

Magistrates Jurisdiction and Procedure**MAGISTRATE'S COURTS
(CIVIL PROCEDURE) RULES, 1958****ARRANGEMENT OF ORDERS**

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Magistrates Jurisdiction and Procedure

Cap. 116.

MAGISTRATES COURTS (CIVIL PROCEDURE) RULES, 1958

L.N. 51/1958.
1975/158.
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Authority: These rules were made on the 1st July, 1958 by the Judicial Advisory Council under section 160 of the *Magistrates Jurisdiction and Procedure Act*.

Commencement: 15th August, 1958.

ORDER 1

Preliminary

1. These Rules may be cited as the *Magistrates Courts (Civil Procedure) Rules, 1958*. Short title.

2. (1) In these Rules

"action" means every proceeding commenced by plaintiff in a magistrate's court; Interpre-
tation.

"Appendix" means the Appendix to these Rules;

"court" means a magistrate's court established in a District;

"default summons" means a summons which is issued on the entry of a plaintiff, and is required by the Act to be served personally;

"marshal" means the Chief Marshal or his deputy;

"matter" includes every proceeding commenced otherwise than by plaintiff, and whether in an action or not;

"ordinary summons" means a summons which is issued on the entry of a plaintiff, and is not required by the Act to be served personally;

"return day" means the day appointed by summons for the appearance of the defendant, or any other day fixed for the trial of an action;

"the Act" other than in Order 21, means the *Petty Debt Act*; Cap. 209.

"the clerk" means the chief Clerk of a magistrate's court and includes any person assigned to perform any part of his duties.

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Cap. 1.

(2) The *Interpretation Act* shall apply to these rules as if they were an Act.

Where Rules are silent.

3. (1) Wherever touching any matter of practice or procedure these rules are silent, the *County Court Rules, 1936*, made in England under the *County Courts Act, 1934*, shall apply *mutatis mutandis*: and, in cases, where no forms are contained in the Appendix to these rules, the parties may use as guides in framing such forms the Forms contained in Appendix A to those rules, but (where appropriate) they shall be intituled

"In the Magistrate's Court of District

Civil Jurisdiction
Between

A.B.

Plaintiff

and

C.D.

Defendant"

(2) Except in the case of a warrant of execution or commitment, or a formal judgment or order, substantial compliance with a form shall be sufficient.

ORDER 2

Sittings and procedure of the Court

Sittings of court.

1. (1) The sittings of the court shall be held on every day not being Sunday or a public holiday, and the magistrate shall attend for the purpose from 9 o'clock in the morning to 4 o'clock in the afternoon of each day.

(2) Nothing in this rule shall prevent a magistrate from sitting before 9 o'clock in the morning or after 4 o'clock in the afternoon of any day, with the consent of the parties or their attorney-at-law: but if a magistrate shall desire to sit before 9 o'clock in the morning of any day without the consent of the parties or their attorney-at-law he may do so on giving to the parties or to their attorney-at-law at least 3 clear days' notice of such sitting.

(3) Nothing in this rule shall require a magistrate to sit on Saturday if there is no business, or prevent him from ceasing his attendance before 4 o'clock in the afternoon of any other day if the business of the court has been disposed of before that time.

2. (1) The magistrate may adjourn the court from day to day or to any convenient day. Adjournment of the court.

(2) If the magistrate is not present at the time and place appointed for any sitting of the court, the clerk or the assistant clerk may, by public oral notice, adjourn the sitting until the time communicated to him by the magistrate, or, in the absence of that communication, to a convenient time; and all persons bound to be present at the sitting so adjourned shall be equally bound to be present at the time appointed by the notice.

3. Where a magistrate has issued any summons or warrant, or otherwise taken or commenced any proceeding or matter, under any authority however conferred, and subsequently ceases to act as magistrate, the person in whose hands the summons or warrant is may execute or serve it in the same manner as if the magistrate who issued it had not ceased so to act; and any successor of the magistrate, or any person acting for the magistrate, may hear, determine, execute, enforce, and carry to completion, any proceeding or matter so commenced. Completion of process.

4. (1) On the hearing of the plaint the plaintiff shall call his evidence, and before doing so may address the court. Order of evidence and speeches.

(2) At the conclusion of the evidence for the plaintiff, the defendant may address the court, whether or not he afterwards call evidence.

(3) At the conclusion of the evidence, if any, for the defence, the defendant may address the court—

- (a) if he has not previously done so; or
- (b) with the leave of the court, if the defendant and any other witness have been called on the part of the defendant.

(4) If the defendant is allowed to address the court twice as aforesaid, the plaintiff may address the court in reply.

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Marking exhibits.

5. The magistrate shall cause all writings and other articles exhibited by the witnesses, or any of them, to be inventoried and labelled, or otherwise marked.

ORDER 3

Certain duties of officers

Office hours.

1. Officers shall attend at their offices during such hours as may be fixed by administrative direction:

Provided that their offices shall not be opened to the public before 9 o'clock in the morning and after 3 o'clock in the afternoon.

Keeping of books and filing of documents.

2. The clerk shall—

(1) keep such books as the Judicial Advisory Council may direct to be kept, and every entry in such books shall have a number prefixed, corresponding with the number of the plaint to which the entry relates;

(2) file all documents delivered to him in any action or matter, and shall distinguish them by the number of the plaint in respect of which they are filed.

Clerk to issue all process.

3. The clerk shall issue all summonses, warrants, and other process forthwith after the plaints are entered, or the warrants or other process are applied for.

Delivery of summonses.

4. (1) The clerk shall deliver to the Chief Writ Officer all summonses together with an adequate number of copies thereof for effecting service and that officer shall in manner prescribed by law and without undue delay serve all summonses so delivered to him and shall make return thereof by affidavit describing the mode of service or the fact and cause of non-service.

(2) When the writ officer to whom a summons has been delivered for service shall ascertain that the defendant has removed from the address given on the summons to some other address within the district, it shall be his duty to effect service of the summons, as if the actual address had been given on the

summons, and to endorse the new address upon the copy retained by him.

5. When an ordinary or default summons has not been served, no further steps shall be taken to serve the same unless the party at whose instance the summons is issued makes satisfactory arrangements with the clerk for effecting service, and if the clerk is satisfied that there is reasonable likelihood of service of the summons being effected, he may again deliver the summons to the Chief Writ Officer for service.

Non-served summonses.

6. Copies of all proceedings or documents in the custody of the court or its officers shall be prepared by the clerk for any party entitled to require the same, upon pre-payment of the costs of such copies.

Copies of documents, how made.

7. The clerk shall, in all cases where by these rules particulars are required, annex to the summons a copy of the plaintiff's particulars and shall also make and deliver to the writ officer a true copy of the summons.

Particulars to be annexed to summons.

8. All notices may be sent by post, postage prepaid.

Notices.

9. Whenever money is paid into or deposited in court, whether before or after judgment, an acknowledgement in writing of such payment or deposit shall be given.

Acknowledgement of payments and deposits.

10. Neither the clerk nor any other officer of the court shall in any way act as the agent in behalf of, or on account of, any suitor; neither shall any such clerk or other officer become surety in any case, where by the practice of the court security is required.

Clerk not to act as agent to parties.

11. The Marshal shall execute every warrant issued to him as soon as possible and shall enter in his book kept for that purpose every warrant which he has been required to execute, and shall note from time to time in the book kept for the purpose what action has been taken under each warrant, and if the same be not executed within one calendar month from the day of its delivery to him, why it has not been executed; and he shall at all reasonable times give to a suitor, his attorney-at-

Marshal to serve warrants and make entries in warrant books.

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law or agent, all information that he may reasonably require as to the execution or non-execution of any warrant which has been issued at his instance.

Where possession taken until security given.

12. Where a warrant shall direct the Marshal to take possession of any goods or chattels until good security be given by some party for their safe keeping but shall not specify the amount of such security, he shall make or cause to be made an inventory or appraisalment of the goods or chattels which he may take into his possession, and may, upon receiving as a deposit the amount of such appraisalment or sufficient security to be approved by the court, for the safe custody, and for the delivery up of possession upon request, of such goods and chattels, relinquish the possession thereof on condition that the same shall be re-delivered to him or held to abide the order of the court. If the warrant shall specify the amount of security, no less deposit or security shall be sufficient.

As to sale of personal property.

13. Where any personal property is directed to be sold by auction, detained, or preserved, the Marshal shall, if the court so direct, superintend such sale, detention or preservation.

Money to be paid in within twenty-one days.

14. Except in any case where any other person is entitled to lay a claim to the proceeds, the Marshal shall pay all money received by him by virtue of any process issuing out of the court to the person duly authorised to receive it within twenty-one days from the receipt of such money, and shall return such process to the custody of the clerk, who shall file the same.

Withdrawal on notice of a receiving order in bankruptcy.

15. Where the Marshal withdraws from possession in consequence of having received notice that a receiving order in bankruptcy has been made, he shall within twenty-four hours after such withdrawal send to the execution creditor notice thereof.

ORDER 4

Commencement of Action

Actions to be commenced by plaintiff.

1. All proceedings shall, except when otherwise provided by these rules, be called actions, and shall be commenced by the

entry of a plaint and the issuing of a summons in manner prescribed by section 24 of the Act, and these rules.

2. No plaint shall be entered unless the plaintiff shall give the christian name and surname, description, and residence or place of business of himself and of the attorney-at-law, if any, entering the plaint, and the surname (and, where known, the christian name) and description and the residence or place of business of the defendant, and the description and addresses so given shall be inserted in such process or attached thereto.

Particulars to be given on entry of plaint.

3. Every plaint shall be entered and numbered in the book kept for that purpose before issuing the summons; and the clerk, after entering the plaint, shall issue the summons forthwith.

Clerk to enter plaint.

4. If the plaintiff sues, or the defendant or any of the defendants be sued in a representative capacity it shall be stated by the plaintiff in what capacity he sues or the defendant is sued.

Representative capacity to be stated.

5. (1) In all cases where an assignee of a debt or other legal *chose in action* sues, the fact that he is such assignee, and the name, address and description of the assignor, shall be stated in the summons, and in the particulars (if any).

Where assignee sues.

(2) An assignee of a debt or other legal *chose in action* shall not be entitled to issue a default summons.

6. Where an infant or person of unsound mind desires to commence an action, he shall sue by a next friend and shall forward to the clerk the christian name and surname, description, and residence or place of business of the next friend, and such next friend shall, at the time of entering the plaint, attend at the office of the clerk and give a written undertaking to be responsible for costs. If the infant fail in or discontinue his action and does not pay the amount of costs ordered to be paid by him to the defendant, proceedings may be taken for the recovery of such amount from the next friend as for the recovery of a judgment debt.

Infant suing.

7. Where a plaintiff requiring a default summons does not desire the order upon the judgment to be for payment forthwith,

Practice where plaintiff does not require payment forthwith.

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he may at the time of the entry of the plaint file a notice stating the time or times, and the instalments, if any, at or by which he consents to accept payment, together with as many copies of such notice as there are defendants; and a copy of such notice shall be annexed to the summons, and served therewith; and, if he neglects to file such notice, he may nevertheless give notice to the clerk to the like effect at the time of entering up judgment.

ORDER 5

Particulars and Statement of Claims

Plaintiff to file copies of his claim.

1. On entering the plaint the plaintiff shall deliver to the clerk as many copies of a statement of the particulars of his demand or cause of action as there are defendants, and an additional copy to be filed; and where the demand exceeds two hundred and fifty dollars but the plaintiff desires to abandon the excess, or to admit a set-off, and sues only for the residue, the abandonment or the admission of the set-off shall be entered on the particulars before service.

Particulars in actions for recovery of land.

2. In all actions for the summary recovery of possession of land, the particulars shall contain a full description of the property sought to be recovered and the value thereof and the rent, if there be any, fixed or paid in respect thereof.

Particulars where more than one cause of action.

3. Where the plaintiff seeks to obtain payment or satisfaction or relief upon more than one cause of action or claim, he shall state in his particulars the grounds of each claim separately, and shall also state separately the payment or satisfaction or relief he claims in respect of each.

Notice by defendant for further particulars.

4. In all actions the defendant may, at any time not later than seven clear days before the return day, give notice to the plaintiff that he requires further particulars, and the plaintiff shall, within four clear days of service of such notice, file full particulars of his claim, and of the relief to which he claims to be entitled, and within the same time shall deliver to the defendant a copy thereof. If the plaintiff fails to comply with such notice, or complies therewith insufficiently, the court, before or at the trial, if satisfied that the defendant is thereby

prejudiced in his defence, may order the plaintiff to file and deliver full or further particulars, and may adjourn the action and stay all proceedings therein until such order has been complied with, and may make such order as to costs as it may think fit.

5. Where a plaintiff sues by attorney-at-law the particulars must be signed by the attorney-at-law in his own name or that of his firm, and he shall state thereon his place of business and where he will accept service of proceedings in the action or matter on behalf of the plaintiff, otherwise the costs of entering the plaint by the attorney-at-law shall not be allowed.

Signature to particulars by attorney-at-law.

ORDER 6

Plaint Note and Summons

1. At the time of entering the plaint, the plaintiff shall inform the clerk whether he requires an ordinary summons or a default summons, and the clerk shall give to the plaintiff or his attorney-at-law or agent a note, according to Form 1 or Form 2 in the Appendix. In the event of such note being lost or destroyed, a duplicate thereof may be given from time to time to the plaintiff, or his agent duly authorised in that behalf, upon proof by affidavit or otherwise, to the satisfaction of the clerk, that the person applying is the plaintiff, or his agent authorised in that behalf; and no money shall be paid out to any person except on production of such note or a duplicate thereof.

Plaint note.

Forms 1 and 2.

2. Summonses to appear to a plaint shall be according to the Forms 3 and 4 in the Appendix, and shall be dated as of the day on which the plaint was entered, and the date thereof shall be the commencement of the action.

Date of summons. Forms 3 and 4.

3. In all cases, the particulars, where required to be filed, shall be annexed to the summons before service, and shall be deemed to be part thereof.

Particulars deemed part of summons.

4. Where an ordinary summons has not been served, successive summonses may be issued without entering a new plaint. Successive summonses shall bear the same date and

Successive summonses.

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number as the summons first issued, which date and number shall be written in red ink in the Record Book, and such summonses shall be a continuance of the first summons:

Provided that no successive summons shall be issued on a plaint after three months from the date of entry.

When ordinary summons is to be delivered for service.

5. An ordinary summons to appear to a plaint shall be delivered to the writ officer at least twelve clear days before the return day, but it shall be served at least seven clear days before the return day thereof:

Time of service.

Provided that a summons may be issued and served at any time before the return day, on production by the plaintiff to the clerk of an affidavit showing that the defendant is about to remove out of the jurisdiction of the court; and the service of such summons may be deemed good service if at the hearing the court is satisfied on the evidence on oath before it that such party was about to remove out of the jurisdiction of the court, but in every such case, whether such proof be given or not, the court may, in its discretion and on such terms as it shall think fit, adjourn the hearing.

Mode of service of an ordinary summons.

6. The service of an ordinary summons, except in the cases hereinafter specially provided for, may be either personal or by delivering the same to some person at the house or dwelling, or place of business, of the defendant, unless the writ officer shall ascertain that the defendant has removed to some other place, in which case if such last-mentioned place be within the district allotted to him, he shall serve the summons; but if not, he shall return the same to the clerk with an indorsement thereon of such place.

Service on attorney-at-law.

7. Where an attorney-at-law represents to the writ officer that he is authorised to accept service on behalf of a defendant, it shall be sufficient service to deliver the summons to such attorney-at-law:

Provided that such an attorney-at-law shall, at the time of such delivery, endorse upon the copy of the summons retained by the writ officer a memorandum that he accepts service thereof on behalf of the defendant.

8. Where a minor is a defendant in any action or matter, service on his father or guardian, or (if none) on the person with whom the minor resides or under whose care he is, shall, unless the Court otherwise orders, be deemed good service on the minor.

Service on minor.

9. Where a person of unsound mind is a defendant in any action or matter, service on the person with whom the person of unsound mind resides, or under whose care he is, shall, unless the court otherwise orders, be deemed good service on such defendant.

Service on person of unsound mind.

10. Where persons are sued as partners in the name of their firm, the summons shall be served either upon any one or more of the partners, or at the principal place of the partnership business upon any person having or appearing to have at the time of service the control or management of the business there, and, subject to these rules, such service shall be deemed good service on the firm so sued:

Service on partners.

Provided that in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the summons shall be served upon every person sought to be made liable.

11. Where one person carrying on business in a name or style other than his own name is sued in such name or style as if it were a firm name, the summons may be served at the principal place of business of such person, upon any person having or appearing to have at the time of service the control or management of the business there; and such service, if sufficient in other respects, shall be deemed good service on the person so sued.

Service where person carried on business in name or style of a firm.

12. Where a company registered under the Companies Act is a defendant, the plaintiff shall give an address for service, described as "being the registered office of the company".

Praeceptum where company is defendant. Cap. 308.

13. Where any corporation or any incorporated company carrying on business within the jurisdiction is sued, the summons may, in the absence of any provision in any law regulating service of process, be served upon the secretary, treasurer, manager, principal officer or clerk of such corporation

Service on corporation.

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or company, and where there is a registered address, at such address.

Where husband and wife are defendants.

14. Where husband and wife are both defendants in any action or matter, they shall both be served, unless the court shall otherwise order.

Service where defendant on board ship.

15. Where a defendant is living or serving on board of any ship or vessel, it shall be sufficient service to deliver the summons to the person on board who is, at the time of such service, apparently in charge of such ship or vessel.

Service on a prisoner.

16. Where a defendant is a prisoner in a gaol, it shall be sufficient service to deliver the summons at the gaol to the superintendent or any person appearing to be the head officer in charge thereof.

Where defendant keeps his house closed.

17. Where a defendant keeps his house or place of dwelling or place of business closed in order to prevent a writ officer from serving the summons, it shall be sufficient service to affix such summons on the door of such house or place of dwelling or place of business.

Service in case of vacant possession.

18. Service of the summons in an action to recover land may, in case of vacant possession, if it cannot otherwise be effected, be made by posting a copy of the summons upon the door of the dwellinghouse or other conspicuous part of the property.

Service where violence threatened.

19. Where a writ officer is prevented by the violence or threats of the defendant, or of any other person in concert with him, from personally serving the summons, it shall be sufficient service to leave such summons as near to the defendant as practicable.

Where summons has to come to the knowledge of defendant before the return day.

20. Where the summons, though not served personally, has been delivered at the house or place of dwelling, or place of business of the defendant, and the defendant does not appear in person or by his attorney-at-law or agent at the return day, the action may proceed if the court is satisfied, on the evidence before it, that the service of such summons has come to the knowledge of the defendant before the return day, but no such

evidence shall be necessary in the cases specially mentioned in the rules numbered 14, 15, 16, and 17 in this Order.

21. Default summonses shall be personally served within a period of twelve months from their date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of twelve months, apply to the clerk, and if the clerk is satisfied that reasonable efforts have been made to serve such defendant, or that there is some other good reason why service has been delayed, he may from time to time issue successive summonses for a further period of six months, and successive summonses shall be a continuance of the action on and from the day on which the plaint was entered.

Service on default summonses.

22. Where twelve months have expired from the date of service of a default summons, and—

Striking out after twelve months.

- (1) no defence or admission or counterclaim has been delivered and judgment has not been entered against the defendant, or
- (2) an admission has been delivered but no notice of acceptance or non-acceptance has been received by the clerk,

the action shall be struck out and no extension of time shall be granted beyond the twelve months, notwithstanding rule 7 of Order 22.

23. Where a default summons has been served in due time to prevent the operation of a statute of limitations, and either party dies after the service and after the lapse of the period within which it is provided by the statute that an action may be brought, proceedings may be taken by or against the surviving party, or by or against the personal representative of the deceased party, within one year from the day of service of the summons.

Where either party dies after service of summons to save statute.

24. A default summons may, at the request of the plaintiff, be exchanged, without fee, for an ordinary summons upon the former being filed in court within twelve months of its issue.

Exchange of default summonses.

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ORDER 7

1. *Parties*

Who may be joined as plaintiffs.

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

Provided that if upon the application of any defendant it shall appear that such joinder may embarrass or delay the trial, the court may order separate trials, or make such other order as may be expedient. Judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment, but the defendant, though unsuccessful, shall be entitled to any extra costs occasioned by so joining any person who shall not be found entitled to relief, unless the court disposing of the costs shall otherwise direct.

Who may be joined as defendants.

2. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, and judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

All persons need not be interested in all the relief prayed for.

3. It shall not be necessary that every defendant shall be interested in all the relief prayed for, or in every cause of action included in any proceeding against him; but the court may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest.

Who may be joined under any one contract.

4. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally or jointly and severally, liable on any one contract.

Where plaintiff in doubt from whom he is entitled to relief.

5. Where the plaintiff is in doubt as to the person from whom he is entitled to relief, he may join two or more defendants, to

the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties.

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

Trustees, and executors and others.

7. Where there are numerous persons having the same interest in one action or matter, one or more of such persons may sue or be sued, or may be authorised, at or before the trial, by the court to defend in such action or matter, on behalf or for the benefit of all parties so interested.

Where parties numerous.

8. (1) A minor may sue as plaintiff by his next friend and may in like manner defend by a guardian appointed by the court for the purpose.

Minors and persons of unsound mind.

(2) A person of unsound mind may sue as plaintiff by his committee or next friend and may in like manner defend by his committee or guardian appointed by the court for the purpose.

(3) On application made and on affidavit in the Form in the Appendix (accompanied by a written consent of the proposed guardian to act as such) the court may appoint a guardian to a defendant who is a minor or person of unsound mind:

Form 5.

Provided that in default of such application the court of its own motion may appoint any person who is willing to act as guardian or, if there be no such person, the court may appoint the clerk.

9. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and in any case, on application by any party to the action, the court may order a statement of the names of the persons who were at the time of

Co-partners may sue and be sued in the name of their firm.

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the accruing of the cause of action co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise as the court may direct.

Application for names of firm in action by firm.

10. Where an action is brought by partners in the name of their firm, the plaintiffs or their attorneys-at-law shall, on demand made in writing by or on behalf of any defendant, forthwith send by post to the defendant so applying and to the clerk the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. If the plaintiffs or their attorneys-at-law shall fail to comply with such demand, all proceedings in the action may, upon an application for the purpose, be stayed upon such terms as the court may direct, or the court at the trial may adjourn the hearing on such terms as it may think fit; and when the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as the plaintiffs in the summons, but all the proceedings shall, nevertheless continue in the name of the firm.

Where business is carried on not in own name.

11. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name, and, so far as the nature of the case will permit, all the provisions of these rules relating to proceedings against firms shall apply.

Persons may be made parties.

12. The court may require any person to be made a party to any action or matter, and may give the conduct of the action or matter to such person as it may think fit, and may make such order in any particular case as it may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

Where no legal representative.

13. If in any action or matter it shall appear to the court that any deceased person who was interested in the matter in question has no legal personal representative, the court may proceed in the absence of any person representing the estate of the deceased person, or may appoint some proper person to represent his estate for all the purposes of the action or matter on such notice to such person, if any, as the court shall think

fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the action or matter.

2. *Change of Parties*

14. An action or matter shall not become abated by reason of the marriage, death or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*, and, whether the cause or action survives or not, there shall be no abatement by reason of the death of either party but judgment may in such cases be entered notwithstanding the death.

When action not to abate.

15. Where, by reason of any event occurring after the commencement of any action or matter, there shall be any assignment, creation, change, transmission, or devolution of the interest, estate or title of any plaintiff in any action or matter before judgment, the person to or upon whom such interest, estate or title has come or devolved may give notice thereof to the defendant and to the clerk according to the Form in the Appendix, and shall at the same time file an affidavit of the truth of the facts stated in the notice; and thereupon the clerk shall notify that person and the defendant of the day upon which the application of that person to be substituted as plaintiff in the action will be heard.

Notice to defendant of change of plaintiff's title.

Form 6.

16. Where by reason of one and the same event any person becomes entitled to give notice under the last preceding rule in more actions or matters than one, such person may give one notice only in respect of all or any of such actions or matters, specifying in a schedule to such notice all the actions or matters in respect of which such notice is given; and in serving a copy of such notice on any defendant in any such action or matter, it shall be sufficient to set forth such part only of such notice as affects such defendant, without setting forth the rest of such notice.

Where change of plaintiff's title affects more actions than one.

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Notice to plaintiff of change in defendant's title.

17. Where by reason of any event occurring after the commencement of any action or matter there shall be any assignment, creation, change, transmission, or devolution of the liability, interest, estate or title of any defendant, in any action or matter before judgment, the plaintiff or the defendant or the person to or upon whom such liability, interest, estate or title has come or devolved may in like manner give notice to the clerk who shall take action thereon similar to those prescribed by rules 15 and 16 of this Order, and a defendant may be substituted or added, as the case may be, in manner similar to that provided in such rules for the substitution or addition of a plaintiff.

Change or transmission of interest.

18. Where by reason of any event occurring after the commencement of any action or matter, and causing a change of transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party may be obtained, before or at the trial, on application to the court upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence.

Service of order on change or transmission of interest.

19. An order obtained as in the last preceding rule mentioned shall, unless the court shall otherwise direct, be served upon the continuing parties or their attorneys-at-law, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the action or matter shall be bound to appear at the trial, and in the same manner as if he had been served with a summons.

Variation of order.

20. Where any person has been served with an order under the preceding rule, such person may at or before the trial apply to the court to discharge or vary such order.

21. When the plaintiff or defendant in an action or matter dies, and the cause of action survives, but the person entitled to proceed fails to do so, the defendant (or the person against whom the action or matter may be continued) may apply to the court for an order directing the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and in default of such proceeding the action or matter may be struck out, and the court may award costs to the defendant, or (as the case may be) to the person against whom the action or matter might be continued, in the same manner as in other cases of striking out; and in such case, if the plaintiff has died, execution may be issued for such costs on an application for leave to issue execution in manner provided by these rules.

Where person entitled to proceed fails to do so.

22. Where a plaintiff or a defendant is substituted or added under any of the foregoing rules, the Record Book shall be altered and all subsequent proceedings shall be carried on under the altered title.

Alteration of records on change of parties.

ORDER 8

Special Defences and Counterclaim

1. Where a plaintiff sues on behalf of or for the benefit of others having the same interest, the defendant may avail himself of any defence in respect of each of the persons in whose behalf or for whose benefit the plaintiff so sues which he would have had against either or any of such persons if they or he had been plaintiff.

Where plaintiff sues on behalf of others.

2. Where a plaintiff avails himself of the provisions of section 23 of the Act and does not proceed against all of several persons jointly answerable, every defendant sued may avail himself of any defence to which he would have been entitled if all the persons liable were made defendants.

Where one of several persons jointly answerable is sued.

3. The defendant in any action or matter may file a statement disclaiming any interest in the subject-matter thereof, or admitting or denying any of the statements in a plaintiff's particulars, or raising any question of law on such statements without

Disclaimer, admission and other statements by defendant.

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admitting the truth thereof; or he may therein state concisely any new fact or document upon which he intends to rely as a defence, or to bring to the notice of the court; and a copy thereof shall be delivered to the plaintiff:

Provided always that in exercising its discretion as to costs, the court shall consider the fact of a defendant having or not having availed himself of the powers given by this rule.

Notice to be given to special defences.

4. Where the defendant intends to rely upon any of the grounds of defence mentioned in rules 5, 6, 7, 8, 9, and 10 of this Order, he shall file a notice stating therein his name and address, together with a concise statement of such grounds, five clear days before the return day and shall within twenty-four hours deliver one copy of such notice and particulars to the plaintiff:

Provided that in case of non-compliance with this and the preceding rules of this Order and of the plaintiff's not consenting at the trial to permit the defendant to avail himself of such defence, the court may, on such terms as it shall think fit, adjourn the trial of the action to enable the defendant to give such notice.

Infancy.

5. Where a defendant intends to rely on the defence of infancy, he shall in his statement set forth, so far as he is able, the place and date of his birth.

Coverture.

6. Where a female defendant intends to rely on the defence of coverture, she shall in her statement set forth, so far as she is able, the place and date of marriage together with the christian name and surname of her husband, and his address and description.

Bankruptcy.

7. Where a defendant intends to rely on the defence of a release under any statute relating to bankrupts, he shall in his statement set forth the date of his certificate, discharge, or final order, and the court by which such certificate, discharge, or final order was granted or made.

Statutory defence.

8. When in any action the defendant relies upon any statutory defence, or any defence of which he is required by any statute to give notice, he shall set out in his statement a

reference to the statute and the particular matter upon which he relies.

9. Where the defence is a tender, such defence shall not be available unless, at the time of filing the notice of such defence, the defendant makes payment into court (which may be without costs) of the amount alleged to have been tendered.

Tender.

10. A defendant in an action may set off, or set up by way of counterclaim against the claims of the plaintiff, any right or claim cognisable in the court, whether such set-off or claim 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.

Set-off and counterclaim.

11. Where in any action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a set-off or counterclaim, he may obtain the benefit thereof by establishing his set-off or counterclaim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

Misjoinder of plaintiff not to defeat counterclaim.

12. A counterclaim or set-off shall contain the same facts and particulars as a plaint so far as those facts and particulars have not been already stated in the plaint.

Particulars of counterclaim.

13. Where a defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff along with any other person, he may apply to the court to add the name of such person as a party to the counterclaim.

Where counterclaim affects other person.

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

Counterclaim may be proceeded with although action discontinued, etc.

15. A plaintiff in respect of a counterclaim by a defendant shall be entitled to take all defences, special or otherwise, which are open to a defendant in an action.

Defences to counterclaim.

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ORDER 9

Discontinuance, Confession, Admission, and Payment into or out of Court

Discon-
tinuance
of action.

1. If the plaintiff desires to discontinue the action or matter against all or any of the parties thereto, he shall give notice in writing by post or otherwise thereof to the clerk and to every party as to whom he so desires to discontinue the action or matter; and after the receipt of such notice the party may apply *ex parte* for an order against the plaintiff for the costs incurred before the receipt of such notice, and of attending the court to obtain the order.

Confessions
under the
Act.

2. All confessions under section 29 of the Act shall be delivered to the clerk five clear days before the return day:

Form 7.

Provided that, at any time before the action is called on, the defendant may confess and admit the claim according to the Form in the Appendix, subject, however, to an order by the court to pay such costs as the plaintiff has incurred in consequence of the defendant's not having delivered such confession as hereinbefore required.

Consents
under the
Act.

3. In all cases of consent under section 30 of the Act the defendant may confess the amount of the plaintiff's costs besides the court fees, and the judgment may be entered accordingly, and the amount of the plaintiff's costs shall be stated separately.

Admission of
truth of
plaintiff's
statement.

Form 8.

4. Where a defendant desires to admit the truth of the statement in the plaintiff's particulars, and to submit to the judgment of the court thereon, he may in the presence of the clerk, or of an attorney-at-law, sign an admission according to the Form in the Appendix. Such admission shall be filed at least five clear days before the return day and the clerk shall transmit a notice thereof by post to the plaintiff or his attorney-at-law, and the plaintiff shall not, unless the court shall otherwise order, be allowed any costs incurred after the service upon him of notice of such admission:

Provided that the plaintiff or his attorney-at-law shall be entitled, notwithstanding such admission, to his costs of attending on the day of trial to enter up judgment.

5. Where a party to an action or matter gives notice in writing to any other party that he admits the truth of the whole or of any part of the case or claim of such other party, no costs incurred after the receipt of such notice in respect of the proof of any matters admitted therein shall be allowed; but the costs of any step taken prior to the receipt of such notice may be allowed if the court be of opinion that they were not taken unnecessarily or prematurely.

Costs after admission by any party.

6. Any party may, by notice in writing according to the Form in the Appendix, at any time not later than six clear days before the return-day, call on any other party to admit, for the purposes of the action, matter, or issue only, any specific fact or facts mentioned in such notice. In case of refusal or neglect to admit the same by delivery of a written admission signed by the party not less than three clear days before the return-day, the cost of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the action, matter, or issue may be, unless at the trial the court certify that the refusal to admit was reasonable, or unless the court shall at any time otherwise order:

Notice to admit specific facts.
Form 9.

Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular action, matter, or issue and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice:

Provided also, that the court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

7. (1) Where a defendant is desirous of paying money into court pursuant to section 31 of the Act, he shall pay the same at least five clear days before the return day. Every such payment shall be taken to admit the claim or cause of action in respect of which the payment is made, unless the defendant shall, at the time of paying the money into court, file with the clerk a notice and a copy thereof according to the Form in the Appendix stating that, notwithstanding such payment, the defendant denies liability.

Payment into court.

Form 10.

(2) The clerk shall, within twenty-four hours from the time

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of any payment made pursuant to the last preceding paragraph, send to the plaintiff notice thereof, and, when such payment is made with a denial of liability he shall send in lieu thereof the copy of the notice.

(3) The defendant may also at any time less than five clear days before the return day pay money into court, and notice thereof shall be given by the clerk to the plaintiff in accordance with the last preceding paragraph; but the defendant shall not be permitted, except by leave of the court, to give a notice denying liability at the time of such payment. Where money is paid into court less than five clear days before the return-day, or where it is in any case paid in without costs, if the plaintiff do not elect to accept the money so paid in satisfaction, the plaintiff may proceed as if no such payment had been made, and, unless the court shall otherwise order, shall be entitled to costs.

Acceptance
of amount
paid in in
satisfaction
of claim.

Form 11.

8. (1) If the plaintiff elects to accept in satisfaction of his claim such money as shall have been paid into court by the defendant, whether the same has been paid in in due time or not, or with or without costs, or with or without a notice of denial of liability, he shall send to the clerk and to the defendant by post, or leave at the clerk's office and at the defendant's dwelling or place of business a written notice according to the Form in the Appendix stating such acceptance, within such reasonable time before the return-day as the time of payment by the defendant has permitted; and thereupon the action shall abate, except as herein provided, and the plaintiff shall not be liable to any costs incurred by the defendant after receiving such notice.

(2) In any such case the court may in its discretion order the defendant to pay such fees and costs beyond the fees and costs (if any) paid into court by the defendant as the plaintiff may have properly incurred for work done before the receipt of notice of payment into court, and in attending the court to obtain the order for the same (including, if the court on consideration of the facts of the case shall so order, any of the items which might have been allowed by order of the court at the trial), but no hearing fee shall be charged.

(3) If the plaintiff intends to apply for such costs he shall give

notice of his intention in his notice of acceptance of the sum paid in.

(4) In default of such notice of acceptance by the plaintiff the action may proceed.

9. Where a notice of defence under section 27 of the Act has been given either as to part or the whole of the claim and the defendant, before notice of the day fixed by the clerk for the trial shall have been sent to the plaintiff, pays into court the amount or a portion of the amount claimed, together with the court fees, and the attorney-at-law's costs charged on the summons, he shall not be liable for any further costs if the plaintiff accepts the money paid in as satisfaction for the whole amount claimed. Where, however, notice of trial shall have been so sent, it shall be lawful for the court to order the defendant to pay forthwith such further fees and costs as the plaintiff may have, prior to receiving notice from the clerk of the payment into court, incurred in preparing for trial, and also such fees and expenses as may be incurred by him in attending the court to obtain the order for the same.

Where payment made after notice of defence given.

10. Where a defendant pays into court any sum admitted to be due, after deducting any amount claimed by him under set-off, he shall pay therewith the court fees.

Payment when there is set-off or counterclaim.

11. Where a defendant pays money into court in order that he may rely on the defence of tender, the money shall not be paid out until after the judgment, and any costs which shall have been awarded to the plaintiff shall be deducted therefrom.

Money paid into court to be detained if defence be tender.

12. (1) Where a defendant pays into court a sum less than the sum claimed with a notice of denial of liability and the plaintiff does not accept the same in satisfaction of his claim and give notice of acceptance, the plaintiff may nevertheless accept the same at any time before the case is called, subject to the payment of any costs which may have been reasonably incurred by the defendant since the date of payment into court, and which may be allowed by the court.

Money paid in with denial of liability.

(2) In any other case the money shall not be paid out until after the trial and judgment: and if the plaintiff recovers less

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than the amount paid into court, the balance of such amount shall be repaid to the defendant, unless the court otherwise orders, and the court may order any costs awarded to the defendant to be set off against the amount recovered by the plaintiff; and if the defendant succeeds, the whole amount paid into court shall be repaid to him, unless the court otherwise orders.

Payment of
money out
of court.

13. Money paid into court, whether under a judgment or order or otherwise, shall be paid out to the plaintiff on production of the plaint note or the duplicate thereof, or to the defendant on production of the summons issued in the action, as the case may be.

Payment and
investment
of moneys
awarded to
minors or
persons of
unsound
mind.

14. In any action or matter in which a sum of money has been awarded to or recovered by a minor or person of unsound mind, the court may at or after the trial order that the whole or any part of such sum shall be paid into court to the credit of an account intituled in the action or matter; and any sum so paid into court may either be invested or be paid from time to time out of court to such person as the court may direct, to be held and applied for the benefit of such a minor or person of unsound mind in such manner as the court from time to time shall direct.

Payment
into court.

15. Where a party is directed to pay money into court, he shall pay the same to the clerk who shall give him an official receipt therefor, and the clerk shall enter in the Cash Book and Ledger all sums so paid to the account of the proceeding in which it is paid.

Clerk to
draw up
order for
payment.

16. Where an order has been made upon any person to pay money into court, the clerk shall, if directed so to do by the court, draw up such order and issue it to the writ officer, by whom the same shall be served personally upon the person ordered to make the payment.

ORDER 10

Joinder of Causes of Action

Generally.

1. Save as otherwise provided in this Order, the plaintiff may unite in the same action several causes of action and—

- (a) claims by or against husband and wife may be joined with claims by or against either of them separately; and Husband and wife.
- (b) claims by or against an executor or administrator as such may be joined with claims by or against him personally, if they are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator; and Executor or administrator.
- (c) claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant. Joint and separate claims.
- 2.** Except by leave of the court—
- (a) no cause of action shall be joined with an action of replevin; and No joinder without leave of court.
- (b) no cause of action shall be joined with an action for the summary recovery of possession of land except claims for arrears of rent or mesne profits.

3. If at any time it appears to the court that any causes of action united in one action cannot be conveniently tried and disposed of together, it may order separate trials, or may exclude any cause of action, and order any consequential amendments to be made. Separate trial may be ordered.

ORDER 11

Inspection and Admission

1. Where in an action any party is desirous of inspecting any document which he is entitled to inspect relating to the matter in question in such action and which shall be in the possession or power or under the control of the other party, such first-mentioned party may, five clear days before the day of hearing, give notice to the other party by post or otherwise that he or his attorney-at-law desires to inspect such document (describing the same) at any place to be appointed by the other party, and if such other party shall neglect or refuse to appoint such place, or to allow such plaintiff or defendant or his attorney-at-law to inspect such document within three clear days after receiving such notice, the court may, in its discretion on the day of trial, adjourn the action and make such order as to costs as it shall think fit. Inspection of documents.

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Admission of documents.

Form 12.

2. Where a party desires to give in evidence any document, he may, not less than five clear days before the trial, give notice in the Form in the Appendix to any other party in the action who is competent to make admissions, requiring him to inspect and admit such document; and if such other party shall not within three days after receiving such notice make such admission, any expense of proving the same at the trial shall be paid by him, whatever be the result of the action, unless the court shall otherwise order, and no costs of proving any document shall be allowed unless such notice shall be given, except in cases where, in the opinion of the court, the omission to give such notice has been a saving of expense.

Notice to admit or produce.
Form 13.

3. (1) A notice to produce documents at the hearing shall be in accordance with the Form in the Appendix.

(2) An affidavit of the party or his attorney-at-law, or some person in the permanent and exclusive employ of either of them, of the service of any notice to admit or produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

Costs of notice to admit or produce.

4. If a notice to admit, or to produce documents at the hearing, comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

Order to apply to minors.

5. This Order shall apply to plaintiffs and defendants who are minors, and their next friends and guardians *ad litem*.

ORDER 12

Amendment

Where party wrongly sues or is sued in representative character.

1. Where a party sues or is sued in a representative character but it appears that he ought to have sued or been sued in his own right, the court may, at the instance of either party, on such terms as may be just, amend the proceedings accordingly; and thereupon the action shall proceed, in all respects, as if the proper description of the party had been given in the plaint.

Where party wrongly sues or is sued in his own right.

2. Where a party sues or is sued in his own right, but it

appears that he ought to have sued or been sued in a representative character, the court may, at the instance of either party, on such terms as may be just, amend the proceedings accordingly; and thereupon the action shall proceed in all respects, as if the proper description of the party had been given in the plaint.

3. Where the name or description of a plaintiff or a defendant in the plaint is insufficient or incorrect, it may be amended at the instance of either party by order of the court, on such terms as may be just; and thereupon the action shall proceed, in all respects, as if the name and description had been originally such as it appears after the amendment has been made.

Insufficient name or description of a plaintiff or defendant.

4. Where 2 or more persons are made defendants, and some of them have not been served, the names of the defendants who have not been served may, at the instance of either party, be struck out by order of the court, on such terms as may be just; and thereupon the action shall proceed, in all respects, as if the parties whose names have not been struck out had alone been made defendants; or the action may be adjourned for service upon any defendant not served.

Where all defendants have not been served.

5. The plaintiff may at any time before an action or matter is called on for hearing, or in opening his case when called on, abandon any part of his claim, and such abandonment shall be entered on the particulars (if any) and in the minute book but if the defendant succeeds, the court may allow him such costs as he would have been entitled to on the amount originally claimed; and in any case the court may allow the defendant any costs properly incurred by him in respect of that part of the plaintiff's claim which is abandoned.

Abandonment of part of claim.

6. Where it appears that a plaintiff is entitled to recover an amount larger than that mentioned in the particulars, but not exceeding the amount which may be recovered in the court, he may, by leave of the court, and on payment of the difference (if any) between the fees payable on the amount so mentioned and those payable on the larger amount, amend his particulars so as to claim such larger amount, and thereupon judgment shall be entered for the same.

Amendment of particulars where plaintiff is entitled to more than amount claimed.

Clerical mistakes and accidental omissions.

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

ORDER 13

Trial

Where plaintiff does not appear.

1. If, when a trial is called on, the plaintiff does not appear, and the defendant appears and does not admit the plaintiff's claim, the court may, in its discretion, award costs to the defendant in the same manner and to the same amount as if the action had been tried.

Where neither plaintiff nor defendant appears.

2. Where a default summons has been issued and notice of defence has been given and neither the plaintiff nor defendant appears when the trial is called on, the action shall be struck out; and where notice of defence has been given, and the defendant appears and the plaintiff does not appear, the action shall be struck out and costs may be ordered against the plaintiff; and where the plaintiff appears and the defendant does not appear, judgment may be entered for the plaintiff without further proof.

Where defendant does not appear.
1975/158.

2A. In an action in which an ordinary summons is served, the plaintiff may, at any time before the trial of the action, file an affidavit stating

- (a) the facts on which he relies to establish his claim; and
- (b) that to the best of his knowledge and belief there is no defence to the claim.

If at the trial the defendant does not appear, the court may, if it is satisfied as to the matters set out in the affidavit, give final judgment without further proof.

The provisions of Order 14 relating to the form, content and effect of affidavits filed under that Order shall, *mutatis mutandis*, apply to affidavits filed under this rule.

Restoring case struck out for non-appearance of plaintiff.

3. Where any action or matter has been struck out under the preceding rule, the court may order such action or matter to be restored to the list for hearing on the same day or any subsequent day, and may set aside any order awarding costs to the opposite party which may have been made under rules 2 and 2A upon such terms as may be just.

4. Where at the trial it shall appear that an action for the same cause at the suit of the same plaintiff is pending in any other court, the court shall order the trial to stand adjourned to a certain day, and, unless before such day the action in such other court shall have been discontinued, the action shall be struck out.

Action pending in another court for same cause.

5. At the trial the court may try the whole matter of the action and give judgment thereon, or grant any relief, or may make any order, or give any direction it may consider necessary to enable it to give a final judgment upon a day to which the trial may be adjourned, and may also make such order as to costs as it may think fit.

Final disposal of action.

6. Where at the trial it shall appear to the court that there are claims, rights or liabilities which cannot be disposed of by reason of all the proper parties not being before the court, the court may order such parties as may be necessary to be made plaintiffs or defendants upon such terms as the court shall think fit.

Absent parties may be added on hearing.

7. If a person not originally a party to the action who has been served with a notice of the claim does not appear at the trial, the court may proceed with the trial notwithstanding, and give such judgment or make such order as may be just against the person so served and not appearing, or may adjourn the trial, and give such directions and make such order as to costs as it shall think fit.

When a person brought in does not appear at the trial.

8. Where in any action a set-off is established as a defence against the plaintiff's claim, the court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

Judgment may be given for balance found due to defendant.

ORDER 14

Evidence

1. Where any documents which would, if duly proved, be admissible in evidence are produced to the court from proper custody, they shall be read without further proof if in the

Documents produced from proper custody to be read without proof unless objected to.

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opinion of the court they appear genuine, and if no objection is taken thereto; and if the admission of any documents so produced is objected to, the court may adjourn the hearing for the proof of the documents, and the party objecting shall pay the costs caused by such objection, in case the documents shall afterwards be proved, unless the court otherwise orders.

Examination of witnesses before trial.

2. The court may, in any action or matter where it appears necessary for the purposes of justice, make an order for the examination upon oath before the court or any officer of the court or any other person, and at any place in the Island, of any witness or person, and may empower any party to any such action or matter to give such deposition in evidence therein on such terms, if any, as the court may direct.

Power to order particular facts to be proved by affidavit.

3. The court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as it may think reasonable:

Provided that, where it appears to the court that the other party *bona-fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

Affidavit to be expressed in the first person.

4. All affidavits shall be expressed in the first person and shall be drawn up in paragraphs and numbered.

Sources of knowledge to be stated.

5. All affidavits shall state the deponent's occupation, and place of residence, and also what facts and circumstances deposed to are within the deponent's own knowledge, and his means of knowledge, and what facts and circumstances deposed to are known to or believed by him by reason of information derived from other sources than his own knowledge, and what such sources are.

Costs of affidavit to unnecessary matter.

6. The costs of every affidavit which unnecessarily sets forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

- 7.** Every affidavit shall be intituled in the action or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the court. Affidavits, how to be intituled.
- 8.** It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be copied on every office or other copy furnished to a party. Affidavit to show on whose behalf filed.
- 9.** The costs of affidavits not in conformity with the preceding rules shall be disallowed unless the court otherwise directs. Costs of affidavits when disallowed.
- 10.** In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the *jurat* except that, if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "abovenamed" deponents. Form of *jurat* when there are several deponents.
- 11.** Before any affidavit is used it shall be filed in the office of the clerk; but this rule shall not hinder the court from making an order in an urgent case upon the undertaking of the applicant to file any affidavit sworn before the making of such order. Filing of affidavit.
- 12.** No affidavit or other document shall be filed or used in any action or matter, unless the court otherwise orders, which is blotted so as to obliterate any word, or which is illegibly written, or so altered as to cause it to be illegible, or in the body or *jurat* of which there is any interlineation, alteration, or erasure, unless the person before whom the same is sworn has duly initialled such interlineation or alteration and, in the case of an erasure, has rewritten and signed in the margin of the affidavit or document the words or figures appearing to be written on the erasure, or which is so imperfect on the face thereof by reason of having blanks thereon or otherwise that it cannot easily be read or understood. Erasure, blotting, interlineation, etc., in affidavits
- 13.** Where an affidavit is sworn by any person who appears to the person taking the affidavit to be illiterate or blind, the Illiterate or blind deponent.

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latter person shall certify in the *jurat* that the affidavit was read in his presence to the deponent, and that that deponent seemed perfectly to understand it, and that the deponent made his signature in his presence. No such affidavit shall be used in evidence in the absence of this certificate unless the court is satisfied that the affidavit was read over to and was perfectly understood by the deponent.

Use of defective affidavit.

14. The court may receive an affidavit sworn for the purpose of being used in any action or matter notwithstanding any defect by misdescription of parties or otherwise in the title or *jurat*, or any other irregularity in the form thereof, and may direct an endorsement to be made on the document that it has been so received.

Affidavits of service.

15. Affidavits of service, when required, shall state when, where, how, and by whom service was effected.

Inspection of property by court.

16. The court may, with or without any application, inspect any property or thing concerning which any question may arise in any action or matter. The expenses of any inspection under this rule shall be paid in the first instance by the party on whose application such inspection is made, or, if the inspection is made without such application, by the party who, in the opinion of the court, ought to bear such expenses in the circumstances of the case.

No evidence of facts admitted.

17. It shall not be necessary for any party to give evidence in proof of any fact or matter which has been admitted by the opposite party before or at the hearing of the action.

The defendant to begin in certain cases.

18. If the defendant admits all the allegations of fact in the plaintiff, but sets up any matter by which in law he claims to be entitled to judgment notwithstanding such admission, the plaintiff and his witnesses shall be deemed to have been heard by the court in proof of the said allegations, and the court may proceed to hear the defendant and any witnesses he examines and any evidence he adduces:

Provided that in such case the plaintiff shall be at liberty without leave of the court to give evidence and examine witnesses in reply.

ORDER 15*Judgments and Orders*

1. The clerk shall enter in a book to be kept for the purpose a minute of every judgment and final order given or made by the court.

Entry of judgments to be made in record book.

2. Except where otherwise specifically provided by any Act or by these rules, no formal judgment or order in any action or matter need be drawn up, but it shall be sufficient evidence that the judgment or order was made and of the contents thereof, if a concise minute of the judgment or order is entered in its appropriate place on the record of the proceedings and signed by the magistrate.

Formal judgment need not be drawn up.

3. (1) The court may, on the application of either party, or without such application, direct the judgment or order to be formally drawn up, and in that case the clerk shall draw up the formal judgment or order in accordance with the Form in the Appendix, and file the same after it has been signed by the magistrate.

Court may direct judgment to be drawn up.

Form 14.

(2) Any person may apply to the clerk for a certified copy of such judgment or order.

4. A judgment in detinue, if for the plaintiff, shall be for the value of the goods detained, together with a sum to be stated in the judgment by way of damages for the detention and costs: but it may be made part of the order that, on payment of damages for the detention and costs, and return of the goods on or before a day to be named, satisfaction shall be entered.

Judgment in detinue.

5. All moneys payable under judgments shall be paid within fourteen days from the date of the judgment, unless the court at the time of giving judgment otherwise orders. Where judgment is given for payment by instalments, such instalments shall be payable at such periods as the order shall direct; and if no period be mentioned, the first shall become due on the twenty-eighth day from the day of the making of the order, and every successive instalment shall become due at a like period of

Order for payment.

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twenty-eight days from the day of the previous instalment becoming due.

ORDER 16

1. *Execution*

Enforcement of order for payment of money.

1. Every order for the payment of money may be enforced in the same manner as a judgment for debt or damages is enforced under the provisions of Part V of the Act.

Amount of levy endorsed.

2. The clerk shall, on issuing a warrant of execution, endorse on such warrant the amount to be levied, distinguishing the amount adjudged to be paid and the amount of the fees for issuing the warrant and for its execution, and shall prepare and deliver to the execution officer with the warrant a notice in the Form in the Appendix; and the execution officer upon levying shall deliver such notice to the party against whom the execution has issued, or leave the same at the place where the execution is levied.

Form 15.

Execution may issue on judgment.

3. Execution on a judgment may issue on behalf of any person not a party to the suit, by leave of the magistrate, upon proof of title to the benefit of the judgment, and upon substitution of the name of the new party, together with a statement of his derivative title for that of the original party, and the clerk shall give notice of such substitution to the defendant by post or otherwise; an execution shall not issue upon the judgment until the expiration of six clear days after the posting or sending of such notice.

Where default made, execution may issue.

4. Where a defendant has made default in payment of the whole amount awarded by the judgment, or, where the judgment was for payment by instalments, of an instalment thereof, a warrant of execution may issue without leave; and such execution shall be for the whole amount of the judgment and costs then remaining unsatisfied, or, in the case of an order for payment by instalments, for such portion thereof as the court shall order, either at the time of making the original order or at any subsequent time.

5. Where judgment is given or an order made for the recovery or payment of a sum of money and costs, and it directs such sum of money to be paid forthwith or within fourteen clear days from the date of the judgment or order, separate warrants may issue for the recovery thereof.

Separate executions for money recovered and for costs.

6. (1) Where a judgment is against partners in the name of the firm, execution may issue in the manner following—

Execution on judgment against a firm.

- (a) against any property of the partnership;
- (b) against any property of any person who has admitted that he is or who has been adjudged to be a partner;
- (c) against any person who has been served as a partner with a copy of the summons and has failed to attend upon the trial.

(2) If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may, after giving to such person two clear days' notice of his intention, apply to the court for leave so to do; and the court may give such leave if the liability is not disputed, or, if such liability is disputed, may order that the liability of such person be tried and determined in an action to be commenced by plaint and summons in the ordinary way.

7. Where goods are sold in execution, the Marshal shall, on the request of the defendant, furnish him with a detailed account in writing of the sale, and of the application of the proceeds thereof.

Account of sale under execution.

2. Attachment of Debts

8. Any person who has obtained a judgment or order for the recovery or payment of money may, either before or after any oral examination of the debtor liable under such judgment or order, upon lodging with the clerk an affidavit by himself or his attorney-at-law stating that judgment has been recovered, or the order made, and that it is still unsatisfied, and to what amount, and that any other person (hereinafter called the garnishee) is indebted to such debtor, enter a plaint to obtain payment to him of the amount of the debt due to the said debtor from the garnishee, or so much thereof as may be sufficient to satisfy the said judgment or order, and thereupon

Proceedings against garnishee.

THE LAWS OF BARBADOS

Form 16. a summons in the Form in the Appendix calling upon the garnishee to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order, shall be issued by the clerk to the writ officer for service.

Service of garnishee summons. **9.** The summons shall be personally served on the garnishee, and when so served it shall bind in the hands of the garnishee all debts due, owing, or accruing from him to the debtor liable under the judgment or order.

Service on a firm or company. **10.** Where the garnishee is a firm or a company, the summons need not be served personally but it may be served as provided by Order 6 rule 10 or rule 13, as the case may be, with respect to the service of an ordinary summons.

No costs where garnishee pays. **11.** (1) Where the garnishee shall pay into court five clear days before the return-day the amount due from him to the debtor liable under the judgment or order, or an amount equal to the judgment or order, he shall not be liable for any costs incurred by the person who obtained the judgment or order.

(2) The clerk shall forthwith give notice of the payment into court to the person who has obtained the judgment or order, and if such person elects to accept the money so paid into court by the garnishee, and shall send to the clerk and to the garnishee by prepaid post, or leave with the clerk a written notice stating such acceptance, within forty-eight hours after receipt of the notice of payment into court, all further proceedings against the garnishee shall abate, and the clerk shall pay the money so paid into court to the person who obtained the judgment or order in discharge, or part discharge, of the debt due to such person, and of the cost of issuing the garnishee summons.

Order on return-day. **12.** If the garnishee does not before the return day of the summons pay into court the amount due from him to the debtor liable under the judgment or order, or an amount equal to the judgment or order, and does not on the return-day dispute the debt due or claimed to be due from him to such debtor, or if he does not appear on the return day either in

person or by some person duly authorised on his behalf, then the court may give judgment for the plaintiff, and may order execution to issue to levy the amount due from the garnishee, or so much thereof as may be sufficient to satisfy the judgment or order.

13. Upon the return-day, should the amount paid into court under rule 11 (1) of this order be not accepted, the court shall determine as to the liability of the garnishee to pay any further sum on account of the debt claimed to be due from him to the debtor, and as to the party by whom the costs of the proceeding by plaint shall be paid, and make such order as may be in accordance with such determination.

Order when payment into court disputed.

14. If the garnishee appears on the return-day and disputes his liability, the court may, instead of giving judgment, order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

Liability disputed.

15. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person or that any third person has a lien or charge upon it, the court may order such third person to appear, and state the nature and particulars of his claim upon such debt. After hearing the allegations of such third person and of any other person whom the court, by the same or any subsequent order may order to appear, or in case of such third person not appearing when ordered, the court may decide in favour of the person who obtained the judgment or order, or may order any issue or question to be tried or determined between the third person and the person who obtained the judgment or order, and may bar the claim of such third person or make such other order as the court shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the court shall think just and reasonable.

Where debt is stated to belong to a third person or there is a lien thereon.

16. Payment made by or execution levied upon the garnishee under any such proceedings as aforesaid shall be a valid discharge to him as against the debtor, liable under a judgment or

Discharge of garnishee.

THE LAWS OF BARBADOS

order, to the amount paid or levied, although such proceeding may be set aside, or the judgment or order reversed.

Costs.

17. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the court.

Court may refuse to interfere.

18. In proceedings to obtain an attachment of debts, the court may, in its discretion, refuse to interfere, where, from the smallness of the amount to be recovered or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious.

ORDER 17

Security

Security by bond.

1. In all cases where a party is required by the court to give a bond by way of security, he shall serve by post or otherwise upon the opposite party and the clerk, notice of the proposed sureties, and the clerk shall forthwith give notice to both parties of the day and hour on which he proposes that the bond shall be executed, and shall state in the notice to the obligee that any valid objection which he may have to make to the sureties or either of them must be on such day.

Validity of objection.

2. The court shall determine the validity of any objection to a surety.

Affidavit of sufficiency.

3. The court may require the party proposing to give the bond or recognizance and/or his surety to make an affidavit of their sufficiency, unless the opposite party in writing dispenses with such affidavit.

Execution of bond.

4. The bond shall be executed in the presence of the clerk.

Bond to be deposited. Form 17.

5. In all cases where the security is by bond, the bond shall be in the Form in the Appendix, and shall be deposited with the clerk.

ORDER 18

*Interpleader***1.** Relief by way of interpleader may be granted—When relief
by inter-
pleader
granted.

- (a) where the person seeking relief (in this Order called the applicant) is under liability for any debt, money, goods, or chattels, for or in respect of which he is, or expects to be, sued by two or more parties (in this Order called the claimants) making adverse claims thereto;
- (b) where the applicant is the Marshal charged with the execution of process by or under the authority of the court, and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels, by any person other than the person against whom the process is issued.

2. The applicant must satisfy the court by affidavit or otherwise—Matters to
be proved
by applicant.

- (a) that the applicant claims no interest in the subject-matter in dispute other than for charges or costs; and
- (b) that the applicant does not collude with any of the claimants; and
- (c) that the applicant, except where he is the Marshal charged with the execution of process by or under the authority of the court, who has seized goods and who has withdrawn from possession in consequence of the execution creditor admitting the claim of the claimant under rule 12 of this Order, is willing to pay or transfer the subject-matter into court or to dispose of it as the court may direct.

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another.Adverse
titles of
claimants.**4.** Where the applicant is a defendant, application for relief may be made at any time after service of the summons.Application
by a
defendant.**THE LAWS OF BARBADOS**

Summons
by applicant.

5. The applicant may take out a summons calling on the claimants to appear at a time to be named therein, and state the nature and particulars of their claims, and either to maintain or relinquish them.

Stay of
proceedings.

6. If the application is made by a defendant in an action, the court may stay all further proceedings in the action.

Order on
summons.

7. If the claimants appear in pursuance of the summons, the court may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant.

Summary
disposal of
matter.

8. The court may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner without stating any issue and on such terms as may be just.

Question
of law.

9. Where the question is a question of law, and the facts are not in dispute, the court may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the Supreme Court. If a special case is stated, the provisions of section 159 of the Magistrates Jurisdiction and Procedure Act shall, so far as applicable, apply thereto.

Cap. 116.

Order for
sale of goods
seized in
execution.

10. When goods or chattels have been seized in execution by a Marshal charged with the execution of process of the court, and any claimant alleges that he is entitled, under a mortgage or bill of sale or otherwise, to the goods or chattels by way of security for debt, the court may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just.

Costs.

11. The court may, in and for the purposes of any inter-

pleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

12. (1) Where a claim is made to or in respect of any goods or chattels taken in execution under the process of the court, it shall be in writing in duplicate and lodged with the clerk and shall set forth the grounds on which the goods or chattels are claimed, with the address of the claimant thereon, and such address shall be the address for service of the claimant. Claim by
third party.

(2) Upon the receipt of the claim, the clerk shall forward a copy forthwith to the Marshal who shall forthwith give notice thereof to the execution creditor, and the execution creditor shall, within four days after receiving the notice, give notice to the Marshal that he admits or disputes the claim.

(3) If the execution creditor admits the title of the claimant, and gives notice as directed by this rule, he shall only be liable to the Marshal for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

(4) Every such claim shall be lodged with the Marshal twenty-four hours at least before the time advertised for the sale of the goods.

(5) When the execution creditor has given notice to the Marshal that he admits the claim of the claimant, the Marshal may thereupon withdraw from the possession of the goods claimed, and may apply for an order protecting him from any action in respect of the said seizure and possession of the said goods, and the court may make such order as may be just and reasonable in respect of the same:

Provided always that the claimant shall receive notice of such intended application, and, if he desires it, may attend the hearing of the same, and if he attend, the court may, in and for the purposes of such application, make all orders as to costs as may be just and reasonable.

13. (1) Where the execution creditor does not in due time, as directed by the last preceding rule, admit or dispute the title of the claimant to the goods or chattels, and the claimant does not withdraw his claim thereto by notice in writing to the Marshal, the Marshal may apply for an interpleader summons Costs in
interpleader.

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to be issued, and service of the summons on the claimant may be effected at the address for service either by personal service upon the claimant or by registered post.

(2) Should the claimant withdraw his claim by notice in writing to the Marshal, or the execution creditor in like manner serve an admission of the title of the claimant, prior to the return day of such summons, and at the same time give notice of such admission to the claimant, the Court may, in and for the purposes of the interpleader proceedings, make all such orders as to costs, fees, charges and expenses as may be just and reasonable.

Definition.

14. For the purposes of this Order " Marshal " includes the district Auctioneer.

ORDER 19

Judgment Summons

Judgment
summons to
be served
personally.
Cap. 198.

1. (1) No order of commitment under the Debtors Act shall be made unless a summons to appear, hereinafter called a judgment summons, has been served upon the judgment debtor personally.

(2) A person requiring a judgment summons to be issued shall give to the clerk all particulars necessary to lead to the issue of the summons.

(3) Where a judgment has been given or an order made against two or more persons, the person entitled to enforce the judgment or order may require a judgment summons to be issued against all or any one or more of the persons liable under the judgment or order.

Affidavit
to be filed.

2. (1) A person requiring a judgment summons to be issued shall file an affidavit by the judgment creditor or some other person who has personal knowledge of the facts setting forth the material facts of the case. The affidavit shall be in the Form in the Appendix and shall state:

Form 18.

(a) the date and amount of the judgment or order, and the court in which it was obtained, and the instalments (if

any) by which it was ordered to be paid, with the date of the order for payment by instalments;

- (b) the occupation, employment, or business of the judgment debtor;
- (c) whether the judgment debtor has means other than from such occupation, employment, or business.

(2) A copy of the affidavit shall be annexed to the judgment summons, and served therewith.

(3) In the case of proceedings for a judgment summons against a firm or a person carrying on business in any name other than his own, the affidavit required by rule 4 of this Order shall be combined with the affidavit required by this rule with such modifications as may be necessary in the circumstances of the case.

3. No judgment summons shall be issued before the time for lodging an appeal against the judgment has expired. Time for appeal to expire.

4. (1) Where a judgment or order is against a firm or against a person carrying on business in any name other than his own and the person entitled to enforce the judgment or order desires to do so by judgment summons against any person whom he alleges to be liable under the judgment or order as a partner in, or the sole member of, the firm, or as the person carrying on business in such other name as aforesaid, he shall file an affidavit, together with a copy thereof, in accordance with the Form in the Appendix directed to the person alleged to be liable as aforesaid, and a certified copy of the said affidavit shall be annexed to such judgment summons and served therewith. Judgment summons against a firm.
Form 18.

(2) If such person does not appear on the return day of the judgment summons, he shall be deemed to admit his liability as a partner in or the sole member of the firm, or as the person carrying on business in such other name as aforesaid, to pay the amount due and payable under the judgment or order. But if such person appears and denies liability, the court may decide the question on the evidence then before it, or may order the question to be tried and determined in an action to be commenced by plaint and summons in the ordinary way.

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Judgment summons issuing out of other court.

5. Where a judgment creditor desires to apply for a judgment summons to a court other than the court in which the judgment or order was obtained, he shall obtain from the clerk of the court in which the judgment or order was obtained a certificate under his hand of the judgment or order in the action and enter the same with his application.

Procedure in case of proceedings in court other than court in which judgment obtained.

6. (1) A party desiring to apply for a judgment summons to a court other than the court in which the judgment or order was obtained shall deliver or cause to be delivered to the clerk of the court to which he is applying—

- (a) the certificate mentioned in the preceding rule;
- (b) a *praecipe* in accordance with sub-rule (2) of rule 1 of this Order and the necessary affidavit in support and the copies thereof for service; and
- (c) the fees payable upon the issue of a judgment summons.

(2) Upon the receipt of the above, the clerk shall file the documents and a judgment summons shall be issued, and thereafter the proceedings shall continue as if the judgment summons had been issued by the court in which the judgment or order was obtained.

(3) The clerk shall inform the judgment creditor of the date on which the summons shall be heard.

Memorandum of result to be sent to original court.

7. Where a judgment summons is heard in a magistrate's court other than that in which the judgment or order was obtained, a memorandum of the result of such hearing shall be sent by the clerk to the clerk of the court in which the judgment or order was obtained.

Form and service of judgment summons. Form 19.

8. A judgment summons shall be in accordance with the Form in the Appendix and shall be served personally by a writ officer, but shall not be heard until the expiration of five clear days after service has been effected.

Witnesses and their expenses.

9. Witnesses may be summoned to prove the means of a judgment debtor in the same manner as witnesses are summoned to give evidence upon the hearing of a plaint; and the expenses of any person examined, whether summoned or not, may,

subject to these rules, be allowed in accordance with the Table in the Appendix.

10. (1) If on the hearing of a judgment summons the court is of opinion that an order of commitment ought not to be made, the court may refuse to make any order, or may make a fresh order for payment of the amount remaining due and unpaid under the judgment or order, either at a specified time or by instalments, but in such case no costs shall be allowed the judgment creditor.

Orders which may be made.

(2) If an order is made for payment of the debt or any unpaid portion thereof by instalments, or at a specified time, an application to commit the judgment debtor to prison may thereafter be made for default in payment either of the whole debt or of any instalment thereof so ordered to be paid.

11. An order for commitment on an application under paragraph (2) of the last preceding rule shall not be made for default in payment of the whole debt or an instalment or instalments of a debt unless the judgment creditor satisfies the court that since the order to pay the debt at a specified time or by instalments the judgment debtor has or has had the means to pay the whole debt or the instalment or instalments in respect whereof he has made default.

Proof of means to pay instalment.

12. (1) If any order of commitment is made, the court may direct the execution of the warrant to be suspended to enable the debtor to pay into court by instalments or otherwise the amount in respect of the non-payment of which the order was made.

Suspending the order of commitment.

(2) A warrant of commitment shall be in accordance with such one of the Forms in the Appendix as shall be applicable to the circumstances of the case.

Form 20.
Form 21.

13. A warrant of commitment shall, on whatever day it may be issued from the clerk's office, bear date of the day on which the order of commitment was made, and shall, if unexecuted, remain in force for one year only from and exclusive of such date, unless renewed in manner hereinafter provided; but the court may at any time before or after the expiration of such

Date, duration and extension of warrant of commitment.

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year, extend the time within which the warrant may be executed for any time not exceeding one year from the date on which it would otherwise have ceased to be in force. Any extension of a warrant of commitment shall be endorsed on the order of commitment as follows—

“ The time during which this warrant is to remain in force was on the _____ day of _____ 19 _____ extended by leave of the Court for _____ from the day of _____ ”

Magistrate.

All costs to accumulate.

14. The costs awarded by the court to the judgment creditor in any judgment summons proceedings shall be added to the amount of the judgment and costs then enforceable against the judgment debtor, and subsequent proceedings may be taken by judgment summons to enforce payment of the judgment and all such accumulated costs.

Payment before delivery into custody.

15. (1) Where a warrant of commitment has been issued against a judgment debtor, he may at any time before he is delivered into the custody of the Superintendent of the prison pay the officer having the warrant of commitment the full amount endorsed thereon as payable to ensure his discharge, and that officer on receipt of such amount shall forthwith discharge the judgment debtor and deliver the amount so paid together with the warrant to the clerk.

(2) All costs lawfully incurred by the judgment creditor in enforcing an order shall, unless the court otherwise orders, be deemed to be due in pursuance of the order.

Payment to gaoler after delivery into custody.

16. Where a judgment debtor is in custody under a warrant of commitment, he may pay to the gaoler the full amount endorsed on the warrant as that payable to ensure the discharge of the judgment debtor from such custody, and on receipt of that amount and all costs incurred in enforcing the order, the gaoler shall discharge the judgment debtor and transmit the amount received and a certificate of such payment and discharge to the clerk.

17. (1) Where before or during the hearing of a judgment summons or after the making of an order of commitment against a judgment debtor, or while a judgment debtor is in custody under a warrant of commitment, the judgment debtor satisfies the court that a receiving order has been made for the protection of his estate, or that he has been adjudicated bankrupt and that the debt in respect of which the judgment summons was issued or the order of commitment made is provable in bankruptcy, or that if a warrant of execution had been issued against his goods he would have been entitled to a stay of execution, no order of commitment shall be made, and if made, no warrant of commitment shall be issued, and, if issued and not executed, it shall be recalled, and if the judgment debtor is in custody he shall be discharged out of custody upon an order of the court.

Judgment debtor made bankrupt after proceedings taken by judgment summons.

(2) Notice of any such proceedings shall be given to the judgment creditor.

ORDER 20

Costs

1. All court fees shall be pre-paid.

Court fees to be pre-paid.

2. (1) Save as provided in paragraph (2) of this rule, the court shall, either at the time of pronouncing judgment or at any time thereafter, fix a lump sum as the costs of and incidental to the action or matter to be paid to the party entitled by the judgment or order to receive costs. In fixing the amount of any such lump sum, the court shall have regard to the probable sum to which costs, if taxed, would amount.

Taxation of costs.

(2) The costs of and incidental to any action or matter may, by special direction of the court, be taxed; and, when so, directed, the amount thereof shall be ascertained by the clerk within fourteen days from the date of the judgment or order on a bill presented by the party entitled to deliver the same, and shall be submitted to the court for approval, and, when approved, shall be deemed to be taxed.

(3) When costs are directed to be taxed they shall be taxed in accordance with the table of costs set forth in the Appendix.

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The party entitled to recover such costs shall within seven days from the date of the judgment or order, or such further time as may be allowed by the court, deliver a bill of costs to the opposite party, and file a copy thereof with the clerk.

Disallowance of costs for improper or vexatious or unnecessary proceedings.

3. The court may, at the hearing of any action or matter, and whether the same is objected to or not, direct the costs of any affidavit, evidence, notice, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or is caused by misconduct or negligence, to be disallowed; and in such case the party whose costs are to be disallowed shall pay the costs occasioned thereby to the other parties.

Proceeding when costs disallowed.

4. In any case in which under any rule or by order of the court, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the court, or the clerk, if directed so to do by the court, may assess the costs such party is so liable to pay and may adjust the same by way of deduction or set-off, or may delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay, or may allow the costs to be paid and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

Costs of witnesses.

5. The costs of witnesses, whether they have been examined or not, must be paid through the clerk, and may, unless otherwise ordered by the court, be allowed, though they have not been summoned.

Witness not allowed more than one day's attendance on same day.

6. A witness shall not be allowed more than one day's attendance at the same court on the same day, notwithstanding that he may have given evidence in more than one action or other proceeding on that day.

Appropriation of money paid into court.

7. Money paid into court on a judgment shall be appropriated first in satisfaction of the court fees and costs, and afterwards in satisfaction of the original demand.

8. Seamen necessarily detained on shore for the purpose of the action shall be allowed such remuneration as the court may think reasonable compensation for their loss of time.

Remuneration of seamen.

9. In all cases where the defendant shall admit the claim, he shall be required to pay only half the hearing fee, although the court may have been required to decide upon the terms and conditions upon which the claim is to be paid.

When claim admitted.

10. Where it shall appear, on an application for the entry of a plaint, that the plaintiff does not reside or is only temporarily resident within this Island, the summons shall not be issued until security for costs, by deposit of money or otherwise, shall have been given to the satisfaction of the clerk:

Where security required.

Provided that where the plaint is entered through an attorney-at-law, an undertaking by him in writing to be personally responsible for the costs shall be sufficient. If the plaintiff fails in or discontinues his action or proceeding, and does not pay the amount of costs ordered to be paid by him to the defendant, proceedings may be taken for the recovery of such amount from him, or from his attorney-at-law if he has given the undertaking, as for the recovery of a judgment debt.

11. The fees and costs set out in the Tables in the Appendix may be demanded and received by the clerk of every magistrate's court for and in respect of the several matters therein mentioned.

Fees and costs.

ORDER 21

Appeal

1. In this Order "the Act" means the Magistrates Jurisdiction and Procedure Act.

Interpretation.
Cap. 116.

2. (1) Where, pursuant to subsection (1) of section 133 of the Act, a person gives notice of appeal verbally, he shall do so either personally or by his attorney-at-law.

Notice of appeal.

(2) A written notice of appeal shall be in the Form in the Appendix.

Form 22.

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Recognizance.
Form 23.

3. The recognizance to be entered under section 138 of the Act shall be in the Form in the Appendix.

Grounds of appeal.
Form 24.

4. Grounds of appeal shall be in the Form in the Appendix.

Service of notice and grounds of appeal.

5. The certified copies of a notice of appeal and of the grounds of appeal which are required by section 141 of the Act to be transmitted or served on a respondent may be served on him or on his attorney-at-law either personally or by registered post.

Documents comprising record for appeal.

6. The documents to be transmitted to the Registrar under section 139 (2) of the Act shall be the plaint and defence, the notes of evidence taken in the case, the adjudication, the notice of appeal, the notice of the grounds of appeal, the recognizance (if any), all documentary exhibits, and all other documents connected with the case, including the magistrate's statement of his reasons for decision.

Abandonment of appeal.
Form 25.

7. The notice to be given by the Registrar to the clerk under section 142 of the Act of the abandonment of an appeal shall be in the Form in the Appendix.

Certificate of costs.

8. The Registrar shall, at the time he notifies the clerk of the result of the appeal, forward a certificate of the costs granted.

ORDER 22

General Provisions

Party may act by attorney-at-law, or agent.

1. Where by these rules any act may be done by any party, such act may, unless the context otherwise requires, be done either in person or by his attorney-at-law, or, if it can be legally done by an agent, by such agent duly authorised in writing.

Service on attorney-at-law deemed service on party.

2. Where a party acts by attorney-at-law, service of any document or proceeding upon such attorney-at-law, or delivery of the same at his office, or sending the same to him by post prepaid, shall be deemed to be good service upon the party for whom such attorney-at-law acts, except in cases where by these Orders personal service upon a party is required.

3. An attorney-at-law acting for a party in any action or matter may give notice in writing by post or otherwise to the clerk and to the other party or his attorney-at-law, that he is so acting, whereupon service of any document or proceeding whatsoever authorised by these rules to be served by or upon an attorney-at-law so acting shall be served by or upon such attorney-at-law accordingly, and he shall be deemed to be the attorney-at-law acting for the party on whose behalf he has given such notice, until notice of change of attorney-at-law has been duly given. No notice need be given under this rule by an attorney-at-law acting for the plaintiff where the plaint has been entered by such attorney-at-law and the particulars duly signed by him.

Attorney-at-law may give notice that he is acting.

4. Where an attorney-at-law undertakes the service of any process, he shall make the necessary copies of each process, and the clerk shall sign the same and return them to the attorney-at-law for service.

Where attorney-at-law undertakes service of process.

5. Any party who acts by attorney-at-law shall be at liberty to change his attorney-at-law without any order for that purpose, but when any such change is made he shall give twenty-four hours notice in writing to the clerk and to the attorney-at-law, if any, acting for any other party to the action or proceeding of such change, and of the name or firm and place of business of the new attorney-at-law, and the Clerk shall file the notice given to him; but until such notice is filed and a copy thereof served, the former attorney-at-law shall be considered as attorney-at-law of the party.

Party changing attorney-at-law required to give notice.

6. Where by reason of the absence of any party or from any other sufficient cause, the service of any summons (other than a default summons), proceeding or document cannot be made, the court may, upon an affidavit showing grounds, make such order for substituted service, or for the substitution for service of notice by advertisement or otherwise as may be just.

Substituted service.

7. Parties may by consent enlarge or abridge any of the times fixed by these rules for taking any steps or filing any document, or giving any notice, in any action or matter. Where such consent cannot be obtained, either party may apply to the court, on notice to the non-consenting party, for an order to effect the

Enlargement of time.

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object sought to have been obtained with the consent of the other party, and such order may be made although the application for the order is not made until after the expiration of the time allowed or appointed.

Particulars and documents to be filed with clerk.

8. Where particulars or documents are directed to be filed, they shall be filed with the clerk, together with as many copies thereof as there are parties to be served; and, if required, an additional copy for the use of the court.

Signing of documents.

9. Before any summons or other document, or any copy thereof, is issued by the clerk, the same shall be signed by him.

Letters, etc., sent by post to be prepaid.

10. All letters, notices, documents, or process sent by post to the officers of the court, or by or to parties in any action or matter shall be prepaid.

Duplicate of document or warrant lost or destroyed.

11. In the event of any warrant, order or other document issued by the court being lost or destroyed, a duplicate thereof may be issued from time to time upon proof, by affidavit or otherwise, to the satisfaction of the magistrate of such loss or destruction.

Non-compliance with rules not to render proceedings void.

12. Non-compliance with any of these rules shall not render any proceedings void unless the court shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the court shall think fit.

When leave required for issue of execution.

13. (1) Where any change has taken place after judgment by death, assignment, or otherwise in the parties entitled to take proceedings to enforce the judgment or order, or in the parties liable to such proceedings, the party alleging himself to be entitled to enforce the judgment or order may apply on affidavit to the court for leave to issue the necessary process accordingly.

(2) The court may, if satisfied that the party so applying is entitled to issue such process, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried, and in either case the court may impose such terms as to costs or otherwise as shall be just.

APPENDIX

FORM 1

PLAINT NOTE (ORDINARY SUMMONS)
IN THE MAGISTRATE'S COURT FOR DISTRICT

Order 6,
r. 1.

Civil Jurisdiction		No. of Plaintiff
A.B. of	Between	Plaintiff
C.D. of	and	Defendant
		§
Amount of debt or claim		
Costs of Plaintiff		
,, Execution		
,, Judgment Summons		
Attorney-at-law's costs		

The above action was entered this day, and will be called for hearing on the day of at o'clock in the noon.

Dated this day of 19 .

Clerk of the Court.

The hearing fee must be paid before the action is called on.

N.B.—If you obtain a judgment against the Defendant all moneys ordered to be paid thereunder must be paid into Court, and must not be received by you.

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FORM 2

Order 6,
r. 1.

PLAINT NOTE (DEFAULT SUMMONS)

(Heading as in Form 1)

	§
Amount of debt or claim	
Costs of Plaintiff	
,, ,, Execution	
,, ,, Judgment Summons	
Attorney-at-law's costs	

The above action was entered this day, and you will be entitled to judgment at the expiration of six days from the date of the personal service of the summons, inclusive of the day of such service, unless the defendant gives notice of his intention to defend the action. Should such notice be given, you will be informed by post thereof, and of the day and hour when the action will be tried.

Dated this day of 19 .

Clerk of the Court.

FORM 3

Order 6,
r. 2.

ORDINARY SUMMONS

(Heading as in Form 1)

You are hereby summoned to appear at the above-mentioned Magistrate's Court on the _____ day of _____ 19____ at the hour of _____ in the _____ noon to answer the plaintiff, to a claim the particulars of which are hereunto annexed.

§

Debt or Claim	...	...	...	...	...	...
Costs of plaint	...	...	...	...	...	...
Attorney-at-law's Costs	...	...	...	...	...	...
Total amount	...	...		

Dated this _____ day of _____ 19____ .

To C.D. of _____ (the Defendant)

1. N.B.—If you owe the money and consent to a judgment you will save half the hearing fee.

2. If you confess the plaintiff's claim,—by doing which you will save half the hearing fee—you should sign a confession, printed forms for which may be obtained at the Clerk's office, before the Clerk of the court five clear days before the day of hearing. But you may deliver your confession to the Clerk at any time before the action is called on, subject to the payment of any further costs which your delay may have caused the plaintiff to incur.

3. If you and the plaintiff can agree as to the amount due and the mode of payment, and will, before the action is called on for trial, sign a memorandum of such agreement at the Clerk's office or before an attorney-at-law you will save half the hearing fee.

4. If you pay the debt and costs five clear days before the trial, you will avoid further costs, unless the Magistrate orders you to pay any further cost properly incurred by the plaintiff before receiving notice of such payment; but you may pay the same at any time before the action is called on for trial, subject to the payment of any further costs which your delay may have caused the plaintiff to incur.

5. If you admit a part only of the claim, you may, by paying into the

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Clerk's office the amount so admitted five clear days before the day of trial, together with costs already incurred, avoid further costs unless the plaintiff proves at the trial an amount exceeding your payment: or the Magistrate orders you to pay any further costs properly incurred by the plaintiff before receiving notice of such payment.

6. If you intend to dispute the plaintiff's claim on the ground of infancy, coverture, bankruptcy, statutory defence, tender or set-off and counterclaim, you must give notice thereof to the Clerk five clear days before the day of hearing; and such notice must contain the particulars prescribed by the rules of the court: and you must deliver to the Clerk as many copies of such notice as there are plaintiffs and an additional copy for the use of the court. If your DEFENCE be a SET-OFF, you must, with the notice thereof, also deliver to the Clerk a statement of the particulars thereof. If your DEFENCE be a TENDER, you must pay into Court before or at the trial the amount tendered.

FORM 4

DEFAULT SUMMONS

Order 6,
r. 2.

(Heading as in Form 1)

Claim	\$	Take notice, that unless within six days after the personal service of this summons on you, inclusive of the day of such service, you return to the Clerk of this court the notice given below, dated and signed by you or your attorney-at-law, you will not afterwards be allowed to make any defence to the claim which the plaintiff makes on you, as per margin, the particulars of which are hereto annexed; but the court without requiring any proof in support of such claim will enter judgment against you. If you return such notice to the
Fee for Plaintiff		
Attorney-at-law's Costs		
Total amount of debt and costs...		

Clerk within the time specified, the Clerk will send you by post notice of the day on which the action will be tried.

Dated this day of 19 .

Clerk of the Court.

To the Defendant.

See below.

(N.B.—This summons must be served personally on the defendant and within a period of twelve months from the date thereof.)

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NOTICE OF INTENTION TO DEFEND

(To be at foot of Summons)

(Heading as above)

I intend to defend this action.

Dated this day of 19 .

.....Defendant (or)

Attorney-at-law for Defendant.

(To be endorsed on the summons.)

If you pay the debt and costs, as per margin on the other side, into the Clerk's office before the expiration of six days from the date of service of this summons, inclusive of the day of such service, and without returning the notice of intention to defend, you will avoid further costs.

If you do not return the notice of intention to defend, but allow judgment against you by default, you will save half the hearing fee, and the order upon such judgment will be to pay the debt and costs forthwith (or by instalments) (to be specified as in Plaintiff's written consent).

If you admit a part only of the claim, you must return the notice of intention to defend within the time specified on the summons; and you may, by paying into the Clerk's office at the same time the amount so admitted, and costs, avoid further costs, unless the plaintiff proves at the trial an amount exceeding your payment.

If you intend to dispute the plaintiff's claim on the ground of infancy, coverture, bankruptcy, statutory defence, tender or set-off and counterclaim, you must give notice thereof to the Clerk at any time not less than five clear days before the day of hearing, and such notice must contain the particulars required by the Rules of the court; and you must deliver to the Clerk as many copies of such notice as there are plaintiffs, and an additional copy for the use of the court. If your defence be a set-off, you must, with the notice thereof, also deliver to the Clerk a statement of the particulars thereof. If your defence be a tender, you must pay into court the amount tendered at the time of filing notice.

NOTE.—This summons is to be printed on half sheet of foolscap paper with the "Notice of the intention to defend" separated by a perforated line, so that it may be torn off for transmission to the Clerk.



FORM 6

Order 7,
r. 15.

NOTICE OF CHANGE IN PLAINTIFF'S TITLE BEFORE JUDGMENT

(Heading as in Action)

I, E.F., of _____, hereby give you notice that the plaintiff in the above action died on the _____ day of _____, and that his last Will and Testament were duly proved in the Supreme Court of _____ upon the _____ day of _____ 19____, (or, that letters of administration were duly granted to me by the _____ Court of _____ on the _____ day of _____ 19____) and that I am the executor of his said Will (or the administrator, as the case may be).

(Or the above-named _____ by an assignment dated the _____ day of _____ duly assigned all his interest in the subject-matter of the above action to me the undersigned.)

And, further take notice, that I am applying to the Court to be substituted as plaintiff in the above action against the above-named defendant.

Dated this _____ day of _____ 19____.
(Signature.)

To the Clerk of the Court, and
to the above-named defendant.

FORM 9

Order 9,
r. 2.

NOTICE TO ADMIT FACTS

Take notice, that the Plaintiff (or Defendant) in this action requires the Defendant (or Plaintiff) to admit, for the purposes of this action only, the several facts respectively hereunder specified; and the Defendant (or Plaintiff) is hereby required, not later than three clear days before the return-day to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this action.

Dated, etc.

(Sgd) A.B.

Plaintiff (or)
Attorney-at-law for Plaintiff

To C.D.

Defendant (or)
Attorney-at-law for Defendant.

The facts, the admission of which is required, are—

(Set out facts)

FORM 10

Order 9,
r. 7.

NOTICE OF PAYMENT INTO COURT WITH DENIAL OF LIABILITY

(Heading as in Action)

Take notice that the above-named Defendant has paid into court the sum of \$ _____ in satisfaction of the whole of the Plaintiff's claim herein (or of so much of the Plaintiff's claim as relates to (here describe the part of the claim or cause of action in respect of which the payment is made)).

And further take notice that notwithstanding such payment the Defendant denies his liability.

And further take notice that the address of the said Defendant is as follows (state the address).

Dated, etc.

C.D.
the above-named Defendant (or E.F., Attorney-at-law
for the above-named Defendant).

To the Clerk of the Court
and to A.B., the above-named
Plaintiff.

FORM 11**NOTICE OF ACCEPTANCE OF SUM PAID INTO COURT**Order 9,
r. 8.

(Heading as in Action)

Take notice that the Plaintiff accepts the sum of \$ _____ paid by the Defendant into court in satisfaction of the claim in respect of which it is paid in.

But the Plaintiff will apply to the Court on _____ the _____ day of _____ at _____ o'clock in the _____ noon for an order directing the Defendant to pay the fees and costs properly incurred by the Plaintiff before the receipt of notice of payment into court, and in attending the Court to obtain such order.

Dated this _____ day of _____ 19 _____ .

Plaintiff.

To the Clerk of the Court and
To the Defendant.

FORM 12**NOTICE TO INSPECT AND ADMIT**Order 11,
r. 2.

Take notice that the Plaintiff (or Defendant) in this action proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the Defendant (or Plaintiff), or his attorney-at-law, at _____ on the _____ day of _____ 19 _____, between the hours of _____ and _____, and the Defendant (or Plaintiff) is hereby required within forty-eight hours from the last-mentioned hour to admit, saving all just exceptions, to the admissibility of all such documents as evidence in this action, that such of the said documents as are specified to be originals were respectively written, signed or executed as they purport respectively to have been, that such as are specified as copies are true copies, and that such documents as are stated to have been served, sent, or delivered, were served, sent or delivered respectively.

Dated this _____ day of _____ 19 _____ .
A.B. Plaintiff (or)
Attorney-at-law for Plaintiff
(or Defendant).

To C.D. Defendant (or)
Attorney-at-law for Defendant
(or Plaintiff).
(Specify documents)

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FORM 15

NOTICE TO BE DELIVERED WITH A WARRANT OF EXECUTION

Order 16,
r. 2.

(Heading as in Action)

Take notice that the warrant of execution against your goods on the judgment obtained against you in this action is for the following amount—

					\$
Amount adjudged to be paid	...	...	...	...	.....
Costs ...	...	...	...	...	.....
Since paid by you into court	...	...	...	...	.....
Remaining due on judgment
Fees for execution
				
Total amount to be levied

To

THE LAWS OF BARBADOS

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FORM 16

Order 16,
r. 8.

SUMMONS TO GARNISHEE

(Heading as in Action)

and (add)

E.F.

Garnishee

(Address and description)

Whereas the Plaintiff (or Defendant) at the Magistrate's Court for District _____ on the _____ day of _____ 19____, obtained a judgment (or an order) against the above-named Defendant (or Plaintiff) for payment of the sum of \$ _____ (including costs) which judgment (or order) remains unsatisfied:

And whereas the Plaintiff (or Defendant) has filed an affidavit stating that you are indebted to the said Defendant (or Plaintiff)—

You are hereby summoned to appear at the said Court on the day of _____ 19____, at the hour of _____ in the noon to show cause why an order should not be made upon you for the payment of the amount of the said judgment (and costs) or so much thereof as shall equal the amount of the debts due and owing by you.

And take notice that from and after the service of this summons upon you all such debts are attached to answer the said judgment (or order), and that if you shall pay the said debts to the said Defendant (or Plaintiff), or otherwise dispose of them, you will be liable to be committed for contempt.

And further take notice that if you shall pay to the Clerk of the Court the amount of such debts, or so much thereof as will satisfy the debt under the judgment (or order), five clear days before the day upon which you are required to appear, you will incur no costs.

Clerk of the Court.

To the garnishee, E.F.

FORM 17

BOND PROVIDING SECURITY

Order 17,
r. 5.

Know all men by these presents that we, A.B. of C.D. of and E.F. of are held and firmly bound unto G.H. of in the sum of to be paid to the said G.H. or his attorney, assigns, or legal personal representative for which payment to be made we bind ourselves and each and every of us in the whole our and each of our legal personal representatives jointly and severally firmly by these presents.

I approve of this Bond. Magistrate.

Signed with our signatures and dated this day of 19

Whereas the above-mentioned C.D. and E.F. at the request of the said A.B. have agreed to enter into the above-written obligation and the security has been approved of by the Magistrate of the Court for District, as appears by his allowance in the margin hereof:

Now the condition of this obligation is such that if the above-bounden A.B. do and shall within fourteen days from the date of the said obligation

, then the obligation shall be void and of no effect but otherwise shall be and remain in full force.

(Sgd.) A.B.
C.D.
E.F.

Signed by the above-bounden in the presence of

- 1.
- 2.

Witnesses.

FORM 18

AFFIDAVIT TO LEAD TO ISSUE OF JUDGMENT SUMMONS

Order 19,
rr. 2 & 4.

(Heading as in Action)

I, of the above-named Plaintiff (or I of (state residence and occupation) make oath and say as follows— (In the case of an individual, set out the particulars required by rule 2 (1).

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(In the case of a firm)

1. On the _____ day of _____ 19____, I (or the Plaintiff) obtained judgment (or an order) in this action in this Court against the Defendants (state name in which Defendants were sued) for the sum of \$ _____ (and costs), and there is now due and payable under the said judgment (or order) the sum of \$ _____.

2. I allege that (state name, residence and occupation) is liable as a partner in (or the sole member of) the said firm of _____ (or as the person carrying on business on his own behalf in the name of _____) to pay the sum payable under the said judgment (or order), and I make this allegation on the following grounds—

- (a) that the said _____ has admitted before the Court in the proceedings in which the said judgment (or order) was obtained that he was a partner in (or the sole member of) the firm of _____ (or the person carrying on business on his own behalf in the name of _____) at the time of the accruing of the cause of action (or has been adjudged in the proceedings in which the said judgment (or order) was obtained to be liable as a partner in (or the sole member of) the said firm of _____ (or as the person carrying on business on his own behalf in the name of _____): or
- (b) that the said _____ was individually served as a partner in (or the sole member of) the said firm of _____ (or as the person carrying on business on his own behalf in the name of _____) with the summons in the action in which the said judgment (or order) was obtained, and failed to appear at the trial: or
- (c) state any other grounds on which the person against whom a judgment summons is sought is alleged to be liable, with the deponent's sources of information and grounds of belief

(in case of individual or firm)

I verily believe that the said _____ is well able to pay the said sum of \$ _____ now due and payable under the said judgment (or order) (to be added where the Plaintiff does not himself make the affidavit) and I am duly authorised by the Plaintiff to make this affidavit on his behalf.

I apply for the issue of a judgment summons against the said _____ in respect of the non-payment of the said sum of \$ _____.

Sworn to _____ in the parish of _____ this
 day of _____ 19____.

Before me:

FORM 19

JUDGMENT SUMMONS

Order 19,
r. 8.

In The Magistrate's Court for District

Civil Jurisdiction

A.B.

Judgment Creditor

v.

C.D.

Judgment Debtor.

To C.D. of in the
parish of

You are hereby required to attend at the
before me, or such other magistrate as may be then sitting, to answer a
summons taken out against you by the above-named A.B. for having made
default in satisfying a judgment pronounced against you in the
Court of on the day of in
virtue of which you were ordered to pay to the said A.B., the sum of
\$, such judgment still remaining unsatisfied.
(Sgd)

Magistrate for District

N.B.—You are hereby warned that if you fail to appear, an order of
imprisonment may be made against you for having failed to satisfy such
judgment, and you may be further condemned to pay costs consequent on
the issuing of this summons.

FORM 20

WARRANT OF COMMITMENT AGAINST INDIVIDUAL

Order 19,
r. 12.

(Heading as in Judgment Summons)

To the Provost Marshal, the Deputy Marshals, the Writ Officers and to the
Keeper of the Prison.

WHEREAS the Plaintiff obtained a judgment (or order) against the
Defendant in this Court (or in the Magistrate's Court for District),
on the day of 19 , for the payment of
\$ for debt (or damages) and costs, and subsequent costs
have been incurred in pursuance thereof amounting to \$,
and the Court on the day of 19 , directed
that the said debt be paid by instalments of \$
every or on the day of 19 :)

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AND WHEREAS the Defendant has made default in payment of payable in pursuance of the said judgment (or order) or of the instalment of such debt which fell to be paid on the _____ day of 19____, (or at the time specified):

AND WHEREAS a summons was, at the instance of the Plaintiff duly issued out of this Court by which the Defendant (if there is more than one defendant, name the Defendant against whom this order of commitment was made) was required to appear personally at this Court on the _____ day of _____ 19____, to answer the said summons, and to show cause why he should not be committed to prison for such default, which summons has been proved to this Court to have been personally and duly served on the said Defendant:

AND WHEREAS at the hearing of the said summons, it has now been proved to the satisfaction of the Court that the said Defendant now has (or has had since the date of the said judgment (or order or direction to pay the debt by the said instalments or at the said specified time)), the means to pay the sum due and payable in pursuance of the said judgment (or order or direction), and refuses (or neglects) (or has refused or neglected) to pay the same and the said Defendant has shown no cause why he should not be committed to prison:

Now, therefore, it is ordered, that for such default as aforesaid the said Defendant _____ shall be committed to prison for _____ days, unless he shall sooner pay the sum stated below as that upon payment of which he is to be discharged, or unless he is discharged out of custody upon an order of the Court pursuant to rule 17 (1) of Order 19 of the Magistrates Courts (Civil Procedure) Rules, 1958.

These are therefore to require you, the said Provost Marshal and others hereinbefore mentioned, to take the said Defendant _____ and to deliver him to the Keeper of the Prison, and you the said Keeper to receive the said Defendant _____, and him safely keep in the said Prison for _____ days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Dated this _____ day of _____ 19____.

Magistrate.

Sum in payment of which Defendant had made default at time of issue of judgment summons	... ..	_____
Fees and costs on issue and hearing of judgment summons	... ..	_____
Deduct amount paid since issue of judgment summons...		_____
Costs of executing this commitment	... ..	_____
Sum on payment of which debtor is to be discharged	... ..	_____

FORM 21

WARRANT OF COMMITMENT AGAINST A FIRM

Order 19,
r. 12.

(Heading as in Judgment Summons)

To the Provost Marshal, the Deputy Marshals, the Writ Officers and to the Keeper of the Prison.

Whereas the Plaintiff obtained a judgment (or an order) against the Defendants by and in the name _____ above described in this Court (or in the Magistrate's Court for District _____) on the day of _____ 19____, for the payment of \$ _____ for debts (or damages) (and costs), [and the Court on the _____ day of _____ 19____, directed the said debt to be paid by instalments of \$ _____ every _____ or on the _____ day of _____ 19____,] and there is now due and payable under the said judgment (or order), from the said Defendants to the said Plaintiff the sum of \$ _____ :

And whereas the said Plaintiff having filed an affidavit in this Court, wherein it was alleged that (state the name, address and description of one of the persons alleged to be partners in the firm against whom the judgment or order was obtained, or of the person alleged to be the sole member thereof, or of the person alleged to be carrying on business in a name other than his own) was liable as one of the partners in (or as the sole member of) the said firm of _____ (or as the person carrying on business on his own behalf in the name of _____) to pay the sum payable under the said judgment (or order) a summons was, at the instance of the said Plaintiff, duly issued out of this Court, by which the said _____ was required to appear personally at this Court on _____ the day of _____ 19____, to answer the said summons, and to show cause why he should not be committed to prison for default in payment of the said sum, and notice was thereby given to the said _____ that if he denied he was liable as one of the partners in (or as the sole member of) the said firm of _____ (or as the person carrying on business on his own behalf in the name of _____) to pay the sum payable under the said judgment (or order) he must appear at this Court on the day above-mentioned, and that in default of his so appearing he would be deemed to admit his liability as aforesaid to pay the amount due and payable under the said judgment (or order):

And whereas the said summons came on for hearing this day, and the said summons has been proved to this Court to have been personally and duly served on the said _____

And whereas the said _____ did not appear at the hearing of the said summons:

[or And whereas the said _____ appeared at the hearing of the said summons, and admitted his liability as one of the partners in (or as the sole member of) the said firm of _____ (or as the person carrying on business on his own behalf in the name of _____)

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to pay the sum payable under the said judgment (or order):]

[or And whereas the said _____ appeared at the hearing of the said summons and denied that he was liable as one of the partners in (or as the sole member of) the said firm of (or as the person carrying on business on his own behalf in the name of _____) to pay the sum payable under the said judgment (or order) _____ but proof has been made to the satisfaction of the Court that the said _____ is liable as one of the partners in (or as the sole member of) the said firm of (or as the person carrying on business on his own behalf in the name of _____) to pay the said sum:]

And whereas at the hearing of the said summons it has now been proved to the satisfaction of the Court that the said _____ now has [(or has had since the date of) the judgment (or order or direction) to pay the debt by the said instalments or at the said specified time)] the means to pay the sum due and payable under the said judgment (or order or direction) and refuses (or neglects) (or has refused or neglected) to pay the same, and the said _____ has shown no cause why he should not be committed to prison:

Now, therefore, it is ordered that for such default as aforesaid the said _____ shall be committed to prison for _____ days, unless he shall sooner pay the sum stated below as that upon payment of which he is to be discharged, or unless he shall be discharged out of custody upon an order of the Court pursuant to rule 17 (1) of Order 19 of the Magistrates' Courts (Civil Procedure) Rules, 1958.

These are therefore to require you, the said Provost Marshal and others hereinbefore mentioned, to take the said Defendant _____ and to deliver him to the Keeper of the Prison, and you the said Keeper, to receive the said Defendant _____ and him safely keep in the said prison for _____ days from the arrest under this order, or until he shall sooner be discharged by due course of law.

Dated this _____ day of _____ 19 _____ .

Magistrate.

Sum in payment of which Defendant had made default at time of issue of judgment summons	... ..	_____
Fees and costs on issue and hearing of judgment summons		_____
Deduct amount paid since issue of judgment summons...		_____
Cost of executing this commitment	... ..	_____
Sum on payment of which debtor is to be discharged	... ..	_____

FORM 22

NOTICE OF APPEAL

Order 21,
r. 2 (2).

IN THE SUPREME COURT OF BARBADOS

On appeal from the Magistrate's Court for District

Civil Jurisdiction

Between	{	Plaintiff,	}	Appellant
A.B.		or		
	{	Defendant.	}	Respondent
and C.D.		Defendant,		
	{	or	}	
		Plaintiff.		

Take notice that this Court will be moved on a day and at an hour of which you shall be informed by the Registrar by Attorney-at-law on behalf of the (Plaintiff, or as may be) that (here state concisely the object of the appeal).

Dated this day of 19 .

A.B., Appellant,
or
E.F., Attorney-at-law
for Appellant.

To C.D.
of
and
To G.H., Esquire,

The Magistrate of the above-named Magistrate's Court.

THE LAWS OF BARBADOS

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FORM 23

Order 21,
r. 3.

RECOGNIZANCE TO PROSECUTE APPEAL IN THE MAGISTRATE'S COURT
FOR DISTRICT

On appeal from the Magistrate's Court for District

We, the undersigned, A.B., of _____ E.F.,
of _____ and G.H., of _____
severally acknowledge ourselves to owe to our Sovereign Lady the Queen,
the several sums following, namely, the said A.B., as principal, the sum of
twenty-five dollars and the said E.F. and G.H., as sureties, the sum of
twenty-five dollars each, to be levied on our several personal and real
property respectively, if the said A.B. fails in the condition hereon endorsed.

(Signed)

A.B.
E.F.
G.H.

Taken before me this _____ day of _____ 19 _____

(Signed)

Magistrate for District.

(Condition endorsed)

The condition of the within-written recognizance is such that if the within-bounden A.B. duly prosecutes an appeal which he has made to the Full Court from the decision of the said Magistrate's Court, pronounced on the _____ day of _____ 19 _____, in a cause in which he, the said A.B. was Plaintiff and C.D., of _____ was Defendant, and satisfies any judgment which may be pronounced against him by the said Full Court in respect of the said appeal, including the payment of all costs of the said appeal and otherwise, and in all other respects abides the result of the said appeal, then the said recognizance shall be void, but otherwise shall remain in full force.

FORM 24

NOTICE OF GROUNDS OF APPEAL

Order 21,
r. 4.

IN THE SUPREME COURT OF BARBADOS

On appeal from the Magistrate's Court for District .

Civil Jurisdiction

(Heading as in Form 22)

Take notice that the following are the grounds of the appeal herein notice whereof was given in the Magistrate's Court on the day of 19 , (or notice whereof is dated the day of 19 , and was served on the day of 19)—

(Here follow the grounds of appeal.)

Dated this day of 19 .

A.B., Appellant,
or
E.F., Attorney-at-law
for Appellant.

To
C.D.
of
and

To
G.H., Esquire,

The Magistrate of the above-named Magistrate's Court.

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FORM 25

Order 21,
r. 7.

CERTIFICATE OF ABANDONMENT OF APPEAL

IN THE SUPREME COURT OF BARBADOS

On appeal from the Magistrate's Court for District

Civil Jurisdiction

(Heading as in Form 22)

This is to certify that A.B., the Appellant herein, has abandoned his appeal in that he (state nature of abandonment).

(Signed)

Registrar

or

Clerk of the Magistrate's Court for District

To

C.D.

of

and

G.H. Esquire,

The Magistrate of the above-named Magistrate's Court.

TABLES OF FEES AND COSTS

1981/68.

TABLE A

						\$
1. Entering Plaintiff or Counterclaim or filing defence						
Under \$500	...	...	...	...	...	5.00
Between \$500 and \$1, 500	...	...	...	...	...	10.00
Over \$1 500	...	...	...	...	...	20.00
2. Issuing summons or judgment summons including return of service	...	...	...	...	...	10.00
3. Hearing fee						
Under \$500	...	...	...	...	...	5.00
Between \$500 and \$1 500	...	...	...	...	...	15.00
Over \$1 500	...	...	...	...	...	25.00
4. Summoning each witness	...	...	...	...	...	5.00
5. Issuing Warrant of execution						
Under \$500	...	...	...	...	...	10.00
Between \$500 and \$ 1 500	...	...	...	...	...	15.00
Over \$1 500	...	...	...	...	...	20.00
6. Filing affidavit or any other document	...	...	...	...	...	5.00
N.B. No fee payable for filing a discontinuance						
7. For any notice sent out by Clerk	...	...	...	...	...	5.00
8. For all copies per folio of 90 words	...	...	...	...	...	1.00
9. Plaintiff for summary recovery of possession	...	...	...	...	...	10.00
10. Issuing warrant of commitment	...	...	...	...	...	10.00
11. For every bond	...	...	...	...	...	10.00

	\$
12. For drawing formal order of judgment	10.00
For copy thereof	5.00
13. Fees on Appeal	
Filing Notice of Appeal	5.00
Grounds of Appeal	5.00
Taking recognizance	15.00
Preparing and forwarding Record of Appeal	20.00
14. Marshal's Fees on Execution	
For the daily keep of any animal, not exceeding	15.00
Cartage and Parterage as paid for lodging execution	5.00
For act of levy and execution	10.00
For taking inventory	10.00
For setting up notice of sale	5.00
Drawing advertisement for sale	5.00
Advertisement of sale, as paid making return to execution	5.00
Summoning appraisers	5.00
Attending appraisers and making return	15.00
Commission on collection or sale and executing conveyance	
(a) on the first \$2 500	4%
(b) above \$2 500	3 ¹ / ₂ %
Attending giving possession	15.00
15. Executing Warrant of Commitment	20.00

TABLE B

Remuneration of Witnesses

For each day's attendance at Court

1. Medical Practitioner or other professional person or expert ...	25.00
--	-------

	\$
2. Merchant, attorney or manager of mercantile firm or sugar Estate, landed proprietor, overseer, clerk salesman, artisan, mechanic, shopkeeper, chauffeur, warehouse porter, tradesman, seamstress, typist, bookkeeper, not exceeding	15.00
3. Labourer, groom, porter, domestic servant, or other person of the like class, not exceeding	10.00

N.B. The above may be used as guides in classes not specified.

TABLE C
Attorney-at-law's Costs

1. On retainer and preparatory work, including instructions not exceeding	30.00
2. On recovery of amount under Hire-Purchase Agreement	
\$1 000 but under \$5 000	250.00
\$5 000 and over	300.00
3. For appearance and conduct of case, in discretion of Magistrate, not exceeding	250.00
4. On signing plaint	
\$25 and under	6.00
Over \$25 and under \$250	25.00
\$250 and over, but under \$500	75.00
\$500 and over, but under \$800	120.00
\$800 and over	170.00
Criminal or quasi-criminal document	20.00
5. On signing Judgment Summons	5.00
6. On signing Take Notice	2.50
7. On Landlord and Tenant ejectment	20.00
8. Any other document	5.00