
STATUTORY INSTRUMENTS

1981 No. 1687 (L.20)

COUNTY COURTS

PROCEDURE

The County Court Rules 1981

Made - - - - 16th November 1981

Coming into Operation 1st September 1982

ORDER 1

CITATION, APPLICATION AND INTERPRETATION

Citation

1. These rules may be cited as the County Court Rules 1981.

Application of rules

2.—(1) Subject to paragraph (2), these rules shall apply to all proceedings authorised by or under any existing or future Act to be commenced or taken in a county court.

(2) In relation to proceedings of a particular kind in a county court, these rules shall have effect subject to any rules made by an authority other than the rule committee mentioned in section 102 of the Act which apply to proceedings of that kind.

Definitions

3. In these rules, unless the context otherwise requires—

“the Act” means the County Courts Act 1959;

“address for service” means the address of a place at or to which any document may be delivered or sent for the party giving the address, being—

(a) in the case of a party in person, his place of residence or business or, if he has no such place within England or Wales, the address of a place within England or Wales at or to which documents for him may be delivered or sent,

(b) where the party is represented by a solicitor, the business address of the solicitor;

“defendant” includes respondent;

“filed” has the meaning assigned to it by Order 2, rule 4;

- “foreign court” means the court to which process is sent by another court;
- “hire-purchase agreement” has the same meaning as in the Hire-Purchase Act 1965;
- “home court” means the court from which process is originally issued;
- “judgment” means the final decision of the court in an action;
- “mental patient” means a person who, by reason of mental disorder within the meaning of the Mental Health Act 1959 is incapable of managing and administering his property and affairs;
- “order” means the final decision of the court in a matter and also any decision of the court other than a final decision in any proceedings;
- “originating process” means—
- (a) the summons in a default, fixed date or admiralty action, or
 - (b) in relation to a garnishee, an order nisi under Order 30, rule 2, or
 - (c) an interpleader summons or notice under Order 33, rule 4, 7 or 8, or
 - (d) an originating application, petition or request for the entry of an appeal to a country court;
- “person under disability” means a person who is a minor or a mental patient;
- “plaintiff” includes applicant, petitioner and appellant;
- “pre-trial review” means the preliminary consideration of an action or matter under Order 17;
- “proper officer” means the registrar or, in relation to any act of a formal or administrative character which is not by statute the responsibility of the registrar, the chief clerk or any other officer of the court acting on his behalf in accordance with directions given by the Lord Chancellor;
- “records of the court” means such records of and in relation to proceedings in the court as the Lord Chancellor may by regulations prescribe;
- “recovery of land” means the recovery or delivery of possession of land;
- “residence”, in relation to a body corporate, means the registered or principal office of the body;
- “senior master” means the senior master of the Supreme Court (Queen's Bench Division).

Construction of references to Orders, rules, etc

4. Unless the context otherwise requires, and subject to rule 5, any reference in these rules to a specified Order, rule or Appendix is a reference to that Order or rule of, or that Appendix to, these rules, and any reference to a specified rule, paragraph or sub-paragraph is a reference to that rule of the Order, that paragraph of the rule or that sub-paragraph of the paragraph in which the reference appears.

Construction of references to “R.S.C.”

5. In these rules the abbreviation “R.S.C.” denotes the Rules of the Supreme Court 1965 and any reference to an Order and rule prefixed by “R.S.C.” is a reference to that Order and rule in those rules.

Application of R.S.C. to county court proceedings

6. Where by virtue of these rules or section 103 of the Act or otherwise any provision of the R.S.C. is applied in relation to proceedings in a country court, that provision shall have effect with the necessary modifications and in particular—

- (a) rule 8 of this Order shall apply in relation to any power or jurisdiction conferred by that provision on the Court as it applies in relation to any power or jurisdiction conferred by these rules on the court;

- (b) any reference in that provision to a master, registrar of the principal registry of the Family Division, the Admiralty registrar, or a district registrar, Chancery registrar or taxing officer shall be construed as a reference to the registrar of the county court;
- (c) any reference in that provision to an application by summons shall be construed as a reference to an application on notice under Order 13 of these rules;
- (d) any reference in that provision to the Central Office or a district registry shall be construed as a reference to the county court office.

Construction of references to other enactments

7. Unless the context otherwise requires, any reference in these rules to an enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment.

Exercise of jurisdiction of court

8. Where any jurisdiction or power is conferred by any provision of these rules on the court, then—

- (a) if the jurisdiction or power is to be exercised at the trial or hearing of an action or matter, it may be exercised by the judge or registrar before whom the trial or hearing takes place; and
- (b) if the jurisdiction or power is to be exercised at any other stage of the proceedings, it may be exercised either by the judge or by the registrar.

Computation of time

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

(2) Where the act is required to be done not less than a specified period before a specified date, the period starts immediately after the date on which the act is done.

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

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

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

(6) Where the time so fixed for doing an act in the court office expires on a day on which the office is closed, and for that reason the act cannot be done on that day, the act shall be in time if done on the next day on which the office is open.

Cost of repairs to be treated as liquidated claim in road accident case

10. A claim in an action for the cost of repairs executed to a vehicle or to any property in, on or abutting a highway in consequence of damage which it is alleged to have sustained in an accident due to the defendant's negligence shall, unless the court otherwise orders, be treated as a liquidated demand for the purposes of these rules.

Application of rules to conditional sale agreements

11. The provisions of these rules relating to hire-purchase agreements shall have effect in relation to conditional sale agreements within the meaning of section 1(1) of the Hire-Purchase Act 1965, subject to the modifications specified in section 45(2) of that Act.

ORDER 2

OFFICES

Courts to have offices

1. Every court shall have an office or, if the Lord Chancellor so directs, two or more offices, situated at such place or places as he may direct, for the transaction of the business of the court.

Days of opening

2.—(1) Every court office or, if a court has two or more offices, at least one of those offices, shall be open on every day of the year except—

- (a) Saturdays and Sundays,
- (b) the day before Good Friday from noon onwards and Good Friday,
- (c) the Tuesday after the spring holiday,
- (d) Christmas Eve or—
 - (i) if that day is a Saturday, then 23rd December,
 - (ii) if that day is a Sunday or a Tuesday, then 27th December,
- (e) Christmas Day and, if that day is a Friday or Saturday, then 28th December,
- (f) bank holidays, and
- (g) such other days as the Lord Chancellor may by general or special order direct.

(2) In the foregoing paragraph “bank holiday” means a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 and “spring holiday” means the bank holiday on the last Monday in May or any day appointed instead of that day under section 1(2) of that Act.

Hours of opening

3. Subject to rule 2(1)(b), the hours during which any court office is open to the public shall be such as the Lord Chancellor may by general or special order direct.

Filing of documents

4. In these rules any reference to filing a document is a reference to filing it in the court office by delivering it to the proper officer for entry by him in the records of the court.

Conduct of business by post

5.—(1) Any act that may be done by a party in the office of a county court by attendance at the office may be done by post, provided that the party sends to the court office by prepaid post in an envelope addressed to the proper officer—

- (a) such documents as he would have been required to produce at the court office if he had attended, and
- (b) any court fees which are payable and any money which is to be paid or tendered to a witness in accordance with Order 20, rule 12, or to a judgment debtor in accordance with Order 28, rule 2(4) or 4(2), and
- (c) an envelope addressed to himself,

and they are duly received by the proper officer.

(2) Nothing in this rule shall affect any duty of a party to be present at any proceedings before the judge or the registrar in court or in chambers.

ORDER 3

COMMENCEMENT OF PROCEEDINGS

Proceedings by action

1. Subject to the provisions of any Act or rule, all proceedings authorised to be brought in a country court; where the object of the proceedings is to obtain relief against any person or to compel any person to do or abstain from doing any act, shall be brought by action and commenced by plaint.

Classes of action

2.—(1) An action in which a claim is made for any relief other than the payment of money shall be a fixed date action.

(2) Except as otherwise provided by these rules, every other action shall be a default action.

(3) Nothing in this rule applies to an Admiralty action or a rent action.

Commencement of action

3.—(1) A plaintiff desiring to commence a default or fixed date action shall file a request for the issue of a summons, together with the particulars of claim and copies required by Order 6.

(2) On the filing of the documents mentioned in paragraph (1) the proper officer shall—

- (a) enter a plaint in the records of the court and in the case of a fixed date action fix the return day;
- (b) prepare and issue a summons and make all necessary copies;
- (c) annex to, or incorporate in, the summons and every copy so made a copy of the particulars of claim and also annex to every copy of the summons for service a form of admission, defence and counterclaim, and
- (d) deliver to the plaintiff—
 - (i) a plaint note and
 - (ii) if the summons is to be served otherwise than by an officer of the court, the summons and all necessary copies, with any documents required to be annexed thereto, for service in accordance with Order 7.

(3) In the case of a fixed date action the return day shall, unless the court otherwise directs, be a day fixed for a pre-trial review.

(4) Paragraph (3) shall not apply to an action for the recovery of land unless a claim is joined for some relief other than the payment of mesne profits or arrears of rent or for moneys secured by a mortgage or charge.

Originating applications

4.—(1) Any proceedings authorised to be brought in a country court and not required by any Act or rule to be commenced otherwise shall be brought by originating application.

(2) An originating application shall be in writing and shall state—

- (a) the order applied for and sufficient particulars to show the grounds on which the applicant claims to be entitled to the order;
 - (b) the names and addresses of the persons (if any) intended to be served (in this rule called “respondents”) or that no person is intended to be served, and
 - (c) the applicant's address for service.
- (3) The applicant shall file—
- (a) the originating application together with as many copies as there are respondents; and
 - (b) a request for the issue of the originating application.
- (4) On the filing of the documents mentioned in paragraph (1) the proper officer shall—
- (a) enter the originating application in the records of the court and fix the return day;
 - (b) prepare a notice to each respondent of the return day and annex to each such notice a copy of the application, and
 - (c) deliver a plaint note to the applicant.
- (5) The return day shall be a day fixed for the hearing of the originating application or, if the court so directs, a day fixed for a pre-trial review.
- (6) Rule 3(2)(d)(ii) of this Order and the provisions of Order 7 shall apply, with the necessary modifications, to the service of an originating application as if the notice of the return day were a fixed date summons.

Petitions

5. Where by any Act or rule proceedings in a county court are required to be by petition, rule 4 shall apply to the petition as it applies to an originating application but with the substitution of “petitioner” for “applicant” and “petition” for “originating application” or “application”, wherever those expressions occur.

Appeals to county court

6.—(1) Where by or under any Act an appeal lies to a country court from any order, decision or award of any tribunal or person, then, subject to any special provision made by or under that Act, the provisions of this rule shall apply.

- (2) The appellant shall, within 21 days after the date of the order, decision or award, file—
- (a) a request for the entry of the appeal, stating the names and addresses of the persons intended to be served (in this rule called “respondents”) and the appellant's address for service, together with as many copies of the request as there are respondents; and
 - (b) a copy of the order, decision or award appealed against.

(3) Where the provision under which the appeal lies requires the appellant to give to the other parties notice in writing of his intention to appeal and of the grounds of his appeal, the appellant shall file a copy of such notice with the request, and in any other case he shall include in his request a statement of the grounds of the appeal.

- (4) On the filing of the documents mentioned in paragraphs (2) and (3) the proper officer shall—
- (a) enter the appeal in the records of the court and fix the return day;
 - (b) prepare a notice to each respondent of the day on which the appeal will be heard and annex each copy of the request for the entry of the appeal to a copy of the notice; and
 - (c) deliver a plaint note to the appellant.

(5) The return day shall be a day fixed for the hearing of the appeal by the judge (or, if the registrar has jurisdiction to hear the appeal, by the registrar) or, if the court so directs, a day fixed for a pre-trial review.

(6) Rule 3(2)(d)(ii) of this Order and the provisions of Order 7 shall apply, with the necessary modifications, to the service of the request for the entry of the appeal as if the notice of the day of hearing were a fixed date summons.

Title of proceedings

7.—(1) Every document filed, issued or served in an action or matter shall bear the title of the action or matter and the distinguishing number allotted to it by the court.

(2) The title of an action or matter shall contain a reference to any Act, other than the County Courts Act 1959, by which the court is given power to entertain the proceedings.

ORDER 4

VENUE FOR BRINGING PROCEEDINGS

Saving for particular provisions etc

1.—(1) The provisions of this Order shall have effect subject to any provision made by any Act or rule (including the rules of this Order) in relation to particular proceedings.

(2) Nothing in this Order shall be taken as affecting any obligation under Order 8 or otherwise to obtain the leave of the court to serve process out of England and Wales.

General provisions as to actions

2.—(1) An action may be commenced—

- (a) in the court for the district in which the defendant or one of the defendants resides or carries on business, or
- (b) in the court for the district in which the cause of action wholly or in part arose.

(2) Where the plaintiff sues as assignee, the action shall be commenced only in a court in which the assignor might have commenced the action but for the assignment.

(3) Where the plaintiff's claim—

- (a) is founded on a hire-purchase agreement but is not for the delivery of the goods, or
- (b) is founded on a contract for the sale or hire of goods under which the purchase price or rental is payable otherwise than in one sum.

the action shall be commenced only in the court for the district in which the defendant or one of the defendants resides or carries on business or resided or carried on business when the contract was made.

(4) Where the plaintiff's claim is founded on tort and the defendant or each of the defendants does not reside or carry on business in England or Wales, paragraph (1) shall have effect as if for the reference in sub-paragraph (a) to the defendant or one of the defendants there were substituted references to the plaintiff or one of the plaintiffs.

Proceedings relating to land

3. Proceedings—

- (a) for the recovery of land, or
- (b) for the foreclosure or redemption of any mortgage or, subject to Order 31, rule 4, for enforcing any charge or lien on land, or
- (c) for the recovery of moneys secured by a mortgage or charge on land,

may be commenced only in the court for the district in which the land or any part thereof is situated.

Proceedings under Settled Land Act 1925 etc

4. Proceedings—

- (a) under the Settled Land Act 1925, or
- (b) under the Trustee Act 1925, or
- (c) for the administration of the estate of a deceased person,

may, subject to Order 49, rule 20, be commenced in the court which in the opinion of the plaintiff is the most convenient having regard to the places where the parties reside or carry on business or the subject matter of the proceedings is situated.

Partnership proceedings

5. Proceedings for the dissolution or winding up of a partnership shall be commenced in the court for the district or one of the districts in which the partnership business was or is carried on.

Wrongful interference with goods

6.—(1) Where proceedings are brought in a county court on one of two or more claims for wrongful interference with goods, and are still pending, any proceedings on another of those claims may, if they could be brought in the High Court, be brought in the same county court, notwithstanding that they would otherwise be outside the jurisdiction (financial or territorial) of that court under the Act or these rules.

(2) Where goods are the subject of two or more claims under section 6 of the Torts (Interference with Goods) Act 1977 this rule shall apply as if any claim under section 6(3) were a claim for wrongful interference.

Proceedings by or against judge or registrar

7.—(1) If the court in which but for this rule an action would be commenced is a court of which one of the parties is the judge or registrar, the action shall not be commenced in that court but in the court which in the opinion of the plaintiff is the nearest or most convenient one of which the party concerned is not the judge or registrar.

(2) Nothing in this rule shall affect any alternative right to commence the action in another court of which the party in question is not the judge or registrar.

Originating applications and petitions

8. Proceedings by originating application or petition may be commenced—

- (a) in the court for the district in which—
 - (i) the respondent or one of the respondents resides or carries on business, or
 - (ii) the subject-matter of the proceedings is situated, or

- (b) if no respondent is named in the application or petition, in the court for the district in which the applicant or petitioner or one of the applicants or petitioners resides or carries on business.

Appeals to county court

9. An appeal to a county court from an order, decision or award of any tribunal or person shall be brought in the court for the district in which the order, decision or award was made or given.

ORDER 5

CAUSES OF ACTION AND PARTIES

Joinder of causes of action

1. Subject to rule 3, a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action—

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

Joinder of parties

2. Subject to rule 3, two or more persons may be joined together in one action as plaintiffs or as defendants—

- (a) where all rights to relief claimed in the action (whether they are joint, several or in the alternative) are in respect of or arise out of the same transaction or series of transactions and if separate actions were brought by or against each of those persons, some common question of law or fact would arise, or
- (b) in any other case, with the leave of the court.

Power to order separate trials

3. If it appears to the court that the joinder of two or more causes of action, or of two or more plaintiffs or defendants, in the same action may embarrass or delay the trial or is otherwise inconvenient, the court may order separate trials or make such other order as may be expedient.

Misjoinder or nonjoinder of parties

4. No action or matter shall be defeated by reason of the misjoinder or nonjoinder of any parties and the court may in any action or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the action or matter.

Representative proceedings

5.—(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 6, the proceedings may be begun and, unless the court otherwise

orders, continued, by or against any one or more of them as representing all or all except one or more of them.

- (2) At any stage of proceedings under this rule the court may—
- (a) on the application of a plaintiff who is suing in a representative capacity, appoint him to represent all, or all except one or more, of the persons on whose behalf he sues;
 - (b) on the application of the plaintiff or of a defendant who is sued in a representative capacity, appoint any one or more of the defendants or other persons on whose behalf the defendants are sued to represent all, or all except one or more, of those persons.

Where in the exercise of the power conferred by sub-paragraph (b) the court appoints a person not named as a defendant, it shall make an order under Order 15, rule 1, adding that person as a defendant:

- (3) An application under paragraph (2)—
- (a) if made under sub-paragraph (a), may be *ex parte*;
 - (b) if made under sub-paragraph (b), shall be made on notice—
 - (i) where the applicant is the plaintiff, to the person sought to be appointed, or
 - (ii) where the applicant is a defendant, to the plaintiff and to any person, other than the applicant, sought to be appointed.

and in each case the notice shall state the facts on which the applicant relies and the names and addresses or, where appropriate a collective description, of the persons to be represented.

(4) Where an order is made granting an application under paragraph (2)(b), the proper officer shall send notice of the order to the person to whom notice of the application was given and shall notify other persons affected by the order in such manner as the court may direct.

(5) A judgment or order given or made in proceedings under this rule shall be binding on all persons on whose behalf the plaintiff sues or, as the case may be, the defendant is sued but shall not be enforced against any person not a party to the proceedings except with the leave of the court.

(6) An application for leave under paragraph (5) shall be made on notice to the person against whom it is sought to enforce the judgment or order and, notwithstanding that the judgment or order is binding on him, he may dispute liability to have it enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

Representation of person or class

- 6.—(1) In any proceedings concerning—
- (a) the estate of a deceased person,
 - (b) property subject to a trust, or
 - (c) the construction of a written instrument, including a statute,

the court may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested in or affected by the proceedings, if the person, the class or some member of the class cannot readily be ascertained or cannot be found or if it otherwise appears to the court expedient to exercise this power for the purpose of saving expense.

(2) A judgment or order given or made when a person or persons appointed under paragraph (1) is or are before the court shall be binding on the person or class so represented.

(3) Where, in proceedings to which paragraph (1) applies, a compromise is proposed and some of the persons who are interested in or who may be affected by the compromise (including unborn or unascertained persons) are not parties to the proceedings but—

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

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

Representation of estate where no personal representative

7.—(1) Where in any proceedings it appears to the court that a deceased person who was interested in the matter in question in the proceedings has no personal representative, the court may, on the application of any party to the proceedings—

- (a) proceed in the absence of a person representing the estate of the deceased person or
- (b) by order appoint a person to represent the estate for the purpose of the proceedings.

(2) Any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as if a personal representative of that person had been a party to the proceedings.

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

Proceedings against estates

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

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

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

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

- (a) the plaintiff shall, in the case of a fixed date action, on or before the return day, or, in the case of a default action, within the time allowed for service of the summons, apply to the court for an order appointing a person to represent the deceased's estate for the purpose of the proceedings or, if a grant of probate or administration has been made, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person so appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;
- (b) the court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in subparagraph (a) and allow such amendments (if any) to be made and make such other order as the court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

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

(6) Where an order is made under paragraph (4), the person against whom the proceedings are to be carried on shall be served with a copy of the order, together with a copy of the summons in the action, in accordance with the rules applicable to the service of such a summons on a defendant.

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

Partners may sue and be sued in firm name

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

(2) Where partners sue or are sued in the name of the firm, the partners shall, on demand made in writing by any other party, forthwith deliver to the party making the demand and file a statement of the names and places of residence of all the persons who were partners in the firm when the cause of action arose.

(3) If the partners fail to comply with such a demand, the court, on application by any other party, may order the partners to furnish him with such a statement and to verify it on oath and may direct that in default—

- (a) if the partners are plaintiffs, the proceedings be stayed on such terms as the court thinks fit, or
- (b) if the partners are defendants, they be debarred from defending the action.

(4) When the names and places of residence of the partners have been stated in compliance with a demand or order under this rule, the proceedings shall continue in the name of the firm.

Defendant carrying on business in another name

10.—(1) A person carrying on business in England or Wales in a name other than his own name may be sued—

- (a) in his own name, followed by the words “trading as A.B.”, or
- (b) in his business name, followed by the words “(a trading name)”.

(2) Where a person is sued in his business name in accordance with paragraph (1)(b), the provisions of these rules relating to actions against firms shall, subject to the provisions of any enactment, apply as if he were a partner and the name in which he carries on business were the name of his firm.

Change of parties by reason of assignment etc

11.—(1) Where, at any stage of the proceedings in an action or matter, the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the court may, for the purpose of ensuring that all matters in dispute in the action or matter may be effectually and completely disposed of, order that other person to be made a party to the action or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party.

(2) An application for an order under paragraph (1) may be made ex parte by filing a notice stating the grounds on which the application is made.

(3) The notice shall be accompanied by an affidavit verifying the facts stated therein and by as many copies of the notice as there are persons to be served under the next succeeding paragraph.

(4) If an order is made on the application, the proper officer shall, unless the court otherwise directs, serve notice of the order, together with a copy of the notice given under paragraph (2), on every person, other than the applicant, who is a party to the action or matter or who becomes or ceases to be a party by virtue of the order.

(5) In the case of a person who becomes a defendant by virtue of the order, the documents mentioned in paragraph (4) shall be accompanied by a copy of the originating process and shall be served on him in accordance with the provisions of these rules relating to service of the process by which the proceedings were commenced.

(6) Any person served with notice of an order made ex parte under this rule may, within 14 days after service of the order on him, apply for the discharge or the variation of the order, and the notice shall contain a statement to that effect.

(7) Where, by one and the same event, a person becomes entitled to apply for an order under paragraph (1) in more than one action or matter he may give one notice of application only, specifying in a schedule the actions or matters in respect of which it is given, and it shall be sufficient for the proper officer, in serving a copy of the notice on any party, to set out only so much of the notice as affects that party.

Failure to proceed after death of party

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

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

Claim to money in court where change in parties after judgment

13.—(1) Where any change has taken place after judgment, by death, assignment or otherwise, in the parties to any action or matter and there is money standing in court to the credit of the action or matter, any person claiming to be entitled to the money may give to the proper officer notice of his claim, accompanied by an affidavit verifying the facts stated in the notice.

(2) The registrar may, if satisfied as to the entitlement of the person giving the notice, cause the money to be paid to him or may refer the claim to the judge and may require the claimant to give notice of the claim to any other person.

(3) It shall not be necessary for notice to be given under this rule where the person claiming to be entitled to the money in court has obtained leave under Order 26, rule 5, to issue a warrant of execution.

Bankruptcy of plaintiff

14. Rules 11 and 13 shall not apply to any case for which provision is made by section 82 of the Act.

ORDER 6

PARTICULARS OF CLAIM

General requirements

1.—(1) Subject to the provisions of this rule, a plaintiff shall, at the time of commencing an action, file particulars of his claim specifying his cause of action and the relief or remedy which he seeks and stating briefly the material facts on which he relies.

(2) Where in an action for a debt the particulars of claim can conveniently be incorporated in the form of request for the issue of the summons, they may be incorporated in that form if the proper officer so allows.

(3) Where a plaintiff desires to abandon, under section 41(1) of the Act, the excess of his claim over the sum mentioned in that section, the abandonment of the excess shall be stated at the end of the particulars.

(4) Except where the particulars are incorporated in the request pursuant to paragraph (2), the plaintiff shall, when filing particulars of his claim, file a copy for each defendant to be served with the summons.

Claim for account

2. Where the plaintiff desires to have an account taken, his particulars of claim shall contain a statement to that effect and shall specify the amount which the plaintiff claims subject to the taking of the account, and if no such amount is stated the plaintiff shall be deemed to claim the maximum sum which may be recovered in the action.

Recovery of land

3. In an action for recovery of land the particulars of claim shall state—

- (a) the land sought to be recovered;
- (b) the net annual value of the land for rating or, if the land does not consist of one or more hereditaments having at the time when the action is commenced a separate net annual value for rating—
 - (i) where the land forms part of a hereditaments having a net value for rating not exceeding the county court limit under section 51 of the Act, the net annual value of that hereditament or
 - (ii) in any other case, the value of the land by the year;
- (c) the rent, if any, of the land;
- (d) the ground on which possession is claimed, and
- (e) in a case to which section 191 of the Act applies, the daily rate at which the rent in arrear is to be calculated.

Injunction or declaration relating to land

4. Where the plaintiff claims under section 51A of the Act an injunction or declaration in respect of, or relating to, any land, or the possession, occupation, use or enjoyment of any land, the particulars shall contain the information which would be required under paragraph (a) and (b) of the last foregoing rule if the action were for recovery of the relevant land.

Mortgage action

5.—(1) Where a plaintiff claims as mortgagee payment of moneys secured by a mortgage of real or leasehold property or possession of such property, he shall in his particulars of claim—

- (a) state the date of the mortgage;
- (b) show the state of account between the plaintiff and the defendant with particulars of—
 - (i) the amount of the advance,
 - (ii) the amount of the periodic payments required to be made.
 - (iii) the amount of any interest or instalments in arrear at the commencement of the proceedings, and
 - (iv) the amount remaining due under the mortgage;
- (c) state what proceedings, if any, the plaintiff has previously taken against the defendant in respect of the moneys secured by the mortgage or the mortgaged property and, where payment of such moneys only is claimed, whether the plaintiff has obtained possession of the property; and
- (d) state, where possession of the property is claimed, whether or not the property consists of or includes a dwelling house within the meaning of Part IV of the Administration of Justice Act 1970.

(2) In this rule “mortgage” includes a legal or equitable mortgage and a legal or equitable charge, and references to the mortgaged property and mortgagee shall be construed accordingly.

Hire-purchase

6.—(1) Where a plaintiff claims the delivery of goods let under a hire-purchase agreement to a person other than a body corporate, he shall in his particulars state in the order following—

- (i) the date of the agreement and the parties thereto;
- (ii) the place where the agreement was signed by the hirer;
- (iii) the goods claimed;
- (iv) the amount of the hire-purchase price;
- (v) the amount paid by or on behalf of the hirer;
- (vi) the amount of the unpaid balance of the hire-purchase price;
- (vii) whether a notice of default within the meaning of section 25 of the Hire-Purchase Act 1965 has been served on the hirer, and if it has, the date on which it was so served;
- (viii) the date when the right to demand delivery of the goods accrued;
- (ix) the amount (if any) claimed as an alternative to the delivery of the goods; and
- (x) the amounts (if any) claimed in addition to the delivery of the goods or any claim under subparagraph (ix), stating the cause of action in respect of which each claim is made.

(2) Where a plaintiff's claim arises out of a hire-purchase agreement but is not for the delivery of goods, he shall in his particulars state in the order following—

- (i) the date of the agreement and the parties thereto;
- (ii) the goods let under the agreement;
- (iii) the amount of the hire-purchase price;
- (iv) the amount paid by or on behalf of the hirer;
- (v) the amount (if any) claimed as being due and unpaid in respect of any instalment or instalments of the hire-purchase price;

(vi) the amount of any other claim and the circumstances in which it arises.

Further particulars

7.—(1) The court may, on application or of its own motion, order the plaintiff to give the defendant further particulars of the plaintiff's claim and the order may be made on such terms as the court thinks just.

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

(3) Where the applicant for an order under this rule did not make a written request for the particulars he desires, the court may refuse to make the order unless of opinion that there were sufficient reasons for not making such a request.

(4) Where further particulars are given pursuant to an order or request—

- (a) the order or request shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the order or request, and
- (b) the particulars shall be filed and a copy shall forthwith be served on the defendant.

Signing of particulars and address for service

8. Particulars of claim shall be signed—

- (a) by the plaintiff, if he sues in person;
- (b) by the plaintiff's solicitor in his own name or the name of his firm, if the plaintiff sues by solicitor,

and shall state the plaintiff's address for service.

ORDER 7

SERVICE OF DOCUMENTS

PART I

GENERALLY

General mode of service

1.—(1) Where by virtue of these rules any document is required to be served on any person and no other mode of service is prescribed by any Act or rule, the document may be served—

- (a) if the person to be served is acting in person, by delivering it to him personally or by delivering it at, or sending it by first-class post to, his address for service or, if he has no address for service—
 - (i) by delivering the document at his residence or by sending it by first-class post to his last known residence, or
 - (ii) in the case of a proprietor of a business, by delivering the document at his place of business or sending it by first-class post to his last known place of business;
- (b) if the person to be served is acting by a solicitor, by delivering the document at, or sending it by first-class post to, the solicitor's address for service.

(2) In this Order “first-class post” means first-class post which has been pre-paid or in respect of which prepayment is not required.

Personal service

2. Where any document is required by an Act or rule to be served personally—
- (a) service shall be effected by leaving the document with the person to be served;
 - (b) the document may be served by—
 - (i) a bailiff of the court or, if the person to be served attends at the office of the court, any other officer of the court; or
 - (ii) a party to the proceedings or some person acting as his agent; or
 - (iii) the solicitor of a party or a solicitor acting as an agent for such solicitor or some person employed by either solicitor to serve the document;
- but service shall not be effected by any person under the age of 16 years.

Days on which no service permitted

3. Without prejudice to Order 40, rule 5(5), no process shall be served or executed within England or Wales on a Sunday, Good Friday or Christmas Day except, in the case of urgency, with the leave of the court.

Service beyond boundary of district

4.—(1) Any process to be served or executed by the bailiff of any court may be served or executed within a distance of not more than 500 yards beyond the boundary of the district of that court.

(2) Without prejudice to paragraph (1), any process to be served or executed by bailiff may, if the judge or registrar of the court from which it issues so directs be served or executed within the district of any other court by the bailiff of the court from which the process issues.

Violence or threats

5. Where a bailiff is prevented by the violence or threats of the person to be served, or any other person acting in concert with him, from serving a document in manner prescribed by this Order, it shall be sufficient service to leave the document as near as practicable to the person to be served.

Proof of service or non-service

- 6.—(1) The person effecting service of any document shall—
- (a) if he is an officer of the court, make, sign and file a certificate showing the date, place and mode of service and any conduct money paid or tendered to the person served; and
 - (b) if he is not an officer of the court, file an affidavit of service.

(2) A bailiff who has failed to effect service of any document to be served by bailiff shall make, sign and file a certificate of non-service showing the reason why service has not been effected, and the proper officer of the bailiff's court shall send notice of non-service to the person at whose instance the document was issued.

Service in foreign district

7.—(1) Where any document is to be served in the district of a foreign court by a bailiff of that court, the proper officer shall send the document and all necessary copies to the foreign court.

(2) On the filing of a certificate of service or non-service of a document under rule 6 the proper officer of the foreign court shall forward the certificate to the home court, together with any copies of the document in his possession.

Substituted service

8.—(1) If it appears to the court that it is impracticable for any reason to serve a document in any manner prescribed by these rules for the service of that document, the court may, upon an affidavit showing grounds, make an order (in this rule called “an order for substituted service”) giving leave for such steps to be taken as the court directs to bring the document to the notice of the person to be served.

(2) Where a document is to be served by bailiff, the proper officer of the bailiff's court shall, if so requested, take such steps as may be necessary to provide evidence on which an order for substituted service may be made.

PART II

DEFAULT AND FIXED DATE SUMMONSES

Application of Part II

9. Except as otherwise provided, this Part of this Order shall apply to both default and fixed date summonses and “summons” shall be construed accordingly.

Mode of service

10.—(1) Subject to the provisions of any Act or rule (including the following paragraphs of this rule), service of a summons shall be effected—

- (a) by delivering the summons to the defendant personally; or
- (b) by a bailiff of the court delivering the summons to some person, apparently not less than 16 years old, at the defendant's residence or, if the defendant is the proprietor of a business, at his place of business.

(2) Where the plaintiff or his solicitor gives a certificate for postal service, the summons shall, unless the registrar otherwise directs, be served by an officer of the court sending it by first-class post to the defendant named in the certificate at the address stated in the request for the summons.

(3) Where it appears to the bailiff by whom a summons is to be served that there is a reasonable probability that the summons, if delivered at the address stated in the request for the summons, will come to the defendant's knowledge in sufficient time—

- (a) in the case of a default summons, for the defendant to deliver a defence, admission or counterclaim within the time limited by these rules; or
- (b) in the case of a fixed date summons, for the defendant to appear on the return day,

the summons may, unless the registrar otherwise directs, be served by—

- (i) an officer of the court sending the summons by first-class post to the defendant at that address; or
- (ii) the bailiff inserting the summons, enclosed in an envelope addressed to the defendant, through the letterbox for that address.

(4) Where a summons is served in accordance with paragraph (2) or (3)(i), the date of service shall, unless the contrary is shown, be deemed to be the seventh day after the date on which the summons was sent to the defendant.

(5) Service of a fixed date summons shall be effected not less than 21 days before the return day; but, without prejudice to the power to abridge that period under Order 13, rule 4, service may be effected at any time before the return day on the plaintiff satisfying the registrar by affidavit that the defendant is about to remove from the address stated in the request for the summons.

(6) Where a summons is served by bailiff in accordance with paragraph (1)(b), the certificate of service made by the bailiff pursuant to rule 6(1) shall set out any statement made by the person who received the summons and any other circumstances from which it may be inferred that the summons has come to the knowledge of the defendant.

(7) Where a summons is served in accordance with paragraph (3), the bailiff shall make, sign and file a certificate of his reasons for supposing that the summons was likely to come to the defendant's knowledge.

(8) Where a summons has been sent by post under paragraph (2) or (3)(i) and has been returned to the court office undelivered, notice of non-service shall be sent pursuant to rule 6(2).

Solicitor accepting service

11. Where a defendant's solicitor gives a certificate that the accepts service of the summons on behalf of that defendant and stating an address for service, the summons shall be deemed to have been duly served on that defendant on the date on which the certificate was made.

Presumed service of summons

12. Where a summons has not been served in accordance with rule 10 but the defendant delivers to the court office a defence, admission or counterclaim, the summons shall be deemed, unless the contrary is shown, to have been duly served on him on the date on which the defence, admission or counterclaim was so delivered.

Partners

13.—(1) Subject to the following paragraphs of this rule, where partners are sued in the name of their firm, service of a summons shall be good service on all the partners, whether any of them is out of England and Wales or not, if the summons is delivered—

- (a) to a partner personally, or
- (b) at the principal place of the partnership business within the district within which the summons is to be served, to any person having, or appearing to have, at the time of service, the control or management of the business there:

Provided that, where the partnership has to the knowledge of the plaintiff been dissolved before the commencement of the action, the summons shall be served upon every person within England and Wales sought to be made liable.

(2) Where the plaintiff or his solicitor gives a certificate for postal service pursuant to rule 10(2), the summons shall, unless the registrar otherwise directs, be served by an officer of the court sending it by first-class post to the firm at the address stated in the request for the summons.

(3) Rule 10(3) shall apply to the service of the summons as if for the reference to the defendant's knowledge there was substituted a reference to the knowledge of one of the person to whom the summons may be delivered in accordance with paragraph (1) and as if for the references in rule 10(3) (a) and (b) to the defendant there were substituted references to one of the partners.

(4) Rule 10(4) shall apply in relation to service by post under paragraph (2) or (3) as it applies in relation to service under rule 10(2) or (3)(i).

Service on body corporate

14. Service of a summons on a body corporate may, in cases for which provision is not otherwise made by an enactment, be effected by serving it on the mayor, chairman or president of the body or the town clerk, clerk, secretary, treasurer or other similar officer thereof.

Recovery of land

15.—(1) Where, in the case of a summons for the recovery of land which is to be served by bailiff, the court is of opinion that it is impracticable to serve the summons in accordance with any of the foregoing provisions of this Part of this Order, the summons may be served in a manner authorised by this rule.

(2) The summons may be served on any person on the premises who is the husband or wife of the defendant or on any person who has or appears to have the authority of the defendant—

(a) to reside or carry on business in the premises or to manage them on behalf of the defendant or to receive any rents or profits of the premises or to pay any outgoings in respect of the premises; or

(b) to safeguard or deal with the premises or with the furniture or other goods on the premises, and service on any such person shall be effected in the manner required by these rules with respect to a fixed date summons.

(3) Paragraph (2) shall apply to a man and woman who are living with each other in the same household as husband and wife as it applies to the parties to a marriage.

(4) Where the premises are vacant or are occupied only by virtue of the presence of furniture or other goods, the summons may be served by affixing it to some conspicuous part of the premises.

(5) Unless the court otherwise orders, service of a summons in accordance with this rule shall be good service on the defendant, but if a claim for the recovery of money is joined with the claim for recovery of land, the court shall order the summons to be marked “not served” with respect to the money claim unless in special circumstances the court thinks it just to hear and determine both claims.

Late knowledge of service

16. Where a fixed date summons has been served on a defendant in one of the modes mentioned in this Part of this Order but it appears to have come to his knowledge less than 21 days before the return day, the court may, without prejudice to its powers under rule 10(5) or Order 13, rule 4.—

(a) allow the action to proceed whether or not the defendant appears on the return day, or

(b) adjourn the hearing or, as the case may be, the pre-trial review.

Error in request

17.—(1) Subject to the following paragraphs of this rule, a summons which has not been served may be amended on the plaintiff filing an amended request for the issue of the summons.

(2) An amendment may be made under paragraph (1) notwithstanding that it consists of the addition or substitution of a defendant but in that case Order 15, rule 2(3), shall apply to the amendment as it applies to an amendment made under paragraph (1) of that rule.

(3) If the bailiff by whom a summons is to be served ascertains before notice of non-service has been sent that the defendant has removed from the address stated on the summons to a new address within the district of the court, it shall be his duty to serve the summons without amendment and to state the new address in his certificate of service.

(4) Where the defendant's address stated in the request for the issue of the summons was within the district of the court and at the time of the entry of the plaint the defendant was not residing or carrying on business within the district, an amendment of the address shall be allowed only on the plaintiff filing a fresh request for the issue of the summons showing that the court had jurisdiction under Order 4, rule 2, to entertain the action.

Doubtful service

18.—(1) If it appears from the certificate of service of a default or fixed date summons that the summons has been delivered to a person under rule 10(1)(b) but it is doubtful whether the court will be satisfied that the summons has come to the defendant's knowledge in sufficient time, the proper officer of the court for the district in which the summons is to be served shall give to the plaintiff notice of doubtful service.

(2) Where such a notice has been given and the defendant does not deliver a defence, admission or counterclaim or, in the case of a fixed date summons, does not appear on the return day, the plaintiff may be required to satisfy the court that the summons has come to the defendant's knowledge in sufficient time.

(3) In this rule “sufficient time” means —

- (a) in the case of a default summons, sufficient time for the defendant to deliver a defence, admission or counterclaim within 14 days after delivery of the summons under rule 10(1)(b), and
- (b) in the case of a fixed date summons, sufficient time for him to attend on the return day.

Successive summonses

19.—(1) Where a fixed date summons has not been served on every defendant, successive summonses may from time to time be issued without entering a new plaint, on the plaintiff filing an amendment request on each occasion when a successive summons is to be issued.

(2) Where a fixed date summons has not been served by reason of a defendant having, after entry of the plaint, removed out of the district in which the summons was required to be served, successive summonses may from time to time be issued for service in any district to which he has removed.

(3) A successive summons shall—

- (a) bear the same date and number as the original summons; and
- (b) be a continuance of the original summons; and
- (c) be served in accordance with rule 10.

Duration and renewal of summons

20.—(1) The time within which a summons may be served shall, unless extended under paragraph (2), be limited to a period of 12 months beginning with the date of issue of the summons.

(2) The court may extend the period for service of a summons from time to time for such period, not exceeding 12 months at any one time, beginning with the day next following that on which it would otherwise expire, as the court may specify, if an application for extension is made before that day or such later day (if any) as the court may allow.

Notice of service of default summons

21. Where a default summons has been served by a bailiff or other officer of a county court, the proper officer of that court shall send notice of service to the plaintiff.

ORDER 8

SERVICE OUT OF ENGLAND AND WALES

Interpretation

1. In this Order the following words and expressions have the following meanings, unless a contrary intention appears:—

“originating process” includes a third party notice;

“interlocutory process” means a summons, order or notice issued, made or given in proceedings already commenced in or transferred to a county court;

“process” means an originating process or an interlocutory process;

“country” means a foreign country, or any country mentioned in rule 8(5);

“country of service” means the country in which a process is to be served or is served pursuant to leave granted under this Order;

“convention country” means a foreign country with which a convention has been made relating to civil procedure including the service of documents issued from England or Wales in the foreign country and includes a country which is a party to the Hague Convention;

“Hague Convention” means the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial matters signed at The Hague on 15th November 1965⁽¹⁾;

“applicant” means the party applying for or obtaining leave under this Order to serve a process out of England and Wales;

“respondent” means the party on whom the applicant seeks or obtains leave to serve a process.

Conditions of allowing service of originating process

2. Except in an action to which rule 3 applies, the court may allow an originating process to be served out of England and Wales where—

- (a) the whole subject-matter of the proceedings is land situate within the district (with or without rent or profits); or
- (b) any act, deed, will, contract, obligation or liability affecting land situate within the district is sought to be construed, rectified, set aside or enforced in the proceedings; or
- (c) any relief is sought against any person domiciled or ordinarily resident in England or Wales against whom an action may be commenced in the court by virtue of Order 4, rule 2; or
- (d) the claim is for the administration of the personal estate of any deceased person who had his last residence within the district, or for the execution (as to property situate within the district) of the trusts of any instrument of which the person to be served is a trustee, which ought to be executed according to the law of England; or
- (e) the claim is founded on any breach or alleged breach, within the district, of any contract wherever made, which, according to the terms thereof, ought to be performed within England or Wales, unless the respondent is domiciled or ordinarily resident in Scotland or Northern Ireland; or
- (f) the claim is founded on a tort committed in England or Wales; or
- (g) any injunction is sought as to anything done, or to be done, in the district, or any nuisance in the district is sought to be prevented or removed; or

(1) Cmnd. 3986.

- (h) any person out of England and Wales is a necessary or proper party to any proceedings properly commenced in the court against some other person duly served in England or Wales; or
- (i) the claim is for a sum to which the Directive of the Council of the European Communities dated 15th March 1976 No. [76/308/EEC](#) applies, and service is to be effected in a country which is a member state of the European Economic Community.

Collision of ships and similar cases

3. Where an action is brought in a county court to enforce a claim to which section 70 of the Act applies, the court may allow the summons to be served out of England and Wales if, but only if,—

- (a) the defendant has his habitual residence or place of business within England and Wales; or
- (b) the cause of action arose within inland waters of England and Wales or within the limits of a port of England and Wales; or
- (c) an action arising out of the same incident or series of incidents is proceeding in that court or has been heard and determined in that court; or
- (d) the defendant has submitted or agreed to submit to the jurisdiction of the court.

In this rule “inland waters” and “port” have the same meanings as in subsection (1) of the said section 70.

Conditions of allowing service of other process

4.—(1) The court may allow an interlocutory process to be served out of England and Wales on a person who is already a party to the proceedings and, in the case of a defendant, respondent or third party, has been served with the originating process.

(2) The court may allow an application for an attachment of earnings order to be served on the debtor out of England and Wales where the person to whom the order is to be directed is in England or Wales.

Scotland and Northern Ireland

5.—(1) Subject to paragraph (2), where leave is asked from the court under rule 2 to serve a process in Scotland or in Northern Ireland and it appears to the court that there may be a concurrent remedy in Scotland or Northern Ireland (as the case may be), the court shall have regard to the comparative cost and convenience of proceeding in the district, or in the place of residence of the respondent, and particularly to the powers and jurisdiction of the sheriff courts in Scotland and of the county courts in Northern Ireland, respectively.

(2) Nothing in this rule shall be construed as enabling leave to be given under paragraph (e) of rule 2 where the respondent is domiciled or ordinarily resident in Scotland or Northern Ireland.

Application to be supported by evidence

6.—(1) An application for leave to serve a process on a respondent out of England and Wales shall be supported by affidavit or other evidence—

- (a) stating (in the case of a fixed date summons) that in the belief of the deponent the applicant has a good cause of action; and
- (b) showing (in the case of any process)—
 - (i) in what country and place the respondent is or may probably be found; and
 - (ii) whether the respondent is a United Kingdom national or not; and

(iii) the grounds on which the application is made.

(2) Leave shall not be granted unless it appears to the court that the case is a proper one for service out of England and Wales.

Return day etc

7. When giving leave to serve a process out of England and Wales the court shall—

- (a) in the case of a default summons, fix the time for delivering an admission or defence or paying the total amount of the claim and costs into court, and
- (b) in any other case, fix the return day,

and in so doing shall have regard to the distance of the country of service.

Modes of service

8.—(1) Where leave has been given to serve a process out of England and Wales, service may, subject to the provisions of this rule, be effected—

- (a) through the court; or
- (b) by the applicant or his agent.

(2) Where the country of service is a convention country, service may be effected through the court or, if service by the applicant or his agent is permitted by the convention, by the applicant or his agent.

(3) Where the country of service is neither a convention country nor a country mentioned in paragraph (5), service may be effected through the court.

(4) Where the country of service is not a convention country but is a country mentioned in paragraph (5), service may be effected by the applicant or his agent, if and so far as the law of the country of service permits.

(5) The countries referred to in paragraphs (3) and (4) are:—

- (a) Scotland, Northern Ireland, the Isle of Man and the Channel Islands;
- (b) any independent Commonwealth country outside the United Kingdom, and any territory administered by the government of such a country;
- (c) any associated state;
- (d) any colony;
- (e) the Republic of Ireland.

(6) Where the respondent is a State, as defined in section 14 of the State Immunity Act 1978, service shall be effected through the court, except where the State has agreed to some other method of service.

Service by applicant

9. The process, if served by the applicant or his agent, shall be served on the respondent by delivering it to him personally.

Service through the court

10.—(1) Where service is to be effected through the court, the applicant shall file a request in that behalf, together with a copy thereof and two copies of the process to be served.

(2) The request shall indicate whether the applicant wishes service to be effected—

- (a) through the authority designated under the Hague Convention,
- (b) through the foreign judicial authority,
- (c) through a British consular authority,
- (d) through the foreign government, where it is willing for service to be effected in that way.

(3) Where the party to be served is a State, as defined in section 14 of the State Immunity Act 1978, the request shall indicate that fact and that the applicant is willing for service to be effected by whatever method the Secretary of State may choose.

(4) The applicant shall file with the request two copies of a translation of the process in the language of the country of service, certified by or on behalf of the applicant to be a correct translation: Provided that this paragraph shall not apply where the official language or one of the official languages of the country of service is English, or service is to be effected on a United Kingdom national directly through the British Consul, unless the country of service is a convention country and the convention requires a translation.

(5) The proper officer shall seal the two copies of the process and the translations (if any), and shall forward them and the request to the senior master.

(6) An official certificate or declaration upon oath or otherwise of the judicial authority, central authority or government of the country of service or of the British consular authority in that country, transmitted by the senior master to the proper officer of the county court, shall be received as evidence of the facts certified or declared with regard to the service or attempted service of the process.

(7) Where the process has been served in accordance with the law of the country of service, or in the manner in which default summonses are required to be served, the service shall be deemed to be good service.

(8) Where it appears from the certificate or declaration that the process has been duly served upon the respondent, the certificate or declaration shall be an equivalent substitute for any affidavit or certificate of service required by these rules.

(9) Where, pursuant to an order for substituted service, a document is required to be transmitted through the court to the country of service, the provisions of this rule shall apply with the necessary modifications.

Proof of service

11. Where the respondent does not appear on the return day, the applicant shall, before proceeding, file an affidavit or official certificate or declaration, showing that the process has been duly served.

Setting aside the service

12. The respondent may apply, on notice, to the court to set aside the service of the process, or to discharge the order giving leave to serve the process out of the jurisdiction.

ORDER 9

ADMISSION, DEFENCE, COUNTERCLAIM AND ANSWER

Application of Order

1. Except as otherwise provided, the provisions of this Order relating to actions shall apply to both default and fixed date actions.

Admission, defence or counterclaim to be delivered

2.—(1) A defendant in any action who—

- (a) admits his liability for the whole or part of the plaintiff's claim;
- (b) desires time for payment of any sum admitted by him;
- (c) disputes his liability for the whole or part of the plaintiff's claim, or
- (d) desires to set up a counterclaim,

shall, within 14 days after the service of the summons on him, deliver at the court office—

- (i) the form appended to the summons completed according to the circumstances of the case, or
- (ii) an admission, request for time for payment, defence or counter-claim otherwise than on that form, together with a copy for the plaintiff.

(2) On receipt of the document the proper officer shall send a copy thereof to the plaintiff together, in a case to which rule 3(1) relates, with a notice of the requirements of that rule.

(3) The court may at any time allow a defendant to amend or withdraw an admission made by him under this rule on such terms as may be just.

Admission of part or request for time in default action

3.—(1) If within the period of 14 days mentioned in rule 2 the defendant in a default action delivers at the court office—

- (a) an admission of part of the plaintiff's claim, or
- (b) an admission of the whole or part of the plaintiff's claim accompanied by a request for time for payment,

the plaintiff shall, within 14 days after receipt by him of the proper officer's notice under rule 2(3), notify the proper officer whether he accepts the amount admitted (if it is not the whole of the plaintiff's claim) and any proposal as to the time of payment.

(2) If the plaintiff notifies the proper officer of his acceptance of the amount admitted (if it is not the whole of the plaintiff's claim) and any proposal as to the time of payment, the registrar shall as soon as practicable enter judgment accordingly.

(3) If the defendant admits the whole of the plaintiff's claim or such part thereof as the plaintiff accepts and the plaintiff notifies the proper officer that he does not accept the defendant's proposal as to time of payment, the proper officer shall fix a day (in these rules called a day fixed for the disposal of the action) on which the time of payment will be determined and judgment entered by the court, and shall give to the plaintiff and the defendant not less than 8 days' notice of the day so fixed.

(4) If the defendant admits part of the plaintiff's claim and the plaintiff notifies the proper officer that he does not accept the amount admitted, the proper officer shall fix a day for a pre-trial review or, if he thinks fit, a day for the hearing of the action and give to the plaintiff and the defendant not less than 8 days' notice of the day so fixed.

(5) The disposal of an action under paragraph (3) may be conducted by the registrar sitting either in court or in chambers.

(6) Where the action is for unliquidated damages and the defendant delivers an admission of liability for the claim but disputes the amount of the plaintiff's damages, then—

- (a) if the defendant offers to pay in satisfaction of the claim a specific sum which the plaintiff accepts, the provisions of this rule shall apply as if the defendant had admitted part of the plaintiff's claim; and
- (b) in any other case, the plaintiff may apply to the court for such judgment as he may be entitled to upon the admission, and the court may give such judgment, including an

interlocutory judgment for damages to be assessed and costs, or make such order on the application as it thinks just.

Admission in fixed date action

4.—(1) If within the period of 14 days mentioned in rule 2 the defendant in a fixed date action other than an action for the recovery of land delivers at the court office an admission of the whole or part of the plaintiff's claim, the plaintiff may apply to the court for such judgment as he may be entitled to upon the admission, without waiting for the return day or for the determination of any other question between the parties, and the court may give such judgment or make such order on the application as it thinks just.

(2) An application under paragraph (1) shall, if made before the return day, be made on notice to the defendant.

Defence or counterclaim in default action

5. If within the period of 14 days mentioned in rule 2 the defendant in a default action delivers at the court office either a defence not accompanied by an admission of any part of the plaintiff's claim or a counterclaim, the proper officer shall fix a day for a pre-trial review or, if he thinks fit, a day for the hearing of the action, and shall give to all parties not less than 14 days' notice of the day so fixed.

Judgment in default or on admission in default action

6.—(1) Subject to paragraphs (2) and (3) and rule 7, if the defendant in a default action—

- (a) does not within 14 days after service of the summons on him, pay into court the total amount of the claim and costs on the summons or deliver at the court office an admission, defence or counterclaim, or
- (b) delivers at the court office an admission of the whole of the plaintiff's claim unaccompanied by a counterclaim or a request for time for payment,

the plaintiff may, upon filing a request in that behalf and, unless otherwise directed, producing the plaintiff's claim note, have judgment entered against the defendant for the amount of the claim and costs, and the order shall be for payment forthwith or at such time or times as the plaintiff may specify.

(2) If the plaintiff's claim is for unliquidated damages, any judgment entered under paragraph (1) shall be an interlocutory judgment for damages to be assessed and costs.

(3) Where the defendant is a State as defined in section 14 of the State Immunity Act 1978—

- (a) the plaintiff may not enter judgment under paragraph (1)(a) without the leave of the judge and R.S.C. Order 13, rule 7A, shall apply to an application for such leave as it applies to an application for leave to enter judgment against a State in the High Court;
- (b) the plaintiff may not enforce a judgment entered pursuant to such leave until two months after a copy of it has been served on the State.

Default judgment for mortgage money

7.—(1) No judgment shall be entered under rule 6(1)(a) for money secured by a mortgage except with the leave of the court.

(2) An application for the grant of leave under this rule shall be made on notice to the defendant.

(3) The application may be heard and determined by the registrar.

(4) In this rule "mortgage" includes a legal and an equitable mortgage and a legal and an equitable charge.

Interest after action brought

8.—(1) The sum for which judgment is entered under rule 6(1) may include interest to the date of entering judgment, if such interest is payable by virtue of a statute or contract and is stated in the plaintiff's particulars of claim to be so payable.

(2) A claim shall not be prevented from being treated for the purposes of rule 6(2) as a liquidated demand by reason only that part of it is for interest so payable at an unspecified rate but any such interest shall be computed at the rate which would be allowed in the High Court in like circumstances.

Failure to deliver admission etc. in time

9.—(1) Notwithstanding that the period of 14 days mentioned in rule 2 has expired, a defendant may deliver an admission, defence or counterclaim at any time before the entry of judgment under rule 6 or, in a fixed date action, before the return day, and if time permits the same procedure shall be followed as if the admission, defence or counterclaim had been delivered within the said period of 14 days.

(2) Notwithstanding that he has failed to deliver a defence, the defendant in a fixed date action may appear on the return day and dispute the plaintiff's claim.

(3) In any case to which paragraph (1) or (2) applies, the court may order the defendant to pay any costs properly incurred in consequence of his delay or failure.

Striking out default action after twelve months

10. Where 12 months have expired from the date of service of a default summons and—

- (i) no admission, defence or counterclaim has been delivered and judgment has not been entered against the defendant, or
- (ii) an admission has been delivered but no judgment has been entered under rule 6(1) or, as the circumstances may require, no notice of acceptance or non-acceptance has been received by the proper officer,

the action shall be struck out and no enlargement of the period of 12 months shall be granted under Order 13, rule 4.

Particulars of defence

11.—(1) If the defendant in a fixed date action fails to deliver a defence within the period of 14 days mentioned in rule 2, the court may at any time before the trial order him to do so.

(2) The court may order the defendant in a default or fixed date action to give the plaintiff further particulars of any defence delivered by the defendant and the order may be made on such terms as the court thinks just.

(3) An order under paragraph (1) or paragraph (2) may be made by the court on application or of its own motion, but where the applicant for an order under paragraph (2) did not make a written request for the particulars he desires, the court may refuse to make an order unless of opinion that there were sufficient reasons for not making such a request.

(4) Where further particulars are given pursuant to an order or request—

- (a) the order or request shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the order or request, and
- (b) the particulars shall be filed and a copy shall forthwith be served on the plaintiff.

Defence of tender

12. Where a defence of tender before action is pleaded, the defendant shall pay into court the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until the payment into court has been made.

Delivery of defence not a waiver

13.—(1) The delivery by a defendant of a defence shall not be treated as a waiver by him of any irregularity in the summons or the service thereof or in any order giving leave to serve the summons out of England and Wales or extending the validity of the summons for the purpose of service.

(2) No application to set aside any proceedings for such an irregularity shall be granted unless made within a reasonable time, nor if the party applying has taken any step in the proceedings, otherwise than by delivering a defence, after knowledge of the irregularity.

Summary judgment where no real defence

14.—(1) Without prejudice to rule 11 and Order 13, rule 5, where in a default action the plaintiff's claim is for a sum of not less than £500 and the defendant has delivered at the court office a document purporting to be a defence, the plaintiff may apply to the court for judgment against the defendant on the ground that, notwithstanding the delivery of that document, the defendant has no defence to the claim or to a particular part of the claim.

(2) An application under paragraph (1) shall be supported by an affidavit verifying the facts on which the claim or the part of it to which the application relates is based and stating that in the deponent's belief, notwithstanding the document which has been delivered, there is no defence to the claim or that part.

(3) Notice of the application, together with a copy of the affidavit in support and of any exhibits referred to therein, shall be served on the defendant not less than 7 days before the day fixed for the hearing of the application.

(4) Where an application under paragraph (1) is made at a time when a day has been fixed for the pre-trial review of the action, the application shall, unless otherwise directed, be heard on that day, and in any case, if on the hearing of the application the court orders that the defendant do have leave (whether conditional or unconditional) to defend the action with respect to the claim or part of the claim, the court may treat the hearing as a pre-trial review and Order 17 with the necessary modifications shall apply accordingly.

(5) The provisions of the R.S.C. relating to showing cause against an application under Order 14 of those rules and giving the plaintiff judgment or granting the defendant leave to defend on such an application shall apply in relation to an application under this rule as they apply in relation to an application under the said Order 14.

Counterclaim against person other than plaintiff

15. Where a defendant desires to set up a counterclaim against the plaintiff and some other person who is not a party to the action, he may apply to the court for an order that the other person be added as a defendant to the counterclaim and the court may make an order accordingly and give all such directions as may be necessary to enable the questions at issue between all the parties to be determined at the trial of the action.

Admission in action for recovery of land

16.—(1) A defendant in an action for the recovery of land who admits the plaintiff's right to recover possession of the land may at any time before the return day deliver at the court office an admission to that effect.

(2) The proper officer shall as soon as practicable after the receipt by him of the admission send notice thereof to the plaintiff accompanied by a copy of the admission, and no costs incurred after the receipt of the notice in respect of the proof of any matter which the admission renders it unnecessary to prove shall be allowed against the defendant who has made the admission.

Interpretation

17. In the foregoing provisions of this Order, unless the context otherwise requires, “defence”, “admission” and “counterclaim” mean respectively any document which shows that the defendant desires—

- (a) to dispute the whole or any part of the plaintiff's claim,
- (b) to admit the whole or any part of the plaintiff's claim or ask for time for payment of the amount admitted and costs, or
- (c) to set up a counterclaim.

Answer to originating application

18.—(1) Where the respondent to an originating application is required by any of these rules to file an answer, the following paragraphs shall apply subject to any special provision made by that rule.

(2) The answer shall state whether or not the respondent intends to resist the application and, if so, on what grounds.

(3) The answer shall be filed within 14 days after the date of service of the application on the respondent and shall be accompanied by as many copies as there are other parties to the proceedings.

(4) On receipt of the answer and copies the proper officer shall send a copy to the applicant and to every other party to the proceedings.

(5) The notice of the return day given to the respondent under Order 3, rule 4(4)(b), shall contain a notice requiring him to file an answer as aforesaid.

Signing of admission etc. and address for service

19. Every admission, defence or counterclaim delivered pursuant to rule 2 and every answer to which rule 18 relates shall be signed—

- (a) by the defendant if he is acting in person;
- (b) by the defendant's solicitor in his own name or in the name of his firm, if the defendant is acting by solicitor,

and shall state the defendant's address for service.

ORDER 10

PERSONS UNDER DISABILITY

Person under disability to have next friend or guardian ad litem

1.—(1) Except where a minor brings an action in his own name under section 80 of the Act, a person under disability may not bring or make a claim in any proceedings except by his next friend.

(2) A person under disability may not defend or make a counterclaim in any proceedings except by his guardian ad litem.

(3) Where a person is authorised under Part VIII of the Mental Health Act 1959 (in this Order called “Part VIII”) to conduct legal proceedings in the name of a mental patient or on his behalf, that person shall be entitled to be the next friend or guardian ad litem, as the case may be, of the patient in any proceedings to which his authority extends, unless some other person is appointed by the court to be his next friend or guardian ad litem.

Next friend without appointment

2. Before proceedings are commenced or a claim in any proceedings is made by a next friend on behalf of a person under disability, the next friend shall deliver at the court office—

- (a) in a case to which rule 1(3) applies, an office copy, sealed with the official seal of the Court of Protection, of the order or other authorisation made or given under Part VIII by virtue of which he is authorised to conduct the proceedings on behalf of the patient;
- (b) in any other case, a written undertaking, attested by a solicitor or by an officer of the court authorised to take affidavits, to be responsible for any costs which the person under disability may be ordered and fail to pay the person against whom the proceedings are brought or the claim is made.

Appointment of next friend by court

3. Where proceedings are commenced or a claim is made by a person under disability without a next friend as required by rule 1, the court may—

- (a) on application appoint as next friend any person who is authorised as mentioned in paragraph (a), or gives such an undertaking as is mentioned in paragraph (b), of rule 2, or
- (b) order the proceedings to be struck out.

Service on person under disability

4.—(1) Where a defendant is a person under disability, the summons shall be served—

- (a) in the case of a minor who is not also a mental patient, on one of his parents or his guardian or, if he has no parent or guardian, on the person with whom he resides or in whose care he is;
- (b) in the case of a mental patient, on the person (if any) who is authorised under Part VIII to conduct in the name of the mental patient or on his behalf the proceedings in connection with which the summons is to be served or, if there is no person so authorised, on the person with whom he resides or in whose care he is,

and shall be served on the person to be served in the manner required by these rules with respect to the summons in question.

(2) Notwithstanding anything in paragraph (1), the court may order that any summons which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

Guardian ad litem without appointment

5. Where in any action a person proposing to act as guardian ad litem of a defendant under disability delivers at the court office on his behalf an admission of or defence to the plaintiff's claim accompanied by—

- (a) in a case to which rule 1(3) applies, such an office copy as is mentioned in rule 2(a);
- (b) in any other case, a certificate made by the proposed guardian ad litem that he is a fit and proper person to act as guardian ad litem of the defendant and has no interest in the matters in question in the proceedings adverse to that of the defendant,

the person delivering the admission or defence shall be the guardian ad litem of the defendant and no order appointing him to act as such shall be necessary.

Appointment of guardian ad litem

6.—(1) Where a defendant under disability has no guardian ad litem acting for him by virtue of rule 5, the plaintiff shall, after the time for delivering an admission or defence has expired and before taking any further step in the proceedings, apply to the court for an order that a person named in the application or some other proper person be appointed guardian ad litem of the defendant.

(2) The application shall be supported by an affidavit showing that the person proposed by the plaintiff for appointment—

- (a) is a fit and proper person to act as guardian ad litem of the defendant,
- (b) has no interest in the matters in question in the proceedings adverse to that of the defendant, and
- (c) consents to act.

(3) Not less than 3 days before the hearing of the application notice of the application, together with a copy of the supporting affidavit, shall be served on the person on whom the summons in the action was required to be served.

(4) On the hearing of the application the court may appoint the person proposed by the plaintiff or, if not satisfied that the person proposed is a proper person to be appointed, may appoint any other person willing to act or in default of any such person may appoint the registrar.

Appointment of guardian ad litem at hearing

7. Where a defendant attends the hearing of an action and it appears that he is a minor who has no guardian ad litem, then—

- (a) if the defendant names a person as his guardian ad litem who consents to act, that person shall be appointed guardian;
- (b) if the defendant does not name a guardian ad litem, the court may appoint as guardian any person present who is willing to act or, in default of any such person, the court may appoint the registrar to act.

Application of preceding rules to liquidated sums and matters

8.—(1) Where a minor is sued for a liquidated sum, the court may, on the application of the plaintiff, direct that rule 6 or 7, as the case may be, shall not apply, and if the court directs that rule 6 shall not apply, no appointment of a guardian ad litem under rule 7 shall be necessary.

(2) Rules 5, 6 and 7 and this rule shall have effect in relation to a matter as they have effect in relation to an action, but with the substitution of a reference to an answer for any reference to a defence and with such other modifications as may be appropriate.

Guardian not liable for costs

9. A guardian ad litem of a person under disability shall not be personally liable for any costs not occasioned by his personal negligence or misconduct.

Compromise etc. by person under disability

10.—(1) Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the court.

(2) Where the sole object of an action in which a claim for money is made by or on behalf of a person under disability is to obtain the approval of the court to a settlement or compromise of the claim, the particulars of claim shall contain a brief statement of the cause of action together with a request for the approval of the settlement or compromise.

(3) Whatever the amount involved, the approval of the court may be given either by the judge or by the registrar and either in chambers or in open court.

Control of money recovered by person under disability

11.—(1) Where in any proceedings—

(a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability, or

(b) money paid into court is accepted by or on behalf of a person under disability,

then, unless the court otherwise directs, the money shall not be paid to the person under disability or to his next friend, guardian ad litem or his solicitor but shall be paid into or remain in court.

(2) The money and any interest thereon shall be invested, applied or otherwise dealt with as the court may from time to time direct.

(3) An application to the court as to the mode of dealing with the money and any interest thereon may be made by or on behalf of any person interested.

(4) Unless the court otherwise directs, the costs payable to his solicitor by any plaintiff in the proceedings shall be taxed as between solicitor and own client and no costs shall be payable to the plaintiff's solicitor except the amount allowed on taxation.

(5) On the taxation of a solicitor's bill to any plaintiff in accordance with paragraph (4), the registrar shall also tax any costs payable to that plaintiff in the proceedings and shall certify—

(a) the amount (if any) by which the amount allowed on the taxation of the solicitor's bill exceeds the amount allowed on the taxation of the costs payable to that plaintiff in the proceedings, and

(b) where necessary, the proportion of the amount of the excess payable by or out of any money belonging to any party to the proceedings who is a person under disability.

(6) Nothing in this rule shall prejudice a solicitor's lien for costs or apply to a case in which a minor sues as if he were of full age by virtue of section 80 of the Act.

Authority of next friend or guardian

12. Subject to the provisions of these rules, any act which in the ordinary conduct of any proceedings is required or authorised by a provision of these rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian ad litem.

ORDER 11

PAYMENT INTO AND OUT OF COURT

Payment into court before judgment

1.—(1) In any action for a debt or damages any defendant may at any time before judgment pay money into court—

- (a) in satisfaction of the plaintiff's cause of action or, where two or more causes of action are joined in the action, in satisfaction of any or all of those causes of action; or
- (b) on account of a sum admitted by him to be due to the plaintiff in respect of the plaintiff's cause or causes of action.

(2) Where the amount paid into court under paragraph (1) is less than the amount claimed, the payment shall be treated as being made under sub-paragraph (b) unless it is accompanied by notice stating that it is made in satisfaction of the plaintiff's cause or causes of action.

(3) Where a payment under paragraph (1) is made by one or more but not all of several defendants, it shall be accompanied by a notice stating the name and address of each defendant making the payment.

(4) A defendant may, without leave, give notice of an increase in a payment made under paragraph (1)(a) but, subject to that and without prejudice to paragraph (6), a notice of payment may not be withdrawn or amended without the leave of the court, which may be granted on such terms as may be just.

(5) Where two or more causes of action are joined in the action, any notice given under paragraph (2) shall—

- (a) state that the payment is made in respect of all those causes of action or specify the cause or causes of action in respect of which the payment is made, and
- (b) where the defendant desires to make separate payments in respect of any two or more of the causes of action, specify the sum paid in respect of each.

For the purposes of this paragraph a payment stated to be made in satisfaction of the plaintiff's claim shall be treated as being made in satisfaction of all the causes of action.

(6) Where a single sum of money is paid into court under this rule in respect of two or more causes of action, then, if it appears to the court that the plaintiff is embarrassed by the payment, the court may, subject to paragraph (7), order the defendant to amend the notice of payment so as to specify the sum paid in respect of each cause of action.

(7) Where a cause of action under the Fatal Accidents Act 1976 and a cause of action under the Law Reform (Miscellaneous Provisions) Act 1934 are joined in an action, with or without any other cause of action, the causes of action under the said Acts shall, for the purpose of paragraph (6), be treated as one cause of action.

(8) For the purposes of this rule a plaintiff's cause of action in respect of a debt or damages shall be construed as a cause of action in respect also of such interest as might be included in the judgment,

whether under section 3 of the Law Reform (Miscellaneous Provisions) Act 1934 or otherwise, if judgment were given at the date of the payment into court.

(9) Where a payment under paragraph (1) is made by a defendant who makes a counterclaim against the plaintiff for a debt or damages, the notice given under paragraph (2) must state, if it be the case, that in making the payment the defendant has taken into account and intends to satisfy the cause of action in respect of which he counterclaims or, if two or more causes of action are joined in the counterclaim, all those causes of action or such of them as may be specified in the notice.

(10) On receipt of a payment by a defendant under paragraph (1) the proper officer shall, if time permits, send notice thereof to every other party to the action.

Payment of whole sum

2.—(1) Where the only relief claimed in an action is the payment of money and the whole amount is paid into court under rule 1, the action shall be stayed except for the purposes of paragraphs (2) and (3) of this rule and rules 4 and 6.

(2) Where the action is for a debt or liquidated demand and the money was paid by the defendant within 14 days after the service of the summons on him, together with the costs stated on the summons, the defendant shall not be liable for any further costs unless the court otherwise orders.

(3) In any case to which paragraph (2) does not apply, the defendant shall not be liable for any costs incurred after receipt by the plaintiff of the notice of payment into court, but—

- (a) except as provided in sub-paragraph (b), the plaintiff may lodge for taxation a bill of the costs incurred by him before receipt of the notice and, if the costs allowed on taxation are not paid within 14 days after taxation, may have judgment entered for them and the costs of entering judgment;
- (b) if an order is required under rule 4(2) for payment of the money out of court, the plaintiff may apply for an order for such costs.

(4) Paragraphs (2) and (3) are without prejudice to the provisions of Order 10, rules 10 and 11, Order 19, rule 6, and Order 38, rule 3(4).

Acceptance of lesser sum

3.—(1) Where the amount paid into court by the defendant under rule 1(1)(a) in satisfaction of the plaintiff's cause or causes of action is less than the amount claimed or there is also a claim for some relief other than the payment of money, then, subject to paragraph (2), the plaintiff may—

- (a) where the money was paid in respect of the cause of action or all of the causes of action in respect of which he claims, accept the money in satisfaction of such cause or causes of action, or
- (b) where the money was paid in respect of some only of the causes of action in respect of which he claims, accept in satisfaction of any such cause or causes of action the sum specified in the notice of payment into court,

by giving notice of acceptance to the proper officer and to every other party to the action within 14 days after the receipt by the plaintiff of notice of payment into court but in any case not less than 3 days before the hearing of the action begins.

(2) Where after the hearing of an action has begun—

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

the plaintiff may accept the money in accordance with paragraph (1) within 14 days after receipt of notice of the payment but in any case before the court begins to deliver judgment.

(3) On receipt by the proper officer of the plaintiff's notice of acceptance, proceedings in respect of the cause or causes of action to which the notice relates shall be stayed except for the purposes of this rule.

(4) Where notice of acceptance is given in a case to which paragraph (1)(a) applies and—

- (a) the action is for a debt or liquidated demand, and
- (b) the money was paid by the defendant within 14 days after service of the summons on him, together with the costs which would be stated on a summons for that amount,

the defendant shall not be liable for any further costs unless the court otherwise orders.

(5) Where notice of acceptance is given in any case to which paragraph (4) does not apply and the notice relates to the whole claim or, if it relates to one or more of several causes of action, the plaintiff at the same time gives notice that he abandons the other cause or causes of action, then—

- (a) except as provided in sub-paragraph (b) the plaintiff may lodge for taxation a bill of the costs incurred by him before receipt of the notice of payment into court and, if the costs allowed on taxation are not paid within 14 days after taxation, may have judgment entered for them and the costs of entering judgment;
- (b) if an order is required under rule 4(2) for payment of the money out of court, the plaintiff may apply for an order for such costs.

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

(7) The foregoing paragraphs are without prejudice to the provisions of Order 10, rules 10 and 11, Order 19, rule 6, and Order 38, rule 3(4).

Payment out of court

4.—(1) Where proceedings are stayed under rule 2(1) or 3(3), the plaintiff shall, subject to the following paragraphs of this rule, be entitled to have paid out to him the sum paid into court in satisfaction of his claim or, if the stay is in respect of some only of the plaintiff's causes of action, in satisfaction of that cause or those causes of action.

(2) Subject to the provisions of this rule, money paid into court—

- (a) by one or more but not all of defendants sued jointly or in the alternative;
- (b) with a defence of tender before action;
- (c) in an Admiralty action;
- (d) in proceedings to which Order 10, rule 11, relates, or
- (e) in satisfaction either of causes of action arising under the Fatal Accidents Act 1976 and the Law Reform (Miscellaneous Provisions) Act 1934 or a cause of action arising out of the first-mentioned Act where more than one person is entitled to the money,

shall not be paid out of court except in pursuance of an order of the court.

(3) Where in a case to which paragraph (2)(a) relates the plaintiff discontinues the action against the other defendants and those defendants consent in writing to the payment out of the money, it may be paid out without an order of the court.

(4) Where a party entitled to money in court is a person in respect of whom a certificate is or has been in force entitling him to legal aid under Part I of the Legal Aid Act 1974, payment shall be made only to that party's solicitor or, if he is no longer represented by a solicitor, to the Law Society.

Late acceptance

5.—(1) If in a case to which rule 3(1) relates the plaintiff fails to give notice of acceptance within the time limited by that rule, he may give notice at any subsequent time before the hearing of the action begins and thereupon, subject to the provisions of this rule, rule 3 shall apply as if the notice had been given within the time so limited.

(2) Paragraph (5)(a) of rule 3 shall not apply but in the circumstances to which that paragraph relates the plaintiff may apply for an order for the costs incurred by him before the receipt of the notice of payment into court.

(3) Notwithstanding the provisions of rule 4(1) the money in court shall not be paid out without an order of the court.

(4) An application for an order under paragraph (2) or (3) shall be made on notice to the defendant, and on the application the court may order the plaintiff to pay any costs reasonably incurred by the defendant since the date of payment into court.

Payment of hospital expenses

6. Where in an action or counterclaim for bodily injury arising out of the use of a motor vehicle on a road or in a place to which the public have a right of access—

- (a) the claim for damages includes a sum for hospital expenses, and
- (b) the party against whom the claim is made, or an authorised insurer within the meaning of Part VI of the Road Traffic Act 1972, pays the amount for which he is or may be liable under section 154 of that Act in respect of treatment afforded by a hospital to the person in respect of whom the claim is made,

the party against whom the claim is made shall, within 7 days after the payment is made, give notice of the payment to the proper officer and to every other party to the action.

Non-disclosure of payment into court

7.—(1) Subject to paragraph (2), no statement of the fact that money has been paid into court under rule 1(1)(a) in satisfaction of the plaintiff's cause or causes of action shall be contained in the pleadings or inserted in the documents for the use of the court at the hearing of the action or of any issue as to debt or damages, and no communication of that fact shall be made to the court at any such hearing, until all questions of liability and of the amount of the debt or damages have been decided, but the court shall, in exercising its discretion as to costs, take into account, to such extent, if any, as may be appropriate in the circumstances, both the fact that money has been paid into court and the amount of the payment.

(2) Nothing in paragraph (1) shall apply in relation to an action in which—

- (a) a defence of tender before action is pleaded, or
- (b) all further proceedings are stayed by virtue of rule 3(3) after the hearing has begun, or
- (c) the defence for which section 2 of the Libel Act 1843 provides is pleaded.

Counterclaim

8. A plaintiff against whom a counterclaim is made and any other defendant to a counterclaim may pay money into court in accordance with rule 1 and rules 1 to 7 (except rules 2(2) and 3(4) and (6)) shall apply accordingly with the necessary modifications.

Money paid into court under order

9.—(1) Subject to paragraph (2), money paid into court under an order shall not be paid out except in pursuance of an order of the court.

(2) Unless the court otherwise orders, a party who has paid money into court in pursuance of an order made under Order 9, rule 14, or Order 13, rule 1(8)(c), or Order 37, rule 8(1)—

- (a) may by notice to the proper officer and to every other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made by the other party and specified in the notice, or
- (b) if he pleads a tender, may by his defence appropriate the whole or part of the money as payment into court of the money alleged to be tendered;

and money appropriated in accordance with this rule shall be deemed to be money paid into court in accordance with rule 1 or money paid into court with a plea of tender, as the case may be, and this Order shall apply accordingly.

ORDER 12

THIRD PARTY AND SIMILAR PROCEEDINGS

Third party notice

1.—(1) Where in any action a defendant—

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

then, subject to paragraph (2), the defendant may issue a notice (in this Order referred to as a third-party notice) containing a statement of the nature and grounds of the claim made by the defendant or, as the case may be, of the question or issue required to be determined.

(2) A third party notice shall not be issued without the leave of the court—

- (a) in a fixed date action, or
- (b) in a default action where a day has been fixed under Order 9, rule 5, for the hearing or pre-trial review of the action.

(3) An application for leave to issue a third party notice shall be made on notice to the plaintiff, and on the hearing of the application the court, if it grants leave, shall give directions as to the service of the third party notice and as to the further conduct of the proceedings.

(4) The defendant shall file a copy of the third party notice when it is issued or, if leave to issue the notice is required, when he gives the proper officer notice of his application for leave.

(5) Where a third party notice is issued pursuant to paragraph (1) without the leave of the court, the proper officer shall fix a day for the pre-trial review of the action and notice of the day so fixed shall be contained in or indorsed on every copy of the third party notice for service under paragraph (6).

(6) Subject to any directions given under paragraph (3), the third party notice accompanied by a copy of the summons in the action and of the particulars of claim annexed thereto and any pleading delivered by the defendant shall be served on the third party in accordance with the rules applicable

to the service of the summons in a fixed date action and, where the notice is issued pursuant to paragraph (1) without leave, a copy shall also be served on the plaintiff.

(7) Where a third party notice is issued in a default action, judgment on admission or in default shall not be entered against the defendant under Order 9, rule 3(2) or 6.

Admission or defence by third party

2. Order 9, rules 2, 9 and 11, shall apply, with the necessary modifications, in relation to a third party notice as if—

- (a) the third party notice were a summons and the proceedings begun thereby an action, and
- (b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action.

Hearing of action

3.—(1) Subject to any directions given under rule 1(3) or otherwise, the court shall have power at the hearing of the action to determine what part the third party shall take in the trial and generally how the trial shall be conducted.

(2) As between the defendant by whom the third party notice was issued and the third party, the court may grant to either party any relief or remedy which might properly have been granted if the claim against the third party had been made in a separate action and may give such judgment for either party against the other as may be just.

(3) If the third party does not appear at the hearing, he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action in so far as it is relevant to any claim, question or issue stated in the notice.

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

In this paragraph “liability” includes liability under a judgment in the same or other proceedings and liability under an agreement to which section 1(4) of the Civil Liability (Contribution) Act 1978 applies.

Setting aside third party proceedings

4. Proceedings on a third party notice may be set aside by the court at any stage of the proceedings.

Claim against person already a party

5.—(1) Subject to paragraph (3), a defendant in any action who makes against a person already a party to the action a claim or requirement to which rule 1(1) would apply if that person were not a party may, without leave, issue and serve on that person a notice containing a statement of the nature and grounds of his claim or, as the case may be, of the question or issue required to be determined and the same procedure shall be adopted for the determination of the claim, question or issue as would be appropriate under this Order if the person served with the notice were a third party.

(2) A defendant who issues a notice under paragraph (1) shall at the same time file a copy.

(3) Nothing in paragraph (1) shall apply in relation to a claim which could be made by the defendant by counterclaim in the action.

Fourth and subsequent parties

6. Where a defendant has issued a third party notice and the third party makes such a claim or requirement as is mentioned in rule 1(1) or 5(1), this Order shall apply, with any necessary modifications, as if the third party were a defendant; and where the person against whom the claim or requirement is made makes such a claim or requirement against a further person, this Order shall similarly apply and so on successively.

Offer of contribution

7.—(1) A party to an action who stands to be held liable in the action to another party to contribute towards any debt or damages which may be recovered against that other party in the action may make, without prejudice to his defence, a written offer to that other party to contribute to a specified extent to the debt or damages and reserve the right to bring the offer to the attention of the court at the hearing.

(2) A defendant who makes such an offer shall file a copy, but the offer shall not be brought to the attention of the court at the hearing until after all questions of liability and amount of debt or damages have been decided, and if the offer is then brought to the attention of the court in pursuance of the right reserved by the defendant to do so, the court shall take the offer into account, to such extent, if any, as may be appropriate in the circumstances, in exercising its discretion as to costs.

Application to counterclaim

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

ORDER 13

APPLICATIONS AND ORDERS IN THE COURSE OF PROCEEDINGS

General provisions

1.—(1) Except as otherwise provided, the following paragraphs of this rule shall have effect in relation to any application authorised by or under any Act or rule to be made in the course of an action or matter before or after judgment.

(2) Unless allowed or authorised to be made ex parte, the application shall be made on notice, which shall be filed and served on the opposite party not less than two days before the hearing of the application.

(3) Where the application is made ex parte, notice of the application shall be filed a reasonable time before the application is heard, unless the court otherwise directs.

(4) Unless allowed or authorised to be made otherwise, every application shall be heard in chambers.

(5) Where any party to the application fails to attend on the hearing the court may proceed in his absence if, having regard to the nature of the application, the court thinks it expedient to do so.

(6) The jurisdiction of the court to hear and determine the application may be exercised by the registrar and the applicant shall, unless the judge otherwise directs, make the application to the registrar in the first instance.

(7) Where the application is made to the registrar, he may refer to the judge any matter which he thinks should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the registrar with such directions as he thinks fit.

(8) The court may, as a condition of granting any application, impose such terms and conditions as it thinks fit, including a term or condition requiring any party to—

- (a) give security,
- (b) give an undertaking,
- (c) pay money into court,
- (d) pay all or any part of the costs of the proceedings, or
- (e) give a power of re-entry.

(9) Unless the court otherwise directs, the costs of the application shall not be taxed until the general taxation of the costs of the action or matter and, where an earlier taxation is directed, Order 38 shall apply as if the word “claimed” were substituted for the word “recovered” wherever it appears.

(10) An appeal shall lie to the judge from any order made by the registrar on the application and the appeal shall be disposed of in chambers unless the judge otherwise directs.

(11) An appeal under paragraph (10) shall be made on notice, which shall be filed and served on the opposite party within 5 days after the order appealed from or such further time as the judge may allow.

Directions

2.—(1) In any action or matter the court may at any time, on application or of its own motion, give such directions as it thinks proper with regard to any matter arising in the course of the proceedings.

(2) In the exercise of the power conferred by paragraph (1) the court may, in particular, order any party to deliver any pleading or give any particulars which the court thinks necessary for defining the issues in the proceedings and may at the same or any subsequent time direct that the action or matter be dismissed or, as the case may be, the defendant be debarred from defending altogether or that anything in any pleading of which particulars have been ordered be struck out unless the order is obeyed within such time as the court may allow.

(3) Where the same judge is the judge for two or more districts and proceedings which are to be heard and determined by him are pending in the court for one of those districts, the judge or registrar may, in the exercise of the power conferred by paragraph (1), direct that the hearing in those proceedings shall take place in the court for another of those districts, and notice of any such direction shall be given by the proper officer to all parties who were not present when the direction was given.

(4) Where an application under paragraph (1) is made at a time when no day has been fixed for a pre-trial review, the court may, if it thinks it appropriate to do so, treat the hearing of the application as a day fixed for that purpose and the provisions of Order 17 shall apply accordingly.

(5) The provisions of this rule are without prejudice to Order 6, rule 7, Order 9, rule 11, and Order 17, rules 3 and 10.

Adjournment

3.—(1) The court may at any time and from time to time, upon application or of its own motion, by order adjourn or advance the date of the hearing of any proceedings.

(2) Notice of any such adjournment or advancement shall be given by the proper officer to all parties who were not present when the order was made.

(3) If the hearing of any action or matter is adjourned generally, any party may apply to have a day fixed for the hearing and the proper officer shall fix a day and give notice of it to all parties.

(4) If no application is made under paragraph (3) within 12 months of the day on which the order was made adjourning the action or matter generally, the proper officer may give notice to all parties under this paragraph and, unless any party applies within 14 days after receipt of the notice to have a day fixed for the hearing or to have the hearing again adjourned and the application is granted, the action or matter shall be struck out.

Extension or abridgment of time

4.—(1) Except as otherwise provided, the period within which a person is required or authorised by these rules or by any judgment, order or direction to do any act in any proceedings may be extended or abridged by consent of all the parties or by the court on the application of any party.

(2) Any such period may be extended by the court although the application for extension is not made until after the expiration of the period.

Striking out pleadings

5.—(1) The court may at any stage of the proceedings in an action order the whole or any part of any pleading to be struck out or amended on the ground that—

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

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

(2) Any application for an order under paragraph (1) shall be made on notice to the party affected by it.

(3) This rule shall apply with the necessary modifications to a matter as it applies to an action.

Application for injunction

6.—(1) An application for the grant of an injunction may be made by any party to an action or matter before or after the trial or hearing, whether or not a claim for the injunction was included in that party's particulars of claim, originating application, petition, counterclaim or third party notice, as the case may be.

(2) Rule 1(6) shall not apply and, unless the registrar has power under any other provision of these rules to grant the injunction, the application shall be made to the judge.

(3) Where the applicant is the plaintiff and the case is one of urgency, the application may be made ex parte on affidavit but, except as aforesaid, the application must be made on notice, and in any case the affidavit or notice must state the terms of the injunction applied for.

(4) The plaintiff may not make an application before the issue of the summons, originating application or petition by which the action or matter is to be commenced except where the case is one of urgency and in that case—

- (a) the affidavit on which the application is made shall show that the action or matter is one which the court to which the application is made has jurisdiction to hear and determine, and
- (b) the injunction applied for shall, if granted, be on terms providing for the issue of the summons, originating application or petition in the court granting the application and on such other terms, if any, as the court thinks fit.

(5) Unless otherwise directed, every application not made ex parte shall be heard in open court.

(6) Except where the case is one of urgency, a draft of the injunction shall be prepared beforehand by the party making an application to the judge under paragraph (1) and, if the application is granted, the draft shall be submitted to the judge by whom the application was heard and shall be settled by him.

(7) The injunction, when settled, shall be forwarded to the proper officer for filing.

Application of R.S.C. relating to other interlocutory matters

7.—(1) Subject to the following paragraphs of this rule, the provisions of the R.S.C. with regard to—

- (a) the payment into court of money in respect of which the defendant claims a lien on or other right to retain specific property (other than land) which the plaintiff seeks to recover;
- (b) the detention, custody, preservation or inspection of any relevant property;
- (c) the payment into court or securing of a specific fund which is in dispute in an action or matter;
- (d) the delivery up of any relevant goods under section 2 of the Torts (Interference with Goods) Act 1977;
- (e) the taking of any sample of or the making of any observation or experiment on any relevant property;
- (f) the sale of any relevant property (other than land) which is of a perishable nature or likely to deteriorate if kept or which for any other good reason it is desirable to sell forthwith;
- (g) the exercise of the powers conferred by section 21 of the Administration of Justice Act 1969 or section 31 or 32 of the Administration of Justice Act 1970;
- (h) the taking or making of any necessary accounts or inquiries,

shall apply in relation to proceedings or, as the case may be, subsequent proceedings in a country court as they apply in relation to proceedings or subsequent proceedings in the High Court.

In this paragraph “relevant property” and “relevant goods” mean property or, as the case may be, goods which is or are the subject matter of an action or matter or as to which any question may arise therein.

(2) Rule 6(3) and (4) shall apply with the necessary modifications to an application for the relief mentioned in sub-paragraph (d) of paragraph (1) as they apply to an application for an injunction.

(3) An application for the exercise of the powers conferred by section 21 of the said Act of 1969 or section 31 of the said Act of 1970 shall be made by originating application and the affidavit in support of the application shall show that the subsequent proceedings are such as the court to which the application is made has jurisdiction to hear and determine.

(4) An application for any other relief mentioned in paragraph (1) shall be made by notice and, in the case of an application for the exercise of the powers conferred by section 32 of the said Act of 1970, the notice shall be served on the person against whom the order is sought.

Security for costs where plaintiff resident out of England and Wales

8.—(1) Where, on the application of a defendant to an action or other proceeding, it appears to the court that the plaintiff is ordinarily resident out of England and Wales, then if, having regard to all the circumstances of the case, the court thinks it reasonable to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just.

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

(3) The foregoing paragraphs are without prejudice to the provisions of any enactment by or under which the court is empowered to require security to be given for the costs of any proceedings.

Order for consolidation etc

9.—(1) Where two or more actions or matters are pending in the same county court and it appears to the court—

- (a) that some common question of law or fact arises in both or all of them, or
- (b) that the rights to relief claimed are in respect of or arise out of the same transaction or series of transactions, or
- (c) that for some other reason it is desirable to make an order under this rule,

the court may order that the actions or matters be consolidated or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until the determination of any other of them.

(2) An order under paragraph (1) may be made by the court of its own motion or on the application of any party on notice to all other parties to the actions or matters affected.

Juries

10.—(1) An application for an order for trial with a jury may be made by any party on notice stating the grounds of the application.

(2) Notice shall, if time permits, be given not less than 10 days before the return day, and where notice is given later or where for that or any other reason the application is not heard in time for a jury to be summoned, the judge or registrar may, on such terms as he thinks fit, postpone the trial so as to allow time for a jury to be summoned.

(3) Notice of any order for trial with a jury shall be given by the proper officer to any party who was not present when the order was made.

Assessors

11.—(1) A party to any proceedings who desires an assessor to be summoned to assist the judge at the hearing shall, not less than 14 days before the day fixed for the hearing, file an application in that behalf.

(2) The proper officer shall submit to the judge any application made under paragraph (1) and, if the judge grants the application, the proper officer shall give to the parties notice stating the name of the person proposed to be summoned as assessor.

(3) A party who objects to the person proposed to be summoned as assessor shall, within 4 days after service on him of the notice under paragraph (2), give to the proper officer notice of his objection stating the grounds thereof and on receipt of the notice the proper officer shall fix a day for the hearing of the objection and give notice thereof to the parties including, except in the notice to the party objecting, a statement of the grounds of the objection.

(4) Where no notice of objection is given within the time limited or where an objection has been heard and an assessor has been selected, the applicant shall deposit in the court office such sum as the registrar thinks reasonable in respect of the assessor's fee for the day of hearing and thereupon the proper officer shall summon the assessor.

(5) If an application for an assessor is refused, the proper officer shall give notice of the refusal to the parties.

(6) An order summoning an assessor may be varied or revoked by the judge on application or of his own motion.

(7) An assessor shall be entitled to such fee for attending court as would be allowed on taxation in respect of an expert witness.

(8) Where the hearing of proceedings in which an assessor has been summoned is adjourned, the party on whose application the assessor was summoned shall forthwith deposit in the court office such sum as the registrar thinks reasonable in respect of the assessor's fee for the day of the adjourned hearing.

ORDER 14

DISCOVERY AND INTERROGATORIES

Discovery of documents

1.—(1) Subject to the provisions of this rule and of rule 8, the court may, on the application on notice of any party to an action or matter, make an order (in these rules referred to as an “order for discovery”) directing any other party to make a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the proceedings and may at the same time or subsequently also order him to make an affidavit verifying such a list.

(2) Where the applicant for an order for discovery did not make a written request for the discovery he desires, the court may refuse to make the order unless satisfied that there were sufficient reasons for not making such a request.

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

(4) An order under this rule shall be drawn up by the proper officer and shall be served on the party against whom it is made.

(5) A list of documents made in compliance with an order or request, and any affidavit verifying such a list, shall be filed and a copy shall at the same time be served on the applicant.

Disclosure of particular documents

2.—(1) Subject to rule 8, the court may, on the application on notice of any party to an action or matter, make an order directing any other party to make an affidavit stating whether any document, or any class of document, specified or described in the application is or has at any time been in his possession, custody or power and, if not still in his possession, custody or power, when he parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he has already made or been required to make a list of documents or affidavit under rule 1.

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

Inspection of documents referred to in list

3. A party who makes a list of documents in compliance with an order or request under rule 1 shall allow the applicant to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies thereof and accordingly, when he serves the list on the applicant, he shall also serve on him a notice stating a time within 7 days after service at which the documents may be inspected at a place specified in the notice.

Inspection of documents referred to in pleadings and affidavits

4.—(1) Any party to an action or matter shall be entitled at any time to serve on any other party in whose pleadings or affidavits reference is made to any document a notice requiring him to produce it for the inspection of the party giving the notice and to permit him to take copies thereof.

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

Order for production for inspection

5.—(1) If a party who is required to serve such a notice as is mentioned in rule 3 or who is served with a notice under rule 4(1)—

- (a) fails to serve a notice under rule 3 or, as the case may be, rule 4(2), or
- (b) objects to produce any documents for inspection, or
- (c) offers inspection at a time or place which in the opinion of the court is unreasonable,

then, subject to rule 8, the court may, on the application on notice of the party entitled to inspection, make an order for production of the documents for inspection at such time and place, and in such manner, as the court thinks fit.

(2) Without prejudice to paragraph (1), but subject to rule 8, the court may, on the application on notice of any party to an action or matter, order any other party to permit the applicant to inspect any documents in the possession, custody or power of the other party relating to any matter in question in the proceedings.

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

Inspection by court before order

6. Where, on an application for an order for the production of any document for inspection, privilege from production is claimed or objection to production is made on any other ground, the court may inspect the document for the purpose of deciding whether the claim or objection is valid.

Order for production to court

7. At any stage of the proceedings in an action or matter the court may, subject to rule 8, order any party to produce to the court any document in his possession, custody or power relating to any matter in question in the proceedings and the court may deal with the document when produced in such manner as it thinks fit.

Discovery etc. to be ordered only if necessary

8.—(1) On the hearing of an application under rule 1, 2 or 5, the court, if satisfied that the discovery, disclosure or production sought is not necessary, or not necessary at that stage of the action or matter, may dismiss or adjourn the application and shall in any case refuse to make an order if and so far as it is of opinion that discovery, disclosure or production, as the case may be, is not necessary either for disposing fairly of the action or matter or for saving costs.

(2) No order shall be made under rule 7 unless the court is of opinion that production of the document is necessary as aforesaid.

Saving for public interest

9. The foregoing provisions of this Order shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

Failure to comply with order for discovery etc

10.—(1) If any party who is required by an order under any of the foregoing rules to make discovery of or disclose any documents or to produce any documents for inspection or for any other purpose fails to comply with the order, the court may make such order as it thinks just, including in particular an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment entered accordingly.

(2) Without prejudice to paragraph (1), a party who fails to comply with any order for discovery, disclosure or production of documents shall be liable to committal.

(3) Notwithstanding anything in Order 29, rule 1(2), service on a party's solicitor of an order for discovery, disclosure or production of documents shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

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

Interrogatories

11.—(1) Subject to the following paragraphs, the provisions of the R.S.C. with regard to the administration of interrogatories shall apply in relation to an action or matter in the county court as they apply in relation to a cause or matter in the High Court.

(2) An application for leave to serve interrogatories shall be made on notice to the party by whom the interrogatories are to be answered.

(3) If leave is granted, an order shall be drawn up by the proper officer and, subject to paragraph (4), shall be served on the party against whom it is made.

(4) The provisions of the R.S.C. making service of the order on a party's solicitor sufficient to found an application for committal of the party disobeying the order shall apply notwithstanding anything in Order 29, rule 1(2).

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

Revocation and variation of orders

12. Any order made under a power conferred by this Order (including an order made on appeal from the registrar to the judge) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the court made or given at or before the hearing of the action or matter in connection with which the original order was made.

ORDER 15

AMENDMENT

Amendment by order

1.—(1) Without prejudice to Order 5, rules 8 and 11, and rule 2 of this Order, but subject to the following paragraphs of this rule, the court may, in any action or matter, by order allow or direct—

(a) any originating process, pleading or any other document in the proceedings to be amended, or

(b) any person to be added, struck out or substituted as a party to the proceedings,

if the amendment, whether falling within sub-paragraph (a) or (b), is such that the High Court would have power to allow in a like case.

(2) In any case where a relevant limitation period has expired, the reference in paragraph (1) to the power of the High Court to allow the amendment shall be construed, in particular, as a reference to its power to do so subject to the conditions and restrictions imposed by section 35 of the Limitation Act 1980 and the R.S.C. made thereunder.

(3) An order under paragraph (1) may be made on application at the hearing of the action or matter or before the hearing on notice or by the court of its own motion at any stage of the proceedings.

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

(5) If a summons or other document issued by the court is to be amended pursuant to an order under paragraph (1), the amendment shall be made by the proper officer, and if any other document is to be amended, the amendment shall be made by the party whose document it is and he shall, if authorised or required to do so, file and serve on every other party to the proceedings a copy of the document as so amended.

(6) Where by an order under paragraph (1) a person is added or substituted as a defendant, the amended originating process shall, unless the court otherwise directs, be served on him in accordance with the rules applicable to the service of the originating process.

In relation to a person added or substituted as a defendant to a counterclaim this paragraph shall have effect as if for the reference to the amended originating process there were substituted a reference to the amended counterclaim.

Amendment of pleadings without order

2.—(1) Subject to Order 9, rule 2(3), and the following provisions of this rule, a party to an action or matter may, without an order, amend any pleading of his at any time before the return day by filing the amended pleading and serving a copy on the opposite party.

Where a day has been fixed for the pre-trial review of the action or matter, that day shall be treated as the return day for the purpose of this paragraph.

(2) Where in a default action the plaintiff's claim is amended under paragraph (1) by adding or substituting a claim which could not be made in a default action, the action shall continue as if it had been commenced as a fixed date action.

(3) The court may, of its own motion or on the application of the opposite party, disallow an amendment made under paragraph (1) and shall do so where it is satisfied that, if an application for leave to make the amendment had been made under rule 1, leave would have been refused.

Joinder of defendant in action for recovery of land

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

(2) An application by any person for an order adding him as a defendant under this rule may be made ex parte in writing stating the grounds of the application and showing that the applicant is in possession of the land in question and, if by a tenant, naming him.

(3) Where an order is made adding a person as a defendant under this rule, the proper officer shall send notice of the order, together with a copy of the application, to every other party to the proceedings.

Actions for wrongful interference with goods

4.—(1) Where the plaintiff in an action for wrongful interference with goods is one of two or more persons having or claiming any interest in the goods, then unless he has the written authority of every other such person to sue on the latter's behalf, the particulars of claim shall contain particulars of the plaintiff's title and identify every other person who, to his knowledge, has or claims any interest in the goods.

This paragraph shall not apply to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle.

(2) A defendant to an action for wrongful interference with goods who desires to show that a third party has a better right than the plaintiff as respects all or any part of the interest claimed by the plaintiff may, at any time after service of the summons on the defendant and before any judgment or order is given or made on the plaintiff's claim, apply to the court on notice for directions as to whether any person named in the application (not being a person whose written authority the plaintiff has to sue on his behalf) should be joined with a view to establishing whether he has a better right than the plaintiff, or has a claim as a result of which the defendant might be doubly liable within the meaning of section 7 of the Torts (Interference with Goods) Act 1977.

Notice of any application under this paragraph shall, as well as being served on the plaintiff, be served on every person named in the application in accordance with the rules applicable to the service of a fixed date summons.

(3) Where a person named in an application under paragraph (2) fails to appear on the hearing of the application or to comply with any direction given by the court on the application, the court may by order deprive him of any right of action against the defendant for the wrong, either unconditionally or subject to such terms and conditions as the court thinks fit.

Clerical mistakes and errors

5. 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 16

TRANSFER OF PROCEEDINGS

PART I

FROM ONE COUNTY COURT TO ANOTHER

General power of transfer

1. If the judge or registrar of any court is satisfied that—
 - (a) any action or matter in that court could be more conveniently or fairly heard and determined in some other court, or
 - (b) any default action in that court could be more conveniently or fairly disposed of under Order 9, rule 3(3), in some other court, or
 - (c) any pre-trial review or interlocutory application in an action or matter in that court could be more conveniently or fairly conducted or heard in some other court, or
 - (d) any proceedings for the enforcement of a judgment or order in an action or matter in that court could be more conveniently or fairly taken in some other court, or
 - (e) any payments required to be made into court under a judgment or order in an action or matter in that court could be more conveniently made into some other court,

then, subject to rule 3 and without prejudice, as respects paragraph (d), to Order 25, rule 2, the judge or registrar may order the action or matter to be transferred to that other court.

Proceedings commenced in wrong court

2. Where proceedings are commenced in the wrong court, the judge or registrar may, subject to rule 3,—
 - (a) transfer the proceedings to the court in which they ought to have been commenced, or
 - (b) order the proceedings to continue in the court in which they have been commenced, or
 - (c) order the proceedings to be struck out.

Saving for statutory provisions

3. Where an action or matter is required by any Act or statutory instrument other than these rules to be commenced in a particular court, nothing in rule 1 or 2 shall authorise the making of an order for the transfer of the action or matter to, or its continuance in, another court.

Making and carrying out of order for transfer

4.—(1) Subject to paragraph (2), an order for the transfer of proceedings under rule 1 or 2 may be made by the judge or, as the case may be, the registrar of his own motion or on the application of any party on notice to all other parties.

(2) A defendant who does not reside or carry on business within the district of the court in which an action has been commenced may, after delivering a defence at the court office, apply ex parte in writing to that court for an order under rule 1(a), (b) or (c) transferring the action to the court for the district in which he resides or carries on business; and the judge or registrar of the first-mentioned court may, if he thinks fit, grant the application after considering any representations which he may give the plaintiff an opportunity of making.

(3) Where a transfer is ordered under any of the foregoing provisions the proper officer of the court in which the action or matter is pending shall give notice of the transfer to all parties and shall send to the proper officer of the other court a certified copy of all the relevant entries in the records of the first-mentioned court.

(4) If the transfer is ordered under rule 1(a), (b) or (c) or rule 2(a), or the proper officer of the other court so requests, the proper officer sending the certified copy mentioned in paragraph (3) shall also send all the documents in his custody relating to the action or matter.

(5) On receipt of the certified copy and any documents sent under paragraph (4) the proper officer of the court to which the action or matter has been transferred shall, if the transfer was ordered under rule 1(a), (b) or (c), fix a day for the pre-trial review or, as may be appropriate, the hearing or disposal of the action or matter and send notice thereof in the appropriate form to all the parties.

In this paragraph a day for the hearing of the action or matter means, in the case of an action or matter which is to be referred to the arbitration of the judge or registrar, the day on which the arbitration will be proceeded with.

(6) All subsequent proceedings shall be taken in the court to which the action or matter has been transferred except that, where the transfer was ordered under rule 1(d) or (e), any application or appeal under any of the provisions of Order 37 shall be made to the court in which the judgment or order was given or made.

Transfer of money in court

5.—(1) The judge or registrar of any county court may, at any time, on application or of his own motion, order any money held by that court under Order 10, rule 11(1), or section 174 of the Act to be transferred to another county court if he is of opinion that it may be more conveniently dealt with in that court.

(2) Where such an order is made, the proper officer of the court holding the money shall transfer it to the other court in accordance with the County Court Funds Rules and shall send to the proper officer of the other court a certified copy of the relevant entries in the records of the first-mentioned court and, if so requested by that officer, all the documents in his custody relating to the proceedings.

PART II

FROM THE HIGH COURT TO A COUNTY COURT

General provisions on transfer from High Court

6.—(1) Where by an order of the High Court—

- (a) any proceedings are to be transferred to a county court, or
- (b) an issue is directed to be tried in a county court,

the proper officer of the county court, on receipt of the documents mentioned in section 77(1) or 146(2) of the Act, as the case may be, shall enter the proceedings or issue in the records of the court and shall fix a day for the hearing of the proceedings or issue or, if he thinks fit, a day for a pre-trial review and give 21 days' notice thereof to every party.

(2) The party lodging or causing to be lodged with the proper officer the documents aforesaid shall at the same time file—

- (a) a statement of the names and addresses of the parties and of their solicitors;
- (b) if he is the plaintiff and has not indorsed a statement of claim on the writ or served a statement of claim in the High Court, particulars of his claim, together with a copy for each defendant;

- (c) if he is the defendant and only a counterclaim is transferred and the counterclaim has not been served in the High Court, particulars of the counterclaim, together with a copy for the plaintiff;
- (d) where money has been paid into the High Court, a copy of the notice of payment into court, and
- (e) a copy of any other pleading served but not filed in the High Court.

(3) Where—

- (a) a statement of claim has been indorsed on the writ or served in the High Court but no defence has been served there, or
- (b) particulars of claim have been filed in the county court pursuant to paragraph (2)(b),

the defendant shall, within 14 days after receipt of the notice given under paragraph (1), deliver at the court office a defence and, if he has a counterclaim, particulars of the counterclaim, together with a copy for the plaintiff.

(4) Where only a counterclaim is transferred, paragraph (3) shall apply, with the necessary modifications, to the counterclaim as it applies to a claim.

(5) On receipt of any document filed by the plaintiff pursuant to paragraph (2)(b) or by the defendant pursuant to paragraph (2)(c) or (3), the proper officer shall send a copy to each defendant or, as the case may be, to the plaintiff.

(6) For the purpose of enabling a party to obtain further particulars, Order 6, rule 7, Order 9, rule 11(2) to (4), and Order 13, rule 2(2), shall apply in relation to—

- (a) a statement of claim indorsed on the writ or served in the High Court,
- (b) particulars of claim or counterclaim filed pursuant to paragraph (2), or
- (c) a defence or counterclaim filed pursuant to paragraph (3),

as they apply in relation to particulars of claim, defence or counterclaim delivered in an action commenced in the county court.

Interpleader proceedings under execution

7.—(1) In relation to interpleader proceedings under an execution which are ordered to be transferred from the High Court under section 68 of the Act, rule 6 shall have effect subject to the provisions of this rule.

(2) Notice of the hearing or pre-trial review of the proceedings shall be given by the proper officer to the sheriff as well as to every other party to the proceedings.

(3) The claimant shall, within 8 days of the receipt by him of the notice referred to in paragraph (2), file in triplicate particulars of any goods alleged to be his property and the grounds of his claim and the proper officer shall send a copy to the execution creditor and to the sheriff, but the judge may hear the proceedings or, as the case may be, the registrar may proceed with the pre-trial review, if he thinks fit, notwithstanding that the particulars have not been filed.

(4) Subject to any directions in the order of the High Court, damages may be claimed against the execution creditor in the same manner as in interpleader proceedings commenced in a county court.

(5) On any day fixed for the preliminary consideration of the proceedings or for the hearing of any application by the sheriff or other party for directions the court may order the sheriff—

- (a) to postpone the sale of the goods seized, or
- (b) to remain in possession of such goods until the hearing of the proceedings, or
- (c) to hand over possession of such goods to the registrar,

and, where a direction is given under sub-paragraph (c), the registrar shall be allowed reasonable charges for keeping possession of the goods, not exceeding those which might be allowed to the sheriff, and, if the registrar is directed to sell the goods, such charges for the sale as would be allowed under an execution issued by the county court.

(6) No order made in the proceedings shall prejudice or affect the rights of the sheriff to any proper charges and the judge may make such order with respect to them as may be just.

(7) The charges referred to in paragraphs (5) and (6) shall ultimately be borne in such manner as the judge shall direct.

(8) The order made at the hearing of the proceedings shall direct how any money in the hands of the sheriff is to be disposed of.

Money for benefit of person under disability

8.—(1) Where money has been received by a county court under section 174 of the Act for the benefit of a person under disability, the registrar shall notify his next friend or guardian ad litem, as the case may be.

(2) Order 10, rule 11(2) and (3), shall apply in relation to the money and any interest thereon as if the money had been recovered in proceedings in the county court.

(3) The court may direct that any costs or expenses incurred in connection with any of the matters referred to in the previous paragraphs of this rule shall be paid out of the money and any interest thereon and that any investments may be sold for that purpose.

(4) Where an order has been made by the High Court for payment of any costs to a solicitor out of the money, the amount of such costs, if not paid before the money was received by the county court, shall, on the application of the solicitor, supported by the certificate of the taxing officer of the High Court, be paid out of the money received, and any investments may be sold for that purpose if the court thinks fit.

(5) The court may at any time require the next friend or guardian ad litem to obtain and produce the writ, pleadings and any other documents used in the proceedings in the High Court.

PART III

FROM A COUNTY COURT TO THE HIGH COURT

Action for recovery of land

9. An application to the High Court under section 49 of the Act for the transfer of an action for recovery of land to the High Court shall be made within 14 days after the service of the summons on the defendant.

Objection to trial in county court

10.—(1) Notice of objection under section 44 of the Act to an action being tried in a county court shall be given to the plaintiff within 14 days after service of the summons on the defendant.

(2) An application for the certificate required by subsection (2)(b) of the said section 44 shall be made to the judge on notice to the proper officer and the plaintiff, accompanied by an affidavit showing the important question of law or fact which the defendant alleges is likely to arise.

(3) If the certificate is granted and the security required by subsection (2)(a) of the said section 44 is given, the proper officer shall give notice to that effect to the plaintiff.

Procedure on transfer or removal

11. Where an order is made by the High Court or a county court for the transfer or removal of any proceedings from a county court to the High Court, the proper officer shall—

- (a) send notice of the transfer or removal to all parties to the proceedings, and
- (b) make copies of all entries in the records of the court relating to the proceedings and send them, certified by the registrar, to the proper officer of the High Court, together with—
 - (i) all documents filed in the proceedings,
 - (ii) the order of transfer if made by the county court, and
 - (iii) in the case of legitimacy proceedings, a certificate by the registrar showing the state of the proceedings and the steps which have been taken therein.

Certiorari or prohibition

12. A party obtaining from the High Court, on an ex parte application, an order giving leave to make an application for an order of certiorari to remove proceedings from a county court or an order of prohibition to any such court shall forthwith serve a copy of the order on the opposite party and on the proper officer of the county court.

ORDER 17

PRE-TRIAL REVIEW

Matter to be considered on pre-trial review

1. On any day fixed for the pre-trial review of an action or matter the registrar shall, subject to the following provisions of this Order, consider the course of the proceedings and give all such directions as appear to be necessary or desirable for securing the just, expeditious and economical disposal of the action or matter.

Securing admissions and agreements

2. On the pre-trial review the registrar shall endeavour to secure that the parties make all such admissions and agreements as ought reasonably to be made by them in relation to the proceedings and may record in the order made on the review any admission or agreement so made or any refusal to make any admission or agreement.

Application for particular direction

3. Every party shall, so far as practicable, apply on the pre-trial review for any particular direction he may desire and shall file and give to every other party notice of his intention to do so, and if an application which might have been made on the review is made subsequently, the applicant shall pay the costs of and occasioned by the application, unless the court otherwise directs.

Rules as to interlocutory applications to apply

4. The provisions of these rules relating to interlocutory applications shall have effect as if the pre-trial review were the hearing of an interlocutory application and accordingly the registrar may, on the review, exercise any of the powers exercisable by him on an interlocutory application and may do so of his own motion if no application is made for the exercise of the power.

Non-appearance by plaintiff

5.—(1) If the plaintiff does not appear on the pre-trial review, the registrar may, without prejudice to any other power, proceed with the review in his absence or order the action or matter to be struck out.

(2) Order 21, rules 1(2) and (3) and 2(2), shall apply, with the necessary modifications, in relation to the striking out of an action or matter under paragraph (1) as they apply in relation to the striking out of proceedings under Order 21, rule 1(1).

Admission by defendant of plaintiff's claim

6. If, on or before the pre-trial review, the defendant admits the plaintiff's claim or such part thereof as the plaintiff accepts in satisfaction of his claim, the registrar may give such judgment or make such order as he thinks just.

Non-appearance by defendant who has not delivered admission or defence

7.—(1) If the defendant does not appear on the pre-trial review of an action and has not delivered an admission or defence, the registrar may, if he thinks fit, enter judgment for the plaintiff.

(2) If the plaintiff's claim is for unliquidated damages, any judgment entered under paragraph (1) shall be an interlocutory judgment for damages to be assessed, unless at the time of the entry of judgment the plaintiff adduces evidence as to the amount of his damages.

Non-appearance by defendant who has delivered defence

8. If the defendant has delivered a defence but does not appear on the pre-trial review of an action, the registrar may, at the request of the plaintiff and upon proof of facts entitling him to relief, give such judgment or make such order as the registrar thinks fit.

Fixing date of hearing

9. On or as soon as practicable after the completion by the registrar of his consideration of the matters referred to in rule 1 the proper officer shall, if the action or matter remains to be heard and determined, fix a day for the hearing and give notice thereof to every party.

Pre-trial review in other proceedings

10. If in any proceedings in which no pre-trial review has been fixed the registrar is nevertheless of opinion that the question of giving directions ought to be considered, then, without prejudice to Order 13, rule 2(4), he may, with a view to obtaining assistance in such consideration, cause notice to be given to the parties requiring them to appear before him on a day named in the notice and thereupon the provisions of this Order shall have effect, with the necessary modifications, as if that day were the day fixed for a pre-trial review.

ORDER 18

DISCONTINUANCE OF PROCEEDINGS

Notice of discontinuance

1. The plaintiff in an action or matter may, at any time before judgment or final order, discontinue the proceedings wholly or in part against all or any of the defendants thereto by giving notice to the

proper officer and to every defendant against whom he desires to discontinue, and the notice to the proper officer shall contain a certificate by the plaintiff that he has also given notice to the defendant.

Effect of discontinuance

2.—(1) Subject to the following paragraphs of this rule and to Order 19, rule 6, and Order 38, rule 3(4), a defendant served with a notice of discontinuance under rule 1 may, unless the court on the application of the plaintiff otherwise directs, lodge for taxation a bill of the costs incurred by him before the receipt of the notice or, if the proceedings are not wholly discontinued against him, his costs so incurred in relation to the part discontinued and, if the costs allowed on taxation are not paid within 14 days after taxation, he may have judgment entered for the taxed costs and the costs of entering judgment.

(2) Where the proceedings are not wholly discontinued against a defendant entering judgment for costs pursuant to paragraph (1), execution shall not issue for such costs, without the leave of the court, before the proceedings are determined.

(3) Discontinuance of any action or matter or a particular claim therein under rule 1 shall not be a defence to subsequent proceedings for the same or substantially the same cause of action; but if any such proceedings are subsequently brought before payment of any costs taxed under paragraph (1), the court may order them to be stayed until those costs have been paid.

Discontinuance of counterclaim

3. Rules 1 and 2 shall apply, with the necessary modifications, in relation to the discontinuance by a defendant of a counterclaim as they apply in relation to the discontinuance by a plaintiff of an action or matter.

ORDER 19

REFERENCE TO ARBITRATION OR FOR INQUIRY AND REPORT OR TO EUROPEAN COURT

PART I

REFERENCE TO ARBITRATION

Interpretation of Part I

1. In this Part of this Order, unless the context otherwise requires, “reference” means the reference of proceedings to arbitration under section 92 of the Act, “order” means an order referring proceedings to arbitration under that section and “outside arbitrator” means an arbitrator other than the judge or registrar.

Mode of reference

2.—(1) Except as provided by paragraph (3), a reference shall be made only on the application of a party to the proceedings sought to be referred.

(2) Unless the court otherwise directs, an application by a party to any proceedings for a reference may be made—

- (a) in the case of a plaintiff, by notice incorporated in his particulars of claim or request for the issue of a summons;
- (b) in the case of a defendant, by notice incorporated in any defence or counterclaim of his;

(c) in any case, on notice under Order 13, rule 1.

(3) Any proceedings in which the sum claimed or amount involved does not exceed £500 shall stand referred for arbitration by the registrar upon the receipt by the court of a defence to the claim, but the registrar may, on the application of any party, refer the proceedings for arbitration by the judge or by an outside arbitrator.

(4) Where any proceedings are referred for arbitration by the registrar under paragraph (3), he may, on the application of any party, rescind the reference if he is satisfied—

- (a) that a difficult question of law or a question of fact of exceptional complexity is involved; or
- (b) that a charge of fraud is in issue; or
- (c) that the parties are agreed that the dispute should be tried in court; or
- (d) that it would be unreasonable for the claim to proceed to arbitration having regard to its subject matter, the circumstances of the parties or the interests of any other person likely to be affected by the award.

(5) Where an application for a reference is made under paragraph (1) and the proceedings are not referred to arbitration under paragraph (3), the following provisions shall apply:—

- (a) Subject to sub-paragraphs (b) to (d), an order may be made by the registrar.
- (b) Any party to the proceedings may, at any time before the application is heard, request the registrar in writing to refer the application to the judge and thereupon the proper officer shall fix a day for the hearing of the application by the judge and give notice thereof to the parties.
- (c) An order shall not be made referring proceedings to the judge except by or with the leave of the judge.
- (d) An order shall not be made referring proceedings to an outside arbitrator except with the consent of the parties.
- (e) If the court is satisfied that a charge of fraud against a party is in issue in the proceedings, an order shall not be made except with the consent of that party.

Reference of other matters in dispute

3. If it appears to the court at any time after a reference has been made, whether by order or otherwise, that there are any other matters within the jurisdiction of the court in dispute between the parties, the court may order them also to be referred to arbitration.

Service of order for reference to outside arbitrator

4. Where proceedings are referred to an outside arbitrator, the order or request shall be served on the arbitrator as well as on the parties, but it shall not, unless the court directs, be served on anyone until each party has paid into court such sum as the registrar may determine in respect of the arbitrator's remuneration.

Conduct of reference

5.—(1) Subject to any directions of the court as to the conduct of the reference, rule 9(a) to (e) shall apply, with the necessary modifications, in relation to a reference or order as they apply in relation to an order under section 93 of the Act.

(2) Any proceedings referred to arbitration under rule 2 shall be referred on the terms set out below unless the court otherwise directs:—

Terms of reference

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(1) The arbitrator shall appoint a date for the preliminary consideration of the dispute and ways of resolving it, unless the size or nature of the claim or other circumstances make such a course undesirable or unnecessary.

(2) Where the registrar is the arbitrator, he shall have the same powers on the preliminary At appointment as he has under Order 17 on a pre-trial review.

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- (3) Any hearing shall be informal and the strict rules of evidence shall not apply.
- (4) At the hearing the arbitrator may adopt any method of procedure which he may consider to be convenient and to afford a fair and equal opportunity to each party to present his case
- (5) If any party does not appear at the arbitration, the arbitrator may make an award on hearing any other party to the proceedings who may be present.
- (6) Where an award has been given in the absence of a party, the arbitrator shall have power, on that party's application, to set the award aside and to order a fresh hearing as if the award were a judgment and the application were made pursuant to Order 37, rule 2.
- (7) With the consent of the parties and at any time before giving his decision and either before or after the hearing, the arbitrator may consult any expert or call for an expert report on any matter in dispute or invite an expert to attend the hearing as assessor.
- (8) Subject to the provisions of Order 19, rule 6, in respect of claims involving £500 or less, the costs of the action up to and including the entry of judgment shall be in the discretion of the arbitrator to be exercised in the same manner as the discretion of the court under the provisions of the County Court Rules.

Restriction on allowance of costs

6. No solicitors' charges shall be allowed as between party and party in respect of any proceedings referred to arbitration under rule 2(3), except—

- (a) the costs which were stated on the summons or which would have been stated on the summons if the claim had been for a liquidated sum;
- (b) the costs of enforcing the award, and
- (c) such costs as are certified by the arbitrator to have been incurred through the unreasonable conduct of the opposite party in relation to the proceedings or the claim therein.

PART II

REFERENCE FOR INQUIRY AND REPORT

Mode of making order for reference

7. An order under section 93 of the Act for the reference of any proceedings or questions to the registrar or a referee for inquiry and report may be made—

- (a) on an application by any party before the hearing on notice; or

- (b) on an application by any party at the hearing; or
- (c) at any stage of the proceedings by the court of its own motion.

Registrar's power to make order

8. An order referring any question arising in any proceedings to a referee for inquiry and report may be made by the registrar if the sum claimed or amount involved in the proceedings does not exceed the sum mentioned in Order 21, rule 5(1)(b), or in any other case with the consent of the parties.

Conduct of reference

9. Subject to any order as to the conduct of the reference—
- (a) the registrar may hold the inquiry at the court house or at the court office or at any place convenient to the parties;
 - (b) a referee, other than the registrar, may hold the inquiry at any place convenient to the parties;
 - (c) the registrar or referee may inspect any property or thing concerning which any question may arise;
 - (d) the attendance of witnesses may be enforced by summons and the inquiry shall be conducted in the same manner, as nearly as circumstances will permit, as if the inquiry were the hearing of an action;
 - (e) subject to rule 10, the registrar or referee shall have the powers of a judge with respect to discovery and production of documents and in the conduct of the inquiry;
 - (f) the registrar or referee may submit any question arising in the inquiry for the decision of the court;
 - (g) the report shall be in writing and filed and—
 - (i) the proper officer shall give notice to all parties of the filing of the report;
 - (ii) subject to the right of the referee or any party to appeal to the judge, the registrar shall fix the remuneration of the referee unless it has been agreed;
 - (iii) upon payment into court by any party of the amount fixed for the remuneration of the referee, without prejudice as to how it shall ultimately be borne, the parties shall be at liberty to inspect the report;
 - (h) when the report has been filed—
 - (i) if the further consideration of the proceedings has not been adjourned to a day named, the proper officer shall fix a day and give not less than 10 days' notice thereof to all parties;
 - (ii) on the day named or fixed any party may apply to the court to adopt the report or, on giving not less than 5 days' notice of his intention to do so, may apply to the court to vary the report or to remit it or any part of it for further inquiry and report, and any such notice shall contain particulars of the variation or remission sought;
 - (iii) the court may at any time on the application of any party or the referee determine by whom and (if by more than one person) in what proportions the remuneration and expenses of the referee shall be borne, whether or not any payment or deposit has been made for or on account of such remuneration and expenses, and may make all orders and give all directions necessary to give effect to the determination.

Saving for power of committal

10. Nothing in this Part of this Order shall authorise the registrar or referee to commit any person to prison or to enforce any order by committal.

PART III

REFERENCE TO EUROPEAN COURT

Making and transmission of order

11.—(1) In this rule “the European Court” means the Court of Justice of the European Communities and “order” means an order referring a question to the European Court for a preliminary ruling under Article 177 of the Treaty establishing the European Economic Community, Article 150 of the Treaty establishing the European Atomic Energy Community or Article 41 of the Treaty establishing the European Coal and Steel Community.

(2) An order may be made by the judge before or at the trial or hearing of any action or matter and either of his own motion or on the application of any party.

(3) An order shall set out in a schedule the request for the preliminary ruling of the European Court, and the judge may give directions as to the manner and form in which the schedule is to be prepared.

(4) The proceedings in which an order is made shall, unless the judge otherwise orders, be stayed until the European Court has given a preliminary ruling on the question referred to it.

(5) When an order has been made, the proper officer shall send a copy thereof to the senior master for transmission to the registrar of the European Court; but, unless the judge otherwise orders, the copy shall not be sent to the senior master until the time for appealing to the Court of Appeal against the order has expired or, if an appeal is entered within that time, until the appeal has been determined or otherwise disposed of.

(6) Nothing in these rules shall authorise the registrar to make an order.

ORDER 20

EVIDENCE

PART I

ADMISSIONS

Admission of other party's case

1. A party to an action or matter may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party, and no costs incurred after receipt of the notice in respect of the proof of any matters which the admission renders it unnecessary to prove shall be allowed.

Notice to admit facts

2.—(1) A party to an action or matter may, not later than 14 days before the trial or hearing, serve on any other party a notice requiring him to admit, for the purpose of that action or matter only, such facts, or such part of his case, as may be specified in the notice.

(2) If the party served with a notice to admit facts under paragraph (1) does not deliver a written admission of the facts within 7 days after service of the notice on him, the costs of proving the facts shall be paid by him unless the court otherwise orders.

(3) An admission made in compliance with a notice under paragraph (1) shall not be used against the party by whom it was made in any action or matter other than the one for the purpose of which it was made or in favour of any person other than the one by whom the notice was given and the court may at any time allow a party to amend or withdraw an admission so made by him on such terms as may be just.

Notice to admit or produce documents

3.—(1) Without prejudice to rule 11 and any presumption of law as to the authenticity of a document, a party to an action or matter who desires to adduce any document in evidence may, not later than 14 days before the trial or hearing, serve on any other party a notice requiring him to admit the authenticity of the document.

(2) If the party served with a notice under paragraph (1) desires to challenge the authenticity of the document, he must, within 7 days after service of the notice, serve on the party by whom it was given a notice that he does not admit the authenticity of the document and requires it to be proved at the trial, and in that case the costs of proving the document shall be paid by him unless the court otherwise orders.

(3) A party who fails to give notice of non-admission under paragraph (2) shall be deemed to have admitted the authenticity of the document unless the court otherwise orders.

(4) A party to an action or matter may serve on any other party a notice requiring him to produce the document specified in the notice at the trial or hearing of the action or matter.

PART II

EVIDENCE GENERALLY

Evidence generally to be given orally and in open court

4. Subject to any provision made by or under any Act or rule and to any rule of law, any fact required to be proved at the hearing of an action or matter by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

Evidence in chambers

5. In any proceedings in chambers evidence may be given by affidavit unless by any provision of these rules it is otherwise provided or the court otherwise directs, but the court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used in evidence without the leave of the court.

Evidence by affidavit on order

6.—(1) In any case to which rule 5 does not apply the court may, at or before the hearing of an action or matter, order that the affidavit of any witness may be read at the hearing if in the circumstances of the case it thinks it reasonable to do so.

(2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavit and as to the production of the deponent for cross-examination as the court thinks fit but, subject to such terms and to any subsequent order of the court, the deponent shall not be subject to cross-examination and need not attend the hearing for the purpose.

Use of affidavit on notice

7.—(1) Where a party desires to use at the hearing of an action or matter an affidavit which is not rendered admissible by rule 5 and in respect of which no order has been made under rule 6, he may, not less than 14 days before the hearing, give notice of his desire, accompanied by a copy of the affidavit, to the party against whom it is to be used, and unless that party, not less than 7 days after receipt of the notice, gives notice to the other party that he objects to the use of the affidavit, he shall be taken to have consented to its use and accordingly the affidavit may be used at the hearing.

(2) Where—

- (a) the defendant in a fixed date action has not delivered a defence within the time limited by Order 9, rule 2, or
- (b) the defendant in a default or fixed date action does not appear on a pre-trial review of the action,

evidence by affidavit shall be admissible in support of the plaintiff's claim without notice being given under paragraph (1), unless the court otherwise orders.

Evidence of particular facts

8. The court may, at or before the trial or hearing of any action or matter and on or before any application in the course of proceedings or any pre-trial review, order that evidence of any particular fact shall be given at the hearing of the action or matter or, as the case may be, on the application or pre-trial review in such manner as may be specified in the order, and in particular—

- (a) by the production of documents or entries in books, or
- (b) by copies of documents or entries in books, or
- (c) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.

Savings and revocation or variation of orders

9.—(1) Nothing in rules 5 to 8 or in any order made thereunder shall affect the weight, if any, to be attached to a statement admissible in evidence under any of those rules or under any such order, or the power of the court, when the statement is tendered in evidence, to refuse to admit it if in the interest of justice the court thinks fit to do so.

(2) Subject to paragraph (3), any order under rules 5 to 8 (including an order made on appeal from the registrar to the judge) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the court made at or before the hearing of the proceedings.

(3) Nothing in paragraph (2) shall enable the registrar to revoke or vary an order made by the judge.

Form and contents of affidavit

10.—(1) Subject to the following paragraphs of this rule, the provisions of the R.S.C. with respect to—

- (a) the form and contents of an affidavit;
- (b) the making of an affidavit by two or more deponents or by a blind or illiterate deponent;
- (c) the use of any affidavit which contains an interlineation, erasure or other alteration or is otherwise defective;
- (d) the striking out of any matter which is scandalous, irrelevant or otherwise oppressive;

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(e) the insufficiency of an affidavit sworn before any agent, partner or clerk of a party's solicitor; and

(f) the making and marking of exhibits to an affidavit,

shall apply in relation to an affidavit for use in a county court as they apply in relation to an affidavit for use in the High Court.

(2) Before any affidavit is used in evidence it must be filed, but in an urgent case the court may make an order upon the undertaking of a party to file, within such time as the court may require, any affidavit used by him before it is filed.

(3) Every affidavit must be indorsed with a note showing on whose behalf it is filed and the court may refuse to accept an affidavit which is not so indorsed.

(4) Unless the court otherwise orders, an affidavit may be used notwithstanding that it contains statements of information or belief.

(5) Every affidavit shall state which of the facts deposed to are within the deponent's knowledge and which are based on information or belief and shall give, in the former case, his means of knowledge and, in the latter case, the sources and grounds of the information or belief.

Documents produced from proper custody

11.—(1) Where a document which would, if duly proved, be admissible in evidence is produced to the court from proper custody, it shall be admitted without further proof if—

(a) in the opinion of the court it appears genuine; and

(b) no objection is taken to its admission.

(2) If objection is taken to the admission of any document so produced, the court may adjourn the hearing of the action or matter for proof of the document and, if it is proved, the party objecting shall pay the costs occasioned by the objection unless the court otherwise orders.

PART III

—SUMMONING AND EXAMINATION OF WITNESSES

Witness summons

12.—(1) Where a party to an action or matter desires a person to be summoned as a witness to give oral evidence or to produce a document in his possession, custody or power, the proper officer shall, on an application made by the party in accordance with paragraph (2), issue a witness summons, together with a copy.

(2) The applicant shall file a request for the issue of the summons and, if the summons is to be served by an officer of the court, deposit in the court office the money to be paid or tendered under paragraph (7).

(3) The summons shall contain the name of one witness only but may, as regards such name, be issued in blank.

(4) The summons shall be served on the witness a reasonable time before the return day and, subject to paragraph (5), service shall be effected by delivering the summons to the witness personally.

(5) Where the applicant or his solicitor gives a certificate for postal service, the summons shall, unless the registrar otherwise directs, be served on the witness by an officer of the court sending it to him by first-class post at the address stated in the request for the summons and, unless the contrary is shown, the date of service shall be deemed to be the seventh day after the date on which the summons was sent to the witness.

(6) Where the summons has been served by post, the witness shall not be fined for failing to appear on the return day unless the judge is satisfied that—

- (a) the summons came to his knowledge in sufficient time for him to appear on that day, and
- (b) the money to be paid or tendered under paragraph (7) was sent to him with the summons.

(7) At the time of service of the summons there shall be paid or tendered to the witness the sum of £6 for a police officer and £8.50 for any other person and, in addition, a sum reasonable sufficient to cover his expenses in travelling to and from the court.

Evidence by deposition

13.—(1) The court may, in any action or matter where it appears necessary for the purposes of justice, make an order in the appropriate form for the examination on oath of any person (in this rule called “the witness”) at any place in England and Wales.

(2) The examination may be ordered to take place before any of the following persons (in this rule called “the examiner”), that is to say—

- (a) any officer of the court making the order, or
- (b) any officer of the court for the district in which the witness resides or carries on business, or
- (c) such other person as the court may appoint.

(3) The order shall specify the day and place fixed for the examination and shall be served on the witness personally a reasonable time before the day so fixed and at the same time there shall be paid or tendered to the witness the sums prescribed by rule 12(7).

A copy of the order shall also be sent to every party to the action or matter.

(4) Where the examination is to take place before an officer of a court other than the court making the order, the proper officer of the last-mentioned court shall supply the proper officer of the first-mentioned court with sufficient copies of the order to enable paragraph (3) to be complied with.

(5) Subject to the following paragraphs of this rule, the provisions of the R.S.C. with respect to—

- (a) the documents to be furnished to the examiner,
- (b) the conduct of the examination,
- (c) the making of objections to questions put to the witness,
- (d) the taking and signing of the deposition,
- (e) the making of a special report by the examiner, and
- (f) the reception of the deposition in evidence at the hearing of the action or matter,

shall apply in relation to the examination of a witness pursuant to an order under paragraph (1) as they apply in relation to the examination of a witness pursuant to an order made in a cause or matter in the High Court.

(6) Order 29, rule 1, shall have effect in relation to an order under paragraph (1) as if it were an order in the nature of an injunction.

(7) If the witness refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document, a certificate of his refusal, signed by the examiner, shall be filed in the office of the court by which the order under paragraph (1) was made, and the party by whom the attendance of the witness was required may apply to the court ex parte for an order requiring the witness to be sworn or to answer any question or produce any document, as the case may be.

(8) The original deposition of the witness, authenticated by the signature of the examiner, shall be filed in the office of the court by which the order under paragraph (1) was made.

PART IV

—HEARSAY EVIDENCE

Interpretation and application

14.—(1) In this Part of this Order “the Act of 1968” means the Civil Evidence Act 1968 and any expressions used in this Part of this Order and in Part I of the Act of 1968 have the same meanings in this Part of this Order as they have in the said Part I.

(2) This Part of this Order shall apply in relation to the trial or hearing of an issue arising in an action or matter and to a reference under section 93 of the Act as it applies to the trial or hearing of an action or matter.

(3) Nothing in this Part of this Order shall apply in relation to a reference under section 92 of the Act.

Notice of intention to give certain-statements in evidence

15.—(1) Subject to the provisions of this rule, a party to an action or matter who desires to give in evidence at the trial or hearing any statement which is admissible in evidence by virtue of section 2, 4 or 5 of the Act of 1968 shall, not less than 14 days before the day fixed for the trial or hearing, give notice of his desire to do so to the registrar and to every other party.

(2) Unless in any particular case the court otherwise directs, paragraph (1) shall not apply to an action or matter in which no defence or answer has been filed; and where a defence or answer is filed less than 14 days before the day fixed for the trial or hearing, any party required to give notice pursuant to paragraph (1) shall apply to the court for an adjournment of the trial or hearing or for such other directions as may be appropriate.

(3) Paragraph (1) shall not apply in relation to any statement which is admissible as evidence of any fact stated therein by virtue not only of the said section 2, 4 or 5 but by virtue also of any other statutory provision within the meaning of section 1 of the Act of 1968.

(4) Paragraph (1) shall not apply in relation to any statement which any party to a probate action desires to give in evidence at the trial of that action and which is alleged to have been made by the deceased person whose estate is the subject of the action.

(5) Where, by virtue of any provision of these rules or of any order or direction of the court, the evidence in any proceedings is to be given by affidavit then, without prejudice to paragraph (3), paragraph (1) shall not apply in relation to any statement which any party to the proceedings desires to have included in any affidavit to be used on his behalf in the proceedings.

Application of R.S.C

16. R.S.C. Order 38, rules 22 to 25, shall apply to a notice under the last foregoing rule as they apply to a notice under rule 21 of the said Order 38.

Counter-notice requiring person to be called as a witness

17.—(1) Subject to paragraphs (2) and (3), any party on whom a notice under rule 15 is served may, within 7 days after service of the notice on him, give to the proper officer and to the party who gave the notice a counter-notice requiring that party to call as a witness at the trial or hearing any person (naming him) particulars of whom are contained in the notice.

(2) Where any notice under rule 15 contains a statement that any person particulars of whom are contained in the notice cannot or should not be called as a witness for the reason specified therein, a party shall not be entitled to serve a counter-notice under this rule requiring that person to be called

as a witness at the trial or hearing unless he contends that the person can or, as the case may be, should be called, and in that case he must include in his counter-notice a statement to that effect.

(3) Where a statement to which a notice under rule 15 relates is one to which rule 19 applies, no party on whom the notice is served shall be entitled to serve a counter-notice under this rule in relation to that statement, but the foregoing provision is without prejudice to the right of any party to apply to the court under rule 19 for directions with respect to the admissibility of that statement.

(4) If any party by whom a notice under rule 15 is served fails to comply with a counter-notice duly served on him under this rule, then, unless any of the reasons specified in paragraph (5) applies in relation to the person named in the counter-notice, and without prejudice to the powers of the court under rule 20, the statement to which the notice under rule 15 relates shall not be admissible at the trial or hearing as evidence of any fact stated therein by virtue of section 2, 4 or 5 of the Act of 1968, as the case may be.

(5) The reasons referred to in paragraph (4) are that the person in question is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness or that despite the exercise of reasonable diligence it has not been possible to identify or find him or that he cannot reasonably be expected to have any recollection of matters relevant to the accuracy or otherwise of the statement to which the notice relates.

Determination of question whether person can or should be called as a witness

18.—(1) Where a question arises whether any of the reasons specified in rule 17(5) applies in relation to a person particulars of whom are contained in a notice under rule 15, the court may, on the application of any party to the action or matter, determine that question before the trial or hearing or give directions for it to be determined before the trial or hearing and for the manner in which it is to be determined.

(2) Unless the court otherwise directs, notice of any application under paragraph (1) must be served on every other party to the action or matter.

(3) Where any such question as is referred to in paragraph (1) has been determined under or by virtue of that paragraph, no application to have it determined afresh at the trial or hearing may be made unless the evidence which it is sought to adduce in support of the application could not with reasonable diligence have been adduced at the hearing which resulted in the determination.

Directions with respect to statement made in previous proceedings

19.—(1) Where a party has given notice in accordance with rule 15 that he desires to give in evidence at the trial or hearing—

- (a) a statement falling within section 2(1) of the Act of 1968 which was made by a person, whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal), or
- (b) a statement falling within section 4(1) of the Act of 1968 which is contained in a record of direct oral evidence given in some other legal proceedings (whether civil or criminal), any party to the action or matter may apply to the court for directions as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to do so and (where applicable) as to the manner in which that statement and any other evidence given in those other proceedings is to be proved.

Power of court to allow statement to be given in evidence

20.—(1) Without prejudice to sections 2(2)(a) and 4(2)(a) of the Act of 1968 and rule 19, the court may, if it thinks it just to do so, allow a statement falling within section 2(1), 4(1) or 5(1) of the Act of 1968 to be given in evidence at the trial or hearing of an action or matter notwithstanding—

- (a) that the statement is one in relation to which rule 15(1) applies and that the party desiring to give the statement in evidence has failed to comply with that rule, or
- (b) that that party has failed to comply with any requirement of a counter-notice relating to that statement which was served on him in accordance with rule 17.

(2) Without prejudice to the generality of paragraph (1), the court may exercise its power under that paragraph to allow a statement to be given in evidence at the trial or hearing if a refusal to exercise that power might oblige the party desiring to give the statement in evidence to call as a witness at the trial or hearing an opposite party or a person who is or was at the material time the servant or agent of an opposite party.

Restriction on adducing evidence as to credibility of maker etc. of certain statements

21. Where—

- (a) a notice given under rule 15 in an action or matter relates to a statement which is admissible by virtue of section 2 or 4 of the Act of 1968, and
- (b) the person who made the statement, or, as the case may be, the person who originally supplied the information from which the record containing the statement was compiled, is not called as a witness at the trial or hearing of the action or matter, and
- (c) none of the reasons mentioned in rule 17(5) applies so as to prevent the party who gave the notice from calling that person as a witness,

no other party to the action or matter shall be entitled, except with the leave of the court, to adduce in relation to that person any evidence which could otherwise be adduced by him by virtue of section 7 of the Act of 1968 unless he gave a counter-notice under rule 17 in respect of that person or applied under rule 19 for a direction that that person be called as a witness at the trial or hearing of the action or matter.

Notice required of intention to give evidence of certain inconsistent statements

22.—(1) Where a person, particulars of whom were contained in a notice given under rule 15, is not to be called as a witness at the trial or hearing, any party who is entitled and intends to adduce in relation to that person any evidence which is admissible for the purpose mentioned in section 7(1)(b) of the Act of 1968 must, not more than 7 days after service of that notice on him, give notice of his intention to do so to the proper officer and to the party who gave the notice under rule 15.

(2) R.S.C. Order 38, rule 22(1) and (2), shall apply to a notice under this rule as if the notice were a notice under rule 15 and the statement to which the notice relates were a statement admissible by virtue of section 2 of the Act of 1968.

(3) The court may, if it thinks it just to do so, allow a party to give in evidence at the trial or hearing of an action or matter any evidence which is admissible for the purposes mentioned in the said section 7(1)(b) notwithstanding that that party has failed to comply with the provisions of paragraph (1).

Costs

23. If—

- (a) a party to an action or matter serves a counter-notice under rule 17 in respect of any person who is called as a witness at the trial of the action or matter in compliance with a requirement of the counter-notice, and
- (b) it appears to the court that it was unreasonable to require that person to be called as a witness,

then without prejudice to Order 38, and, in particular, to rule 6 thereof, the court may direct that any costs to that party in respect of the preparation and service of the counter-notice shall not be allowed to him and that any costs occasioned by the counter-notice to any other party shall be paid by him to that other party.

Exercise of jurisdiction

24. Order 1, rule 8, shall have effect in relation to the jurisdiction of the court under sections 2(2) (a), 2(3), 4(2)(a) and 6(1) of the Act of 1968 as it has effect in relation to any jurisdiction conferred by these rules.

Evidence of findings on foreign law

25.—(1) Subject to the provisions of this rule, a party who intends to adduce in evidence a finding or decision on a question of foreign law by virtue of section 4(2) of the Civil Evidence Act 1972 shall, not less than 14 days before the day fixed for the trial or hearing or within such other period as the court may specify, serve notice of his intention on every other party to the proceedings.

(2) The notice shall specify the question on which the finding or decision was given or made and specify the document in which it is reported or recorded in citable form.

(3) In any action or matter in which evidence may be given by affidavit, an affidavit specifying the matters contained in paragraph (2) shall constitute notice under paragraph (1) if served within the period mentioned in that paragraph.

(4) Unless in any particular case the court otherwise directs, paragraph (1) shall not apply to an action or matter in which no defence or answer has been filed.

Statements of opinion

26. Where a party to an action or matter desires to give in evidence by virtue of Part I of the Act of 1968 as extended by section 1(1) of the Civil Evidence Act 1972, a statement of opinion other than a statement to which Part III of this Order applies, the provisions of rules 14 to 24 of this Order (except so much of rule 16 as applies R.S.C. Order 38, rule 24) shall apply with such modifications as the court may direct or the circumstances of the case may require.

PART V

—EXPERT EVIDENCE

Restrictions on adducing expert evidence

27.—(1) Except with the leave of the court or where all parties agree, no expert evidence may be adduced at the trial or hearing of an action or matter, unless the party seeking to adduce the evidence has applied to the court to determine whether a direction should be given under rule 37, 38 or 41 (whichever is appropriate) of R.S.C. Order 38, as applied by rule 28 of this Order, and has complied with any direction given on the application.

(2) Nothing in paragraph (1) shall apply to expert evidence which is permitted to be given by affidavit or which is to be adduced in an action or matter in which no defence or answer has been filed or in proceedings referred to arbitration under section 92 of the Act.

(3) Nothing in paragraph (1) shall affect the enforcement under any other provision of these rules (except Order 29, rule 1) of a direction given under this Part of this Order.

Application of R.S.C

28. R.S.C. Order 38, rules 37 to 44 shall apply in relation to an application under rule 27 of this Order as they apply in relation to an application under rule 36(1) of the said Order 38.

ORDER 21

HEARING OF ACTION OR MATTER

Non-appearance by plaintiff

1.—(1) If the plaintiff does not appear on the day fixed for the hearing of an action or matter, the court may, without prejudice to any other power, strike out the proceedings or, if the defendant appears, proceed with the hearing in the plaintiff's absence.

(2) Where the court has received from the plaintiff an affidavit which is admissible in evidence by virtue of any Act or rule, he shall be deemed for the purposes of paragraph (1) to have appeared on the day aforesaid and to have tendered the evidence in the affidavit.

(3) Where any proceedings have been struck out under paragraph (1), the court may restore them to the list on application or of its own motion.

Failure by plaintiff to prove claim

2.—(1) If the plaintiff appears at the hearing of an action or matter but fails to prove his claim to the satisfaction of the court, it may, without prejudice to any other power, either nonsuit him or give judgment for the defendant.

(2) Where, after a plaintiff has been nonsuited, or proceedings have been struck out, and costs have been awarded to the defendant, a subsequent action or matter for the same or substantially the same cause of action is brought before payment of those costs, the court may stay the subsequent action or matter until they have been paid.

Non-appearance or admission by defendant

3. If on the day fixed for the hearing of an action or matter the defendant—

- (a) does not appear but the plaintiff proves his claim to the satisfaction of the court, or
- (b) appears and admits the plaintiff's claim,

the court may give such judgment or make such order as may be just.

Counterclaims

4.—(1) The foregoing provisions of this Order shall have effect, with the necessary modifications, in relation to a counterclaim as they have effect in relation to a claim.

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

(3) Where it appears that the subject-matter of a counterclaim ought for any reason to be disposed of by a separate action, the court may of its own motion or on the application of any party order the counterclaim to be struck out or to be tried separately or may make such other order as may be expedient.

(4) Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the court may give judgment for the balance, but nothing in this provision shall be taken as affecting the court's discretion as to costs.

Registrar's jurisdiction

5.—(1) The registrar shall have power to hear and determine—

- (a) any action or matter in which the defendant fails to appear at the hearing or admits the claim;
- (b) any action or matter in which the sum claimed or the amount involved does not exceed £500; and
- (c) by leave of the judge and with the consent of the parties, any other action or matter.

(2) In relation to an action brought to enforce a right to recover possession of goods, or to enforce such a right and to claim payment of a debt or other demand or damages, the reference in paragraph (1)(b) to the sum claimed or amount involved shall be construed as a reference to the aggregate amount claimed by the plaintiff, including the value of the goods or, in the case of goods let under a hire-purchase agreement, the unpaid balance of the hire-purchase price.

(3) Nothing in this rule shall prejudice any power conferred by any Act or rule on the registrar to hear and determine any other action or matter or authorise the registrar to exercise any jurisdiction conferred by any Act or rule on the judge alone.

Inspection by judge or jury

6.—(1) The judge by whom any action or matter is heard may inspect any place or thing with respect to which any question arises in the proceedings.

(2) Where an action or matter is tried with a jury and the judge inspects any place or thing under paragraph (1), he may authorise the jury to inspect it also.

ORDER 22

JUDGMENTS AND ORDERS

Drawing up and service of judgments and orders

1.—(1) Subject to the provisions of these rules with respect to particular judgments and orders, every judgment or final order and every order for directions made under Order 13, rule 2, or Order 17, rule 1, shall, unless the court otherwise directs, be drawn up and served by the proper officer on the party against whom it was given or made.

(2) Service shall be effected in accordance with Order 7, rule 1, and it shall not be necessary for the party in whose favour the judgment or order was made to prove that it reached the party to be served.

(3) Where judgment is entered in a default action under Order 9, rule 6(1), for payment forthwith, it shall not be necessary to draw up and serve the judgment unless—

- (a) the judgment is for payment to the plaintiff or his solicitor;
- (b) the plaintiff has abandoned part of his claim otherwise than by amending his particulars of claim and serving a copy on the defendant;
- (c) the judgment is an interlocutory judgment for damages to be assessed.

(4) Any judgment given for the plaintiff in an action for principal money or interest secured by a mortgage or charge, and any order made on an appeal to a county court, shall be served on every party to the proceedings.

(5) Where a party to be served with a judgment or order is acting by a solicitor, service may, if the court thinks fit, be effected on the party as if he were acting in person.

Time for payment of money judgments

2.—(1) Where judgment is given or an order is made for the payment of money (including costs) otherwise than by instalments, then, subject to paragraph (2) and to rule 7(5) and Order 9, rule 6, the money shall, if no day for payment is specified in the judgment or order, be payable at the expiration of 14 days from the date of the judgment or order.

(2) Where costs to be taxed are payable and the costs have not been taxed before the day on which they would otherwise be payable, the costs shall, unless the court otherwise directs, be payable at the expiration of 14 days from the date of taxation.

Time for complying with other judgments

3. Every judgment or order requiring any person to do an act other than the payment of money shall state the time within which the act is to be done.

Judgment in favour of reversioner for detention of goods

4.—(1) Where a claim relating to the detention of goods is made by a partial owner whose right of action is not founded on a possessory title, any judgment or order given or made in respect of the claim shall, notwithstanding anything in section 3(3) of the Torts (Interference with Goods) Act 1977, be for the payment of damages only.

In this paragraph “partial owner” means one of the two or more persons having interests in the goods, unless he has the written authority of every other such person to sue on the latter's behalf.

(2) This rule is without prejudice to the remedies and jurisdiction mentioned in section 3(8) of the said Act of 1977.

Entry of judgment on plaintiff's request where defendant debarred etc

5.—(1) Where a defendant is debarred from defending altogether or the whole of his defence is struck out, the plaintiff may have judgment entered for the amount of his claim and costs on filing a request in that behalf showing, where appropriate, that any condition subject to which the defendant was debarred or the defence was to be struck out has been fulfilled.

(2) If the plaintiff's claim is for unliquidated damages, any judgment entered under paragraph (1) shall be an interlocutory judgment for damages to be assessed and costs.

(3) Where a plaintiff or defendant is entitled under Order 11, rule 2(3)(a) or 3(5)(a), or under Order 18, rule 2(1), to have judgment entered for his taxed costs, he may have judgment entered on filing a request in that behalf showing that the costs have not been paid.

Assessment of damages under interlocutory judgment

6.—(1) Where an interlocutory judgment has been entered for damages to be assessed and no date has been fixed by the court for the assessment, an application by the plaintiff for such assessment shall be made on 7 days' notice to the defendant.

(2) For the purposes of any provision of these rules authorising the registrar to hear and determine any proceedings, the assessment shall be treated as the hearing of an action for the damages claimed.

Settlement of judgment and preparation of deed

7.—(1) Where a judgment or order is of such a nature that it should, in the opinion of the registrar, be settled in the presence of the parties, the judgment or order shall be prepared by the proper officer and a draft thereof, together with notice of an appointment before the registrar to settle the judgment

or order, shall be sent by the proper officer to every party to the proceedings not less than 7 days before the day of the appointment.

(2) The registrar shall settle the judgment or order in the presence of such of the parties as attend the appointment.

(3) When the judgment or order has been settled, it shall be filed and a minute of the judgment or order, showing the date thereof shall be entered in the records of the court.

(4) Any party dissatisfied with the judgment or order as settled may apply to the judge, on notice to be served within 7 days after the settling of the judgment or order, to vary it, but the notice shall not operate as a stay of proceedings unless the court otherwise orders.

(5) Any money payable under a judgment or order settled under this rule shall be payable forthwith unless the court otherwise orders.

(6) Where a judgment or order directs any deed to be prepared and executed, it shall state by whom the deed is to be prepared and by whom, if anyone, it is to be approved, and if the parties to the deed cannot agree upon its form, the judge may, upon the application of any of them on notice, settle the deed himself or refer it to the registrar or to conveyancing counsel to be settled, subject to the final approval of the judge.

Certificate of judgment

8.—(1) Any person who desires to have a certificate of any judgment or order given or made in an action or matter shall make a request in writing to the proper officer stating—

- (a) if he is a party to the action or matter, whether the certificate is required for the purpose of taking proceedings on the judgment or order in another court or is for the purpose of evidence only, or
- (b) if he is not a party to the action or matter, the purpose for which the certificate is required, the capacity in which he asks for it and any other facts showing that the certificate may properly be granted.

(2) Where the request is made by a person who is not a party to the action or matter, the request shall be referred to the registrar, who may, if he thinks fit, refer it to the judge.

Payment in reduction of judgment debt

9.—(1) Subject to paragraph (2), a person liable to pay money under a judgment or order may at any time make a payment into court in reduction of the amount payable by him.

(2) Where no order has been made for payment by instalments, the proper officer shall not accept under paragraph (1) any sum less than the full amount payable if the person entitled to the benefit of the judgment or order has given written instructions to the proper officer not to accept a lesser sum.

(3) Where a judgment or order is given or made for the delivery of goods or payment of their value and the goods are returned or a warrant to recover the goods or their value is issued, money paid into court under the judgment or order shall be appropriate first to any sum of money and costs awarded.

Variation of payment

10.—(1) Where a judgment or order has been given or made for the payment of money, the person entitled to the benefit of the judgment or order or, as the case may be, the person liable to make the payment (in this rule referred to as “the judgment creditor” and “the debtor” respectively) may apply to the court in accordance with the provisions of this rule for a variation in the date or rate of payment.

(2) The judgment creditor may apply to the registrar ex parte in writing for an order that the money, if payable in one sum, be paid at a later date than that on which it is due or by instalments

or, if the money is already payable by instalments, that it be paid by the same or smaller instalments, and the registrar may make an order accordingly without requiring the attendance of the judgment creditor unless no payment has been made under the judgment or order for 6 years before the date of the application or for some other reason the registrar thinks that the judgment creditor's attendance is desirable.

(3) The judgment creditor may apply to the court on notice for an order that the money, if payable in one sum, be paid at an earlier date than that on which it is due or, if the money is payable by instalments, that it be paid in one sum or by larger instalments, and if it appears to the court that the debtor is able so to pay the money, the court may make an order accordingly.

(4) The debtor may apply to the court on notice for an order that the money, if payable in one sum, be paid at a later date than that on which it is due or by instalments or, if the money is already payable by instalments, that it be paid by smaller instalments, and if it appears to the court that the debtor is unable to pay the money at the date on which it is due or by the instalments specified in the judgment or order, the court may make an order accordingly.

(5) An application under paragraph (3) or (4) may be made to the registrar unless the original judgment or order was given or made by the judge and the judge has directed that any application to vary it under paragraph (3) or (4) be made to the judge.

(6) Any order made under any of the foregoing paragraphs shall be entered in the records of the court and may be varied from time to time by a subsequent order made under any of those paragraphs.

Set-off of cross judgments

11.—(1) An application under section 100 of the Act for leave to set off any sums, including costs, payable under several judgments or orders each of which was obtained in a county court shall be made in accordance with this rule.

(2) Where the judgments or orders have been obtained in the same county court, the application may be made to that court on the day when the last judgment or order is obtained, if both parties are present, and in any other case shall be made on notice.

(3) Where the judgments or orders have been obtained in different county courts, the application may be made to either of them on notice, and notice shall be given to the proper officer of the other court.

(4) The registrar of the court to which the application is made and the registrar of any other court to which notice is given under paragraph (3) shall forthwith stay execution on any judgment or order in his court to which the application relates and any money paid into court under the judgment or order shall be retained until the application has been disposed of.

(5) The application may be heard and determined by the court and any order giving leave shall direct how any money paid into court is to be dealt with.

(6) Where the judgments or orders have been obtained in different courts, the proper officer of the court in which an order giving leave is made shall send a copy of the order to the proper officer of the other court, who shall deal with any money paid into that court in accordance with the order.

(7) The proper officer or, as the case may be, each of the proper officers affected shall enter satisfaction in the records of his court for any sums ordered to be set off, and execution or other process for the enforcement of any judgment or order not wholly satisfied shall issue only for the balance remaining payable.

(8) Where an order is made by the High Court giving leave to set off sums payable under several judgments and orders obtained respectively in the High Court and a county court, the proper officer of the county court shall, on receipt of a copy of the order, proceed in accordance with paragraph (7).

Sale etc. by order of court

12.—(1) Subject to paragraph (2), the provisions of the R. S. C. with regard to the sale, mortgage, exchange or partition of land by order of the Court shall apply in relation to an action or matter in the county court as they apply in relation to a cause or matter in the Chancery Division of the High Court.

(2) The requirement in the said provisions to leave a copy of the order or any other document at the judge's chambers shall not apply and any reference to conveyancing counsel of the Court shall be omitted.

Order of appellate court

13. Where the Court of Appeal or High Court has heard and determined an appeal from a county court, the party entitled to the benefit of the order of the Court of Appeal or High Court shall deposit the order or an office copy thereof in the office of the county court.

ORDER 23

ACCOUNTS AND INQUIRIES IN EQUITY PROCEEDINGS

Service of notice of judgment

1.—(1) Where in any action or matter for—

- (a) the administration of the estate of a deceased person, or
- (b) the execution of a trust, or
- (c) the sale of any property,

the court gives a judgment or makes an order which affects the rights or interests of persons who are not parties to the action or matter or directs any account to be taken or inquiry made, the court may direct notice of the judgment or order to be served on any person interested in the estate or under the trust or in the property, as the case may be.

(2) The notice shall be prepared by the proper officer and shall have annexed to it a copy of the judgment or order.

(3) The notice shall be served in the same manner as a fixed date summons, but if it appears to the court that it is impracticable to serve the notice on any person directed to be served, the court may dispense with service on him.

(4) Where the court dispenses with service of the notice on any person, it may also direct that he shall be bound by the judgment or order to the same extent as if he had been served with notice of it and he shall be bound accordingly except where the judgment has been obtained by fraud or non-disclosure of material facts.

(5) Any person served with notice under this rule shall be bound by the judgment or order and shall be entitled to attend the proceedings under it, but he may, within one month after service of the notice on him, apply to the judge (or, if the judgment or order was given or made by the registrar, to the registrar) to discharge, vary or add to the judgment or order.

Application of R.S.C

2.—(1) Subject to the following paragraphs of this rule and to rule 3, the provisions of the R.S.C. relating to proceedings under a judgment in the Chancery Division (except R.S.C. Order 44, rule 3, to which rule of this Order corresponds) shall apply to proceedings under a judgment or order given or made by a county court in the exercise of its equity jurisdiction.

(2) The proper officer shall fix a day for proceeding under the judgment or order and shall give notice thereof to all parties entitled to attend the proceedings.

(3) Where the judgment or order directs an account to be taken or inquiry made and does not otherwise provide, the account shall be taken or the inquiry made by the registrar and Order 19, rule 9(a), (d) and (e) shall apply as if there had been a reference to the registrar for inquiry and report.

(4) The person to whom a claimant is required by any advertisement to send his name and address and particulars of his claim shall be the proper officer.

(5) Where a claimant is required to make an affidavit or produce documents in support of his claim or to attend court for adjudication on the claim, the person by whom notice to that effect is to be given shall be the proper officer.

(6) The proper officer shall give to every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of that fact.

Registrar's certificate and further consideration

3.—(1) In proceedings to which rule 2 relates it shall not be necessary for the registrar's certificate of the result of the proceedings before him to be drawn up in draft and settled by the parties unless the court so directs, but when the registrar has prepared and signed his certificate, it shall be filed and the proper officer shall fix a day for the further consideration of the proceedings and give to all parties notice of the day so fixed, accompanied by a copy of the certificate.

(2) On the day fixed under paragraph (1) any party to the proceedings under the judgment or order may apply to the judge on notice for an order discharging or varying the registrar's certificate, and the judge after hearing any such application may confirm, discharge or vary the certificate or remit it to the registrar and may make such order on the application and on the further consideration of the proceedings as may be just.

ORDER 24

SUMMARY PROCEEDINGS FOR THE RECOVERY OF LAND OR RENT

PART I

LAND

Proceedings to be by originating application

1. Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating application in accordance with the provisions of this Order.

Affidavit in support

2. The applicant shall file in support of the originating application an affidavit stating—
- (a) his interest in the land;
 - (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and

- (c) that he does not know the name of any person occupying the land who is not named in the originating application.

Service of originating application

3.—(1) Where any person in occupation of the land is named in the originating application, the application shall be served on him—

- (a) by delivering to him personally a copy of the originating application, together with the notice of the return day required by Order 3, rule 4(4)(b), and a copy of the affidavit in support, or
- (b) by an officer of the court leaving the documents mentioned in sub-paragraph (a), or sending them to him, at the premises, or
- (c) in accordance with Order 7, rule 11, as applied to originating applications by Order 3, rule 4(6), or
- (d) in such other manner as the court may direct.

(2) The originating application shall, in addition to being served on the named respondents (if any) in accordance with paragraph (1), be served, unless the court otherwise directs, by—

- (a) affixing a copy of each of the documents mentioned in paragraph (1)(a) to the main door or other conspicuous part of the premises, and
- (b) if practicable, inserting through the letterbox at the premises a copy of those documents enclosed in a sealed envelope addressed to “the occupiers.”

Application by occupier to be made a party

4. Without prejudice to Order 15, rule 1, any person not named as a respondent who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as respondent, and the notice of the return day required by Order 3, rule 4(4)(b), shall contain a notice to that effect.

Hearing of originating application

5.—(1) Except in case of urgency and by leave of the court, the day fixed for the hearing of the originating application shall not be less than 5 days after the day of service.

(2) Notwithstanding anything in Order 21, rule 5, no order for possession shall be made on the originating application except by the judge or, with the leave of the judge, by the registrar.

(3) An order for possession in proceedings under this Order shall be to the effect that the plaintiff do recover possession of the land mentioned in the originating application.

(4) Nothing in this Order shall prevent the court from ordering possession to be given on a specified date, in the exercise of any power which could have been exercised if the proceedings had been brought by action.

Warrant of possession

6.—(1) Subject to paragraph (2), a warrant of possession to enforce an order for possession under this Order may be issued at any time after the making of the order and subject to the provisions of Order 26, rule 17, a warrant of restitution may be issued in aid of the warrant of possession.

(2) No warrant of possession shall be issued after the expiry of 3 months from the date of the order without the leave of the court, and an application for such leave may be made ex parte unless the court otherwise directs.

Setting aside order

7. The judge may, on such terms as he thinks just, set aside or vary any order made in proceedings under this Order.

Part II

RENT

Claim for arrears of rent by rent action

8. Where a landlord claims arrears of rent from a tenant or former tenant of his who is still in occupation of the land to which the claim relates, the claim may be brought by action (in these rules referred to as a “rent action”) in accordance with the provisions of this Part of this Order and, subject to those provisions, these rules shall apply with the necessary modifications to a rent action as they apply to a fixed date action.

Venue

9. A rent action shall be brought in the court for the district in which the land is situated and the request for the issue of the summons shall contain a statement that the plaintiff requires a summons under this Part of this Order.

Form of summons and service

10. The summons with a copy of the particulars of claim attached shall be served on the defendant in accordance with Order 7, rule 1, not less than 7 days before the return day.

Certain rules not to apply

11.—(1) Order 3, rule 3(2)(c) and (3), Order 9 and Order 11 (except rules 1 and 4(2) thereof) shall not apply to a rent action.

(2) Nothing in paragraph (1) of this rule shall prejudice the exercise by the court of its power to give directions under Order 13, rule 2, and the court may at any time direct that the proceedings shall continue as an ordinary action.

ORDER 25

ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL

Judgment creditor and debtor

1. In this Order and Orders 26 to 29 “judgment creditor” means the person who has obtained or is entitled to enforce a judgment or order and “debtor” means the person against whom it was given or made.

Transfer of proceedings for enforcement

2.—(1) Where, with a view to enforcing a judgment or order obtained by him in a county court, a judgment creditor desires to apply for—

- (a) the oral examination of the debtor,
- (b) a charging order under section 1 of the Charging Orders Act 1979,
- (c) an attachment of earnings order, or

(d) the issue of a judgment summons,
and the application is required by any provision of these rules to be made to another county court, the judgment creditor shall make a request in writing to the registrar of the court in which the judgment or order was obtained for the transfer of the action or matter to the other court.

(2) On receipt of a request under paragraph (1) the registrar shall make an order transferring the action or matter to the other court and the proper officer shall—

- (a) make an entry of the transfer in the records of his court; and
- (b) send to the proper officer of the court to which the action or matter has been transferred a certificate of the judgment or order, stating the purpose for which it has been issued, and, if requested by that officer, all the documents in his custody relating to the action or matter.

(3) When the action or matter has been transferred to the other court—

- (a) the proper officer of that court shall give notice of the transfer to the judgment creditor and the debtor,
- (b) payments under the judgment or order shall be made into that court, and
- (c) subject to sub-paragraph (d), any subsequent proceedings in the action or matter shall be taken in that court, but
- (d) any application or appeal under Order 37 shall be made to the court in which the judgment or order was obtained.

(4) If the judgment creditor desires to make a subsequent application for any of the remedies mentioned in paragraph (1)(a) to (d) and the application is required to be made to another court, he may make a request under paragraph (1) to the court to which the action or matter has been transferred and paragraphs (2) and (3) shall apply with the necessary modifications.

Oral examination of debtor

3.—(1) Where a person has obtained a judgment or order in a county court for the payment of money, the appropriate court may, on an application made ex parte by the judgment creditor, order the debtor or, if the debtor is a body corporate, an officer thereof to attend before the registrar or such other officer of the court not below the rank of higher executive officer as the court may appoint and be orally examined as to the debtor's means of satisfying the judgment or order, and may also order the person to be examined to produce at the time and place appointed for the examination any books or documents in his possession relevant to the debtor's means.

(2) The appropriate court for the purposes of paragraph (1) shall be the court for the district in which the person to be examined (or, if there are more such persons than one, any of them) resides or carries on business.

(3) The order shall be served in the same manner as a default summons.

(4) If the person to be examined fails to attend at the time and place fixed for the examination, the court may adjourn the examination and make a further order for his attendance.

(5) Nothing in Order 29, rule 1(2) to (7) shall apply to an order made under paragraph (4), but Order 27, rule 8, and Order 28, rule 4(2), shall apply, with the necessary modifications, as they apply to orders made under section 23(1) of the Attachment of Earnings Act 1971 and section 144(1) of the County Courts Act 1959 respectively.

(6) Order 20, rule 13, shall apply with the necessary modifications, to an examination under this rule as it applies to an examination under that rule.

(7) Nothing in this rule shall be construed as preventing the court, before deciding whether to make an order under paragraph (1), from giving the person to be examined an opportunity of making a statement in writing or an affidavit as to the debtor's means.

Examination of debtor under judgment not for money

4. Where any difficulty arises in or in connection with the enforcement of any judgment or order for some relief other than the payment of money, the court may make an order under rule 3 for the attendance of the debtor and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications.

Production of plaint note

5. On filing—

- (a) a request for a warrant of execution, delivery or possession,
- (b) a request for a judgment summons or warrant of committal,
- (c) an application for a garnishee order under Order 30, rule 1, or
- (d) an application for a charging order,

the judgment creditor shall, if the judgment or order sought to be enforced is a judgment or order of a county court, produce the plaint note or originating process unless otherwise directed.

Description of parties

6. Where the name or address of the judgment creditor or the debtor as given in the request for the issue of a warrant of execution or delivery, judgment summons or warrant of committal differs from his name or address in the judgment or order sought to be enforced and the judgment creditor satisfies the proper officer that the name or address as given in the request is applicable to the person concerned, the judgment creditor or the debtor, as the case may be, shall be described in the warrant or judgment summons as “C.D. of [name and address as given in the request] suing [or sued] as A.D. of [name and address in the judgment or order]”.

Recording and giving information as to warrants and orders

7.—(1) Every registrar by whom a warrant or order is issued or received for execution shall from time to time state in the records of his court what has been done in the execution of the warrant or order.

(2) If the warrant or order has not been executed within one month from the date of its issue or receipt by him, the proper officer of the court responsible for its execution shall, at the end of that month and every subsequent month during which the warrant remains outstanding, send notice of the reason for non-execution to the judgment creditor and, if the warrant or order was received from another court, to the proper officer of that court.

(3) The registrar responsible for executing a warrant or order shall give such information respecting it as may reasonably be required by the judgment creditor and, if the warrant or order was received by him from another court, by the registrar of that court.

(4) Where money is received in pursuance of a warrant of execution or committal sent by one court to another court, the proper officer of the foreign court shall, subject to paragraph (5) and to section 41 of the Bankruptcy Act 1914 and section 326 of the Companies Act 1948, forthwith send the money, accompanied by a return, to the proper officer of the home court in the manner prescribed by the County Court Funds Rules.

(5) Where interpleader proceedings are pending, the proper officer shall not proceed in accordance with paragraph (4) until the interpleader proceedings are determined and the registrar shall then make a return showing how the money is to be disposed of and, if any money is payable to the judgment creditor, the proper officer shall proceed in accordance with paragraph (4).

(6) Where a warrant of committal has been received from another court, the proper officer of the foreign court shall, on the execution of the warrant, send notice thereof to the proper officer of the home court.

Suspension of judgment or execution

8.—(1) Any power of the court to suspend or stay a judgment or order or to stay execution of any warrant may be exercised by the registrar.

(2) Where an order is made suspending a warrant of execution—

- (a) the court may order the debtor to pay the costs of the warrant and any fees or expenses incurred by the registrar before its suspension and may authorise the registrar to sell a sufficient portion of any goods seized to cover such costs, fees and expenses and the expenses of sale, and
- (b) subject to any directions given by the court, the warrant may be re-issued on the judgment creditor's filing a request in writing showing that any condition subject to which the warrant was suspended has not been complied with.

Enforcement of judgment or order against firm

9.—(1) Subject to paragraph (2), a judgment or order against a firm may be enforced against—

- (a) any property of the firm,
- (b) any person who admitted in the action or matter that he was a partner or was adjudged to be a partner,
- (c) any person who was served as a partner with the originating process if—
 - (i) the proceeding is a default action and judgment was entered under Order 9, rule 6, in default of defence or on admission, or
 - (ii) the person so served did not appear on a pre-trial review and judgment was entered or given under Order 17, rule 7 or 8, or
 - (iii) the person so served did not appear at the trial or hearing of the action or matter.

(2) A judgment or order may not be enforced under paragraph (1) against a member of the firm who was out of England and Wales when the originating process was issued unless he—

- (a) was served within England and Wales with the originating process as a partner, or
- (b) was, with the leave of the court under Order 8, rule 2, served out of England and Wales with the originating process as a partner,

and, except as provided by paragraph (1)(a) and by the foregoing provisions of this paragraph, a judgment or order obtained against a firm shall not render liable, release or otherwise affect a member of the firm who was out of England and Wales when the originating process was issued.

(3) A judgment creditor who claims to be entitled to enforce a judgment or order against any other person as a partner may apply to the court for leave to do so.

(4) Notice of any application under paragraph (3) shall be served on the alleged partner, not less than three days before the hearing of the application, in the manner prescribed by Order 7, rule 10, for a fixed date summons, and on the hearing of the application, if the alleged partner does not dispute his liability, the court may, subject to paragraph (2), give leave to enforce the judgment or order against him and, if he disputes liability, the court may order that the question of his liability be tried and determined in such a manner as the court thinks fit.

(5) The foregoing provisions of this rule shall not apply where it is desired to enforce in a county court a judgment or order of the High Court, or a judgment, order, decree or award of any court or arbitrator which is or has become enforceable as if it were a judgment or order of the High Court,

and in any such case the provisions of the R.S.C. relating to the enforcement of a judgment or order against a firm shall apply.

Enforcing judgment between a firm and its members

10.—(1) Execution to enforce a judgment or order given or made in—

- (a) proceedings by or against a firm in the name of the firm against or by a member of the firm, or
- (b) proceedings by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,

shall not issue without the leave of the court.

(2) On an application for leave the court may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

Enforcement of High Court judgment

11. A judgment creditor who desires to enforce by warrant of execution, attachment of earnings or judgment summons a judgment or order of the High Court, or a judgment, order, decree or award of any court or arbitrator which is or has become enforceable as if it were a judgment or order of the High Court, shall file with his request for the warrant or judgment summons or his application for an attachment of earnings order, as the case may be,—

- (a) an office copy of the judgment or order or, in the case of a judgment, order, decree or award of a court other than the High Court or an arbitrator, such evidence of the judgment, order, decree or award and of its enforceability as a judgment of the High Court as the registrar may require;
- (b) an affidavit verifying the amount due under the judgment, order, decree or award, and
- (c) where a writ of execution has been issued to enforce it, a copy of the sheriff's return to the writ.

Enforcement of award of tribunal

12.—(1) Where by any Act or statutory instrument other than these rules a sum of money is, if the county court so orders, recoverable as if payable under an order of that court, an application for such an order shall be made ex parte by filing an affidavit verifying the amount remaining due to the applicant and by producing any award, order or agreement under which the sum is payable, or a duplicate thereof, and filing a copy.

(2) Unless otherwise provided, the application shall be made to the court for the district in which the person by whom the sum is payable resides or carries on business.

(3) The application may be heard and determined by the registrar.

ORDER 26

WARRANTS OF EXECUTION, DELIVERY AND POSSESSION

Application for warrant of execution

1.—(1) A judgment creditor desiring a warrant of execution to be issued shall file a request in that behalf.

(2) Where the court has made an order for payment of a sum of money by instalments and default has been made in payment of such an instalment, a warrant of execution may be issued for the whole of the said sum of money and costs then remaining unpaid or, subject to paragraph (3), for such part as the judgment creditor may request, not being in the latter case less than £15 or the amount of one monthly instalment or, as the case may be, four weekly instalments, whichever is the greater.

(3) In any case to which paragraph (2) applies no warrant shall be issued unless at the time when it is issued—

- (a) the whole or part of an instalment which has already become due remains unpaid, and
- (b) any warrant previously issued for part of the said sum of money and costs has expired or has been satisfied or abandoned.

(4) Where a warrant is issued for part of the said sum of money and costs, the registrar responsible for its execution may, if he thinks fit, direct that a warning notice shall be sent to the person against whom the warrant is issued and that the warrant shall not be levied until 7 days thereafter.

(5) Where judgment is given or an order made for payment otherwise than by instalments of a sum of money and costs to be taxed and default is made in payment of the sum of money before the costs have been taxed, a warrant of execution may issue for recovery of the sum of money and a separate warrant may issue subsequently for the recovery of the costs if default is made in payment of them.

Execution of High Court judgment

2.—(1) Where it is desired to enforce by warrant of execution a judgment or order of the High Court, or a judgment, order, decree or award which is or has become enforceable as if it were a judgment of the High Court, the request referred to in rule 1(1) may be filed in any court in the district of which execution is to be levied.

(2) Subject to Order 25, rule 9(5), any restriction imposed by these rules on the issue of execution shall apply as if the judgment, order, decree or award were a judgment or order of the county court, but leave to issue execution shall not be required if leave has already been given by the High Court.

(3) Notice of the issue of the warrant shall be sent by the proper officer of the county court to the proper officer of the High Court.

Execution against farmer

3. If after the issue of a warrant of execution the registrar for the district in which the warrant is to be executed has reason to believe that the debtor is a farmer, the execution creditor shall, if so required by the registrar, furnish him with an official certificate, dated not more than three days beforehand, of the result of a search at the Land Registry as to the existence of any charge registered against the debtor under the Agricultural Credits Act 1928.

Concurrent warrants

4. Two or more warrants of execution may be issued concurrently for execution in different districts, but—

- (a) no more shall be levied under all the warrants together than is authorised to be levied under one of them, and
- (b) the costs of more than one such warrant shall not be allowed against the debtor except by order of the court.

Leave to issue certain warrants

5.—(1) A warrant of execution shall not issue without the leave of the court where—

- (a) six years or more have elapsed since the date of the judgment or order;
- (b) any change has taken place, whether by death or otherwise in the parties entitled to enforce the judgment or order or liable to have it enforced against them;
- (c) the judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the judgment or order and it is sought to issue execution against such assets; or
- (d) any goods to be seized under a warrant of execution are in the hands of a receiver appointed by a court.

(2) An application for leave shall be supported by an affidavit establishing the applicant's right to relief and may be made ex parte in the first instance but the court may direct notice of the application to be served on such persons as it thinks fit.

(3) Where, by reason of one and the same event, a person seeks leave under paragraph (1)(b) to enforce more judgments or orders than one, he may make one application only, specifying in a schedule all the judgments or orders in respect of which it is made, and if notice is directed to be given to any person, it need set out only such part of the application as affects him.

(4) Paragraph (1) is without prejudice to any enactment, rule or direction by virtue of which a person is required to obtain the leave of the court for the issue of a warrant or to proceed to execution or otherwise to the enforcement of a judgment or order.

Duration and renewal of warrant

6.—(1) A warrant of execution shall, for the purpose of execution, be valid in the first instance for 12 months beginning with the date of its issue, but if not wholly executed, it may be renewed from time to time, by order of the court, for a period of 12 months at any one time, beginning with the day next following that on which it would otherwise expire, if an application for renewal is made before that day or such later day (if any) as the court may allow.

(2) A note of any such renewal shall be indorsed on the warrant and it shall be entitled to priority according to the time of its original issue or, where appropriate, its receipt by the registrar responsible for its execution.

Notice on levy

7. Any bailiff upon levying execution shall deliver to the debtor or leave at the place where execution is levied a notice of the warrant.

Bankruptcy or winding up of debtor

8.—(1) Where the registrar responsible for the execution of a warrant is required by section 41(2) of the Bankruptcy Act 1914 or section 326(2) of the Companies Act 1948 to retain the proceeds of sale of goods sold under the warrant or money paid in order to avoid a sale, the proper officer shall, as soon as practicable after the sale or the receipt of the money, send notice to the execution creditor and, if the warrant issued out of another court, to the proper officer of that court.

(2) Where the registrar responsible for the execution of a warrant—

- (a) receives notice that a receiving order has been made against the debtor or, if the debtor is a company, that a provisional liquidator has been appointed or that an order has been made or a resolution passed for the winding up of the company, and
- (b) withdraws from possession of goods seized or pays over to the official receiver or trustee in bankruptcy or, if the debtor is a company, to the liquidator the proceeds of sale of goods sold under the warrant or money paid in order to avoid a sale or seized or received in part satisfaction of the warrant,

the proper officer shall send notice to the execution creditor and, if the warrant issued out of another court, to the proper officer of that court.

(3) Where the proper officer of a court to which a warrant issued out of another court has been sent for execution receives any such notice as is referred to in paragraph (2)(a) after he has sent to the proper officer of the home court any money seized or received in part satisfaction of the warrant, he shall forward the notice to the proper officer of that court.

Costs of warrant

9.—(1) The costs of a warrant of execution shall, unless the court otherwise directs, be recoverable under the warrant or, if the warrant is unproductive, under a subsequent warrant of execution against the debtor's goods but shall not be recoverable in any other manner.

(2) Where a request for a warrant of execution is filed by a solicitor in respect of a sum of money exceeding £25, the solicitor shall be entitled to make a charge for filing the request, which may be fixed and allowed without taxation.

Withdrawal and suspension of warrant at creditor's request

10.—(1) Where an execution creditor requests the registrar responsible for executing a warrant to withdraw from possession, he shall, subject to the following paragraphs of this rule, be treated as having abandoned the execution, and the proper officer shall mark the warrant as withdrawn by request of the execution creditor.

(2) Where the request is made in consequence of a claim having been made under Order 33, rule 1, to goods seized under the warrant, the execution shall be treated as being abandoned in respect only of the goods claimed.

(3) If the registrar responsible for executing a warrant is requested by the execution creditor to suspend it in pursuance of an arrangement between him and the debtor, the proper officer shall mark the warrant as suspended by request of the execution creditor and the execution creditor may subsequently apply to the registrar holding the warrant for it to be re-issued and, if he does so, the application shall be deemed for the purpose of section 120(3) of the Act to be an application to issue the warrant.

(4) Nothing in this rule shall prejudice any right of the execution creditor to apply for the issue of a fresh warrant or shall authorise the re-issue of a warrant which has been withdrawn or has expired or has been superseded by the issue of a fresh warrant.

Suspension of part warrant

11. Where a warrant issued for part of a sum of money and costs payable under a judgment or order is suspended on payment of instalments, the judgment or order shall, unless the court otherwise directs, be treated as suspended on those terms as respects the whole of the sum of money and costs then remaining unpaid.

Inventory and notice where goods removed

12.—(1) Where goods seized in execution are removed, the proper officer shall forthwith deliver or send to the debtor a sufficient inventory of the goods removed and shall, not less than 4 days before the time fixed for the sale, give him notice of the time and place at which the goods will be sold.

(2) The inventory and notice shall be given to the debtor by delivering them to him personally or by sending them to him by post at his place of residence or, if his place of residence is not known, by leaving them for him, or sending them to him by post, at the place from which the goods were removed.

Account of sale

13. Where goods are sold under an execution, the proper officer shall furnish the debtor with a detailed account in writing of the sale and of the application of the proceeds.

Notification to foreign court of money paid into home court

14. Where, after a warrant has been sent to a foreign court for execution but before a final return has been made to the warrant, money is paid into the home court in respect of the sum for which the warrant is issued, the proper officer of the home court shall send notice of the payment to the proper officer of the foreign court.

Order for private sale

15.—(1) Subject to paragraph (6), an order of the court under section 132 of the Act that a sale under an execution may be made otherwise than by public auction may be made on the application of the execution creditor or the debtor or the registrar responsible for the execution of the warrant.

(2) Where he is not the applicant for an order under this rule, the registrar responsible for the execution of the warrant shall, on the demand of the applicant, furnish him with a list containing the name and address of every execution creditor under any other warrant or writ of execution against the goods of the debtor of which the registrar has notice, and where the registrar is the applicant, he shall prepare such a list.

(3) Not less than 4 days before the day fixed for the hearing of the application, the applicant shall give notice of the application to each of the other persons by whom the application might have been made and to every person named in the list referred to in paragraph (2).

(4) The applicant shall produce the list to the court on the hearing of the application.

(5) Every person to whom notice of the application was given may attend and be heard on the hearing of the application.

(6) Where the registrar responsible for the execution of the warrant is the registrar by whom it was issued and he has no notice of any other warrant or writ of execution against the goods of the debtor, an order under this rule may be made by the court of its own motion with the consent of the execution creditor and the debtor or after giving them an opportunity of being heard.

Warrant of delivery

16.—(1) Except where by any Act or rule it is otherwise provided, a judgment or order for the delivery of any goods shall be enforceable by warrant of delivery in accordance with this rule.

(2) If the judgment or order does not give the person against whom it was given or made the alternative of paying the value of the goods, it may be enforced by a warrant of specific delivery, that is to say, a warrant to recover the goods without alternative provision for recovery of their value.

(3) If the judgment or order is for the delivery of the goods or payment of their value, it may be enforced by a warrant of delivery to recover the goods or their value.

(4) Where a warrant of delivery is issued, the judgment creditor shall be entitled, by the same or a separate warrant, to execution against the debtor's goods for any money payable under the judgment or order which is to be enforced by the warrant of delivery.

(5) The foregoing provisions of this Order, so far as applicable, shall have effect, with the necessary modifications, in relation to warrants of delivery as they have effect in relation to warrants of execution.

Warrant of possession

17.—(1) A judgment or order for the recovery of land shall be enforceable by warrant of possession.

(2) The person desiring a warrant of possession to be issued shall file a request in that behalf.

(3) Where a warrant of possession is issued, the judgment creditor shall be entitled, by the same or a separate warrant, to execution against the debtor's goods for any money payable under the judgment or order which is to be enforced by the warrant of possession.

(4) A warrant of restitution may be issued, with the leave of the court, in aid of any warrant of possession.

(5) An application for leave under paragraph (4) may be made ex parte and shall be supported by evidence of wrongful re-entry into possession following the execution of the warrant of possession and of such further facts as would, in the High Court, enable the judgment creditor to have a writ of restitution issued.

(6) Rules 5 and 6 shall apply, with the necessary modifications, in relation to a warrant of possession and any further warrant in aid of such a warrant as they apply in relation to a warrant of execution.

Saving for enforcement by committal

18. Nothing in rule 16 or 17 shall prejudice any power to enforce a judgment or order for the delivery of goods or the recovery of land by an order of committal.

ORDER 27

ATTACHMENT OF EARNINGS

PART I

GENERAL

Interpretation

1. In this Order “the Act of 1971” means the Attachment of Earnings Act 1971 and, unless the context otherwise requires, expressions used in that Act have the same meanings as in that Act.

Index of orders

2.—(1) The proper officer of every court shall keep a nominal index of the debtors residing within the district of his court in respect of whom there are in force attachment of earnings orders which have been made by that court or of which the proper officer has received notice from another court.

(2) Where a debtor in respect of whom a court has made an attachment of earnings order resides within the district of another court, the proper officer of the first-mentioned court shall send a copy of the order to the proper officer of the other court for entry in his index.

(3) The proper officer of a court shall, on the request of any person having a judgment or order against a person believed to be residing within the district of the court, cause a search to be made in the index of the court and issue a certificate of the result of the search.

Appropriate court

3.—(1) Subject to paragraphs (2) and (3), an application for an attachment of earnings order may be made to the court for the district in which the debtor resides.

(2) If the debtor does not reside within England or Wales, or the creditor does not know where he resides, the application may be made to the court in which, or for the district in which, the judgment or order sought to be enforced was obtained.

(3) Where the creditor applies for attachment of earnings orders in respect of two or more debtors jointly liable under a judgment or order, the application may be made to the court for the district in which any of the debtors resides, so however that if the judgment or order was given or made by any such court, the application shall be made to that court.

Mode of applying

4.—(1) A judgment creditor who desires to apply for an attachment of earnings order shall file his application together with a copy for service on the debtor and, where it is sought to enforce an order of magistrates' court,—

- (a) a certified copy of the order, and
- (b) an affidavit verifying the amount due under the order or, if payments under the order are required to be made to the clerk to the magistrates' court, a certificate by that clerk to the same effect.

(2) On the filing of the documents mentioned in paragraph (1) the proper officer shall fix a day for the hearing of the application.

Service and reply

5.—(1) A copy of the application, together with a notice to the debtor and a form of reply, shall be served on the debtor in the manner prescribed by these rules for the service of a fixed date summons.

(2) The debtor shall, within 8 days after service on him of the documents mentioned in paragraph (1), file a reply in the form provided, and the instruction to that effect in the notice to the debtor shall constitute a requirement imposed by virtue of section 14(4) of the Act of 1971:

Provided that no proceedings shall be taken for an offence alleged to have been committed under section 23(2)(c) or (f) of the Act of 1971 in relation to the requirement unless the said documents have been served on the debtor personally or the court is satisfied that they came to his knowledge in sufficient time for him to comply with the requirement.

(3) On receipt of a reply the proper officer shall send a copy to the applicant.

Notice to employer

6. Without prejudice to the powers conferred by section 14(1) of the Act of 1971, the proper officer may, at any stage of the proceedings, send to any person appearing to have the debtor in his employment a notice requesting him to give to the registrar, within such period as may be specified in the notice, a statement of the debtor's earnings and anticipated earnings with such particulars as may be so specified.

Hearing of application

7.—(1) An application for an attachment of earnings order may be heard and determined by the registrar, and Order 1, rule 8, shall apply in relation to any power conferred by the Act of 1971 as it applies in relation to any power conferred by these rules.

(2) The application may be heard and determined in chambers.

(3) Where the registrar has information which in his opinion is sufficient to enable an attachment of earnings order to be made without the attendance of the parties, he may cause notice to be given to the parties, not less than 10 days before the return day, that he will, 10 days after the date of such notice, make an order in the terms specified therein, unless either party objects in accordance with paragraph (4).

(4) If either party objects to the order proposed or to the terms specified in a notice given under paragraph (3), he shall, within 5 days after the receipt by him of such notice, give notice of his objection to the other party and to the proper officer and thereupon the application shall be dealt with on the return day.

(5) If the creditor does not appear at the hearing of the application but—

- (a) the court has received an affidavit of evidence from him, or
- (b) the creditor requests the court in writing to proceed in his absence,

the court may, notwithstanding anything in Order 21, rule 1, proceed to hear the application and to make an order thereon.

(6) An attachment of earnings order may be made to secure the payment of a judgment debt if the debt is—

- (a) of not less than £15, or
- (b) for the amount remaining payable under a judgment for a sum of not less than £15.

(7) Where the judgment debt or the balance thereof in respect of which the application is made is paid into court before the day fixed for the hearing of the application, the proper officer shall, if time permits, give the creditor notice of the payment.

Enforcement of debtor's attendance

8.—(1) An order made under section 23(1) of the Act of 1971 for the attendance of the debtor at an adjourned hearing of an application for an attachment of earnings order shall be served on the debtor personally not less than 5 days before the day fixed for the adjourned hearing.

(2) An application by a debtor for the revocation of an order committing him to prison and, if he is already in custody, for his discharge under subsection (7) of the said section 23 shall be made to the judge *ex parte* in writing showing the reasons for the debtor's failure to attend the court or his refusal to be sworn or to give evidence, as the case may be, and containing an undertaking by the debtor to attend the court or to be sworn or to give evidence when next ordered or required to do so.

(3) The application shall, if the debtor has already been lodged in prison, be attested by the governor of the prison (or any other officer of the prison not below the rank of principal officer) and in any other case be made on affidavit.

(4) Before dealing with the application the judge may, if he thinks fit, cause notice to be given to the judgment creditor that the application has been made and of a day and hour when he may attend and be heard.

Costs

9.—(1) Where costs are allowed to the judgment creditor on an application for an attachment of earnings order, there may be allowed—

- (a) a charge of a solicitor for attending the hearing and, if the court so directs, for serving the application;
- (b) if the court certifies that the case is fit for counsel, a fee to counsel, and
- (c) the court fee on the issue of the application.

(2) For the purposes of paragraph (1)(a) a solicitor who has prepared on behalf of the judgment creditor an affidavit or request under rule 7(5) shall be treated as having attended the hearing.

(3) The costs may be fixed and allowed without taxation and the scale shall be determined by the amount payable under the relevant adjudication (or so much of that amount as remains unpaid), including any relevant costs.

Contents and service of order

10.—(1) An attachment of earnings order shall contain such of the following particulars relating to the debtor as are known to the court, namely—

- (a) his full name and address,
- (b) his place of work and
- (c) the nature of his work and his works number, if any,

and those particulars shall be the prescribed particulars for the purposes of section 6(3) of the Act of 1971.

(2) An attachment of earnings order and any order varying or discharging such an order shall be served on the debtor and on the person to whom the order is directed, and Order 7, rule 1, shall apply with the modification contained in Order 22, rule 1(5), and with the further modification that where the order is directed to a corporation which has requested the court that any communication relating to the debtor or to the class of persons to whom he belongs shall be directed to the corporation at a particular address, service may, if the registrar thinks fit, be effected on the corporation at that address.

(3) Where an attachment of earnings order is made to enforce a judgment or order of the High Court or a magistrates' court, a copy of the attachment of earnings order and of any order discharging it shall be sent by the proper officer of the county court to the proper officer of the High Court or, as the case may be, the clerk of the magistrates' court.

Application to determine whether particular payments are earnings

11. An application to the court under section 16 of the Act of 1971 to determine whether payments to the debtor of a particular class or description are earnings for the purpose of an attachment of earnings order may be made to the registrar in writing and the proper officer shall thereupon fix a date and time for the hearing of the application by the court and give notice thereof to the persons mentioned in the said section 16(2)(a), (b) and (c).

Notice of cesser

12. Where an attachment of earnings order ceases to have effect under section 8(4) of the Act of 1971, the proper officer of the court in which the matter is proceeding shall give notice of the cesser to the person to whom the order was directed.

Variation and discharge by court of own motion

13.—(1) Subject to paragraph (9), the powers conferred by section 9(1) of the Act of 1971 may be exercised by the court of its own motion in the circumstances mentioned in the following paragraphs.

(2) Where it appears to the court that a person served with an attachment of earnings order directed to him has not the debtor in his employment, the court may discharge the order.

(3) Where an attachment of earnings order which has lapsed under section 9(4) of the Act of 1971 is again directed to a person who appears to the court to have the debtor in his employment, the court may make such consequential variations in the order as it thinks fit.

(4) Where, after making an attachment of earnings order, the court makes or is notified of the making of another such order in respect of the same debtor which is not to secure the payment of a judgment debt or payments under an administration order, the court may discharge or vary the first-mentioned order having regard to the priority accorded to the other order by paragraph 8 of Schedule 3 to the Act of 1971.

(5) Where, after making an attachment of earnings order, the court makes an order under section 4(1)(b) of the Act of 1971 or makes an administration order, the court may discharge the attachment of earnings order or, if it exercises the power conferred by section 5(3) of the said Act, may vary the order in such manner as it thinks fit.

(6) On making a consolidated attachment of earnings order the court may discharge any earlier attachment of earnings order made to secure the payment of a judgment debt by the same debtor.

(7) Where it appears to the court that a receiving order or an order of adjudication in bankruptcy has been made against a person in respect of whom an attachment of earnings order is in force to secure the payment of a judgment debt, the court may discharge the attachment of earnings order.

(8) Where an attachment of earnings order has been made to secure the payment of a judgment debt and the court grants leave to issue execution for the recovery of the debt, the court may discharge the order.

(9) Before varying or discharging an attachment of earnings order of its own motion under any of the foregoing paragraphs of this rule, the court shall, unless it thinks it unnecessary in the circumstances to do so, give the debtor and the person on whose application the order was made an opportunity of being heard on the question whether the order should be varied or discharged, and for that purpose the proper officer may give them notice of a date, time and place at which the question will be considered.

Transfer of attachment order

14.—(1) Where the court by which the question of making a consolidated attachment order falls to be considered is not the court by which any attachment of earnings order has been made to secure the payment of a judgment debt by the debtor, the registrar of the last-mentioned court shall, at the request of the registrar of the first-mentioned court, transfer to that court the matter in which the attachment of earnings order was made.

(2) Without prejudice to paragraph (1), if in the opinion of the judge or registrar of any court by which an attachment of earnings order has been made, the matter could more conveniently proceed in some other court, whether by reason of the debtor having become resident in the district of that court or otherwise, he may order the matter to be transferred to that court.

(3) The court to which proceedings arising out of an attachment of earnings are transferred under this rule shall have the same jurisdiction in relation to the order as if it has been made by that court.

Exercise of power to obtain statement of earnings etc

15.—(1) An order under section 14(1) of the Act of 1971 shall be indorsed with or incorporate a notice warning the person to whom it is directed of the consequences of disobedience to the order and shall be served on him personally.

(2) Order 34, rule 2, shall apply, with the necessary modifications, in relation to any penalty for failure to comply with an order under the said section 14(1) or, subject to the proviso to rule 5(2), any penalty for failure to comply with a requirement mentioned in that rule, as it applies in relation to a fine under section 84 of the County Courts Act 1959.

Offences

16.—(1) Where it is alleged that a person has committed any offence mentioned in section 23(2) (a), (b), (d), (e) or (f) of the Act of 1971 in relation to proceedings in, or to an attachment of earnings order made by, a county court, the registrar shall, unless it is decided to proceed against the alleged offender summarily, issue a summons calling upon him to show cause why he should not be punished for the alleged offence.

The summons shall be served on the alleged offender personally not less than 14 days before the return day.

(2) Order 34, rules 3 and 4, shall apply, with the necessary modifications, to proceedings for an offence under section 23(2) of the Act of 1971 as they apply to proceedings for offences under the County Courts Act 1959.

Maintenance orders

17.—(1) The foregoing rules of this Order shall apply in relation to maintenance payments as they apply in relation to a judgment debt, subject to the following paragraphs.

(2) An application for an attachment of earnings order to secure payments under a maintenance order made by a county court shall be made to that county court.

(3) Any application under section 32 of the Matrimonial Causes Act 1973 for leave to enforce the payment of arrears which became due more than 12 months before the application for an attachment of earnings order shall be made in that application.

(4) An application by the debtor for an attachment of earnings order to secure payments under a maintenance order may be made on the making of the maintenance order or an order varying the maintenance order, and rules 4 and 5 shall not apply.

(5) Rule 7 shall apply with the omission of paragraphs (3) and (4).

(6) Rule 9 shall apply as if for the reference to the amount payable under the relevant adjudication there were substituted a reference to the arrears due under the related maintenance order.

(7) Where an attachment of earnings order made by the High Court designates the proper officer of a county court as the collecting officer, that officer shall, on receipt of a certified copy of the order from the proper officer of the High Court, send to the person to whom the order is directed a notice as to the mode of payment.

(8) Where an attachment of earnings order made by a county court to secure payments under a maintenance order ceases to have effect and—

- (a) the related maintenance order was made by that court, or
- (b) the related maintenance order was an order of the High Court and—
 - (i) the proper officer of the county court has received notice of the cessation from the proper officer of the High Court, or
 - (ii) a committal order has been made in the county court for the enforcement of the related maintenance order,

the proper officer of the county court shall give notice of the cessation to the person to whom the attachment of earnings order was directed.

(9) Where an attachment of earnings order has been made by a county court to secure payments under a maintenance order, notice under section 10(2) of the Act of 1971 to the debtor and to the person to whom the registrar is required to pay sums received under the order shall be in the form provided for that purpose, and if the debtor wishes to request the court to discharge the attachment of earnings order or to vary it otherwise than by making the appropriate variation, he shall apply to the court, within 14 days after the date of the notice, for the relief desired.

(10) Rule 13 shall have effect as if for paragraphs (4) to (7) there were substituted the following paragraph:—

“(4) Where it appears to the court by which an attachment of earnings order has been made that the related maintenance order has ceased to have effect, whether by virtue of the terms of the maintenance order or under section 28 of the Matrimonial Causes Act 1973 or otherwise, the court may discharge or vary the attachment of earnings order.”

(11) Rule 7(6) shall not apply.

PART II

CONSOLIDATED ATTACHMENT OF EARNINGS ORDERS

Cases in which consolidated order may be made

18. Subject to the provisions of rules 19 to 21, the court may make a consolidated attachment order where—

- (a) two or more attachment of earnings orders are in force to secure the payment of judgment debts by the same debtor, or
- (b) on an application for an attachment of earnings order to secure the payment of a judgment debt, or for a consolidated attachment order to secure the payment of two or more judgment debts, it appears to the court that an attachment of earnings order is already in force to secure the payment of a judgment debt by the same debtor.

Application for consolidated order

19.—(1) An application for a consolidated attachment order may be made—

- (a) by the debtor in respect of whom the order is sought, or
 - (b) by any person who has obtained or is entitled to apply for an attachment of earnings order to secure the payment of a judgment debt by that debtor.
- (2) An application by the debtor for a consolidated attachment of earnings order may be made—
- (a) in the proceedings in which any attachment of earnings order is in force to secure the payment of a judgment debt by the debtor, or
 - (b) at the hearing of any application for such an order.

The application shall be made in accordance with Order 13, rule 1, on notice to the creditor in the proceedings in which the application is made and any other creditor who has obtained an attachment of earnings order which is in force to secure the payment of a judgment debt by the debtor, and rules 3, 4 and 5 of this Order shall not apply.

(3) An application by a creditor for a consolidated attachment order may—

- (a) if the judgment which he seeks to enforce was given by the court to which the application is made, be made in accordance with Order 13, rule 1, in the proceedings in which the judgment was obtained, and rules 4 and 5 of this Order shall not apply;
- (b) in any other case, be made by originating application, and rules 4(1) and 5 shall not apply.

The debtor and every person who, to the knowledge of the applicant, has obtained an attachment of earnings order which is in force to secure the payment of a judgment debt by the debtor shall be given notice of the application or, as the case may be, made a respondent to the originating application.

(4) A person to whom two or more attachment of earnings orders are directed to secure the payment of judgment debts by the same debtor may request the court in writing to make a consolidated attachment order to secure the payment of those debts, and on receipt of such a request

the proper officer shall fix a date, time and place at which the request will be considered and give notice thereof to the debtor and the persons who obtained the attachment of earnings orders.

Making of consolidated order by court of its own motion

20. Where an application is made for an attachment of earnings order to secure the payment of a judgment debt by a debtor in respect of whom an attachment of earnings order is already in force to secure the payment of another judgment debt and no application is made for a consolidated attachment order, the court may make such an order of its own motion after giving all persons concerned an opportunity of being heard.

Extension of consolidated order

21.—(1) Where a consolidated attachment order is in force to secure the payment of two or more judgment debts, any creditor to whom another judgment debt is owed by the same judgment debtor may apply to the court by which the order was made for it to be extended so as to secure the payment of that debt as well as the first-mentioned debts and, if the application is granted, the court may either vary the order accordingly or may discharge it and make a new consolidated attachment order to secure payment of all the aforesaid judgment debts.

(2) An application under this rule shall be treated for the purposes of rules 19 and 20 as an application for a consolidated attachment order.

Payments under consolidated order

22. Instead of complying with section 13 of the Act of 1971, a proper officer who receives payments made to him in compliance with a consolidated attachment order shall, after deducting such court fees, if any, in respect of proceedings for or arising out of the order as are deductible from those payments, deal with the sums paid as he would if they had been paid by the debtor to satisfy the relevant adjudications in proportion to the amounts payable thereunder, and for that purpose dividends may from time to time be declared and distributed among the creditors entitled thereto.

ORDER 28

JUDGMENT SUMMONSES

Application for judgment summons

1.—(1) An application for the issue of a judgment summons may be made to the court for the district in which the debtor resides or carries on business or, if the summons is to issue against two or more persons jointly liable under the judgment or order sought to be enforced, in the court for the district in which any of the debtors resides or carries on business.

(2) The judgment creditor shall make his application by filing a request in that behalf.

Mode of service

2.—(1) Subject to paragraph (2), a judgment summons shall be served personally on every debtor against whom it is issued.

(2) Where the judgment creditor or his solicitor gives a certificate for postal service in respect of a debtor residing or carrying on business within the district of the court, the judgment summons shall, unless the registrar otherwise directs, be served on that debtor by an officer of the court sending it to him by first-class post at the address stated in the request for the judgment summons and, unless

the contrary is shown, the date of service shall be deemed to be the seventh day after the date on which the judgment summons was sent to the debtor.

(3) Where a judgment summons has been served on a debtor in accordance with paragraph (2), no order of commitment shall be made against him unless—

(a) he appears at the hearing, or

(b) the judge is satisfied that the summons came to his knowledge in sufficient time for him to appear at the hearing.

(4) Where a judgment summons is served personally, there may, if the judgment creditor so desires, be paid to the debtor at the time of service a sum reasonably sufficient to cover his expenses in travelling to and from the court.

Time for service

3.—(1) A judgment summons shall be served not less than 14 days before the day fixed for the hearing.

(2) A notice of non-service shall be sent pursuant to Order 7, rule 6(2), in respect of a judgment summons which has been sent by post under rule 2(2) and has been returned to the court office undelivered.

(3) Order 7, rules 19 and 20, shall apply, with the necessary modifications, to a judgment summons as they apply to a fixed date summons.

Enforcement of debtor's attendance

4.—(1) Order 27, rule 8, shall apply, with the necessary modifications, to an order made under section 144(1) of the Act for the attendance of the debtor at an adjourned hearing of a judgment summons as it applies to an order made under section 23(1) of the Attachment of Earnings Act 1971 for the attendance of the debtor at an adjourned hearing of an application for an attachment of earnings order.

(2) At the time of service of the order there shall be paid or tendered to the debtor a sum reasonably sufficient to cover his expenses in travelling to and from the court, unless such a sum was paid to him at the time of service of the judgment summons.

Evidence by affidavit

5. Where the judgment creditor does not reside or carry on business within the district of the court from which the judgment summons issued, evidence by affidavit shall be admissible on his behalf without any such notice as is required by Order 20, rule 7, having been given, unless the judge otherwise directs.

Notification of payment of judgment summons

6. Where the amount in respect of which a judgment summons has been issued is paid into court before the day fixed for the hearing of the judgment summons, the proper officer shall, if time permits, give the judgment creditor notice of the payment.

Suspension of committal order

7.—(1) If on the hearing of a judgment summons a committal order is made, the judge may direct execution of the order to be suspended to enable the debtor to pay the amount due.

(2) A note of any direction given under paragraph (1) shall be entered in the records of the court and notice of the suspended committal order shall be sent to the debtor.

(3) Where a judgment summons is issued in respect of one or more but not all of the instalments payable under a judgment or order for payment by instalments and a committal order is made and suspended under paragraph (1), the judgment or order shall, unless the judge otherwise orders, be suspended for so long as the execution of the committal order is suspended.

(4) Where execution of a committal order is suspended under paragraph (1) and the debtor subsequently desires to apply for a further suspension, the debtor shall attend at or write to the court office and apply for the suspension he desires, stating the reasons for his inability to comply with the terms of the original suspension, and the proper officer shall fix a day for the hearing of the application by the judge and give at least 3 days' notice thereof to the judgment creditor and the debtor.

(5) The registrar may suspend execution of the committal order pending the hearing of an application under paragraph (4).

New order on judgment summons

8.—(1) Where on the hearing of a judgment summons, the judge makes a new order for payment of the amount of the judgment debt remaining unpaid, there shall be included in the amount payable under the order for the purpose of any enforcement proceedings, otherwise than by judgment summons, any amount in respect of which a committal order has already been made and the debtor imprisoned.

(2) No judgment summons under the new order shall include any amount in respect of which the debtor was imprisoned before the new order was made, and any amount subsequently paid shall be appropriated in the first instance to the amount due under the new order.

Notification of order on judgment of High Court

9.—(1) Notice of the result of the hearing of a judgment summons on a judgment or order of the High Court shall be sent by the proper officer of the county court to the proper officer of the High Court.

(2) If a committal order or a new order for payment is made on the hearing, the office copy of the judgment or order filed under Order 25, rule 11, shall be deemed to be a judgment or order of the court in which the judgment summons is heard, and if the judgment creditor subsequently desires to issue a judgment summons in another county court, Order 25, rule 2, shall apply with the necessary modifications.

Costs on judgment summons

10.—(1) No costs shall be allowed to the judgment creditor on the hearing of a judgment summons unless—

- (a) a committal order is made, or
 - (b) the sum in respect of which the judgment summons was issued is paid before the hearing.
- (2) Where costs are allowed to the judgment creditor,
- (a) there may be allowed—
 - (i) a charge of the judgment creditor's solicitor for attending the hearing and, if the judge so directs, for serving the judgment summons;
 - (ii) any travelling expenses paid to the debtor, and
 - (iii) the court fee on the issue of the judgment summons;
 - (b) the costs may be fixed and allowed without taxation; and

(c) the scale shall be determined by the sum in respect of which the judgment summons was issued.

(3) For the purposes of paragraph (2)(a)(i) a solicitor who has prepared on behalf of the judgment creditor an affidavit under rule 5 shall be treated as having attended the hearing.

Issue of warrant of committal

11.—(1) A judgment creditor desiring a warrant to be issued pursuant to a committal order shall file a request in that behalf.

(2) Where two or more debtors are to be committed in respect of the same judgment or order, a separate warrant of committal shall be issued for each of them.

(3) Where a warrant of committal is sent to a foreign court for execution, the proper officer of that court shall indorse on it a notice as to the effect of section 161(3) of the Act addressed to the governor of the prison of that court.

Notification to foreign court of part payment before debtor lodged in prison

12. Where, after a warrant of committal has been sent to a foreign court for execution but before the debtor is lodged in prison, an amount less than the sum on payment of which the debtor is to be discharged is paid into the home court, the proper officer of that court shall send notice of the payment to the proper officer of the foreign court.

Payment after debtor lodged in prison

13.—(1) Where, after the debtor has been lodged in prison under a warrant of committal, payment is made of the sum on payment of which the debtor is to be discharged, then—

- (a) if the payment is made to the proper officer of the court responsible for the execution of the warrant, he shall make and sign a certificate of payment and send it by post or otherwise to the gaoler;
- (b) if the payment is made to the proper officer of the court which issued the warrant of committal after the warrant has been sent to a foreign court for execution, the proper officer of the home court shall send notice of the payment to the proper officer of the foreign court, who shall make and sign a certificate of payment and send it by post or otherwise to the gaoler;
- (c) if the payment is made to the gaoler, he shall sign a certificate of payment and send the amount to the proper officer of the court which made the committal order.

(2) Where, after the debtor has been lodged in prison under a warrant of committal, payment is made of an amount less than the sum on payment of which the debtor is to be discharged, then, subject to paragraph (3), paragraph (1)(a) and (b) shall apply with the substitution of references to a notice of payment for the references to a certificate of payment and paragraph (1)(c) shall apply with the omission of the requirement to make and sign a certificate of payment.

(3) Where, after the making of a payment to which paragraph (2) relates, the balance of the sum on payment of which the debtor is to be discharged is paid, paragraph (1) shall apply without the modifications mentioned in paragraph (2).

Discharge of debtor otherwise than on payment

14.—(1) Where the judgment creditor lodges with the registrar a request that a debtor lodged in prison under a warrant of committal may be discharged from custody, the registrar shall make an order for the discharge of the debtor in respect of the warrant of committal and the proper officer shall send the gaoler a certificate of discharge.

(2) Where a debtor who has been lodged in prison under a warrant of committal desires to apply for his discharge under section 160 of the Act, the application shall be made to the judge ex parte in writing showing the reasons why the debtor alleges that he is unable to pay the sum in respect of which he has been committed and ought to be discharged and stating any offer which he desires to make as to the terms on which his discharge is to be ordered, and Order 27, rule 8(3) and (4), shall apply, with the necessary modifications, as it applies to an application by a debtor for his discharge from custody under section 23(7) of the Attachment of Earnings Act 1971.

(3) If in a case to which paragraph (2) relates the debtor is ordered to be discharged from custody on terms which include liability to re-arrest if the terms are not complied with, the judge may, on the application of the judgment creditor if the terms are not complied with, order the debtor to be re-arrested and imprisoned for such part of the term of imprisonment as remained unserved at the time of discharge.

(4) Where an order is made under paragraph (3), a duplicate warrant of committal shall be issued, indorsed with a certificate signed by the proper officer as to the order of the judge.

ORDER 29

COMMITTAL FOR BREACH OF ORDER OR UNDERTAKING

Enforcement of judgment to do or abstain from doing any act

1.—(1) Where a person required by a judgment or order to do an act refuses or neglects to do it within the time fixed by the judgment or order or any subsequent order, or where a person disobeys a judgment or order requiring him to abstain from doing an act, then, subject to the Debtors Acts 1869 and 1878 and to the provisions of these rules, the judgment or order may be enforced, by order of the judge, by a committal order against that person or, if that person is a body corporate, against any director or other officer of the body.

(2) Subject to paragraphs (6) and (7), a judgment or order shall not be enforced under paragraph (1) unless—

- (a) a copy of the judgment or order has been served personally on the person required to do or abstain from doing the act in question and also, where that person is a body corporate, on the director or other officer of the body against whom a committal order is sought, and
- (b) in the case of a judgment or order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act and was accompanied by a copy of any order, made between the date of the judgment or order and the date of service, fixing that time.

(3) Where a judgment or order enforceable by committal order under paragraph (1) has been given or made, the proper officer shall, if the judgment or order is in the nature of an injunction, at the time when the judgment or order is drawn up, and in any other case on the request of the judgment creditor, issue a copy of the judgment or order, indorsed with or incorporating a notice as to the consequences of disobedience, for service in accordance with paragraph (2).

(4) If the person served with the judgment or order fails to obey it, the proper officer shall, at the request of the judgment creditor, issue a notice calling on that person to show cause why a committal order should not be made against him, and subject to paragraph (7) the notice shall be served on him personally.

(5) If a committal order is made, the order shall be for the issue of a warrant of committal and a copy of the order shall be served on the person to be committed either before or at the time of the execution of the warrant unless the judge otherwise orders.

(6) A judgment or order requiring a person to abstain from doing an act may be enforced under paragraph (1) notwithstanding that service of a copy of the judgment or order has not been effected in accordance with paragraph (2) if the judge is satisfied that, pending such service, the person against whom it is sought to enforce the judgment or order has had notice thereof either—

- (a) by being present when the judgment or order was given or made, or
- (b) by being notified of the terms of the judgment or order whether by telephone, telegram or otherwise.

(7) Without prejudice to its powers under Order 7, rule 8, the court may dispense with service of a copy of a judgment or order under paragraph (2) or a notice to show cause under paragraph (4), if the court thinks it just to do so.

Solicitor's undertaking

2.—(1) An undertaking given by a solicitor in relation to any proceeding in a county court may be enforced, by order of the judge of that court, by committal order against the solicitor.

(2) Where it appears to the judge that a solicitor has failed to carry out any such undertaking, he may of his own motion direct the proper officer to issue a notice calling on the solicitor to show cause why he should not be committed to prison.

(3) Where any party to the proceedings desires to have the undertaking enforced by committal order, the proper officer shall, on the application of the party supported by an affidavit setting out the facts on which the application is based, issue such a notice as is referred to in paragraph (2).

(4) A notice to show cause issued under paragraph (2) or (3) shall be served on the solicitor personally, together with a copy of any affidavit filed under paragraph (3), but rule 1(5) and (7) shall apply in relation to the notice as they apply in relation to a notice to show cause issued under rule 1(4).

Discharge of person in custody

3.—(1) Where a person in custody under a warrant or order, other than a warrant of committal to which Order 27, rule 8, or Order 28, rule 4 or 14, relates, desires to apply to the court for his discharge, he shall make his application in writing attested by the governor of the prison (or any other officer of the prison not below the rank of principal officer) showing that he has purged or is desirous of purging his contempt and shall, not less than one day before the application is made, serve notice of it on the party, if any, at whose instance the warrant or order was issued.

(2) If the committal order does not direct that any application for discharge shall be made to the judge, it may, with leave of the judge, be made to the registrar.

(3) Nothing in paragraph (1) shall apply to an application made by the Official Solicitor in his official capacity for the discharge of a person in custody.

ORDER 30

GARNISHEE PROCEEDINGS

Attachment of debt due to judgment debtor

1.—(1) Where a person (in this Order called “the judgment creditor”) has obtained in a county court a judgment or order for the payment of money by some other person (“the judgment debtor”) and any person within England and Wales (“the garnishee”) is indebted to the judgment debtor, that court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due from the garnishee to the judgment

debtor or so much thereof as is sufficient to satisfy the judgment or order against the judgment debtor and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, specifying the place and time for the further consideration of the matter (in this Order called “the return day”) and in the meantime attaching the debt due or accruing due from the garnishee or so much thereof as is sufficient for the purpose aforesaid.

(3) Among the conditions mentioned in section 143(1) of the Act (which enables any sum standing to the credit of a person in a deposit account in a bank to be attached notwithstanding that certain conditions applicable to the account have not been satisfied) there shall be included any condition that a receipt for money deposited in the account must be produced before any money is withdrawn.

(4) An order may be made under this rule notwithstanding that the debt due or accruing due from the garnishee to the judgment debtor exceeds the sum for the time being specified in section 39 of the Act.

Application for order

2. An application for an order under rule 1 may be made ex parte by filing an affidavit—
 - (a) stating that, to the best of the information or belief of the deponent, the garnishee (giving his name and address) is indebted to the judgment debtor, and
 - (b) where the garnishee is a bank having more than one place of business, giving the name and address of the branch at which the judgment debtor's account is believed to be held or, if it be the case, that this information is unknown to the deponent.

Preparation, service and effect of order to show cause

3.—(1) An order under rule 1 to show cause shall be drawn up by the proper officer with sufficient copies for service under this rule.

- (2) At least 7 days before the return day a copy of the order shall be served—
 - (a) on the garnishee in the same manner as a fixed date summons, and thereafter
 - (b) unless the court otherwise directs, on the judgment debtor in accordance with Order 7, rule 1,

and as from such service on the garnishee the order shall bind in his hands any debt due or accruing due from the garnishee to the judgment debtor, or so much thereof as is sufficient to satisfy the judgment or order obtained by the judgment creditor against the judgment debtor, and the costs entered on the order to show cause.

Payment into court by garnishee

- 4.—(1) The garnishee may, at any time before the return day, pay into court—
 - (a) the amount required to satisfy the judgment or order obtained by the judgment creditor against the judgment debtor and the costs entered on the order to show cause, or
 - (b) such lesser sum as he admits to be owing by him to the judgment debtor,

and thereupon, subject to rule 8, the proceedings against the garnishee shall be stayed.

(2) Where a payment into court is made under paragraph (1), the proper officer shall, if time permits, send notice of the payment to the judgment creditor and the judgment debtor.

Notice by bank denying indebtedness

5. Where the garnishee being a bank alleges that it does not hold any money to the credit of the judgment debtor, the garnishee may, at any time before the return day, give notice to that effect to the proper officer and to the judgment creditor and thereupon, subject to rule 8, the proceedings against the garnishee shall be stayed.

Order where money paid in by garnishee

6. If the garnishee makes a payment into court under rule 4, then, subject to rule 8, the court may on the return day, after hearing the judgment creditor and the judgment debtor if they appear, order the payment out of the money to the judgment creditor or make such other order in the proceedings as may be just.

Order where no payment into court etc

7.—(1) Where the garnishee—

- (a) does not make a payment into court under rule 4 or give notice under rule 5, and
- (b) does not on the return day appear or dispute the debt due or claimed to be due from him to the judgment debtor,

then, if the judgment debtor does not appear or show cause to the contrary, the court may, if it thinks fit, make an order absolute under rule 1 against the garnishee.

(2) An order absolute under rule 1 may be enforced in the same manner as any other order for the payment of money.

Directions where dispute as to part payment or notice under rule 5

8. Where the garnishee—

- (a) pays into court under rule 4(1)(b) a sum which the judgment creditor contends is less than the amount owing by the garnishee to the judgment debtor, or
- (b) makes in a notice given under rule 5 an allegation which the judgment creditor disputes,

the court shall on the return day give directions for the determination of the question at issue.

Determination of liability in other cases

9. Where in a case in which no payment into court has been made under rule 4 and no notice has been given under rule 5 the garnishee on the return day disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried.

Transfer of proceedings

10. A garnishee who does not reside or carry on business within the district of the court in which the garnishee proceedings have been commenced and who desires to dispute liability for the debt due or claimed to be due from him to the judgment debtor may apply ex parte in writing to that court for an order transferring the action in which the judgment or order sought to be enforced was obtained to the court for the district in which the garnishee resides or carries on business, and the court applied to may, if it thinks fit, grant the application after considering any representations which it may give the judgment creditor and the judgment debtor an opportunity of making.

Discharge of garnishee

11. Any payment made by a garnishee either under rule 4 or in compliance with an order absolute in garnishee proceedings, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied (otherwise than in respect of any costs ordered to be paid by the garnishee personally), notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arise is reversed.

Money in court

12.—(1) Where money is standing to the credit of the judgment debtor in any county court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of the money but may apply to the court on notice for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) On receipt of notice of an application under paragraph (1) the proper officer shall retain the money in court until the application has been determined.

(3) The court hearing on application under paragraph (1) may make such order with respect to the money in court as it thinks just.

Costs of judgment creditor

13. Any costs allowed to the judgment creditor on an application for an order under rule 1 or 12 which in the former case are not ordered to be paid by the garnishee personally shall, unless the court otherwise directs, be retained by the judgment creditor out of the money recovered by him under the order in priority to the amount due under the judgment or order obtained by him against the judgment debtor.

Attachment of debt owed by firm

14.—(1) An order may be made under rule 1 in relation to a debt due or accruing due from a firm carrying on business within England and Wales, notwithstanding that one or more members of the firm may be resident out of England and Wales.

(2) An order to show cause under rule 1 relating to such a debt shall be served on a member of the firm within England and Wales or on some other person having the control or management of the partnership business.

Powers of registrar

15. The powers conferred on the court by any provision of this Order may be exercised by the judge or registrar.

ORDER 31

CHARGING ORDERS

Application for charging order

1.—(1) An application to a county court for a charging order under section 1 of the Charging Orders Act 1979 may be made—

(a) if the order is sought in respect of a fund in court, to the court where the money is lodged;

- (b) subject to (a), if the judgment or order sought to be enforced is that of a county court, to the court in which the judgment or order was obtained or, if the action or matter has been transferred to another court under Order 16, rule 1(d) or (e), or Order 25, rule 2, the court to which it has been transferred;
 - (c) subject to (a) and (b), to the court for the district in which the debtor resides or carries on business or, if there is no such district, to the court for the district in which the judgment creditor resides or carries on business.
- (2) The application may be made ex parte by filing an affidavit—
- (a) stating the name and address of the debtor and, if known, of every creditor of his whom the applicant can identify;
 - (b) identifying the subject matter of the intended charge;
 - (c) either verifying the debtor's beneficial ownership of the asset to be charged or, where the asset is held by a trustee, stating on which of the three grounds appearing in section 2(1)(b) of the said Act the application is based and verifying the material facts;
 - (d) stating, in the case of securities other than securities in court, the name and address of the person or body to be served for the purpose of protecting the intended charge;
 - (e) stating, where the subject matter is an interest under a trust, or held by a trustee, the names and addresses of such trustees and beneficiaries as are known to the applicant.

Where the judgment or order to be enforced is a judgment or order of the High Court or a judgment, order, decree or award of a court or arbitrator which is or has become enforceable as if it were a judgment or order of the High Court, the applicant shall file with his affidavit the documents mentioned in Order 25, rule 11(a) and (c), and the affidavit shall verify the amount unpaid at the date of the application.

(3) Subject to paragraph (1), an application may be made for a single charging order in respect of more than one judgment or order against a debtor.

(4) Upon the filing of the affidavit mentioned in paragraph (2), the application shall be entered in the records of the court, and if, in the opinion of the registrar, a sufficient case for such an order is made in the affidavit, the registrar shall make a charging order nisi fixing a day for the further consideration of the matter by the court.

(5) A copy of the order shall be sent by the proper officer to the judgment creditor and, where funds in court are to be charged, shall be served by the proper officer on the Accountant-General at the Court Funds Office.

(6) Copies of the order and of the affidavit shall be served by the proper officer on the debtor and on such of the debtor's other creditors, and, where a trust is involved, on such trustees and beneficiaries as the registrar may direct.

(7) Where an interest in securities not in court is to be charged, copies of the order nisi shall be served by the proper officer on the person or body required to be served in like circumstances by R.S.C. Order 50, rule 2(1)(b).

(8) The documents required by the foregoing paragraphs to be served shall be served in accordance with Order 7, rule 1, not less than 7 days before the day fixed for the further consideration of the matter.

Order on further consideration of application for charging order

2.—(1) On the day fixed under rule 1(4) for the further consideration of the matter, the court shall either make the order absolute, with or without modifications, or discharge it.

(2) If an order absolute is made, a copy shall be served by the proper officer, in accordance with Order 7, rule 1, on each of the following persons, namely—

- (a) the debtor,
- (b) the applicant for the order,
- (c) where funds in court are charged, the Accountant General at the Court Funds Office, and
- (d) unless otherwise directed, any person or body on whom a copy of the order nisi was served pursuant to rule 1(7).

(3) Every copy of an order served on a person or body under paragraph (2)(d) shall contain a stop notice.

Effect of charging order, etc

3.—(1) Where a charging order nisi or a charging order absolute has been made and served in accordance with rule 1 or 2, it shall have the same effect as an order made and served in like circumstances under R.S.C. Order 50.

(2) The court may vary or discharge a charging order in the like circumstances and in accordance with the same procedure, with the necessary modifications, as a like order made by the High Court.

(3) The powers of the court under rule 2 or the last preceding paragraph, except the power to vary an order made by the judge, may be exercised by the registrar.

Enforcement of charging order by sale

4.—(1) Proceedings in a county court for the enforcement of a charging order by sale of the property charged shall be commenced by originating application, which shall be filed in the appropriate court, together with an affidavit and a copy thereof—

- (a) identifying the charging order sought to be enforced and the subject matter of the charge;
- (b) specifying the amount in respect of which the charge was imposed and the balance outstanding at the date of the application;
- (c) verifying, so far as known, the debtor's title to the property charged;
- (d) identifying any prior incumbrances on the property charged, with, so far as known, the names and addresses of the incumbrancers and the amounts owing to them; and
- (e) giving an estimate of the price which would be obtained on sale of the property.

(2) The appropriate court shall be—

- (a) if the charging order was made by a country court, that court;
- (b) in any other case, the court for the district in which the debtor resides or carries on business or, if there is no such district, the court for the district in which the judgment creditor resides or carries on business.

(3) A copy of the affidavit filed under paragraph (1) shall be served on the respondent with the documents mentioned in Order 3, rule 4(4)(b).

(4) The proceedings may be heard and determined by the registrar.

ORDER 32

RECEIVERS

Application for appointment

1.—(1) An application for the appointment of a receiver may be made before, at or after the trial or hearing of any proceedings.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such an order.

(3) Where the applicant wishes to apply for the immediate grant of such an injunction pending the hearing of his application for the appointment of a receiver, he may do so ex parte on affidavit.

(4) The power to make an order for the appointment of a receiver shall be exercisable by the court and, without prejudice to Order 21, rule 5, the registrar shall have power to grant an injunction if, and only so far as, it is ancillary or incidental to an order for the appointment of a receiver by way of execution.

In this paragraph “receiver by way of execution” means a receiver appointed by way of equitable execution in relation either to an equitable interest or to a legal estate or interest in land.

Receiver to give security

2. Unless the court otherwise orders, a person other than an officer of the court who is appointed a receiver shall not act as such until he has given security duly to account for what he receives and to deal with it as the court directs.

Application of R.S.C

3.—(1) Subject to the following paragraphs of this rule, the provisions of the R.S.C. with regard to—

- (a) the remuneration of a receiver,
- (b) the submission and passing of a receiver's accounts and the payment of the amounts found due from him, and
- (c) the failure by a receiver to do any act which he is required to do,

shall apply in relation to a receiver appointed by a county court as they apply in relation to a receiver appointed by the High Court.

(2) On the delivery of any account by the receiver at the court office, the proper officer shall fix a place and time for the passing of the account by the registrar and give notice thereof to the receiver and to the parties.

(3) The receiver or any party dissatisfied with the allowance or disallowance by the registrar of any item in the account may apply to the judge on notice for a review of the registrar's decision and the judge may make such order on the application as he thinks fit.

(4) Where the order for the appointment of a receiver was made by the judge, the power on any default by the receiver to direct his discharge and the appointment of another receiver shall be exercised only by the judge.

ORDER 33

INTERPLEADER PROCEEDINGS

PART I

UNDER EXECUTION

Notice of claim

1.—(1) Any person making a claim to or in respect of goods seized in execution or the proceeds or value thereof shall deliver to the bailiff holding the warrant of execution, or file in the office of the court for the district in which the goods were seized, notice of his claim stating—

- (a) the grounds of the claim or, in the case of a claim for rent, the particulars required by section 137(2) of the Act, and
 - (b) the claimant's full name and address, which shall be his address for service.
- (2) On receipt of a claim made under this rule, the proper officer shall—
- (a) send notice thereof to the execution creditor, and
 - (b) except where the claim is to the proceeds or value of the goods, send to the claimant a notice requiring him to make a deposit or give security in accordance with section 135 of the Act.

Reply to claim

2.—(1) Within 4 days after receiving notice of a claim under rule 1(2) the execution creditor shall give notice to the proper officer informing him whether he admits or disputes the claim or requests the registrar to withdraw from possession of the goods or money claimed.

(2) If, within the period aforesaid, the execution creditor gives notice to the proper officer admitting the claim or requesting the registrar to withdraw from possession of the goods or money claimed, the execution creditor shall not be liable to the registrar for any fees or expenses incurred after receipt of the notice.

Order protecting registrar

3. Where the execution creditor gives the proper officer such a notice as is mentioned in rule 2(2), the registrar shall withdraw from possession of the goods or money claimed and may apply to the judge, on notice to the claimant, for an order restraining the bringing of an action against the registrar for or in respect of his having taken possession of the goods or money and on the hearing of the application the judge may make such order as may be just.

Issue of interpleader proceedings

4.—(1) Where the execution creditor gives notice under rule 2(1) disputing a claim made under rule 1 or fails, within the period mentioned in rule 2(1), to give the notice required by that rule, the registrar shall, unless the claim is withdrawn, issue an interpleader summons to the execution creditor and the claimant.

(2) On the issue of an interpleader summons under paragraph (1) the proper officer shall enter the proceedings in the records of the court, fix a day for the hearing by the judge and prepare sufficient copies of the summons for service under this rule.

(3) Subject to paragraph (4), the summons shall be served on the execution creditor and the claimant in the same manner as a fixed date summons.

(4) Without prejudice to Order 13, rule 4, service shall be effected not less than 14 days before the return day.

Claim for damages

5. Where in interpleader proceedings under an execution the claimant claims from the execution creditor or the registrar, or the execution creditor claims from the registrar, damages arising or capable of arising out of the execution—

- (a) the party claiming damages shall, within 8 days after service of the summons on him, give notice of his claim to the proper officer and to any other party against whom the claim is made, stating the amount and the grounds of the claim; and

- (b) the party from whom damages are claimed may pay money into court in satisfaction of the claim as if the interpleader proceedings were an action brought by the person making the claim.

PART II

OTHERWISE THAN UNDER EXECUTION

Application for relief

6.—(1) Where a person (in this Part of this Order called “the applicant”) is under a liability in respect of a debt or any money or goods and he is, or expects to be, sued for or in respect of the debt, money or goods by two or more persons making adverse claims thereto (“the claimants”), he may apply to the court, in accordance with these rules, for relief by way of interpleader.

(2) The application shall be made to the court in which the action is pending against the applicant or, if no action is pending against him, to the court in which he might be sued.

(3) The application shall be made by filing an affidavit showing that—

- (a) the applicant claims no interest in the subject-matter in dispute other than for charges or costs,
- (b) the applicant does not collude with any of the claimants,
- (c) the applicant is willing to pay or transfer the subject-matter into court or to dispose of it as the court may direct, and
- (d) except where the applicant is a defendant in a pending action, the subject matter does not exceed in value the sum for the time being mentioned in section 39 of the Act,

together with as many copies of the affidavit as there are claimants.

Relief in pending action

7. Where the applicant is a defendant in a pending action—

- (a) the affidavit and copies required by rule 6(3) shall be filed within 14 days after service on him of the summons in the action;
- (b) the return day of the application shall be a day fixed for the pre-trial review of the action including the interpleader proceedings and, if a day has already been fixed for the pre-trial review or hearing of the action, the proper officer shall, if necessary, postpone it;
- (c) the claimant, the applicant and the plaintiff in the action shall be given notice of the application, which shall be prepared by the proper officer together with sufficient copies for service;
- (d) the notice to the claimant shall be served on him, together with a copy of the affidavit filed under rule 6(3) and of the summons and particulars of claim in the action, not less than 21 days before the return day in the same manner as a fixed date summons;
- (e) the notices to the applicant and the plaintiff shall be sent to them by the proper officer and the notice to the plaintiff shall be accompanied by a copy of the said affidavit.

Relief otherwise than in pending action

8. Where the applicant is not a defendant in a pending action—

- (a) the proper officer shall enter the proceedings in the records of the court;
- (b) the proper officer shall fix a day for the pre-trial review or, if the court so directs, a day for the hearing of the proceedings and shall prepare and issue an interpleader summons, together with sufficient copies for service;

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- (c) the summons, together with a copy of the affidavit filed under rule 6(3), shall be served on each of the claimants not less than 21 days before the return day in the same manner as a fixed date summons; and
- (d) the proper officer shall deliver or send a plaint note to the applicant.

Payment into court etc

9. Before or after the proper officer proceeds under rule 7 or 8 the registrar may direct the applicant to bring the subject-matter of the proceedings into court, or to dispose of it in such manner as the registrar thinks fit, to abide the order of the court.

Reply by claimant

10.—(1) A claimant shall, within 14 days after service on him of the notice under rule 7(c) or the summons under rule 8(c), file—

- (a) a notice that he makes no claim, or
- (b) particulars stating the grounds of his claim to the subject matter, together in either case with sufficient copies for service under paragraph (2).

(2) The proper officer shall send to each of the other parties a copy of any notice or particulars filed under paragraph (1).

(3) The court may, if it thinks fit, hear the proceedings although no notice or particulars have been filed.

Order barring claim etc

11.—(1) Where a claimant does not appear on any day fixed for a pre-trial review or the hearing of interpleader proceedings, or fails or refuses to comply with an order made in the proceedings, the court may make an order barring his claim.

(2) If, where the applicant is a defendant in a pending action, the plaintiff does not appear on any day fixed for a pre-trial review or the hearing of the interpleader proceedings, the action including the interpleader proceedings may be struck out.

(3) In any other case where a day is fixed for the hearing of interpleader proceedings, the court shall hear and determine the proceedings and give judgment finally determining the rights and claims of the parties.

(4) Where the court makes an order barring the claim of a claimant, the order shall declare the claimant, and all persons claiming under him, for ever barred from prosecuting his claim against the applicant and all persons claiming under him, but unless the claimant has filed a notice under rule 10 that he makes no claim, such an order shall not affect the rights of the claimants as between themselves.

Relief in pending matter

12. The provisions of this Part of this Order relating to an application for interpleader relief by the defendant to an action shall apply with the necessary modifications to an application for such relief by the respondent to a matter.

ORDER 34

PENAL AND DISCIPLINARY PROVISIONS

Issue and service of summons for offence under s. 30, 31, 127 or 164 of the Act

1. Where—

- (a) it is alleged that any person has committed an offence under section 30 or 127 of the Act by assaulting an officer of the court while in the execution of his duty, or by rescuing or attempting to rescue any goods seized in execution, and the alleged offender has not been taken into custody and brought before the judge, or
- (b) any officer of the court is charged under section 31 of the Act with extortion or other misconduct, or
- (c) a complaint is made against an officer of the court under section 164 of the Act for having lost the opportunity of levying execution,

the proper officer shall issue a summons, which shall be served on the alleged offender personally not less than 8 days before the return day appointed in the summons.

Notice to show cause before or after fine under s. 84 of the Act

2. Before or after imposing a fine on any person under section 84 of the Act for disobeying a witness summons or refusing to be sworn or give evidence, the judge may direct the proper officer to give to that person notice that if he has any cause to show why a fine should not be or should not have been imposed on him, he may show cause in person or by affidavit or otherwise on a day named in the notice, and the judge after considering the cause shown may make such order as he thinks fit.

Non-payment of fine

3.—(1) If a fine is not paid in accordance with the order imposing it, the proper officer shall forthwith report the matter to the judge.

(2) Where by an order imposing a fine, the amount of the fine is directed to be paid by instalments and default is made in the payment of any instalment, the same proceedings may be taken as if default had been made in payment of the whole of the fine.

(3) If the judge makes an order for payment of a fine to be enforced by warrant of execution, the order shall be treated as an application made to the registrar for the issue of the warrant at the time when the order was received by him.

Repayment of fine

4. If, after a fine has been paid, the person on whom it was imposed shows cause sufficient to satisfy the judge that, if it had been shown at an earlier date, he would not have imposed a fine or would have imposed a smaller fine or would not have ordered payment to be enforced, the judge may order the fine or any part thereof to be repaid.

ORDER 35

THE INFERIOR COURTS JUDGMENTS EXTENSION ACT 1882

Application for certificate of county court judgment

1.—(1) A certificate of a judgment of a county court which is to be registered under the Inferior Courts Judgments Extension Act 1882 may be obtained by filing an affidavit made by the solicitor of the party entitled to enforce the judgment, or by the party himself if he is acting in person, giving particulars of the judgment and stating—

- (a) that the judgment has not been satisfied and the amount remaining unsatisfied,
- (b) to the best of the deponent's information or belief, the business or occupation and address of the party entitled to enforce the judgment and of the party against whom it was obtained.

(2) If the judgment is for payment within a specified time or by instalments and that time has not expired or default has not been made in payment of some instalment, the certificate shall not be granted.

(3) The proper officer shall enter on the certificate—

- (a) the number of the action,
- (b) the amount remaining due under the judgment,
- (c) a note of the costs, if any, allowed for obtaining the certificate, and
- (d) the date on which the certificate is granted.

(4) When a certificate of judgment is granted, the proper officer shall make a note thereof in the records of the court relating to the judgment and thereafter no proceedings shall be taken on the judgment in England or Wales unless—

- (a) the court is satisfied that no further proceedings are pending or can be taken on the certificate outside England and Wales and that the judgment is still unsatisfied in whole or in part; and
- (b) a note that the court is so satisfied is made in the records of the court granting the certificate.

Registration of certificate of court outside England and Wales

2.—(1) An application for registration in a county court of a certificate granted under the said Act may be made by producing the certificate and a copy thereof to the proper officer.

(2) The certificate shall be registered by filing it, and the copy shall be sealed and dated and returned to the person producing it.

(3) The sealed copy shall be treated as if it were the plaint note in an action brought by the person obtaining registration of the certificate.

(4) The costs, if any, allowed for registering the certificate shall be added to the amount to be recovered under the judgment.

ORDER 36

ENFORCEMENT OF MAINTENANCE ORDERS IN COURTS OTHER THAN COUNTY COURTS

PART I

MAINTENANCE ORDERS ACT 1950

Interpretation of Part I

1. In this Part of this Order a section referred to by number means the section so numbered in the Maintenance Orders Act 1950 and “maintenance order” means an order to which section 16 of that Act applies, being an order made by a county court.

Prescribed officer

2. The prescribed officer of a county court for the purposes of sections 17, 22, 23 and 24 of the Act of 1950 shall be the registrar.

Application for registration in Scotland or Northern Ireland

3.—(1) An application under Part II of the said Act of 1950 for the registration of a maintenance order in a sheriff court in Scotland or court of summary jurisdiction in Northern Ireland shall be made to the registrar of the county court by which the maintenance order was made by lodging in the office of that court an affidavit by the applicant (together with a copy thereof) stating—

- (a) the date of the order, the name of the person liable to make payments thereunder and the amount of the weekly or other periodical payments ordered to be made;
- (b) the address in Scotland or Northern Ireland of the person liable to make payments under the order;
- (c) the reason why it is convenient that the order should be enforceable in Scotland or Northern Ireland, as the case may be;
- (d) the amount of any arrears due to the applicant under the order; and
- (e) that the order is not already registered under the Act.

(2) If it appears to the registrar that the person liable to make payments under the maintenance order resides in Scotland or Northern Ireland and that it is convenient that the maintenance order should be enforceable there, he shall cause a certified copy of the order and the applicant's affidavit to be sent to the sheriff-clerk of the sheriff court in Scotland or, as the case may be, to the clerk of the court of summary jurisdiction in Northern Ireland, having jurisdiction in the place in which the person liable to make payments under the order appears to be.

Variation or discharge of order by court which made it

4. Where a maintenance order registered in a court in Scotland or Northern Ireland is varied or discharged by the court which made it, the registrar shall cause a certified copy of the order varying or discharging the order to be sent to the sheriff-clerk or, as the case may be, the clerk of the court in which the order is registered.

Recording of registration, variation or cancellation by court of registration

5. On being notified of—

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- (a) the registration of a maintenance order in the court to which a certified copy has been sent pursuant to rule 3(2), or
- (b) the variation of a registered maintenance order, or the cancellation of the registration of such an order, by the court in which it is registered,

the registrar shall cause a note of the registration, variation or cancellation to be made in the records of the court relating to the order.

Application to adduce evidence

6. An application to a county court under section 22(5) to adduce evidence in connection with a maintenance order of that court which has been registered in Scotland or Northern Ireland shall be made on notice in accordance with Order 13, rule 1.

PART II

MAINTENANCE ORDERS ACT 1958

7. In this Part of this Order a section referred to by number means the section so numbered in the Maintenance Orders Act 1958 and, unless the context otherwise requires, expressions used in this Part of this Order which are used in the Act of 1958 have the same meaning as in that Act.

Application for registration in magistrates' court

8.—(1) An application under Part I of the said Act of 1958 for the registration of a county court order in a magistrates' court may be made—

- (a) on the making of the maintenance order or an order varying the maintenance order, or
- (b) at any other time by lodging in the office of the court in which the order was made an affidavit by the applicant (together with a copy thereof) stating—
 - (i) the date of the order and the amount of the weekly or other periodical payments ordered to be made;
 - (ii) the address of the person liable to make payments under the order;
 - (iii) the reason why registration of the order in a magistrates' court is desired;
 - (iv) the amount of any arrears due to the applicant under the order, the date to which those arrears have been calculated and the date on which the next payment under the order falls due;
 - (v) the date of birth of each child named in the order;
 - (vi) that the order is not already registered under the said Act of 1958, and
 - (vii) whether any proceedings are pending, or any warrant or other process is in force, for the enforcement of the order.

(2) The application may be heard and determined by the registrar.

Procedure on grant of application

9.—(1) Where the application is granted, the applicant shall, if the application is granted on the making of the maintenance order or an order varying the maintenance order, lodge in the court office a statement signed by the applicant or his solicitor, and a copy thereof, giving the address of the person entitled to receive payments under the maintenance order and the particulars mentioned in rule 8(1)(b)(ii), (iv) and (v).

(2) The period required to be prescribed by rules of court for the purpose of section 2(2) shall be 14 days.

(3) The certified copy of an order required by section 2(2) to be sent to the clerk of a magistrates' court shall be accompanied by the copy of the applicant's affidavit or statement lodged under rule 8(1)(b) or paragraph (1), as the case may be.

Variation or discharge of order by county court

10.—(1) An order of a county court varying or discharging a maintenance order registered in a magistrates' court shall be served on the clerk of the magistrates' court as well as on the person liable to make payments under the maintenance order.

(2) Where a county court, on varying or discharging a maintenance order registered in a magistrates' court, decides to give notice under section 5(2), the notice shall be indorsed on the order required by the last foregoing paragraph to be served on the clerk of the magistrates' court.

Recording of registration, variation or cancellation by magistrates' court

11. On being notified of—

- (a) the registration in a magistrates' court of a maintenance order made by a county court, or
- (b) the variation of a registered maintenance order, or the cancellation of the registration of such an order, by the magistrates' court in which it is registered,

the registrar shall cause a note of the registration, variation or cancellation to be made in the records of the court relating to the order.

PART III

MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT 1972

Interpretation of Part III

12.—(1) In this Part of this Order a section referred to by number means the section so numbered in the Maintenance Orders (Reciprocal Enforcement) Act 1972 except that, in relation to a country or territory with respect to which an Order in Council has been made under section 40, any reference to a provision of that Act is a reference to that provision as applied by the Order in Council.

(2) Unless the context otherwise requires, expressions used in this Part of this Order which are used in the said Act of 1972 have the same meaning as in that Act.

Prescribed officer

13. For the purpose of sections 2(3), 5(4) and 14 the prescribed officer in relation to a county court shall be the registrar.

Application for transmission of order to reciprocating country

14. An application for a maintenance order made by a county court to be sent to a reciprocating country under section 2 shall be made to the registrar by lodging in the court office:—

- (a) an affidavit by the applicant stating—
 - (i) the applicant's reasons for believing that the payer under the maintenance order is residing in that country, and
 - (ii) the amount of any arrears due to the applicant under the order, the date to which those arrears have been calculated, and the date on which the next payment under the order falls due;

- (b) a statement giving such information as the applicant possesses as to the whereabouts of the payer;
- (c) a statement giving such information as the applicant possesses for facilitating the identification of the payer (including, if known to the applicant, the name and address of any employer of the payer, his occupation and the date and place of issue of any passport of the payer), and
- (d) if available to the applicant, a photograph of the payer.

Provisional order

15.—(1) Where a county court makes a provisional order under section 5, the document required by subsection (4) of that section to set out or summarise the evidence given in the proceedings shall be authenticated by a certificate signed by the registrar.

(2) On receipt by a county court of a certified copy of a provisional order made in a reciprocating country, together with the document mentioned in section 5(5), the proper officer shall fix a time and place for the court to consider whether or not the provisional order should be confirmed, and shall send to the payee under the maintenance order notice of the time and place so fixed, together with a copy of the provisional order and of that document.

(3) The registrar shall cause a certified copy of any order confirming or refusing to confirm a provisional order to be sent to the court which made that order.

Taking of evidence for court in reciprocating country

16.—(1) A county court shall be the prescribed court for the purpose of taking the evidence of a person residing within its district pursuant to a request by a court in a reciprocating country under section 14 where the request for evidence relates to a maintenance order made by a county court which is not for the time being registered in a magistrates' court under the Maintenance Orders Act 1958.

(2) The evidence may be taken before the judge or before the registrar or other officer of the county court as the court thinks fit, and the provisions of Order 20, rule 13, shall apply with the necessary modifications as if the evidence were required to be taken pursuant to an order made by the court for the examination of the witness on oath.

Notification of variation or revocation

17. Where a county court makes an order (other than a provisional order) varying or revoking a maintenance order a copy of which has been sent to a reciprocating country in pursuance of section 2, the registrar shall cause a certified copy of the order to be sent to the court in the reciprocating country.

Transmission of documents

18. Any document required to be sent to a court in a reciprocating country under section 5(4) or section 14(1), or rule 15(3) or 17, shall be sent to the Secretary of State for transmission to that court unless the registrar is satisfied that, in accordance with the law of that country, the document may be sent direct to that court.

Application of Part III to the Republic of Ireland

19.—(1) In relation to the Republic of Ireland this Part of this Order shall have effect subject to the provisions of this rule.

(2) The following paragraphs shall be added to rule 14:—

- “(e) a statement that the payer appeared in the proceedings in which the maintenance order was made or, if he did not, the original or a copy certified by the applicant or his solicitor to be a true copy of a document which establishes that notice of the institution of the proceedings was served on the payer; and
- (f) if the payee received legal aid in the proceedings in which the order was made, a copy certified by the applicant or his solicitor to be a true copy of the legal aid certificate.”
- (3) For paragraph (1) of rule 15 there shall be substituted the following paragraph:—
 - “(1) Where an application is made to a county court for the variation or revocation of an order to which section 5 applies, the certified copy of the application and the documents required by sub-section (2) of that section to set out or summarise the evidence in support of the application shall be authenticated by a certificate signed by the registrar.”
- (4) Paragraphs (2) and (3) of rule 15 shall not apply.
- (5) For rule 17 there shall be substituted the following rule:—

“17. Where a county court makes an order varying or revoking a maintenance order to which section 5 applies, the registrar shall cause a certified copy of the order and a statement as to the service on the payer of the documents mentioned in sub-section (2) of that section to be sent to the court in the Republic of Ireland by which the maintenance order is being enforced.”
- (6) Rule 18 shall not apply.

Application of Part III to Hague Convention countries

20.—(1) In relation to the Hague Convention countries this Part of this Order shall have effect subject to the provisions of this rule.

- (2) The following paragraph shall be added to rule 14(a):—

“and (iii) whether the time for appealing against the order has expired and whether an appeal is pending.”
- (3) The following paragraphs shall be added to rule 14 after paragraph (d):—
 - “(e) a statement as to whether or not the payer appeared in the proceedings in which the maintenance order was made and, if he did not, the original or a copy certified by the applicant or his solicitor to be a true copy of a document which establishes that notice of the institution of proceedings, including notice of the substance of the claim, was served on the payer;
 - (f) a document which establishes that notice of the order was sent to the payer;
 - (g) a written statement as to whether or not the payee received legal aid in the proceedings in which the order was made, or in connection with the application under section 2, and, if he did, a copy certified by the applicant or his solicitor to be a true copy of the legal aid certificate.”
- (4) Rule 15 shall not apply.
- (5) For rules 17 and 18 there shall be substituted the following rules:—

“**17.**—(1) Where a county court makes an order varying or revoking a maintenance order to which section 5 applies and the time for appealing has expired without an appeal having been entered, the registrar shall cause the documents required by subsection (7) of that section (including a certificate that the order of variation or revocation is enforceable and that it is no longer subject to ordinary forms of review) to be sent to the Secretary of State.

(2) Where either party enters an appeal against the order or revocation, he shall, at the same time, inform the proper officer thereof by notice in writing.

18. Any document required to be sent to a court in a Hague Convention country shall be sent to the Secretary of State for transmission to that court.”

(6) In this rule “Hague Convention country” has the same meaning as in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979.

ORDER 37

REHEARING, SETTING ASIDE AND APPEAL FROM REGISTRAR

Rehearing

1.—(1) In any proceedings tried without a jury the judge shall have power on application to order a rehearing where no error of the court at the hearing is alleged.

(2) Unless the court otherwise orders, any application under paragraph (1) shall be made to the judge by whom the proceedings were tried.

(3) A rehearing may be ordered on any question without interfering with the finding or decision on any other question.

(4) Where the proceedings were tried by the registrar, the powers conferred on the judge by paragraphs (1) and (3) shall be exercisable by the registrar and paragraph (2) shall not apply.

(5) Any application for a rehearing under this rule shall be made on notice stating the grounds of the application and the notice shall be served on the opposite party not more than 14 days after the day of the trial and not less than 7 days before the day fixed for the hearing of the application.

(6) On receipt of the notice, the proper officer shall, unless the court otherwise orders, retain any money in court until the application had been heard.

Setting aside judgment given in party's absence

2.—(1) Any judgment or order obtained against a party in his absence at the hearing may be set aside by the court on application by that party on notice.

(2) The application shall be made to the judge if the judgment or order was given or made by the judge and in any other case shall be made to the registrar.

Setting aside on failure of postal service

3.—(1) Where in an action or matter the originating process has been sent to the defendant or inserted in his letter-box in accordance with Order 7, rule 10(2) or (3) or 13(2) or (3), and after judgment has been entered or given or an order has been made it appears to the court that the process did not come to the knowledge of the defendant in due time, the court may of its own motion set aside the judgment or order and may give any such directions as the court thinks fit.

(2) The proper officer shall give notice to the plaintiff of the setting aside of any judgment or order under this rule.

Setting aside default judgment

4.—(1) Without prejudice to rule 3, the court may, on application or of its own motion, set aside or vary any judgment entered in a default action pursuant to Order 9, rule 6.

(2) An application under paragraph (1) shall be made on notice.

Non-compliance with rules

5.—(1) Where there has been a failure to comply with any requirement of these rules, the failure shall be treated as an irregularity and shall not nullify the proceedings, but the court may set aside the proceedings wholly or in part or exercise its powers under these rules to allow any such amendments and to give any such directions as it thinks fit.

(2) No application to set aside any proceedings for irregularity shall be granted unless made within a reasonable time, nor if the party applying has taken any step in the proceedings after knowledge of the irregularity.

(3) Where any such application is made, the grounds of objection shall be stated in the notice.

(4) The expression “proceedings” in paragraph (1) and where it first occurs in paragraph (2), includes any step taken in the proceedings and any document, judgment or order therein.

Appeal from registrar

6.—(1) Any party affected by a judgment or final order of the registrar may, except where he has consented to the terms thereof, appeal from the judgment or order to the judge, who may, upon such terms as he thinks fit,—

- (a) set aside or vary the judgment or order or any part thereof, or
- (b) give any other judgment or make any other order in substitution for the judgment or order appealed from, or
- (c) remit the action or matter or any question therein to the registrar for rehearing or further consideration, or
- (d) order a new trial to take place before himself or another judge of the court on a day to be fixed.

(2) The appeal shall be made on notice, which shall state the grounds of the appeal and be served within 14 days after the day on which judgment or order appealed from was given or made.

Setting aside arbitrator's award

7. An application by a party to the judge to set aside the award of an arbitrator to whom proceedings have been referred under section 92 of the Act shall be made on notice stating the grounds of the application, and the notice shall be served within 14 days after the day on which the award was entered as the judgment of the court.

Imposition of terms and stay of execution

8.—(1) An application to the judge or registrar under any of the foregoing rules may be granted on such terms as he thinks reasonable.

(2) Notice of any such application shall not of itself operate as a stay of execution on the judgment or order to which it relates but the court may order a stay of execution pending the hearing of the application or any rehearing or new trial ordered on the application.

(3) If a judgment or order is set aside under any of the foregoing rules, any execution issued on the judgment or order shall cease to have effect unless the court otherwise orders.

ORDER 38

COSTS

Discretion

1. Subject to the provisions of any Act or rule, the costs of and incidental to all proceedings in a county court shall be in the discretion of the court and the discretion shall be exercised in accordance with the principles which would be applied by the High Court in a like case.

Taxation of costs

2.—(1) Subject to this Order, where by or under these rules or any order or direction of the court costs are to be paid to any person, that person shall be entitled to his taxed costs.

(2) The registrar shall be the taxing officer of the court.

Costs to be regulated by scales

3.—(1) For the regulation of solicitors' charges and disbursements otherwise than for the purposes of rule 18 or 19, there shall be four scales of costs, namely a lower scale and three higher scales as set out in Appendix A.

(2) The scales shall have effect subject to and in accordance with the provisions of this Order and any directions contained in the scales.

(3) In relation to a sum of money only, the scales shall apply as follows:—

Sum of money		Scale applicable
Exceeding £25	but not exceeding £100	lower scale
Exceeding £100	but not exceeding £500	scale 1
Exceeding £500	but not exceeding £3,000	scale 2
Exceeding £3,000		scale 3

(4) Where the sum of money does not exceed £25, no solicitors' charges shall be allowed as between party and party, unless a certificate is granted under rule 4(6).

(5) In addition to the disbursements shown in the scales the appropriate court fees shall be allowable.

(6) In relation to proceedings referred to arbitration under Order 19, rule 2(3), this rule is without prejudice to rule 6 of that Order.

Determination of scale

4.—(1) Subject to this Order, the scale of costs in an action for the recovery of a sum of money only shall be determined—

(a) as regards the costs of the plaintiff, by the amount recovered;

(b) as regards the costs of the defendant, by the amount claimed;

but nothing in this paragraph shall apply to an action under the equity jurisdiction or to an admiralty action or an action in which the title to a hereditament comes in question.

(2) In relation to third party proceedings, paragraph (1) shall have effect as if the defendant issuing the third party notice were the plaintiff and the third party were the defendant.

(3) Where in an action to which paragraph (1) applies there is a counterclaim for a sum of money only, that paragraph shall have effect in relation to the costs exclusively referable to the counterclaim as if the references therein to the amount recovered and the amount claimed were references to the amount recovered on the counterclaim and the amount of the counterclaim respectively.

(4) Where an action to which paragraph (1) applies has been transferred from the High Court to a county court and the amount remaining in dispute at the date on which the registrar receives the documents referred to in section 77 of the Act is less than the amount originally claimed, paragraph (1)(b) shall have effect as if the reference therein to the amount claimed were a reference to the amount remaining in dispute at that date.

(5) Paragraph (1) shall have effect in relation to garnishee proceedings as if the judgment creditor were the plaintiff and the garnishee or, as the case may be, the judgment debtor were the defendant.

(6) In any proceedings in which the judge certifies that a difficult question of law or a question of fact of exceptional complexity is involved, he may award costs on such scale as he thinks fit.

(7) In proceedings to which none of the foregoing paragraphs applies, costs shall be on such scale as the judge when awarding the costs, or the registrar when taxing or assessing them, may determine.

Discretionary allowances

5. Where in the scales of costs—

- (a) an upper and a lower sum of money are specified against an item, or
- (b) the amount to be allowed in respect of an item is directed not to exceed a specified sum, or
- (c) no amount is specified against an item,

the amount of costs to be allowed in respect of that item shall, subject to rules 9 and 17, be in the discretion of the registrar within the limits of the sums, if any, so specified, and in exercising his discretion the registrar shall have regard to all the circumstances to which a taxing officer of the Supreme Court is required to have regard when determining the amount to be allowed in respect of items of a similar character in the scale of costs prescribed for use in the Supreme Court.

Allowance or disallowance of items by judge

6. Where the costs of any action or matter are to be taxed, the judge may direct that any item in the scale be allowed or disallowed on taxation.

Value added tax

7. In addition to the amount of costs allowed to a party on taxation or assessment in respect of the supply of goods or services on which value added tax is chargeable there may be allowed as a disbursement a sum equivalent to value added tax at the appropriate rate on that amount in so far as the tax is not deductible as input tax by that party.

Restrictions on allowance of counsel's fees

8.—(1) No costs shall be allowed on taxation in respect of counsel attending before the judge or registrar on an interlocutory application, or in respect of more counsel than one attending before the judge or registrar on any occasion, unless the judge or registrar, as the case may be, has certified the attendance as proper in the circumstances of the case.

(2) Unless the judge or registrar at the hearing otherwise orders, no fee to counsel with brief shall be allowed in an action for the recovery of a sum of money only where no defence has been delivered and the defendant does not appear at the hearing to resist the claim.

(3) Where a party appearing by counsel is awarded costs but the costs of employing counsel are not allowed, he may be allowed such costs as he might have been allowed if he had appeared by a solicitor and not by counsel.

Allowance of increased sums on taxation

9.—(1) Where in any proceedings in which the costs are to be taxed, the judge is satisfied from the nature of the case or the conduct of the proceedings that the costs which may be allowed on taxation may be inadequate in the circumstances, he may give a certificate under this rule.

(2) Where a certificate is given under this rule, the registrar may, if he thinks fit, allow on taxation such larger sum as he thinks reasonable in respect of all or any of the items in the relevant scale except item 5.

(3) If he decides to exercise his powers under paragraph (2), the registrar, in determining the sum to be allowed in respect of any item, shall have regard to, but shall not be limited by the amount allowable in respect of that item in the next higher scale, if any.

(4) Subject to paragraph (5), an application for a certificate under this rule may be made at the trial or hearing of the action or matter or on notice to be served on the party by whom the costs are payable within 14 days after the making of the order or direction for their payment:

Provided that where an application which could have been made at the trial or hearing is made subsequently, the judge may refuse the application on the ground that it ought to have been made at the hearing.

(5) Where no direction has been given by the judge that this paragraph shall not apply, the registrar may, if satisfied as to the matters mentioned in paragraph (1), exercise on taxation the powers conferred by paragraph (2) as if a certificate had been given under this rule.

Plans in collision actions

10. In an action arising out of an accident on land due to a collision or apprehended collision, the costs of preparing a plan (other than a sketch plan) of the place where the accident happened shall not be allowed on taxation unless—

- (a) before the trial the court authorised the preparation of the plan, or
- (b) notwithstanding the absence of an authorisation under paragraph (a), the registrar is satisfied that it was reasonable to prepare the plan for use at the trial.

Expenses of inspection

11. The expenses of any inspection of a place or thing by the judge or a jury under Order 21, rule 6, shall be paid in the first instance by the party on whose application the inspection is made or ordered or, if made or ordered without an application, by the plaintiff and shall be costs in the proceedings unless the judge otherwise orders.

Allowance of items not in scale

12.—(1) Subject to paragraph (2) and rule 9, where costs are to be taxed in a matter for which no item appears in the relevant scale, reasonable costs may be allowed on taxation, not exceeding those appearing in the scale for a matter of a similar nature.

(2) Where the amount of a solicitor's remuneration in respect of the sale, purchase, lease or mortgage of land or other conveyancing matter or in respect of any other non-contentious business is regulated (in the absence of agreement to the contrary) by general orders for the time being in force under the Solicitors Act 1974, the amount of the costs to be allowed on taxation in respect

of the like contentious business shall be the same notwithstanding anything in the scales contained in Appendix A.

Attendance allowance for witness of fact

13.—(1) Subject to paragraph (2), there may be allowed such sum as the judge or registrar thinks reasonable in respect of the attendance at court of any person (including a party to the proceedings) as a witness of fact or as a witness producing a document.

(2) The sum allowed under paragraph (1) shall not exceed £12 for a police officer or £17 for any other person, unless the registrar on taxing or assessing the costs is satisfied that such sum may be inadequate in the circumstances.

Expert witness's fees

14.—(1) Subject to paragraphs (2) and (3), the fees allowable in respect of an expert witness shall be in accordance with the following table:—

Fee	Amount allowable
1. For attending court	not less than £17 nor more than £34 (or £68 on scale 3).
2. For qualifying to give evidence if the judge thinks fit to allow such a fee and the witness has attended court or the judge thinks that the fee should be allowed notwithstanding that the witness did not attend court.	not more than £17 (or £34 on scale 3)
3. For a report in writing from an expert who is not allowed a qualifying fee, if the judge thinks the report was reasonably necessary	not more than £17 (or £34 on scale 3)

(2) Where in any proceedings the judge is satisfied that any of the fees specified in paragraph (1) ought not to be limited as therein mentioned, he may give a certificate under this rule.

(3) Rule 9(2), (4) and (5) shall apply, with the necessary modifications, in relation to a certificate under this rule as they apply in relation to a certificate under rule 9.

Further provisions as to witnesses' allowances

15.—(1) There may be allowed in respect of a witness or party who has attended the trial or hearing of an action or matter, in addition to any sum allowed under rule 13 or 14, any expenses which the witness or party has actually and reasonably incurred in travelling to and from the court or in staying in an hotel.

(2) Where a witness or party attends the court in respect of two or more actions or matters, the sum which might be allowed to him under rule 13 or 14 or paragraph (1) in respect of one action or matter may be apportioned between the several actions or matters.

(3) Allowances may be made in respect of a witness whether he was called or not, if his attendance was necessary.

Interpreters

16.—(1) Subject to paragraph (2), where on the trial or hearing of an action or matter a person attends the court for the purpose of interpreting evidence, there may be allowed in respect of his attendance such sum as might be allowed if he had attended the court as a witness of fact or, if the judge thinks fit, such sum as might be allowed if he had attended the court as an expert witness.

(2) Nothing in paragraph (1) shall apply to an interpreter who is employed and remunerated in accordance with rules made under section 3 of the Welsh Courts Act 1942.

Litigant in person

17.—(1) Where in any proceedings any costs of a litigant in person are ordered to be paid by any other party or in any other way, then, subject to the following paragraphs of this rule, there may be allowed to the litigant in person such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by a solicitor on his behalf, and the provisions of these rules shall apply with the necessary modifications to the costs of a litigant in person as they apply to solicitors' charges and disbursements.

(2) Nothing in rule 18 or Appendix B shall apply where the plaintiff is a litigant in person.

(3) In relation to the costs of a litigant in person, rule 19(1) shall have effect as if for the words “and the solicitor for the party to whom they are payable so desires” there were substituted the words “and the court does not otherwise order”.

(4) Where the costs of a litigant in person are taxed or assessed without taxation—

- (a) he shall not be allowed more than such sum as would be allowed in the High Court in respect of the time reasonably spent by him in doing any work to which the costs relate if in the opinion of the court he has not suffered any pecuniary loss in doing the work, and
- (b) the amount allowed in respect of any work done by the litigant in person shall not in any case exceed two-thirds of the sum which in the opinion of the court would have been allowed in respect of that work if the litigant had been represented by a solicitor.

(5) Where the costs of a litigant in person are assessed under Appendix C, or where on the taxation of the costs of a litigant in person he is allowed a charge for attending court to conduct his own case, then, notwithstanding anything in rule 13, he shall not be entitled to a witness allowance for himself in addition.

Fixed costs

18.—(1) Appendix B shall effect for the purpose of showing the total amount which, in the several cases to which Appendix B applies, shall be allowed to the solicitor for the plaintiff as fixed costs without taxation, unless the court otherwise orders.

(2) In a case to which Appendix B does not apply no amount shall be entered on the summons for the charges of the solicitor for the plaintiff, but the words “to be taxed” shall be inserted.

Assessed or agreed costs

19.—(1) Where costs are payable on the lower scale, or where costs are payable on one of the higher scales and the solicitor for the party to whom they are payable so desires, the costs shall be assessed without taxation, and on the assessment the court may allow such sums as it thinks reasonable within the limits of the sums appearing in Appendix C opposite the scale applicable to the proceedings, together with such additions, if any, as are authorised by that Appendix.

(2) In relation to costs which fall to be assessed pursuant to paragraph (1), any reference in these rules to taxation shall be treated as a reference to assessment under that paragraph.

(3) Where costs payable on one of the higher scales in respect of an interlocutory application are not included in the general costs of the action or matter, they may be assessed without taxation unless the court otherwise orders, and on the assessment the court may allow such sums as it thinks reasonable within the limits appearing in the scale applicable to the proceedings opposite the relevant items.

(4) Before assessing any costs pursuant to paragraph (1) or (3) the court may require the party to whom the costs are payable to give to the court a note of the sums which he claims to be allowed on the assessment.

(5) Where the sum to be paid by one party to another party in respect of the costs of an action or matter has been agreed between them, the court may direct payment of that sum in lieu of taxed costs.

Taxation of costs as between party and party

20.—(1) Where a party (in this rule called “the applicant”) is entitled to require any costs to be taxed by virtue of any order or direction of the court or by or under any provision of these rules, he shall, within 3 months after the order or direction or, as the case may be, the event entitling him to tax his costs, lodge in the court office his bill of costs, together with all necessary papers and vouchers, and sufficient copies of the bill for service under paragraph (2).

(2) On receipt of the documents mentioned in paragraph (1) the proper officer shall send a copy of the bill to every other party entitled to be heard on the taxation and shall give to the applicant and that party—

- (a) not less than 14 days' notice of the day and time appointed for the taxation, or
- (b) if the registrar thinks that an appointment to tax may be unnecessary, a notice specifying the amount which the registrar proposes to allow in respect of the bill and requiring either party to inform the proper officer, within 14 days after receipt of the notice, if he wishes to be heard on the taxation.

(3) If in a case in which notice has been given under paragraph (2)(b) either party informs the proper officer within the time limited that he wishes to be heard on the taxation, the proper officer shall fix a day and time for the taxation and give not less than 7 days' notice to the applicant and every other party entitled to be heard.

(4) Where a party entitled to costs fails to procure or fails to proceed with taxation, the registrar may allow the party so entitled a nominal or other sum for costs and may tax and allow the costs of any other party.

(5) Without prejudice to paragraph (4) and rule 25, where a solicitor fails to lodge his bill of costs and requisite documents within the time limited or otherwise delays or impedes taxation, then, unless the registrar otherwise directs, the solicitor shall not be allowed the costs of and incidental to the preparation of the bill and the taxation of the costs.

Taxation as between solicitor and client

21.—(1) In this rule references to a taxation of costs as between solicitor and client include references to—

- (a) taxation of a solicitor's bill to his own client, and
- (b) taxation on the common fund basis, that is to say, taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are interested.

(2) Rule 4 shall apply to costs as between solicitor and client as if for the reference in paragraph (1) (a) thereof to the amount recovered there were substituted a reference to the amount claimed.

(3) The judge by whom any order is made for the taxation of costs as between solicitor and client may, after affording to the solicitor an opportunity of making any representations that he desires to make,—

- (a) determine the scale on which the costs are to be taxed under rule 4 as applied by paragraph (2) of this rule, and

- (b) exercise any discretion, whether as to scale or any other matter, give any direction and grant any certificate that the judge could have exercised, given or granted in relation to costs as between party and party.

(4) On taxation of costs as between solicitor and client the registrar shall not be bound to follow any determination of the judge or registrar in relation to the costs as between party and party and accordingly, subject to any determination made under paragraph (3), the registrar may—

- (a) exercise any of the powers conferred on the judge by that paragraph;
- (b) allow items disallowed as between party and party, and
- (c) allow a higher sum in respect of any item than the sum allowed as between party and party, not exceeding the maximum sum prescribed for that item in the scale on which the costs are being taxed.

(5) Subject to paragraph (7), rule 20 (except paragraphs (2)(b) and (3) thereof) shall apply, with the necessary modifications, in relation to costs as between solicitor and client as it applies in relation to costs as between party and party.

(6) In relation to the taxation of costs pursuant to an order under the Solicitors Act 1974, rule 20(1) shall have effect as if for the period of 3 months mentioned in that rule there were substituted a period of 7 days.

(7) The costs of a taxation under the Solicitors Act 1974 shall be dealt with by the registrar in accordance with the provisions of that Act and shall be added to or deducted from the amount certified to be due.

Taxation of costs awarded by tribunal

22.—(1) Rule 20 shall not apply to an application for the taxation of costs, fees or expenses which by or under any Act or statutory instrument other than these rules fall to be taxed by a county court but any such application shall be made by originating application.

(2) The applicant shall lodge with his originating application a bill of the costs, fees or expenses to be taxed and annex a copy of the bill to every copy of the originating application for service.

(3) The application may be made to the registrar and the rules relating to originating applications shall apply as if the taxation were the hearing of the application.

(4) On the taxation the registrar may exercise in relation to the costs any power which he could have exercised if the costs had been awarded in proceedings in the county court.

(5) On the completion of the taxation (or, in the case of a review by the judge, after the review) the proper officer shall send to every party a certificate of the result of the taxation.

(6) Nothing in this rule shall apply to an application under section 20 of the Representation of the People Act 1949 for the taxation of a returning officer's account.

Bases of taxation

23. The provisions of the R.S.C. relating to the costs which may be allowed—

- (a) on a taxation on the party and party basis,
- (b) on a taxation on the common fund basis,
- (c) on a taxation of a solicitor's bill to his own client, or
- (d) on a taxation of the costs which a person who is or has been a party to any proceedings in the capacity of a trustee or personal representative is entitled to be paid out of any fund which he holds in that capacity,

shall apply to the taxation of costs in a county court as they apply to the taxation of costs in the High Court.

Review of taxation

24.—(1) Any party to a taxation who is dissatisfied with the registrar's allowance or disallowance of the whole or part of any item or with the amount allowed by the registrar in respect of any item may, within 14 days after the taxation, request the registrar to reconsider his decision in respect of that item.

(2) A request under paragraph (1) shall be made in writing specifying the item or items objected to and the nature and grounds of the objection, and the party making the request shall serve a copy on each other party to the taxation.

(3) On the making of a request under paragraph (1) the registrar shall reconsider his decision as to the item or items objected to and shall notify each party of his decision on the reconsideration and of his reasons for it.

(4) Any party who is dissatisfied with the registrar's decision on the reconsideration may, within 14 days, after being notified of it, apply to the judge to review the taxation as to the item or items to which it relates.

(5) An application for a review under paragraph (4) shall be made on notice stating the nature and grounds of the applicant's objection to the registrar's decision.

(6) Unless the judge otherwise directs, no further evidence shall be received on the hearing of an application under paragraph (4), and no ground of objection shall be raised which has not been raised in the applicant's notice, but, save as aforesaid, on the hearing of the application the judge may exercise all such powers and discretion as are vested in the registrar in relation to the subject matter of the application.

(7) If the judge sees fit to exercise in relation to the application his power to appoint assessors under section 91 of the Act without any application being made by any party to the proceedings, he shall appoint two assessors, of whom one shall be a registrar, and Order 13, rule 11 (with the omission of so much of paragraphs (4) and (8) thereof as requires the applicant to deposit a sum in respect of the assessor's fee), shall apply as if the assessor had been summoned on the application of a party.

(8) On an application under this rule the judge may make such order as the circumstances require and in particular may order the registrar's certificate of the result of the taxation to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the registrar for re-taxation.

Costs arising from misconduct or default

25. The provisions of the R.S.C. relating to—

- (a) costs arising from misconduct or neglect, and
- (b) the personal liability of a solicitor for costs,

except such of those provisions as refer to the Official Solicitor and court fees, shall apply in relation to proceedings in a county court as they apply in relation to proceedings in the High Court.

ORDER 39

ADMINISTRATION ORDERS

Exercise of powers by registrar

1. Any powers conferred on the court by Part VII of the Act, section 4 of the Attachment of Earnings Act 1971 or this Order may be exercised by the registrar.

Request and list of creditors

2.—(1) A debtor who desires to obtain an administration order under Part VII of the Act shall file a request in that behalf.

(2) Where on his examination under Order 25, rule 3, or otherwise, a debtor furnishes to the court on oath a list of his creditors and the amounts which he owes to them respectively and sufficient particulars of his resources and needs, the court may proceed as if the debtor had filed a request under paragraph (1).

(3) Where a debtor is ordered to furnish a list under section 4(1)(b) of the said Act of 1971, then, unless otherwise directed, the list shall be filed within 14 days after the making of the order.

Verification on oath

3. The statements in the request mentioned in rule 2(1) and the list mentioned in rule 2(3) shall be verified by the debtor on oath.

Forwarding of certificate of judgment to another court

4.—(1) The court to which a request is made for an administration order may give notice to the debtor to show cause why a certificate of the judgment obtained against him in that court should not be forwarded to another court pursuant to section 148(2) of the Act.

(2) If the court causes such a certificate to be sent to another court, the proper officer of the first-mentioned court shall give notice to the debtor that the certificate has been sent.

Appointment of day for consideration

5. On the filing of a request or list under rule 2 or the receipt of a certificate of judgment forwarded pursuant to section 148(2) of the Act, the proper officer shall appoint a day for consideration of the question whether an administration order should be made and shall give not less than 14 days' notice thereof to the debtor and to each creditor mentioned in the list furnished by the debtor.

Notice of objection by creditor

6.—(1) Any creditor to whom notice has been given under rule 5 and who objects to any debt included in the list furnished by the debtor shall, not less than 7 days before the day of hearing, give notice of his objection, stating the grounds thereof, to the proper officer, to the debtor and to the creditor to whose debt he objects.

(2) Except with the leave of the court, no creditor may object to a debt unless he has given notice of his objection under paragraph (1).

Procedure on day of hearing

7. On the day of hearing—

- (a) any creditor, whether or not he is mentioned in the list furnished by the debtor, may attend and prove his debt or, subject to rule 6, object to any debt included in that list;
- (b) every debt included in that list shall be taken to be proved unless it is objected to by a creditor or disallowed by the court or required by the court to be supported by evidence;
- (c) any creditor whose debt is required by the court to be supported by evidence shall prove his debt;
- (d) the court may adjourn proof of any debt and, if it does so, may either adjourn consideration of the question whether an administration order should be made or proceed to determine the question, in which case, if an administration order is made, the debt, when proved, shall be added to the debts scheduled to the order;
- (e) any creditor whose debt is admitted or proved, and, with the leave of the court, any creditor the proof of whose debt has been adjourned, shall be entitled to be heard and to adduce evidence on the question whether an administration order should be made and, if so, in what terms.

Direction for order to be subject to review

8.—(1) The court may, on making an administration order or at any subsequent time, direct that the order shall be subject to review at such time or at such intervals as the court may specify.

(2) Where the court has directed that an administration order shall be subject to review, the proper officer shall give to the debtor and to every creditor who appeared when the order was made not less than 7 days' notice of any day appointed for such a review.

Service of order

9. Where an administration order is made, the proper officer shall send a copy to—

- (a) the debtor,
- (b) every creditor whose name was included in the list furnished by the debtor,
- (c) any other creditor who has proved his debt, and
- (d) every other court in which, to the knowledge of the registrar, judgment has been obtained against the debtor or proceedings are pending in respect of any debt scheduled to the order.

Subsequent objection by creditor

10.—(1) After an administration order has been made, a creditor who has not received notice under rule 5 and who wishes to object to a debt scheduled to the order, or to the manner in which payment is directed to be made by instalments, shall give notice to the proper officer of his objection and of the grounds thereof.

(2) On receipt of such notice the court shall consider the objection and may—

- (a) allow it,
- (b) dismiss it, or
- (c) adjourn it for hearing on notice being given to such persons and on such terms as to security for costs or otherwise as the court thinks fit.

(3) Without prejudice to the generality of paragraph (2), the court may dismiss an objection if it is not satisfied that the creditor gave notice of it within a reasonable time of his becoming aware of the administration order.

Subsequent proof by creditor

11.—(1) Any creditor whose debt is not scheduled to an administration order, and any person who after the date of the order became a creditor of the debtor, shall, if he wishes to prove his debt, send particulars of his claim to the proper officer, who shall give notice thereof to the debtor and to every creditor whose debt is so scheduled.

(2) If neither the debtor nor any creditor gives notice to the proper officer, within 7 days after receipt of notice under paragraph (1), that he objects to the claim, then, unless it is required by the court to be supported by evidence, the claim shall be taken to be proved.

(3) If the debtor or a creditor gives notice of objection within the said period of 7 days or the court requires the claim to be supported by evidence, the proper officer shall fix a day for consideration of the claim and give notice thereof to the debtor, the creditor by whom the claim was made and the creditor, if any, making the objection, and on the hearing the court may either disallow the claim or allow it in whole or in part.

(4) If a claim is taken to be proved under paragraph (2) or allowed under paragraph (3), the debt shall be added to the schedule to the order and a copy of the order shall then be sent to the creditor by whom the claim was made.

Leave to present bankruptcy petition

12. An application by a creditor under section 20(3) of the Administration of Justice Act 1965 for leave to present or join in a bankruptcy petition shall be made on notice to the debtor in accordance with Order 13, rule 1, but the court may, if it thinks fit, order that notice be given to any other creditor whose debt is scheduled to the administration order.

Conduct of order

13.—(1) The chief clerk or such other officer of the court as the court making an administration order shall from time to time appoint shall have the conduct of the order and shall take all proper steps to enforce the order or to bring to the attention of the court any matter which may make it desirable to review the order.

(2) Without prejudice to section 151 of the Act, any creditor whose debt is scheduled to the order may, with the leave of the court, take proceedings to enforce the order.

(3) The debtor or, with the leave of the court, any such creditor may apply to the court to review the order.

(4) When on a matter being brought to its attention under paragraph (1) the court so directs or the debtor or a creditor applies for the review of an administration order, rule 8(2) shall apply as if the order were subject to review under that rule.

Review of order

14.—(1) On the review of an administration order the court may—

- (a) if satisfied that the debtor is unable from any cause to pay any instalment due under the order, suspend the operation of the order for such time and on such terms as it thinks fit;
- (b) if satisfied that there has been a material change in any relevant circumstances since the order was made, vary any provision of the order made by virtue of section 148(4) of the Act;
- (c) if satisfied that the debtor has failed without reasonable cause to comply with any provision of the order or that it is otherwise just and expedient to do so, revoke the order, either, forthwith or on failure to comply with any condition specified by the court; or

- (d) make an attachment of earnings order to secure the payments required by the administration order or vary or discharge any such attachment of earnings order already made.

(2) The proper officer shall send a copy of any order varying or revoking an administration order to the debtor, to every creditor whose debt is scheduled to the administration order and, if the administration order is revoked, to any other court to which a copy of the administration order was sent pursuant to rule 9.

Reference of question of making a receiving order

15. Where a court which has no bankruptcy jurisdiction makes an order referring to a court which has such jurisdiction the question whether an administration order should be revoked and a receiving order made under section 11 of the Insolvency Act 1976, the proper officer of the first-mentioned court shall send a copy of the order, together with all the documents in his custody relating to the proceedings, to the proper officer of the court to which the question is referred and shall send notice of the reference to the debtor and to every creditor whose debt is scheduled to the administration order.

Discharge of attachment of earnings order

16. On the revocation of an administration order any attachment of earnings order made to secure the payments required by the administration order shall be discharged.

Declaration of dividends

17.—(1) The officer having the conduct of an administration order shall from time to time declare dividends and distribute them among the creditors entitled thereto.

(2) When a dividend is declared, notice shall be sent by the officer to each of the said creditors.

Creditors to rank equally

18. All creditors scheduled under section 149(d) of the Act before an administration order is superseded under section 155 of the Act shall rank equally in proportion to the amount of their debts subject to the priority given by the said paragraph (d) to those scheduled as having been creditors before the date of the order, but no payment made to any creditor by way of dividend or otherwise shall be disturbed by reason of any subsequent proof by any creditor under the said paragraph (d).

Change of debtor's address

19.—(1) A debtor who changes his residence shall forthwith inform the court of his new address.

(2) Where the debtor becomes resident in the district of another court, the court in which the administration order is being conducted may transfer the proceedings to that other court.

ORDER 40

ADMIRALTY PROCEEDINGS

Application and interpretation

1.—(1) This Order applies to Admiralty proceedings and, subject to the provisions of this Order, the other provisions of these rules apply to those proceedings as they apply to default actions.

(2) In this Order “court” means an Admiralty county court and “district” means the district assigned to such a court for Admiralty purposes.

Venue for commencement of action

2.—(1) An action in rem may be commenced in the court for the district in which the property against which the action is brought is situated at the time of the commencement of the proceedings or, if the property is situated in England or Wales but is not situated in the district of any Admiralty county court, then in the court for the district nearest to the place where it is situated.

(2) An action in personam may be commenced—

- (a) if an action in rem could have been brought in respect of the claim, in the court for the district in which the owner, or one of the owners, of the property against which such an action would have lain or the agent in England or Wales of the owner resides or carries on business, or if no such owner or agent resides or carries on business within the district of any Admiralty county court, then in the court for the district nearest to the place in England or Wales where the owner or one of the owners or the agent resides or carries on business; or
- (b) if sub-paragraph (a) is not applicable, then in the court for the district in which the defendant or one of the defendants resides or carries on business or, if no defendant resides or carries on business within the district of any Admiralty county court, then in the court for the district nearest to the place in England or Wales where the defendant or one of the defendants resides or carries on business; or
- (c) by leave of the judge or registrar, in the court for the district in which the cause of action wholly or in part arose.

Particulars of claim in action in rem

3. When filing particulars of his claim pursuant to Order 6, rule 1, the plaintiff in an action in rem shall file a copy for service with the summons.

Warrant of arrest

4.—(1) Where, after the commencement of an action in rem, it is desired to arrest the property against which the action or any counterclaim in the action is brought, the plaintiff or defendant, as the case may be, shall file an affidavit, stating—

- (a) where the action is brought by virtue of section 57(2) of the Act, the grounds on which it is alleged that there is a maritime lien or other charge on the property for the amount claimed;
- (b) where the action is brought by virtue of section 57(3) of the Act—
 - (i) whether or not the ship proceeded against is the ship in connection with which the claim arose,
 - (ii) that in the belief of the deponent the person who would, apart from section 70 of the Act, be liable on the claim in an action in personam was, at the time when the cause of action arose, the owner or charterer, or in possession or control, of the ship in connection with which the claim arose and was also, at the time of the issue of the summons, the beneficial owner of all the shares in the ship proceeded against;
- (c) the facts which render it probable that the property will be removed out of the jurisdiction of the court before the claim or counterclaim is satisfied, but it shall not be necessary to show that the property is likely to be removed immediately;
- (d) in an action for wages, the nationality of the ship.

(2) Where upon the filing of the affidavit the court is satisfied with the evidence, it may, subject to paragraphs (3) and (4), issue a warrant of arrest in duplicate and, where the court is not satisfied, it may require further evidence to be adduced and may order the detention of the property for the purpose of adducing such evidence.

(3) Except with the leave of the court or where notice has been given under paragraph (4), a warrant of arrest shall not be issued in an action for wages against a foreign ship belonging to a port of a State having a consulate within the district of the court until notice that the action has been begun has been sent to the consul.

(4) Where by any convention or treaty the United Kingdom has undertaken to minimise the possibility of arrest of ships of another State, no warrant of arrest in an action in rem against a ship owned by that State shall be issued until notice of intention to ask for the ship to be arrested has been served on a consular officer at the consular office of that State in London or the port at which it is intended to cause the ship to be arrested.

(5) In a case to which paragraph (3) or (4) relates the affidavit mentioned in paragraph (1) shall state that the notice required by paragraph (3) or (4), as the case may be, has been served, and a copy of the notice shall be exhibited to the affidavit.

Service of summons or warrant in action in rem

5.—(1) Subject to paragraph (6), the summons and any warrant of arrest issued in an action in rem shall be served on the property against which it is issued, except that, where the property is freight, the summons or warrant shall be served on the cargo in respect of which the freight is payable or on the ship in which the cargo was carried.

(2) Subject to paragraph (3), service shall be effected by—

- (a) affixing the summons or duplicate warrant on any mast of the ship or on the outside of any part of the ship's superstructure, or
- (b) delivering the summons or duplicate of the warrant to the person who is, at the time of service, apparently in charge of the ship or other property.

(3) Service of a summons or warrant of arrest in an action in rem against freight or cargo shall, if the cargo has been landed or transhipped, be effected—

- (a) by leaving the summons or duplicate warrant on the cargo, or
- (b) if the cargo is in the custody of a person who will not permit access to it, by leaving the summons or duplicate warrant with that person.

(4) Service of the summons in an action in rem may be effected by any of the persons mentioned in Order 7, rule 2(b).

(5) The summons and any warrant of arrest in an action in rem may be served on a Sunday, Good Friday or Christmas Day, as well as on any other day.

(6) A summons in an action in rem need not be served on the property mentioned in paragraph (1) if the summons is deemed to have been duly served on the defendant by virtue of Order 7, rule 11.

Service of summons in action in personam

6.—(1) The summons in an action in personam may be served in any manner prescribed by these rules for the service of a default summons.

(2) Where an action in personam is commenced under rule 2(2)(a) in the court for the district in which an agent resides or carries on business, the summons shall be served on the agent.

Interveners

7.—(1) In an action in rem any person not named in the summons who claims to be interested in the property against which the action is brought or in money paid into court in the action may, with the leave of the court, intervene in the action.

(2) An application for the grant of leave under this rule shall be made ex parte by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.

(3) A person to whom leave is granted under this rule shall thereupon become a party to the action.

(4) The court may order that a person to whom it grants leave to intervene in an action shall, within such period or periods as may be specified in the order, serve on any other party to the action such notice of his intervention and deliver such pleading as may be so specified.

(5) If the interest claimed by the intervener is not cognisable by the court, any party may apply to the court for an order transferring the action to the High Court.

Delivery of defence etc

8. Order 9, rules 2, 5 and 9, shall apply with the necessary modifications to an Admiralty action as they apply to a default action, and if the defendant fails to deliver a defence or counterclaim within the time prescribed by the said rule 2, the plaintiff may—

(a) except where the claim is in the nature of salvage or towage, proceed under Order 9, rule 6, as if the action were a default action, or

(b) request the proper officer to set the action down for hearing,

and where such a request is made, the proper officer shall fix a day for the hearing of the action and give notice thereof to both parties.

Particulars in collision actions

9.—(1) This rule applies, unless the court otherwise orders, to any action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships.

(2) If the plaintiff's claim is stated not to exceed £500, the plaintiff in his particulars of claim and the defendant in his defence shall give the particulars mentioned in paragraph (4).

(3) In any other case the plaintiff's particulars of claim shall contain only a concise statement of the nature of his claim and the plaintiff shall, when filing his particulars of claim, and the defendant shall, within 14 days after service of the summons on him, file a document, to be called "a preliminary act", containing the particulars mentioned in paragraph (4).

(4) The particulars referred to in paragraphs (2) and (3) are the particulars which would be required to be stated in a preliminary act if the action were proceeding in the High Court and also—

(a) what act of negligence or what breach of any navigation rule, bye-law or regulation is alleged to have been committed by those in charge of the other ship, and

(b) in the case of a defendant, the name of any ship, other than the plaintiff's ship, which is alleged by the defendant to have caused the collision or damage or with reference to which those in charge of the defendant's ship had to act.

(5) Every preliminary act filed pursuant to paragraph (3) shall be sealed by the proper officer and filed in a closed envelope, and, unless the court otherwise orders, no envelope shall be opened until every other preliminary act required to be filed in the action has been filed or all the parties to the action consent in writing to the opening of the preliminary acts.

(6) On filing a preliminary act pursuant to paragraph (3) a defendant shall give notice to the plaintiff that he has done so.

(7) Subject to paragraphs (8) and (9), any action in which preliminary acts are required shall be tried on the preliminary acts without pleadings unless the court otherwise directs.

(8) Where in an action in which preliminary acts are required the defendant has a set-off or counterclaim, he shall, in addition to filing a preliminary act, file a defence in respect of the set-off or a counterclaim.

(9) In relation to an action in which preliminary acts are required, rule 8 of this Order and Order 9, rules 5 and 9, shall have effect as if the references in them to a defence included references to a preliminary act.

Examination of witness before trial

10. In an Admiralty action the power conferred by Order 20, rule 13, shall extend to the making of an order authorising the examination of a person on oath before the judge sitting in court as if for the trial of the action without the action having been fixed for hearing or called on for hearing.

Bail

11.—(1) The provisions of the R.S.C. with respect to the giving of bail shall apply in relation to an action in rem in a county court as they apply in relation to an action in rem in the High Court.

(2) Where the solicitor of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his solicitor to give bail or pay money into court in lieu of bail, he shall be liable to committal.

Release of property under arrest

12.—(1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the court, it shall only be released—

- (a) on the written request of a party at whose instance the property was arrested, or
- (b) if the court so orders or if all the other parties to the action consent, on the written request of a party interested in the property.

(2) Before property is released under paragraph (1), the party requesting the release shall pay or give an undertaking to pay all the costs, charges and expenses incurred or to be incurred in connection with the arrest of the property, the care and custody of it while under arrest and its release.

Sale of property after judgment in action in rem

13.—(1) Where a judgment or order has been obtained in an action in rem, the court may, on an application made by the judgment creditor in accordance with the provisions of this rule, order—

- (a) if the property to which the action relates is under arrest, that the property be sold;
- (b) if the property has not been arrested, that the property be taken and sold in execution.

(2) Where at the time when the judgment or order is obtained the owners of the property are known, then—

- (a) except as provided in sub-paragraph (b), an application under paragraph (1) may be made ex parte but the court may, before making an order, direct that notice be given to the owners;
- (b) if the property is a British-owned ship, the judgment creditor shall file a certified copy of the ship's register and, if the name of any person not before the court appears on the register as having an interest in the ship, he shall be given notice of any application under paragraph (1).

(3) Where at the time when the judgment or order is obtained the owners of the property are unknown, then—

- (a) if the owners are subsequently ascertained and the judgment creditor files a list of their names and addresses accompanied, if the property is a British-owned ship, by a certified copy of the ship's register, an application may be made under paragraph (1) on notice to every owner and, in the case of a British-owned ship, to every person appearing in the ship's register as having an interest in the ship;
- (b) if the owners cannot be ascertained, the court may, on an affidavit showing grounds, allow an application under paragraph (1) to be made on notice given by advertisement or otherwise to all the owners of, and all persons having an interest in, the property to which an application relates.

(4) Any notice required to be given to a person by or under paragraph (2) or (3)(a) shall be served on him in the manner prescribed by these rules for service of a default summons.

(5) Where an order is made under paragraph (1)(b), the proper officer shall, on a request in that behalf being filed by the judgment creditor, issue a warrant of execution.

(6) Where an order is made under paragraph (1) in an action in rem against a ship, any party who has obtained judgment against the ship or proceeds of sale may apply to the judge to determine the order of priority of the claims against the proceeds of sale.

(7) Subject to paragraph (8), the proceeds of sale shall not be paid out of court except in pursuance of an order of the judge.

(8) Where the order of priority of claims against the proceeds has been determined and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each, the registrar may make an order for payment out in accordance with the agreement.

Appraisement

14. Where a ship is ordered to be sold or is seized under a warrant of execution, the registrar shall, before selling it, cause the property to be valued by an appraiser and the property shall not be sold for less than the appraised value except by leave of the court.

Completion of sale

15.—(1) On the completion of the sale of any property in an action in rem, the registrar shall—

- (a) deliver up the property to the purchaser and, if required to do so, execute a bill of sale to him at his expense;
- (b) file an account of the sale and the fees thereon, together with the certificate of appraisement signed by the appraiser.

(2) Any person interested in the proceeds of sale may inspect the account filed under paragraph (1) (b) and, if dissatisfied with any item in the account, may apply to the judge for a review of the account and thereupon Order 38, rule 24, shall apply with the necessary modifications as if the account had been taxed by the registrar.

Costs of order for sale

16. In an action in rem the costs incurred by the plaintiff in obtaining an order for the sale of property and in the execution of the order shall be allowed and recoverable against the property.

Transfer of proceedings for sale to High Court

17.—(1) Where, pursuant to section 145 of the Act, the owner of property liable to be sold in Admiralty proceedings desires that the sale should be conducted in the High Court instead of in the county court, he may, on giving security in the sum of £100, apply to the judge ex parte in writing for an order for the transfer of the proceedings for sale to the High Court.

(2) Where an order under paragraph (1) relates to a ship which is in the custody of the court, the ship shall be retained by the registrar until the Admiralty marshal takes possession of it by order of the High Court.

Retention of money where more than one action

18. Where more actions than one have been commenced against any property and the property has been sold, the proceeds of sale shall, unless the judge otherwise orders, be retained in court to abide the decision of the court in each action.

Reference to registrar

19.—(1) Where the defendant to a claim or counterclaim in an Admiralty action admits liability before the trial, the parties may agree that the amount to be recovered shall be assessed by the registrar with or without assessors.

(2) On the hearing by the judge of an Admiralty action the judge may, instead of giving judgment for a particular amount, give judgment settling the rights of the parties and order a reference to the registrar, with or without assessors, as to the amount to be recovered.

(3) Where the parties are agreed as mentioned in paragraph (1) or an order has been made under paragraph (2), the registrar shall proceed as if the assessment of the amount to be recovered were a question referred to him for inquiry and report, and Order 19, rule 9, shall apply with the modification that, unless any party, within 7 days after service on him of notice of the filing of the report, gives notice of an application to vary the report and of the grounds of the application, the report shall become binding on all the parties and judgment shall be entered accordingly.

(4) Nothing in this rule shall apply to a claim in the nature of salvage or prejudice the power of the registrar to hear and determine an action or matter under Order 21, rule 5.

ORDER 41

PROBATE ACTIONS

Interpretation

1. In this Order “probate action” means an action in respect of any contentious matter arising in connection with an application through the principal registry of the Family Division for the grant or revocation of probate or administration.

Commencement of probate action

2.—(1) A plaintiff bringing a probate action in a county court shall file with his request for the issue of a summons the minute of a registrar of the principal registry enabling the action to be brought in the county court under section 62 of the Act.

(2) The proper officer of the county court shall, on issuing the summons, send to the principal registry a notice requesting all documents in the principal registry or any district probate registry relating to the matter to be sent to him.

Judgment to be sent to every party

3. A copy of any judgment given in a probate action brought in or transferred to a county court under section 62 or 63 of the Act shall be sent by the proper officer to every party to the proceedings.

Application of R.S.C

4. Except as otherwise provided by these rules, the provisions of the R.S.C. relating to contentious probate proceedings shall, so far as appropriate, apply to probate actions in the county court as they apply to probate actions in the High Court.

ORDER 42

PROCEEDINGS BY AND AGAINST THE CROWN

Application and interpretation

1.—(1) These rules apply to any proceedings, so far as they are civil proceedings to which the Crown is a party, subject to the following rules of this Order.

(2) Except where the context otherwise requires, references in these rules to an action or claim for the recovery of land or other property shall be construed as including references to proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the land or property or to the possession thereof.

(3) No rent action shall be brought against the Crown.

(4) In this Order—

“the Act of 1947” means the Crown Proceedings Act 1947;

“civil proceedings by the Crown” and “civil proceedings against the Crown” and “civil proceedings by or against the Crown” have the same respective meanings as in Part II of the Act of 1947 and do not include any of the proceedings specified in section 23(3) of that Act;

“civil proceedings to which the Crown is a party” has the same meaning as it has for the purposes of Part IV of the Act of 1947 by virtue of section 38(4) of that Act.

Venue in proceedings against the Crown

2.—(1) In relation to an action against the Crown Order 4, rule 2, shall have effect as if paragraph (1)(a) thereof were omitted and in relation to an originating application to which the Crown is a respondent Order 4, rule 8, shall have effect as if paragraph (a)(i) thereof were omitted.

(2) For the purposes of Order 40, rule 2, the Crown shall be deemed to reside in the district of every court.

(3) If there is any reasonable doubt as to the court in which any proceedings should be commenced pursuant to Order 4 as modified by this rule, they may be commenced in the court for the district in which the plaintiff or one of the plaintiffs resides or carries on business.

Venue in proceedings for recovery of tax

3. In the case of proceedings for the recovery of income tax, the cause of action shall, for the purposes of Order 4, rule 2(1)(b), be deemed to have arisen in part at the office of any collector of taxes by whom demand of the sum claimed has been made from the defendant.

Particulars of claim in action against the Crown

4. The particulars of claim required by Order 6, rule 1, to be filed at the commencement of an action shall, in the case of civil proceedings against the Crown, include a statement of the circumstances in which the Crown's liability is said to have arisen and as to the government department and officers of the Crown concerned.

Subsequent procedure in default action

5.—(1) If in a default action against the Crown the defendant considers that the particulars of claim do not contain a sufficient statement as required by rule 4, he may, before the time for delivering a defence has expired, file two copies of a demand for further information as specified in the demand and thereupon the proper officer shall serve one copy on the plaintiff.

(2) Where the defendant files a demand under paragraph (1), the time for delivering a defence shall not expire until 4 days after the defendant has given notice to the proper officer and the plaintiff that the defendant is satisfied with the information supplied in compliance with the demand or 4 days after the court has, on the application of the plaintiff of which not less than 7 days' notice has been given to the defendant, decided that no further information as to the matters referred to in rule 4 is reasonably required.

(3) Except with the leave of the court, no judgment shall be entered under Order 9, rule 6(1)(a), in a default action against the Crown.

(4) An application for leave under paragraph (3) shall be made on not less than 7 days' notice to the defendant.

(5) No application against the Crown shall be made under Order 9, rule 14.

Subsequent procedure in fixed date action

6.—(1) In the case of a fixed date action against the Crown, Order 3, rule 3(2), shall not apply but on the filing of the documents required by Order 3, rule 3(1), the proper officer shall—

- (a) enter a plaint in the records of the court and deliver to the plaintiff a plaint note omitting any reference to a return day;
- (b) serve on the defendant a copy of the particulars of claim and a notice of the entry of the plaint and of the effect of paragraphs (3) and (5).

(2) Upon the service of the notice mentioned in paragraph (1)(b) all further proceedings in the action shall be stayed except as provided in this rule.

(3) If the defendant considers that the particulars of claim do not contain a sufficient statement as required by rule 4, he may, within 21 days after service on him of the notice mentioned in paragraph (1)(b), file in the court office two copies of a demand for further information as specified in the demand and thereupon the proper officer shall serve one copy on the plaintiff.

(4) If within the said period the defendant does not file two copies of such a demand, then, subject to paragraph (5), the stay of proceedings provided for by paragraph (2) shall cease to have effect at the end of that period.

(5) If within the said period the defendant files a statement that no such demand will be made, the stay of proceedings provided for by paragraph (2) shall cease to have effect forthwith.

(6) If within the said period the defendant files two copies of such a demand, the stay of proceedings provided for by paragraph (2) shall cease to have effect when the defendant gives notice to the proper officer and the plaintiff that the defendant is satisfied with the information supplied in compliance with the demand or when the court decides, on the application of the plaintiff of which not less than 7 days' notice has been given to the defendant, that no further information as to the matters referred to in rule 4 is reasonably required.

(7) When the stay of proceedings provided for by paragraph (2) ceases to have effect, the proper officer shall fix a return day and give notice thereof to the plaintiff and shall proceed in accordance with Order 3, rule 3(2)(b), (c) (omitting the words from the beginning to “and also”) and (d)(ii).

Service on the Crown

7.—(1) Order 8 and any other provision of these rules relating to service of process out of England and Wales shall apply in relation to civil proceedings by the Crown but shall not apply in relation to civil proceedings against the Crown.

(2) Personal service of any document which is to be served on the Crown for the purpose of or in connection with civil proceedings by or against the Crown shall not be requisite.

(3) Any such document may be served on the Crown—

- (a) by leaving the document at the office of the person to be served in accordance with section 18 of the Act of 1947, or any agent whom he has nominated for the purpose, but in either case with a member of the staff of that person or agent, or
- (b) by posting it in a prepaid envelope addressed to the person to be served in accordance with the said section 18 or to any such agent as aforesaid.

Summary judgment in Admiralty actions etc

8.—(1) In an Admiralty action no judgment shall be entered against the Crown under Order 40, rule 8, except with the leave of the court to be obtained on application of which not less than 7 days' notice has been given to the Crown.

(2) No order shall be made against the Crown by the court of its own motion under Order 13, rule 2(2), or Order 17, rule 4.

Counterclaim in proceedings by or against the Crown

9.—(1) In proceedings by the Crown for the recovery of taxes, duties or penalties the defendant shall not be entitled to avail himself of any set-off or counterclaim and accordingly the form of summons to be served on the defendant and the form of admission, defence or counterclaim to be annexed to the summons shall omit any reference to a counterclaim.

(2) In proceedings of any other nature by the Crown the defendant shall not be entitled to avail himself of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

(3) In any proceedings by the Crown the defendant shall not be entitled, and in any proceedings against the Crown the Crown shall not be entitled, without the leave of the court to be obtained on application of which not less than 7 days' notice has been given to the plaintiff, to make any counterclaim or plead any set-off if—

- (a) the Crown sues or is sued in the name of a Government department and the subject-matter of the set-off or counterclaim does not relate to that department; or
- (b) the Crown sues or is sued in the name of the Attorney-General.

Adjustment of liability under judgment for taxes

10. Where the Crown has obtained a judgment for taxes but subsequently the tax liability is reduced, whether by reason of an appeal against an assessment or otherwise, and the Crown has given notice of the reduction to the court and to the debtor, the sum remaining unsatisfied under the judgment shall be reduced accordingly, but the amount of the reduction shall not rank as a payment under the judgment.

Third party notice against the Crown

11.—(1) Notwithstanding anything in Order 12, rule 1(1), a third party notice (including a notice issuable by virtue of Order 12, rule 6) for service on the Crown shall not be issued without the leave of the court to be obtained on application of which 7 days' notice has been given to the Crown and to the plaintiff.

(2) Leave shall not be granted under paragraph (1) unless the court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

Discovery against the Crown

12.—(1) In any civil proceedings to which the Crown is a party any order of the court made under the powers conferred by section 28(1) of the Act of 1947 shall be construed as not requiring disclosure of the existence of any document the existence of which would, in the opinion of a Minister of the Crown, be injurious to the public interest.

(2) Where in any such proceedings an order of the court directs that a list of documents made in answer to an order for discovery against the Crown shall be verified by affidavit, the affidavit shall be made by such officer of the Crown as the court may direct.

Execution and satisfaction of orders against Crown

13.—(1) Nothing in Orders 25 to 32 shall apply in respect of any order against the Crown.

(2) A certificate issued under section 25(1) of the Act of 1947 shall be in the form used under Order 22, rule 8, with such variations as the circumstances of the case may require.

Attachment of debts, etc

14.—(1) No order for the attachment of a debt under Order 30 or for the appointment of a receiver under Order 32 shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the Crown.

(2) Where such an order could have been obtained in a county court if the money had been due or accruing due from a subject, an application may be made to that county court in accordance with Order 13, rule 1, for an order under section 27 of the Act of 1947 restraining the person to whom the money is payable by the Crown from receiving the money and directing payment to the applicant or to the receiver.

(3) The application shall be supported by an affidavit setting out the facts giving rise to it and in particular identifying the particular debt from the Crown in respect of which it is made.

(4) Notice of the application together with a copy of the affidavit shall be served on the Crown and, unless the court otherwise directs, on the person to be restrained or his solicitor at least 7 days before the day fixed for the hearing.

(5) Order 30, rules 4 and 6 to 9, shall apply, with the necessary modifications, in relation to an application under the said section 21 as they apply in relation to an application for an order under Order 30, rule 1, except that the court shall not have power to issue execution against the Crown.

ORDER 43

THE LANDLORD AND TENANT ACTS 1927 AND 1954

Interpretation

1.—(1) In this Order “the Act 1927” means the Landlord and Tenant Act 1927 and “the Act of 1954” means the Landlord and Tenant Act 1954.

(2) In relation to any proceedings under the Act of 1954 any reference in this Order to a landlord shall, if the interest of the landlord in question is subject to a mortgage and the mortgagee is in possession or a receiver appointed by the mortgagee or by the court is in receipt of the rents and profits, be construed as a reference to the mortgagee.

Commencement of proceedings and answer

2.—(1) Except as provided in rule 5(2), proceedings in a county court under the Act of 1927 or 1954 shall be commenced by originating application, and the respondent shall file an answer.

(2) Unless the court otherwise directs, the return day shall be a day fixed for the pre-trial review of the proceedings.

Claim for compensation in respect of improvement

3.—(1) A claim under section 1 of the Act of 1927 for compensation in respect of any improvement, or a claim by a mesne landlord under section 8(1) of that Act, shall be in writing, signed by the claimant, his solicitor or agent, and shall contain—

- (a) a statement of the name and address of the claimant and of the landlord against whom the claim is made;
- (b) a description of the holding in respect of which the claim arises and of the trade or business carried on there;
- (c) a concise statement of the nature of the claim;
- (d) particulars of the improvement including the date when it was completed and the cost thereof, and
- (e) a statement of the amount claimed.

(2) Where any document relating to any proposed improvement, or to any claim, is sent to or served on a mesne landlord in pursuance of Part I of the Act of 1927, he shall forthwith serve on his immediate landlord a copy of the document, together with a notice in writing stating the date when the document was received by the mesne landlord, and if the immediate landlord is himself a mesne landlord, he shall, forthwith on receipt of the documents aforesaid, serve on his immediate landlord a similar copy and notice, and so on from landlord to landlord.

(3) Any document required to be served under paragraph (2) shall be served in the manner prescribed by section 23 of the Act of 1927.

Proceedings under Part I of the Act of 1927

4.—(1) Subject to paragraph (2), the originating application by which proceedings under Part I of the Act of 1927 are commenced shall state—

- (a) the nature of the claim or application or matter to be determined,
- (b) the holding in respect of which the claim or application is made, its rateable value and the trade or business carried on there,

- (c) particulars of the improvement or proposed improvement to which the claim or application relates, and
 - (d) if the claim is for payment of compensation, the amount claimed.
- (2) In any case to which rule 3(1) relates the particulars required by paragraph (1) may, so far as they are contained in a claim made in accordance with that rule, be given by appending a copy of the claim to the originating application.
- (3) The applicant's immediate landlord shall be made respondent to the application.
- (4) Any certificate of the court under section 3 of the Act of 1927 that an improvement is a proper improvement or has been duly executed shall be embodied in an order.

Proceedings under Part I of the Act of 1954

5.—(1) A respondent to an application under section 7 of the Act of 1954 who resists any of the applicant's proposals as to the terms of a statutory tenancy shall state in his answer the terms which he proposes in their place.

(2) An application under section 13 of the Act of 1954 for the recovery of possession shall be brought by action and the particulars shall state, in addition to the matters set out in Order 6, rule 3,—

- (a) the date and term of the lease under which the tenant holds or has held the property;
- (b) the date of service upon the tenant of the landlord's notice to resume possession and the date of termination specified in the notice;
- (c) where the tenant has notified the landlord that he is not willing to give up possession, the date of the notification; and
- (d) where the plaintiff is not both the freeholder of the property comprised in the tenancy and the immediate landlord of the defendant, details of the interest constituting him the landlord for the purpose of proceedings under Part I of the Act of 1954.

(3) Where an order has been made under paragraph 1 of the Second Schedule to the Act of 1954 for the reduction of rent of any premises on the ground of failure by the landlord to do initial repairs, and it is subsequently agreed between the landlord and the tenant that the repairs to which the order relates have been carried out, the landlord shall file a copy of the agreement, and a note thereof shall be entered in the records of the court.

(4) Where the court makes an order for the recovery of possession of property in proceedings to which paragraph 9 of the Fifth Schedule to the Act of 1954 applies, the plaintiff shall, if the occupying tenant is not a party to the proceedings, forthwith notify him of the terms of the order and inform him of his rights to obtain relief under sub-paragraph (2) of that paragraph.

(5) If a copy of a notice under section 16(2) of the Act of 1954 or paragraph 9(2) or 10(2) of the Fifth Schedule to that Act is lodged in court, a notice of the lodgment shall be entered in the records of the court.

Application for new tenancy under s. 24 of the Act of 1954

6.—(1) an application under section 24 of the Act of 1954 for a new tenancy shall state—

- (a) the premises to which the application relates, their rateable value and the business carried on there,
- (b) particulars of the applicant's current tenancy of the premises and of every notice or request given or made in respect of that tenancy under section 25 or 26 of that Act,
- (c) the applicant's proposals as to the terms of the new tenancy applied for, including, in particular, terms as to the duration thereof and as to the rent payable thereunder,

- (d) the name and address of any person other than the respondent who, to the knowledge of the applicant, has an interest in reversion in the premises expectant (whether immediately or in not more than 14 years) on the termination of the applicant's current tenancy; and
- (e) the name and address of any person having an interest in the premises other than a freehold interest or tenancy who, to the knowledge of the applicant, is likely to be affected by the grant of a new tenancy.

(2) The person who, in relation to the applicant's current tenancy, is the landlord as defined by section 44 of the Act of 1954 shall be made respondent to the application.

(3) The provisions of Order 7, rule 20, shall apply to an originating application under this rule with the substitution of references to two months for the references therein to 12 months.

Answer to application for new tenancy under s. 24 of Act of 1954

7. Every answer by a respondent to an application to which rule 6 relates shall state—
- (a) whether or not the respondent opposes the grant of a new tenancy and, if so, on what grounds;
 - (b) whether or not, if a new tenancy is granted, the respondent objects to any of the terms proposed by the applicant and, if so, the terms to which he objects and the terms which he proposes in so far as they differ from those proposed by the applicant;
 - (c) whether the respondent is a tenant under a lease having less than 14 years unexpired at the date of the termination of the applicant's current tenancy and, if he is, the name and address of any person who, to the knowledge of the respondent, has an interest in reversion in the premises expectant (whether immediately or in not more than 14 years from the said date) on the termination of the respondent's tenancy;
 - (d) the name and address of any person having an interest in the premises other than a freehold interest or tenancy who is likely to be affected by the grant of a new tenancy, and
 - (e) if the applicant's current tenancy is one to which section 32(2) of the Act of 1954 applies, whether the respondent requires that any new tenancy ordered to be granted shall be a tenancy of the whole of the property comprised in the applicant's current tenancy.

Order dismissing application under section s. 24 which is successfully opposed

8. Where the court hearing an application under section 24 of the Act of 1954 is precluded by section 31 of that Act from ordering the grant of a new tenancy by reason of any of the grounds specified in section 30(1) of that Act, the order dismissing the application shall state all the grounds by reason of which the court is so precluded.

Other applications under Part II of Act of 1954

9. An application for an order under section 31(2)(b) of the Act of 1954 and, unless made at the hearing of the application under section 24, an application for a certificate under section 37(4) of that Act may be made ex parte to the registrar.

Service of order in proceedings under Part II of Act of 1954

10. A copy of any order made on an application to which rule 6 or 9 relates shall be sent by the proper officer to every party to the proceedings.

Proof of determination of rateable value

11. Where pursuant to section 37(5) of the Act of 1954 any dispute as to the rateable value of any premises has been referred to the Commissioners of Inland Revenue for decision by a valuation officer, whether for the purpose of section 37(2) or of section 63 of that Act, any document purporting to be a notification by the valuation officer of his decision shall be admissible in any proceedings in a county court as evidence of the matters contained therein.

Transfer of jurisdiction to High Court

12. Where under section 63(3) of the Act of 1954 the parties to any proceedings agree in writing that the jurisdiction of the court under Part I of the Act of 1927 or Part II of the Act of 1954 with respect to those proceedings shall be transferred to the High Court, either party may file the agreement and thereupon the provisions of Order 16, rule 11, shall apply, with such modifications as may be necessary, as if an order had been made for the transfer of the proceedings to the High Court.

Provisions as to assessors

13.—(1) Where, in any proceedings under Part I of the Act of 1927 or Part I or II of the Act of 1954, an assessor is summoned by the judge under section 91(1) of the County Courts Act 1959, as extended by section 63 of the Act of 1954, then, whether or not the summons was issued pursuant to an application by one of the parties, the provisions of Order 13, rule 11(4) and (8), shall not apply.

(2) In relation to any such proceedings, Order 13, rule 11(2), shall have effect where the judge decides to exercise his power to appoint an assessor without any application being made in that behalf by a party to the proceedings as it has effect where the judge grants such an application.

(3) Any report made by the assessor pursuant to paragraph (a) of section 63(6) of the Act of 1954 shall be filed by the assessor, together with a copy for each party to the proceedings, and thereupon the proper officer shall send a copy to each party and shall, if the further consideration of the proceedings has not been adjourned to a day named, fix a day for further consideration and give notice thereof to all parties.

Joinder of and notice to persons affected

14.—(1) Any person affected by an proceedings on an originating application under Part I of the Act of 1927 or Part I or II of the Act of 1954 may apply to the court to be made a party to the proceedings and the court may give such directions on the application as appear to be necessary.

(2) An application under paragraph (1) may be made ex parte in the first instance but the court may require notice thereof to be given to the parties to the proceedings before making any order.

(3) The foregoing provisions are without prejudice to the power of the court, either with or without an application by any party, to order notice of the proceedings to be given to any person or any person to be made a party to the proceedings but nothing in this rule shall be construed as requiring the court to make any such order and, if it appears that any person though he is affected by the proceedings is not sufficiently affected for it to be necessary for him to be made a party or given notice of the proceedings, the court may refuse to make him a party or, as the case may be, to require him to be given notice of the proceedings.

Registrar's jurisdiction

15.—(1) If on the day fixed for the hearing of an application under section 7 or section 24 of the Act of 1954 the registrar is satisfied that—

- (a) the parties to the application have agreed, in the case of an application under section 7, on the matters specified in subsection (2) of that section, or, in the case of an application under section 24, on the subject, period and terms of the new tenancy;
 - (b) the owner of any reversionary interest in the property consents thereto, and
 - (c) there are no other persons with interests in the property who are likely to be affected,
- the registrar shall have power to make an order giving effect to the agreement.
- (2) An application under section 38(4) of the Act of 1954 for the authorisation of an agreement may be heard and determined by the registrar and may be dealt with in chambers.

ORDER 44

THE AGRICULTURAL HOLDINGS ACT 1948 AND THE AGRICULTURAL HOLDINGS (NOTICE TO QUIT) ACT 1977

Order to arbitrator to state case

1.—(1) An application under paragraph 24 of the Sixth Schedule to the Agricultural Holdings Act 1948 for an order directing an arbitrator to state, in the form of a special case for the opinion of the court, a question of law arising in the course of the arbitration shall include a concise statement of the question of law.

(2) The arbitrator shall not be made a respondent to the application, but if the judge grants the application, a copy of the order shall be served on the arbitrator.

Special case stated by arbitrator

2.—(1) Where, pursuant to the said paragraph 24, an arbitrator states, in the form of a special case for the opinion of the court, any question of law arising in the course of the arbitration, the case shall contain a statement of such facts and reference to such documents as may be necessary to enable the judge to decide the question of law.

(2) The case shall be signed by the arbitrator and shall be lodged in the court office by the arbitrator or any party to the arbitration, together with a copy for the use of the judge.

(3) The proper officer shall fix a day for the hearing of the special case and give notice thereof to the parties.

(4) On the hearing the judge shall be at liberty to draw any inferences of fact from the case and the documents referred to therein.

(5) The judge may remit the case to the arbitrator for restatement or further statement.

(6) A copy of the order made by the judge on the hearing shall be served on the parties to the arbitration and on the arbitrator.

Removal of arbitrator or setting aside award

3.—(1) An application under paragraph 25 of the Sixth Schedule to the said Act of 1948 for the removal of an arbitrator on the ground of his misconduct or for an order setting aside an award on the ground that the arbitrator has misconducted himself or that an arbitration or award has been improperly procured or that there is an error of law on the face of the award shall be made within 21 days after the date of the award.

(2) The arbitrator and all parties to the arbitration, other than the applicant, shall be made respondents.

Enforcement of order imposing penalty

4.—(1) When taking any proceedings for the enforcement in a county court of an order under section 6 of the Agricultural Holdings (Notice to Quit) Act 1977, the party in whose favour the order was made shall file—

- (a) a certified copy of the order and
- (b) an affidavit verifying the amount due under the order and stating whether any previous proceedings have been taken for its enforcement and, if so, the nature of the proceedings and their result.

(2) Where it is desired to enforce the order by warrant of execution, the proceedings may be taken in any court in the district of which execution is to be levied.

ORDER 45

THE REPRESENTATION OF THE PEOPLE ACT 1949

Application for taxation of returning officer's account

1.—(1) An application by the Treasury under section 20 of the Representation of the People Act 1949 for the taxation of a returning officer's account shall be made by originating application and the day fixed for the hearing shall be a day for proceeding with the taxation if the application is granted.

(2) Where on the application the returning officer desires to apply to the court to examine any claim made against him in respect of matters charged in the account, the application shall be made in writing and filed, together with a copy thereof, within 7 days after service on the returning officer of the copy of the application for taxation.

(3) On the filing of an application under paragraph (2) the proper officer shall fix a day for the hearing and give notice thereof to the returning officer, and a copy of the application and of the notice shall be served on the claimant in the manner prescribed for a fixed date summons.

(4) The examination and taxation may, if the court thinks fit, take place on the same day, but the examination shall be determined before the taxation is concluded.

(5) The application for taxation and any application under paragraph (2) may be heard and determined by the registrar and a copy of the order made on the application shall be served on the Treasury and the returning officer and, in the case of an application under paragraph (2), on the claimant.

Appeal from decision of registration officer

2.—(1) Where notice of appeal from a decision of a registration officer is given pursuant to regulations made under section 42 of the said Act of 1949, the registration officer shall, within 7 days after receipt of the notice by him, forward the notice by post to the proper officer of the court in which the appeal is required to be brought, together with the statement mentioned in those regulations.

(2) The appeal shall be brought in the court for the district in which the qualifying premises are situated.

In this paragraph “qualifying premises” means the premises in respect of which the person whose right to be registered is in question on the appeal is entered on the electors' list or claims to be entitled to be registered.

(3) The respondents to the appeal shall be the registration officer and the party (if any) in whose favour the decision of the registration officer was given.

(4) On the hearing of the appeal—

- (a) the statement forwarded to the proper officer by the registration officer and any document containing information furnished to the court by the registration officer pursuant to the regulations mentioned in paragraph (1) shall be admissible as evidence of the facts stated therein;
 - (b) the judge shall have power to draw all inferences of fact which might have been drawn by the registration officer and to give any decision and make any order which ought to have been given or made by the registration officer.
- (5) A respondent to an appeal other than the registration officer shall not be liable for or entitled to costs, unless he appears before the court in support of the decision of the registration officer.

Selected appeal

3.—(1) Where two or more appeals to which rule 2 relates involve the same point of law, the judge may direct that one appeal shall be heard in the first instance as a test case and thereupon the proper officer shall send a notice of the direction to the parties to the selected appeal and the parties to the other appeals.

(2) If within 7 days after service of such notice on him any party to an appeal other than the selected appeal gives notice to the proper officer that he desires the appeal to which he is a party to be heard—

- (a) the appeal shall be heard after the selected appeal is disposed of;
 - (b) the proper officer shall give the parties to the appeal notice of the day on which it will be heard;
 - (c) the party giving notice under this paragraph shall not be entitled to receive any costs occasioned by the separate hearing of the appeal to which he is a party, unless the judge otherwise orders.
- (3) If no notice is given under paragraph (2) within the time limited—
- (a) the decision on the selected appeal shall bind the parties to each other appeal without prejudice to their right to appeal to the Court of Appeal;
 - (b) an order similar to the order in the selected appeal shall be made in each other appeal without further hearing;
 - (c) the party to each other appeal who is in the same interest as the unsuccessful party to the selected appeal shall be liable for the costs of the selected appeal in the same manner and to the same extent as the unsuccessful party to that appeal and an order directing him to pay such costs may be made and enforced accordingly.

ORDER 46

THE LEGITIMACY ACT 1976

Manner of application

1.—(1) An application to a county court under section 45(2) of the Matrimonial Causes Act 1973 for a declaration of legitimation by virtue of the Legitimacy Act 1976 shall be made by originating application stating—

- (a) the grounds on which the applicant relies,
- (b) the date and place of birth of the applicant and the maiden name of his mother and, if it be the case, that the applicant is known by a name other than that which appears in the certificate of his birth, and

- (c) particulars of every person whose interest may be affected by the proceedings and his relationship, if any, to the applicant, including any person other than the applicant's father to whom his mother was married at the date of his birth.
- (2) The application may be filed in the court for the district in which the applicant resides or the marriage leading to the legitimation was celebrated or, if neither the residence of the applicant nor the place of the marriage is in England or Wales, then in the Westminster County Court.
- (3) The applicant shall file with the originating application—
 - (a) an affidavit by him (or, if he is a minor, by his next friend) verifying the application, and
 - (b) any birth, death or marriage certificate intended to be relied on at the hearing.

Preliminary consideration and service

- 2.—(1) On the filing of the documents mentioned in rule 1, the proper officer shall fix a day for the pre-trial review of the proceedings and give notice thereof to the Attorney-General.
- (2) It shall not be necessary to serve the application on the Attorney-General otherwise than by delivering a copy of it to him in accordance with section 45(6) of the Matrimonial Causes Act 1973.
- (3) On the pre-trial review the court shall give directions as to the persons, if any, other than the Attorney-General, who are to be made respondents to the application.
- (4) Where in the opinion of the court it is impracticable to serve a respondent other than the Attorney-General in accordance with the rules relating to the service of originating applications or it is otherwise necessary or expedient to dispense with service of the originating application on any such respondent, the court may make an order dispensing with service on him.

Answer

- 3.—(1) The Attorney-General may file an answer to the application within 14 days after directions have been given on the pre-trial review.
- (2) Any other respondent who wishes to oppose the application or to dispute any of the facts alleged in it shall, within 14 days after service of the application on him, file an answer to the application.
- (3) A respondent who files an answer shall file with it as many copies as there are other parties to the proceedings and the proper officer shall send one of the copies to each of those parties.

ORDER 47

DOMESTIC AND MATRIMONIAL PROCEEDINGS

Consent to marriage of minor

- 1.—(1) Every application under section 3 of the Marriage Act 1949 for the consent of the court to the marriage of a minor shall be dealt with in chambers unless the court otherwise directs.
- (2) The application may be heard and determined by the registrar.
- (3) Notwithstanding anything in Order 10, rule 1(1), it shall not be necessary for the application to be made by the applicant's next friend unless the court so directs.
- (4) Where the application is made in consequence of a refusal to give consent, every person who has refused his consent shall be made a respondent to the application and Order 7, rule 10(5), shall have effect in relation to the application as if for the period of 21 days specified therein there were substituted a period of 7 days.

Married Women's Property Act 1882, s. 17

2.—(1) Where an application under section 17 of the Married Women's Property Act 1882 concerns the title to or possession of land, the originating application shall—

- (a) state whether the title to the land is registered or unregistered and, if registered, the Land Registry title number; and
- (b) give particulars, so far as known to the applicant, of any mortgage of the land or any interest therein.

(2) Where particulars of a mortgage are given pursuant to paragraph (1)—

- (a) the applicant shall file a copy of the originating application for service on the mortgage;
- (b) the copy of the originating application and a copy of the notice of the return day given to the respondent under Order 3, rule 4(4)(b), shall be served on the mortgagee in accordance with Order 7, rule 1, and

(c) any person so served shall be entitled to be heard on the application.

(3) The respondent to an application under the said section 17 shall file an answer.

(4) The judge may refer the application to the registrar, who shall there-upon have power to hear and determine it subject to the right of appeal conferred by Order 37, rule 6.

Law Reform (Husband and Wife) Act 1962, s.1(1)

3.—(1) In any action in tort brought by one of the parties to a marriage against the other during the subsistence of the marriage, the jurisdiction of the court under section 1(2) of the Law Reform (Husband and Wife) Act 1962 may be exercised by the registrar—

- (a) if the action is to be heard by the judge, at any time before the hearing, or
- (b) if the action is to be heard by the registrar, at any stage of the proceedings.

(2) In every such action the court shall, after a defence has been filed or, in a fixed date action, after the time for filing a defence has expired, consider whether the power to stay the action under the said section 1(2) should or should not be exercised and for the purpose of such consideration the proper officer shall, if he has not already done so, fix a day for a pre-trial review.

(3) Where the action is a default action, judgment shall not be entered under Order 9, rule 6(1) (a), except with the leave of the court.

(4) An application for the grant of leave under paragraph (3) shall be made on notice to the defendant and on the hearing of the application, which may be dealt with by the registrar, the court shall consider whether the power to stay the action under the said section 1(2) should or should not be exercised.

Matrimonial Homes Act 1967

4.—(1) Every application under section 1 of the Matrimonial Homes Act 1967 shall be dealt with in chambers unless the court otherwise directs.

(2) The application may be heard and determined by the registrar.

(3) Paragraphs (1) and (2) of rule 2 shall apply in relation to the application as they apply in relation to an application under section 17 of the Married Women's Property Act 1882.

(4) Where the application is for an order terminating the respondent's rights of occupation and it appears to the registrar, on the ex parte application of the applicant, that the respondent is not in occupation of the dwelling house to which the application relates and his whereabouts cannot after reasonable inquiries be ascertained, the registrar may dispense with service of the originating application on the respondent.

(5) This rule shall apply to an application for an order vacating the registration of a land charge of Class F or a notice or caution registered under section 2(7) of the Matrimonial Homes Act 1967, whether or not it is joined with an application under the said section 1, as it applies to an application under that section.

Family Law Reform Act 1969

5.—(1) In this rule—

“blood samples” and “blood tests” have the meanings assigned to them by section 25 of the Family Law Reform Act 1969, and

“direction” means a direction for the use of blood tests under section 20(1) of that Act.

(2) Except with the leave of the court, an application in any proceedings for a direction shall be made on notice to every party to the proceedings (other than the applicant) and to any other person from whom the direction involves the taking of blood samples.

(3) Where an application is made for a direction involving the taking of blood samples from a person who is not a party to the proceedings in which the application is made, the notice of application shall be served on him personally and the court may at any time direct him to be made a party to the proceedings.

(4) Where an application is made for a direction in respect of a person (in this paragraph referred to as a person under disability) who is either—

(a) under 16, or

(b) suffering from mental disorder within the meaning of the Mental Health Act 1959 and incapable of understanding the nature and purpose of blood tests,

the notice of application shall state the name and address of the person having the care and control of the person under disability and shall be served on him instead of on the person under disability.

(5) Where the court gives a direction in any proceedings, the proper officer shall send a copy to every party to the proceedings and to every other person from whom the direction involves the taking of blood samples and, unless otherwise ordered, the proceedings shall stand adjourned until the court receives a report pursuant to the direction.

(6) On receipt by the court of a report made pursuant to a direction, the proper officer shall send a copy to every party to the proceedings and to every other person from whom the direction involved the taking of blood samples.

Guardianship of Minors Act 1971 and 1973

6.—(1) Every person appearing to be interested in, or affected by, an application under the Guardianship of Minors Acts 1971 and 1973 (except the minor with respect to whom the application is made) shall be made a respondent to the application, including, where the application is made under section 5 of the said Act of 1971 with respect to a minor who has been received into the care of a local authority under section 2 of the Child Care Act 1980, that authority.

(2) Where on an application made under section 9 of the said Act of 1971 relating to the custody of a minor under the age of 16 the court proposes to make an order under section 2(2)(b) of the Guardianship Act 1973 committing the minor to the care of a local authority, the proper officer shall fix a date for hearing any representations from the authority and shall, not less than 14 days before the date so fixed, send notice thereof to the authority and to the parties together with, in the case of the authority, a copy of the originating application.

(3) All proceedings under the said Acts of 1971 and 1973 shall be dealt with in chambers unless the court otherwise directs.

Children Act 1975

7.—(1) An “authorised court” for the purposes of section 100(2) of the Children Act 1975, as respects an application for an order relating to a child, shall include any divorce county court in which a declaration has been made under section 41(1)(b) or (c) of the Matrimonial Causes Act 1973 in respect of that child.

(2) A “divorce county court” in this rule means any county court designated by the Lord Chancellor as a divorce county court under section 1(1) of the Matrimonial Causes Act 1967.

Domestic Violence and Matrimonial Proceedings Act 1976

8.—(1) In this rule a section referred to by number means the section so numbered in the Domestic Violence and Matrimonial Proceedings Act 1976.

(2) An application under section 1 shall be made by originating application to the court for the district in which either the applicant or the respondent resides or the matrimonial home is situated.

(3) Order 7, rule 10(5), as applied by Order 3, rule 4(6), shall have effect in relation to the originating application as if for the period of 21 days mentioned in the said rule 10(5) there were substituted a period of 4 days.

(4) The originating application shall be dealt with in chambers unless the court otherwise directs.

(5) A copy of any injunction to which a power of arrest has been attached under section 2 shall be delivered to the officer for the time being in charge of any police station for the applicant's address.

(6) Where an order is made varying or discharging an injunction to which a power of arrest has been attached under section 2, an officer of the court shall immediately inform the officer for the time being in charge of the police station at which a copy of the injunction was delivered pursuant to paragraph (5) and, if the applicant's address has since changed, any police station for the new address, and a copy of the order shall be delivered to any officer so informed.

(7) The judge before whom a person arrested is brought pursuant to section 2(4) may exercise his power to punish that person for disobedience to the injunction, notwithstanding that a copy of the injunction has not been served on him in accordance with Order 29, rule 1(2), and that no notice to show cause has been issued or served on him pursuant to Order 29, rule 1(4).

(8) In relation to a person who is in custody under such an order and warrant Order 29, rule 3, shall have effect as if the order and warrant were issued at the instance of the person who made the application under section 2(1).

Domestic Proceedings and Magistrates' Courts Act 1978

9. Where a direction is given under section 28 of the Domestic Proceedings and Magistrates' Courts Act 1978 that a magistrates' court order shall cease to have effect—

- (a) the proper officer of the court giving the direction shall send notice thereof to the clerk of the magistrates' court, and
- (b) if a power of arrest is attached to the order, an officer of the court giving the direction shall forthwith inform the officer for the time being in charge of any police station to which a copy of the order was sent and, if the applicant's address has since changed, any police station for the new address, and a copy of the direction shall be delivered to any officer so informed.

ORDER 48

FAMILY PROVISION

Interpretation

1. In this Order—

“the Act of 1973” means the Matrimonial Causes Act 1973;

“the Act of 1975” means the Inheritance (Provision for Family and Dependants) Act 1975;

“the deceased” means, in the case of an application under section 36 of the Act of 1973, the deceased party to the agreement to which the application relates and, in the case of an application under section 1 of the Act of 1975, the person to whose estate the application relates.

Mode of application

2.—(1) An application to a county court under section 1 of the Act of 1975 for provision to be made out of the estate of a deceased person shall be made by originating application stating—

- (a) the name of the deceased, the date of his death and his country of domicile at that date;
- (b) the relationship of the applicant to the deceased or other qualification of the applicant for making the application;
- (c) the date on which representation with respect to the deceased's estate was first taken out and the names and addresses of the personal representatives;
- (d) that to the best of the applicant's knowledge and belief the value of the deceased's net estate does not exceed the sum for the time being fixed under section 22(1) of the Act of 1975;
- (e) whether the disposition of the deceased's estate effected by his will or the law relating to intestacy was such as to make any provision for the applicant and, if it was, the nature of the provision;
- (f) to the best of the applicant's knowledge and belief, the persons or classes of persons interested in the deceased's estate and the nature of their interests;
- (g) particulars of the applicant's present and foreseeable financial resources and financial needs and any other information which he desires to place before the court on the matters to which the court is required to have regard under section 3 of the Act of 1975;
- (h) where appropriate, a request for the court's permission to make the application notwithstanding that the period of six months has expired from the date on which representation in regard to the estate of the deceased was first taken out, and the grounds of the request; and
- (i) the nature of the provision applied for.

(2) An application to a county court under section 36 of the Act of 1973 for the alteration of a maintenance agreement after the death of one of the parties shall be made by originating application giving the information which would be required to be stated in a supporting affidavit if the application were made to the High Court and also, in the case of an application by the surviving party to the agreement, stating that to the best of the applicant's knowledge and belief the value of the deceased's net estate does not exceed the sum for the time being fixed under section 22(1) of the Act of 1975.

Filing of application

3.—(1) An application to which rule 2(1) or (2) relates shall be filed—

- (a) in the court for the district in which the deceased resided at the date of his death, or

- (b) if the deceased did not then reside in England or Wales, in the court for the district in which the respondent or one of the respondents resides or carries on business or the estate or part of the estate is situate, or
 - (c) if neither of the foregoing sub-paragraphs is applicable, in the court for the district in which the applicant resides or carries on business.
- (2) The applicant shall file with his originating application—
- (a) an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof, and
 - (b) in the case of an application under section 36 of the Act of 1973, a copy of the agreement to which the application relates.
- (3) Unless the court otherwise directs, the return day of the originating application shall be a day fixed for the pre-trial review of the proceedings.

Parties

4.—(1) Without prejudice to its powers under Orders 5 and 15, the court may, at any stage of the proceedings, direct that any person be added as a party to the proceedings or that notice of the proceedings be served on any person.

(2) Order 5, rule 6, shall apply to an application under section 1 of the Act of 1975 or section 36 of the Act of 1973 as it applies to the proceedings mentioned in that rule.

Answer

5. Every respondent shall, within 21 days after service of the originating application on him, file an answer, which, if the respondent is a personal representative, shall state to the best of his ability—

- (a) full particulars of the value of the deceased's net estate, as defined by section 25(1) of the Act of 1975;
- (b) the persons or classes of persons beneficially interested in the estate, giving the names and (in the case of those who are not already parties) the addresses of all living beneficiaries, and the value of their interests so far as ascertained;
- (c) if such be the case, that any living beneficiary (naming him) is a minor or a mental patient; and
- (d) in the case of an application under section 1 of the Act of 1975, any facts known to the personal representative which might affect the exercise of the court's powers under that Act.

Subsequent application

6. Where an order has been made on an application under section 1 of the Act of 1975, any subsequent application, whether made by a party to the proceedings or by any other person, shall be made in those proceedings in accordance with Order 13, rule 1.

Hearing

7. Any application under section 1 of the Act of 1975 or section 36 of the Act of 1973 may be heard and determined by the registrar and may, if the court thinks fit, be dealt with in chambers.

Endorsement of memorandum on grant

8. On the hearing of an application under section 1 of the Act of 1975, the personal representative shall produce to the court the grant of representation to the deceased's estate and, if an order is made under the Act, the proper officer shall send a sealed copy thereof, together with the grant of representation, to the principal registry of the Family Division for a memorandum of the order to be endorsed on, or permanently annexed to, the grant in accordance with section 19(3) of the Act of 1975.

Transfer to High Court

9.—(1) The court in which an application under section 36 of the Act of 1973 or section 1 of the Act of 1975 is pending may order the transfer of the application to the High Court where the transfer appears to the court to be desirable.

(2) In considering whether an application should be transferred under paragraph (1) from a county court to the High Court, the court shall have regard to all relevant considerations, including the nature and value of the property involved, the relative expense of proceeding in the High Court and the county court and the limit for the time being of the jurisdiction of county courts under section 22 of the Act of 1975.

(3) Any order of transfer shall state whether it is desired that the proceedings be assigned to the Chancery Division or to the Family Division of the High Court.

ORDER 49

MISCELLANEOUS STATUTES

Administration of Justice Act 1970

1. Any action by a mortgagee for possession of a dwelling-house, being an action to which section 36 of the Administration of Justice Act 1970 applies, shall be dealt with in chambers unless the court otherwise directs.

Chancel Repairs Act 1932

2.—(1) A notice to repair under section 2 of the Chancel Repairs Act 1932 shall—

- (a) identify the responsible authority by whom it is given and the chancel alleged to be in need of repair;
- (b) state the repairs alleged to be necessary and the grounds on which the person to whom the notice is addressed is alleged to be liable to repair the chancel, and
- (c) call upon that person to put the chancel in proper repair,

and shall be served in accordance with Order 7, rule 1.

(2) Proceedings to recover the sum required to put a chancel in proper repair shall be brought by action.

(3) An application for the leave of the court under the proviso to subsection (2) of the said section 2 may be made in accordance with Order 13, rule 1.

(4) If the court is satisfied that the defendant has a prima facie defence to the action on the merits, the court may, on an application made by the defendant in accordance with Order 13, rule 1, order the plaintiff to give security for the defendant's costs.

(5) Where judgment is given for the payment of a sum of money in respect of repairs not yet executed, the court may order that the money be paid into court and dealt with in such manner as the court may direct for the purpose of ensuring that the money is spent in executing the repairs, but nothing in this paragraph shall prejudice a solicitor's lien for costs.

Companies Acts 1948 to 1980

3. An application to a county court under the Companies Acts 1948 to 1980(2) shall be made by petition if a like application to the High Court would be made by petition.

Consumer Credit Act 1974

4.—(1) An application to a county court under section 139(1)(a) of the Consumer Credit Act 1974 for a credit agreement to be re-opened shall be made by originating application.

(2) Where in any such proceedings in a county court as are mentioned in section 139(1)(b) or (c) of the said Act the debtor or a surety desires to have a credit agreement reopened, he shall, within 14 days after the service of the originating process on him, give notice to that effect to the proper officer and to every other party to the proceedings and thereafter the debtor or surety, as the case may be, shall be treated as having delivered a defence or answer and accordingly, if the proceedings are a default action, no judgment shall be entered under Order 9, rule 6(1).

Fair Trading Act 1973

5.—(1) In this rule a section referred to by number means the section so numbered in the Fair Trading Act 1973 and “the Director” means the Director General of Fair Trading.

(2) Proceedings in a county court under section 35, 38 or 40 shall be commenced by originating application.

(3) The respondent shall file an answer.

(4) Where in any proceedings under section 35 or 38 the Director intends to apply for a direction under section 40(2) that any order made against a body corporate (in this rule referred to as the “respondent body”) which is a member of a group of interconnected bodies corporate shall be binding on all members of the group, he shall file notice of his intention together with as many copies of the originating application and of the notice as are required for the purposes of paragraph (5).

(5) A copy of any notice under paragraph (4) shall be served on the respondent body and a copy of the notice together with a copy of the originating application and a notice of the return day shall be served on each of the bodies corporate specified in the notice under paragraph (4).

(6) The respondent body may at any time serve on the Director a notice containing particulars of any interconnected body corporate not mentioned in a notice under paragraph (4).

(7) With a view to deciding whether or in respect of which bodies notice should be given under paragraph (4) the Director may serve on the respondent body a notice requiring that body to give to him within 14 days after service of the notice particulars of any interconnected bodies corporate belonging to the same group as the respondent body and a copy of any such notice shall be filed.

(8) An application under section 40(3) shall be made on notice to the respondent body and every interconnected body belonging to the same group.

Hire-Purchase Act 1965

6.—(1) In this rule a section referred to by number means the section so numbered in the Hire-Purchase Act 1965 and “Schedule 3” means Schedule 3 to that Act.

(2) 1948 c. 38, 1967 c. 81, 1976 c. 69, 1980 c. 22.

(2) Where in an action to which section 35 applies the hirer or a guarantor named as a defendant has not been served with the summons, the court may, on the ex parte application of the plaintiff made at or before the hearing of the action, dispense with the requirement that the hirer or guarantor, as the case may be, be made a party to the action.

(3) Where such an action is brought by a person to whom a former owner's property in the goods or any of the rights or liabilities of a former owner have passed by assignment or by operation of law, the requirement that all the parties to the agreement shall be made parties to the action shall not apply to the former owner unless the court so directs.

(4) Notwithstanding anything in Order 13, rule 6, any application under section 35(3) may be heard and determined by the registrar.

(5) In an action to which section 35 applies, Order 9 shall have effect with the following modifications:—

- (a) subject to sub-paragraph (b), rules 2 and 3(1) and (2) of the said Order shall apply, with the necessary modifications, in relation to a hirer who makes an offer as to conditions for the postponement of the operation of an order under section 35(4)(b) as they apply in relation to a defendant in a default action who admits the whole or part of the plaintiff's claim and desires time for payment;
- (b) where the plaintiff elects to accept such an offer as is mentioned in sub-paragraph (a) and a guarantor is a party to the action, judgment shall not be entered before the return day;
- (c) rule 4 of the said Order shall not apply where judgment is entered under rule 3(2) thereof;
- (d) where such an offer as is mentioned in sub-paragraph (a) is made on the form appended to the summons but the plaintiff elects not to accept it, the court may, if the hirer does not attend on the return day, treat the form as evidence of the facts stated therein for the purposes of sections 35(4)(b) and 36(1).

(6) In an action in which a postponed order under section 35(4) has been made by the registrar, any application under section 38, 39 or 42 may be heard and determined by the registrar.

(7) Where an application is made in pursuance of paragraph 8(1) of Schedule 3 for the issue of a warrant of delivery, the application shall be made on notice to be served on the person in possession of the goods in the same manner as a fixed date summons and no leave to issue the warrant shall be required under Order 26, rule 5.

(8) Where, after the making of an order under section 35(4)(a) or (b), the plaintiff proposes, in pursuance of section 44(1), to make or proceed with a claim for the payment of money, he shall apply on notice to the defendant for an order for payment of the money, and, if the claim has not already been made in the action, particulars of the claim shall be given in or annexed to the notice.

(9) In this rule “guarantor” has the meaning assigned to it by section 58(1).

Housing Act 1961

7. An application under section 33(6) of the Housing Act 1961 for an order authorising the inclusion in a lease of provisions excluding or modifying the provisions of section 32 of that Act may be heard and determined by the registrar and may, if the court thinks fit, be dealt with in chambers.

Leasehold Reform Act 1967

8.—(1) In this rule a section referred to by number means the section so numbered in the Leasehold Reform Act 1967 and “Schedule 2” means Schedule 2 to that Act.

(2) Where a tenant of a house and premises desires to pay money into court pursuant to section 11(4) or section 13(1) or (3)—

- (a) he shall file in the office of the appropriate court an affidavit stating—

- (i) the reasons for the payment into court,
- (ii) the house and premises to which the payment relates and the name and address of the landlord, and
- (iii) so far as they are known to the tenant, the name and address of every person who is or may be interested in or entitled to the money;
- (b) on the filing of the affidavit the tenant shall pay the money into court and the proper officer shall enter the matter in the records of the court and send notice of the payment to the landlord and to every person whose name and address are given in the affidavit pursuant to sub-paragraph (a)(iii);
- (c) any subsequent payment into court by the landlord pursuant to section 11(4) shall be made to the credit of the same account as the payment into court by the tenant and sub-paragraphs (a) and (b) shall apply as if for the references to the tenant and the landlord there were substituted references to the landlord and the tenant respectively;
- (d) the appropriate court for the purposes of sub-paragraph (a) shall be the court for the district in which the property is situated or, if the payment into court is made by reason of a notice under section 13(3), any other county court specified in the notice.
- (3) Where the proceedings on an application are ordered to be transferred to a leasehold valuation tribunal under section 21(3), the proper officer shall—
 - (a) send notice of the transfer to all parties to the application and
 - (b) send to the leasehold valuation tribunal copies certified by the registrar of all entries in the records of the court relating to the application, together with the order of transfer and all documents filed in the proceedings.
- (4) Where an application is made under section 17 or 18 for an order for possession of a house and premises the respondent shall—
 - (a) forthwith after being served with the application, serve on every person in occupation of the property or part of it under an immediate or derivative sub-tenancy, a notice informing him of the proceedings and of his right under paragraph 3(4) of Schedule 2 to appear and be heard in the proceedings with the leave of the court, and
 - (b) within 14 days after being served with the application, file an answer stating the grounds, if any, on which he intends to oppose the application and giving particulars of every such sub-tenancy.

Licensing Act 1964

9.—(1) The provisions of this rule shall have effect where a question is referred to a county court under section 14(5) of the Licensing Act 1964.

(2) The compensation authority shall send to the proper officer of the court for the district in which the licensed premises are situate a statement of the question referred to the court and the names and addresses of the persons interested in the licensed premises.

(3) On receipt of the statement, the proper officer shall fix a day for the hearing of the matter by the judge, and give notice thereof to the persons named by the compensation authority as being interested in the licensed premises.

(4) A copy of the order made on the hearing of the matter shall be sent by the proper officer to the clerk of the compensation authority and to each of the persons referred to in paragraph (3).

Local Government Act 1972

10.—(1) In this rule a section referred to by number means the section so numbered in the Local Government Act 1972.

(2) Proceedings in a county court under section 161 shall be commenced in the court for the district in which the principal office of the body to whose accounts the application relates (in this rule referred to as “the body concerned”) is situated.

(3) An originating application for a declaration under section 161(1) shall state the facts on which the applicant intends to rely at the hearing of the application and the respondents to the application shall be the body concerned and any person against whom an order is sought under section 161(2).

(4) An appeal under section 161(6) against a decision of a district auditor shall be brought within 28 days of the receipt by the appellant of the district auditor's statement of the reasons for his decision.

(5) The request for entry of an appeal to which paragraph (4) relates shall state—

- (a) the reasons stated by the district auditor for his decision;
- (b) the date on which the appellant received the district auditor's statement;
- (c) the facts on which the appellant intends to rely at the hearing of the appeal; and
- (d) in the case of a decision not to apply for a declaration, such facts within the appellant's knowledge as will enable the court to consider whether to exercise the powers conferred on it by section 161(2).

(6) The respondents to the appeal shall be:—

- (i) the district auditor who for the time being has responsibility for the audit of the accounts of the body concerned;
- (ii) the body concerned; and
- (iii) in the case of an appeal against a decision not to certify under section 161(4) that a sum or amount is due from any person, that person.

(7) Without prejudice to its powers under Order 15, the court may at any stage of an application or appeal under section 161 direct that any officer or member of the body concerned be joined as a respondent.

Local Government (Miscellaneous Provisions) Act 1976

11. A person who appeals against a notice under section 21, 23 or 35 of the Local Government (Miscellaneous Provisions) Act 1976 shall state in his notice of appeal the grounds of the appeal and where one of those grounds is that it would have been fairer to serve the notice on another person or, as the case may be, that it would be reasonable for the whole or part of the expenses to which the notice relates to be paid by some other person, that person shall be made a respondent to the appeal, unless the court on the ex parte application of the appellant otherwise directs.

Mental Health Act 1959

12.—(1) In this rule—

a section referred to by number means the section so numbered in the Mental Health Act 1959 and “Part IV” means Part IV of that Act;

“place of residence” means, in relation to a patient who is receiving treatment as an in-patient in a hospital or other institution, that hospital or institution;

“hospital authority” means the managers of a hospital as defined in section 59(1).

(2) An application to a county court under Part IV shall be made by originating application filed in the court for the district in which the patient's place of residence is situated or, in the case of an

application made under section 53 for the discharge or variation of an order made under section 52, in that court or in the court which made the order.

(3) Where an application is made under section 52 for an order that the functions of the nearest relative of the patient shall be exercisable by some other person—

(a) the nearest relative shall be made a respondent to the application unless the application is made on the ground set out in subsection (3)(a) of the said section or the court otherwise orders, and

(b) the court may order that any other person, not being the patient, shall be made a respondent.

(4) On the hearing of the application the court may accept as evidence of the facts stated therein any report made by a medical practitioner and any report made in the course of his official duties by—

(a) a probation officer, or

(b) an officer of a local authority or of a voluntary organisation exercising statutory functions on behalf of a local authority, or

(c) an officer of a hospital authority:

Provided that the respondent shall be told the substance of any part of the report bearing on his fitness or conduct which the judge considers to be material for the fair determination of the application.

(5) Unless otherwise ordered, an application under Part IV shall be heard and determined in chambers.

(6) For the purpose of determining the application the judge may interview the patient either in the presence of or separately from the parties and either at the court or elsewhere, or may direct the registrar to interview the patient and report to the judge in writing.

Mobile Homes Act 1975

13.—(1) The respondent to an application under section 4 of the Mobile Homes Act 1975 for the grant of an agreement or the determination of a dispute shall file an answer.

(2) The application may be heard and determined by the registrar and may, if the court thinks fit, be dealt with in chambers.

Pilotage Act 1913

14. Order 13, rule 11, shall have effect in relation to an assessor who is to sit with the judge on the hearing of an appeal under section 28 of the Pilotage Act 1913 as if the judge had granted an application by the appellant for the assessor to be summoned.

Post Office Act 1969

15.—(1) An application under section 30(5) of the Post Office Act 1969 for leave to bring proceedings in the name of the sender or addressee of a postal packet or his personal representatives shall be made by originating application.

(2) The respondents to the application shall be the Post Office and the person in whose name the applicant seeks to bring proceedings.

Rentcharges Act 1977

16. Where for the purposes of section 9 of the Rentcharges Act 1977 the sum required to redeem a rentcharge is to be paid into the county court, it shall be paid into the court for the district in which the land affected by the rentcharge or any part thereof is situated.

Sex Discrimination Act 1975 and Race Relations Act 1976

17.—(1) In this rule—

- (a) “the Act of 1975” and “the Act of 1976” mean respectively the Sex Discrimination Act 1975 and the Race Relations Act 1976;
- (b) in relation to proceedings under either of those Acts expressions which are used in the Act concerned have the same meanings in this rule as they have in that Act;
- (c) in relation to proceedings under the Act of 1976 “court” means a designated county court and “district” means the district assigned to such a court for the purposes of that Act.

(2) A plaintiff who brings an action under section 66 of the Act of 1975 or section 57 of the Act of 1976 shall forthwith give notice to the Commission of the commencement of the proceedings and file a copy of the notice.

(3) Order 13, rule 11, shall have effect in relation to an assessor who is to be summoned in proceedings under section 66(1) of the Act of 1975, subject to the following modifications:—

- (a) whether or not the assessor is to be summoned pursuant to an application by one of the parties, paragraphs (4) and (8) of the said rule 11 shall be omitted;
- (b) paragraph (2) of the said rule 11 shall have effect where the judge decides to exercise his power to appoint an assessor without an application being made in that behalf as it has effect where the judge grants such an application.

(4) Proceedings under section 66, 71 or 72 of the Act of 1975 or section 57, 62 or 63 of the Act of 1976 may be commenced—

- (a) in the court for the district in which the defendant resides or carries on business, or
- (b) in the court for the district in which the act or any of the acts in respect of which the proceedings are brought took place.

(5) An appeal under section 68 of the Act of 1975 or section 59 of the Act of 1976 against a requirement of a non-discrimination notice shall be brought in the court for the district in which the acts to which the requirements relates were done.

(6) Where the plaintiff in any action alleging discrimination has questioned the defendant under section 74 of the Act of 1975 or section 66 of the Act of 1976—

- (a) either party may apply to the court under Order 13, rule 1, to determine whether the question or any reply is admissible under that section, and
- (b) Order 13, rule 5, shall apply to the question and any answer as it applies to any particulars of claim or defence.

(7) Where in any action the Commission claim a charge for expenses incurred by them in providing the plaintiff with assistance under section 75 of the Act of 1975 or section 66 of the Act of 1976—

- (a) the Commission shall, within 14 days after the determination of the action, give notice of the claim to the proper officer and the plaintiff and thereafter no money paid into court for the benefit of the plaintiff, so far as it relates to any costs or expenses, shall be paid out except in pursuance of an order of the court, and
- (b) the court may order the expenses incurred by the Commission to be taxed or assessed as if they were costs payable by the plaintiff to his own solicitor for work done in connection with the proceedings.

(8) Where an application is made for the removal or modification of any term of a contract to which section 77(2) of the Act of 1975 or section 77(2) of the Act of 1976 applies, all persons affected shall be made respondents to the application, unless in any particular case the court otherwise directs, and the proceedings may be commenced—

- (a) in the court for the district in which the respondent or any of the respondents resides or carries on business, or
- (b) in the court for the district in which the contract was made.

Solicitors Act 1974

18. Any application under Part III of the Solicitors Act 1974 may be heard and determined by the registrar and may, if the court thinks fit, be dealt with in chambers.

Trade Union Act 1913

19.—(1) Where a complainant desires to have an order of the Certification Officer under section 3 of the Trade Union Act 1913 recorded in the county court, he shall produce the order and a copy thereof to the proper officer of the court for the district in which he resides or the head or main office of the trade union is situate.

(2) The order shall be recorded by filing it, and the copy shall be sealed and dated and returned to the complainant.

(3) The sealed copy shall be treated as if it were the plaint note in an action begun by the complainant.

(4) The costs, if any, allowed for recording the order shall be recoverable as if they were payable under the order.

(5) The order shall not be enforced until proof is given to the satisfaction of the court that the order has not been obeyed and, if the order is for payment of money, of the amount remaining unpaid.

Trustee Act 1925, s. 63

20.—(1) Any person wishing to make a payment into court under section 63 of the Trustee Act 1925 shall make and file in the office of the appropriate court an affidavit setting out—

- (a) a brief description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose;
- (b) so far as known to him, the names and addresses of the persons interested in or entitled to the money or securities to be paid into court;
- (c) his submission to answer all such inquiries relating to the application of such money or securities as the court may make or direct;
- (d) his place of residence, and
- (e) an address where he may be served with any notice or application relating to such money or securities.

(2) The appropriate court for the purposes of paragraph (1) shall be the court for the district in which the person or any of the persons making the payment into court resides.

(3) The costs incurred in the payment into court shall be taxed and the amount of the taxed costs may be retained by the person making the payment into court.

(4) The registrar may require, in addition to the affidavit, such evidence as he thinks proper with regard to the matter in respect of which the payment into court is made.

(5) On the making of the payment into court the proper officer shall send notice thereof to each person mentioned in the affidavit pursuant to paragraph (1)(b).

(6) An application for the investment or payment out of court of any money or securities paid into court under paragraph (1) may be made ex parte but on the hearing of the application the court may require notice to be served on such person as it thinks fit and fix a day for the further hearing.

(7) No affidavit in support of the application shall be necessary in the first instance but the court may direct evidence to be adduced in such manner as it thinks fit.

(8) The application may be heard and determined by the registrar.

(9) Paragraphs (6) to (8) are without prejudice to any provision of the County Court Funds Rules enabling or requiring the court to transfer money from a deposit to an investment account of its own motion.

ORDER 50

GENERAL PROVISIONS

Practice directions

1. The Lord Chancellor may issue directions for the purpose of securing uniformity of practice in the county courts.

Powers of registrar when exercising his jurisdiction

2.—(1) Where the registrar is authorised by or under any Act or these rules to hear and determine any action or matter or to deal with any proceedings or to exercise any other jurisdiction, he shall, within the limits of that authority and subject to any right of appeal to or review by the judge, have all the powers of the judge.

(2) Nothing in this rule shall authorise the registrar to commit any person to prison.

Distribution of business between judge and registrar

3.—(1) Where by or under any Act or these rules any jurisdiction or power may be exercised either by the judge or by the registrar, its exercise by the registrar shall be subject to any arrangements made by the judge for the proper distribution of business between himself and the registrar.

(2) Where by or under any Act or these rules the leave of the judge is required for the exercise of any jurisdiction or power by the registrar, such leave may be either general or special.

(3) Where any proceedings are listed for hearing by the registrar, he may refer to the judge any matter which he thinks should properly be decided by the judge and the judge may either dispose of the matter or refer it back to the registrar with such directions as he thinks fit.

Notices

4. Every notice required by these rules shall be in writing unless the court authorises it to be given orally.

Change of solicitor etc

5.—(1) Where a party to an action or matter for whom a solicitor has acted desires to change his solicitor, he or the new solicitor shall give notice of the change to the proper officer and to every other party to the proceedings, stating the new solicitor's address for service, and unless and until such notice is given the former solicitor shall, subject to paragraph (5), be considered the solicitor of the party until the final conclusion of the action or matter.

(2) Where a party, after having sued or defended in person, appoints a solicitor to act on his behalf in the action or matter, except as advocate at the trial, he or the solicitor shall give notice of the appointment to the proper officer and to every other party to the proceedings, stating the solicitor's address for service.

(3) Where a party, after having sued or defended by a solicitor, intends to act in person, he shall give notice of his intention to the proper officer and to every other party to the proceedings, stating the address for service of the party giving the notice.

(4) Where a solicitor who has acted for a party in an action or matter has ceased to act and no notice has been given of a change of solicitor or of the party's intention to act in person, the solicitor may apply to the court, on notice to the party for whom he has acted, for an order declaring that he has ceased to be the solicitor acting for that party in the action or matter, and a copy of any such order shall be served by the proper officer on every party to the action or matter; but unless and until the solicitor has obtained such an order and a copy has been served as aforesaid, he shall, subject to paragraph (5), be considered the solicitor of the party until the final conclusion of the action or matter.

(5) Notwithstanding anything in this rule, where the certificate of an assisted person within the meaning of the Legal Aid (General) Regulations 1980 is revoked or discharged, the solicitor who acted for the assisted person shall cease to be the solicitor acting in the action or matter as soon as his retainer is determined under regulation 84 of the said Regulations; and if the assisted person desires to proceed with the action or matter without legal aid and appoints that solicitor or another solicitor to act on his behalf, paragraph (2) shall apply as if that party had previously sued or defended in person.

Signing of pleadings settled by counsel

6. Every pleading or other document settled by counsel for the purpose of proceedings in a county court shall be signed by him and his name shall appear on every copy of the document used in the proceedings.

Proper officer's obligations to be subject to payment of court fees

7. Any obligation imposed by these rules on the proper officer of a county court to do any act at the instance of a party to any proceeding in the court shall be subject to the payment of any fee required by a fees order to be paid on the proceeding.

Expense of advertisement

8. The expense of any advertisement in proceedings in a county court shall be borne in the first instance by such party as the court may direct and, if the advertisement is to be inserted by the proper officer, shall be paid before the advertisement is inserted.

Security for costs

9. Where by or under any Act or rule any person is required or authorised to give security for costs in relation to proceedings in a county court, then, subject to any express provision, the security shall be given in such manner, at such time and on such terms, if any, as the court may direct.

Supply of documents from court records

10.—(1) Subject to payment of the prescribed fee, any party to proceedings in a county court may, on written application, be supplied from the records of the court with a copy of any document relating to those proceedings, but the proper officer may, before supplying a duplicate of any plaint note or other document issued to a party, require him to satisfy the registrar, by affidavit or otherwise, of the loss or destruction of the document.

(2) Without prejudice to Order 22, rule 8, no other person shall be supplied with a copy of any document from the records of the court except with the leave of the registrar.

(3) In this rule any reference to supplying a copy of a document includes examining a copy prepared by the applicant and marking it as an office copy.

Impounded documents

11. Documents impounded by order of the court shall not be delivered out of the custody of the court or inspected, except on an order made by the judge or, if the registrar ordered the document to be impounded, by the registrar:

Provided that where a Law Officer or the Director of Public Prosecutions makes a written request in that behalf, documents so impounded shall be delivered into his custody.

Payment out of small estate

12. Where a person entitled to a fund in court or a share of such a fund dies intestate and the court is satisfied that no grant of representation of his estate has been made and that the assets of his estate, including the fund or share, do not exceed in value the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965 the court may order that the fund or share shall be paid, transferred or delivered to the person who, being a widower, widow, child, father, mother, brother or sister of the deceased, would be entitled to a grant of administration of the estate of the deceased.

ORDER 51

REVOCATIONS AND TRANSITIONAL PROVISIONS

Revocations

1. Subject to rule 2, the County Court Rules 1936, as amended⁽³⁾, are hereby revoked.

Transitional Provisions

2.—(1) These rules shall apply, so far as practicable, to any proceedings pending in a county court on the day on which these rules come into force and, where their application is excluded by virtue of the foregoing provision, the rules in force immediately before that day shall continue to apply to such proceedings.

(2) Nothing in paragraph (1) shall be taken as prejudicing the operation of the provisions of the Interpretation Act 1978 as respects the effect of repeals.

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under section 102 of the County Courts Act 1959, having by virtue of the powers vested in us in this

⁽³⁾ The amending instruments are: S.R. & O. 1936/1312, 1937/239, 1938/18, 731, 1475, 1939/778, 815, 1351, 1942/1070, 1943/549, 1120, 1944/63, 152, 481, 762, 986, 1947/737, 1919, 2576; S.I. 1950/1231, 1993, 1951/1354, 1952/2198, 1953/1728, 1954/1394, 1675, 1955/1799, 1956/471, 1243, 1851, 1957/174, 1136, 1958/2226, 1959/1251, 1960/1275, 1837, 1961/1526, 1962/1293, 1963/403, 1964/353, 1974, 1965/2147, 1966/1303, 1967/276, 1812, 1968/2010, 1969/585, 1970/30, 204, 673, 1201, 1871, 1971/781, 836, 2127, 2152, 1972/208, 1156, 1593, 1973/345, 847, 1412, 1974/178, 636, 1138, 1354, 1975/285, 1345, 2040, 1976/314, 2137, 1977/604, 615, 1206, 2194, 1978/682, 794, 911, 1943, 1979/1045, 1488, 1980/329, 628, 1807, 1982, 1981/1181.

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behalf made the foregoing Rules, do hereby certify the same under our hand and submit them to the Lord Chancellor accordingly.

*Henry Ruttle
A.C. Goodall
David Peck
S.S. Gill
J.B. Taylor
M.A.W. Grundy
M. Birks
Fielding Hatton
Andrew Smith
Norman Cooper
E.J.D. Evans*

I allow these Rules which shall come into operation on 1st September 1982.

Dated 16th November 1981

Hailsham of St. Marylebone, C

EXPLANATORY NOTE

These rules substitute for the County Court Rules 1936, as amended, a new code of county court procedure, omitting and shortening obsolete or little used provisions and generally simplifying and modernising the practice of the court. Where appropriate, the procedure is assimilated to that of the High Court, either by incorporating the relevant provisions of the Rules of the Supreme Court or by relying on their application through section 103 of the County Courts Act 1959. The new provisions are arranged in more logical order and several changes of a general character have been made. Except in relation to judicial acts, the term “registrar” is replaced by “proper officer”, which in accordance with the system prevailing in practice, will usually be the chief clerk (Order 1, rule 3). The powers of the registrar are extended, notably by omitting the requirement in some cases for them to be exercised only with the leave of the judge, although where the judge and the registrar have concurrent jurisdiction, the judge will be able to make arrangements for the proper distribution of business between himself and the registrar (Order 50, rule 3). Wherever possible, time limits are standardised; “clear” days and other special modes of calculating time are eliminated by the introduction of a general provision (Order 1, rule 9) for periods of time to be exclusive of the days by reference to which they are fixed. Instead of specifying the forms to be used in county court proceedings, the rules leave them to be prescribed, so far as necessary, by a separate statutory instrument.

The following are the more important of the specific changes made by the rules:—

- (1) The obligation previously imposed on a plaintiff resident outside England and Wales to give security for the defendant's costs before commencing proceedings is replaced by a provision (in Order 13, rule 8) enabling the defendant in such circumstances to apply for security.
- (2) The default action is extended to unliquidated as well as liquidated claims. If the claim is for some relief other than the payment of money, the proceedings are to be brought by “fixed date” (replacing the “ordinary”) action, while in all other cases they are to be brought by default action. The former exceptions for claims against persons under disability or to recover mortgage money or interest accruing after the commencement of the proceedings are abolished (Order 3, rule 2).
- (3) Order 5 has been rewritten to deal with the causes of action as well as parties but the provisions relating to persons under disability have been transferred to a new Order 10. There is no longer any restriction on the joinder of claims with an action for recovery of land (Order 5, rule 1) and the provisions relating to representative actions have been re-cast (Order 5, rule 5). The methods of suing a person carrying on business in a firm name are set out (Order 5, rule 10) and the procedure to be followed where there is a change in a party's title before judgment now applies to a change at any stage of the proceedings (Order 5, rule 11).
- (4) It will no longer be a condition precedent to the making of an order for further particulars of a claim or defence or for discovery that the applicant should have made a prior request for what he requires but the court may refuse an order in the absence of such a request (Order 6, rule 7; Order 9, rule 11; Order 14, rule 1).
- (5) The provisions about the service of documents have been shortened and simplified. Personal service may be effected by an agent of a party without his having to be in the party's permanent and exclusive employ (Order 7, rule 2). The court may entertain an application for extension of the time for service of a summons or the execution of a warrant even after the current period has expired and a successive summons may be issued at any time during the validity of the summons for service (Order 7, rules 19 and 20; Order 26, rule 6). The rules as to service out of England and Wales are transferred to a separate Order (Order 8).

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(6) The provisions relating to the delivery of an admission, defence or counterclaim in ordinary (now fixed date) and default actions are combined in a new Order 9. The procedure for the entry of judgment on acceptance of an admission and offer of payment is confined to default actions (and hire-purchase actions by virtue of Order 49, rule 6); but it will be open to the plaintiff in a fixed date action (other than a possession action) to apply for such judgment as he may be entitled to upon any admission delivered by the defendant (Order 9, rules 3 and 4). In a default action judgment may be entered not only where the defendant fails to deliver an admission, defence or counterclaim within the time prescribed but also where he delivers a bare admission unaccompanied by a request for time for payment (Order 9, rule 6). If the claim is for unliquidated damages, any default judgment will be interlocutory judgment for damages to be assessed. No judgment may be entered for money secured by a mortgage without the leave of the court (Order 9, rule 7). Interest payable by virtue of a statute or contract after the commencement of the proceedings may be included in the judgment (Order 9, rule 8).

(7) Order 10 collects together most of the rules relating to persons under disability. No formal appointment of a person as guardian ad litem will be required where he delivers on behalf of the person under disability an admission or defence accompanied by specified documents (Order 10, rule 5). Where a defendant under disability has no guardian ad litem, the registrar is no longer required to send the plaintiff a warning notice but the plaintiff must, after the time for delivery of a defence has expired and before taking any further step in the proceedings, apply to the court for the appointment of a guardian (Order 10, rule 6).

(8) Payment of the costs stated on the summons with the full amount of the plaintiff's claim or an amount accepted by the plaintiff in satisfaction of his claim will absolve the defendant from liability for further costs only if the claim is for a debt or liquidated demand (Order 11, rules 2(2) and 3(4)). A payment in satisfaction may be made at any time before judgment, even after the hearing of the action has begun (Order 11, rules 1(1) and 3(2)).

(9) The provisions relating to third parties are simplified, notably by enabling a third party notice in certain circumstances to be issued without leave and providing for the proceedings as between the plaintiff and the defendant and as between the defendant and the third party to be dealt with at the same time (Order 12, rules 1, 2 and 3).

(10) The rules with regard to interlocutory applications are re-stated. In particular, an application must be made on two days' notice unless permitted to be made ex parte and an appeal will lie to the judge from any order made by the registrar (Order 13, rule 1). The provisions relating to the consolidation of actions and matters and the appointment of assessors, which previously formed the subject of separate Orders, are shortened and included in Order 13 as rules 9 and 11.

(11) The provisions about discovery are replaced by a new code based largely on the corresponding provisions of R.S.C. Order 24 (Order 14, rules 1–10 and 12).

(12) The powers of amendment are assimilated to those of the High Court, particularly in cases where a relevant limitation period has expired (Order 15, rules 1 and 3).

(13) The power to transfer proceedings from one county court to another is extended to cases in which a disposal, pre-trial review, interlocutory application, enforcement process or payment into court could more conveniently be taken or made in the other court (Order 16, rule 1).

(14) Changes are made in the provisions relating to pre-trial review so as to extend the use of the procedure and render it more effective (Order 17).

(15) Notice of discontinuance can only be given before judgment or final order in the proceedings and the notice given to the proper officer must contain a certificate that notice has also been given to the defendant (Order 18, rule 1).

(16) The terms of reference applicable where proceedings are referred to the registrar for arbitration provide for the registrar on preliminary consideration of the dispute to have the same powers as on a pre-trial review (Order 19, rule 5(2)).

(17) The Order relating to evidence contains a number of new provisions enabling, for example, evidence to be given by affidavit in any proceedings in chambers, facts to be proved by the production of documents if the court so orders and witness summonses to be served by post subject to certain safeguards (Order 20, rules 5, 8 and 12).

(18) If the plaintiff does not appear on the day fixed for the hearing of an action or matter, the court may, instead of striking out the proceedings, proceed with the hearing in his absence if the defendant is present (Order 21, rule 1).

(19) The provisions about the enforcement of judgments and orders are divided into separate Orders dealing first with enforcement generally and then with the individual methods of enforcement (Orders 25 to 32).

(20) The requirements as to the service of an order for oral examination are simplified; the provision for fortnightly instead of monthly returns of non-execution to be sent where a warrant is for more than £50 is dropped; the requirements as to the enforcement of a judgment against a firm are generalised and brought closer to the corresponding High Court provisions, and an application for the enforcement in the county court of the award of a tribunal may be made ex parte by affidavit instead of by originating application (Order 25, rules 3, 7, 9 and 12).

(21) The minimum sum for which a part warrant may be issued is raised from £10 to £15 and the effect of suspending such a warrant is clarified (Order 26, rules 1 and 11).

(22) The cases in which leave to issue execution is required are restated in a comprehensive provision based on the corresponding High Court rule (Order 26, rule 5).

(23) The registrar as well as a party is enabled to apply for an order for goods seized in execution to be sold otherwise than by public auction (Order 26, rule 15).

(24) In view of their limited scope, the provisions relating to judgment summonses are shortened and simplified, clearer terminology is used and the costs allowable are redefined (Order 28).

(25) The rules as to committal for breach of an order or undertaking have been brought closer to the corresponding High Court provisions, for example by making it clear that an order to do an act must be served within the time limited for complying with it (Order 29).

(26) Garnishee proceedings will normally be taken in the court in which the judgment was obtained and not the court in which the garnishee could have been sued, and instead of issuing a summons the registrar will make an order nisi in the first instance (Order 30, rule 1). Where the garnishee is a bank and alleges that it does not hold any money to the credit of the judgment debtor, the bank will be able to file a notice to that effect, whereupon, unless the facts are disputed, the proceedings will be stayed (Order 30, rule 5).

(27) The provisions about the appointment of a receiver and the issue of interpleader proceedings are simplified, partly by applying the corresponding High Court provisions (Orders 32 and 33).

(28) In place of the former power to order a new trial, Order 37, rule 1, enables the judge to order a rehearing of proceedings tried without a jury where no error of the court at the hearing is alleged. This power may be exercised by the registrar where the proceedings were originally tried by the registrar.

(29) The rules relating to the costs of county court proceedings are stated more simply and concisely (Order 38). The time for lodging a bill of costs for taxation is extended from 14 days to 3 months after the making of the order for costs and the registrar is given the option of either fixing an appointment or carrying out a provisional taxation (Order 38, rule 20). The time limits for bringing in objections and thereafter applying for a review of taxation are also extended but any objections will be considered without a hearing (Order 38, rule 24).

(30) The procedure in Admiralty actions is simplified and modernised, for example by abolishing the entry of appearance, reducing the need to file preliminary acts, omitting many of the requirements as to bail and clarifying the provisions as to the enforcement of a judgment in rem (Order 40).

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(31) The provisions as to proceedings by and against the Crown are collected in a new Order 42. The prohibition against bringing a default action against the Crown is removed although it will not be possible to enter a default judgment without the leave of the court or to apply for summary judgment under Order 9, rule 14 (Order 42, rule 5). The procedure for attaching money due from the Crown and appointing a receiver of such money is simplified (Order 42, rule 14).

(32) In proceedings under the Landlord and Tenant Act 1954 the parties will no longer be required automatically to serve notice of the proceedings on mesne and superior landlords, but particulars of persons likely to be affected by the proceedings must be given in the pleadings so that the court can decide, for example on a pre-trial review, whether to order such persons to be given notice of or made parties to the proceedings (Order 43, rules 6, 7 and 14).

(33) Order 47 groups together a number of miscellaneous and formerly scattered provisions about consent to marriage and other family affairs.

(34) The provisions about proceedings under other special statutes which do not justify separate Orders are collected, with some redrafting, in a new Order 49.

(35) The requirements relating to change of solicitor are simplified and, in particular, no time limit is laid down for giving the court notice of a change (Order 50, rule 5).

(36) The provisions about supplying documents from the court records are clarified and a duplicate plaint note may be issued without proof of the loss or destruction of the original unless it is specially required (Order 50, rule 10).

(37) The Appendices are reduced to three (A, B and C), dealing respectively with the Higher Scales of Costs, the Tables of Fixed Costs and the Assessment of Costs.