effect in such a case as if the amended pleading had been served at the time when that pleading, before its amendment under subrule (1) was served.

Application for disallowance of amendment made without leave.

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

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

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

Amendment of writ or pleading with leave .

5. (1) Subject to rules 6, 9 and 10 of Order 18 and this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

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

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

(4) An amendment to alter the capacity in which a party sues may be allowed under subrule (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or has since acquired.

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

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

Amendment of other originating process.

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

Amendment of certain other documents.

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

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

Failure to amend after order.

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

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

10. Clerical mistakes in judgments or orders, or errors arising in the judgments or orders from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without an appeal.

11. (1) Notwithstanding rules 1 to 10 any pleading in any cause or matter may, by written agreement between the parties, be amended at any stage of the proceedings.

(2) This rule shall not have effect in relation to an amendment to a counterclaim which consists of the addition, omission or substitution of a party.

ORDER 24

WITHDRAWAL AND DISCONTINUANCE

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

(2) Where the application is by a solicitor, he shall satisfy the Court that he has given due notice to all parties and his client.

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

(2) A defendant to an action begun writ may, without the leave of the Court-

- (a) withdraw his defence or any part of it at any time;
- (b) discontinue a counterclaim, or withdraw any particular claim made by him in the claim or counterclaim, as against any or all of the parties against whom it is made, at any time not later than 14 days after service on him of a defence to the counterclaim or, if the counterclaim is made against two or more parties, of the defence to the counterclaim last serving a notice to that effect on the plaintiff or other party concerned.

(3) Where there are two or more defendants to an action begun by writ not all of whom serve a defence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, subrule (1) shall have effect as if the reference in it to the service of the defence last served were a reference to the expiration of that period.

(4) Subrule (3) shall apply in relation to a counterclaim as it applies in relation to an action with the substitution for references to a defence, to the plaintiff and to subrule (1) of reference to a defence to counterclaim, to the defendant and to subrule (2) respectively.

(5) The plaintiff in an action begun by originating summons may, without the leave of the Court, discontinue the action or withdraw any particular question or claim in the originating summons, as against any or all of the defendants at any time not later than 14 days after service on him of the defendant's affidavit evidence or, if there are two or more defendants, of such evidence last served, by serving a notice to that effect on the defendant concerned.

(6) When there are two or more defendants to an action begun by originating summons not all of whom serve affidavit evidence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his affidavit evidence expires after the latest date on which any other defendant serves his affidavit evidence, subrule (5) shall have effect as if the reference in it to the service of the affidavit evidence last served were a reference to the expiration of that period.

(7) If all the parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by producing-

- (a) in a case where the action has been set down for trial, to the proper officer; and
- (b) in any other case, to an officer of the Master's Office or district registry, a written consent to the action being withdrawn by filing of a notice to that signed by all the parties.

Discontinuance of action etc. with leave.

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

(2) An application for the grant of leave under this rule may be made by summons or motion or by notice under rule 6 of Order 28.

Effect of discontinuance.

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

5. (1) Where a party has discontinued an action or counterclaim a withdrawn any particular claim made by him in the action or counterclaim and he is liable to pay any other party's costs of the action or counterclaim or the costs occasioned to any other party by the claim withdrawn, then if, before payment of those costs, he subsequently brings an action for the same, or substantially the same cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.

Stay of subsequent action until costs paid.

(2) An application for an order under this rule may be made by summons or motion or by notice under rule 6 of Order 28.

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

Withdrawal of summons or motion.

ORDER 25

PAYMENT INTO AND OUT OF COURT

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

Payment into court.

(2) On making any payment into Court under this rule, and on increasing the payment already made, the defendant shall give notice thereof in an appropriate form to the plaintiff and every other defendant (if any); and within three days after receiving the notice, the plaintiff shall send the defendant a written acknowledgment of its receipt.

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

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

- (a) shall state that the money is paid in respect of all those causes of action or, as the case

may be, shall specify the cause or causes of action in respect of which the payment is made; and

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

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

Payment in court by defendant who has counterclaimed.

2. Where a defendant who makes by counterclaim a claim against the plaintiff for a debt or damages, pays a sum or sums of money into Court under rule 1, the notice of payment shall state, if it be the case, that in making the payment the defendant has taken into account and intends to satisfy -

- (a) the cause of action in respect of which he claims; or
- (b) where two or more causes of action are joined in the counterclaim, all those causes of action or, if not all, which of them.

Acceptance of money paid into Court.

3. (1) Where money is paid into Court under rule 1, then subject to subrule (2), within 21 days after receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within 21 days after receipt of the notice of the last payment or the amended notice but, in any case, before the trial or hearing of the action begins, the plaintiff may -

- (a) where the money was paid in respect of the cause of action or all the causes of action in respect of which he claims, accept the money in satisfaction of that cause of action or those causes of action, as the case may be, or

- (b) where the money was paid in respect of some only of the causes of action in respect of which he claims, accept in satisfaction of the cause or causes of action the sum specified in respect of that cause or those causes of action in the notice of payment, by giving notice in an appropriate form to every defendant to the action.

(2) Where after the trial or hearing of an action has begun-

- (a) money is paid into Court under rule 1; or
- (b) money in Court is increased by a further payment into Court under that rule,

the plaintiff may accept the money in accordance with subrule (1) within two days after receipt of the notice of payment or notice of the further payment, as the case may be, but, in any case, before the Judge begins to deliver judgment or, if the trial is with a jury, before the Judge begins his summing up.

(3) Subrule (5) of rule 1 shall not apply in relation to money paid into Court in an action after the trial or hearing of the action has begun.

(4) On the plaintiff accepting any money paid into court all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates, both against the defendant making the payment and against any other defendant sued jointly with or in the alternative to him shall be stayed.

(5) Where money is paid into Court by a defendant who made a counterclaim and the notice of payment stated, in relation to any sum so paid, that in making the payment the defendant had taken into account and satisfied the cause or causes of action, or the specified cause or causes of action in respect of which he claimed, then, on the plaintiff accepting that sum, all further proceedings on the counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.

(6) A plaintiff who has accepted any sum paid into court shall, subject to rules 4 and 10 and Order 14, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptance relates.

Order for payment out of money accepted required in certain cases.

4. (1) Where a plaintiff accepts any sum paid into court and that sum was paid into court -

- (a) by some but not all of the defendants sued jointly or in the alternative by him;
- (b) with a defence of tender before action;
- (c) in an action to which Order 14 applies; or
- (d) in satisfaction either of causes of action arising under any enactment or of a cause of action arising under such enactment where more than one person is entitled to the money,

the money in court shall not be paid out except under subrule (2) or in pursuance of an order of the Court, and the order shall deal with the whole costs of the action or of the cause of action to which the payment relates, as the case may be.

(2) Where an order of the Court is required under subrule (1) by reason of paragraph (a) of subrule (1) then if, either before or after accepting the money paid into Court by some only of the defendants sued jointly or in the alternative by him, the plaintiff discontinues the action against all the other defendants and those defendants consent in writing to the payment out of that sum, it may be paid out without an order of the Court.

(3) Where after the trial or hearing of an action has begun a plaintiff accepts any money paid into court and all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates are stayed by virtue of subrule (4) of rule 3 then, notwithstanding anything in subrule (2) the money shall not be paid out except in pursuance of an order of the Court, and the order shall deal with the whole costs of the action.

5. If any money paid into court in an action is not accepted in accordance with rule 3, the money remaining in court shall not be paid out except in pursuance of an order of the Court which may be made at any time before, at or after the trial or hearing of the action; and where such an order is made before the trial or hearing the money shall not be paid out except in satisfaction of the cause or causes of action in respect of which it was paid in.

Money remaining in court.

6. A plaintiff against whom a counterclaim is made and any other defendant to the counterclaim may pay money into court in accordance with rule 1, and that rule and rules 3, (except subrule (5), rule 4 and 5 shall apply accordingly with the necessary modifications.

Counterclaim.

7. (1) Except in an action to which a defence of tender before action is pleaded, and except in an action all further proceedings in which are stayed by virtue of subrule (4) of rule 3 after the trial or hearing has begun, and subject to subrule (2), the fact that money has been paid into court under this Order shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or counterclaim or of any question or issue as to the debt or damages until all questions of liability and of the amount of the debt or damages have been decided.

Non-disclosure of payment into court.

(2) Where the question of the costs of the issue of liability falls to be decided, that issue having been tried and an issue or question concerning the amount of the debt or damages remaining to be tried separately, any party may bring to the attention of the Court the fact that a payment into court has or has not been made and the date (but not the amount) of the payment or of the first payment if more than one.

(3) For the purposes of this rule, the Master shall keep a record book.

8. (1) On making any payment into court under an order of the Court or a certificate of the Master, a party shall give notice thereof to every other party to the proceedings.

Money paid into court under order.

(2) Subject to subrule (3), money paid into court under an order of the Court or a certificate of the Master shall not be paid out except in pursuance of an order of the Court.

(3) Unless the Court otherwise orders, a party who has paid money into court in pursuance of an order made under Order 6-

- (a) may by notice to the other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made in the writ or counterclaim, as the case may be, and specified in the notice; or
- (b) if he pleads a tender, may by his pleading appropriate the whole or any part of the money as payment into court of the money alleged to have been tendered, and money appropriated in accordance with this rule shall be deemed to be money paid into court in accordance with rule 1 or money paid into court with a plea of tender, as the case may be, and this Order shall apply accordingly.

(4) If the Court so orders, subrule (3) shall apply, with the necessary modifications, where a party has paid money to another person to abide the outcome of the action.

Payment out of money paid into Court under the Exchange Control Act. Cap 265.

9. If it appears to the Court that payment out of any money paid into court will contravene any provision of the Exchange Control Act, the Court may order that the payment out be not effected until there has been due compliance with the provision of that Act.

Person to be paid.

10. (1) Payment shall be made to the party entitled or on the written authority of the party to his solicitor.

(2) This rule applies whether the money in court has been paid into court under rule 1 or under an order of the Court.

Payment out of small intestate estates.

11. Where the estate of a deceased person who has died intestate is entitled to a fund or to a share of a fund in court not exceeding Le1,000,000 and it is proved to the satisfaction of the Court that-

- (a) no administration has been taken out to the deceased person; and
- (b) his assets do not exceed the value of Le1,000,000, including the amount of the fund or share to which the estate of the deceased person is entitled,

the Court may direct that the fund or share of the fund shall be paid, delivered or transferred to the person who, being a widow, widower, child, father, mother, brother or sister of the deceased, would be entitled to take out administration of the estate of the deceased person.

12. (1) A party to proceedings may at any time make a written offer to any other party to those proceedings which is expressed to be 'without prejudice save as to costs' and which relates to any issue in the proceedings.

Written offers "without prejudice save as to costs".

(2) Where an offer is made under subrule (1), the fact that such an offer has been made shall not be communicated to the Court until the question of costs falls to be decided.

ORDER 26

SECURITY FOR COSTS

1. (1) Where, on the application of a defendant to an action or other proceeding in the Court, it appears to the Court -

Security for costs etc.

- (a) that the plaintiff is ordinarily resident out of the jurisdiction;
- (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so;

- (c) subject to subrule (2), that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated in it, or
- (d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just.

(2) The Court shall not require a plaintiff to give security by reason only of paragraph (c) of subrule (1) if he satisfies the Court that the failure to state his address or the mis-statement was made innocently and without intention to deceive.

(3) The references in the subrules (1) and (2) to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counterclaim.

Manner of giving security.

2. Where an order is made requiring any party to give security for costs, the security shall be given in such manner, at such time, and on such terms (if any) as the Court may direct.

Saving for enactments.

3. This order is without prejudice to the provisions of any enactment which empowers the Court to require security to be given for the costs of any proceedings.

ORDER 27

DISCOVERY AND INSPECTION OF DOCUMENTS

Mutual discovery of documents.

1. (1) After the close of pleadings in an action begun by writ, there shall, subject to and in accordance with this Order, be discovery by the parties to the action of the documents which are or have been in their possession, custody or power relating to matters in question in the action.

(2) Nothing in this Order shall be taken as preventing the parties to an action agreeing to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

2. (1) Subject to subrule (2) and rule 4, the parties to an action between whom pleadings are closed shall make discovery by exchanging lists of documents and, accordingly, each party shall, within 14 days after the pleadings in the action are deemed to be closed as between him and any other party, make and serve on that other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the action. Discovery by parties without order.

(2) Without prejudice to any directions given by the Court under rule 3 of Order 19, subrule (1) shall not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

(3) Unless the Court otherwise orders, a defendant to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle shall not make discovery of any documents to the plaintiff under subrule (1).

(4) Subrule (1) shall not be taken as requiring a defendant to an action for the recovery of any penalty recoverable by virtue of any enactment to make discovery of any documents.

(5) Subrules (3) and (4) shall apply in relation to a counterclaim as they apply in relation to an action but with the substitution, for the reference in subrule (3) to the plaintiff, of a reference to the party making the counterclaim.

(6) On the application of any party required by this rule to make discovery of documents, the Court may -

- (a) order that the parties to the action or any of them shall make discovery under subrule (1) of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order, or

- (b) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at that stage of the action, order that there shall be no discovery of documents by any or all of the parties either at all or at that stage; and the Court shall make such an order if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the action or for saving costs.

(7) An application for an order under subrule (6) shall be by summons, and the summons shall be taken out before the expiration of the period within which by virtue of this rule discovery of documents in the action is required to be made.

(8) Any party to whom discovery of documents is required to be made under this rule may, at any time before the summons for directions in the action is taken out, serve on the party required to make such discovery a notice requiring him to make an affidavit verifying the list he is required to make under subrule (1) and the party on whom such a notice is served shall, within 14 days after service of the notice, make and file an affidavit in compliance with the notice and serve a copy of the affidavit on the party by whom the notice was served.

Order for
discovery.

3. (1) Subject to this rule and to rules 4 and 8, the Court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.

(2) Where a party who is required by rule 2 to make discovery of documents fails to comply with any provision of that rule, the Court, on the application of any party to whom the discovery was required to be made, may make an order against the first-mentioned party under subrule (1) or, as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under rule 2, and to serve a copy thereof on the applicant.

(3) An order under this rule may be limited to such documents or classes of document only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

4. (1) Where on an application for an order under rule 2 or 3, it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

Order for
determination
of issue, etc.
before
discovery.

(2) Where in an action begun by writ an order is made under this rule for the determination of an issue or question, rules 2 to 6 of Order 28 shall, with the omission of so much of subrule (1) of rule 6 as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application on which the order was made were a summons for directions.

5. (1) A list of documents made in compliance with rule 2 or with an order under rule 3 shall be in an appropriate Form and shall enumerate the documents in a convenient order and as shortly as possible by describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

Form of list
and affidavit.

(2) If it is desired to claim that any documents are privileged from production, the claim shall be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made verifying a list of documents shall be in an appropriate Form.

6. (1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any rule on the party making the counterclaim by any other defendant to the counterclaim.

Defendant
entitled to
copy of co-
defendant's
list.

(2) A party required by virtue of subrule (1) to supply a copy of a list of documents shall supply it free of charge on a request made by the party entitled to it.

(3) Where in an action begun by originating summons the Court makes an order under rule 3 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.

(4) In this rule “list of documents” includes an affidavit verifying a list of documents.

Order for discovery of particular documents.

7. (1) Subject to rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it.

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

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

Discovery to be ordered only if necessary.

8. On the hearing of an application for an order under rule 3 or 7, the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall, in any case refuse to make such an order if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

9. A party who has served a list of documents on any other party, whether in compliance with rule 2 or 6 or with an order under rule 3, shall allow the other party to inspect the documents referred to in the list (other than any document which he objects to produce) and to take copies thereof and, accordingly, he shall, when he serves the list on the other party also serve on him a notice stating a time within 7 days after the service at which the documents may be inspected at a place specified in the notice.

Inspection of documents referred to in list.

10. (1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings, affidavits or witness statements reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies of this document.

Inspection of documents referred to in pleadings, affidavits and witness statements.

(2) The party on whom a notice is served under subrule (1) shall, within 4 days after service of the notice, serve on the party giving the notice a notice, stating a time within 7 days after the service at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he objects to produce and on what grounds.

11. (1) If a party who is required by rule 9 to serve a notice or who is served with a notice under subrule (1) of rule 10 –

Order for production for inspection.

- (a) fails to serve a notice under rule 9 or subrule (2) of rule 10 as the case may be;
- (b) objects to produce any document for inspection, or
- (c) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there,

then, subject to subrule (1) of rule 14, the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

(2) Without prejudice to subrule (1) but subject to subrule (1) of rule 14 the Court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.

(3) An application for an order under subrule (2) shall be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the cause or matter.

Provision of copies of documents.

12. (1) Any party who is entitled to inspect any documents under this Order or any order made under it, may, at or before the time when inspection takes place serve on the party who is required to produce such documents for inspection a notice (which shall contain an undertaking to pay the reasonable charges) requiring him to supply a true copy of such document as is capable of being copied by photographic or similar process.

(2) The party on whom such a notice is served shall, within 7 days after receipt of the notice supply the copy requested together with an account of the reasonable charges.

(3) Where a party fails to supply to another party a copy of any document under subrule (2), the Court may, on the application of either party, make such order as to the supply of that document as it thinks fit.

Order for production to court.

13. At any stage of the proceedings in any cause or matter the Court may, subject to subrule (1) of rule 14, order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit.

Production to be ordered only if necessary, etc.

14. (1) No order for the production of any documents for inspection or to the Court, or for the supply of a copy of any document, shall be made under rules 1 to 13 unless the Court is of the opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where, on an application under this Order for production of any document for inspection or to the Court, or for the supply of a copy of any document, privilege from such production or supply is claimed or objection is made to such production or supply on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

15. (1) Where production of any business books for inspection is applied for under rules 1 to 14, the Court may, instead of ordering production of the original books for inspection, order a copy of any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books. Production of business books.

(2) An affidavit referred to in subrule (1) shall state whether or not there are in the original books any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

16. Any undertaking, whether express or implied, not to use a document for any purposes other than those of the proceedings in which it is disclosed shall cease to apply to such document after it has been read to or by the Court, or referred to, in open court, unless the Court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs. Use of documents.

17. Rules 1 to 15 shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest. Document disclosure of which would be injurious to public interest.

18. (1) If any party who is required by rules 1 to 15 or by any order made under any of those rules to make discovery of documents or to produce any document for the purpose of inspection or any other purpose or to supply copies thereof fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with such provision, to subrule (2) of rule 3 and subrule (1) of rule 11, the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly. Failure to comply with requirement for discovery etc.

(2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to subrule (1), he shall be liable to committal.

(3) Service on a party's solicitor of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom such an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

Revocation and variation of orders.

19. Any order made under this Order (including an order made on appeal) may, on an application made not later than one month after the date of the order on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made upon such terms as the Court may think fit.

ORDER 28

SUMMONS FOR DIRECTIONS

Summons for directions.

1. (1) With a view to providing, in every action to which this rule applies, an occasion for the consideration by the Court of the preparations for the trial of the action, so that-

- (a) all matters which shall or can be dealt with on interlocutory applications and have not already been dealt with may, so far as possible, be dealt with; and
- (b) such directions may be given as to the future course of the action as appear best adapted to secure the just, expeditious and economical disposal thereof,

the plaintiff shall, within one month after the pleadings in the action are deemed to be closed, take out a summons (in these rules referred to as a summons for directions) returnable in not less than 14 days.

(2) Subrule (1) applies to all actions begun by writ except

- (a) actions in which the plaintiff or defendant has applied for summary judgment under Order 16, and directions have been given under the relevant rule;
- (b) actions in which an order has been made under rule 4 of Order 27 for the trial of an issue or question before discovery.

(3) Where, in the case of any action in which discovery of documents is required to be made by any party under rule 2 of Order 27, the period of 14 days referred to in subrule (1) of that rule is extended, whether by consent or by order of the Court or both by consent and by order, subrule (1) shall have effect in relation to that action as if for the reference therein to one month after the pleadings in the action are deemed to be closed there were substituted a reference to 14 days after the expiration of the period referred to in subrule (1) of rule 2 of Order 27.

(4) If the plaintiff does not take out a summons for directions in accordance with subrules (1) to (3), the defendant or any defendant may do so or apply for an order to dismiss the action.

(5) On an application by a defendant to dismiss the action under subrule (4), the Court may either dismiss the action on such terms as may be just or deal with the application as if it were a summons for directions.

(6) In the case of an action which is proceeding only as respects a counterclaim, references in this rule to the plaintiff and defendant shall be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.

(7) Notwithstanding anything in subrule (1), any party to an action to which this rule applies may take out a summons for directions at any time after the defendant has entered appearance or, if there are two or more defendants, at least one of them has entered appearance.

(8) A plaintiff whose action has been dismissed under subrule (5) may apply not later than one month after the date of the order by notice on motion that the order be set aside and the action be restored; and the Court may, for good and sufficient cause order that the action be restored upon such terms as it may think fit.

Duty to consider all matters.

2. (1) When the summons for directions first comes to be heard, the Court shall consider whether-

- (a) it is possible to deal then with all the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons for directions, or
- (b) it is expedient to adjourn the consideration of all or any of those matters until a later stage.

(2) If, when the summons for directions first comes to be heard the Court considers that it is possible to deal then with all the matters mentioned in subrule (1), it shall deal with them forthwith and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are also then dealt with.

(3) If, when the summons for directions first comes to be heard, the Court considers that it is expedient to adjourn the consideration of all or any of the matters which, by this Order, are required to be considered on the hearing of the summons, the Court shall deal forthwith with such of those matters as it considers can conveniently be dealt with forthwith and adjourn the consideration of the remaining matters; and the Court shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are dealt with either then or at a resumed hearing of the summons for directions.

(4) On the hearing of the summons for directions the Court shall give directions on all matters which by this Order are required to be considered on the hearing of a summons for directions including whether the bundle to be provided under rule 9 of Order 40 is to include the documents mentioned in paragraph (c) of subrule (2) of

rule 9 of Order 40 and the summons shall be adjourned to a date after the deadline fixed for compliance with that order; and no date shall be fixed for the trial of the action until there has been total compliance with the order made by the Court at such hearing.

(5) If either party fails to comply with the order as required by subrule (4), the Court may make such order as it thinks just including, in particular an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(6) A party against whom an order has been made under subrule (5) may apply not later than one month after the date of the order, by notice of motion that the order be set aside and the action or defence be restored, and the Court may, for good and sufficient cause order that the action or defence be restored, upon such terms as it thinks fit.

(7) If, on the summons for directions, the action or any question or issue therein is ordered to be tried before another Court, subrule (4) shall not apply and the Court may, without giving any further directions, adjourn the summons so that it can be heard by the other Court.

(8) If the hearing of the summons for directions is adjourned without a day being fixed for the resumed hearing thereof, any party may restore it to the list on two days' notice to the other party or parties.

3. At the hearing of a summons for directions, the Court shall endeavour to secure that the parties make all admissions and agreements as to the conduct of the proceedings which ought reasonably to be made by them and may cause the order on the summons to record any admissions or agreements so made, and (with a view to such special order, if any, as to costs as may be just being made at the trial) any refusal to make any admission or agreement.

Admissions and agreements to be made.

4. Nothing in rule 3 shall be construed as requiring the Court to endeavour to secure that the parties shall agree to exclude or limit any right of appeal, but the order made on the summons for directions may record such agreement.

Limitation of right of appeal.

Duty to give all information at hearing.

5. (1) Subject to subrule (3), no affidavit shall be used on the hearing of the summons for directions except by the leave or direction of the Court, but, subject to subrule (5) it shall be the duty of the parties to the action and their advisers to give all such information and produce all such documents on any hearing of the summons as the Court may reasonably require for the purpose of enabling it properly to deal with the summons.

(2) The Court may, if it appears proper to do so in the circumstances, authorise the information or documents referred to in subrule (1) to be given or produced to the Court without being disclosed to the other party or parties but, in the absence of such authority, any information or document given or produced under this subrule shall be given or produced to all the parties present or represented on the hearing of the summons as well as to the Court.

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

(4) If the Court on any hearing of the summons for directions requires a party to the action or his solicitor to give any information or produce any document and that information or document is not given or produced, then, subject to subrule (5) the Court may-

- (a) cause the facts to be recorded in the order with a view to such special order, if any, as to costs as may be just being made at the trial, or
- (b) if it appears to it to be just to do so, order the whole or any part of the pleadings of the party concerned to be struck out, or, if the party is plaintiff or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.

(5) Notwithstanding anything in this rule, no information or documents which are privileged from disclosure shall be required to be given or produced under this rule by or by the advisers of any party otherwise than with the consent of that party.

6. (1) Any party to whom the summons for directions is addressed shall so far as practicable apply at the hearing of the summons for any order or directions which he may desire as to any matter capable of being dealt with on an interlocutory application in the action and shall, not less than 7 days before the hearing of the summons, serve on the other party or parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons.

(2) If the hearing of the summons for directions is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or directions not asked for by the summons or in any notice given under subrule (1), he shall, not less than 7 days before the resumed hearing of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons or in such notice.

(3) Any application subsequent to the summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action shall be made under the summons by two clear days' notice to the other party stating the grounds of the application.

ORDER 29

INTERROGATORIES

1. (1) A party to any cause or matter may, in accordance with this Order, serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter which are necessary either-

- (a) for disposing fairly of the cause or matter; or
- (b) for saving costs.

(2) Without prejudice to subrule (1), a party may apply to the Court for an order giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter.

Duty to make all interlocutory applications on summons for directions.

Discovery by interrogatories.

(3) A proposed interrogatory which does not relate to such a matter as is mentioned in subrule (1) may not be administered notwithstanding that it might be admissible in oral cross examination of a witness.

(4) In this Order-
“interrogatories without order” means interrogatories served under subrule (1);

“ordered interrogatories” means interrogatories served under subrule (2) or interrogatories which are required to be answered pursuant to an order made on an application under subrule (2) of rule 3 and, where such an order is made, the interrogatories shall not, unless the Court orders otherwise, be treated as interrogatories without order for the purposes of subrule (1).

(5) Unless the context otherwise requires, this Order shall apply to both interrogatories without order and ordered interrogatories.

Form and
nature of
interrogatories.

2. (1) Where interrogatories are served, a note at the end of the interrogatories shall specify-

- (a) a period of time (not being less than 28 days from the date of service) within which the interrogatories are to be answered;
- (b) where the party to be interrogated is a body corporate or unincorporate which is empowered by law to sue or be sued whether in its own name or in the name of an officer or other person, the officer or member on whom the interrogatories are to be served; and
- (c) where the interrogatories are to be served on two or more parties or are required to be answered by an agent or servant of a party, which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.

(2) Subject to subrule (1) of rule 5, a party on whom interrogatories are served shall, unless the Court orders otherwise on an application under subrule (2) of rule 3 be required to give within the period specified under paragraph (a) of subrule (1) of rule 2 answers, which shall (unless the Court directs otherwise) be on affidavit.

3. (1) Interrogatories without order may be served on a party not more than twice. Interrogatories without order.

(2) A party on whom interrogatories without order are served may, within 14 days of the service of the interrogatories, apply to the Court for the interrogatories to be varied or withdrawn and, on such application, the Court may make such order as it thinks fit (including an order that the party who served the interrogatories shall not serve further interrogatories without order).

(3) Interrogatories without order shall not be served on the State.

4. (1) Where an application is made for leave to serve interrogatories, a copy of the proposed interrogatories shall be served with the summons or the notice under rule 6 of Order 28, by which the application is made. Ordered interrogatories.

(2) In deciding whether to give leave to serve interrogatories, the Court shall take into account any offer made by the party to be interrogated to give particulars, make admissions or produce documents relating to any matter in question and whether or not interrogatories without order have been administered.

5. (1) Without prejudice to subrule (2) of rule 3, where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his answer. Objections and insufficient answers.

(2) Where any person on whom ordered interrogatories have been served answers any of them insufficiently, the court may make an order requiring him to make a further answer, either by affidavit or on oral examination as the Court may direct.

(3) Where any person on whom interrogatories without order have been served answers any of them insufficiently, the party

serving the interrogatories may ask for further and better particulars of the answer given and such request shall not be treated as service of further interrogatories for the purposes of subrule (1) of rule 3.

Failure to
comply with
order.

6. (1) If a party fails to answer interrogatories or to comply with an order made under subrule (2) of rule 5 or a request made under subrule (3) of rule 5, the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) Without prejudice to subrule (1), where a party fails to answer ordered interrogatories or to comply with an order made under subrule (2) of rule 5, he shall be liable to committal.

(3) Service on a party's solicitor of an order to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

(5) A party against whom an order has been made under subrule (1) may apply not later than one month after the date of the order, by notice of motion that the order be set aside and the action or defence be restored; and the Court may, for good and sufficient cause order that the action or defence be restored, upon such terms as it thinks fit.

Use of
answers to
interrogatories
at trial.

7. A party may put in evidence at the trial of a cause or matter, or of any issue in it, some only of the answers to interrogatories, or part only of such an answer, without putting in evidence the other answers or, as the case may be, the Court may look at the whole of the answers and if it is of opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one ought not to be so used without the other, the Court may direct that that other answer or part shall be put in evidence.

8. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

Revocation
and variation
of orders.

ORDER 30

EVIDENCE

1. (1) The powers of the Court under this rule shall be exercised for the purpose of disposing fairly and expeditiously of the cause or matter before it, and saving costs, having regard to all the circumstances of the case, including-

Exchange of
witness
statements.

- (a) the extent to which the facts are in dispute or have been admitted;
- (b) the extent to which the issues of fact are defined by the pleadings;
- (c) the extent to which information has been or is likely to be provided by further and better particulars, answers to interrogatories or otherwise.

(2) At the summons for directions in an action commenced by writ, the Court shall direct every party to serve on the other parties, within 14 weeks (or such other period as the Court may specify) of the hearing of the summons and on such terms as the Court may specify, written statements of the oral evidence which the party intends to adduce on any issues of fact to be decided at the trial.

(3) The Court may give a direction to any party under subrule (2) at any other stage of such an action and at any stage of any other cause or matter.

(4) The power of the Court to extend the period within which a person is required or authorised by these rules to do any act in any proceedings shall not apply to any period specified by the court under this rule except in exceptional circumstance as the Court may consider just and subject to such terms as it may think fit.

(5) Directions given under subrule (2) or rule 2 may make different provisions with regard to different issues of fact or different witnesses.

(6) Statements served under this rule shall-

- (a) be dated and, except for good reason (which shall be specified by a letter accompanying the statement), be signed by the intended witness and shall include a statement by him that the contents are true to the best of his knowledge and belief,
- (b) sufficiently identify any documents referred to in it; and
- (c) where they are to be served by more than one party, be exchanged simultaneously.

(7) Where a party is unable to obtain a written statement from an intended witness in accordance with paragraph (a) of subrule (6), the Court may direct the party wishing to adduce that witness's evidence to provide the other party with the name of the witness and (unless the Court otherwise orders) a statement of the nature of the evidence intended to be adduced.

(8) Where the party serving a statement under this rule does not call the witness to whose evidence it relates, no other party may put the statement in evidence at the trial.

(9) Where the party serving the statement does call such a witness at the trial-

- (a) the Court may, on such terms as it thinks fit, direct that the statement served, or part of it, shall stand as the evidence-in-chief of the witness or part of such evidence;
- (b) the party may not, without the consent of the other party or parties or the leave of the Court adduce evidence from that witness the substance of which is not included in the statement served, except -

(i) where the Court's directions under subrule (3) or rule 2 specify that statements should be exchanged in relation to only some issues of fact, in relation to any other issues;

(ii) in relation to new matters which have arisen since the statement was served on the other party;

(c) whether or not the statement or any part of it is referred to during the evidence-in-chief of the witness, any party may put the statement or any part of it in cross examination of that witness.

(10) Nothing in this rule shall make admissible evidence which is otherwise inadmissible.

(11) Where a party fails to comply with a direction for the exchange of witness statements, he shall not be entitled to adduce evidence to which the direction relates without the leave of the Court.

(12) Where a party serves a witness statement under this rule, no other person may make use of that statement for any purpose other than the purpose of the proceedings in which it was served-

(a) unless and to the extent that the party serving it gives his consent in writing or the Court gives leave; or

(b) unless and to the extent that it has been put in evidence (whether pursuant to a direction under paragraph (a) of subrule (9) or otherwise).

(13) Subject to subrule (14), the judge shall, if any person so requests during the course of the trial, direct the Master to certify as open to inspection any witness statement which was ordered to stand as evidence-in-chief under paragraph (a) of subrule (9).

(14) A request under subrule (13) may be made orally or in writing.

(15) The judge may refuse to give a direction under subrule (13) in relation to a witness statement, or may exclude from such a direction any words or passages in a statement, if he considers that inspection should not be available –

- (a) in the interests of justice or national security,
- (b) because of the nature of any expert medical evidence in the statement; or
- (c) for any other sufficient reason.

(16) Where the Master is directed under subrule (13) to certify a witness statement as open to inspection, he shall-

- (a) prepare a certificate which shall be attached to a copy (“the certified copy”) of that witness statement; and
- (b) make the certified copy available for inspection.

(17) Subject to any conditions which the Court may by special or general direction impose, any person may inspect and (subject to payment of the prescribed fee) take a copy of the certified copy of a witness statement from the time when the certificate is given until the end of 7 days after the conclusion of the trial.

(18) In this rule-

- (a) any reference in subrules (13) to (17) to a witness statement shall, in relation to a witness statement of which only part has been ordered to stand as evidence- in-chief under paragraph (a) of subrule (9), be construed as a reference to that part;

- (b) any reference to inspecting or copying the certified copy of a witness statement shall be construed as including a reference to inspecting or copying a copy of that certified copy.

2. The court may vary or override any of the provisions of rule 1 (except subrules (1), (10) and (13) to (17)) and may give such alternative directions as it thinks fit. Court to override provisions.

3. Any evidence taken at the trial of any cause or matter may be used in any subsequent proceedings in that cause or matter. Evidence at trial may be used in subsequent proceedings.

ORDER 31

AFFIDAVITS

1. (1) Subject to subrules (2) and (3), every affidavit sworn in a cause or matter shall be entitled in that cause or matter. Form of affidavit.

(2) Where a cause or matter is entitled in more than one matter, it shall be sufficient to state the first matter followed by the words “and other matters,” and where a cause or matter is entitled in a matter or matters and between parties, that part of the title which consists of the matter or matters may be omitted.

(3) Where there are more plaintiffs than one, it shall be sufficient to state the full name of the first followed by the words “and others,” and similarly with respect to defendants.

(4) Every affidavit shall be expressed in the first person and, unless the Court otherwise directs shall state the place of residence of the deponent and his occupation or, if he has none, his description, and if he is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit shall state that fact.

(5) In the case of a deponent who is giving evidence in a professional, business or other occupational capacity the affidavit may, instead of stating the deponent's place of residence, state the address at which he works, the position he holds and the name of his firm or employer, if any.

(6) Every affidavit shall be bound in book form, and, whether or not both sides of the paper are used, the printed, written or typed sides of the paper shall be numbered consecutively.

(7) Every affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(8) Dates, sums and other numbers shall be expressed in an affidavit in figures and not in words.

(9) Every affidavit shall be signed by the deponent and the jurat shall be completed and signed by the person before whom it is sworn.

Affidavit by two or more deponents.

2. Where an affidavit is made by two or more deponents, the names of the persons making the affidavit shall be inserted in the jurat except that, if the affidavit is sworn by both or all the deponents at one time before the same person, it shall be sufficient to state that it was sworn by both (or all) of the "above named" deponents.

Affidavit by illiterate or blind person.

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

- (a) the affidavit was read in his presence to the deponent;
- (b) the deponent seemed perfectly to understand it; and
- (c) the deponent made his signature or mark in his presence,

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

4. The Court may receive an affidavit sworn for the purpose of being used in the cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat or any other irregularity in its form; and may direct a memorandum to be made on the document that it has been so used.

Use of defective affidavit.

5. (1) An affidavit shall contain only facts that the deponent can prove, unless any provision of these Rules provides that it may contain a statement of information or belief or both.

Contents of affidavit.

(2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain a statement of information or belief or both with the source of the information and the grounds of the belief.

6. The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.

Scandalous, etc., matters in affidavit.

7. (1) An affidavit which has in the jurat or body any interlineation, erasure or other alteration shall not be filed or used in any proceeding without the leave of the Court unless the person before whom the affidavit was sworn has initialled the alteration and in the case of an erasure, has re-written in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.

Alterations in affidavits.

(2) Where an affidavit is sworn at the Court, the official stamp of that Court may be substituted for the signature or initials required by this rule.

8. No affidavit shall be acceptable if sworn before the solicitor of the party on whose behalf the affidavit is to be used or before any agent, partner or clerk of that solicitor.

Affidavit not to be sworn before solicitor.

9. (1) Every affidavit used in any proceedings shall be filed in the registry of the Court in which the proceedings are brought.

Filing of affidavit.

(2) Every affidavit shall be indorsed with a note showing on whose behalf it is filed and the date of the filing and an affidavit which is not so indorsed may not be filed or used without leave of the Court.

Use of original affidavit or office copy.

10. (1) An original affidavit may be used in any proceedings if it bears an appropriate stamp.

(2) Where an original affidavit is used then, unless the party whose affidavit it is undertakes to file it, he shall immediately after it is used leave it with the Master in court or in chambers, as the case may be, and the Master shall send it to the registry to be filed.

(3) Where an affidavit has been filed, an office copy of it may be used in any proceedings.

Document to be used in conjunction with affidavit to be exhibited to it.

11. (1) Any document to be used in conjunction with an affidavit shall be exhibited, and not annexed, to the affidavit.

(2) Any exhibit to an affidavit shall be identified by a certificate of the person before whom the affidavit is sworn.

(3) The certificate shall be entitled in the same manner as the affidavit and subrules (1), (2) and (3) of rule 1 shall apply accordingly.

Affidavit taken in other countries.

12. A document purporting to have fixed, impressed or subscribed on it the seal or signature of a court, judge, notary public or person with authority to administer oaths in any country outside Sierra Leone in testimony of an affidavit taken before that court, judge, notary public or person shall be admitted in evidence without proof of the seal or signature of that court, judge, notary public or person.

ORDER 32

EVIDENCE BY DEPOSITION: EXAMINERS OF THE COURT

1. (1) The Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order in an appropriate form for the examination on oath before a Judge, an officer or examiner of the Court or some other person at any place.

Power to order depositions to be taken.

(2) An order under subrule (1) may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court thinks fit and may contain an order for the production of any document which appears to the Court to be necessary for the purposes of the examination.

2. Where the person in relation to whom an order under rule 1 is required is out of the jurisdiction, an application may be made for an order in an appropriate Form under that rule for the issue of a letter of request to the judicial authorities of the country in which that person is to take, or cause to be taken, the evidence of that person.

Where person to be examined is out of the jurisdiction.

3. (1) Where an order is made under rule 1 for the issue of a letter of request to the judicial authorities of a country to take, or cause to be taken, the evidence of any person in that country the following provisions shall apply.

Order for issue of letter of request.

(2) The party obtaining the order shall prepare the letter of request and lodge it in the Master's Office, and the letter shall be in an appropriate Form with such variations as the order may require.

(3) If the evidence of the person to be examined is to be obtained by means of written questions, there shall be lodged with the letter of request a copy of the interrogatories and cross-interrogatories to be put to him on examination.

(4) Each document lodged under subrule (2) or (3) shall be accompanied by a translation of the document in the official language of the country in which the examination is to be taken or, if there is more than one official language of that country, in any one of

those languages which is appropriate to the place in that country where the examination is to be taken unless the official language or one of the official languages of that country is English.

(5) Every translation lodged under subrule (4) shall be certified by the person making it to be a correct translation; and the certificate shall contain a statement of that person's full name, address and qualifications for making the translation.

(6) The party obtaining the order shall, when he lodges the documents mentioned in subrules (2) to (5) at the Master's office, also file in that office an undertaking signed by him or his solicitor to be responsible personally for all expenses incurred by the Ministry of Foreign Affairs and International Cooperation in respect of the letter of request and, on receiving due notification of the amount of those expenses, to pay that amount to the Finance Officer of the office at the Ministry of Foreign Affairs and International Cooperation and to produce a receipt for the payment to the Master.

Examination otherwise than on oath.

4. Notwithstanding the provisions of rule 1, where the person to be examined is out of the jurisdiction, that person may be examined on oath or affirmation or otherwise in accordance with the procedure of the country in which the examination is to take place.

Enforcing attendance of witness at examination.

5. Where an order has been made under rule 1-

- (a) for the examination of any person before an officer or examiner of the Court or some other person (in this rule and rules 6 to 14 referred to as "the examiner"); or
- (b) for the cross-examination before the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of that person before the examiner and the production by him of any document at the examination may be enforced by writ of subpoena in like manner as the attendance of a witness and the production by a witness of a document at a trial may be enforced.

6. (1) If any person, having been duly summoned by writ of subpoena to attend before the examiner, refuses or fails to attend or refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document, a certificate of his refusal or failure, signed by the examiner, shall be filed in the Master's office, and upon the filing of the certificate, the party by whom the attendance of that person was required may apply to the Court for an order requiring that person to attend, or to be sworn or to answer any question or produce any document as the case may be.

Refusal of witness to attend, be sworn, etc.

(2) An application for an order under this rule may be made by notice of motion *ex parte*.

(3) If the Court makes an order under this rule, it may order the person against whom the order is made to pay any costs occasioned by his refusal or failure.

(4) A person who willfully disobeys any order made against him under subrule (1) is guilty of contempt of Court.

7. (1) The examiner shall give the party on whose application the order for examination was made a notice appointing the place and time at which, subject to any application by the parties, the examination shall be taken, and such time shall, having regard to the convenience of the persons to be examined and all the circumstances of the case, be as soon as practicable after the making of the order.

Appointment of time and place for examination.

(2) The party to whom a notice under subrule (1) is given shall on receiving it forthwith give notice of the appointment to all the other parties.

8. The party on whose application the order for examination before the examiner was made shall furnish the examiner with copies of such of the documents in the cause or matter as are necessary to inform the examiner of the questions at issue in the cause or matter.

Examiner to have certain documents.

9. (1) Subject to any directions contained in the order for examination-

Conduct of examination.

- (a) any person ordered to be examined before the examiner may be cross-examined and re-examined; and
- (b) the examination, cross-examination and re-examination of persons before the examiner shall be conducted in like manner as at the trial of a cause or matter.

(2) The examiner may put any question to any person examined before him as to the meaning of any answer made by that person or as to any matter arising in the course of the examination.

(3) The examiner may, if necessary adjourn the examination from time to time.

Examination of additional witnesses.

10. The examiner may, with the written consent of all the parties to the cause or matter, take the examination of any person in addition to those named or provided for in the order for examination, and shall annex such consent to the original deposition of that person.

Objection to questions.

11. (1) If any person being examined before the examiner objects to answer any questions put to him, or if objection is taken to such question, that question, the ground for the objection and the answer to such question to which objection is taken shall be set out in the deposition of that person or in a statement annexed to the deposition.

(2) The validity of the ground for objecting to answer the question or for objecting to the question shall be decided by the Court and not by the examiner, but the examiner shall state to the parties his opinion on the question and the statement of his opinion shall be set out in the deposition or in a statement annexed to the deposition.

(3) If the Court decides against the person taking the objection, it may order him to pay the costs occasioned by his objection.

12. (1) The deposition of any person examined before the examiner shall be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner but, subject to subrule (2) and Order 10 the deposition need not set out every question and answer so long as it contains as nearly as may be, the statement of the person examined.

Taking of depositions.

(2) The examiner may direct the exact words of any particular question and the answer to it to be set out in the deposition if the question and answer appear to him to have special importance.

(3) The deposition of any person shall be read to him, and he shall be asked to sign it, in the presence of such of the parties as may attend, but the parties may agree in writing to dispense with these.

(4) If a person refuses to sign a deposition when asked under subrule (3) to do so, the examiner shall sign the deposition.

(5) The original deposition of any person authenticated by the signature of the examiner before whom it was taken, shall be sent by the examiner to the district registry (if any) in which the cause or matter is proceeding and otherwise to the Master's office and shall be filed in that office.

13. Before sending any deposition to the District Registry or the Master's office, the examiner shall indorse on the deposition a statement signed by him of the time occupied in taking the examination and the fees received in respect of the deposition.

Time taken by examiner to be indorsed on depositions.

14. The examiner may make a special report to the Court with regard to any examination taken before him and with regard to the absence or conduct of any person at the Court and the Court may direct such proceedings to be taken, or make such order, on the report as it thinks fit.

Special report by examiner.

Order for payment of examiner's fees. 15. (1) If the fees and expenses due to an examiner are not paid, he may report that fact to the Court, and the Court may direct the Master to apply for an order against the party on whose application the order for examination was made, to pay the examiner the fees and expenses due to him in respect of the examination.

(2) An order under this rule shall not prejudice any determination on the taxation of costs or otherwise as to the party by whom the costs of the examination are ultimately to be borne.

Perpetuation of testimony. 16. (1) Witnesses shall not be examined to perpetuate testimony unless an action has been begun for the purpose.

(2) Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity or office, or to any estate or interest in any real or personal property, the right or claim to which cannot be brought to trial by him before the happening of such event, may begin an action to perpetuate any testimony which may be material for establishing such right or claim.

(3) No action to perpetuate the testimony of witnesses shall be set down for trial.

Examiners of Court. 17. A sufficient number of solicitors of not less than 5 years standing, shall be appointed by the Chief Justice to act as examiners of the Court for a period not exceeding 3 years at a time, but the Chief Justice may at any time revoke the appointment.

Assignment of examinations to examiners of Court. 18. (1) The examinations to be taken before examiners of the Court shall be assigned to them in rotation by a proper officer in the Master's office.

(2) If an examiner is unable or declines to take an examination assigned to him, the examination shall be assigned to some other examiner under subrule (1).

Obtaining assignment of examiner of Court. 19. (1) The party prosecuting an order for examination before an examiner of the Court shall take the order or a copy of it to the proper officer mentioned in rule 18 for him to note on it the name of the examiner to whom the examination is to be assigned and shall leave a copy of the order with that examiner.

(2) A copy of the order for examination is sufficient authority for the examiner whose name is indorsed on it to proceed with the examination.

20. (1) The examiners of the Court shall be entitled to charge the fees mentioned in the following Table:- Fees and expenses of examiners of Court.

TABLE OF EXAMINERS' FEES

	Le
1. For each day for which an appointment to take an examination is given.....	250,000.00
2. For each hour or part of it (after the first hour) occupied in an examination within 5 kilometres from the principal entrance of the Court.....	100,000.00
3. For each half day of 3 hours or part of it occupied in an examination beyond 5 kilometres from the principal entrance of the Court.....	150,000.00

(2) The party prosecuting the order shall also pay all reasonable traveling and other expenses, including charges for the room (other than the examiner's chambers) where the examination is taken.

(3) An examiner shall not be obliged to send any deposition to the Masters' office under subrule (5) of rule 12 until all fees and expenses due to him in respect of the examination have been paid.

ORDER 33

OBTAINING EVIDENCE FOR FOREIGN TRIBUNALS

1. Where under the Foreign Tribunals Evidence Act, 1856 the Extradition Act, 1974 and the Anti-Money Laundering Act, 2005-
 - (a) any civil or criminal matter is pending before a court or tribunal of a foreign country; and
 - (b) it is made to appear before a judge by a Commission Rogatoire or letters of request or other evidence as specified in this Order, that the court or tribunal is desirous of

Mode of obtaining evidence. Act No. 11 of 1974. Act No 5 of 2005.

obtaining the testimony in relation to such matters, of any witness within the country,

a judge may, on the *ex parte* application of any person shown to be duly authorized to make the application on behalf of the foreign court or tribunal, and on the production of the Commission Rogatoire or letters of request or of the certificate signed in the manner and certifying to the effect mentioned in section 2 of the Foreign Tribunals Act Evidence Act, 1856 or such other evidence as a Judge may require, make such order as may be necessary to give effect to the enactments mentioned in this rule in conformity with section 1 of the Foreign Tribunals Act. 1856.

Person to take and manner of taking evidence.

2. (1) Any order made in pursuance of this Order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before an examiner of the Court or before such other qualified person as the Court thinks fit.

(2) In any special directions contained in any order made in pursuance of this Order for the examination of any witness, the examination shall be taken in the manner provided by rules 6 to 10 of Order 32 and an order may be made under rule 15 of Order 32, for the payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with the necessary modifications.

(3) If the examination is directed to be taken before one of the examiners of the Court, rules 17, 18 and 19 of Order 32 shall apply in relation to the examination.

Forwarding of examination.

3. Unless otherwise provided in the order for examination, the examiner before whom the examination is taken shall, on its completion, forward it to the Registrar and on receipt of it, the Master shall append to it a certificate in an appropriate form duly sealed with the seal of the Court for use out of Sierra Leone and shall forward the deposition so certified and the Commission Rogatoire or letters of request, to the Minister of Foreign Affairs and International Cooperation for transmission to the foreign court or tribunal requiring the deposition.

4. An order made under rule 1 may, if the Court thinks fit direct the examination to be taken in such manner as may be requested by the Commission Rogatoire or letters of request from the foreign court or tribunal specified in the Commission-Rogatoire or letters of request to be in accordance with the practice or requirement of the foreign court or tribunal or which may for the same reason be requested by the applicant for the order.

Manner of examination.

5. Where a Commission Rogatoire or letters of request is transmitted to the Court by the Minister of Foreign Affairs and International Cooperation, with an intimation that it is desirable that effect be given to the Commission Rogatoire or letters of request without requiring an application to be made to the court by the agents in Sierra Leone of any of the parties to the action or matter in the foreign country, the Master shall transmit it to the Attorney-General who may with the consent of the Minister of Foreign Affairs and International Cooperation make such applications and take such steps as may be necessary to give effect to the Commission Rogatoire or letters of request, in accordance with rules 1 to 4.

Application by Attorney-General.

ORDER 34**ADMISSIONS**

Admission of case of other party.

1. Without prejudice to rule 13 of Order 21, a party to a cause or matter may give notice by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Notice to admit.

2. (1) A party to a cause or matter may, not later than twenty-one days after the cause or matter is set down for trial serve on any other party requiring him to admit, for the purpose of that cause or matter only, such facts or such part of his case as may be specified in the notice.

(2) An admission made in compliance with the notice under this rule shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made or in favour of any person other than the person by whom the notice was given, and the Court may at any time allow a party to amend or withdraw an admission so made by him.

Judgment on admission.

3. (1) Where admission of fact or part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any party to the cause or matter may apply to the Court for such judgment or order as upon the admission he may be entitled to, without waiting for the determination of any other question between the parties; and the Court may give such judgment or make such order on the application as it thinks just.

(2) An application for an order under subrule (1) may be made by motion or summons.

Admission and production of documents specified in list of documents.

4. (1) Subject to subrule (2) and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a list of documents is served in pursuance of any provision of Order 27 shall, unless the Court otherwise orders, be deemed to admit—

(a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purport respectively to have been; and

(b) that any document described therein as a copy is a true copy.

(2) Subrule (1) shall not apply to a document the authenticity of which the party has denied in his pleading.

(3) If before the expiration of 21 days after inspection of the documents specified in a list of documents or after the time limited for inspection of those documents expires, whichever is later, the party on whom the list is served, serves on the party whose list it is a notice stating, in relation to any document specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial, he shall not be deemed to make any admission in relation to that document under subrule (1).

(4) A party to a cause or matter by whom a list of documents is served on any other party in pursuance of Order 27 shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the documents specified in the list as are in his possession, custody or power.

(5) Subrules (1) to (4) shall apply in relation to an affidavit made in compliance with rule 7 of Order 27, as they in relation to a list of documents served in pursuance of any provision of that Order.

5. (1) Except where subrule (1) of rule 4 applies, a party to a cause or matter may within twenty-one days after the cause or matter is set down for trial, serve on any other party a notice requiring him to admit the authenticity of the documents specified in the notice. Notices to admit or produce documents.

(2) If a party on whom a notice under subrule (1) is served desires to challenge the authenticity of any document specified in that subrule he shall, within twenty-days after service of the notice serve on the party by whom it was given a notice stating that he does not admit the authenticity of the document and requires it to be proved at the trial.

(3) A party who fails to give a notice of non-admission in accordance with subrule (2) in relation to any document shall be deemed to have admitted the authenticity of that document unless the Court otherwise orders.

(4) Except where subrule (4) of rule 4 applies, a party to a cause or matter may serve on any other party a notice requiring him to produce the document specified in the notice at the trial of the cause or matter.

ORDER 35

INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY

Application
for injunc-
tion.

1. (1) The Court may grant an injunction by an interlocutory order in all cases in which it appears to the Court to be just or convenient to do so and the order may be made either unconditionally or upon such terms and conditions as the Court considers just.

(2) A party to a cause or matter may apply for the grant of an injunction before or after the trial of the cause or matter whether or not a claim for the injunction was included in the party's writ, counterclaim or third party notice.

(3) The plaintiff may not make such an application before the issue of the process by which the action is to be begun, except where the case is one of urgency and in that case the injunction applied for may be granted on terms providing for the issue of the process together with the *ex-parte* order obtained on the defendant and such other terms as the Court thinks fit.

(4) An application shall be by notice of motion supported by an affidavit.

(5) A draft of the order sought may be filed with the application to facilitate the speedy preparation and perfection of the order.

(6) A respondent who desires to oppose the application shall file an affidavit in opposition.

(7) In case of urgency, a party may make the application *ex-parte* supported by an affidavit.

(8) An application made *ex parte* under subrule (7) shall not be granted unless the applicant gives sufficient reasons for making it *ex parte* and specifies some irreparable damage or mischief which will be caused to the plaintiff if he proceeds in the ordinary manner.

(9) Where an order is made pursuant to an application made *ex parte* under subrule (7), it shall not remain in force for more than 7 days.

(10) If no application is made to the Court to extend the validity of the order it shall lapse after the expiration of 7 days from the making of the order unless the Court otherwise directs.

(11) The Court may, upon application by any party affected set aside an order made *ex parte* under subrule (7) on such terms as it thinks fit.

2. (1) On the application of any party to a cause or matter, the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter, or as to which any question may arise in the action or for the inspection of such property in the possession of a party to the cause or matter.

Detention,
preservation
of property.

(2) To enable any order made under subrule (1) to be carried out, the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Where the right of any party to a specific fund is in dispute, the Court may, on the application of a party to the cause or matter, order the fund to be paid into Court or otherwise secured.

(4) An order under this rule may be made on such terms, if any, as the Court thinks just.

(5) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he enters appearance to the writ or other originating process by which the cause or matter was begun.

Power to order samples to be taken, etc.

3. (1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of a party to the cause or matter, and on such terms, if any, as it thinks just, by order authorise or require any sample to be taken of any property which is the subject-matter of the cause or matter or as to which any question may arise in the action, any observation to be made on the property or any experiment to be carried on or with such property.

(2) To enable any order under subrule (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

Sale of perishable property.

4. (1) The Court may, on the application of any party to a cause or matter, make an order for the sale by the applicant in such manner and on such terms as may be specified in the order of any perishable property which is the subject-matter of the cause or matter or as to which any question arises therein and which for any other good reason it is desirable to sell forthwith.

(2) Unless the Court otherwise directs, an application by a defendant for an order under this rule may not be made before entering an appearance.

Order for early trial.

5. (1) Where on the hearing of an application made before the trial of a cause or matter, for an injunction or the appointment of a receiver or an order under rule 2, 3 or 4 it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits for the purposes of the application, the Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires.

(2) Where the Court makes an order for early trial it shall by the order determine the place and mode of the trial.

6. Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings (if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum (if any) for interest and costs as the Court may direct and that, upon the payment being made, the property claimed be given up to the party claiming it.

Recovery of personal property subject to lien, etc.

7. Where an application is made under any of the provisions of this Order, the Court may give directions as to the further proceedings in the cause or matter.

Directions.

8. Where any real or personal property forms the subject-matter of any proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may, at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest in the property or may direct that any part of the personal property be transferred or delivered to any or all of the parties.

Allowance of income of property *pendente lite*.

9. (1) Where an application is made under rules (1) and (2), the Court shall require, before making an order that the applicant shall give an undertaking to the person opposing the application to pay any damages that person may suffer as a result of the grant of the application if it turns out in the end that the applicant was not entitled to the order.

Undertaking as to damages.

(2) The giving of an undertaking required under subrule (1) shall be a pre-condition to the making of any order under rules 1 and 2.

(3) Where the applicant gives the undertaking, the Court shall, at the end of the proceedings in which the undertaking was given assess the damages, if any, which the person who opposed the application has suffered and which the applicant is liable to pay and shall give such judgment as the circumstances require.

ORDER 36

RECEIVERS

Application for receiver and injunction.

1. (1) An application for the appointment of a receiver may be made by summons or motion.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

(3) Where the applicant wishes to apply for the immediate grant of an injunction, he may do so on an application by notice of motion *ex parte* supported by affidavit.

(4) The Court hearing an application under subrule (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver and may require such a summons returnable on such date as the Court may direct, to be issued.

Giving of security by receiver.

2. (1) A judgment or order directing the appointment of a receiver may include such directions as the Court thinks fit as to the giving of security by the person appointed.

(2) Where by virtue of any judgment or order appointing a person named in the order to be receiver, a person is required to give security in accordance with this rule, he shall give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee or if the amount for which security is given does not exceed Le5,000,000 by an undertaking.

3. (1) A person appointed receiver shall be allowed such proper remuneration, if any, as may be authorised by the Court. Remuneration of receiver.

(2) The Court may direct that such remuneration shall be—

(a) fixed by reference to such scales or rates of professional charges as it thinks fit; or

(b) shall be assessed by the Master.

(3) Where remuneration is assessed by the Master pursuant to a direction under subrule (2), rules 15 and 16 of Order 57 shall apply as it applies to a taxation by the Master and an appeal shall lie from the assessment to a judge in chambers.

4. A copy of the judgment or order appointing a receiver shall be served by the party having conduct of the proceedings on the receiver and all other parties to the cause or matter in which the receiver has been appointed. Service of order and notice

5. (1) A receiver shall submit accounts to the Court and to such parties and at such intervals or on such dates as the Court may direct in order that they may be passed. Receiver's accounts.

(2) Unless the Court otherwise directs, each account submitted by a receiver shall be accompanied by an affidavit verifying it.

(3) Any party to whom a receiver is required to submit accounts may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to such accounts.

(4) Any party who is dissatisfied with the accounts of the receiver may give notice specifying the item or items to which objection is taken and requiring the receiver within not less than 14 days to lodge his accounts with the Court, and if it is a proceeding in a District Registry, in that Registry.

(5) Following an examination by or on behalf of the Court of an item or items in an account to which objection is taken, the result of such examination shall be certified by the Master, and an order may then be made as to the incidence of any costs or expenses incurred.

Payment of
balance by
receiver

6. The days on which a receiver shall pay into court the amount shown by his accounts as due from him, or such part of it as the Court may certify as proper to be paid by him shall be fixed by the Court.

Receiver's
default

7. (1) Where a receiver fails to attend for the passing of any accounts prepared by the receiver or fails to submit accounts, make an affidavit or do any other thing which the receiver is required to submit, make or do, the receiver and any or all of the parties to the proceedings in which the receiver was appointed may be required to attend in chambers to show cause for the failure, and the Court may, either in chambers or after adjournment into open court give such directions as it considers proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to subrule (1), where a receiver fails to attend for the passing of any accounts prepared by the receiver or fails to submit accounts or fails to pay into court on the date fixed by the Court any sum shown by the accounts as due from the receiver, the Court may disallow any remuneration claimed by the receiver.

(3) Where the Court or receiver fails to pass accounts prepared by that receiver or to pay into court any money due from the receiver, any party who has an interest in the accounts or the money may apply for an order calling upon the receiver to show cause why an order for sequestration or committal should not be made against the receiver.

(4) The Court, upon hearing an application under subrule (3) may—

- (a) order the receiver to file the accounts within the period specified in the order;
- (b) order that the receiver shall pay into court any amount found to be due from the receiver; or
- (c) make an order for committal or sequestration against the receiver.

8. A receiver may at any time request the Court to give him directions and such request shall state in writing the matters with regard to which directions are required. Directions to receivers.

9. Where an application is made for the appointment of a receiver by way of equitable execution, the Court, in determining whether it is just or convenient that the appointment should be made, shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment. Appointment by way of equitable execution.

10. The Court shall have power to make an order for the appointment of a receiver by way of equitable execution and to grant an injunction if, and only so far as, the injunction is ancillary or incidental to such order. Court may appoint receiver etc.

11. An application for the appointment of a receiver, by way of equitable execution may be made in accordance with rule 1, and rules 2 to 6 shall apply in relation to a receiver appointed by way of equitable execution as they apply to a receiver appointed for any other purpose. Application of rules as to appointment of receiver.

ORDER 37**SALE OF LAND BY ORDER OF COURT**

Power to
order sale of
land.

1. (1) Where in any cause or matter in court relating to any land it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits from the land may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.

(2) In this Order “land” includes any interest in or right over, land.

Manner of
carrying out
sale.

2. (1) Where an order is made, whether in court or in chambers, directing any land to be sold, the Court may permit the party or person having the conduct of the sale to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may either by the order or subsequently direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.

(2) The Court may give such directions as it thinks fit for the purpose of effecting the sale, including, directions—

- (a) appointing the party or person who is to have the conduct of the sale;
- (b) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;
- (c) fixing a reserve or minimum price;
- (d) requiring payment of the purchase money into Court or to trustees or other persons;

- (e) for settling the particulars and conditions of sale;
- (f) for obtaining evidence of the value of the property;
- (g) fixing the security (if any) to be given by the auctioneer, if the sale is to be by public auction, and the remuneration to be allowed him.

3. (1) If either the Court has directed payment of the purchase money into Court or the court so directs, the result of a sale by order of the Court shall be certified—

- (a) in the case of a sale by public auction, by the auctioneer who conducted the sale; and
- (b) in any other case, by the solicitor of the party or person having the conduct of the sale,

and the Court may require the certificate to be verified by the affidavit of the auctioneer or solicitor, as the case may be.

(2) The solicitor of the party or person having the conduct of the sale shall file the certificate and any affidavit in the Registry.

4. Rules 2 and 3 shall, so far as applicable and with the necessary modifications, apply in relation to the mortgage, exchange or partition of any land under an order of the Court as they apply in relation to the sale of any land under such an order.

5. The Court may refer to a conveyancing counsel—

- (a) any matter relating to the investigation of the title to any property with a view to an investment of money in the purchase or on mortgage thereof, or with a view to the sale thereof;

Certifying
result of sale.

Mortgage,
exchange or
partition
under order of
Court.

Reference of
matters to
conveyancing
counsel.

(b) any matter relating to the settlement of a draft of a conveyance, mortgage, settlement or other instrument; and

(c) any other matter it thinks fit,

and may act upon his opinion in the matter referred.

Objection to conveyancing counsel's opinion.

6. Any party may object to the opinion given by any conveyancing counsel on a reference under rule 5, and if he does so, the point in dispute shall be determined by the Judge either in chambers or in court as he thinks fit.

Obtaining counsel's opinion on reference.

7. The order referring any matter to conveyancing counsel shall be recorded in the books of the Court and a copy of such order shall be sent by the Court to counsel and shall constitute sufficient authority for him to proceed with the reference.

ORDER 38

APPLICATION AND PROCEEDINGS IN CHAMBERS

Issue of summons.

1. (1) Except otherwise provided by rule 6 of Order 28, every application in chambers shall be by summons.

(2) All summonses shall be duly stamped.

Application by summons.

2. Unless where otherwise expressly provided by these Rules or any enactment, no application by summons shall be made without previous notice to the parties affected thereby; but the Court if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court may think just; and any party affected by such order may move to set it aside.

Length of summons

3. Unless the Court otherwise gives leave, there shall be two clear days between the service of the summons and the day named in the summons for hearing, but in applications to answer the matters in an affidavit or to strike off the rolls, the summons shall be served on parties not less than 10 clear days before the time fixed by the summons.

4. (1) The hearing of a summons may be adjourned from time to time, either generally or to a particular date, as may be appropriate. Adjournment of hearing.

(2) If the hearing is adjourned generally, the party by whom the summons was taken out may restore it to the list on 2 clear days' notice to all the other parties on whom the summons was served.

5. Where any of the parties to a summons fails to attend, whether upon the return of the summons or at any time appointed for the consideration or further consideration of the matter, the judge may proceed in the absence of a party if considering the nature of the case, he thinks it expedient to do so, and no affidavit of non-attendance shall be required or allowed but the judge may require such evidence of service as he thinks just. Proceeding in absence of one party.

6. Where a judge has proceeded in the absence of a party, the proceeding shall not in any manner be reconsidered in a judge's chambers unless the judge is satisfied that the party was not guilty of willful delay or negligence; and in such case the costs occasioned by his non-attendance shall be at the discretion of the judge who may fix it at the time and direct them to be paid by the party or his solicitor before the party is permitted to have the proceedings reconsidered or make such other order as to costs as he thinks just. Reconsideration of *ex parte* proceedings.

7. Where a proceeding in chambers fails by reason of non-attendance of any party and the judge thinks it expedient to proceed in the absence of a party, he may order such an amount of costs, if any, as he thinks reasonable, to be paid to the party attending, by the absent party or by his solicitor. Costs for non-attendance of party.

8. The Court may set aside an order made *ex parte* under rule 2. Order made *ex parte* to be set aside.

9. A writ of subpoena *ad testificandum* or a writ of subpoena *duces tecum* to compel the attendance of a witness for the purpose of proceedings in chambers may be issued out of the High Court Registry if the party who desires the attendance of the witness obtains an order from a judge authorizing the issue of the writ. Issue of subpoena etc. to compel attendance of witness.

Power to direct hearing in Court.

10. (1) The Judge in chambers may direct that any summons, application or appeal shall be heard in court or shall be adjourned into Court to be so heard if he considers that by reason of its importance or for any other reason it should be so heard.

(2) Any matter heard in Court by virtue of a direction under subrule (1) may be adjourned from court into chambers.

Obtaining assistance of experts.

11. If the Court thinks it expedient in order to enable it better to determine any matter arising in proceedings in chambers, it may obtain the assistance of any person specially qualified to advise on that matter and may act upon his opinion.

Notice of filing of affidavit.

12. (1) A party who files an affidavit intended to be used by him in any proceedings in chambers shall give notice of the filing to every other party.

(2) A party who intends to use in any proceedings in chambers, an affidavit filed by the party in previous proceedings, shall give notice of the intention to do so, to every other party.

Alteration in accounts to be initialled.

13. Every alteration in an account verified by affidavit to be left at chambers shall be marked with the initials of the commissioner or officer before whom the affidavit was sworn; and the alteration shall not be made by erasure.

Disposal of matters in chambers.

14. The Judge may by any judgment or order made in Court in any proceedings direct that such matters (if any) in the proceedings as he may specify shall be disposed of in chambers.

Papers for use of Court, etc.

15. The original of any document which is to be used in evidence in proceedings in Chambers shall, if it is available, be brought in, and copies of the document or of any part thereof shall not be made unless the Court directs that copies of that document or part be supplied for the use of the Court or be given to the other parties to the proceedings.

ORDER 39

PLACE AND MODE OF TRIAL

1. Subject to these Rules, the place of trial of a cause or matter, Place of trial. or of any question or issue arising therein, shall be determined by the Court and shall be either in Freetown or one of the other places at which sittings of the Court are authorized to be held for the trial of those proceedings or proceedings of the class to which they belong.

2. Subject to these Rules, a cause or matter, or any question Mode of trial. or issue arising from it, may be tried before—

- (a) a judge alone;
- (b) a judge with the assistance of assessors;
- (c) a judge with the assistance of a referee;
- (d) by a referee alone subject to an order of the Court made with the prior consent of the parties to the cause or matter.

3. The Court may order any question or issue arising in a Time, etc. of trial of questions or issues. cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

4. (1) In every action, an order made on Determination of place and mode of trial. summons for directions shall, subject to these Rules, determine the place and mode of trial; and any order may be varied by a subsequent order of the Court made at or before the trial.

(2) In an action different questions or issues may be ordered to be tried at different places or by different modes of trial and one or more questions or issues may be ordered to be tried before others.

(3) The reference in this rule to summons for directions include a reference to any summons to which, under Order 28 are to apply with or without modification.

Split trial:
offer on
liability.

5. (1) This rule applies where an order is made under subrule (2) of rule 4 for the issue of liability to be tried before any issue or question concerning the amount of damages to be awarded if liability is established.

(2) After the making of an order to which subrule (1) applies, any party against whom a finding of liability is sought may (without prejudice to his defence) make a written offer to the other party to accept liability up to a specified proportion.

(3) Any offer made under subrule (2) may be brought to the attention of the Judge after the issue of liability has been decided, but not before.

Trial with
assistance of
assessors.

6. A trial of a cause or matter with the assistance of assessors or referees shall take place in such manner and on such terms as the Court may direct.

ORDER 40

SETTING DOWN FOR TRIAL - ACTION BEGUN BY WRIT

Application
and inter-
pretation.

1. This Order applies to actions begun by writ and, accordingly, references in this Order to an action shall be construed as references to an action so begun.

Time for
setting down
action.

2. (1) Every order made upon the hearing of a summons for directions under Order 28 shall fix a period within which the plaintiff shall set down the action for trial.

(2) Where the plaintiff does not, within the period fixed under subrule (1) set the action down for trial, the defendant may set the action down for trial or may apply to the Court to dismiss the action for want of prosecution; and on the hearing of the application, the Court may order the action to be dismissed accordingly or make such order as it thinks just.

3. Every order fixing the time within which an action should be set down for trial shall contain an estimate of the length of the trial. Length of trial.

4. Subject to Order 28, immediately an action has been entered for trial, it shall be entered in a Cause List to be kept by the Master and shall come on for trial in its order upon the list unless otherwise ordered. Action for trial to be entered in Cause List.

5. (1) A party to an action who sets it down for trial shall, on the day he sets it down, notify the other parties to the action that he has done so. Notification of setting down.

(2) It shall be the duty of all parties to an action entered in any list to furnish without delay to the officer who keeps the list, all available information as to the action being or likely to be settled, or affecting the estimated length of the trial; and, if the action is settled or withdrawn, to notify that officer of the fact without delay and take such steps as may be necessary to withdraw the record.

(3) In the performance of the duty imposed by subrule (2), a plaintiff who gives notice of acceptance of a payment into Court in accordance with rule 3 of Order 25 shall at the same time lodge a copy of the notice with the officer mentioned in that subrule.

6. (1) If neither the plaintiff nor defendant makes an application under these Rules, the Master shall certify that fact to the Court or judge in chambers after the time limited for both parties to make the application. Default in applying for setting down.

(2) The Court or judge in chambers, upon receipt of the certificate of the Master, shall cause the case to be listed for striking out and the parties to the case shall be notified accordingly.

7. Upon the case coming up for striking out, the Court or judge shall strike it out unless good cause is shown why the case should proceed to hearing. Case to be struck out.

Abatement,
etc., of
action.

8. (1) Where, after an action has been set down for trial the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the solicitor for the plaintiff or other party having the conduct of the action shall, as soon as practicable after becoming aware of it, certify the abatement or change of interest or liability and send the certificate to the Master who shall cause the appropriate entry to be made in the list of actions set down for trial.

(2) Where in the list an action stands for one year marked as abated or ordered to stand over generally, the action shall, on the expiration of that year be struck out of the list unless, in the case of an action ordered to stand over generally, the order otherwise provides.

The court
bundle.

9. (1) Within 14 days from the date the action is set down for trial, the defendant shall identify to the plaintiff those documents central to his case which he wishes to be included in the bundle to be provided under subrule (2).

(2) At least 7 clear days before the date fixed for the trial, the plaintiff shall lodge two bundles consisting of one copy of each of the following documents:—

- (a) witness statements which have been exchanged and expert's reports which have been disclosed, together with an indication of whether the contents of such documents are agreed;
- (b) those documents which each party wishes to have included in the bundle and those central to each party's case; and
- (c) where a direction has been given under subrule (4) of rule 2 of Order 28, of a note agreed by the parties, failing agreement, a note by each party given in the following order:—

- (i) a summary of the issues involved;
- (ii) a summary of any propositions of law to be advanced together with a list of authorities to be cited; and
- (iii) a chronology of relevant events.

(3) Nothing in this rule shall prevent the Court from giving, whether before or after the documents have been lodged, such further or different directions as to the documents to be lodged as may, in the circumstances be appropriate.

10. (1) If a party fails to comply with any of the provisions of rule 9, the Court may make such orders as it thinks just, including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

Failure to
comply with
rule 9.

(2) A party against whom an order has been made under subrule (1) may apply not later than one month after the date of the order, by notice of motion that the order be set aside and the action or defence be restored; and the Court may, for good and sufficient cause order that the action or defence be restored, upon such terms as it thinks fit.

ORDER 41

PROCEEDINGS AT TRIAL

1. (1) If, when the trial of an action is called, all the parties fail to appear, the action may be struck out of the list, without prejudice, however to its restoration on the direction of the judge or Court.

Failure to
appear by
both parties
or one of
them.

(2) Where an action is called for trial and a party fails to attend the trial, a judge may—

- (a) where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim, if any, and allow the plaintiff to prove the claim;

- (b) where the defendant attends and the plaintiff fails to attend, dismiss the action and allow the defendant to prove the counterclaim, if any; or
- (c) make such other order as he thinks just.

Judgment by default may be set aside.

2. Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court upon such terms as it thinks fit, upon an application made within 6 days after the trial or within such time as the Court or judge may allow.

Adjournment of trial.

3. (1) The Court may, if it considers it necessary in the interest of justice, adjourn a trial for such time and to such place and upon such terms, if any, as it thinks fit.

(2) Subject to rule 1, it is the duty of the parties, their solicitors and the Court to avoid all unnecessary adjournments and other delays and to ensure that causes or matters are disposed of as speedily as the justice of the case permits.

Addresses to court.

4. (1) Unless the judge before whom an action is tried gives directions as to the party to begin and the order of speeches at the trial, the party to begin and the order of speeches shall be that provided by this rule.

(2) Subject to subrule (6), the plaintiff shall begin by opening his case.

(3) Where the defendant or his solicitor elects not to adduce evidence, then, whether or not the defendant has in the course of cross-examination of a witness for the plaintiff or otherwise put in a document, the plaintiff may, after the evidence for the plaintiff has been given, close his case and may thereafter deliver his closing speech after which the defendant may make his closing speech in reply.

(4) Where the defendant or his solicitor elects to adduce evidence, the defendant may, at the close of the plaintiff's case, open his case and after the evidence for the defence has been given, give his closing speech after which the plaintiff may make a closing speech in reply.

(5) Where there are two or more defendants who appear separately or are separately represented then where-

- (a) none of them elects to adduce evidence, subrule (3) shall apply and each defendant shall make his closing speech in the order in which that defendant's name appears on the record;
- (b) each of the defendants elects to adduce evidence, each defendant may open his case and the evidence of each defendant shall be given in the order specified in paragraph (a) and the speech of each defendant closing his case shall be made in that order after the evidence of all the defendants has been given, or
- (c) some of them elect to adduce evidence and some do not-
 - (i) in respect of those who do, paragraph (a) shall apply, and
 - (ii) in respect of those who do not paragraph (b) shall apply

(6) Where the legal burden in all the issues in the action lies on the defendant, the defendant may begin, and subrules (3), (4) and (5) shall have effect in relation to the plaintiff and the defendant, as if for the references to the plaintiff there were substituted references to the defendant and for references to the defendant there were substituted references to the plaintiff.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this subrule be entitled to make the final speech, raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may, with leave of the Court make a further speech in reply, but only in relation to that point of law or that authority.

(8) The Court may order that any or all of the closing speeches referred to in this rule be reduced into writing and may fix the deadline for filing and serving of the same on the opposite party; and this subrule shall apply to speeches in support of or in opposition to interlocutory applications.

Inspection by Judge.

5. The Judge by whom any case or matter is tried may inspect any place or thing in respect of which any question arises in the cause or matter and may do so *suo moto* or at the invitation of any party.

List of exhibits.

6. (1) The clerk of the Court shall take charge of every document or object put in as exhibit during the trial and mark or label each exhibit with a letter or letters indicating the party by whom the exhibit is put in or the witness by whom it is proved and with a number, so that all the exhibits put in by a party or proved by a witness are numbered in one consecutive series.

(2) The clerk of the Court shall cause a list to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee have an office copy of that list and any documentary exhibit.

(3) The list of exhibits when completed and any documentary exhibit shall be attached to the pleadings and shall form part of the record of the action.

(4) For the purpose of this rule, a bundle of documents may be treated and counted as one exhibit.

Custody of exhibits after trial.

7. (1) All the exhibits tendered at a trial shall be kept in the registry of the trial court until the period limited for appeal has expired; but where an appeal is made after trial, the exhibits shall be forwarded to the Court of Appeal or the relevant appellate court with the record of proceedings.

(2) No exhibit shall, except by order of the Court, be given to any party or taken out of the registry before the expiration of the time limited for appeal or until the appeal has been heard and disposed of.

8. (1) Documents and exhibits impounded by order of the Court shall not be delivered out of the custody of the Court except in compliance with an order made by a judge or on an application. Impounded documents and exhibits.

(2) Documents or exhibits impounded by order of the Court while in the custody of the Court shall not be inspected except by a person authorized to do so by an order signed by a judge; but where a Law Officer or Director of Public Prosecutions makes a written request in that behalf, documents or exhibits so impounded shall be delivered into his custody.

9. Where 12 months have elapsed since the last step taken in any cause or matter, the party who wishes to proceed shall give to every other party not less than 28 days' notice of the intention to proceed. Proceedings after delay.

10. (1) Where in any cause or matter no step has been taken for twelve months from the date of the last proceeding and no notice has been given under rule 9, the Master or any party to the cause or matter may apply to the Court for an order that the cause or matter be struck out for want of prosecution. Striking out for delays.

(2) Notice of the application shall be served on all parties concerned, at least 14 days before the day stated in the notice for hearing the application.

(3) Upon the hearing of the application where none of the parties shows cause to the satisfaction of the Court why the cause or matter should not be struck out and upon proof of service of the notice on all parties concerned, the Court shall strike out the proceedings.

(4) If any party shows cause to the satisfaction of the Court why the cause or matter should not be struck out for want of prosecution, the Court shall order the proceedings to continue on such terms as it thinks fit.

ORDER 42**COURT EXPERT**

Appointment of expert to report on certain questions.

1. (1) In any cause or matter which is to be tried without a jury and in which any question for an expert witness arises, the Court may at any time, on the application of any party, appoint an independent expert or, if more than one question arises, two or more experts, to inquire and report upon any question of fact or opinion not involving questions of law or of construction.

(2) An expert appointed under subrule (1) is referred to in this Order as a “court expert”.

(3) Any Court expert in a cause or matter shall, if possible, be a person agreed between the parties and, failing agreement, shall be nominated by the Court.

(4) The question to be submitted to the court expert and the instructions (if any) given to him shall, failing agreement between the parties, be settled by the Court.

(5) In this rule “expert,” in relation to any question arising in a cause or matter, means any person who has such knowledge or experience of or in connection with that question that his opinion on it would be admissible in evidence.

Report of court expert.

2. (1) The court expert shall send his report to the Court, together with such number of copies of it as the Court may direct, and the Master shall send copies of the report to the parties or their solicitors.

(2) The Court may direct the court expert to make a further or supplemental report.

(3) Any part of a court expert’s report which is not accepted by all the parties to the cause or matter in which it is made shall be treated as information furnished to the Court and be given such weight as the Court thinks fit.

3. If the court expert is of the opinion that an experiment or test of any kind (other than one of a trifling character) is necessary to enable him to make a satisfactory report, he shall inform the parties or their solicitor and shall, if possible, make an arrangement with them as to the expenses involved, the persons to attend and other relevant matters; and if the parties are unable to agree on any of those matters it shall be settled by the Court.

Experiments and tests.

4. Any party may, within 14 days after receiving a copy of the court expert’s report, apply to the Court for leave to cross-examine the expert on his report, and on that application the Court shall make an order for the cross-examination of the expert by all the parties either—

Cross-examination of Court expert

(a) at the trial; or

(b) before an examiner at such time and place as may be specified in the order.

5. (1) The remuneration of the court expert shall be fixed by the Court and shall include a fee for his report and a proper sum for each day during which he is required to be present either in Court or before an examiner.

Remuneration of court expert.

(2) As part of the costs of the cause or matter, the parties shall be jointly and severally liable to pay the amount fixed by the Court for his remuneration; but where the appointment of a court expert is opposed the Court may, as a condition of making the appointment, require the party applying for the appointment to give such security for the remuneration of the expert as the Court thinks fit.

6. Where a court expert is appointed in a cause or matter, any party may, on giving to the other parties a reasonable time before the trial, notice of his intention to do so, call one expert witness to give evidence on the question reported on by the court expert; but no party may call more than one such witness without the leave of the court, and the court shall not grant leave unless it considers the circumstances of the case to be exceptional.

Calling of expert witnesses.

ORDER 43**JUDGMENTS AND ORDERS**

Declaratory Judgment.

1. No action or proceeding shall be open to objection on the ground that a mere 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.

Form of judgment or order.

2. (1) Where, in the case of any judgment, a form for the entry of judgment is prescribed the entry of judgment shall, as far as practicable, be in that form.

(2) The party who enters any judgment may recite in it a statement of the manner in which and the place at which the writ of summons was served.

(3) An order shall be marked with the name of the judge by whom it was made and shall be sealed with the seal of the Court.

Time for doing an act under judgment or order.

3. (1) Subject to subrule (2), a judgment or order which requires a person to do an act shall specify the time within which the act is to be done.

(2) Time under this rule starts to run from the date of service of the judgment or order.

(3) Where an act which a person is required by a judgment or order to do is to pay money to any other person, give possession of immovable property or deliver movable property, subrule (1) shall not apply unless the Court otherwise directs.

Date of judgment pronounced in court

4. (1) Subject to subrule (2), where any judgment is pronounced in court, the entry of the judgment shall be dated as of the day on which the judgment is pronounced, unless the Court otherwise orders; and the judgment shall take effect from that date.

(2) By special leave of the Court a judgment may be ante-dated or post-dated.

5. (1) In all cases not within rule 4, the entry of judgment shall be dated as of the day on which the requisite documents are left with the Master for the purpose of the entry. Date of entry otherwise.

(2) Upon receipt of the documents the Master shall indicate on them the date and time of receipt of the documents and judgment shall take effect from that date.

6. (1) Subject to subrule (2), every order of the Court shall be drawn up unless the Court otherwise directs. Orders required to be drawn up.

(2) An order—

(a) which –

(i) extends the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act; or

(ii) grants leave for the doing of any of the acts mentioned in subrule (3); and

(b) which neither imposes any special terms nor includes any special directions other than a direction as to costs, need not be drawn up unless the Court otherwise directs.

(3) The acts referred to in paragraph (a) (ii) of subrule (2) are—

(a) the issue of any writ, other than a writ of summons for service out of the jurisdiction;

(b) the amendment of a writ of summons or other originating process or a pleading;

(c) the filing of any document;

(d) any act to be done by an officer of the Court other than a solicitor.

Drawing up and entry of judgment or order.

7. (1) The party seeking to have a judgment entered shall draw up the judgment and present it to the Master for entry.

(2) Where a judgment is presented for entry in accordance with this rule, after due payment of stamp duty by either party, the Master shall enter it in the book kept for that purpose, file the judgment and return a duplicate of it to the party who presents it for entry.

(3) An order required to be drawn up shall be drawn by any party in whose favour the order is made or by any other party affected by the order.

(4) The order referred to in subrule (3) shall when drawn up, be produced at the registry together with a copy of it, and when passed by the Master, the order shall be sealed and returned to the party who produced it and the copy shall be lodged in the registry.

Payment by installments.

8. (1) Where any judgment or order directs the payment of money, the Court may, for sufficient reason, order that the amount be paid by instalments with interest; and any other order may be made at the time of giving the judgment or at any time afterwards by the same or any other judge and may be rescinded upon specific cause shown at any time.

(2) Where the Court orders payment of money by instalments, execution shall not issue until after the default in payment of some instalment according to the order; and execution or successive executions may then issue for the whole money then remaining unpaid or for such portion of it as the court orders, either when making the original order or at any subsequent time.

Judgment by consent where defendant appears by solicitor.

9. In any cause or matter where the defendant has appeared by a solicitor, no order for entering judgment shall be made by his consent unless the consent of the defendant is given by the solicitor or agent but evidence of the consent shall be produced to the Court.

10. (1) The register of judgments ordered to be registered shall be kept in the Master's office by or under the direction of the Master. Register of judgments.

(2) The judgment shall be registered in the register in accordance with the order giving leave to register it.

11. (1) Where in an action for—

Service of notice of judgment on person not a party

(a) the administration of the estate of a deceased person; or

(b) the execution of a trust; or

(c) the sale of any property,

the Court gives a judgment or makes a direction which affects persons not parties to the action, the Court may, when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on such persons and any person so served shall, subject to subrule (4), be bound by the judgment as if he had originally been a party to the action.

(2) If it appears that it is not practicable to serve notice of a judgment on a person directed to be served, the Court may dispense with service and may also order that such person be bound by the judgment.

(3) Subrule (1) of rule 7 of Order 6 shall apply in relation to a notice of judgment under this rule as if the notice were a writ and the person by whom the notice is issued were the plaintiff.

(4) Every notice of a judgment for service under this rule shall be indorsed with a memorandum in an appropriate Form and accompanied by a direction for the entry of appearance and the copy of the notice to be served shall be a sealed copy.

(5) A person served with notice of a judgment may, within one month after service of the notice on him, and after entry of appearance apply to the Court to discharge, vary or add to the judgment.

(6) A person served with notice of a judgment may, after entry of appearance, attend the proceedings under the judgment.

(7) Rules 1 to 4 of Order 19 shall apply in relation to entry of appearance after service of a notice of judgment as if the judgment were a writ, the person by whom the notice is served were the plaintiff and the person on whom it is served were a defendant.

Directions by Court.

12. (1) Where a judgment given in a cause or matter contains directions which make it necessary to proceed in chambers under the judgment, the Court may, when giving the judgment or at any time during proceedings under the judgment, give further directions for the conduct of those proceedings, including, in particular, directions with respect to—

- (a) the manner in which any account or inquiry is to be prosecuted;
- (b) the evidence to be adduced in support thereof;
- (c) the preparation and service on the parties to be bound thereby of the draft of any deed or other instrument which is directed by the judgment to be settled by the Court and the service of any objections to the draft;
- (d) without prejudice to rule 20 of Order 18 the parties required to attend all or any part of the proceedings;
- (e) the representation by the same solicitors of parties who constitute a class and by different solicitors of parties who ought to be separately represented; and

(f) the time within which each proceeding is to be taken,

and may fix a day or days for the further attendance of the parties.

(2) The Court may revoke or vary any directions given under this rule.

13. Rules 5 to 8 apply—

- (a) where in proceedings for the administration under the direction of the Court, of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next-of-kin or other ascertained claimants to be made; and
- (b) where in proceedings for the execution under the direction of the Court of a trust the judgment directs such inquiry to be made, and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs an account of debts or other liabilities to be taken or any inquiry to be made.

Application of rules 5 to 8.

14. The Court may, when giving a judgment or at any stage of proceedings under a judgment, give directions for the issue of advertisements for creditors or other claimants and may fix the time within which creditors and claimants may respond.

Advertisements for creditors and other claimants.

15. (1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct shall—

Examination of claims

- (a) examine the claims of persons claiming to be creditors of the estate;
- (b) determine, so far as he is able, to which of such claims the estate is liable; and

- (c) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them and listing all the other debts of the deceased which are or may still be due.

(2) Where an inquiry for next-of-kin or other unascertained claimants has been directed, such party as the Court may direct shall—

- (a) examine the claims;
- (b) determine, so far as he is able, which of them are valid; and
- (c) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them.

(3) If the personal representatives or trustees concerned are not the parties directed by the Court to examine claims, they shall join with the party directed to examine them in making the affidavit required by this rule.

Adjudication on claims.

16. For the purpose of adjudicating on claims the Court may -

- (a) direct any claim to be investigated in such manner as it thinks fit;
- (b) require any claimant to attend and prove his claim or to furnish further particulars or evidence of it; or
- (c) allow any claim after or without proof of the claim.

Notice of adjudication.

17. The Court shall give directions that there be served on every creditor whose claim or any part of the claim has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of that fact.

18. Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed - ^{Interest on debts.}

- (a) on such debt as carries interest, at the rate it carries; and
- (b) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date.

ORDER 44

ACCOUNTS AND INQUIRIES

1. (1) Where a writ is indorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant has entered appearance to the writ or after the time limited for entry of appearance, apply for an order under this rule. ^{Summary order for account.}

(2) A defendant to an action begun by writ who has served a counter-claim, which includes a claim for an account or a claim which necessarily involves taking an account, on-

- (a) the plaintiff;
- (b) any other party;
- (c) any person who becomes a party by virtue of such service,

may apply for an order under this rule.

(3) An application under this rule shall be made by summons and, if the Court so directs, shall be supported by affidavit or other evidence.

(4) On the hearing of the application, the Court may, unless satisfied that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

Court may direct taking of accounts, etc.

2. (1) The Court may, on an application made by summons at any stage of the proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made.

(2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgment or order so that, as far as may be, each distinct account and inquiry may be designated by a number.

Directions as to manner of taking account or making inquiry.

3. (1) Where the Court orders an account to be taken or inquiry to be made, it may by the same or a subsequent order give directions with regard to the manner in which the account is to be taken or vouched or the inquiry is to be made.

(2) Without prejudice to the generality of subrule (1), the Court may direct that in taking an account the relevant books of account shall be evidence of the matters contained in it with liberty to the parties interested to take such objections to it as they think fit

Account to be made, verified etc.

4. (1) Where an account has been ordered to be taken, the accounting party shall make out his account and, unless the Court otherwise directs, verify it by an affidavit to which the account shall be exhibited.

(2) The items on each side of the account shall be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party shall lodge the account with the Court and shall at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

5. Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of an amount or in any other respect shall give him notice thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or, as the case may be, the grounds for alleging that the item is erroneous.

Notice to be given of alleged omissions, etc., in account.

6. In taking any account directed by any judgment or order, all just allowances shall be made without any direction to that effect.

Allowances.

7. (1) If it appears to the Court that there is undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or for expediting them or for the conduct thereof and for costs as the circumstances require.

Delay in prosecution of accounts, etc.

(2) The Court may direct any party or solicitor to take over the conduct of the proceedings in question and to carry out any directions made by an order under this rule and may make such order as it thinks fit as to the payment of the official solicitor's costs.

8. Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to meet the subsequent costs of ascertaining those other persons.

Distribution of fund before all persons entitled are ascertained.

9. The accounts of a person appointed guardian of a minor's estate shall be verified and passed in such manner as the Court may direct.

Guardian's accounts.

ORDER 45

RECIPROCAL ENFORCEMENT OF JUDGMENTS

Interpretation. Cap 21. 1. In this Order “Act” means the Foreign Judgments (Reciprocal Enforcement) Act and the definitions contained in section 2 of that Act shall apply.

Application for leave. 2. An application under subsection (1) of section 4 of the Act for leave to have a judgment obtained in a superior court in a country to which the Act has been or shall hereinafter be extended, registered in the High Court shall be made by originating summons *ex parte*.

Application to be supported by affidavit. 3. (1) The application shall be supported by an affidavit of the fact exhibiting the judgment, or a verified or certified or otherwise duly authenticated copy thereof, stating that to the best of the information and belief of the deponent the judgment creditor is entitled to enforce the judgment and the judgment does not fall within any of the cases in which, under subsection (1) of section 4 of the Act, a judgment cannot properly be ordered to be registered.

(2) The affidavit shall also state, so far as the deponent can, the full name, title, trade or business and usual or last known place of residence or business of the judgment creditor and the judgment debtor and all other matters required by subsections (2), (3), (4) (5) and (6) of section 4 of the Act.

Title of summons. 4. The summons shall be intituled—
“In the matter of the Foreign Judgments (Reciprocal Enforcement) Act, and in the matter of a judgment of the

(describing the court) obtained

(describing the cause or matter)

and dated the day of 20

5. Unless otherwise provided by any relevant enactment, the Court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration. Security for costs.

6. (1) The order giving leave to register the judgment shall state the time within which the judgment debtor is to be entitled to apply to set aside the registration. Form of order.

(2) The time referred to in subrule (1), where the judgment debtor is resident in Freetown, shall ordinarily be 8 days after service of the notice of registration and where the judgment debtor is resident out of Freetown shall be 21 days thereafter.

7. (1) The register of judgments ordered to be registered under the Act shall be kept in the Master’s office by or under the direction of the Master. Register of judgment to be kept in Master’s office.

(2) The judgment shall be registered in the register in accordance with the order giving leave to register it.

8. The register shall be arranged in alphabetical order in the surname of the judgment debtor and there shall be entered in the register- Form of register.

(a) the date of the order for registration, and of the registration, the name, title trade or business and usual or last known place of residence or business of the judgment debtor;

(b) the judgment creditor and the amount for which judgment is signed; and

(c) any special directions in the order for registration as to the registration or execution thereon and the particulars of any execution issued thereon.

Notice of registration.

9. (1) Notice in writing of the registration of the judgment together with the order granting leave to register the judgment shall be served on the judgment debtor within 7 days after registration

(2) The notice shall (in the absence of an order by a judge as to the mode of service thereof) be served on the judgment debtor by personal service (with power to order substituted service or service out of the jurisdiction or both) as in the case of a writ of summons; but the judge may, at any stage of the proceedings, authorize or direct some other mode of service, and if he does so the service shall be effected in accordance with such authority or direction.

Form of notice.

10. The notice of registration shall contain full particulars of the judgment registered and of the order for such registration and shall state the name and address of the judgment creditor or of his solicitor or agent on whom and at which service of any summons issued by the judgment debtor may be served.

Application to set aside registration.

11. (1) The judgment debtor may, at any time within the time limited by the order giving leave to register after service on him of the notice of the registration of the judgment, apply by summons to a judge to set aside the registration or to suspend execution on the judgment; and the judge on such application, if satisfied that the case comes within one of the cases in which under subsection (1) of section 4 of the Act no judgment can be ordered to be registered or that it is not just or convenient that the judgment should be enforced in Sierra Leone or for other sufficient reason may order that the registration be set aside or execution on the judgment suspended either unconditionally or on such terms as he thinks fit and either altogether or until such time as he shall direct.

(2) The Judge on good and sufficient cause shown may allow the application to be made at any time after the expiration of the time mentioned in this rule.

Summons to set aside.

12. The summons referred to in rule 11 shall be an ordinary summons intituled in the same manner as the summons referred to in rule 4.

13. (1) No execution shall issue on a judgment registered under the Act until after the expiration of the time limited by the order giving leave to register after service on the judgment debtor of notice of the registration thereof. Execution.

(2) The Judge may, at any time order that execution be suspended for a longer time.

(3) Any party desirous of issuing execution on a judgment registered under the Act shall produce to the Master an affidavit of the service of the notice of registration.

14. A writ of execution on a judgment registered under the Act may be thus varied – Instead of “which sum of money and interest were later before us in our High Court, etc.,” insert “which sum of money and interest were lately in (describing the court in which the judgment was obtained) etc and which judgment has been duly registered in our High Court pursuant to the Foreign Judgments (Reciprocal Enforcement) Act”. Form of writ of execution.

15. Any application under section 12 of the Act for a certified copy of a judgment obtained in the Court shall be made by originating summons *ex parte* supported by affidavit made by the judgment creditor or his solicitor, giving the particulars of the judgment and showing that the judgment debtor is resident in a country to which the Act extends and stating to the best of his information and belief the title, trade, business or occupation of the judgment creditor and judgment debtor respectively and their respective usual or last known places of residence or business. Certified copy of judgment.

16. The certified copy of the judgment shall be an office copy and shall be sealed with the seal of the Court and shall be certified by the Master as follows:– Certified copy to be office copy.

“I certify that the above copy judgment is a true copy of a judgment obtained in the High Court, and this copy is issued in accordance with section 12 of the Foreign Judgments (Reciprocal Enforcement) Act.”

(Sgd.) Master and Registrar of the High Court

ORDER 46**ENFORCEMENT OF JUDGMENTS AND ORDERS**

Enforcement of judgment, etc., for payment of money.

1. (1) Subject to these Rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into Court, may be enforced by one or more of the following means—

- (a) writ of *fiери facias*;
- (b) garnishee proceedings;
- (c) the appointment of a receiver;
- (d) in a case in which rule 5 applies, an order of committal;
- (e) in such a case, a writ of sequestration.

(2) Subject to these Rules, a judgment or order for the payment of money into Court may be enforced by one or more of the following means:—

- (a) the appointment of a receiver;
- (b) in a case in which rule 5 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(3) Subrules (1) and (2) are without prejudice to any other remedy available to enforce such a judgment or order as is mentioned in the judgment or order.

(4) In this Order references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.

2. When first executing a writ of *fiери facias*, the sheriff or his officer shall deliver to the debtor or leave at each place where execution is levied a notice informing the debtor of the execution. Notice of seizure.

3. (1) Subject to these Rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means:— Enforcement of judgment for possession of land.

- (a) writ of possession;
- (b) in a case in which rule 5 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was given or made in a mortgage action.

(3) Such leave shall not be granted unless it is shown—

- (a) that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled; and
- (b) if the operation of the judgment or order is suspended by statute.

(4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

4. (1) Subject to these Rules, a judgment or order for the delivery of any goods which does not give a person against whom the judgment is given or order made the alternative of paying the assessed value of the goods may be enforced by one or more of the following means:— Enforcement of judgment for delivery of goods.

- (a) writ of delivery to recover the goods without alternative provision for recovery of the assessed value thereof (hereafter in this rule referred to as a “writ of specific delivery”);
- (b) in a case in which rule 5 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(2) Subject to these Rules, a judgment or order for the delivery of any goods or payment of their assessed value may be enforced by one or more of the following means:–

- (a) writ of delivery to recover the goods or their assessed value;
- (b) by order of the Court, writ of specific delivery;
- (c) in a case in which rule 5 applies, writ of sequestration.

(3) An application for an order under sub-paragraph (b) of subrule (2) shall be served on the defendant against whom the judgment or order sought to be enforced was given or made.

(4) A writ of specific delivery, and a writ of delivery to recover any goods or their assessed value, may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

(5) A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money.

Enforcement of judgment to do or abstain from doing any act.

5. (1) Where–

- (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time;

- (b) a person disobeys a judgment or order requiring him to abstain from doing an act,

then, subject to these Rules, the judgment or order may be enforced by one or more of the following means:–

- (i) with the leave of the Court, a writ of sequestration against the property of that person;
- (ii) where that person is a body corporate, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the body;
- (iii) subject to the provisions of the Debtors Act, an order of committal against that person or, where that person is a body corporate, against any such officer.

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(2) Where a judgment or order requires a person to do an act within a time specified in the judgment or order and an order is subsequently made under rule 6 requiring the act to be done within some other time, references in subrule (1) to a judgment or order shall be construed as references to the order made under rule 6.

(3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under subrule (1), but the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first mentioned person to deliver the goods to the applicant within a time specified in the order, and that order may be so enforced.

6. (1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court shall have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified in the order.

Judgment, etc. requiring act to be done: order fixing time for doing it.

(2) Where, notwithstanding or by reason of rule 2 of Order 43 a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified in the order.

(3) An application for an order under this rule shall be made by summons and the summons shall be served on the person required to do the act in question.

Service of copy of judgment, etc., prerequisite to enforcement under r.5.

7. (1) In this rule references to an order shall be construed as including references to a judgment.

(2) Subject to subrule (3) of rule 18 of Order 27, subrule (3) of rule 6 of Order 29 and subrules (6) and (7), an order shall not be enforced under rule 5 unless—

- (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question, and
- (b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.

(3) Subject to this rule, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in paragraph (b)(ii) or (iii) of subrule (1) of rule 5 unless—

- (a) a copy of the order has also been served personally on the officer against whose property leave is sought to issue a writ of sequestration or against whom an order of committal is sought; and
- (b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.

(4) There shall be prominently indorsed on the front of the copy of an order served under this rule a warning to the person on whom the copy is served that disobedience to the order would be a contempt of court punishable by imprisonment, or (in the case of an order requiring a body corporate to do or abstain from doing an act) punishable by sequestration of the assets of the body corporate and by imprisonment of any individual responsible.

(5) Subject to this Order, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in paragraph (b)(ii) or (iii) of subrule (1) of rule 5 unless—

- (a) a copy of the order has also been served personally on the officer against whose property leave is sought to issue a writ of sequestration or against whom an order of committal is sought; and
- (b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.

(6) An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that pending such service, the person against whom or against whose property is sought to enforce the order has had notice thereof either—

- (a) by being present when the order was made; or
- (b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

(7) Without prejudice to its powers under this Order, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

Court may order act to be done at expense of disobedient party.

8. If an order of *mandamus*, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

Execution by or against person not being a party.

9. (1) Any person, not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.

(2) Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

Conditional judgment: waiver.

10. A party entitled under any judgment or order to any relief subject to the fulfillment of any condition who fails to fulfill that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

Matters occurring after judgment: stay of execution, etc.

11. Without prejudice to rule 1 of Order 48 a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

12. (1) A writ of *fieri facias* shall be in such form as is appropriate in the particular case. Forms of writs.

(2) A writ of delivery shall be in the appropriate form.

(3) A writ of possession shall be in an appropriate Form.

(4) A writ of sequestration shall be in an appropriate Form.

13. (1) Subrule (1) of rule 1, with the omission of sub-paragraphs (d) and (e) thereof, and Orders 47 to 50 shall apply in relation to a judgment or order for the recovery of money as they apply in relation to a judgment or order for the payment of money. Enforcement of judgments and orders for recovery of money, etc.

(2) Rule 3, with the omission of paragraphs (b) and (c) of subrule (1) thereof and rule 3 of Order 48 shall apply in relation to a judgment or order for the recovery of possession of land as they apply in relation to a judgment or order for the giving or delivery of possession of land.

(3) Rule 4 of this Order, with the omission of paragraphs (b) and (c) of subrule (1) and paragraph (c) of subrule (2) and subrule (2) of rule 3 of Order 48 shall apply in relation to a judgment or order that a person do have a return of any goods or do recover the assessed value thereof as they apply in relation to a judgment or order for the delivery of any goods or payment of the assessed value thereof respectively.

14. A party entitled to tax his costs by virtue of subrule (3), (4), (5) or (6) of rule 5 of Order 57 may, if the taxed costs are not paid within 4 days after taxation, sign judgment for them. Signing judgment for costs under deemed order.

ORDER 47

WRITS OF EXECUTION-GENERAL

Definition. 1. In this Order, unless the context otherwise requires, “writ of execution” includes a writ of *feri facias*, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of those writs.

When leave to issue any writ of execution is necessary., 2. (1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases:

- (a) where 6 years or more have elapsed since the date of the judgment or order;
- (b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;
- (c) where the judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the judgment or order, and it is sought to issue execution against such assets;
- (d) where under the judgment or order any person is entitled to relief subject to the fulfillment of any condition which it is alleged has been fulfilled;
- (e) where any goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.

(2) Where the Court grants leave, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within 1 year after the date of the order granting such leave, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

3. A writ of execution in aid of any other writ of execution shall not issue without the leave of the Court.

Leave required for issue of writ in aid of other writ.

4. (1) An application for leave to issue a writ of execution may be made by notice of motion *ex parte* unless the Court directs it to be made by summons.

Application for leave to issue writ.

(2) Such an application shall be supported by an affidavit—

- (a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due under the writ and the amount due under it at the date of the application;
- (b) stating, where the case falls within paragraph (a) of subrule (1) of rule 2 the reasons for the delay in enforcing the judgment or order;
- (c) stating where the case falls within paragraph (b) of subrule (1) of rule 2 the change which has taken place in the parties entitled or liable to execution since the date of the judgment or order;
- (d) stating, where the case falls within paragraph (c) or (d) of subrule (1) of rule 2 that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so;
- (e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.

(3) The Court hearing the application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in an action may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

Application for leave to issue writ of sequestration.

5. (1) Notwithstanding anything in rules 2 and 4, an application for leave to issue a writ of sequestration shall be made by motion.

(2) Without prejudice to its powers under rule 4 of Order 58, the Court may dispense with service of the notice of motion under this rule if it thinks it just to do so.

(3) The judge hearing an application for leave to issue a writ of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of rule 4 of Order 51 but, except in such a case, the application shall be heard in open court.

Issue of writ of execution.

6. (1) Issue of a writ of execution takes place on it being sealed by an officer of the appropriate office.

(2) Before such a writ is issued a praecipe for its issue shall be filed.

(3) The praecipe shall be signed by or on behalf of the solicitor of the person entitled to execution or, if that person is acting in person, by him.

(4) No such writ shall be sealed unless at the time of the tender thereof for sealing—

(a) the person tendering it produces—

(i) the judgment or order on which the writ is to issue, or an office copy thereof;

(ii) where the writ may not issue without the leave of the Court, the order granting such leave or evidence of the granting of it;

(b) the officer authorised to seal it is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.

(5) Every writ of execution shall bear the date of the day on which it is issued.

(6) In this rule “the appropriate office” means the High Court Registry or District Registry.

7. (1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.

Duration and renewal of writ of execution.

(2) Where a writ has not been wholly executed, the Court may by order extend the validity of the writ from time to time for a period of 12 months at any one time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire or such later day, if any, as the Court may allow.

(3) Before a writ the validity of which had been extended under subrule (2) is executed, either the writ shall be sealed with the seal of the office out of which it was issued showing the date on which the order extending its validity was made or the applicant for the order shall serve a notice in an appropriate Form and sealed on the sheriff to whom the writ is directed informing him of the making of the order and the date of the order.

(4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally delivered to the sheriff.

(5) The production of a writ of execution, or of such a notice as is mentioned in subrule (3) purporting in either case to be sealed as mentioned in that subrule, shall be evidence that the validity of that writ, or, as the case may be, of the writ referred to in that notice, has been extended under subrule (2).

(6) If, during the validity of a writ of execution, an interpleader summons is issued in relation to an execution under that writ, the validity of the writ shall be extended until the expiry of 12 months from the conclusion of the interpleader proceedings.

Returns to writ of execution.

8. (1) Any party at whose instance or against whom a writ of execution was issued may serve a notice on the sheriff to whom the writ was directed requiring him, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.

(2) If a sheriff on whom such a notice is served fails to comply with it the party by whom it was served may apply to the Court for an order directing the sheriff to comply with the notice.

ORDER 48

WRITS OF FIERI FACIAS

Nature of writ of fieri facias.

1. (1) A judgment or order for the payment of money may be enforced by a writ of *feri facias*.

(2) Where a writ of *feri facias* is issued, it shall be executed by the seizure and sale of the debtor's property sufficient to satisfy the amount of the judgment debt together with post-judgment interest at the appropriate rate until payment and the costs of the execution.

Two or more writs of fieri facias.

2. (1) A party entitled to enforce a judgment or order by writ of *feri facias* may issue two or more such writs, directed to different Registrars at either the same time or different times, to enforce that judgment or order, but no more shall be levied under all those writs together than is authorized to be levied under one of them.

(2) Where a party issues two or more writs of *feri facias* directed to different Registrars to enforce the same judgment or order, the party shall inform each Registrar of the issue of the other writ or writs.

3. (1) A party entitled to enforce a judgment or order for the payment of money, together with costs, may, if the party so elects, issue one writ of *feri facias* to enforce payment of the sum (other than for costs) adjudged or ordered, and a second writ of *feri facias* to enforce payment of the costs. Separate writs to enforce payment of costs.

(2) A party entitled to enforce a judgment or order for the delivery of possession of any property (other than money) may, if the party so elects, issue a separate writ of *feri facias* to enforce payment of any damages or costs awarded to the party by that judgment or order.

4. (1) Subject to the other provisions of this Order and to the provisions of any other enactment, a writ of *feri facias* shall be put into effect— Methods of putting writ into effect.

- (a) in respect of any movable property in the possession of the judgment debtor by actual seizure, the property being kept in the custody of the Master until sale;
- (b) in respect of any money or negotiable instrument, by actual seizure and the money or instrument being deposited in court by the Master and held subject to the further order of the Court;
- (c) in respect of any movable property to which the judgment debtor is entitled subject to a lien or right of some other person to the immediate possession of the property, by delivering to the person in possession a written order prohibiting the person in possession from giving over the property to the judgment debtor;

- (d) in respect of shares in any body corporate, by a written order prohibiting the person in whose name the shares are held from making any transfer of the shares or receiving payment of any dividends of the shares, and prohibiting the manager, secretary or other proper officer of the body corporate from making such payment until such further order;
- (e) in respect of immovable property or any interest in immovable property, whether at law or in equity, by a written order prohibiting the judgment debtor from alienating the property or any interest in the property by sale, gift or in any other way and prohibiting all persons from receiving it by purchase, gift or otherwise, and the Master may also, by direction of the Court, take and retain actual possession of the property.

(2) The orders referred to in paragraphs (c), (d) and (e) of subrule (1) shall be signed by the Master.

(3) Subject to any enactment, property in the custody or under the control of any public officer in the officer's official capacity is liable to attachment in execution of judgment or order with notice to the Attorney-General, and the order of the attachment shall be served on a public officer

(4) Property in *custodia legis* is liable to attachment by leave of the Court, and the order of attachment shall be served on the Master.

5. (1) In the case of any movable property not in the possession of the judgment debtor, an office copy of the order referred to in paragraph (e) of subrule (1) of rule 4 shall be delivered to the person in possession of the property.

Service of
prohibitory
orders

(2) In the case of shares in any body corporate, an office copy of the order referred to in paragraph (d) of subrule (1) of rule 4 shall be delivered to or served upon the manager, secretary or other proper officer of that body corporate.

(3) In the case of immovable property or any interest in it, a copy of the order referred to in paragraph (e) of subrule (1) of rule 4, certified by the Master, shall be delivered to the judgment debtor or if the judgment debtor cannot be found, shall be delivered to some adult person at the judgment debtor's last known place of residence or business to be given to the judgment debtor, or in case such delivery cannot be made, shall be affixed to a front door of the court building of the court from which the writ of *feri facias* issued and, unless it is the same court building, to the door of the Magistrate Court nearest the immovable property in question.

(4) A similar copy of the order referred to in paragraph (e) of subrule (1) of rule 4 shall also, in every case be posted on or affixed to some conspicuous part of the immovable property in question.

6. After an attachment has been made by actual seizure, or by written order duly delivered, served or posted in accordance with rule 5, any alienation without leave of the Court of the property attached, whether by sale, gift or otherwise, and any payment of the debt, dividends or shares to the judgment debtor during the continuance of the attachment, shall be null and void, and the person making the alienation or payment shall be liable to committal for contempt of court.

Unauthorised
alienation
during
attachment
void.

7. The Court may at any time during an attachment under this Order, direct that any part of the property attached which—

Payment of
money and
proceeds of
sale.

- (a) consists of money, or a sufficient part of it, shall be paid over to the party applying for execution of the judgment;
- (b) does not consist of money, so far as may be necessary for the satisfaction of the judgment shall be sold and that the money realised by the sale or a sufficient part of it shall be paid to the party.

Sales in execution of judgments.

8. (1) Sales in execution of judgments shall be made by the Under Sheriff under the direction of the Master, and shall be conducted according to such orders, if any, as the Court may make on the application of any party concerned.

(2) Unless the Court authorises the sale to be made in any other manner, the sale shall be made by public auction.

(3) An order relating to sale may be made at the time of issuing a writ of *fieri facias* or afterwards.

Periods of notice of sale.

9. (1) Subject to subrule (3), no sale shall be made until after at least 7 days notice of the sale in the case of movable property, unless the judgment debtor in writing consents otherwise.

(2) Whatever notices are made elsewhere, the notices shall be made in the town or place where the property to be sold is situated and if the sale is to take place in any town or place, the notices shall be made at the place of sale.

(3) The Court may, for any sufficient reason extend or reduce the periods of notice in any case.

Setting aside sale for irregularity.

10. (1) Subject to any enactment, at any time within 21 days from the date of the sale of any immovable property, an application may be made to the Court to set aside the sale on the ground of any material irregularity in the conduct of the sale; but no sale shall be set aside on the ground of such irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of the irregularity.

(2) If the application is granted by the Court, the Court shall make an order setting aside the sale for irregularity and thereupon the purchaser shall be entitled to receive back any money deposited or paid by the purchaser on account of the sale, with or without interest, to be paid by such parties and in such manner as the Court may direct.

11. (1) If the amount adjudged, with costs and all charges and expenses incurred by the attachment, is paid into court or if the judgment or order is otherwise satisfied or vacated or set aside, an order shall be issued for the withdrawal of the attachment. Withdrawal on satisfaction of judgment.

(2) If the execution debtor so wishes, and deposits in court a sum sufficient to cover the expenses, an order shall be issued in the same manner as prescribed before in this Order for the withdrawal of the attachment, and such steps shall be taken as may be necessary to stay further proceedings in execution of the judgment or order.

12. (1) Where a judgment is given or an order is made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order or at any time thereafter by the judgment debtor or other party liable to execution— Power to stay execution by writ of *fieri facias*.

(a) that there are special circumstances which render it inexpedient to enforce the judgment or order; or

(b) that the applicant is unable for any just cause to pay the money,

then, notwithstanding anything in rule 2 or 3, the Court may by order stay the execution of the judgment or order by writ of *fieri facias* either absolutely or for such period and subject to such conditions as the Court considers fit.

(2) An application under this rule may be made notwithstanding that the party liable to execution did not file appearance in the action.

(3) The application, if not made at the time the judgment is given or order made, shall be supported by an affidavit made by or on behalf of the applicant stating the grounds of the application and the evidence necessary to substantiate them.

(4) Where the application is made on the ground of the applicant's inability to pay, the affidavit shall disclose the applicant's income, the nature and value of any property of the applicant and the amount of any other liabilities of the applicant.

(5) Where the application is not made at the time the judgment is given or order made, notice of the application and a copy of the supporting affidavit shall be served on the party entitled to enforce the judgment or order not less than 4 clear days before the day named in the notice for hearing the application.

(6) An order staying execution under this rule may be varied or revoked by a subsequent order.

ORDER 49

EXAMINATION OF JUDGMENT DEBTOR

Order for examination of judgment debtor.

1. (1) Where a person has obtained a judgment or order for the payment of money by some other person, hereafter referred to as “the judgment debtor” the Court may, on an application made *ex parte* by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a body corporate, an officer of it, to attend before the Court and be orally examined on the questions–

- (a) whether any and, if so, what debts are owing to the judgment debtor, and
- (b) whether the judgment debtor has any and, if so, what other property or other means of satisfying the judgment or order,

and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to these questions at the time and place appointed for the examination.

(2) An order under this rule shall be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination.

2. Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than such a judgment or order as is mentioned in rule 1, the Court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications. Examination of party liable to satisfy other judgment.

3. The costs of any application under rule 1 or of any proceedings arising from or incidental to the application shall be at the discretion of the Court. Cost of application under rules 1 and 2.

ORDER 50

GARNISHEE PROCEEDINGS

1. (1) Where a person (in this Order referred to as “the judgment creditor”) has obtained a judgment or order for the payment by some other person (in this Order referred to as “the judgment debtor”), not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order referred to as “the garnishee”) is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any other enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings. Attachment of debt due to judgment debtor.

(2) An order under this rule shall, in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in subrule (1) or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that subrule and the costs of the garnishee proceedings.

2. An application for an order under rule 1 shall be made *ex parte* supported by an affidavit– Application for order.

- (a) stating the name and last known address of the judgment debtor;

- (b) identifying the judgment or order to be enforced and stating the amount of such judgment or order and the amount remaining unpaid under it at the time of the application; and
- (c) stating that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor.

Service and effect of order to show cause.

3. (1) An order under rule 1 to show cause shall, at least 7 days before the time appointed for the further consideration of the matter, be served on the—

- (a) garnishee personally; and
- (b) judgment debtor unless the Court otherwise directs.

(2) Service of the order shall bind in the hands of the garnishee as from the date of service on him of any debt specified in the order or as much of it as may be specified.

No appearance or dispute of liability by garnishee.

4. (1) Where on the further consideration of the matter, the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may make an order absolute under rule 1 against the garnishee.

(2) An order absolute under rule 1 against the garnishee may be enforced in the same manner as any other order for the payment of money.

Dispute of liability by garnishee.

5. Where on the further consideration of the matter, the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried.

6. (1) If in garnishee proceedings it is brought to the notice of the Court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien upon it, the Court may order that person to attend before the Court and state the nature of his claim with particulars of the claim. Claims of third persons.

(2) After hearing any person who attends before the Court in compliance with an order under subrule (1) the Court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for determining the validity of the claim of such other person as is mentioned in subrule (1) be tried in such manner as is mentioned in rule 5.

7. If it appears to the Court that payment by the garnishee to the judgment creditor will contravene any provision of the Exchange Control Act, it may order the garnishee to pay into court the amount due to the judgment creditor inclusive of costs after deduction of the garnishee's costs. Judgment creditor resident outside Sierra Leone.

8. Any payment made by a garnishee in compliance with an order absolute under this Order, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose reversed. Discharge of garnishee.

9. (1) Where money is standing to the credit of the judgment debtor in court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of that money but may apply to the Court by summons for an order that the money or so much of it as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application, be paid to the judgment creditor. Money in court.

(2) On issuing a summons under this rule, the applicant shall produce the summons at the office of the Master and leave a copy at that office, and the money to which the application relates shall not be paid out of court until after the determination of the application.

(3) If the application is dismissed, the applicant shall give notice of that fact to the Master.

(4) Unless the Court otherwise directs, the summons shall be served on the judgment debtor at least 7 days before the day named in the summons for the hearing of it.

(5) The Court hearing an application under this rule may make such order with respect to the money in Court as it thinks just.

Costs.

10. The costs of the application for an order under rule 1 or 8, and of any proceedings arising from the application or incidental thereto, shall, unless the Court otherwise directs, be retained by the judgment creditor out of the money recovered by him under the order and in priority to the judgment debt.

ORDER 51

COMMITTAL FOR CONTEMPT OF COURT

Committal for contempt of court.

1. (1) The power of the Court to punish for contempt of court may be exercised by an order of committal.

(2) An order of committal may be made by the Court where contempt of court—

- (a) is committed in connection with—
 - (i) any proceedings before the Court;
 - (ii) criminal proceedings;
 - (iii) proceedings in an inferior court;
- (b) is committed in the face of the Court, or consists of disobedience to an order of the Court or a breach of an undertaking to the Court; or
- (c) is committed otherwise than in connection with any proceedings.

2. (1) An application for an order of committal shall be made to the Court by notice of motion stating the grounds of the application and supported by an affidavit. Application to court.

(2) The notice of motion, and affidavit shall be served personally on the person sought to be committed but the Court may dispense with personal service where the justice of the case so demands.

3. Nothing in rules 1 and 2 shall be taken as affecting the power of the Court to make an order of committal of its own motion against a person guilty of contempt of court. Saving for power to commit without application for the purpose.

4. (1) Subject to sub-rule (2), the Court hearing an application for an order of committal may sit in chambers in the following cases, that is to say where:— Provisions as to hearing.

- (a) the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant or rights of access to an infant;
- (b) the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder;
- (c) the application arises out of proceedings in which a secret process, discovery or invention was in issue;
- (d) it appears to the Court that in the interest of the administration of justice or for reasons of national security the application should be heard in chambers,

but except otherwise provided in this rule, the application shall be heard in open court.

(2) If the Court hearing an application in chambers by virtue of sub-rule (1) decides to make an order of committal against the person sought to be committed, it shall in open court state—

- (a) the name of that person;
- (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and
- (c) if he is being committed for a fixed period, the length of that period.

(3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the notice of motion under rule 2.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf he shall be entitled to do so.

Contempt in face of court.

5. Rules 1 to 4 are without prejudice to the powers of the Court to commit for contempt committed in the face of the Court.

Power to suspend execution of committal order.

6. (1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under sub-rule (1), the applicant for the order of committal shall, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that sub-rule.

Discharge of person committed.

7. (1) The Court may, on the application of any person committed to prison for any contempt of court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver anything to some other person or to deposit it in Court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the sheriff may take possession of it as if it were the property of that person and, without prejudice to the generality of sub-rule (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the sheriff as it thinks fit.

8. Nothing in this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of Court to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with necessary modifications, shall apply in relation to an application for an order of committal. Saving for other powers.

ORDER 52

APPLICATIONS FOR JUDICIAL REVIEW

- 1. (1) An application for—
 - (a) an order of mandamus, prohibition or certiorari; or
 - (b) an injunction restraining a person from acting in any office in which he is not entitled to act,

Cases appropriate for application for judicial review

shall be made by way of an application for judicial review in accordance with this Order.

(2) An application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to—

- (a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition, or certiorari,
- (b) the nature of the person and bodies against whom relief may be granted by way of such an order; and
- (c) all the circumstances of the case,

it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

Joinder of claims for relief.

2. On an application for judicial review any relief mentioned in subrule (1) or (2) of rule 1 may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

Time for making application.

3. (1) An application for judicial review shall be made not later than 3 months from the date of the occurrence of the event giving grounds for making the application.

(2) Where an order of certiorari is sought in respect of any judgment, order, conviction or other proceeding, the date of the occurrence of the event giving grounds for the making of the application shall be taken to be the date of that judgment, order, conviction or proceeding.

Mode of application.

4. (1) An application for judicial review shall be made to the Court by originating notice of motion.

(2) The motion shall be supported by an affidavit by or on behalf of the applicant which shall contain the following particulars:—

- (a) the full name, description and address for service of the applicant;
- (b) the facts upon which the applicant relies;

- (c) the relief or remedy sought by the applicant and the grounds on which he seeks the relief or remedy; and
- (d) the full name, description and address for service of the person directly affected by the application.

5. (1) The notice of motion shall be served on all parties named in the applicant's affidavit as being directly affected by it. Notice of application.

(2) The Court may order that notice of the application shall be served on any person not named as being directly affected by the application if in its opinion it is desirable that the person should be given notice.

(3) A person who is served with a notice of the motion may file an affidavit in response to the application not later than 7 days after service of the notice on the person.

(4) An applicant shall not rely on any ground at the hearing not set out in the applicant's affidavit in support of the application.

(5) The applicant may by leave of the Court, amend the grounds relied on and upon leave being granted, the applicant shall file a further affidavit setting out the grounds relied on as amended not later than 7 days after the grant of leave or sue other time as the Court may order.

(6) Where the respondent wishes to file a reply to the applicant's amended affidavit, the respondent shall do so within 7 days of service of the further affidavit.

(7) No further affidavits may be filed by either the applicant or any respondent except by leave of the Court.

(8) Each party to the application shall supply to every other party copies of every affidavit the party proposes to use at the hearing of the application.

(9) The application relates to any proceedings in or before a court and the object of the application is either to compel the Court or an officer of the Court to do any act in relation to the proceedings or to quash them or any order made therein, the motion shall also be served on the Clerk or Master and where any objection to the conduct of the judge is to be made, on the judge.

Hearing of application.

6. (1) The Court may on the hearing of an application for judicial review, allow a person who desires to oppose the application to be heard notwithstanding that the person has not been served with notice of the application and may direct that person to file an affidavit.

(2) Within 7 days after filing the notice of application, the applicant shall file a statement of his case setting out fully his arguments and relevant enactments or decided cases he wishes the Court to consider.

(3) If the applicant does not file a statement of case within the time stipulated in subrule 2, the Registrar shall certify that fact to the Court which may dismiss the application for non-prosecution or make such other order as it may consider appropriate.

(4) If the applicant files a statement of case the Master shall cause a copy to be served on each respondent or interested party or his solicitor within 2 days from the date of filing.

(5) A respondent or any interested party who files a statement of case shall file his statement of case within 7 days of the service of the statement of the applicant's case on him and shall set out his arguments in full citing all relevant enactments and decided cases intended for the consideration of the Court.

(6) A respondent or any interested party who files his statement of case shall serve it on the applicant and on any interested party within 2 days of the filing of the statement of case.

(7) Within 2 days of service under subrule (6), the party filing a statement of case shall file an affidavit of service.

(8) The Master shall, within 5 days of the filing of the respondent's affidavit of service fix the application for hearing by the Court and shall notify the parties of the date of hearing.

(9) The application shall be considered and disposed of by the Court on the basis of the papers filed and if considered necessary by the Court, oral submission from the parties or their solicitors may also be received and considered by the Court.

7. On the hearing of an application for judicial review the Court may make an order for prohibition, certiorari or mandamus. Prohibition, certiorari etc.

8. (1) Where the applicant seeks an order of certiorari to remove any proceedings for the purpose of quashing them, he shall, at least 7 days before the hearing of the application file in the registry of the Court a copy of any order, warrant, commitment, conviction, inquisition or record verified by affidavit, otherwise the applicant shall not be heard unless the applicant's failure to do so is explained to the satisfaction of the Court. Certiorari.

(2) On the hearing of an application for certiorari, the Court if satisfied that there are grounds for quashing the decision or proceeding to which the application refers, may quash it and may, in addition to quashing it remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and proceed in accordance with the findings of the Court.

9. (1) In an application for the relief of injunction, declaration or damages, if the Court considers that the relief should not be granted on an application for judicial review but might have been granted if sought in an action commenced by writ by the applicant at the time the application was made, it may, instead of refusing the application order the proceedings to continue as if they had been commenced by writ. Injunction or declaration.

(2) Where the Court makes an order under subrule (1) for the proceedings to continue, it may direct that the parties shall settle the issues for trial and give such further directions for the conduct of the proceedings as it may consider necessary for the just and expeditious disposal of the matter.

Protection for person acting in obedience to mandamus.

10. No action or proceedings shall be commenced or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

ORDER 53

HABEAS CORPUS

Application for habeas corpus ad subjiciendum.

1. (1) An application for a writ of *habeas corpus ad subjiciendum* shall be made to the Court, but—

- (a) in vacation or at any time when no court is sitting it may be made to a judge otherwise than in court;
- (b) in cases where the application is made on behalf of an infant, it shall be made in the first instance to a judge otherwise than in court.

(2) Subject to subrule (3), an application for the writ may be made *ex-parte* and shall be supported by an affidavit by the person restrained setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the affidavit required by subrule (2), the affidavit may be made by some other person on behalf of the person restrained and that affidavit shall state that the person restrained is unable to make the affidavit for reasons stated in the affidavit.

Power of Court to which *ex-parte* application is made.

2. (1) The Court or Judge to whom an application under rule 1 is made *ex-parte* may make an order forthwith for the writ to issue, or may—

- (a) where the application is made to a judge otherwise than in Court, direct that an application be made by notice of motion to the Court; or
- (b) where the application is made to the Court, adjourn the application so that notice of it may be given.

(2) The notice of the application shall be served on the person against whom the issue of the writ is sought and on such other persons as the Court or Judge may direct and, unless the Court or Judge otherwise directs, there shall be at least 4 clear days between the date of the service of the notice and the date stated in the notice for the hearing of the application.

3. Every party to an application under rule 1 shall supply to every other party copies of the affidavit which the party proposes to use at the hearing of the application. Copies of affidavits to be supplied.

4. Without prejudice to subrule (1) of rule 2, the Court or Judge hearing an application for a writ of habeas corpus ad *subjiciendum* may in the Court's or judge's discretion order that the person restrained be released, and such order shall be a sufficient warrant to any officer in charge of a prison, police officer or other person for the release of the person under restraint. Power to order release of persons restrained.

5. Where a writ of habeas corpus ad *subjiciendum* is ordered to issue, the Court or judge by whom the order is made shall give directions as to the Court or judge before whom, and the date on which the writ is returnable. Directions as to return of writ.

6. (1) Subject to subrules (2) and (3), a writ of habeas corpus ad *subjiciendum* shall be served personally on the person to whom it is directed. Service of writ and notice.

(2) Where it is not possible to serve the writ personally, or if it is directed to the Director of Prisons, police officer or other public official, it shall be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) Where the writ is directed to more than one person, the writ shall be served in the manner provided by this rule on the person first named in it, and copies shall be served on each of the other persons in the same manner as the writ.

(4) There shall be served with the writ a notice stating the Court or Judge before whom and the date on which the person restrained is to be brought and that in default of obeying, proceedings for committal of the party disobeying will be taken.

Return to the writ.

7. (1) The return to a writ of habeas corpus *ad subjiciendum* shall be indorsed on or annexed to the writ and shall state all the causes of the detention of the person restrained.

(2) The return may be amended or another return substituted by leave of the Court or Judge before whom the writ is returnable.

Procedure at hearing of writ.

8. When a return to a writ of habeas corpus *ad subjiciendum* is made, the return shall first be read and motion then made to discharge or remand the person restrained or to amend or quash the return and where that person is brought in accordance with the writ, that person's Solicitor shall be heard first, then the counsel for the State and the Solicitor for the person restrained in reply.

Bringing up prisoner to give evidence etc.

9. (1) An application for a writ of habeas corpus *ad testificandum* or of habeas corpus *ad respondendum* shall be made by notice supported by affidavit to a judge in chambers.

(2) An application for an order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any cause or matter, civil or criminal, before any Court, tribunal or justice, shall be made by notice supported by made on affidavit to a judge in chambers.

Form of writ.

10. A writ of habeas corpus shall be in an appropriate Form.

ORDER 54

ARREST OF ABSCONDING DEFENDANT

Defendant leaving the jurisdiction; application for security.

1. (1) A plaintiff may at the institution of an action or at any time before final judgment, make an application *ex parte* supported by an affidavit to the Court for an order for security to be taken for the appearance of the defendant to answer any judgment that may be given against him in the action where the amount involved in the action exceeds Le20,000, and

(a) the defendant has disposed of or removed all or part of his property from the country; or

(b) the defendant is about to leave the country.

(2) Where the Court is satisfied that the provisions in paragraph (a) or (b) of subrule (1) have been substantiated and that the execution of any judgment in the action against the defendant is likely to be obstructed or delayed, it may issue a warrant to bring the defendant immediately before the Court or a judge to show cause why the defendant should not give good and sufficient bail for his appearance.

(3) The defendant may, at any time after arrest apply to the Court to rescind or vary the order.

(4) The warrant shall be indorsed for bail subject to such conditions as the Court may order.

2. An order to arrest shall, before delivery to the sheriff be indorsed with the plaintiff's address for service.

Indorsement of order to arrest defendant.

3. Where the defendant fails to show cause, the Court shall order him to give bail for his appearance at any time while the action is pending until the execution or satisfaction of any judgment that may be given against him in the action, and the surety shall undertake to pay any money that may be adjudged to be paid by the defendant in the action in default of his appearance.

Bail for appearance.

4. A deposit of money or other valuable property by the defendant sufficient to satisfy the claim and costs of the action may be accepted by the Court in lieu of bail.

Deposit in lieu of bail.

5. Where the defendant fails to furnish security or to provide sufficient security, he may—

Committal in default of security or deposit.

(a) be committed to custody until the determination of the action; or

- (b) if the judgment is against the defendant, until the executions of the order if the Court so orders,

but the Court may at any time release the defendant upon reasonable cause being shown and upon terms such as security or other relevant matters.

Money to be under control of Court.

6. The money deposited, the security and all proceedings relating to them shall be subject to the order and control of the Court.

Jurisdiction of Court.

7. (1) An application under this Order may be made to any Court where the defendant may be found and the Court may issue the warrant to detain and bring the defendant before the Court and may make such further orders as it considers just in the circumstances.

(2) Where the warrant is issued by a Court other than the Court before which the action is pending, that Court shall transmit the application and the evidence to the Court where the action is pending, upon the request of either party to the action.

(3) Where subrule (2) applies, the Court transferring the application shall take sufficient security for the appearance of the defendant in that Court or send the defendant to the other Court in the custody of an officer of the Court; and the Court where the action is pending shall deal with the application in accordance with this Order.

Cost of keeping the arrested person.

8. (1) The expenses incurred for keeping the arrested person in custody shall be of such sum as shall be determined by the Court and shall be paid by the plaintiff in advance to the prison authority.

(2) Any amount expended under subrule (1) may be recovered by the plaintiff in the action unless the Court otherwise orders.

(3) The Court may order the release of the person in custody if the plaintiff fails to pay the subsistence expenses or in the case of serious illness, order the removal of the person to a hospital.

9. The written application to the Court provided for by section 9 of the Debtors Act, shall be by *ex parte* notice of motion supported by affidavit. Application to the Court

10. The sheriff or other officer named in an order to arrest shall, within 2 days after the arrest, indorse on the order the true date of the arrest. Date of arrest.

ORDER 55

CONTENTIOUS PROBATE PROCEEDINGS

1. (1) This Order applies to probate causes and matters, and the other provisions of these Rules apply to those causes and matters including applications for the rectification of a will subject to this Order. Application and interpretation.

(2) In these rules “probate action” means an action for the grant of probate of the will, or letters of administration of the estate of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.

(3) In this Order, “will” includes a codicil and “relevant office” means—

(a) if the action is proceeding in a District Office, that Registry, and

(b) in any other case the Registry in Freetown.

2. (1) A probate action shall be begun by writ, and the writ shall be issued out of the Registry or one of the District Registries. Requirements in connection with issue of writ.

(2) Before a writ beginning a probate action is issued, it shall be indorsed with a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates.

Parties to action for revocation of grant.

3. Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his will or letters of administration of his estate shall be made a party to any action for revocation of the grant.

Lodgment of grant in action for revocation.

4. (1) Where, at the commencement of an action for the revocation of a grant of probate of the will or letters of administration of the estate of a deceased person, the probate or letters of administration as the case may be, have not been lodged in court, then—

- (a) if the action is commenced by a person to whom the grant was made, he shall lodge the probate or letters of administration in the Registry within 7 days after the issue of the writ;
- (b) if any defendant to the action has the probate or letters of administration in his possession or under his control, he shall lodge it or them in the Registry within 7 days after the service of the writ upon him.

(2) In subrule (1) “Court” includes the Master’s office or a District Registry.

(3) Any person who fails to comply with subrule (1) may, on the application of any party to the action, be ordered by the Court to lodge the probate or letters of administration in the relevant office within a specified time; and any person against whom such an order is made shall not be entitled to take any step in the action without the leave of the Court until he has complied with the order.

Affidavit of testamentary scripts.

5. (1) Unless the Court otherwise directs, the plaintiff and every defendant who has entered appearance to the writ in a probate action shall swear an affidavit—

- (a) describing any testamentary script of the deceased person, whose estate is the subject of the action, of which he has any knowledge or, if such be the case, stating that he knows of no such script; and
- (b) if such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of the person.

(2) Any affidavit required by this rule shall be filed, and any testamentary script referred to in it which is in the possession or under the control of the deponent shall be lodged in the relevant office within 14 days after entering appearance by a defendant to the action or, if no defendant enters appearance and the Court does not otherwise direct, before an order is made for the trial of the action.

(3) Where any testamentary script required by this rule to be lodged in the relevant office or any part is written in pencil, then, unless the Court otherwise directs, a copy of that script or of the page or pages of the script containing the part written in pencil shall also be lodged in the relevant office and the words which appear in pencil in the original shall be underlined in red ink in the copy.

(4) Except with the leave of the Court, a party to a probate action shall not be allowed to inspect an affidavit filed, or any testamentary script lodged by any other party to the action under this rule, unless and until an affidavit sworn by him containing the information referred to in subrule (1) has been filed.

(5) In this rule “testamentary script” means a will or draft of the will, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the content or to be a copy, of a will which is alleged to have been lost or destroyed.

Failure to enter appearance.

6. (1) Order 13 shall not apply to a probate action.

(2) Where any of several defendants to a probate action fails to enter appearance, the plaintiff may, after the time for entering appearance has expired and upon filing an affidavit proving due service of the writ on that defendant proceed with the action as if that defendant had entered appearance.

(3) Where the defendant or all the defendants to a probate action, fails or fail to enter appearance, then, unless on the application of the plaintiff the Court orders the action to be discontinued, the plaintiff may, after the time limited for entering appearance by the defendant apply to the Court for an order for trial of the action.

(4) Before applying for an order under subrule (3), the plaintiff shall file an affidavit proving due service of the writ on the defendant and if no statement of claim is indorsed on the writ, he shall lodge a statement of claim.

(5) Where the Court grants an order under subrule (3) it may direct the action to be tried on affidavit evidence.

Service of statement of claim.

7. The plaintiff in a probate action shall, unless the court gives leave to the contrary or unless a statement of claim is indorsed on the writ, serve a statement of claim on every defendant who enters appearance to the writ in the action and shall do so before the expiration of 21 days after entering appearance by that defendant or 8 days after the filing by that defendant of an affidavit under rule 5, whichever is the later.

Counterclaim.

8. (1) Notwithstanding anything in subrule (1) of rule 2 of Order 18 a defendant to a probate action who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the action shall add to his defence a counterclaim in respect of that matter.

(2) If the plaintiff fails to serve a statement of claim, the defendant may, with the leave of the Court, serve a counterclaim and the action shall then proceed as if the counterclaim were the statement of claim.

Contents of pleadings.

9. (1) Every writ in a probate action shall be accompanied with a statement of claim which shall be served on the defendant in the action and any person who intervenes.

(2) Every defendant who is served with a writ and statement of claim and who enters appearance shall file a statement of defence not later than 14 days after appearance.

(3) Where the plaintiff in a probate action disputes the interest of a defendant he shall allege in his statement of claim that he denies the interest of that defendant.

(4) In a probate action in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest shall show in his pleading that if the allegations made in it are proved he would be entitled to an interest in the estate.

(5) Without prejudice to rule 7 of Order 21 any party who pleads that at the time when a will, the subject of the action, was alleged to have been executed the testator did not know and approve of its contents, shall specify the nature of the case on which he intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas:-

- (a) that the will was not duly executed;
- (b) that at the time of the execution of the will the testator was not of sound mind, memory and understanding; and
- (c) that the execution of the will was obtained by undue influence or fraud, shall be made by that party unless that other plea is also pleaded.

10. (1) A judgment shall not be given in default of pleadings in a probate action.

Default of pleadings.

(2) Where any party to a probate action fails to serve on any other party a pleading which he is required by these Rules to serve on that other party, then, unless the Court orders the action to be discontinued or dismissed, that other party may, after the expiration of the period fixed by or under these Rules for service of the pleading in question, apply to the Court for an order for trial of the action; and if an order is made, the Court may direct the action to be tried on affidavit evidence.

Intervention. 11. (1) A person not already a party to a probate action may apply to the Court for leave to intervene in the action.

(2) The application shall be supported by an affidavit which shows the interest of the applicant in the estate of the deceased person and shall be served on all the existing parties.

(3) Where the Court grants leave under this rule, it may give such directions as to the service of pleadings, filing of affidavit or of testamentary scripts and other matters as it considers necessary.

Discontin-
nuance. 12. (1) A probate action shall not be discontinued except by leave of the Court.

(2) At any stage in the proceeding in a probate action, the Court may on the application of the plaintiff or of any party to the action who has entered an appearance, order the action to be discontinued on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate or letters of administration in respect of the estate which is the subject matter of the action be made to the person entitled to it.

(3) Where, whether before or after the service of the defence in a probate action, the parties to the action agree to a compromise, the Court may order the trial of the action on affidavit evidence.

ORDER 56

ADMIRALTY PROCEEDINGS

1. (1) This Order applies to Admiralty causes and matters, Application and the other provisions of these rules apply to those causes and matters subject to the provisions of this Order. and interpretation.

(2) In this Order—

Act No. 3 of 2003. “Act” means the Merchant Shipping Act, 2003;

“action in rem” means an Admiralty action in rem;

“caveat against arrest” means caveat entered in the caveat book under rule 6;

“caveat against release and payment” means a caveat entered in the caveat book under rule 5;

“Commercial and Admiralty Division” means the Commercial and Admiralty Division of the High Court;

“limitation action” means an action by ship owners or other persons under the Act, for the limitation of the amount of their liability in connection with a ship or other property;

“marshal” means the person carrying on the duty of under-sheriff or bailiff;

“registry” (except where the context otherwise requires) means the Registry of the High Court;

“ship” includes any description of vessel used in navigation.

2. (1) Without prejudice to any enactment or rule providing for the assignment of causes and matters to the Commercial and Admiralty Division— Certain actions to be assigned to Admiralty.

- (a) every action to enforce a claim for damage, loss of life or personal injury arising out of—
 - (i) a collision between ships;
 - (ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more two or more ships, or
 - (iii) non-compliance, on the part of one or more two or more ships, with the collision regulations; and
- (b) every limitation action,

shall be assigned to the Commercial and Admiralty Division.

(2) In this rule “collision regulations” means regulations under section 230 of the Act.

Issue of writ and entry of appearance

3. (1) An action in rem shall be begun by writ; and the writ shall be in an appropriate Form.

(2) The writ by which an Admiralty action in *personam* is begun shall be in an appropriate Form.

(3) The writ by which a limitation action is begun shall be in an appropriate Form.

(4) Subject to subrules (5) and (6) of Order 6 shall apply in relation to a writ by which an admiralty action is begun, and Order 12 shall apply in relation to such an action.

(5) A memorandum of appearance and a notice of appearance in an action in rem or a limitation action shall be in an appropriate Form.

(6) A defendant to an action in rem in which the writ has not been served, or a defendant to a limitation action who has not been served with the writ, may if he desires to take part in the proceedings, enter appearance to the writ as provided in Order 12.

4. (1) Subject to this rule, service out of the jurisdiction of a writ, containing such claim as is mentioned in subrule (1) of rule 2 is permissible with the leave of the Court if, but only if—

Service of writ out of jurisdiction.

- (a) the defendant has his habitual residence or a place of business within Sierra Leone;
- (b) the cause of action arose within the inland waters of Sierra Leone or within the limits of a port of Sierra Leone; and
- (c) an action arising out of the same incident or series of incidents is proceeding in the Court or has been heard and determined in the Court; or
- (d) the defendant has submitted or agreed to submit to the jurisdiction of the Court.

(2) Subrules (1), (2) and (4) of rule 4 of Order 11 shall apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.

(3) Subrule (1) shall not apply to an action in rem.

5. (1) In an action in rem the plaintiff or defendant, as the case may be, may, after the issue of the writ in the action and subject to the provisions of this rule issue a warrant in an appropriate Form for the arrest of the property against which the action or any counterclaim in the action is brought.

Warrant of arrest.

(2) A party applying for the issue out of the registry of a warrant of arrest of any property shall search the Caveat Book to ascertain whether there is a caveat against arrest in force with respect to that property.

(3) A warrant of arrest shall not be issued until the party applying for it has filed a request for the issue of the warrant together with an affidavit made by the party or the party's agent containing the particulars required by subrules (7) and (8) but the Court may allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(4) Except with the leave of the Court a warrant of arrest shall not be issued in an action in rem against a foreign ship belonging to a port of a State having a consulate in Sierra Leone being an action for possession of the ship or for wages, until notice that the action has been begun has been sent to the consulate.

(5) A warrant of arrest may not be issued as of right in the case of property whose beneficial ownership has since the issue of the writ, changed as a result of a sale or disposal by any Court exercising Admiralty jurisdiction.

(6) Issue of a warrant of arrest takes place upon its being sealed by an officer of the registry.

(7) An affidavit required by subrule (3) shall state-

- (a) in every case-
 - (i) the nature of the claim or counterclaim and that it has not been satisfied and, if it arises in connection with a ship, the name of that ship; and
 - (ii) the nature of the property to be arrested and, if the property is a ship, the name of the ship and her port of registry; and
- (b) in the case of a claim for possession of a ship or for wages, the nationality of the ship in respect of which the warrant is required and that the notice (if any) required by subrule (4) has been sent.

(8) Where appropriate a copy of any notice sent to a consul under subrule (4) shall be exhibited in an affidavit in support of the application.

6. (1) A person who wishes to prevent the arrest of any property shall file in the registry a request for a caveat against arrest signed by the person or person's solicitor undertaking-

- (a) to enter appearance in any action that may be commenced against the property described in the request; and
- (b) to give bail in the action in the sum not exceeding an amount specified in the request or to pay the amount specified into court within 14 days after receiving notice that an action has commenced,

and on the filing of the request, a caveat against the issue of a warrant to arrest the property described in the request shall be entered in the Caveat Book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

7. Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

8. (1) Subject to subrule (2), a writ by which an action in rem is begun shall be served on the property against which the action is brought, except that-

Caveat against arrest

Remedy where property protected by caveat is arrested.

Service of writ in action in rem.

- (a) where the property is freight, the writ shall be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried;
- (b) where the property has been sold by the marshal, the writ may not be served on that property but a sealed copy of it shall be filed in the registry or, if the writ was issued out of a district registry, in that registry, and the writ shall be deemed to have been duly served on the day on which the copy was filed.

(2) A writ need not be served or filed as mentioned in subrule (1) if the writ is deemed to have been duly served on the defendant by virtue of subrule (2) or (3) of rule 3 of Order 10.

(3) Where by virtue of this rule a writ is required to be served on any property, the plaintiff may request service of the writ to be effected by the marshal if, but only if, a warrant of arrest has been issued for service against the property or the property is under arrest, and in that case the plaintiff shall file in the Registry or, where the action is proceeding in a District Registry, that Registry a praecipe in an appropriate Form and lodge—

- (a) the writ and a copy thereof; and
- (b) an undertaking to pay on demand all expenses incurred by the marshal in respect of the service of the writ,

and thereupon the marshal or his substitute shall serve the writ on the property described in the praecipe.

(4) Where a writ is served on any property by the marshal or his substitute, the person effecting service shall indorse on the writ the following particulars, that is to say, where it was served, the property on which it was served, the day of the week and the date on which it was served, the manner in which it was served and the name and the address of the person effecting service, and the indorsement shall be evidence of the facts stated in the writ.

(5) Where the plaintiff in an action in rem, or his solicitor, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he shall serve the writ forthwith on the person at whose instance the caveat was entered.

(6) Where a writ by which an action in rem is begun is amended under rule 1 of Order 23 after service thereof, subrule (2) of that rule shall not apply and, unless the Court otherwise directs on an application made *ex parte*, the amended writ shall be served on any intervener and any defendant who has entered appearance to the writ in the action or, if no defendant has entered appearance to the writ, it shall be served or filed in accordance with subrule (1).

9. Where the solicitor of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his solicitor to enter appearance to the writ in the action, to give bail or pay money into court in lieu of bail, he shall be liable to committal. Committal of solicitor failing to comply with undertaking.

10. (1) A warrant of arrest is valid for 12 months beginning with the date of its issue. Execution, etc., of warrant of arrest.

(2) A warrant of arrest may be executed only by the marshal.

(3) A warrant of arrest shall not be executed until an undertaking to pay on demand the fees of the marshal and all expenses incurred by him or on his behalf in respect of the arrest of the property and the care and custody of it while under arrest has been lodged in the marshal's office or, where the action is proceeding in a district registry, in that registry.

(4) A warrant of arrest shall not be executed if the party at whose instance it was issued lodges a written request to that effect with the marshal or, where the action is proceeding in a district registry, the registrar of that registry.

(5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

(6) Subject to subrule (5), a warrant of arrest shall be served on the property against which it is issued.

(7) Within 7 days after the service of a warrant of arrest, the warrant shall be filed in the registry.

(8) No instrument except a warrant of arrest shall be served on a Sunday.

Service on
ships, etc.:
how effected.

11. (1) Subject to subrule (2), service of a warrant of arrest or writ in an action in rem against a ship, freight or cargo shall be effected by—

- (a) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and
- (b) removing the warrant or writ, leaving a copy of it affixed (in the case of the warrant) in its place or (in the case of the writ) on a sheltered, conspicuous part of the ship.

(2) Service of a warrant of arrest or writ in an action in rem against freight or cargo or both shall, if the cargo has been landed or transhipped, be effected—

- (a) by placing the warrant or writ for a short time on the cargo and, on removing the warrant or writ, leaving a copy of it on the cargo; or
- (b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or writ with that person.

Directions
with respect
to property
under arrest.

12. (1) The marshal may at any time apply to the Court for directions with respect to property under arrest in any action and may, and if the Court so directs shall give notice of the application to any or all of the persons referred to in subrule (2).

(2) The marshal shall send a copy of any order made on an application under subrule (1) to all those persons who, in relation to that property, have—

- (a) entered a caveat which is still in force;
- (b) caused a warrant for the arrest of the property to be executed by the marshal;
- (c) entered appearance to the writ in any action in which the property is under arrest; or
- (d) intervened in any action in which the property is under arrest.

(3) A person other than the marshal may make an application under this rule by motion in the action in which the property is under arrest and the notice of motion together with copies of any affidavits in support shall be served upon the marshal and all persons referred to in subrule (2) unless the Court otherwise orders on an application made *ex parte*.

(4) The Court making an order under subrule (3) shall cause a copy of the order to be sent to the marshal.

13. (1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall only be released under the authority of an instrument of release (in this rule referred to as a "release") in an appropriate Form, issued out of the Registry or, where the action in which the warrant was issued is proceeding in a District Registry, out of that Registry.

Release of
property
under arrest.

(2) A release shall not be issued with respect to property as to which a caveat against release is in force, unless, either—

- (a) at the time of the issue of the release the property is under arrest in one or more other actions, or

(b) the Court so orders.

(3) A release may be issued at the instance of any party to the action in which the warrant of arrest was issued if the Court so orders, or, subject to subrule (2), if all the other parties, except any defendant who has not entered appearance to the writ, consent.

(4) Where a release is to issue out of a district registry the registrar of that registry shall, before issuing it, procure a search to be made in the Caveat Book for the purpose of ascertaining whether there is a caveat against release in force as to the property in question.

(5) Before a release is issued, the party applying for its issue shall, unless paragraph (a) of subrule (2) applies, give notice to any person at whose instance a subsisting caveat against release has been entered, or to his solicitor, requiring the caveat to be withdrawn.

(6) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued shall, in accordance with the directions of the marshal or, where the action is proceeding in a district registry, the registrar of that registry shall either—

- (a) pay the fees of the marshal already incurred and lodge in the marshal's office or the district registry, as the case may be, an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release, or
- (b) lodge in the marshal's office or district registry an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.

(7) The Court, on the application of any party who objects to directions given to him by the marshal under subrule (6) may vary or revoke the directions.

14. (1) Where a person claiming to have a right of action in rem against any property which is under arrest or the proceeds of sale thereof wishes to be served with notice of any application to the Court in respect of that property or those proceeds, he shall file in the registry a praecipe in an appropriate Form and, on the filing of the praecipe, a caveat shall be entered in the Caveat Book. Caveat against release, etc.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

15. (1) Every caveat entered in the Caveat Book is valid for 12 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe in an appropriate Form. Duration of caveats.

(2) The period of validity of a caveat may not be extended but this provision shall not be taken as preventing the entry of successive caveats.

16. (1) Bail on behalf of a party to an action in rem shall be given by bond in an appropriate Form; and the sureties to the bond shall enter into the bond before a commissioner for oaths not being a commissioner who, or whose partner, is acting as solicitor or agent for the party on whose behalf the bail is to be given. Bail.

(2) Subject to subrule (3) a surety to a bail bond shall make an affidavit stating that he is able to pay the sum for which the bond is given.

(3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under subrule (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it shall be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given shall serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the commissioner before whom the bail bond was entered into; and after the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) he may file the bond and shall at the same time file the affidavits (if any) made under subrule (2) and an affidavit proving due service of the notice of bail to which a copy of that notice shall be exhibited.

Interveners.

17. (1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.

(2) An application for the grant of leave under this rule shall be made *ex parte* by notice of motion supported by an affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.

(3) A person to whom leave is granted under this rule shall thereupon become a party to the action.

(4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period or periods as may be specified in the order, serve on any other party to the action such notice of his intervention and such pleading as may be so specified.

Preliminary acts.

18. (1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, the following provisions of this rule shall apply unless the Court otherwise orders.

(2) The plaintiff shall, within 2 months after service of the writ on any defendant and the defendant shall within 2 months of entering appearance to the writ file in the appropriate registry a document in two parts (in this rule referred to as a "preliminary act") containing a statement of the following:—

Part One

- (i) the names of the ships which came into collision and their ports of registry;
- (ii) the length, breadth, gross tonnage, horsepower and draught at the material time, of the ship and the nature and tonnage of any cargo carried by the ship;
- (iii) the date and time (including the time zone) of the collision;
- (iv) the place of the collision;
- (v) the direction and force of the wind;
- (vi) the state of the weather;
- (vii) the state, direction and force of the tidal or other current;
- (viii) the position, the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was earlier;
- (ix) the lights or shapes (if any) carried by the ship;
- (x) (a) the distance and bearing of the other ship if and when her echo was first observed by radar;
- (b) the distance, bearing and approximate heading of the other ship when first seen;
- (xi) what light or shape or combination of lights or shapes (if any) of the other ship was first seen;

- (xii) what other lights or shapes or combinations of lights or shapes (if any) of the other ship were subsequently seen before the collision, and when;
- (xiii) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (viii) up to the time of the collision, and when, and what measures (if any) other than alterations of course or speed, were taken to avoid the collision, and when;
- (xiv) the heading of the ship, the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
- (xv) what sound signals (if any) were given, and when;
- (xvi) what sound signals (if any) were heard from the other ship, and when.

Part Two

- (i) a statement that the particulars in Part One are incorporated in Part Two;
- (ii) any other facts and matters upon which the party filing the preliminary act relies;
- (iii) all allegations of negligence or other fault which the party filing the preliminary act makes;
- (iv) the remedy or relief which the party filing the preliminary act claims.

(3) Part Two of the preliminary act shall be deemed to be the pleading of the person filing the preliminary act (in the case of the plaintiff his statement of claim and in the case of the defendant his defence and, where appropriate, his counterclaim) and the provisions of these Rules relating to pleadings shall apply to it except insofar as this rule and rule 23 provide otherwise.

(4) The Court may order that Part Two of the preliminary act need not be filed by the plaintiff or defendant and may give directions for the further conduct of the action.

(5) Every preliminary act shall, before filing be sealed by the proper officer and be filed in a sealed envelope which shall not be opened except as provided in subrule (7) or by order of the Court.

(6) A plaintiff shall serve notice of filing his preliminary act on every defendant who enters appearance to the writ within 3 days of receiving notice of that appearance or upon filing his preliminary act, whichever is the later.

(7) A defendant shall, upon filing his preliminary act, serve notice that he has done so on the plaintiff and on every other defendant who has entered appearance to the writ.

(8) Any party may inspect and bespeak a copy of the preliminary act of any other party upon filing in the appropriate registry a consent signed by that other party or his solicitor.

(9) Rule 18 of Order 21, shall not apply; and for the purposes of rule 14 of Order 21, rule 3 of Order 23 and rules 1 and 2 of Order 27 the pleadings shall be deemed to be closed -

- (a) at the expiration of 7 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim pursuant to leave given under rule 20; or

- (b) if neither a reply nor a defence to counterclaim is served, at the expiration of 7 days after the last preliminary act in the action was served pursuant to subrule (9).

(10) Within 14 days after the last preliminary act in the action is filed each party shall serve on every other party a copy of his preliminary act.

(11) At any time after all preliminary acts have been filed, any party may apply to the Court for an order that -

- (a) one or more parties file in the registry particulars of the damages claimed by them and serve a copy thereof on every other party, and
- (b) that the damages be assessed prior to or at the trial on liability.

(12) The application shall be made by motion to the Court.

Failure to lodge preliminary act: proceedings against party in default.

19. (1) Where in an action as is referred to in subrule (1) of rule 21 the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by motion for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

(2) Where in such an action, being an action in personam, a defendant fails to lodge a preliminary act within the prescribed period, rules 2 and 3 of Order 22, shall apply as if the defendant's failure to lodge the preliminary act within that period were a failure by him to serve a defence on the plaintiff within the period fixed by or under these Rules for service thereof, and the plaintiff, if he has lodged a preliminary act may, accordingly enter judgment against that defendant in accordance with rule 2 or 3 of Order 22 as the circumstances of the case require.

(3) Where in such an action, being an action in rem, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff, if he has lodged such an act, may apply to the Court by motion for judgment against that defendant, and it shall not be necessary for the plaintiff to file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of a motion under subrule (3), the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgment should be given for the plaintiff provided he proves his case, the Court shall order the plaintiff's preliminary act to be opened and require the plaintiff to satisfy the Court that his claim is well founded.

(5) The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(6) Where the plaintiff in accordance with a requirement under subrules (4) and (5) satisfies the Court that his claim is well founded, the Court may give judgment for the claim and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into court or make such order as it thinks just.

(7) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this rule.

(8) In this rule references to the prescribed period shall be construed as references to the period within which by virtue of subrule (2) of rule 18 or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

20. (1) Notwithstanding anything in rule 3 of Order 21 the plaintiff in such action as is referred to in paragraph (a) of subrule (1) of rule 2 may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court.

Special provisions as to pleadings in collision, etc., actions.

(2) Subject to subrule (3), in such action subrule (3) of rule 13 of Order 21 shall not apply to any allegation of fact made in—

- (a) a statement of claim contained in Part Two of a preliminary act, or
- (b) a counterclaim (whether contained in Part Two of a preliminary act or not), and notwithstanding subrule (3) of rule 14 of Order 21 but without prejudice to the other provisions of that rule, there is an implied joinder of issue on the statement of claim or counterclaim.

(3) Subrule (2) does not apply to a counterclaim if the plaintiff has served a defence to counterclaim pursuant to leave given under subrule (1).

Judgment by default.

21. (1) Where a writ is served under subrule (5) of rule 8 on a party at whose instance a caveat against arrest was issued, then if—

- (a) the sum claimed in the action begun by the writ does not exceed the amount specified in the undertaking given by that party or his solicitor to procure the entry of that caveat, and
- (b) that party or his solicitor does not within 14 days after service of the writ fulfil the undertaking given by him as provided in paragraph (a),

the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Judgment given under subrule (1) may be enforced by the arrest of the property against which the action was brought and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to an action in rem fails to enter appearance to the writ within the time limited for doing so, then, on the expiration of 14 days after service of the writ and upon filing an affidavit proving due service of the writ, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(4) Where the writ is deemed to have been duly served on the defendant by virtue of rule 3 of Order 10 or was served by the marshal or his substitute under rule 8, an affidavit proving due service of the writ need not be filed under this subrule but the writ indorsed as mentioned in subrule (4) of rule 8 shall be lodged with the affidavit verifying the facts on which the action is based.

(5) Where a defendant to an action in rem fails to serve a defence on the plaintiff, then, after the expiration of the period fixed by or under these Rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(6) Where a defendant to a counterclaim in an action in rem fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to subrule (4), after the expiration of the period fixed by or under these Rules for service of the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was served on him by the first-mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgment by default.

(7) No application may be made under subrule (5) against the plaintiff in such action as is referred to in paragraph (a) of subrule (1) of rule 2.

(8) An application to the Court under this rule shall be made by motion and if, on the hearing of the motion, the Court is satisfied that the applicant's claim is well founded it may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into court or may make such other order as it thinks just.

(9) In default actions in rem evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(10) The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this rule.

(11) Order 13 and Order 22 (except rule 1) shall not apply to actions in rem.

Order for sale of ship: determination of priority of claims.

22. (1) Where in an action in rem against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may—

- (a) in a case where the order for sale contains the further order referred to in subrule (2) after the expiration of the period specified in the order under paragraph (a) of subrule (2); or
- (b) in any other case, after obtaining judgment, apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(2) Where in an action in rem against a ship the Court orders the ship to be sold, it may further order—

- (a) that the order of priority of the claims against the proceeds of sale of the ship shall not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into court;
- (b) that any party to the action or to any other action in rem against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is a party to extend the period specified in the order;
- (c) that within 7 days after the date of payment into court of the proceeds of sale the marshal shall send for publication in the *Gazette* and such other newspaper, if any, as the Court may direct, a notice complying with subrule (3).

(3) The notice referred to in paragraph (c) of subrule (2) shall state—

- (a) that the ship (naming her) has been sold by order of the Court in an action in rem, identifying the action;
- (b) that the gross proceeds of the sale, specifying the amount thereof, have been paid into court;
- (c) that the order of priority of the claims against the proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale; and
- (d) that any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment should do so before the expiration of that period.

(4) The marshal shall lodge in the registry or, if the action is proceeding in a district registry, that registry, a copy of each newspaper in which the notice referred to in subrule (2) appeared.

(5) The expenses incurred by the marshal in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.

(6) An application to the Court to extend the period referred to in paragraph (a) of subrule (2) shall be made by motion, and a copy of the notice of motion, shall, at least 3 days before the day fixed for the hearing thereof, be served on each party who has begun an action in rem against the ship or the proceeds of sale thereof.

Appraisal and sale of property.

23. (1) A commission for the appraisal and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a praecipe in an appropriate Form.

(2) Such a commission shall, unless the Court otherwise orders, be executed by the marshal and shall be in an appropriate Form.

(3) A commission for appraisal and sale shall not be executed until an undertaking in writing satisfactory to the marshal to pay the fees and expenses of the marshal on demand has been lodged in the marshal's office.

(4) The marshal shall pay into court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into court the account relating to the sale (with vouchers in support) for taxation.

(5) On the taxation of the marshal's account relating to a sale, any person interested in the proceeds of the sale shall be entitled to be heard, and any decision of the Master made on the taxation to which objection is taken may be reviewed in the same manner and by the same persons as any decision of a registrar made in taxation proceedings under Order 57.

24. (1) Every undertaking under subrule (3) of rule 8, subrule (3) of rule 10, subrule (7) of rule 13 or subrule (3) of rule 22 shall be given in writing to the satisfaction of the marshal or, where the action is proceeding in a District Registry, the District Registrar.

Undertakings as to expenses, etc.

(2) Where a party is required by subrule (3) of rule 8, subrule (3) of rule 10, subrule (7) of rule 13 or subrule (3) of rule 22 to give to the marshal or a District Registrar an undertaking to pay any fees or expenses, the marshal or District Registrar may accept instead of an undertaking the deposit with him of such sum as he considers reasonable to meet those fees and expenses.

(3) The Court or, where the action is proceeding in a district registry, a judge, may on the application of any party who is dissatisfied with a direction or determination of the marshal or District Registrar under subrule (6) of rule 13 vary or revoke the direction or determination.

25. (1) Order 25 (except rules 3, 4 and 5) shall apply in relation to an admiralty action (other than a limitation action) as it applies to an action for a debt or damages.

Payment into and out of court.

(2) Subject to subrule (3), money paid into court shall not be paid out except in pursuance of an order of the Court.

(3) The Master or, in the case of an action which is proceeding in a district registry, the registrar of that registry may, with the consent of the parties interested in money paid into court, order the money to be paid out to the person entitled to it.

(4) Where in an admiralty action money has been paid into court, the Court may make an order under subrule (1) of rule 13 of Order 25 for the money to be paid out to the person entitled to it.

26. Order 28 shall apply to admiralty actions (other than limitation actions) as it applies to other actions.

Summons for directions.

27. (1) Subject to subrule (2), the date for trial of an admiralty action shall be fixed by the judge at the hearing of the summons for directions, unless a judge otherwise directs.

Fixing of date for trial, etc.

(2) Order 40 shall apply to Admiralty actions subject to the following and any other necessary modifications:—

- (a) the bundles referred to in subrule (1) of rule 3 of Order 40 shall include any preliminary acts and any particulars filed pursuant to an order under paragraph (a) of subrule (11) of rule 18;
- (b) “the proper officer” shall mean the Master.

(3) If all the parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by producing—

- (a) in a case where the action has been set down for trial, to the proper officer; and
- (b) in any other case, to an officer of the registry or, if the action is proceeding in a district registry, to the registrar of that registry, a written consent to the action being withdrawn signed by all the parties.

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

28. Where an action in rem, being an action to enforce any claim as is referred to in paragraph (a) of subrule 1 of rule 2, is begun and a cross action in rem arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned action, then—

- (a) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest; but
- (b) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has

not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim,

the Court may stay proceedings in the first mentioned action until security is given to satisfy any judgment given in favour of that party.

29. Without prejudice to its powers under rules 2 and 3 of Order 35 and rule 8 of Order 41, the Court may, on the application of any party, make an order for the inspection by the assessors (if the action is tried with assessors) or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action. Inspection of ship, etc.

30. (1) The power conferred by rule 1 of Order 32 shall extend to the making of an order authorising the examination of a witness or person on oath before a judge sitting in court as if for the trial of the cause or matter, without that cause or matter having been set down for trial or called on for trial. Examination of witnesses and other persons.

(2) The power conferred by the rule 1 of Order 32 shall also extend to the making of an order, with the consent of the parties providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.

(3) Where an order is made under subrule (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect:—

- (a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness;
- (b) any representative, being a solicitor of either of the parties shall have authority to administer the oath to the witness;

- (c) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the solicitor for the party whose witness was examined, and that solicitor shall file it in the registry;
- (d) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy thereof shall, before the transcript is filed, be made available to the counsel or other persons who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence, he shall make a certificate specifying the corrections which in his opinion should be made therein, and that certificate shall be filed with the transcript.

(4) In actions in which preliminary acts fall to be filed under rule 18, an order shall not be made under rule 1 of Order 32, authorising any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

Trial without pleadings.

31. Order 21 shall apply to Admiralty actions as it applies to other actions except that the summons shall be served on every other party not less than 7 days before the day specified in the summons for the hearing thereof.

Further provisions with respect to evidence

32. Unless the Court otherwise directs, an affidavit for the purposes of subrule (5) of rule 19, rule 21 or subrule (2) of rule 40 may, except in so far as it relates to the service of a writ, contain statements of information or belief with the sources and grounds thereof.

Proceedings for apportionment of salvage.

33. (1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be assigned to the Commercial and Admiralty Division and shall be begun by originating motion.

(2) On the hearing of the motion, the judge may exercise any of the jurisdiction conferred by section 39 of the Act.

34. (1) Notice of an originating motion in Admiralty shall be issued out of the registry.

Issue of originating and other motions.

(2) Notice of any other motion in an admiralty action shall be issued out of the registry or, if the action is proceeding in a district registry, that registry.

35. (1) The affidavits in support of a motion in an action in rem shall be filed in the appropriate registry together with the notice of motion, unless the Court gives leave to the contrary.

Notice of motion in actions in rem.

(2) A notice of motion, except a motion for judgment in default, shall be served on all caveators together with copies of the affidavits in support of the motion 2 clear days at least before the hearing, unless the Court gives leave to the contrary.

36. (1) Any agreement in writing between the solicitors of the parties to a cause or matter, dated and signed by those solicitors, may, if the judge thinks it reasonable be lodged in the registry, and the agreement shall thereupon become an order of Court.

Agreement between solicitors may be made order of Court.

(2) Subrule (1) shall apply in relation to a cause or matter which is proceeding in a district registry as if for the references to the registrar and the registry there were substituted references to the District Registrar and district registry respectively.

37. An originating summons in admiralty may be issued either out of the registry or out of a District Registry.

Originating summons procedure.

38. (1) In a limitation action the person seeking relief shall be the plaintiff and shall be named in the writ by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

Limitation action: parties

(2) The plaintiff shall make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.

(3) At least one of the defendants to the action shall be named in the writ by his name but the other defendants may be described generally and not named by their names.

(4) The writ shall be served on one or more of the defendants who are named by their names in the writ and need not be served on any other defendant.

(5) In this rule and rules 40, 41 and 42 “name” includes a firm name or the name under which a person carries on his business, and where any person with a claim against the plaintiff in respect of the casualty to which the action relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the writ and, if so described, shall be deemed for the purposes of the rules 40, 41, and 42 to have been named in the writ by his name.

Limitation
action:
payment into
court.
Act No. 5
of 2003.

39. (1) The plaintiff may constitute a limitation fund by paying into court the leones equivalent of the number of special drawing rights to which he claims to be entitled to limit his liability under the Merchant Shipping Act 2003 together with interest thereon from the date of the occurrence giving rise to his liability to the date of payment into court.

(2) Where the plaintiff does not know the Leone equivalent of the number of special drawing rights on the date of payment into court, he may calculate it on the basis of the latest leone equivalent as fixed by the Minister of Finance and published as a Government Notice pursuant to subsection (2) of section 415 of the Act, and in the event of the sterling equivalent of a special drawing right on the date of payment into court under subrule (1) being different from that used for calculating the amount of that payment into court the plaintiff may—

(a) make up any deficiency by making a further payment into court which, if made within 14 days after the payment into court under subrule (1), shall be treated, except for the purposes of the rules relating to the accrual of interest on money paid into court, as if it had been made on the date of that payment into court; or

(b) apply to the court for payment out of any excess amount (together with any interest accrued on it) paid into court under subrule (1).

(3) An application under paragraph (b) of subrule (2) may be made *ex parte* and shall be supported by evidence proving the sterling equivalent of the appropriate number of special drawing rights on the date of payment into court.

(4) On making any payment into court under this rule, the plaintiff shall give notice thereof in writing to every defendant, specifying the date of payment in, the amount paid in, the amount of interest included in it, the rate of such interest and the period to which it relates.

(5) The plaintiff shall also give notice in writing to every defendant of any excess amount (and any interest thereon) paid out to him under paragraph (b) of subrule (2).

(6) Rules 10 and 11 of Order 25 shall apply to a limitation action as they apply to an action for a debt or damages, and subrules (2) and (3) of rule 25 shall apply, with the necessary modifications, to the payment out of money paid into court under this rule.

40. (1) The plaintiff shall—

(a) within 7 days after the entry of appearance to the writ by one of the defendants identified by his name; or,

Summons for
decree or
directions in
limitation
action.

(b) if none of the defendants enter appearance, within 7 days after the time limited for entry of appearance, and without serving a statement of claim, take out a summons returnable before a Judge, asking for a decree limiting his liability or, in default of such a decree, for directions as to the future proceedings in the action.

(2) The summons shall be supported by affidavit verifying—

- (a) the plaintiff's case in the action; and
- (b) if no defendant identified in the writ by his name has entered appearance service of the writ on at least one of the defendants so identified.

(3) The affidavit referred to in subrule (2) shall state—

- (a) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are identified in the writ by their names, and
- (b) the address of each of those persons if known to the plaintiff.

(4) The summons and every affidavit in support thereof shall be served on every defendant who has entered appearance to the writ at least 28 clear days before the hearing of the summons.

(5) Any defendant who disputes the plaintiff's claim to limit his liability or alleges that he is unable to decide whether to dispute that claim shall, within 14 days of the service upon him of the summons and any affidavit in support, serve upon the plaintiff an

affidavit stating the grounds upon which he relies to dispute the plaintiff's claim to limit his liability or such facts and matters as could justify the Court in giving a direction under subrule (8).

(6) The plaintiff may, within 7 days of service upon him of any affidavit under subrule (5), serve such further affidavit evidence as he may wish upon any defendant who has served an affidavit under subrule (5).

(7) If on the hearing of the summons it appears to the judge that the plaintiff's claim to limit his liability is not disputed, he shall make a decree limiting the plaintiff's liability and declaring the amount thereof.

(8) If on the hearing of the summons it appears to the judge that any defendant does not have sufficient information to enable him to decide whether to dispute the plaintiff's claim to limit his liability, he may, on such terms as seem just, give such directions as appear to him appropriate to enable the defendant to obtain such information and shall adjourn the hearing.

(9) Any defendant who thereafter disputes the plaintiff's claim to limit his liability shall state on affidavit the grounds upon which he relies and such affidavit shall be served on the plaintiff at least 10 clear days before the resumed hearing of the summons.

(10) If on the hearing or the resumed hearing of the summons, the judge does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 28.

(11) Any defendant who, after the judge has given directions under subrule (8) or (10), ceases to dispute the plaintiff's right to limit his liability shall forthwith file a notice to that effect in the district registry and serve a copy on the plaintiff and on any other defendant who has entered appearance to the writ.

(12) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under subrule (11), the plaintiff may take out a summons returnable in chambers before the judge asking for a decree limiting his liability; and subrules (4) and (7) shall apply to a summons under this subrule as they apply to a summons under subrule (1).

Limitation
action:
proceedings
under decree.

41. (1) Where the only defendants in a limitation action are those named in the writ by their names and all the persons so named have either been served with the writ or entered appearance, any decree in the action limiting the plaintiff's liability (whether made by a judge or on the trial of the action)–

- (a) need not be advertised; but
- (b) shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within subrule (1), any decree in the action limiting the plaintiff's liability (whether made by a judge or on the trial of the action)–

- (a) shall be advertised by the plaintiff in such manner and within such time as may be provided by the decree;
- (b) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the action relates may file their claims, and, in cases to which rule 42 applies, take out a summons if they think fit, to set the order aside.

(3) The advertisement to be required under paragraph (a) of subrule (2) shall, unless for special reasons the judge thinks fit otherwise to provide, be a single advertisement in each of three newspapers specified in the decree, identifying the action, the casualty and the relation of the plaintiff thereto (whether as owner of

a ship involved in the casualty or otherwise as the case may be), stating that the decree has been made and specifying the amounts fixed thereby as the limits of the plaintiff's liability and the time allowed thereby for the filing of claims and the taking out of summonses to set the decree aside.

(4) The plaintiff shall, within the time fixed under paragraph (b) of subrule (2) file in the Registry or, as the case may be, a copy of each newspaper in which the advertisement required under paragraph (a) of subrule (2) appears.

(5) The time to be allowed under paragraph (b) of subrule (2) shall, unless for special reasons the Registrar or judge thinks fit otherwise to provide, be not less than 2 months from the latest date allowed for the appearance of the advertisements; and after the expiration of the time so allowed, no claim may be filed or summons taken out to set aside the decree except with the leave of the judge.

(6) Except otherwise provided on the making of any decree limiting the plaintiff's liability arising out of an occurrence the Court may distribute the limitation fund and may stay any proceedings relating to any claim arising out of that occurrence which are pending against the plaintiff.

42. (1) Where a decree limiting the plaintiff's liability (whether made by a judge or on the trial of the action) fixes a time in accordance with subrule (2) of rule 41 any person with a claim against the plaintiff in respect of the casualty to which the action relates, who–

Limitation
action:
proceedings
to set aside
decree.

- (a) was not named by his name in the writ as a defendant to the action; or
- (b) if so named, neither was served with the writ nor has entered appearance to the writ,

may, within that time after entering appearance to the writ, take out a summons returnable in chambers asking that the decree be set aside.

(2) The summons shall be supported by an affidavit or affidavits showing that the defendant in question has a *bona fide* claim against the plaintiff in respect of the casualty in question and that he has sufficient *prima facie* grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.

(3) The summons and every affidavit in support thereof shall, at least 7 clear days before the hearing of the summons, be served on the plaintiff and any defendant who has entered appearance to the writ.

(4) On the hearing of the summons the judge, if he is satisfied that the defendant in question has a bona fide claim against the plaintiff and sufficient *prima facie* grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 28.

Reference
to Registrar.

43. (1) Any party (hereafter in this rule referred to as the “claimant”) making a claim which is referred to the judge for decision shall, within 2 months after the order is made, or, in a limitation action, within such other period as the Court may direct, file his claim and, unless the reference is in such an action, serve a copy of the claim on every other party.

(2) At any time after the claimant’s claim has been filed or, where the reference is in a limitation action, after the expiration of the time limited by the Court for the filing of claims but, in any case, not less than 28 days before the day appointed for the hearing of the reference, any party to the cause or matter may apply to the judge by summons for directions as to the proceedings on the reference, and the judge shall give such directions, if any, as he thinks fit including, without prejudice to the generality of this rule, a direction requiring any party to serve on any claimant, within such period as the judge may specify, a defence to that claimant’s claim.

(3) The reference shall be heard on a day appointed by the judge and, unless the reference is in a limitation action or the parties to the reference consent to the appointment of a particular day, the appointment shall be made by order on an application by summons made by any party to the cause or matter.

(4) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim or, where the reference is in a limitation action, until after the expiration of the time limited by the Court for the filing of claims.

(5) Not later than 7 days after an appointment for the hearing of a reference has been made the claimant or, where the reference is in a limitation action, the plaintiff shall enter the reference for hearing by lodging in the registry a praecipe requesting the entry of the reference in the list for hearing on the day appointed.

(6) Not less than 14 days before the day appointed for the hearing of the reference the claimant shall file—

- (a) a list, signed by him and every other party, of the items (if any) of his claim which are not disputed, stating the amount (if any) which he and the other parties agree should be allowed in respect of each item; and
- (b) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed, and, unless the reference is in a limitation action, he shall at the same time serve on every other party a copy of every document filed under this subrule.

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

ORDER 57**COSTS**

Costs at the discretion of Court.

1. (1) Subject to this Order, the costs of and incidental to proceedings in the Court shall be at the discretion of the Court, and the Court shall have full power to determine by whom and to what extent the costs are to be paid.

(2) In any case where the Court considers it fit to award costs to any party, the Court may by order direct taxation of the costs of the party and payment or direct payment of the sum in lieu of taxed costs.

Assessment of costs by Court.

2. (1) The amount of costs to be awarded may be assessed by the Court.

(2) Before any assessment, the parties or their solicitors may briefly address the Court on the question of costs.

(3) Without prejudice to the powers and discretion of the Court, an award of costs shall ordinarily be designed to-

- (a) compensate for expenses reasonably incurred and court fees paid by the party in whose favour the award is made; and
- (b) provide reasonable remuneration for the solicitor of that party in respect of work done by him.

(4) In assessing the amount of costs to be awarded to any party, the Court may have regard to-

- (a) the amount of expenses, including travel expenses reasonably incurred by that party or that party's solicitor or both in relation to the proceedings;

(b) the amount of court fees paid by that party or that party's Solicitor in relation to the proceedings;

(c) the length and complexity of the proceedings;

(d) the conduct of the parties and their solicitor during the proceedings; and

(e) any previous order as to costs made in the proceedings.

(5) When the Court adjudges or orders any costs to be paid, the amount of the costs shall, if practicable, be summarily determined by the Court at the time of making the judgment or order, and shall be stated in the order.

(6) When the Court considers it to be impracticable to determine the amount of any costs which it has adjudged or ordered to be paid summarily, all questions relating to costs may be referred by the Court to a taxing officer and be ascertained by the taxing officer.

3. (1) Costs may be dealt with by the Court at any stage of proceedings or after the conclusion of the proceedings, and any order of the Court for the payment of any costs may, if the Court thinks fit, require the costs to be paid immediately notwithstanding that the proceedings have not been concluded. Stage at which costs may be dealt with.

(2) In the case of an appeal, the costs of the proceedings or after the conclusion of the proceedings, giving rise to the appeal as well as costs of the appeal and the proceedings connected with it, may be dealt with by the Court hearing the appeal.

(3) In the case of any proceedings transferred or removed to the Court from any other court, the costs of the whole proceedings, both before and after the transfer or removal, may, subject to any order of the Court ordering the transfer or removal, be dealt with by the Court to which the proceedings are transferred or removed.

When a party is entitled to costs without an order.

4. (1) When the plaintiff's claim is for a liquidated demand only, and the defendant within the time limited for appearance pays the amount claimed to the plaintiff or the solicitor or agent of the plaintiff, the plaintiff shall be entitled, without an order of the Court to costs of the action.

(2) Where a plaintiff by notice in writing and without leave either wholly discontinues an action against any defendant or withdraws any particular claim made by the plaintiff against any defendant, the defendant shall be entitled, without an order of the Court, to costs of the action or costs occasioned by the matter withdrawn.

(3) Where a defendant by notice in writing and without leave discontinues a counterclaim against any party or withdraws any particular claim made by the defendant against any party, that party shall be entitled, without an order of the Court to costs of the counterclaim or costs occasioned by the claim withdrawn, incurred up to the time of receipt of the notice of discontinuance or withdrawal.

(4) Where a plaintiff accepts money paid into court in satisfaction of a cause of action, or any of the causes of action, in respect of which the plaintiff claims, or where the plaintiff accepts a sum or sums paid in respect of a loan or the specified causes of action and gives notice that the plaintiff abandons the others, the plaintiff shall be entitled, without an order of the Court to costs incurred up to the time of receipt of the notice of payment into court.

(5) Where a plaintiff in an action for defamation against several defendants sued jointly accepts money paid into court by one of the defendants, the plaintiff shall be entitled, without an order of the Court, to costs incurred up to the time of receipt of the notice of payment into court.

(6) A defendant who has counterclaimed shall be entitled, without an order of the Court to the costs of the counterclaim if—

- (a) the defendant pays money into court and in the notice of payment, the defendant states

that the defendant has taken into account and satisfied the cause of action in respect of which the defendant counterclaims, and

- (b) the plaintiff accepts the money paid in,

but the costs of the counterclaim shall be limited to those incurred up to the time when the defendant receives notice of acceptance by the plaintiff of the money paid into court.

(7) Notwithstanding subrules (4), (5) and (6), where money paid into court in an action is accepted after the trial or hearing has begun, the party accepting that money shall not, without an order of the Court, be entitled to costs under subrules (4), (5) or (6).

(8) Where under any provision of subrules (1) to (6), or under any other provision of these Rules a party becomes entitled to any costs without an order of the Court, that party may apply to the taxing officer forthwith for the ascertainment of the amount by the taxing officer, and if the costs are not paid within 7 days after the ascertainment or taxation the party may sign judgment for that party's costs.

5. (1) Subject to rule 4 and to any other provision of these Rules, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceedings except under an order of the Court.

When costs follow the event.

(2) Where the Court in the exercise of its discretion considers it fit to make an order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event except where it appears to the Court that in the circumstances of the case, some other order should be made as to the whole or any part of the costs.

(3) The costs of and occasioned by any amendment made without leave in the originating process or any pleading shall be borne by the party making the amendment, unless the Court otherwise orders.

(4) The costs of and occasioned by any application to extend the time fixed by these Rules, or any direction or order made under it, for serving or filing any document or doing any other act shall be borne by the party making the application unless the Court otherwise orders.

(5) If a party on whom a notice to admit facts is served under Order 34 refuses or neglects to admit the facts within 7 days after the service on the party of the notice, or such longer time as may be allowed by the Court, the costs of proving the facts shall be paid by the party, unless the Court otherwise orders.

(6) If a party on whom a list of documents is served under Order 27 or on whom a notice to admit documents is served under Order 34 gives notice of non-admission of any of the documents in accordance with Order 34 the costs of proving that document shall be paid by the party, unless the Court otherwise orders.

Special matters to be taken into account.

6. The Court in exercising its discretion as to costs shall, to such extent, if any as may be appropriate in the circumstances, take into account—

- (a) any offer of contribution mentioned in Order 19 which is brought to its attention in pursuance of a reserved right to do so; and
- (b) any payment of money into court and the amount of the payment.

Costs in probate, trust and mortgage issues.

7. (1) Notwithstanding anything in this Order, unless the Court is of the opinion that there was no reasonable ground for opposing a will, no order shall be made for the costs of the other side to be paid by the party opposing a will in a probate action if the defendant has given notice with the defence to the party setting up the will that the defendant insists upon the will being proved in solemn form so as to cross-examine the witnesses produced in support of the will.

(2) Unless otherwise provided in any enactment, where a person is or has been a party to any proceedings in the capacity of a trustee, personal representative or a mortgagee the person shall, unless

the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person out of the funds held by the trustee, personal representative or the mortgagee; and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or has in substance acted for the benefit of the trustee, personal representative or mortgagee rather than for the benefit of the fund.

8. (1) Where in any proceedings anything is done or omission is made improperly or unnecessarily by or on behalf of a party, the Court may direct that any costs to that party in respect of it shall not be allowed, and that any costs occasioned by it to the other parties shall be paid by the defaulting party to them. Costs arising from misconduct or neglect

(2) Without prejudice to the generality of subrule (1), the Court shall, for the purpose of that subrule have regard in particular to the following matters:—

- (a) the omission to do anything which, if done would have saved costs;
- (b) the doing of anything calculated to occasion unnecessary costs; and
- (c) any unnecessary delay in the proceedings.

9. (1) Where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Court may make against any solicitor whom it considers to be responsible, whether personally or through a servant or agent an order disallowing the costs as between the solicitor and his client; and Personal liability of solicitor for costs.

- (a) direct the solicitor to repay to the client costs, which the client has been ordered to pay to the other party in the proceedings; or
- (b) direct the solicitor personally to indemnify the other party against costs payable to that party.

(2) No order under this rule shall be made against a solicitor unless he has been given a reasonable opportunity to appear before the Court to show cause why the order should not be made.

(3) The Court may give the solicitor a reasonable opportunity to appear and show cause where proceedings fail, cannot conveniently proceed or are adjourned without useful progress being made because he-

- (a) fails to attend in person or by a proper representative;
- (b) fails to deliver any document for the use of the Court which ought to have been delivered or ought to have been prepared with any proper evidence or account; or
- (c) otherwise fails to proceed.

(4) The Court may direct that notice of any proceedings or order against a solicitor under this rule may be given to the client of the solicitor in such manner as may be specified in the direction.

Set-off.

10. A set-off for costs between parties to the proceedings may be allowed notwithstanding any solicitor's lien for costs in those proceedings.

Extension of time.

11. (1) A taxing officer may-

- (a) extend the period with which a party is required by or under this Order or by the Court to begin proceedings for taxation or to do any thing in or in connection with those proceedings on such terms, if any, as he thinks just; or
- (b) where no period is specified by or under this Order or by the Court for the doing of any thing in or in connection with the proceedings, specify the period within which the thing is to be done.

(2) A taxing officer may extend the period as stated in subrule (1) although the application for extension is not made until after the expiration of that period.

12. (1) A taxing officer-

Certificates.

- (a) shall, at the conclusion of taxation proceedings before him issue a certificate for the costs allowed him;
- (b) may from time to time in the course of the taxation issue an interim certificate for any part of the costs which have been taxed or for any part of the amount of which is not in dispute.
- (c) may amend or cancel an interim certificate issued by him;
- (d) may correct any clerical mistake in any certificate issued by him or any error arising in the certificate from any accidental slip or omission; and
- (e) may set aside a certificate issued by him in order to enable him to extend the period provided in subrule (2) of rule 13.

(2) If in the course of the taxation of a solicitor's bill to his client it appears to the taxing office that in any event the solicitor will be liable in connection with that bill to pay money to the client he may, from time to time issue an interim certificate specifying an amount which in his opinion is payable by the solicitor to his client.

(3) On the filing of a certificate issued under subrule (2), the Court may order the amount specified in it to be paid forthwith to the client or into court.

13. (1) Any party to any taxation proceedings who is dissatisfied with any decision of a taxing officer, may apply to the taxing officer to review his decision.

Application to taxing officer for review.

(2) An application under this rule for the review of a taxing officer's decision shall be made within 21 days after that decision or within such other period as may be fixed by the taxing officer.

(3) Every applicant for review under this rule shall, at the time of making his application deliver his objection to the taxing officer in writing specifying what is objected to and stating concisely the nature and grounds of the objection in each case, and shall at the same time deliver a copy of the objection to any other party who is entitled to receive notice of the appointment for taxation.

(4) Any party to whom a copy of the objection is delivered under this rule may, 7 days after delivering of the copy to him or such other period as may be fixed by the taxing officer, deliver to the taxing officer answers in writing to the objections stating concisely the grounds on which he will oppose the objections, and shall at the same time deliver a copy of the answers to the party applying for review and to any other party who was entitled to receive notice of the appointment for taxation.

Review by
taxing officer

14. (1) A review under rule 13 shall be carried out by the taxing officer who conducted the taxation.

(2) On a review under rule 13, a taxing officer may receive further evidence and may exercise all the powers which he may exercise on an original taxation, including the power to award costs of the proceedings before him; and any costs may be added to or deducted from any other sum payable to or by that party in respect of costs.

(3) On a hearing of a review under rule 13, a party to whom a copy of objections was delivered under subrule (3) of that rule shall be entitled to be heard in respect of all or any of the objections, notwithstanding that he did not deliver written answers to the objections under subrule (4) of that rule.

(4) A taxing officer who issues his certificate pursuant to paragraphs (a) and (b) of subrule (1) of rule 12 after he has conducted a review under this rule if requested to do so by a party to the proceedings before him, shall state in the certificate or otherwise in writing by reference to the objections the reasons for his decision on the review and any special facts or circumstances relevant to it.

(5) A request under subrule (4) shall be made within 7 days after the review or such other period as may be fixed by the taxing officer.

15. (1) Any party who is dissatisfied with a decision of a taxing officer on a review under rule 13 may apply to a judge for an order to review that decision either in whole or in part, provided that one of the parties to the taxation proceedings has requested that officer to state the reasons for his decision in accordance with subrule (4) of rule 14. Review by
judge.

(2) An application under this rule may be made at any time within 14 days after the taxing officer has issued a certificate in accordance with subrule (4) of rule 14.

(3) An application under this rule shall be made by summons and shall, unless the judge thinks fit to adjourn it into court, be heard in chambers.

(4) Unless the judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised by the taxing officer and unless otherwise provided, on the hearing of such application, the judge may exercise all such powers and discretion as are vested in the taxing officer in relation to the subject matter of the application.

(5) On an application under this rule, the judge may make such order as the circumstances may require and in particular may order the taxing officer's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another taxing officer for taxation.

16. (1) On a taxation of costs on the standard basis there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts that the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party. Basis of
taxation.

(2) On a taxation on indemnity basis, all costs shall be allowed except in-so-far as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party.

(3) Where the Court makes an order for costs without indicating the basis of taxation or an order that costs be taxed on basis other than standard basis, the costs shall be taxed on standard basis.

Form of bills of costs.

17. In every bill of costs, the professional charges shall be entered in a separate column from the disbursements and every column shall be cost before the bill is left for taxation.

Interlocutory applications

18. Upon interlocutory applications, where the Court thinks it fit to award costs to any party, it may by the order direct payment of a sum in gross in lieu of the taxed costs and direct by and to whom the sum in gross shall be paid.

ORDER 58
SERVICE OF DOCUMENTS

When personal service required.

1. (1) Any document which by virtue of these Rules is required to be served on any person need not be served personally unless the document is one which, by an express provision of these Rules or by order of the Court is required to be so served.

(2) Subrule (1) shall not affect the power of the Court under any provision of these rules to dispense with the requirement for personal service.

Personal service: how effected.

2. Personal service of a document is effected by leaving a copy of the document with the person to be served.

Service on body corporate.

3. (1) Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any enactment, be effected by serving it in accordance with rule 2 on the mayor, chairman or president of the body, or the town clerk, clerk, secretary, treasurer or other similar officer of the body.

(2) Where a writ is served on a body corporate in accordance with subrule (2) of rule 1 of Order 10, that rule shall have effect as if for the reference to the usual or known address of the defendant there were substituted a reference to the registered or principal office of the body corporate and as if for the reference to the knowledge of the defendant there were substituted a reference to the knowledge of a person mentioned in sub-rule (1).

4. (1) If, in the case of any document which by virtue of any provision of these Rules is required to be served personally or is a document to which rule 1 of Order 10, applies, it appears to the Court that it is impracticable for any reason to serve that document in the manner prescribed, the Court may make an order for substituted service of that document.

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

5. All writs, notices, pleadings, orders, summonses, warrants and other documents, proceedings and written communications in respect of which personal service is not requisite shall be sufficiently served if left within the prescribed hours, at the address for service of the person to be served, with any person resident at or belonging to the place.

6. Where a party having sued or appeared in person has given notice in writing to the opposite party or his solicitor that the solicitor is authorised to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants and other documents, proceedings and written communications which ought to be delivered to or served on the party on whose behalf the notice is given, shall thereafter be delivered to or served on the solicitor.

7. Where no appearance has been entered for a party or where a party or his solicitor has omitted to give an address for service, all writs, notices, pleadings, orders, summonses, warrants and other documents, proceedings and written communications in respect of which personal service is not requisite may be served by filing them with the Master.

Effect of service after certain hours.

8. Any document (other than a writ of summons or other originating process) service of which is effected under rule 2 between 12 noon on a Saturday and midnight on the following day or after 4 in the afternoon on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Saturday or on the day following that other weekday, as the case may be.

Affidavit of service.

9. An affidavit of service of any document shall state by whom the document was served, the day of the week and date on which it was served, where it was served and how.

Service of process on Sunday.

10. (1) No process shall be served or executed within the jurisdiction on a Sunday except, in case of urgency, with the leave of the Court.

(2) For the purposes of this rule “process” includes a writ, judgment, notice, order, petition, originating or other summons or warrant.

ORDER 59

CHANGE OF SOLICITOR

Notice of change of solicitor.

1. (1) A party to any cause or matter who sues or defends by a solicitor may change his solicitor without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are lodged and served in accordance with this rule, the former solicitor shall, subject to this Order be considered the solicitor of the party until the final conclusion of the cause or matter, whether in the Court of Appeal or Supreme Court.

(2) Notice of a change of solicitor shall be filed in the appropriate Registry.

(3) The new solicitor shall serve on every other party to the cause or matter not being a party in default as to appearance and on the former solicitor a copy of the notice indorsed with a memorandum stating that the notice has been duly filed in the appropriate Registry.

(4) The party on whose behalf notice has been given may perform the duties prescribed by this rule in person or by his new solicitor.

2. Where a party, after having sued or defended in person, appoints a solicitor to act in the cause or matter on his behalf, the change may be made without an order for that purpose and subrules (2) (3) and (4) of rule 1 shall, with the necessary modifications, apply in relation to a notice of appointment of a solicitor as they apply in relation to a notice of change of solicitor.

Notice of appointment of solicitor.

3. Where a party, after having sued or defended by a solicitor, intends and is entitled to act in person, the change may be made without an order for that purpose and rule 1 shall, with the necessary modifications, apply in relation to a notice of intention to act in person as it applies in relation to a notice of change of solicitor except that the notice of intention to act in person shall contain an address for service within the jurisdiction of the party giving it.

Notice of intention to act in person.

4. (1) Where—

- (a) a solicitor who has acted for a party in a cause or matter has died or become bankrupt or cannot be found or has failed to take out a practising certificate or has been struck off the roll of court or has been suspended from practising or has for any other reason ceased to practise, and
- (b) the party has not given notice of change of solicitor or notice of intention to act in person in accordance with this Order,

Removal of solicitor from record at instance of another party.

any other party to the cause or matter may apply to the Court or, if an appeal to the Court of Appeal or Supreme Court is pending in the cause or matter, to the Court of Appeal or Supreme Court for an order declaring that the solicitor has ceased to be the solicitor acting for the first-mentioned party in the cause or matter, and the Court, or the Court of Appeal or the Supreme Court as the case may be, may make an order accordingly.

(2) An application for an order under this rule shall be made by summons and the summons shall, unless the Court otherwise directs, be served on the party to whose solicitor the application relates.

(3) The application shall be supported by an affidavit stating the grounds of the application.

(4) Where an order is made under this rule, the party on whose application it was made shall—

- (a) serve on every other party to the cause or matter (not being a party in default as to appearance) a copy of the order;
- (b) procure the order to be entered in the District Registry or other appropriate office mentioned in subrule (2) of rule 1; and
- (c) leave at that office a copy of the order and a certificate signed by him or his solicitor that the order has been duly served.

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

Withdrawal of solicitor who has ceased to act for party.

5. (1) Where a solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with rule 1, or notice of intention to act in person in accordance with rule 4, the solicitor may apply to the Court for an order declaring that he has ceased to be the solicitor acting for the party in the cause or matter, and the Court, Court of Appeal or Supreme Court, as the case may be, may make an order accordingly, but unless and until the solicitor—

- (a) serves on every party to the cause or matter (not being a party in default as to appearance) a copy of the order;
- (b) procures the order to be entered in the district registry or other appropriate office mentioned in subrule (2) of rule 1; and

- (c) leaves at that office a copy of the order and a certificate signed by him that the order has been duly served,

he shall, subject to this Order, be considered the solicitor of the party till the final conclusion of the cause or matter, whether in the Court, Court of Appeal or Supreme Court.

(2) An application for an order under this rule shall be made by summons, and the summons shall, unless the judge, Court of Appeal or Supreme Court, as the case may be otherwise directs, be served on the party for whom the solicitor acted.

(3) The application shall supported by an affidavit stating the grounds of the application.

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

6. (1) Where—

- (a) an order is made under rule 3; or
- (b) an order is made under rule 5,

Address for service of party whose solicitor is removed, etc.

and the applicant for that order has complied with subrule (1) of rule 5, then, unless and until the party to whose solicitor or to whom, as the case may be, the order or certificate relates either appoints another solicitor and complies with rule 3, or being entitled to act in person, gives notice of his intention to do so and complies with rule 4, his last known address within the jurisdiction or, where the party is a body corporate, its registered or principal office shall for the purpose of the service on him of any document not required to be served personally, be deemed to be his address for service.

(2) Where the party has no last known address or registered or principal office, as the case may be, within the jurisdiction, and the party wishing to serve documents on him does not know, or may not reasonably be expected to know, of any other address for service within the jurisdiction, he shall be deemed to have no address for service for the purposes of rule 9 of Order 58.

Copy of notice or order to be sent to proper office, etc.

7. (1) Where the cause or matter in connection with which a notice is given under rule 1,2 or 4, or in which an order is made under rule 5 or 6 in an action or proceeding in the Court which has been entered for trial before a judge .or an official referee, an officer of the District Registry or other office in which a copy of the notice or order is lodged in accordance with this Order shall cause the copy to be sent to the Master.

(2) When a party or solicitor presents such a notice or order as is mentioned in subrule (1) for filing or entry, he shall, if the cause or matter in connection with which the notice was given or in which the order was made in such an action as is referred to in subrule (1), state the place of trial.

ORDER 60

REGISTRARS AND BAILLIFS

Cause lists to be kept

1. Every Registrar shall, subject to the supervision and direction of the Chief Justice, prepare and maintain lists of causes or matters to be tried at the sittings of the Court.

Custody of money in court.

2. (1) When money is paid into or deposited in court, the officer receiving it shall immediately give a receipt from the official receipt book, and shall pay the money into an appropriate bank account operated by the Master, unless the Court otherwise orders.

(2) Upon receipt of the paying-in-slip from the bank, the officer shall forward a copy of the slip to the Master and retain the original.

(3) The Master shall comply with any order that he may receive from the Court in respect of such money and shall, on compliance with the order, be free and exonerated from any liability on account of or relating to that money.

(4) The interest on any money placed in an account under subrule (1) shall be paid and dealt with as the Court may direct.

ORDER 61

SITTINGS, OFFICE HOURS AND VACATIONS

1. There shall be published a weekly cause list for every sitting of the Court. Publication of weekly cause lists.

2. (1) Unless otherwise ordered by the Court or Judge, summonses in chambers shall be heard at 9.00 a.m. Time for commencement of sittings.

(2) Unless preceded by hearing in chambers, sitting of the Court shall commence not later than 9.30 a.m.

3. Unless the Court sees it fit to vary the order of business and subject to special arrangements for any particular day, the business of the day shall be taken as nearly as circumstance permit in the following order:— Order of business.

- (a) adjournments;
- (b) judgments and rulings;
- (c) part-heard motions;
- (d) fresh motions; and
- (e) causes or matters on the Cause List for trial in their order.

4. (1) The offices of the Court shall, subject to subrule (2), be open to the public very day of the year for such hours as the Chief Justice shall direct. Office hours.

(2) Except as otherwise directed by the Chief Justice, the offices of the Court shall be closed on Sundays and public holidays.

5. (1) The vacations to be observed in the Court shall be three in every year, namely— Vacations.

- (a) the long vacation which shall commence on the fifteenth of July and end on the fifteenth of September;

- (b) the Christmas vacation which shall commence on the twenty-third day of December and end on the fourth day of January; and
- (c) the Easter vacation which shall commence on the Wednesday before Easter and end on the Saturday after Easter.

(2) During any vacation, a judge may, in court or chambers hear and dispose of all applications which may require to be immediately or promptly heard.

Absence of vacation judge.

6. In case the judge before whom the Court is to be held is, from any cause, unable or fails to attend on the day fixed and no other judge attends in his stead, the Court shall stand adjourned to such day as the Master may, by direction of a judge fix or failing that, from day-to-day until a judge attends.

Duty Judge.

7. (1) There shall be designated for each month of the year a Judge of the Superior Court of Judicature to whom urgent applications may be made in such manner and at all reasonable hours outside the normal court sittings as the duty judge thinks fit.

(2) Upon such an application, the duty judge, if satisfied that delay caused by deferring the application to be heard in the ordinary way would or might entail irreparable or serious mischief may make an order *ex parte* and in such form and subject to such terms as to costs or otherwise, and subject to such undertaking if any, as he any think just, expedient and necessary in the circumstances of the particular case; and any party affected by such order may move to set it aside.

(3) Thereafter, if necessary, the matter shall continue before the judge to which it was originally assigned or be referred to the Chief Justice for assignment, if not already assigned.

ORDER 62

MISCELLANEOUS PROVISIONS

1. Where no provision is expressly made by these Rules regarding the practice and procedure which shall apply in any cause or matter, the Chief Justice shall prescribe by means of practice directions such practice and procedure as in his opinion the justice of the case may require.

Matters not expressly provided for by these Rules.

2. The Chief Justice may give practice directions generally for carrying out any rule in these Rules.

Practice directions generally.

3. (1) These Rules shall apply to any cause or matter part-heard on the date when these Rules come into operation.

Part-heard matters.

(2) For the further conduct of such part-heard matters any party may apply to the Court or a judge for such directions as may be necessary or expedient to ensure conformity with the requirements of these Rules.

(3) Where an action had been filed and no further step had been taken other than the filing before these Rules come into operation, any subsequent proceedings shall be under these Rules.

4. The High Court Rules are hereby revoked.

Revocation Vol. VI p. 125.

SCHEDULE

SCHEDULE

FORM 1

MEMORANDUM OF APPEARANCE

Order 12 Rule 8

In the High Court of Sierra Leone
Master’s Office, Freetown
District Registry of.....

Between:.....

Plaintiff

And

.....

Defendant

Enter appearance for

in this action

Dated the of

20

Signed:

Whose address for service is*

* Address for service shall be within 5 miles of the Master’s Office or 7 miles of the District Registry.

MADE this *11th day of April, 2007.*

A. R. D. Renner-Thomas
Chief Justice

Chairman

M. E. Tolla Thompson
Justice of the Supreme Court

Member

Salamatu Koroma
Justice of the Court of Appeal

Member

A. Showers
Justice of the High Court

Member

O. V. Robbin-Mason
Ag. Director of Public Prosecutions

Member

J. Aryee
Ag. First Parliamentary Counsel

Member

Berthan Macaulay, Jnr.
Legal Practitioner

Member

E. E. Roberts
*Nominee of Attorney-General and
Minister of Justice*

Member

Y. Williams
Legal Practitioner

Member