



Legislative Council.

No. , 1898.

A BILL

To simplify and amend the Practice of the Supreme Court.

[MR. WANT ;—6 July, 1898.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

- 5 1. This Act may be cited for all purposes as the "Judicature Act of 1898," and shall, except where any provision hereof is declared to take effect on the passing of the Act, come into operation on the first day of January, one thousand eight hundred and ninety-nine.
- 10 2. In this Act, and in the orders and rules made hereunder, unless the context otherwise require—
 - "Action" shall mean a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of Court.

Short title and commencement of Act.

Interpretation of terms.

36 and 37 Vic., c. 66, s. 100.

Victoria, s. 3.

Queensland, s. 1.

- “Cause” shall include any suit, action, or other original proceeding between a plaintiff or a defendant.
- “Chief Justice” shall, in the absence from duty of the Chief Justice, mean the senior puisne Judge for the time being present. 5
- “Court” shall mean the Supreme Court of New South Wales.
- “Defendant” shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.
- “Existing” shall mean existing at the time appointed for the 10 commencement of this Act.
- “Judgment” shall include decree.
- “Matter” shall include every proceeding in Court not in a cause.
- “Order” shall include rule.
- “Party” shall include every person served with notice of or 15 attending any proceeding, although not named on the record.
- “Petitioner” shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.
- “Plaintiff” shall include any person asking any relief (otherwise 20 than by way of counterclaim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.
- “Pleading” shall include any petition or summons, and also shall include the statement in writing of the claim or demand of 25 any plaintiff, and the defence of any defendant thereto, and of the answer of the defendant to any set-off or counter-claim of any defendant.
- “Rules of Court” shall include forms.
- “Suit” shall include action. 30

Rules of law to apply to all Courts.

36 and 37 Vic. c. 66, s. 91.
Queensland s. 2.

Provision to save existing procedure.
36 and 37 Vic., c. 77, s. 21.

3. The several rules of law enacted and declared by this Act shall be in force and receive effect in all jurisdictions of the Supreme Court in New South Wales so far as the matters to which such rules relate shall be respectively cognizable by such Courts.

4. Save as by this Act, or by any rules of Court, may be otherwise 35 provided, all forms and methods of procedure which at the commencement of this Act were in force in the Supreme Court under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with this Act, or with any rules of Court, may continue to be used and practised in the said Court, in such and 40 the like cases, and for such and the like purposes, as those to which they would have been applicable if this Act had not passed.

5. In every civil cause or matter commenced in the Court after the passing of this Act law and equity shall be administered by such Court according to the rules following:—

Law and equity to be administered in all suits in Supreme Court. 36 and 37 Vic., c. 66, s. 24. Victoria, s. 8. Queensland, s. 4. Equitable relief claimed by plaintiff to be given in all cases.

5 (1) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Court, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the said Court in its equitable jurisdiction, in a suit or proceeding for the same, or the like purpose, properly instituted before the passing of this Act.

10 (2) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Court, and every Judge thereof, shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner as the said Court in its equitable jurisdiction ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.

Equitable relief to be given to defendants.

30 (3) The said Court, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as such Court or any Judge thereof might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of Court, or any order of the Court as might properly have been granted against

Or such equitable relief as defendant might obtain by cross bill.

Other parties may be made parties by notice.

- against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose ; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant. 5
- Courts to recognise equitable rights and liabilities. (4) The Court, and every Judge thereof, shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter in the same manner in which the Court in its equitable jurisdiction would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act. 10
- Actions not to be stayed by injunction. (5) No cause or proceeding at any time pending in the said Court shall be restrained by injunction ; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto : Provided always that nothing in this Act contained shall disable the said Court from directing a stay of proceedings in any cause or matter pending before it if it shall think fit ; and any person, whether a party or not to any such cause or matter, who would have been entitled if this Act had not passed to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce by attachment or otherwise any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Court by motion in a summary way for a stay of proceedings in such cause or matter either generally or so far as may be necessary for the purposes of justice, and the Court shall thereupon make such order as shall be just. 20 25 30
- Stay of proceedings. (6) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Court, and every Judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common law or by any custom, or created by any custom, or created by any statute, in the same manner as the same would have been recognised and given effect to if this Act had not passed. 35 40
- Legal rights to be recognised. (7) The Court in the exercise of the jurisdiction vested in it by this Act in every cause or matter pending before it, shall have 45
- Complete justice to be done in one suit as far as possible.

5 have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to, in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

10 6. The law to be hereafter administered as to the matters next hereinafter mentioned shall be as follows:—

15 (1) In the administration by any Court of the assets of any person who may die after the passing of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding-up of any company under the "Companies Act" whose assets may prove to be insufficient for the payment of its debts and liabilities, and the costs of winding-up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to the debts and liabilities provable, and as to the valuation of annuities and future or contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt. And all persons who, in any such case, would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding-up of such company, and may make such claims against the same, as they may be respectively entitled to by virtue of this Act.

Estates of persons deceased to be administered as in insolvency. 38 and 39 Vic., c. 77, s. 10. Victoria, s. 9. Queensland, s. 5.

35 (2) No claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations.

Claims for breach of trust not barred by statute of limitations. 36 and 37 Vic., c. 66, s. 25.

40 (3) An estate for life without impeachment of waste shall not confer, or be deemed to have conferred, upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Victoria, s. 9. Queensland, s. 5. Tenant for life without impeachment for waste not to commit equitable waste.

45 (4) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

No merger of legal estate unless merged in equity.

Mortgagor in possession may sue.

(5) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession, or to enter into the receipt of the rents and profits thereof, shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person. 5 10

Assignments of debts and choses in action.

(6) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act has not passed) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same without the concurrence of the assignor: Provided always that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or anyone claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees. 15 20 25 30

Debtor may interplead or pay money into Court.

Stipulations not of the essence of the contract to be construed as in equity.

(7) Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in Equity. 35

Writs of mandamus and injunction may be granted and receivers appointed.

(8) A mandamus or an injunction may be granted, or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before or at, or after the hearing of any cause or 40 45
or

- 5 or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is, or is not, in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.
- 10 (9) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail. In cases of collision rules of Admiralty to prevail.
- 15 (10) In questions relating to the custody and education of infants the rules of equity shall prevail. In cases relating to infants rules of equity to prevail.
- 20 (11) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail. Rules of equity to prevail where any conflict between them and rules of law.
- 25 **7.** Any Judge of the Court may, subject to any rules of Court, exercise in Court or in chambers all or any part of the jurisdiction of the said Court in all such causes and matters, and in all such proceedings in any causes or matters, as before the commencement of this Act might have been heard in Court or in chambers respectively, by a single Judge of the said Court, or as may be directed or authorised to be so made by any rules of Court to be hereafter made. In all such cases, any Judge sitting in Court shall be deemed to constitute the Court : Powers of one or more Judges. 36 and 37 Vic., c. 66, s. 39. Victoria, s. 22. Queensland, s. 6.
- 30 Provided that every issue of law and every special case stated by consent of parties shall be heard and determined by a single Judge in the first instance, unless either party shall require that the same be heard and determined by the Full Court in the first instance, in which case the same shall be so heard and determined accordingly.
- 35 **8.** Subject to any rules of Court, any Judge of the said Court sitting in the exercise of its jurisdiction elsewhere than in the Full Court, may reserve any case, or any point in a case, for the consideration of the Full Court, or may direct any case, or point in a case, to be argued before the Full Court. Cases or points may be reserved for, or ordered to be argued before the Full Court. 36 and 37 Vic., c. 66, s. 46. Victoria, s. 25. Queensland, s. 7.
- 40 **9.** Every motion for a new trial of any cause or matter on which a verdict has been found by a jury, or by a Judge without a jury, and every motion for judgment other than a motion for judgment on default in delivering a defence, and every motion to reduce damages shall be heard before the Full Court. Motions for new trials to be heard by Full Court. 36 and 37 Vic., c. 66, s. 48. Queensland, s. 8.

What order shall not be subject to appeal.
36 and 37 Vic., c. 66, s. 49.
Victoria, s. 27.
Queensland, s. 9.

As to appeals from order of single Judge.

33 and 37 Vic., c. 66, s. 50.
Victoria, s. 28.
Queensland, s. 10.

Referees and assessors.

36 and 37 Vic., c. 66, s. 56.

Victoria, s. 29.
Queensland, s. 11.

Duty of Judge or jury.

38 and 39 Vic., c. 77, s. 22.

Victoria, s. 25.
Queensland, s. 15.

Rules in Schedule,

38 and 39 Vic., c. 77, s. 16.

Victoria, s. 33.
Queensland, s. 16.

Provisions for making rules of Court.

38 & 39 Vic., c. 77, s. 17.

Victoria, ss. 34, 36.
Queensland, s. 17.

10. No order made by any Judge of the said Court, by the consent of parties, or as to costs only, which by law are left to the discretion of the Judge, shall be subject to any appeal except by leave of the Judge making such order.

11. An appeal shall lie to the Full Court from every order made by a Judge in Court or Chambers, except orders made in the exercise of such discretion as aforesaid. 5

12. Subject to any rules of Court and to such right as may now exist to have particular cases submitted to the verdict of a jury, any question arising in any cause or matter before the Court may be referred by the Court or Judge, before whom such cause or matter may be pending, for inquiry and report to a special referee, and the report of any such referee may be adopted wholly or partially by the Court, and may (if so adopted) be enforced as a judgment by the Court. The Court or Judge may also, in any such cause or matter as aforesaid in which it may think it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration if any to be paid to such special referees or assessors shall be determined by the Court or Judge. 10 15 20

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

But nothing herein, or in any rule of Court, shall take away or prejudice the right of any party to any action, where the action is heard before a jury, to have the questions submitted and left by the Judge to the jury, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such questions. 25

14. The rules of the Court in the Schedule to this Act shall come into operation at the commencement of this Act, and as to all matters to which they extend shall thenceforth regulate the proceedings in the Court. But such rules of Court, and also all such other rules of Court as may be made after the passing and before the commencement of this Act under the authority of the next section, may be annulled or altered by the authority by which new rules of Court may be made after the commencement of this Act. 30 35

15. The Governor may at any time after the passing and before the commencement of this Act, upon the recommendation of the Judges of the Court or any three of them, of whom the Chief Justice shall be one, make any further or additional rules of Court for carrying this Act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the rules in the Schedule to this Act, that is to say,— 40

- (1) For regulating the sittings of the Court, and of the Judges thereof sitting in chambers; and
- (2) For regulating the pleading, practice, and procedure, in the said Court; and
- (3)

- (3) Generally, for regulating any matters relating to the practice and procedure of the said Court, or to the duties of the officers thereof, or to the costs of proceedings therein.

From and after the commencement of this Act the Judges of
5 the Court, or any three of them, of whom the Chief Justice shall be one, may alter and annul any rules of Court for the time being in force, and have and exercise the same power of making rules of Court as is by this section vested in the Governor on the recommendation of the Judges before the commencement of this Act.

- 10 All rules of Court made in pursuance of this section shall be laid before each House of Parliament within such time, and shall be subject to be annulled in such manner as is in this Act provided.

All rules of Court made in pursuance of this section, if made
15 before the commencement of this Act, shall from and after the commencement of this Act, and if made after the commencement of this Act, shall from and after they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this section.

This section shall come into operation immediately on the
20 passing of this Act.

16. All rules and orders of the Court in its ecclesiastical, bank-
ruptcy, and divorce jurisdictions in force at the commencement of this
Act, except so far as they are expressly varied by the Schedule hereto,
or by rules of Court made before the commencement of this Act, shall
25 remain and be in force until they shall respectively be altered or
annulled by any rules of Court made after the commencement of this
Act.

17. The practice and procedure in all criminal causes and
matters whatsoever, including the practice and procedure with respect
30 to Crown cases reserved, shall be the same as the practice and pro-
cedure in similar causes and matters before the commencement of this
Act.

18. Nothing in this Act or in the Schedule hereto, or in any
rules of Court to be made under this Act, save as far as relates to the
35 power of the Court for special reasons to allow depositions or affidavits
to be read, shall affect the mode of giving evidence by the oral
examination of witnesses in trials by jury, or the rules of evidence, or
the law relating to jurymen or juries.

19. Where any provisions in respect of the practice or procedure
40 of the said Court, are contained in any Act of Parliament, rules of
Court may be made for modifying such provisions to any extent that
may be deemed necessary.

Orders and rules to be laid before Parliament, and may be annulled by address from either House.
 38 and 39 Vic., c. 77, s. 25.
 Victoria, s. 35.
 Queensland, s. 22.

20. Every rule of Court required by this Act to be laid before each House of Parliament shall be so laid within forty days next after it is made, if Parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session; and if an address is presented to the Governor by either House of Parliament, within the next subsequent forty days praying that any such rule or order may be annulled, the Governor may thereupon annul the same, and the rule or order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same. 5 10

This section shall come into operation immediately on the passing of this Act.

Repeal.
 38 and 39 Vic., c. 77, s. 33.
 Queensland, s. 24.
 Not to effect pending actions.
 Queensland, s. 25.

21. From and after the commencement of this Act all enactments inconsistent therewith shall be repealed.

22. Nothing in this Act, or in the rules of Court, shall extend to or effect any cause or matter pending at the commencement of this Act, but every such cause or matter shall proceed and be determined in the same manner as if this Act had not been passed. 15

SCHEDULE.

RULES OF THE SUPREME COURT UNDER THE JUDICATURE ACT OF 1898.

CHAPTER I.—INTRODUCTORY AND GENERAL.

5 Rule 1. The rules contained in this Chapter shall come into force on the first day of January, one thousand eight hundred and ninety-nine, and shall apply to the procedure and practice of the Court in its various jurisdictions. Commencement of rules. V. 1.

Rule 2. In the rules contained in this and the following Chapters the words specified in this rule have or include the meanings hereby assigned to them, or expressed to be included in them— Interpretation. V. 2.

10 “Document” includes any book, map, plan, or chart, and any written or printed paper or parchment.

“Person” includes any person acting in an official capacity, and also a corporation.

“Procedure” includes practice.

15 “Promptly” means with the utmost expedition which the Court or Judge dealing with any application considers reasonable, having regard to all the circumstances of the case.

“Service” includes “delivery,” and the words “served upon” include “delivered to.”

“Solicitor” means attorney, solicitor, or proctor, and also includes an agent, being a solicitor who is employed by or acts for another solicitor.

20 “The Court” means the Supreme Court, including one or more Judges of the Supreme Court sitting as a Court.

In this Chapter “the Rules” mean the rules of the Supreme Court in force for the time being, and in subsequent Chapters mean the Rules of the Supreme Court in force for the time being relating to the subject-matters of such Chapters respectively.

25

Introduction and General.

In these rules the masculine gender includes the feminine, the plural number includes the singular, and the singular extends to the plural, unless the frame of the sentence or the context or any rule, besides the rule to be interpreted, requires that a different construction should be adopted. Genders and numbers

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Rule 3. Whenever it is directed by the rules that a document shall be in a particular form, the document shall be sufficient if it is framed in the sense or to the effect of the form prescribed, or with such variations (if any) as the circumstances of the case may require: Provided that if the Judge who has to decide upon the sufficiency of any such document in Court, or in Chambers, thinks that the document, although sufficient, unnecessarily departs from the prescribed form, he may order the document to be amended within such time, and in such manner, and by such party, as he thinks fit. Subject to the previous provisions of this rule, blanks in the form must be filled up in the document by the party using the same. Form. V. 3.

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40 Rule 4. Whenever any time is prescribed or allowed by the rules for doing any thing, the time may, either before it expires, or after it has expired, but subject to the proviso hereinafter contained, be extended by consent of parties without an order, or by the Court or a Judge, for such period, and upon such terms, as the Court or Judge may think fit, unless the contrary is provided either expressly or by necessary implication from the language of any rule: Provided that no such extension of time shall be granted so as to defeat any order previously made, unless the order could be lawfully set aside by the Court or Judge if no extension were granted, and the Court, or Judge, shall think fit to set aside the same. Time enlarging. V. 4.

45

Rule

Introduction and General.

- Time abridging. V . Rule 5. Whenever any time is prescribed or allowed by the rules for doing anything, the time may, before it expires, be abridged by consent of parties without an order, or by the Court or a Judge as a condition of granting some indulgence to any party. 5
- Time when parties reside over 100 miles from Sydney. Eq. R. 294. Rule 6. Where time is prescribed or allowed by the rules to any party to a suit for doing any act, he shall be allowed half as many more days if he resides above 100 miles from Sydney, and twice the stated number of days if he resides above 200 miles from Sydney.
- Non-compliance with rules. V. 7. Rule 7. Non-compliance with any rule or unwritten practice in respect of any proceeding in any particular, and any mistake in any proceeding, shall not, unless the contrary is provided, either expressly or by necessary implication from the language of the rule violated, or any other rule, render the proceeding void; but the Court or a Judge may either declare the proceeding to be void or may set it aside, either wholly or in part, for irregularity, or may direct it to be amended in such manner, within such time, upon 15 such terms, and by such party, as the Court, or Judge, may think fit.
- Waiver of irregularity. V. 8. Rule 8. Any party who knows or ought to have known of any irregularity in any proceeding of any opposite party, and desires to take advantage of it, but fails to take the necessary step for that purpose promptly, shall be deemed to have waived the irregularity. 20
- Objections to be stated. V. 9. Rule 9. In all applications to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion.
- Ordering compliance with rules on failure to comply. V. 10. Rule 10. Whenever any rule directs anything to be done by any party, or within a prescribed time, and the thing is not done as directed, the Court, or a Judge, may order 25 that the thing shall be done, and by whom, and when, and in what manner, and at whose expense.
- Enforcing compliance where no special means provided. V. 11. Rule 11. Whenever no other means are provided by the rules for enforcing compliance with any rule, the Court, or a Judge, may enforce compliance with such rule on the application of any party in such manner as the Court, or Judge, may think fit. 30
- Authority to Court or Judge to supply directions wanting in Act or rules as to execution of powers thereby conferred. V. 12. Rule 12. Whenever any Act or the rules empower the Court, or a Judge, to do anything, or to order or direct anything to be done, or to refer any question, inquiry, or investigation, and do not contain all necessary directions as to the manner in which, the time within which, or the person by whom, the thing is to be done, or the manner in which, the time within which, or the person by whom, the question is to be determined or reported upon, or the inquiry or investigation is to be conducted, the Court or Judge may supply all such directions as are wanting.
- Computation of months. V. 13. Rule 13. Whenever in the rules, or in any order of the Court, or a Judge, time is limited by months, the time shall, unless otherwise expressed, be computed by calendar months according to the ordinary mode of computing calendar months. 40
- Computation of days. V. 13. Rule 14. Whenever in the rules, or in any order of the Court, or a Judge, time is limited by days, not expressed to be clear days, the time shall be reckoned as exclusive of the first day and inclusive of the last.
- Office holidays excluded from time not exceeding ix days. V. 14. Rule 15. Whenever in the rules, or in any order of the Court, or a Judge, a time not exceeding six days is limited, the time shall be reckoned as exclusive of all days 45 prescribed by the rules to be observed as holidays in the offices of the Court, unless the Court or Judge otherwise orders.

Introduction and General.

- Rule 16. Whenever in the rules, or in any order of the Court, or a Judge, a Time exceeding six days and expiring on an office holiday to be extended to the next open day. V. 15.
 time exceeding six days is limited, and the time would, but for this rule, expire on any day prescribed by the rules to be observed as a holiday in the offices of the Court, the
 5 time shall expire at the close of the next day on which the offices are open, unless the Court or Judge otherwise orders.
- Rule 17. The day on which an order for security for costs is served, and the Time occupied in finding security for costs excepted from other party's time for proceeding. V. 16.
 time thenceforward, until and including the day on which such security is given, shall
 10 not be reckoned in the computation of time allowed for taking any proceeding required to be taken by any party other than the person ordered to give security.
- Rule 18. All notices and consents required or allowed by the rules shall be Notices and consents. V. 17.
 written, or printed, or partly written and partly printed, unless otherwise expressly
 authorised by any rule.
- Rule 19. Whenever any point of procedure has not been provided for by the Omissions in rules. V. 18.
 15 rules, or by any Act, the Court, or a Judge, may in any particular case supply the omission.
- Rule 20. Whenever any name or names of any person other than his surname Designation of persons. V. 19.
 is or are unknown, it shall be sufficient in any proceeding to designate such person by
 20 his surname, and by such other names, or name, or part or parts thereof, as may be known.
- Rule 21. All applications for security for costs shall be made promptly. Applications for security for costs to be prompt. V. 20.
- Rule 22. When any duty to be discharged under any Act, or the rules, or the Officers to continue to discharge old duties unless otherwise provided. V. 21.
 25 practice of the Court apart from any Act or rules, is a duty which has heretofore been discharged by any particular officer, such officer shall, unless otherwise provided by the rules, continue to be the proper officer to discharge the same.
- Rule 23. When any new duty is under any Act or the rules to be discharged, New duties by whom to be discharged. V. 22.
 30 the proper officer to discharge the same shall, subject to the Act, be the officer directed by the rules, or an officer having previously discharged analogous duties, or if there be no such officer, then such other officer as may from time to time be directed by the Chief Justice to discharge the same.
- Rule 24. Whenever any doubt arises as to who is the proper officer to discharge Chief Justice to determine proper officer. V. 23.
 any new duty, the Chief Justice may direct by what officer such duty is to be discharged.
- Rule 25. All such arrangements as may be necessary or proper for the trans- Arrangements for business. V. 24.
 35 action or distribution of the business from time to time pending before the Court, shall be made by and under the direction of the Judges of the Court, and in case of difference among them in such manner as the majority of the said Judges shall determine. Provided that, in case of an equality of votes, the Chief Justice shall have the deciding vote.
- Rule 26. All such proceedings as are mentioned in any writ, notice, or other Writs, &c. V. 25.
 40 document issued under the authority of any Act or of the rules, may be taken in the event of any such default or disobedience as therein specified.
- Rule 27. Subject to any special provisions hereinafter contained, the Court, and Amendment. V. 26.
 45 every Judge thereof, may at all times amend all defects and errors in any proceeding in any of the jurisdictions of the Court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not, and all such amendments may be made, with or without costs, and upon such terms as to the Court or Judge may seem fit.

CHAPTER II.—RULES OF PROCEDURE IN CIVIL PROCEEDINGS.

PART I.—EXPLANATORY.
Rules 1-6.

PART II.—ACTIONS.

*Order 1.—Commencement
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Heading 1.—Commencement.—Rules 4-15.	
Heading 2.—Service of Claim and Summons.—Rules 16-25.	5
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CHAPTER II.—RULES OF PROCEDURE IN CIVIL PROCEEDINGS.

PART I.—EXPLANATORY.

Rule 1. The Rules in this Chapter shall be read in connexion with the enact- Rules to be read in
connexion with the Act.
V. 1.
ments as to practice and procedure in civil proceedings contained in the Judicature Act, V. 1.
5 1898.

Rule 2. In the rules in this Chapter the words and expressions specified in this Interpretation. V. 3.
rule have or include the meanings hereby assigned to them or expressed to be included
in them—

- 10 “The Act” means the Judicature Act, 1898.
- “Action” includes all actions which before “The Judicature Act, 1898” came into
operation were commenced by writ, and all suits which before the said Act
came into operation were commenced by statement of claims under the Equity
Act, 1880, in the Supreme Court.
- 15 “Committee” includes the Master-in-Lunacy in any case in which the Master is
by law empowered to bring or defend an action in the name of a lunatic, or to
apply or respond in his name in any matter, or otherwise to act as committee
in any legal proceeding.
- “Execution” means any process including sequestration by which obedience to an
order of the Court or Judge may be enforced.
- 20 “Matter” means any course of proceedings, or any proceeding within the civil
jurisdiction of the Court and the scope of the rules, such course of proceedings
or such proceeding not being an action, or any proceeding in an action, or an
appeal, or a case stated from or by any inferior jurisdiction, or by consent of
parties, or an order to review.
- 25 The word “Money” includes and the expression “a sum of money” excludes
unascertained costs, charges, and expenses.
- “Originating summons” means a summons by which proceedings in an action are
commenced without a claim with summons endorsed.
- “Receiver” includes consignee or manager appointed by or under an order.
- 30 “Relief” includes a declaration of right.
- “Substituted service” includes not only service on one person for another but any
kind of substitute for service, as by advertisement, or by leaving or posting a
document at any place or otherwise.

Rule 3. Except as to procedure nothing contained in the rules shall be construed Adaptation of new
procedure to existing
enactments. V. 4.
35 to affect any existing statutory enactment, and whenever any new mode of procedure is
or has been substituted for any mode previously existing, and referred to in any such
enactment, then, for the purpose of giving effect to such enactment, otherwise than as
regards procedure, its references to the previous procedure must be read as applicable
to the procedure so substituted; and the delivery of an answer shall be treated as
40 equivalent to an appearance.

PART II.—ACTIONS.

Order 1.—Commencement to Judgment.

1. Commencement.

Rule 4. Except in these rules provided, every action shall be commenced by a Actions to be commenced
by claim with endorse-
ment of summons. V. 7.
45 pleading to be called a Claim, which shall specify the jurisdiction in which the action is
to be tried, and on the back shall be written a summons according to Form No. 1, in
Schedule 1.

Rule 5. The summons shall be signed by the plaintiffs' solicitor, or by the plaintiff Summons how signed
tested and issued. V. 8.
50 when he sues in person, shall be tested in the name of the Chief Justice, and sealed by
the Prothonotary, and when so sealed shall be deemed to be issued. A copy of the Claim
so signed and sealed shall be left with the Prothonotary or the Chief Clerk in Equity, as
the action is to be tried in Equity or at Common Law.

Rule

Commencement.

Claim and Summons to be filed. V. 9.

Rule 6. The officers aforesaid shall file the claim and summons, and make an entry thereof in the cause-book, which shall be kept in such form and manner as the Chief Justice shall direct.

Date and number of Summons. V. 10.

Rule 7. Every summons shall bear the date upon which it was issued, and the Prothonotary shall distinguish every summons by the date of the year upon which it was issued, and a consecutive number beginning with number one in each year.

Memorandum to be appended to summons when plaintiff appears by a solicitor. V. 11.

Rule 8. A plaintiff suing by a solicitor shall state in the summons the name or firm and place of business of his solicitor, to be his address for service, unless it shall be more than three miles from the office of the Prothonotary, in which case an address within that distance shall be stated where all documents may be left for him.

And when plaintiff sues in person. V. 12.

Rule 9. A plaintiff suing in person shall append to the summons a memorandum stating his place of residence, his occupation, and a place to be his address for service not more than three miles from the office of the Prothonotary, where all documents may be left for him.

Service by filing in Prothonotary's office. V. 13.

Rule 10. When a plaintiff sues in person and no person can be found at the address for service, or when no such address is given, any document may be served on him by filing the same in the Prothonotary's office or with the Chief Clerk in Equity.

Change of address for service. V. 14.

Rule 11. An address for service may be changed at any time by leave of the Court or a Judge, and upon notice of such change being filed with the Prothonotary, 20 and served on the opposite parties in such manner as the Court, or Judge, may direct, provided that no address or service shall ever be more than three miles from the office of the Prothonotary.

Statement and notice to be appended to claim for debt or liquidated demand. V. 15.

Rule 12. When the claim is for a debt or liquidated demand only, there shall be appended to the summons a statement of the amount demanded for costs, and also a notice that upon payment of the amount claimed with the amount demanded for costs, within the time allowed by the rules or by a Judge for delivering an answer, all further proceedings will be stayed. Such statement and notice shall be in the Form No. 2 in Schedule I.

Duration of summons. V. 16.

Rule 13. No summons shall be in force for more than twelve months from the issue thereof including the day of such issue.

Declaration may be demanded from solicitor whose name is appended to summons. V. 17.

Rule 14. Every solicitor whose name shall be appended to any summons shall, on demand in writing made by or on behalf of any defendant who has been served with a duplicate thereof, declare forthwith in writing whether such summons was issued by him or with his authority or privity, and if he answers in the affirmative, then he shall also, in case the Court or a Judge so orders, declare in writing within a time to be allowed by the Court or Judge, the profession, occupation, or quality, and the place of abode, of the plaintiff, and if such solicitor declares that the summons was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereon without leave of the Court, or a Judge.

Addresses for service in case of originating summons. V. 18.

Rule 15. When an action is commenced by an originating summons the foregoing rule respecting addresses for services shall apply as if the originating summons were a summons endorsed on a claim.

2. Service of claim and summons.

Duplicate summons. V. 19.

Rule 16. Every duplicate summons shall have appended thereto everything required by the rules to be appended to the summons, shall be sealed and distinguished by the Prothonotary in the same manner as the summons, and shall be endorsed on a duplicate of the claim.

Substituted service when prompt personal service cannot be effected. V. 20.

Rule 17. Save as hereinafter mentioned a duplicate claim and summons shall be served on every defendant personally, but if it appears that the plaintiff is from any cause unable to effect prompt personal service, the Court or a Judge may make such order for substituted service as may be just.

Both husband and wife to be served. V. 21.

Rule 18. When husband and wife are both defendants to the action they shall both be served unless the Court or a Judge otherwise orders.

Rule

Service of Claim and Summons.

Rule 19. When an infant is defendant to the action, service on his father or guardian, or if he has none, then upon the person with whom the infant resides, or under whose care he is, shall, unless the Court, or a Judge, otherwise orders, be deemed good service on the infant. Provided that the Court or a Judge may order that service made or to be made on the infant shall be deemed good service. Infant how served. V. 22.

Rule 20. When a person of unsound mind is a defendant to the action, service on his committee, or on the person with whom he resides or under whose care he is, shall, unless the Court, or a Judge, otherwise orders, be deemed good service on such defendant. Person of unsound mind how served. V. 23.

Rule 21. When persons are sued as partners in the name of their firm, service upon any one or more of the partners within the jurisdiction, or if all the partners are out of the jurisdiction, at the principal place of business of the partnership within the jurisdiction, upon any person having at the time of service the control or management of the partnership business there, shall, if sufficient in other respects, be deemed good service upon the firm. Provided that in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, service upon every person sought to be made liable shall be necessary. Partners how served when sued in the name of the firm. V. 24.

Rule 22. When one person carrying on business in the name of a firm is sued in the name of the firm, and is out of the jurisdiction, service at his principal place of business within the jurisdiction upon any person having at the time of service the control or management of the business there shall, if sufficient in other respects, be deemed good service upon the person so sued. Service at the principal place of business, when good. V. 25.

Rule 23. In the absence of any statutory provision to the contrary, service upon the mayor, president, or other head officer, or upon the town clerk, municipal clerk, treasurer, manager, inspector, or secretary of a corporation aggregate, shall, if sufficient in other respects, be deemed good service on the corporation. And when by any Statute provision is made for service of any writ of summons upon any unincorporated body, service of a duplicate claim and summons upon such body may be effected in the manner so provided. Corporations how served. V. 26.

Rule 24. In actions to recover land in case of vacant possession, service, when it cannot be otherwise effected, may, by leave of the Court, or a Judge, be made by posting a duplicate claim and summons upon some conspicuous part of the property. Service in actions to recover land when possession vacant. V. 27.

Rule 25. Any person effecting personal service shall, within three days after service, make and file with the Prothonotary or the Chief Clerk in Equity an affidavit stating the date of service. Otherwise the plaintiff shall not be at liberty to proceed for default of pleading of the defendant. Affidavit of service. V. 28.

3. Pleading generally.

Rule 26. Every pleading shall contain a summary statement of the material facts upon which the party pleading relies, set out as nearly as the case allows, in the manner now followed in the Supreme Court in the Common Law Jurisdiction. Form of pleadings.

Rule 27. The frames of pleadings, given in Schedule II shall except in so far as they may in a particular case be inconsistent with any rule be followed. Frames of pleadings. V. 30.

Rule 28. Notwithstanding anything hereinafter contained a further and better statement of the nature of any claim, counter-claim, or defence, or further and better particulars of any matter stated in any pleading may in all cases be ordered upon such terms as may be just. Further and better statement or particulars may be ordered. V. 31.

Rule 29. Every pleading may be either printed, or written, or partly printed and partly written. Pleadings to be written or printed. V. 32.

Rule 30. Every pleading required to be delivered to a party shall be delivered in the manner now in use to the solicitor of every party who is represented by a solicitor, or to the party if he is not represented by a solicitor at his address for service subject to Rule 11. Mode of delivery of pleadings. V. 33.

Rule 31. Every pleading shall bear on its face the number of the action, the title of the action, and the description of the pleading, and every pleading other than a claim or a defendant's notice of claim shall bear on its face the date of its delivery. Pleadings to bear description and date. V. 34.

Pleading Generally.

Allegations not denied taken to be admitted. V. 35.

Rule 32. Every allegation of fact in any claim, or counter-claim, or defendant's notice of claim, which is not denied by answer or reply shall be taken to be admitted, except as against an infant or a person of unsound mind.

Conditions precedent. V. 36.

Rule 33. Performance or occurrence of conditions precedent need not be averred, but the opposite party shall specify in his pleading the conditions precedent the performance or occurrence of which he intends to contest.

Sufficient to state substance of contents of documents. V. 37.

Rule 34. Whenever the contents or part of the contents of any document are material it shall be sufficient to state the substance thereof briefly, and such statement shall be equivalent to setting forth the instrument according to its legal effect. 10

Sufficient to allege malice, &c., as a fact. V. 38.

Rule 35. Whenever it is necessary to allege malice, fraudulent intention, knowledge, or other condition of mind of any person, it shall be sufficient to allege the same as a fact.

Sufficient to allege notice as a fact. V. 39.

Rule 36. Whenever it is necessary to allege notice of anything to any person, it shall be sufficient to allege the notice as a fact, unless the form or the precise terms of the notice or the circumstances from which the notice is to be inferred are material. 15

Sufficient to allege implied contract or relation as a fact. V. 40.

Rule 37. Whenever any contract or any relation between any persons is to be implied from letters or conversations, or both, it shall be sufficient to allege the contract or relation as a fact, and to refer to the letters or conversations, or both, identifying them as far as possible but without setting them out in detail. If in any such case the party pleading desires to rely in the alternative upon more contracts or relations than one he may state the same in the alternative. 20

Pleadings may be ordered to be amended or portions struck out for cause. V. 1.

Rule 38. The Court, or a Judge, may order any pleading which contains any scandalous or irrelevant matter, or which is prolix, frivolous, or obscure or embarrassing, to any opposite party, to be amended, or may order that any portion of any such pleading be struck out. 25

When pleadings between plaintiffs and defendants deemed to be closed. V. 42.

Rule 39. The pleadings shall as between the plaintiffs and all the defendants, be deemed to be closed after the delivery of the answer or of the last of the answers, as the case may be, when there is no counter-claim; when there is a counter-claim then after the delivery of the reply, or of the last of the replies, the time for delivery of the last of the answers having then expired. 30

When pleadings between defendants and co-defendants or third parties deemed to be closed. V. 43.

Rule 40. The pleadings as between defendants and co-defendants, or third parties served with notice of claim under subsection (3) of section 5 of the Act, shall be deemed to be closed after the delivery of the reply or of the last of the replies, as the case may be.

Answer or reply may be enforced. V. 46.

Rule 41. Whenever any party makes default in answering or replying, the Court or a Judge, may, if necessary or just, order that an answer or reply be delivered, and within what time. 35

4. Claim.

Relief claimed how to be stated. V. 47.

Rule 42. Every claim shall state specifically the relief which the plaintiff claims, whether singly or in the alternative, but the short forms of stating the relief claimed set out in Schedule II, may be used when applicable, and it shall not be necessary to ask for consequential relief which may always be given as may be just. When money is claimed or an account is asked for, it shall not be necessary to claim payment in terms unless alternative relief is claimed in default of payment. 40

Capacity in which plaintiff or defendant sues or is sued to be stated. V. 48.

Rule 43. If the plaintiff sues or any defendant is sued in a representative capacity the claim shall allege in what capacity the plaintiff or defendant sues or is sued. 45

In actions for trespass to land close how designated. V. 49.

Rule 44. In action for trespass to land the close or place in which the trespass was committed must be designated in the claim by name, if any, and abutments or other description, or by reference to a sufficient plan drawn in the margin.

Plaintiff may unite in his claim distinct subjects of relief. V. 50.

Rule 45. The plaintiff in an action may, subject to the following rules, unite in his claim several distinct subjects of relief, but if it appears that such subjects cannot be all conveniently disposed of together, the Court, or a Judge, may make such order as may be necessary or expedient for the separate disposal of the same or any of them. 50

Relief in actions for recovery of land and for foreclosure or redemption. V. 51.

Rule 46. In an action for the recovery of land the plaintiff may also claim mesne profits or arrears of rent or double value in respect of the premises sought to be recovered, or any part thereof, and damages for breach of any contract under which the same or any part 55

Claim.

part thereof are or is held, or for any damage thereto, but no other relief unless by leave of the Court, or a Judge. Provided that any plaintiff in an action for foreclosure or redemption may ask for an order against the defendant for delivery of possession of the mortgaged property to the plaintiff, and an action for foreclosure or redemption and for such delivery of possession shall not be deemed an action for the recovery of land within the meaning of these rules. Provided also that in case any mortgage security shall be foreclosed by reason of any plaintiff in a redemption action failing to redeem, the defendant, in whose favour the foreclosure has taken place, may apply to the Court for an order for delivery of possession of the mortgaged property to him, and such order shall be made as may be just.

Rule 47. Claims by an official assignee as such shall not unless by leave of the Court, or a Judge, be joined with any claim by him in any other capacity.

Claims by trustees in insolvency. V. 52.

Rule 48. Claims by husband and wife may be joined with claims by either of them separately, and claims against husband and wife may be joined with claims against either of them separately.

Claims by and against husband and wife. V. 53.

Rule 49. Claims by an executor or administrator as such may be joined with claims by him personally, and claims against an executor or administrator as such may be joined with claims against him personally, provided that in each case the personal claims arise with reference to the estate in respect to which the plaintiff sues or the defendant is sued as executor or administrator.

Claims by and against executor or administrator. V. 54.

Rule 50. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

Claims by plaintiffs jointly. V. 55.

Rule 51. Any defendant may at any time apply to the Court, or a Judge, for an order confining the action to such of the subjects in respect of which relief is claimed as can be conveniently disposed of together, and if on the hearing of the application it appears that they cannot all be conveniently disposed of together, the Court, or Judge, may order any of them to be excluded, and all necessary amendments to be made.

Action may be confined to certain subjects in certain cases. V. 56.

5. Answer.

Rule 52. Every defendant shall, except when by virtue of any rule an answer would be useless or unnecessary, deliver an answer to the claim within fourteen days after he has been served therewith.

Answer to be delivered within twenty-one days. V. 57.

Rule 53. Every defendant shall append to his answer a memorandum stating the name or firm and place of business of his solicitor (if any) to be his address for service if such place of business is not more than three miles from the office of the Prothonotary, and also if the place of business of his solicitor is more than three miles from the office of the Prothonotary another place to be his address for service not more than three miles from the office of the Prothonotary, where all documents may be left for him.

Address for service when defendant defends by solicitor. V. 58.

Rule 54. A defendant defending in person shall append to his answer a memorandum stating his place of residence, his occupation, and a place to be his address for service not more than three miles from the office of the Prothonotary, where all documents may be left for him, and when no person can be found at such address for service, or when no such address is given, any document may be served on him by filing the same in the Prothonotary's office.

The same when defendant defends in person. V. 59.

Rule 55. A defendant may at any time change his address for service by leave of the Court or a Judge, and upon filing with the Prothonotary notice of such change, and serving notice thereof upon the opposite parties in such manner as the Court or Judge may direct.

Notice of change of address to be filed and served. V. 60.

Rule 56. Any defendant to whom any statement or particulars have been delivered under a Judge's order shall, unless the order otherwise provides, have the same time for answering after the delivery of the statement or particulars as he had at the return of the summons.

Time for answer after delivery of statement or particulars under Judge's order. V. 61.

Rule 57. When the plaintiff's claim is either wholly or in part for a debt or liquidated demand legal or equitable, any defendant may to such debt or liquidated demand set-off any debt or liquidated demand, legal or equitable, due to him by the plaintiff

Set-off to claim. V. 62.

Answer.

plaintiff in the same right, and if the amount found to be due on the set-off shall exceed the amount found to be due on the claim, judgment shall be pronounced for the defendant for the excess.

Defendant not required to answer as to damages. V. 63.

Allegations of fact in claim to be specifically dealt with. V. 64.

Denial not to be evasive. V. 65.

In claim for recovery of land a person not named as a defendant may deliver answer. V. 67.

Defence of judgment recovered or order of Court. V. 68.

"Not Guilty by Statute" abolished, 16 & 17 Vic., c. 113, s. 69.

Pleadings to revise all grounds of defence or reply. E.O. 19, 15.

Presumption of law. E.O. 19, 25.

Technical objection. E.O. 19, 26.

When counter-claim to be delivered. V. 68.

Title and heading thereof.

Rules as to claims applicable to counter-claims. V. 69.

Counter-claim coupled with claim of defendant against co-defendant or third party. V. 70.

[N.B.—See next heading.]

Rule 58. A defendant shall not be required to answer as to damages except when 5 damage forms a necessary part of the cause of action.

Rule 59. A defendant must deal specifically with each allegation of fact contained in the claim which he means to deny: Provided that with regard to the allegations of fact contained in any portion of the claim he may in his answer state the facts as he alleges them to be, and deny save as so stated every allegation of that portion. 10

Rule 60. When a defendant denies an allegation of fact he must not do so evasively but must answer the point of substance. Thus if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must either deny that he received that sum or any part thereof or else set out how much he received. 15

Rule 61. Any person not named as a defendant in a claim for the recovery of land, may, by leave of the Court or a Judge, deliver an answer on filing an affidavit showing that he is in possession of the land, or of any part thereof, either by himself or his tenant, and any such person shall in all subsequent proceedings be named as a party defendant to the action, and any person may defend as to part only of the land 20 claimed.

Rule 62. When a defendant relies on a judgment recovered he shall state in his answer the date of the judgment, the name of the Court, the place where holden, and the number of the roll (if any) on which the judgment is entered, and when a defendant relies on any order of the Court hereafter made he shall state in his answer the year of 25 entry and number of the order.

Rule 63. The defence of "Not guilty by Statute" shall no longer be pleaded.

Rule 64. The defendant or plaintiff, as the case may be, must raise by his pleadings all matters which show the action not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the 30 case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, Statute of Limitations, release, payment, performance, facts showing illegality, either by Statute or Common Law, or Statute of Frauds.

Rule 65. Neither party need in any pleading allege any matter of fact which the 35 law presumes in his favour, or as to which the burden of proof lies on the other side, unless the same has been first specifically denied (*e.g.*, consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim).

Rule 66. No technical objection shall be raised to any pleading on the ground of 40 any alleged want of form.

6. Counter claim.

Rule 67. Whenever any defendant desires to obtain any relief against any plaintiff under subsection (3) of section 5 of the Act, he shall, with his answer, deliver to the plaintiff a counter-claim which shall be on the same paper as his answer or connected 45 therewith, and shall be intitled between the parties in the action and designated

"The Counter-claim of the defendant [naming him] against the plaintiff [naming those against whom the counter-claim is directed]."

Rule 68. The rules under the heading "Claims" shall apply *mutatis mutandis* 50 to counter-claims reading the word "plaintiff" as "defendant," the word "defendant" as "plaintiff," the word "claim" as "counter-claim," and when necessary the word "action" as "counter-claim in an action."

Rule 69. Whenever any defendant desires to obtain under subsection (3) of section 5 of the Act any relief related to or connected with the subject of the action against any co-defendant, or any person not already a party to the action, jointly with 55 any plaintiff, the defendant seeking to obtain such relief shall set forth in his counter-claim the facts on which he founds his right or title to such relief, and shall state against whom jointly with the plaintiff he seeks to obtain such relief. 7.

7. Defendant's Notice of Claim against Co-defendant or Third Party.

Rule 70. Whenever any defendant desires to obtain under subsection (3) of section 5 of the Act any relief relating to or connected with the subject of the action against any co-defendant, or against any other person not already a party to the action, the notice of his claim which the defendant seeking to obtain such relief is required by the said subsection to serve shall be in the Form No. 3 in Schedule I, and shall be served on such co-defendant or other person in the same manner as the claim of a plaintiff may be served upon a defendant, and every such notice of claim shall be deemed to be a pleading, and any person so served who has not been previously made a defendant may be described as a third party.

Form of a defendant's notice of claim under subsection (3) of section 62 of the Act and how to be served. V. 71.

Rule 71. Every such notice of claim as in the last preceding rule mentioned shall be sealed by the Prothonotary with his official seal, before it is served, and at or before the time of sealing the same a duplicate thereof shall be left with him, or with the Chief Clerk in Equity, as the case may be, and he shall seal and file such duplicate, and an entry of the filing thereof shall be made in the Cause Book.

Duplicate to be left with Prothonotary sealed and filed and filing entered. V. 72.

Rule 72. Whenever a defendant has served any co-defendant or third party with a notice of claim, the defendant or third party so served, or any other party to the action, may at any time apply to the Court or a Judge for an order that the relief thereby sought or any part thereof, although it relates to or is connected with the subject of the action, may be dealt with separately, or that the facts on which the right or title to such relief or part thereof depends may be inquired into separately, and the Court or a Judge may on any such application, or the Court may of its own motion at any time before judgment if it appears that such relief or any part thereof or such facts cannot be conveniently dealt with or inquired into together with the subject of the action, or with the issues of fact to be tried or determined between the plaintiffs and defendants, order that such relief or part thereof or such facts be dealt with or inquired into separately in such manner and upon such terms if any as to the Court or Judge may seem fit, or may direct that all further proceedings on such notice of claim be stayed, and that the defendant having served the same be at liberty to bring such action as he may be advised in respect of the relief thereby claimed by him or any part thereof.

Power to deal separately with relief sought by a notice of claim or to inquire separately into facts. V. 73.

Rule 73. Whenever a defendant has served any co-defendant or third party with a notice of claim the co-defendant or third party so served may apply to the Court or a Judge for leave to defend the action jointly with or in the name of the defendant who served him with such notice, and upon proof of good ground for supposing that the action will not otherwise be efficiently defended in the interest of such co-defendant or third party, the Court or Judge, may grant the relief applied for in either alternative as may be just. Provided that when a co-defendant or third party is permitted to defend an action in the name of a defendant who has served him with a notice of claim, such co-defendant or third party shall, as between himself and the defendant who so served him, be liable for all costs which such defendant may be ordered to pay to the plaintiff.

Leave may be granted to co-defendant or third party to defend action jointly with or in name of defendant who served notice of claim. V. 74.

8. Reply and Special Rejoinder.

Rule 74. Every plaintiff to whom a counter-claim has been delivered shall deliver a reply thereto within eight days thereafter.

Reply to counter-claim. V. 75.

Rule 75. Any plaintiff to whom any statement or particulars have been delivered under a Judge's order shall, unless the order otherwise provides, have the same time for replying after the delivery of the statement or particulars as he had at the return of the summons.

Time for reply after delivery of statement or particulars to plaintiff. V. 76.

Rule 76. When the defendant's counter-claim is either wholly or in part for a debt or liquidated demand legal or equitable, any plaintiff may to such debt or liquidated demand set-off any debt or liquidated demand legal or equitable due to him by the defendant in the same right, and if the amount found to be due on the set-off shall exceed the amount found to be due on the counter-claim, judgment may be pronounced for the plaintiff for the excess.

Set-off to counter-claim. V. 77.

Rule 77. A plaintiff shall not be required to reply as to damages for which a defendant as counter-claimed except when damage forms a necessary part of the cause of counter-claim.

When reply as to damages necessary. V. 78.

Rule

Reply and Special Rejoinder.

Reply must be specific.
V. 79.

Rule 78. A plaintiff must reply to the allegations of a counter-claim as specifically and substantially as a defendant is required to answer the allegations of a claim.

Judgment or order how
to be pleaded in reply.
V. 80.

Rule 79. When a plaintiff in his reply to a counter-claim relies on a judgment recovered, he shall state therein the date of the judgment, the name of the Court, the place where holden, and the number of the roll if any on which the judgment is entered, and when a plaintiff in his reply to a counter-claim relies on any order of the Court hereafter made he shall state therein the year of entry and the number of the order. 5

Reply to defendant's
notice of claim. V. 81.

Rule 80. Whenever any co-defendant or any person not previously made party to the action is served with a defendant's notice of claim he shall deliver a reply thereto within eight days after he shall have been served therewith. 10

Memorandum of address
for service of co-
defendant or third
party. V. 82.

Rule 81. Every co-defendant or third party shall append to his reply to a defendant's notice of claim a memorandum as to his address for service similar to that which a defendant is required to append to his answer, and when no person can be found at such address for service any document may be served upon him by filing the same in the Prothonotary's office, or with the Chief Clerk in Equity. 15

Change of such address
V. 83.

Rule 82. Every co-defendant or third party may at any time change his address for service by leave of the Court or a Judge, and upon filing with the Prothonotary notice of such change and serving notice thereof upon the opposite parties in such manner as the Court or Judge may direct. 20

Time for reply after
delivery of statement or
particulars. V. 84.

Rule 83. Any co-defendant or third party to whom any statement or particulars have been delivered under a Judge's order shall, unless the order otherwise provides, have the same time for replying after the delivery of the statement or particulars as he had at the return of the summons. 25

As to pleading, set-off,
damages, and judgment,
or order in reply. V. 85.

Rule 84. The rules of pleading contained under the heading "Answer" respecting set-off damages and judgment recovered or order made shall apply mutatis mutandis to a co-defendant or third party replying in the same manner as to a defendant answering. 25

Reply of co-defendant or
third party must be
specific. V. 86.

Rule 85. A co-defendant or third party must reply to the allegations of a defendant's notice of claim as specifically and substantially as a defendant is required to answer the allegations of a claim. 30

9. Amendment of Pleadings.

Amendment of pleadings.
V. 87.

Rule 86. The Court or a Judge shall, on the settlement of issues, have power to allow the amendment of any pleadings, so as to put in issue the real matter in dispute between the parties.

10. Service out of the Jurisdiction.

In certain cases service of
claim allowed out of
jurisdiction. E. O. 11, 1. or a

Rule 87. Service out of the jurisdiction of a claim may be allowed by the Court or a Judge whenever—

- (a) the whole subject matter of the action is land situate within the jurisdiction (with or without rents or profits); or
- (b) any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action; or
- (c) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or
- (d) the action is for the administration of the estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the laws of England; or
- (e) the action is founded on the breach or the alleged breach within the jurisdiction of any contract wherever made, which, according to the terms thereof, ought to be performed within the jurisdiction; or
- (f) any injunction is sought as to anything to be done within the jurisdiction, or any nuisance is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or
- (g) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other party duly served within the jurisdiction. 40 45 50 55

Rule

Interrogatories and discovery of documents.

5 Rule 88. Every application for leave to affect service out of the jurisdiction, shall be supported by affidavit or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such person sought to be served is or probably may be found, and whether he is a British subject or not, and the grounds upon which such application is made. No such leave shall be granted unless it be made to appear to the Court or Judge that the case is a proper one for service out of the jurisdiction.

Application to be supported by evidence. E. O. 11, 4.

10 Rule 89. Any order giving leave to effect such service shall limit a time after such service within which such defendant is to file his answer, such time to depend on the place or country where or within which the claim is to be served.

Order to fix time for defence. E. O. 11, 5.

11. Interrogatories and discovery of documents.

15 Rule 90. In all actions a plaintiff may when or at any time after delivering his claim, and a defendant may when or at any time after delivering his answer or counter-claim, or his reply to a co-defendant's notice of claim, and a third party may when or at any time after delivering his reply to a notice of claim, by leave of the Court or a Judge, deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties. Provided that a defendant may, or a co-defendant or third party may, on filing an affidavit admitting his liability and stating his intention of paying money into Court in respect of the same, apply on summons before delivering his answer or reply, for leave to deliver interrogatories for the purpose of enabling him to make such payment. Provided also that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose.

One set of interrogatories may be delivered. V. 98.

20 Rule 91. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court or a Judge. In deciding upon such application such Court or Judge shall take into account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions or to produce documents relating to the matter in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court or Judge shall consider necessary either for disposing fairly of the cause or matter or for saving costs.

Particular interrogatories to be submitted. E. O. 31, 2.

25 Rule 92. In adjusting the costs of the cause or matter, inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court or Judge, either with or without application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories, and the answers thereto shall be paid in any event by the party in fault.

Costs of interrogatories. E. O. 31, 3.

30 Rule 93. Interrogatories shall be in the Form No. 4 in Schedule I, and shall have a note at the foot thereof stating which of the interrogatories each of the persons interrogated is required to answer, and every such person shall by affidavit in the Form No. 5 in Schedule I, to be filed within ten days after the delivery of the interrogatories or such other time as a Judge may allow, answer all or so many or such parts of the same as he is required, and shall not object to answer, and shall also state which or what parts of the interrogatories (if any) he objects to answer and his reasons for such objections.

Form of interrogatories and of answer to interrogatories. V. 99.]

45 Rule 94. When a person interrogated objects to answer all or any parts of the interrogatories exhibited to him, the party interrogating may by summons call upon such person to show cause why he should not answer all or any parts of such interrogatories, and such person shall answer by affidavit, to be filed in such time as the Judge may direct any interrogatories or parts of interrogatories which he may be then ordered to answer.

Objections to answer interrogatories how dealt with. V. 100.

50 Rule 95. Any party shall be entitled to obtain discovery by means of interrogatories from any opposite party of all such facts not admitted by the pleadings as may appear to be material to and likely to advance the case of the party interrogating, or to rebut the case of the opposite party, but not of such facts as could only advance the case of the opposite party or as relate exclusively to the evidence whereby such case is to be proved.

What facts may be discovered by interrogatories. V. 101.

Rule

Interrogatories and discovery of documents.

Omission to answer interrogatories or insufficient answer. V. 102.

Rule 96. If any person interrogated omits to answer or answers insufficiently, the party interrogating may apply by summons for an order requiring him to answer or to answer further as the case may be, and an order may be made requiring him to answer or answer further either by affidavit or viva voce examination within or at such time as the Judge may direct. 5

Party interrogated may object to answer. V. 103.

Rule 97. A party interrogated may object to answer any interrogatory or part of an interrogatory exhibited to him on the ground that it is inadmissible, vexatious, prolix, unnecessary, scandalous, or not exhibited bona fide for the purpose of the cause.

Notice or order for discovery of documents. V. 104.

Rule 98. Any party in any action may when serving or delivering or at any time after he has served or delivered any pleading apply by notice in writing in the Form No. 6 in Schedule I, to any opposite party for a discovery on oath of all the documents which are or have been in his custody or under his control relating to or connected with the subject of the action or of any counter-claim. Provided that any defendant or third party may on affidavit showing that discovery is necessary, apply to a Judge for an order for such discovery at any time before delivering his answer or reply. 10 15

Affidavit of party from whom discovery is sought by notice. V. 105.

Rule 99. When an application for discovery of documents is made by any party by notice as aforesaid, the affidavit of the party from whom the discovery is sought shall be filed, and a copy thereof served within ten days after he has been served with the notice, or such other time as the Judge may allow. 20

Application for order for discovery. V. 106.

Rule 100. When an application for discovery of documents is made by any defendant or third party before the delivery of his answer or reply the Judge may either refuse or adjourn the same if satisfied that such discovery is not then necessary or convenient, or may make such other order either generally or limited to certain classes of documents as he thinks fit. When any such order is made the party from whom the discovery is sought shall file his affidavit of documents and serve a copy thereof within ten days after service of the order. 25

Affidavit when ordered.

Form of affidavit of documents. V. 107.

Rule 101. The affidavit of documents required by these rules shall be in the Form No. 7 in Schedule I.

No discovery of privileged document. V. 108.

Rule 102. No party shall be compelled to produce or allow inspection of any privileged document. 30

Certain documents relating to title privileged. V. 109.

Rule 103. Any document which relates to the title to property in which the party seeking production has no interest and which does not relate to the title to property in which the party seeking production has an interest shall be privileged.

Certain documents relating to litigation privileged. V. 110.

Rule 104. Any written report or communication made by a solicitor or other agent to his principal or by a servant to his master for the purpose of assisting him to maintain, resist, settle, or relinquish existing or anticipated litigation shall be privileged. 35

Enforcing compliance with notice or order for discovery. V. 111.

Rule 105. If any party from whom discovery of documents has been sought by notice or who has been ordered to make discovery of documents, fails to make the affidavit required by these rules within due time or makes an insufficient affidavit, or refuses on insufficient grounds to produce any document, or fails to produce or to permit inspection or to allow copies or extracts to be taken of any document without just cause, the opposite party may take out a summons to enforce compliance with the notice or order as the case may be. 40

Objections to discovery how dealt with. V. 112.

Rule 106. If the party from whom discovery of any kind is sought objects to the same or any part thereof, a Judge may if satisfied that the right to the discovery depends upon the determination of any issue or question in dispute in the action, or that it is desirable for any other reason that any issue or question in dispute should be determined before deciding upon the right to the discovery, order that such issue or question be first determined and reserve the question as to the discovery. 45 50

Failure to comply with order for interrogatories or discovery. V. 113.

Rule 107. If any party fails to comply with any order made under Rule 102 or under Rule 111, he shall on application to a Judge be liable, if a plaintiff to have the action dismissed for want of prosecution, and if a defendant or third party to have his answer or reply (if any) struck out and be placed in the same position as if he had not defended. 55

Default of Pleading.

5 Rule 108. Any party may at the hearing of an action, or notice of claim or the trial of issues use in evidence any one or more of the answers of the opposite party to interrogatories, or any part of an answer which is an admission or statement of a distinct fact and without putting in the other answers or the whole of such answer, unless the Judge shall be of opinion that any other answer or any other part of the same answer, is so connected with the answer or part of an answer proposed to be used, that it ought also to be put in evidence.

One or more answers or parts may be used at the hearing or trial. V. 114.

10 Rule 109. If any party to an action from whom discovery is sought is a body corporate or a joint-stock company whether incorporated or not, or any other body of persons empowered by law to sue or be sued either in its own name or in the name of any officer or other person, such corporation, company, or body shall make all requisite affidavits by its manager, secretary, or some other competent officer who may if necessary be nominated by a Judge.

In the case of a body corporate the manager or secretary, &c., to make affidavits. V. 115.

15 Rule 110. In any action by or against a sheriff in respect of any matters connected with the execution of his office a Judge may on the application of either party order that the affidavit to be made in answer either to interrogatories or to an application for discovery of documents shall be made by the officer actually concerned.

In actions by or against a sheriff the officer concerned may be ordered to make the affidavit. V. 116.

12. Default of Pleading.

20 Rule 111. When the plaintiff claims for a debt or liquidated demand only, and the defendant or one or more of the defendants does not or do not deliver an answer within the prescribed time, the plaintiff may at the expiration of such time obtain ex parte from a Judge leave to enter as an order of the Court, an order for payment of the debt or liquidated demand and costs against the defendant or defendants so making default without prejudice to his right to proceed with his action against any other defendant.

Order on claim for debt or liquidated demand in default of answer by one or more defendants. V. 117.

30 Rule 112. When the plaintiff claims value and damages for the detention of goods, or in any action damages only, and the defendant or all the defendants does not or do not deliver an answer within the prescribed time, the plaintiff may at the expiration of such time obtain ex parte from a Judge leave to enter as an order of the Court, an order against the defendant or all the defendants for payment of the value of the goods and the damages, or the damages only as the case may be, to be ascertained in any way which the Judge may direct, and costs.

Order on claim for detention of goods or for damages only for any cause in default of answer by defendants. V. 118.

35 Rule 113. When in any such action as mentioned in Rule 111 one or more of several defendants makes or make default, as in such rule mentioned, the plaintiff may obtain ex parte such leave as therein mentioned against the defendant or defendants so making default, and proceed with his action against the others, excepting that in such case the value and the damages, or either of them shall, as against the defendant or defendants making default, unless the Judge otherwise directs, be assessed at the hearing of the action or trial of the issues therein against the other defendants.

Action may proceed against defendants not in default. V. 119.

40 Rule 114. When the plaintiff claims for a debt or liquidated demand and also for value and damages for the detention of goods, or also for damages for any cause, and any defendant makes default as aforesaid, the plaintiff may obtain ex parte from a Judge leave to enter as an order of the Court an order adapted to his case having regard to Rules 110 and 111 or 110 and 112.

Order on claim for debt or liquidated demand, and also for detention of goods or damages only for any cause. V. 120.

45 Rule 115. When in an action for the recovery of land the defendant or all the defendants does not or do not deliver an answer within the prescribed time, the plaintiff may obtain ex parte from a Judge leave to enter as an order of the Court an order that the person whose title is asserted in the claim shall recover possession of the land and his costs.

Order in action for recovery of land. V. 121.

50 Rule 116. When the plaintiff claims mesne profits, arrears of rent or double value, in respect of the premises claimed, or any part of them, or damages for breach of contract in an action for the recovery of land, and the defendant, or all or any of the defendants, does not or do not deliver an answer within the prescribed time the plaintiff may obtain ex parte from a Judge leave to enter as an order of the Court, an order against the defendant

Order on default by any or all defendants when plaintiff claims mesne profits, &c., in action for recovery of land. V. 122.

Default of Pleading.

defendant or defendants so making default, for payment of such debt or damages or both, as the case may be, to be ascertained in the manner directed by Rule 118 or Rule 112, and costs, without prejudice to his right to proceed with his action against any other defendant.

Order in any such action as aforesaid when cause of action can be severed and is answered in part. V. 123.

Rule 117. When the plaintiff claims for a debt or liquidated demand for value and damages for the detention of goods, or damages only for any cause, or for all or any of such matters, or for the recovery of land, and any defendant delivers an answer which purports to offer a defence to part only of the alleged cause of action, the plaintiff may, if the part to which no defence is offered contains a separate cause of action, or is capable of being severed, obtain ex parte from a Judge leave to enter as an order of the Court an order adapted to his case having regard to the preceding rules. Provided that when the answer raises a set-off, execution on any such order shall not issue without leave of a Judge.

In other actions than those before mentioned motion for judgment in default of answer. V. 124.

Rule 118. When in any actions other than such as are mentioned in the preceding rules under the heading "Default of Pleading," the defendant does not deliver an answer within the prescribed time, the plaintiff may move without notice for judgment in the action, and such judgment shall be pronounced as the Court shall consider the plaintiff entitled to.

The like against one or more defendants when cause of action severable. V. 125.

Rule 119. When in any such action, as in the last preceding rule mentioned, one or more of several defendants makes or make such default, the plaintiff may, if the cause of action is severable, move at once without notice for judgment against the defendant or defendants so making default, or may move without notice against him or them at the hearing of the action, or motion for judgment against the other defendants.

Default of answer by infant or person of unsound mind. V. 126.

Rule 120. When a defendant, who is an infant or a person of unsound mind, has made default by not delivering an answer within the prescribed time, the plaintiff shall, before proceeding with the action against such defendant, apply to the Court or a Judge for an order that some proper person be assigned guardian of such defendant by whom he may defend the action. But no such order shall be made unless it appears on the hearing of the application that the claim was duly served, and that notice of the application was, after the expiration of the time allowed for delivering an answer, and at least four clear days before the day in the notice named for hearing the application, served upon the person with whom or under whose care such defendant was at the time of serving the claim, or left at his dwelling-house, and (in case of such defendant being an infant not residing with or under the care of his father or guardian) that the notice was also served upon the father or guardian, if any, of such infant, or left at his dwelling house, unless the Court or Judge shall at the hearing of the application dispense with such last-mentioned service.

Proof of service of claim with summons in case of default by a defendant. V. 127.

Rule 121. When any defendant makes default by not delivering an answer within the prescribed time, the plaintiff, before he can take advantage of the default, must, when personal service of the claim with summons endorsed has been effected, produce to the Judge the affidavit of service hereinbefore directed to be made by the person who effected such service, and when substituted service has been permitted under any order, must file with the Prothonotary and produce to the Judge an affidavit showing that such service has been duly effected, and in either case the plaintiff shall prove by affidavit to the satisfaction of the Judge that default has been made.

Order on default by plaintiff to deliver reply to counter-claim for debt or liquidated demand. V. 128.

Rule 122. When a defendant counter-claims for a debt or liquidated demand only, and the plaintiff does not deliver a reply within the prescribed time, the defendant may at the expiration of such time obtain ex parte from a Judge leave to enter as an order of the Court, an order for payment of the debt or liquidated demand and costs against the plaintiff so making default.

Order when defendant counter-claims for detention of goods or damages only for any cause. V. 129.

Rule 123. When a defendant counter-claims for value and damages for the detention of goods, or damages only for any cause, and the plaintiff does not deliver a reply within the prescribed time, the defendant may at the expiration of such time obtain ex parte from a Judge leave to enter as an order of the Court, an order against the plaintiff for payment of the value of the goods and the damages, or the damages only as the case may be, to be ascertained in any way which the Judge may direct, and costs.

Rule

Default of Pleading.

5 Rule 124. When a defendant counter-claims for a debt or liquidated demand, and also for value and damages for the detention of goods, or damages only for any cause, and the plaintiff makes default as aforesaid, the defendant may obtain ex parte from a Judge leave to enter as an order of the Court an order adapted to his case having regard to the two last preceding rules.

Order when defendant also counter-claims for debt or liquidated demand. V. 130.

10 Rule 125. When to a counter-claim for the recovery of land the plaintiff does not deliver a reply within the prescribed time, the defendant may obtain ex parte from a Judge leave to enter as an order of the Court an order that the person whose title is asserted in the counter-claim shall recover possession of the land and its costs.

Order on default by plaintiff to reply to counter-claim for recovery of land. V. 131.

15 Rule 126. When a defendant counter-claims for mesne profits, arrears of rent, or double value in respect of the premises which he seeks to recover, or any part of them, or damages for breach of contract in a counter-claim for the recovery of land, and the plaintiff does not deliver a reply within the prescribed time, the defendant may obtain ex parte from a Judge leave to enter as an order of the Court, an order against the plaintiff so making default for payment of such debt or damages or both, as the case may be, to be ascertained in any way which the Judge may direct and costs.

Order on default by plaintiff to reply to counter-claim for mesne profits, &c. V. 132.

20 Rule 127. When a defendant counter-claims for a debt or liquidated demand, for value and damages for the detention of goods, for damages only for any cause, or for all or any of such matters, or for the recovery of land, and the plaintiff delivers a reply which purports to meet part only of the counter-claim, the defendant may, if the other part contains a separate cause of counter-claim, or is capable of being severed, obtain ex parte from a Judge leave to enter as an order of the Court, an order adapted to his case, having regard to the preceding rules concerning counter-claims under this heading.

Order on any such counter-claim as aforesaid when cause severable and reply meets part only. V. 133.

25 Rule 128. When to any counter-claim in respect of matters different from any such as are mentioned in any of the six last preceding rules, any plaintiff does not deliver a reply within the prescribed time, the defendant may either move without notice for judgment on the counter-claim, against the plaintiff so making default, previously to the hearing of the action, or motion for judgment therein, or move without notice for judgment against the same plaintiff on the counter-claim at the hearing of the action or of the motion for judgment therein, and the Court shall make such order on the counter-claim as it may consider the defendant entitled to.

In counter-claims in respect of other matters defendant may, in default of reply, move for judgment. V. 134.

30 Rule 129. Without leave of the Court or a Judge, which is not to be granted ex parte, execution shall not issue on any order entered against a plaintiff under any of the rules of this heading until judgment has been pronounced in the action, and until such time has elapsed thereafter (if any) as the Court, when pronouncing judgment in the action, may direct.

Execution not to issue against plaintiff without leave until judgment. V. 135.

40 Rule 130. When a co-defendant or third party fails to deliver a reply within the prescribed time to a defendant's notice of claim, such defendant may obtain orders against the co-defendant or third party, so making default, similar to those which a plaintiff in an action may obtain against a defendant under similar circumstances, and with the like rights and on the like conditions, having regard to the limitations imposed by subsection (3) of section 5 of the Act to the claim of a defendant against a co-defendant or third party. And provided that when the claim of a defendant against a co-defendant or third party is dealt with in the action against such defendant, he shall nevertheless still be described for all purposes as a defendant, the co-defendant as a co-defendant, and the third party as a third party.

Order on default by a co-defendant or third party to reply. V. 136.

50 Rule 131. When any plaintiff or co-defendant or third party makes default by not delivering a reply within the prescribed time, the defendant desiring to take advantage of such default shall prove by affidavit to the satisfaction of the Judge that such default has been made.

Such default to be proved by affidavit. V. 137.

Rule 132. When any motion is made for judgment for default of pleading, the facts alleged in the claim or counter-claim or notice of claim, as the case may be, against the party who has made default, shall be treated as proved.

On motion for judgment facts alleged to be treated as proved. V. 138.

55 Rule 133. Any judgment by default may be set aside or varied by the Court upon such terms as to costs or otherwise as may be just.

Judgment by default may be set aside or varied. V. 139.

13. Parties.

What persons may be joined as plaintiffs. V. 145.

Rule 134. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative, and such relief as he or they may be entitled to may be granted to any one or more of the plaintiffs, and the action dismissed against any other or others without any amendment.

5

When another person may be substituted or added as plaintiff. V. 146.

Rule 135. When an action has been commenced in the name of the wrong person as plaintiff, or when it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a Judge may if satisfied that it has been so commenced through a bonâ fide mistake, or that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted, or added, as plaintiff upon such terms as may be just.

10

Defendant may have benefit of set-off notwithstanding misjoinder of co-plaintiff. V. 147.

Rule 136. When in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and the defendant has pleaded a set-off, he may obtain the benefit thereof by establishing his set-off as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such co-plaintiff or any proceeding consequent thereon.

15

What persons may be joined as defendants. V. 148.

Rule 137. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, and judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities without any amendment.

20

Every defendant need not be interested as to all relief claimed. V. 149.

Rule 138. It shall not be necessary that every defendant shall be interested as to all the relief or as to every cause of action included in any proceeding against him, but the Court or a Judge may make such order as may be just to prevent any defendant from being embarrassed, or put to expense, by being required to attend any proceedings in which he may have no interest.

25

When person entitled as co-plaintiff may be made a defendant. V. 150.

Rule 139. When any person entitled to any relief jointly with any other person or persons is unable, from any cause, to procure the consent of any such person to join as co-plaintiff he may make him a defendant.

Plaintiff may join as parties all persons liable on one contract. V. 151.

Rule 140. The plaintiff may join as parties to the same action all or any of the persons severally or jointly and severally liable on any one contract, including parties to bills of exchange and promissory notes.

30

When plaintiff is in doubt as to person liable. V. 152.

Rule 141. When the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join as defendants all persons as to whom the doubt exists, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties.

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Trustees, &c., may sue and be sued without joining persons beneficially interested. V. 153.

Rule 142. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the property or estate, and shall be considered as representing such persons in the action. But the Court or a Judge may at any stage of the proceedings, for the purpose of protecting the interest of the cestui que trust, or any of them, and either upon the application of any party, or any cestui que trust not a party, or without any application, order any of such persons to be made parties to the action, either in addition to, or in lieu of, such trustees, executors, or administrators, or any of them.

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When numerous persons have the same interest. V. 154.

Rule 143. When there are numerous persons having the same interest one or more of such persons may sue or be sued, or may be authorised by the Court or a Judge to defend on behalf or for the benefit of all persons so interested.

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Action not to be defeated by reason of misjoinder or non-joinder. V. 155.

Rule 144. No action shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may at any stage of the proceedings, either upon or without the application of any party, and on such terms as may be just, order that the names of any parties improperly joined, whether as plaintiffs or defendants, be struck out, and that the names of any parties who ought to have been joined, or whose presence may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added. No person shall be added as a plaintiff without his consent in writing, unless he shall be under a disability, and then not without the consent in writing of his next friend.

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Rule

Parties.

Rule 145. Subject to any law in force for the time being relating to bankruptcy, an action shall not become abated by reason only of the marriage or death, when the cause of action survives, or bankruptcy of any of the parties, and shall not become defective by the creation, assignment, or devolution of any estate or interest pendente lite, and in case of the creation, assignment, or devolution of any estate or interest pendente lite, the action may be continued by or against the person to or upon whom such estate or interest has come or devolved.

Action not to abate by reason only of marriage, death, or bankruptcy. V. 156.

Rule 146. When by reason of marriage, death, bankruptcy, or any other event occurring after the commencement of an action, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party should be made a party thereto, or that any person already a party thereto should be made a party in another capacity, the Court or a Judge may, upon affidavit of the facts to be made by the applicant or his solicitor, make an order ex parte to that effect, and may thereby allow any amendment necessary for that purpose.

In such cases ex parte order may be made to add necessary parties. V. 157.

Rule 147. Every such order as in the last preceding rule mentioned shall, unless the Court or Judge otherwise directs, be served upon the continuing party or parties or their solicitors, and also upon each such new party, except the applicant, if he be one, and the order shall subject to the next two following rules be binding on the persons so served from the date of such service.

Such order to be served. V. 158.

Rule 148. When any person who is under no disability, or under no disability other than coverture, or who is under any disability other than coverture, but has a guardian ad litem in the action, or a committee, is served with such order as mentioned in Rule 145, he may apply to the Court or a Judge to discharge or vary such order at any time within six days from the service thereof.

Order may be discharged or varied how and when. V. 159.

Rule 149. When any person who is under any disability other than coverture, and has not a guardian ad litem in the action, or a committee, is served with any such order as mentioned in Rule 145, he may apply to the Court or a Judge to discharge or vary such order at any time within six days from the appointment of a guardian ad litem for him, and until such period of six days shall have expired the order shall have no effect as against him.

The same when party an infant without guardian or lunatic without committee. V. 160.

Rule 150. When the plaintiff or defendant in an action dies and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant or the person against whom the action may be continued may obtain an order from a Judge directing the plaintiff or the person entitled to proceed to proceed within a limited time, and in default of his proceeding within the time limited, the Court may give judgment for the defendant, or, as the case may be, for the person against whom the action might have been continued, and in such case if the plaintiff has died the defendant or such other person may prepare an order embodying the judgment and leaving the same with the Prothonotary to be entered, and may issue execution thereon in the manner prescribed by the rules.

Death of plaintiff or defendant. V. 161.

Rule 151. When an action becomes abated, the solicitor for the person having the conduct of the action shall certify that fact to the Prothonotary or the Chief Clerk in Equity, who shall cause an entry thereof to be made in the Cause Book opposite to the name of the action.

Certificate of abatement and entry to be made. V. 162.

Rule 152. When any person is added or substituted as a plaintiff or defendant, the plaintiff shall amend the claim and summons filed in such manner and within such time as the Court or a Judge may direct or allow, and the Prothonotary or the Chief Clerk in Equity shall insert in the margin of the claim and summons filed the date of every amendment so made therein respectively.

On addition or substitution of plaintiff or defendant claim and summons to be amended. V. 163.

Rule 153. A duplicate amended claim and summons shall, unless otherwise ordered by the Court or a Judge, be served upon any such new defendant within such time as the Court or a Judge may direct or allow, and all the provisions hereinbefore contained as to substituted service shall apply to the case of such new defendant.

And a duplicate served on new defendant. V. 164.

Rule 154. When any new plaintiff or defendant has been added or substituted, the duplicate claim and summons served on the defendants or the other defendants, as the case

And duplicate claim and summons shall be amended. V. 165.

Parties.

case may be, shall be amended within such time and in such manner as the Court or a Judge may direct or allow, or, if the Court or a Judge shall so order, a duplicate amended claim and summons shall be served on any defendant, or any other defendant as the case may be, or substituted service thereof shall be effected in such manner and within such time as may be directed. 5

Application to change parties, to whom to be made. V. 166.

Rule 155. Applications to add, strike out, or substitute a plaintiff or defendant, may be made to a Judge at any time before the hearing of the action or trial of the issues, but afterwards shall be made to the Court.

Notice of claim and duplicate to be amended on change of parties. V. 167.

Rule 156. Parties may be added or substituted in a defendant's notice of claim, 10 on the same ground as if the defendant giving the notice had been plaintiff, and the co-defendants or third parties on whom the notice of claim has been served had been defendants in a separate action, having regard to the limitations as to the relief imposed by subsection (3) of section 5 of the Act, and in any such case the necessary amendments shall be made in the duplicate notice of claim filed within such time and in such 15 manner as the Court or a Judge may direct or allow, but the title of the action shall not be altered by reason only of any alteration in the parties to the notice of claim.

Partners may sue or be sued in name of firm. V. 168.

Rule 157. Any two or more persons claiming or being liable as partners may sue or be sued in the name of the respective firms, if any, in which such persons were partners at the time of the accruing of the cause of action. And any person carrying 20 on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm.

On demand names and places of residence of co-partners to be declared in writing. V. 169.

Rule 158. When an action is commenced by or against parties in the name of their firm the parties so suing or being sued, or their solicitors shall, on demand in writing by or on behalf of any opposite party, forthwith declare in writing the names 25 and places of residence of all the persons who were at the time of accruing of the cause of action co-partners in such firm. If such parties or their solicitors fail to comply with the demand all proceedings in the action may be stayed upon such terms as the Court or a Judge may direct, or leave may be granted to the plaintiff upon such terms as the Court or Judge may direct, to move for judgment as for default of pleading 30 and with the same consequences. If the names of the partners are so declared the action shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named in the summons; but all proceedings shall nevertheless continue in the names of the firm.

Married women and infants how to sue and defend. V. 170.

Rule 159. Married women and infants may respectively sue as plaintiffs by their 35 next friends in the manner heretofore practised in the Court in its equitable jurisdiction, and infants may in like manner defend any action by their guardians appointed for that purpose. Married women may also by leave of the Court or a Judge sue or defend any action without their husbands and without a next friend on giving such security (if any) for costs as the Court or a Judge may require, and in cases within the Married Women's 40 Property Act, 1890, may sue or be sued as therein provided.

Guardian ad litem how appointed. V. 171.

Rule 160. Any guardian ad litem may be appointed by a memorandum of his appointment signed by him being left with the Prothonotary accompanied by an affidavit of the solicitor acting for the party on whose behalf such person is to be appointed. Such memorandum and affidavit shall be in the Forms Nos. 11 and 12 in Schedule I. 45

Persons of unsound mind how to sue and defend. V. 172.

Rule 161. When a person of unsound mind might before the passing of the Act have sued or have been liable to be sued, he may sue by his committee or next friend as the case may be, and may defend any action by his committee or by his guardian appointed for that purpose.

Name of person not to be used as next friend, &c., without his written authority. V. 173.

Rule 162. Before the name of any person shall be used in any action as next 50 friend of any infant, or of any person under any other disability, or as relator, such person shall sign a written authority for that purpose, and the authority shall be filed in the Prothonotary's office.

Consent on behalf of persons under disability. V. 174.

Rule 163. In all actions in which any infant or any person under any other disability is a party, any consent given by the next friend or other person acting on behalf 55 of the person under disability, as to the mode of taking evidence or as to any other procedure, shall, with the sanction of the Court or a Judge, which may be obtained ex parte,

Parties.

- parte, have the same force and effect as if such person were not under disability and had given such consent.
- 5 Rule 164. Any person may on an ex parte application be admitted by the Court or a Judge to sue or defend as a pauper on proof that he is not worth twenty-five pounds, his wearing apparel, and the subject matter of the action only excepted. Application to sue or defend as a pauper. V. 175.
- 10 Rule 165. Any person desirous of suing or defending as a pauper shall lay a case before counsel for his opinion as to whether he has reasonable grounds for proceeding or defending, and no person shall be permitted to sue or defend as a pauper unless the case so laid before counsel and his opinion thereon, together with an affidavit of such person or his solicitor that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, shall be produced before the Court or Judge to whom the application is made. Applicant must lay case before counsel. V. 176.
- 15 Rule 166. A person admitted to sue or defend as a pauper shall not be liable to any Court fee. Person admitted not liable to Court fees. V. 177.
- Rule 167. When a person is admitted to sue or defend as a pauper the Court or a Judge may if necessary assign a counsel or solicitor or both to assist him, but no fee shall be payable by such person to the counsel or solicitor so assigned. Counsel and solicitor may be assigned him. V. 178.
- 20 Rule 168. No person shall take or agree to take, or seek to obtain from any person suing or defending as a pauper, any fee, profit, or reward, for the conduct of the business in the Court, and any person who does so take, or agrees to take, or seeks to obtain any such fee, profit, or reward, shall be guilty of a contempt of Court. If any person so admitted to sue or defend gives or agrees to give any such fee, profit, or reward, he shall forthwith be dispaupered, and shall not afterwards be re-admitted to so sue or defend in the same action. Agreement to take fee or reward in such case illegal. V. 175.
- 25 Rule 169. In any case in which the right of an heir-at-law, or the next of kin, or a class, shall depend upon the construction which may be put upon an instrument, and it shall not be known, or shall be difficult to ascertain, who is or are such heir-at-law, or next of kin, or class, and the Court or a Judge shall consider that it is convenient to have the construction determined before such heir-at-law, next of kin, or class shall have been ascertained, the Court or a Judge may appoint some one or more person or persons to represent such heir-at-law, next of kin, or class, and the judgment of the Court in the presence of such person or persons shall be binding on the heir-at-law, next of kin, or class so represented. Court or Judge may appoint some one to represent heir-at-law, next of kin, or a class. V. 180.
- 30 Rule 170. Any residuary legatee or next of kin seeking to have the estate of a deceased person administered by the Court, may sue the executor or administrator without making the remaining residuary legatees or next of kin parties to the action. Parties in actions for administration by residuary legatees or next of kin. V. 181.
- 35 Rule 171. Any legatee interested in a legacy charged upon real estate of a deceased person, and any person interested in the proceeds of real estate of a deceased person directed to be sold, and seeking to have the estate of such deceased person administered by the Court, may sue the executor or administrator without making any other legatee or person interested in the proceeds of the estate a party. Or by legatees interested in real estate. V. 182.
- 40 Rule 172. Any residuary devisee or heir seeking to have the estate of a deceased person administered by the Court, may sue the executor or administrator without making any co-residuary devisee or co-heir a party. Or by residuary devisee or heir. V. 183.
- 45 Rule 173. Any one of several cestuis que trustent under any deed or instrument seeking to have the trusts of such deed or instrument executed, may sue the trustees without making any other cestui que trust a party. Or by a cestui que trust. V. 184.
- 50 Rule 174. In all actions for the prevention of waste or for the protection of property otherwise one person may sue on behalf of himself and all persons having the same interest. In actions for protection of property. V. 185.
- 55 Rule 175. Any executor, administrator, or trustee seeking to have an estate administered by the Court, or trusts executed, may sue any one legatee, next of kin, or cestui que trust for that purpose. In actions by executor, &c. V. 186.
- Rule 176. Notwithstanding anything contained in the preceding rules, the Court may require any person interested to be made a party to any action instituted to obtain the administration of an estate by the Court, or the execution of trusts, and may give
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Parties—Proceedings in lieu of Demurrer.

the conduct of the action to such person as the Court may think fit, and may make such order in any particular case as the Court may deem just for placing the defendant on the same footing with regard to costs as other parties having a common interest with him in the matters in question.

Court may order copy of order in action for administration to be served on persons interested not parties. V. 188.

Rule 177. Whenever in any action for the administration of the estate of a deceased person, or the execution of the trusts of any instrument, an order has been made directing that any accounts shall be taken or inquiries made, or which affects the rights or interests of persons not parties to the action, the Court may direct that any persons interested in the estate or under the trust, whether resident within or out of the jurisdiction, shall be served with an office copy of the order, and after such service they shall be bound by the proceedings in the same manner as if they had been originally made parties, and shall be at liberty to attend any further proceedings. Any party so served may, within twenty-one days after service or within such other time as the Court or a Judge may direct, apply to the Court to discharge, vary, or add to the order.

Memorandum of service of copy order to be entered in Prothonotary's office. V. 189.

Rule 178. A memorandum of the service of an office copy of an order upon any person under the last preceding rule shall be entered in the Prothonotary's office upon proof by affidavit of such service.

Notice to be endorsed on copy. V. 190.

Rule 179. Upon every office copy of an order so served as aforesaid there shall be endorsed a notice in the Form No. 13 in Schedule I.

Infant or person of unsound mind, how served. V. 191.

Rule 180. Service of the office copy on an infant or person of unsound mind shall be effected in the same manner as service of a claim.

Heir when not a necessary party. V. 192.

Rule 181. In any action to execute the trusts of a will it shall not be necessary to make the heir-at-law a party, but the plaintiff shall be at liberty to make the heir-at-law a party when he desires to have the will established against him.

Court may appoint person to represent estate of deceased person in absence of legal personal representative. V. 193.

Rule 182. If in any action it shall appear to the Court that any deceased person who was interested in any matter in question has no legal personal representative, the Court may either proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all purposes of the action, on such notice to such persons (if any) as the Court shall think fit, either specially, or generally by public advertisement, and after any such appointment any order made in such action shall have the same effect as if a duly constituted legal personal representative of such deceased person had been a party to the action.

In action for administration who may appear on claims of persons not parties. V. 194.

Rule 183. In any action for the administration of the estate of a deceased person no party to the action other than the executor or administrator shall, unless by leave of the Court or Judge, be entitled to appear either in Court or in Chambers on the claim of any person not a party to the action against the estate of the deceased in respect of any debt or liability. The Court or Judge may direct or give liberty to any other party to the action so to appear either in addition to or in the place of the executor or administrator upon such terms as the Court or Judge shall think fit.

14. Proceedings in lieu of Demurrer.

Demurrer abolished. E.O. 25, 1. Points of law may be raised by pleadings. E.O. 25, 2.

Rule 184. No demurrer shall be allowed.
Rule 185. Any party shall be entitled to raise by his pleadings any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial. Provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.

Dismissal of action. E.O. 25, 3.

Rule 186. If in the opinion of a Court or Judge the decision of such point of law substantially disposes of the whole action, ground of defence, set-off, counter-claim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.

Striking out pleadings where no reasonable cause of action disclosed. E.O. 25, 4.

Rule 187. The Court or a Judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case, or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.

Rule

Amendment of Pleadings and Settlement of Issues.

5 Rule 188. No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right, whether any consequential relief is or could be claimed or not. Declaratory judgment. E.O. 25, 5.

Rule 189. The foregoing rules shall not apply merely for an omission made in the pleadings where the matter in dispute between the parties can, with or without amendment, be raised on the settlement of the issues. Mistake or omission in pleadings.

15. Amendment of Pleadings and Settlement of Issues.

10 Rule 190. Except in the case of a counter-claim, when an answer shall be allowed to the plaintiff, there shall be no further pleadings after the defence or reply by a third party, unless by special leave of the Court or a Judge, on an application to settle the issues, and the amendment shall then only be allowed in case the real question, whether of fact or law, between the parties cannot be conveniently raised and put in issue by an amendment of the previous pleadings. No pleading after defence. 16 and 17 Vic., c. 113, s. 48.

15 Rule 191. Any facts occurring or discovered after action brought upon which any party desires to rely may be raised by his pleading, or by an amendment of his pleading, at the settlement of the issues, and any such facts which cannot be so pleaded may, by leave of the Court, be proved at the hearing of the action upon such terms as to costs or otherwise as may be just. Facts occurring after commencement of action V. 203.

20 Rule 192. Whenever any defendant in his answer, or any amendment thereto, alleges any facts which have occurred after action brought which afford a complete defence to the plaintiff's claim, the plaintiff may by motion on notice to the parties interested, apply to the Court to dismiss the claim either with or without costs, or with costs against the opposite party, and the Court shall make such order upon such application as may be just. Course to be taken. V. 204.

30 Rule 193. Within six days after the close of the pleadings the plaintiff or any defendant shall take out a summons calling on the defendants or the plaintiff, as the case may be, to appear before a Judge, on a day to be therein named, not being less than four nor more than eight days after service of such summons, for the purpose of settling the issues and determining when the trial is to be before a jury, whether they shall be tried by a jury of twelve or a jury of four men. Issues of fact tried by jury to be settled by Judge. V. 211.

35 Rule 194. The party taking out the summons shall prepare the issues to be submitted to the Judge and shall serve the opposite party with a copy thereof together with the summons. Who to prepare issues. V. 212.

Rule 195. If more such summonses than one are taken out the summons first served shall have precedence unless the Judge shall direct, which in his discretion he may do, that the several summonses be brought on together on the day named in the summons first served. Which summons to have precedence. V. 213.

40 Rule 196. Any party dissatisfied with the issues as settled by the Judge upon the ground that they omit some disputed question of fact arising on the pleadings, which he desires to have inserted, may upon the settlement thereof immediately apply to the Judge to stay proceedings in the action for the purpose of enabling him to have the settlement reconsidered by the Full Court; and the Judge, if satisfied with the bona fides of the application, shall order that the proceedings in such action, except for the purpose of having the settlement of the issues so reconsidered, shall be stayed for a time sufficient to enable the dissatisfied party to move the Full Court on notice to the opposite parties for that purpose. Dissatisfied part may have issues settled by Judge reconsidered by Full Court. V. 214.

50 Rule 197. The notice of motion shall state for the information of the Full Court the questions of fact which the party giving it desires to have inserted in the issues, and shall be served at least two clear days before the day named in the notice for hearing the motion, upon all parties who may be affected thereby, other than parties or the representatives of parties who failed to appear before the Judge on the settlement of the issues, provided that if the notice is not served on all such parties within seven days from the day on which the Judge completed the settlement of the issues, the motion shall lapse and the order staying proceedings shall thereby be discharged, and provided further, Notice of motion, what to state, and when to be served. V. 215.

Place and Mode of Hearing or Trial.

further, that the day named in the notice for hearing the motion shall not be later than ten days from the day of such settlement.

Notice and hearing of motion. V. 216.

Rule 198. The notice of motion may be served in the same manner as a notice of appeal from an order of a Judge not made *ex parte*, and the hearing of the motion shall be conducted in the same manner, as nearly as may be, as the hearing of such an appeal. 5

Copy of notice to be filed and motion to be set down for hearing. V. 217.

Rule 199. A copy of the notice of motion shall be filed with the Prothonotary within three days after the notice has been duly served, and the Prothonotary shall set the motion down to be heard at the then, or then next, sittings of the Full Court on the day named in the notice, or on the next day on which the Full Court sits after that day, and the hearing shall, unless the Full Court otherwise directs, take precedence of all other business, except criminal business and *ex parte* motions. 10

Copy of issues settled to be left with Prothonotary to be filed. V. 218.

Rule 200. Within two days after the issues have been settled, either by the Judge when finally settled by him, or by the Full Court when settled by the Full Court, a copy thereof shall be left with the Prothonotary or the Chief Clerk in Equity, by the party by whom the summons was taken out to be filed. If the summons was taken out by the plaintiff and he fails to leave such copy to be filed within the prescribed time, the defendant may leave a copy of the issues to be filed within four days after the settlement thereof. If the summons was taken out by a defendant, and he fails to leave a copy of the issues to be filed within the prescribed time, the plaintiff may leave a copy to be filed within four days after the settlement thereof. If no copy be left to be filed as hereinbefore provided, the action shall be heard by the Court without a jury. 15

Leaving copy equivalent to entry of cause for trial. V. 219. Venue.

Rule 201. Leaving a copy of issues with the Prothonotary to be filed shall be equivalent to an entry of a cause for trial. 25

Rule 202. There shall be endorsed on the copy of the issues left with the Prothonotary the name of the place where it is desired that the trial shall take place.

16. Place and mode of hearing or trial.

Hearing of actions and trial of issues. V. 205.

Rule 203. Every action to be heard by the Court without a jury shall, unless the Court or a Judge otherwise orders, be heard in the place in which the action was commenced. 30

In what actions issues may be tried by a jury. V. 206.

Rule 204. In actions in which the plaintiff claims or the defendant counter-claims damages for slander, libel, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage, the plaintiff may have the issues relating to such slander, libel, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage, tried by a jury, and in any such action any defendant may have the issues relating thereto as between himself and the plaintiff tried by a jury. 35

In all other cases except by order of Court actions to be heard without jury. V. 207.

Rule 205. Subject to the last preceding rule and to this rule, every action shall be heard by the Court without a jury. Provided that the Court may, at its discretion at or before the hearing, order any issues to be tried by a jury. 40

Single Judge to try issues. V. 208.

Rule 206. Every trial of any issue of fact by a jury shall be held before a single Judge.

Arbitration not affected by this order. V. 209.

Rule 207. Nothing in this order shall affect any proceeding under any of the provisions of the Act relating to arbitration.

Court or Judge to determine how evidence to be taken on notices of claim. V. 210.

Rule 208. Subject to the rules hereinbefore contained as to notices of claim, the Court shall at the hearing of the action, or the Court or a Judge may upon the application of any party interested previously to the hearing of the action, or motion for judgment, determine when and how the evidence for the defendant, giving such notice, and for the parties served therewith, is to be taken, and when the arguments thereon or on any issues of fact arising out of the notice of claim and the reply thereto which may be directed to be tried by a jury shall be heard. 45

17. Hearing of action.

Prothonotary to enter issues in list for trial. Plaintiff or defendant to give notice of trial. V. 229.

Rule 209. The Prothonotary or the Chief Clerk in Equity shall, after a copy of issues has been left with him, enter the issues in the list for trial at the place where the same are to be tried, and the plaintiff or the defendant as the case may be shall on the 55 day

Hearing of Action.

day on which he leaves the copy of the issues give notice of trial to the parties in the Form No. 15 in Schedule I, but the issues shall not come on for trial on any day earlier than fourteen days after the copy thereof has been left with the Prothonotary.

5 Rule 210. Subject as aforesaid issues shall be tried in the order in which they stand in the list, and either on or as soon as possible after the day for which they are set down, unless the Court or a Judge otherwise orders. Issues to be tried in order of list. V. 230.

10 Rule 211. If when a trial is called on the plaintiff appears and the defendant does not appear, the plaintiff shall be entitled to a finding in his favour against such defendant on all the issues except an issue as to the amount of unliquidated damages, which shall be determined by the jury. When plaintiff appears and defendant does not appear at trial plaintiff entitled to finding. V. 231.

15 Rule 212. If when a trial is called on a defendant appears and the plaintiff does not appear, such defendant shall be entitled to a finding in his favour against the plaintiff on all the issues except an issue as to the amount of unliquidated damages which shall be determined by the jury. When defendant appears and plaintiff does not appear at trial defendant entitled to finding. V. 232.

20 Rule 213. If when a trial is called on the plaintiff does not appear and all the defendants or one or some of several defendants do not appear, the issues may be struck out as between the plaintiff and the defendants not appearing, and thereupon unless the Court or a Judge otherwise orders the action shall be discontinued as between the plaintiff and such defendants, and the parties not appearing shall not be entitled to costs. When plaintiff and all or some defendants do not appear at trial issues may be struck out, &c. V. 233.

Rule 214. Any finding obtained when a party does not appear at the trial may, upon application made within a reasonable time afterwards, be set aside by the Court upon such terms as may be just, provided that any such application shall if possible be made to the Judge before whom the trial was called on. Finding may be set aside by Court. V. 234.

25 Rule 215. Upon the hearing of actions the right to begin shall be the same as heretofore, and the party who begins shall be allowed at the close of his case to address the Court or jury a second time for the purpose of summing up the evidence if his opponent does not announce any intention to adduce evidence, and the opposite party shall be allowed to open his case and also to sum up the evidence (if any), and the right to reply shall be the same as heretofore. Provided that if persons having the same interest are represented by different counsel it shall be in the discretion of the Court to allow one or more of such counsel to address the Court or jury or to take part in the examination of witnesses. Right to begin and addresses to Court or jury at hearings and trials. V. 235.

35 Rule 216. The Court may at the hearing of an action reserve for the consideration of the Full Court any points of law, and such points shall be set down by the plaintiff for argument within four days after the same have been reserved, or if not so set down by him may be set down for argument by any other party interested within four days after the expiration of the said first four days. Court at hearing may reserve for consideration of Full Court points of law. V. 236.

40 Rule 217. Upon the hearing of an action, the Court may either pronounce or reserve judgment or leave the parties to move for judgment. Provided that any such motion may by leave of the Court be then and there made without notice. Power of Court as to pronouncing or reserving judgment or leaving parties to move. V. 237.

45 Rule 218. The Associate or his substitute shall make a note of the times at which any hearing or trial shall commence and terminate respectively on each day on which the same shall take place, for communication to the taxing officer if required. Associate to take note of times. V. 238.

50 Rule 219. The Associate or his substitute shall enter in a book to be kept for that purpose all findings on issues and any certificates granted by the Judge. Associate to enter findings on issues and certificates. V. 239.

50 Rule 220. Hearings with assessors shall take place in such manner and upon such terms as the Court may direct, and the Court shall determine by what party or parties and in what proportion the remuneration to the assessors shall be paid either in the first instance or finally. Hearings with assessors. V. 240.

Rule 221. The Court may adjourn any hearing or trial from time to time as may be convenient. Adjournment of hearing or trial. V. 241.

18. Procedure for dealing with notices of claim.

55 Rule 222. Four days before the trial of any issues directed to be tried as between a defendant having served a notice of claim and any co-defendant or third party, or before any day named for hearing the evidence or arguments for and against the defendant who served the notice, or before the hearing of the action if no such issues have been directed, and

Issues to be tried in order of list. V. 230.

When plaintiff appears and defendant does not appear at trial plaintiff entitled to finding. V. 231.

When defendant appears and plaintiff does not appear at trial defendant entitled to finding. V. 232.

When plaintiff and all or some defendants do not appear at trial issues may be struck out, &c. V. 233.

Finding may be set aside by Court. V. 234.

Right to begin and addresses to Court or jury at hearings and trials. V. 235.

Court at hearing may reserve for consideration of Full Court points of law. V. 236.

Power of Court as to pronouncing or reserving judgment or leaving parties to move. V. 237.

Associate to take note of times. V. 238.

Associate to enter findings on issues and certificates. V. 239.

Hearings with assessors. V. 240.

Adjournment of hearing or trial. V. 241.

Copies of notice of claim and replies to be left with prothonotary. V. 242.

New Trial—Motions for Judgment.

and no order has been made for dealing with the notice of claim separately, the defendant who served the notice shall deliver to the prothonotary two copies of the notice of claim, and of every reply thereto showing all amendments of the same respectively, one of which copies shall be for the use of the judge, and the other shall be filed. 5

Procedure when notice of claim dealt with or issues thereon tried.

Non-appearance. V. 242.

Rule 223. When any notice of claim is dealt with, or any issues are tried as between a defendant having served any such notice and any co-defendant or third party served therewith, the procedure at the hearing or trial as regards the rights of the parties, the power of the court, and the duty of the associate, and likewise the results as regards the non-appearance of the defendant who served the notice, or of any such co-defendant or third party, shall be the same, mutatis mutandis, and having regard to the limitations imposed by subsection (3) of section five of the Act, as if the notice of claim were the claim of a plaintiff in an action, the reply thereto to an answer, the defendant who served the notice of claim a plaintiff in the action, and the co-defendant and third parties the defendants in the action. 15

19. New trial.

New trial of issues may be granted.

Exception. V. 244.

Rule 224. Subject as hereinafter mentioned a new trial of issues may hereafter be granted upon any grounds upon which a new trial might have been granted immediately before the Judicature Act, 1898, came into operation: Provided that a new trial shall not be granted on the ground of misdirection, or of the improper admission or rejection of evidence, or of the ruling of the Judge that the stamp upon a document is sufficient, or insufficient, or that a document does not require a stamp, unless in any such case, in the opinion of the Full Court, some substantial wrong or miscarriage of justice has been thereby occasioned. 20

New trial as to some issues only. V. 245.

Application for new trial to be by motion. V. 246.

Notice of motion to be served within eight days after trial or last day of sittings and to state grounds. V. 247.

Rule 225. When the grounds on which a new trial is applied for affect one or some only of several issues, the Full Court may grant a new trial as to the issues so affected only.

Rule 226. Every application for a new trial of issues shall be made by motion to the Full Court.

Rule 227. Notice of such motion shall be served upon all parties who may be affected thereby within eight days after the trial if the trial took place in Sydney, and 30 within eight days after the last day of the sittings during which the trial took place if it took place elsewhere than in Sydney. Such notice shall state specifically the grounds of the application, and to which of the findings they respectively relate.

Judge who tried issues not to hear motion. V. 248.

Necessary directions to be given in ordering granting new trial. V. 249.

Rule 228. The Judge who tried any issues shall not sit on the hearing of a motion for a new trial thereof. 35

Rule 229. In the order granting a new trial the Full Court shall give all necessary directions for holding the same or otherwise relating thereto.

20. Motions for judgment.

Notice of motion for judgment to be served within four days. V. 250.

Rule 230. Whenever the parties are left to move for judgment any party may within four days thereafter serve a notice of motion for judgment in the Form No. 16 in Schedule I upon all the parties who may be affected thereby, and any party giving such notice shall within the same period leave a copy thereof with the Prothonotary.

Upon receiving copy notice Prothonotary to enter motion for hearing. V. 251.

Rule 231. Upon receiving any such notice the Prothonotary shall, save as herein-after mentioned, enter the motion for hearing in the same list as actions for hearing, but so that the motion shall not be heard before the expiration of six days from the time of the receipt of such notice: Provided that the Court at the trial of the issues or a Judge at any time may if necessary, convenient, or just, direct that any such motion may be heard at Sydney or before the Judge who presided at the trial at a time and place to be fixed by him. 45

Such notice to be a two clear days' notice. V. 252.

Party moving to begin. V. 253.

Upon motion Court may determine questions of fact, take evidence, direct further issues, and adjourn. V. 254.

Rule 232. Every such notice of motion shall be a two clear days' notice. 50

Rule 233. Upon any motion for judgment the party moving shall begin and have the right of reply, and the Court may at its discretion hear one or more counsel on either side.

Rule 234. Upon any motion for judgment the Court may determine any questions of fact not comprehended in the issues, and for that purpose may take any evidence, or it may direct any further issues to be tried as on a hearing, and may adjourn any such motion from time to time as may be convenient, and upon any such motion the Judge may either pronounce or reserve judgment. Rule 55

Motions for Judgment.

Rule 235. Upon any motion for judgment the Court may reserve for the consideration of the Full Court any points of law as at the hearing of an action, and the same may be set down for argument in the same manner as points reserved at the hearing.

Upon motion Court may reserve for consideration of Full Court points of law. V. 255.

21. Judgments.

Rule 236. In any judgment pronounced by the Court at the hearing of an action, or on motion for judgment, or on dealing with a defendant's notice of claim separately, the Court may reserve the consideration of further directions and may give liberty to the parties to apply to the Court as there may be occasion.

Court may reserve consideration of further directions. V. 256.

Rule 237. Every judgment pronounced by the Court at the hearing of an action, or on motion for judgment, or on dealing with a defendant's notice of claim separately, shall be drawn up in the form of an order.

Judgments to be drawn up in form of order. V. 257.

Rule 238. It shall not be obligatory on the Court or a Judge, when an action has been brought for the administration of a trust, or of the estate of a deceased person, to order that such trust or estate shall be administered by or under the direction of the Court or Judge, if the question between the parties can be properly determined without such order.

In action for administration, administration by or under direction of Court or Judge need not be ordered. V. 258.

Rule 239. In actions in which the plaintiff seeks merely to recover a debt or liquidated demand in money, payable by the defendant with or without interest, arising upon a contract express or implied, as for instance on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a Statute, where the sum sought to be recovered is a fixed sum of money in the nature of a debt other than a penalty, or on a guarantee whether under seal or not, when the claim against the principal is in respect of a debt or liquidated demand only, or on a trust, and in actions for the recovery of land with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or against persons claiming under such tenant, the plaintiff may at any time after the expiration of six days from service of the claim apply to the Court or a Judge to pronounce judgment for the amount claimed, or for the recovery of the land, with or without rent or mesne profits, as the case may be. Provided that no such application shall be heard until after the expiration of two clear days from the service of the notice of motion or summons.

In certain actions plaintiff may, after expiration of six days from service of claim, apply for judgment. V. 259.

Rule 240. Any such application shall be on affidavit made by the plaintiff or by any other person who can swear positively to the facts verifying the cause of action, and the amount claimed (if any), and stating that in his belief there is no defence to the action. The Court or a Judge may thereupon, unless the defendant by affidavit or otherwise satisfies such Court or Judge that he has a good defence to the action in whole or in part on the merits, or discloses such facts as may be deemed sufficient to entitle him to defend in whole or in part or except in actions for the recovery of lands, brings into Court the amount claimed or part thereof, pronounce judgment for the amount claimed or for the recovery of the land, with or without rent or mesne profits, as the case may be, accordingly.

Such application to be on affidavit by plaintiff or other person who can swear positively to facts. V. 260.

Rule 241. When the defendant makes an affidavit it shall state whether the defence he alleges goes to the whole or to part only, and if so, to what part of the plaintiff's claim, and if it appears that the defence set up to the action applies only to a part of the plaintiff's claim, or that any part of the claim is admitted, the Court or a Judge may pronounce judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms (if any) as the Court or a Judge may think fit, and the defendant may be allowed to defend as to the residue of the claim.

Defendant's affidavit to state whether defence goes to whole or to part only of claim. V. 261.

Judgment for part admitted or not defended. V. 261.

Rule 242. If it appears to the Court or a Judge that any defendant has a good defence to, or ought to be permitted to defend the action in whole or in part, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend accordingly, and the Court or a Judge may pronounce judgment for the plaintiff against the latter.

Judgment may be for plaintiffs against some defendants only. V. 262.

Rule 243. Leave may be given to defend the action unconditionally or subject to such terms as the Court or a Judge may think fit.

Leave to defend may be unconditional or on terms. V. 263.

Rule

Judgments.

Court may, with consent of all parties, dispose of action finally. V. 264.
Directions as to trial. E.O.14.7.

Rule 244. The Court or a Judge may, upon any such application as aforesaid and with the consent of all parties, dispose of the action finally and without appeal.

Rule 245. (a) Where leave, whether conditionally or unconditionally, is given to defend, the Judge shall have power to give all such directions as to the future conduct of the action as might be given on a summons for directions, and may order the action to be forthwith set down for trial. 5

(b) A special list shall be kept for the trial of causes in which leave to defend has been given, and in which a Judge is of opinion that a prolonged trial will not be requisite; and the Judge may, if he thinks it advisable, order any such action to be put into such list. 10

Costs. E.O.14.9.

Rule 246. (a) The costs of and incidental to all applications under this heading shall be dealt with by the Judge at the hearing of the application, who shall order by and to whom and when the same shall be paid, or may refer them to the Judge at the trial. Provided that in case no trial afterwards takes place, the costs are to be costs in the cause. 15

(b) If the plaintiff makes an application under this heading, where in the opinion of the Judge he knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, the application shall be dismissed with costs to be forthwith paid by the plaintiff. 20

Consideration of further directions to be brought before Court on notice. V. 265.

Rule 247. Whenever by any order the consideration of further directions has been reserved for the Court, the plaintiff shall within twelve days after the filing of the certificate of the Master in Equity, if no application is made within due time to discharge or vary such certificate, and if any such application is made within due time then within four days after such application has been finally disposed of, whether by the Chief Judge, or on appeal, give notice to the defendants and all other necessary parties (if any) that on a day to be named in such notice, not being less than two nor more than four days from the date of such notice, or so soon thereafter as counsel can be heard, the consideration of such further directions will be brought on before the Court. 25

Notice if not given by plaintiff may be given by defendant. V. 266.

Rule 248. If such notice as in the last preceding rule mentioned is not given by the plaintiff within the prescribed time, any defendant may within four days after the expiration of such time give a similar notice to the plaintiff and to all the other defendants. 30

Directions for listing of actions for further directions. V. 267.

Rule 249. The Chief Judge may from time to time give such general directions (if any) as he may think fit respecting the listing of any action for consideration of further directions and, subject to any such directions of the Chief Judge, any Judge may give any special directions respecting such listing in the Court in which he presides for the time being. 35

Conduct of hearing on consideration of further directions. V. 268.

Rule 250. Upon the consideration of further directions the conduct of the hearing shall be as nearly as may be the same as on the hearing of a motion for judgment, excepting that the certificate of the Master in Equity shall stand in the place of the verdict of a jury on issues, and that any evidence which the Court may require or allow shall be furnished by affidavit. 40

Court may make further reference and again reserve further directions or liberty to apply. V. 269.

Rule 251. Upon the consideration of further directions the Court may make any further reference and again reserve further directions or any liberty to parties to apply as there may be occasion, and so from time to time. 45

22. Referees, Assessors, &c.

Court or Judge to prepare issues for trial before special referee. V. 270.

Rule 252. When the Court or a Judge orders any question of fact or question of account to be tried before a special referee, the Court or Judge shall prepare the issues on which he is to report. 50

Court or Judge to determine remuneration. V. 271.

Rule 253. The Court or Judge shall determine the remuneration to be paid to any referee or to any assessor, and by what party or parties, and in what proportion the same shall be paid either in the first instance or finally.

Referee to proceed with inquiry or trial *de die in diem*. V. 272.

Rule 254. When any question or matter for inquiry in an action is referred to a referee, or when any question of fact or question of account is ordered to be tried before a referee, the referee may hold the inquiry or trial at, or adjourn it to, any place he may 55

Referees, Assessors, &c.

may deem most convenient, and may have any inspection or view which he may deem expedient, and he shall, unless otherwise directed by the Court or Judge proceed with the inquiry or trial *de die in diem*.

5 Rule 255. Every referee shall forward his report to the Court or Judge by whom the reference or trial was directed, and the Court or Judge may order the same to be filed with the Prothonotary. Every referee to forward report to Court or Judge. V. 273.

10 Rule 256. Whenever a report is made by a referee he shall on the same day give notice of such report to all the parties to the reference or trial by prepaid letter directed to the address for service of each party who shall be deemed to have notice of such report in due course of post. Referee to give notice of report to parties. V. 275.

15 Rule 257. In all cases under section 11 of the Act the Court or Judge may order any party or parties to pay a sum of money into Court as security for any remuneration or allowances payable under the said section, or to give any other security for the same, and may order that until such order is complied with all further proceedings be stayed. Security for remuneration or allowances. V. 275.

23. Production of documents before the Court.

20 Rule 258. Any party may by notice call upon any opposite party to produce at the hearing of an action or of a motion for judgment or of a defendant's notice of claim, any material documents. Such notice shall be in the Form No. 17 in Schedule I. An affidavit of the service of the notice stating when it was served and identifying a copy thereof shall be sufficient evidence of the service and of the time of service. Notice to produce material documents a hearing or trial. V. 276.

25 Rule 259. The Court may during the hearing of an action or motion for judgment or defendant's notice of claim order any party to produce any material and unprivileged document. Court may order production of material and unprivileged document. V. 277.

24. Payment into Court.

30 Rule 260. When in any action the plaintiff seeks to recover any debt or damages, any defendant may at any time before delivering his answer, or at any later time by leave of the Court or a Judge, and upon such terms as the Court or Judge may think just, pay money into Court by way of satisfaction of the whole or any part or parts of the debt or damages claimed; but in every such case shall, when making such payment, file in the Prothonotary's office a memorandum stating how much of the money paid in is intended to satisfy each particular item of debt or damages claimed by the plaintiff. Defendant may before delivering answer or afterwards by leave pay money into Court, and shall file memorandum. V. 278.

35 Rule 261. Such memorandum shall be in the Form No. 18 in Schedule I, and the defendant shall forthwith serve a copy thereof on the plaintiff. Form of memorandum. Copy to be served. V. 279.

40 Rule 262. Every payment into Court by a defendant shall be taken to admit the cause of action underlying each particular item or items in respect of which the payment is made. Payment into Court an admission of cause of action underlying items. V. 280.

45 Rule 263. When a defence of tender before action is set up, the sum of money alleged to have been tendered must be paid into Court to abide the result of the action, and a memorandum to that effect filed in the Prothonotary's office. On defence of tender before action money to be paid in Court. V. 281.

50 Rule 264. When any defendant pays money into Court under Rule 278, the plaintiff may within four days after receiving a copy of the memorandum file in the Prothonotary's office a notice accepting in satisfaction of any particular item or items of debt or damages claimed, the sum or sums paid into Court in respect thereof, and when the plaintiff's claim for relief as against such defendant is thereby wholly extinguished, and no counter-claim has been delivered by such defendant, he may obtain ex parte from a Judge leave to enter as an order of the Court an order directing payment of his costs, and that the action be discontinued against such defendant, except so far as necessary for the recovery of such costs. Plaintiff may by filed notice accept sums paid into Court in satisfaction of particular items. V. 282.

55 Rule 265. Such notice shall be in the Form No. 19 in Schedule I, and the plaintiff shall forthwith after filing the same, serve a copy thereof on the defendant. Form of notice. Copy to be served on defendant. V. 283.

Rule 266. When any defendant pays money into Court and the plaintiff accepts in satisfaction of any item or items of debt or damages claimed by him the sum or sums paid into Court in respect thereof, the sum or sums so accepted shall unless the Court or a Judge otherwise orders, be paid out to the plaintiff on his request or to his solicitor on the plaintiff's written authority. Sums accepted in satisfaction to be paid out to plaintiff or his solicitor. V. 284.

Rule

Payment into Court.

Plaintiff may by leave pay money into Court in satisfaction of set-off pleaded. V. 235.

Plaintiff may before delivering reply or afterwards by leave pay money into Court, and shall file memorandum. V. 236.

Form of memorandum. Copy to be served. V. 237.

Payment into Court an admission of ground of counter-claim underlying items. V. 283.

On reply of tender before counter-claim money to be paid into Court. V. 289.

Defendant may by filed notice accept sums paid into Court in satisfaction of particular items. V. 290.

Form of notice. Copy to be served. V. 291.

Sums accepted in satisfaction to be paid out to defendant or his solicitor. V. 292.

Rules 278, 280, 282, and 284 to apply between parties to a notice of claim. V. 293.

Co-defendant or third party may pay money into Court to meet contingent claim of a defendant.

Forms of memorandum and notice of acceptance when co-defendant or third party pays money into Court.

Copies to be served. V. 294.

Money paid in may be ordered to be security for costs. V. 295.

Rule 267. When a defendant pleads a set-off in his answer the plaintiff may by leave of the Court or a Judge, and upon such terms as the Court or Judge may think just pay money into Court in satisfaction thereof.

Rule 268. When in any action a defendant counter-claims for any debt or damages, any plaintiff may at any time before delivering his reply, or at any later time by leave of the Court or a Judge, and upon such terms as the Court or Judge may think just, pay money into Court by way of satisfaction of the whole or any part or parts of the debt or damages claimed by such defendant, but in every such case shall when making such payment file in the Prothonotary's office a memorandum stating how much of the money paid in is intended to satisfy each particular item of debt or damages claimed by the defendant.

Rule 269. Such memorandum shall be in the Form No. 20 in Schedule I, and the plaintiff shall forthwith serve a copy thereof on the defendant.

Rule 270. Every payment into Court by a plaintiff shall be taken to admit the ground of counter-claim underlying each particular item or items in respect of which the payment is made.

Rule 271. When a reply of tender before counter-claim is set up the sum of money alleged to have been tendered must be paid into Court to abide the result of the action, and a memorandum to that effect filed in the Prothonotary's office.

Rule 272. When any plaintiff pays money into Court under Rule two hundred and eighty-six, the defendant may, within four days after receiving a copy of the memorandum, file in the Prothonotary's office a notice accepting in satisfaction of any particular item or items of debt or damages claimed, the sum or sums paid into Court in respect thereof.

Rule 273. Such notice shall be in the Form No. 21 in Schedule I, and the defendant shall forthwith, after filing the same, serve a copy thereof on the plaintiff.

Rule 274. When any plaintiff pays money into Court, and the defendant accepts in satisfaction of any item or items of debt or damages claimed by him the sum or sums paid into Court in respect thereof, the sum or sums so accepted shall, unless the Court or a Judge otherwise orders, be paid out to the defendant on his request or to his solicitor on the defendant's written authority.

Rule 275. Subject to the proviso hereinafter contained, Rules two hundred and seventy-eight, two hundred and eighty, two hundred and eighty-two, and two hundred and eighty-four under the above heading, "Payment into Court" shall, so far as applicable, apply, mutatis mutandis, as between the parties to a notice of claim, construing the word "plaintiff" as "a defendant having served a notice of claim," the word "defendant" as "co-defendant or third party," the word "answer" as "reply," the words "cause of action" as "ground of claim," and the word "action" either as "notice of claim" or "proceedings on the notice of claim," as the case may require: Provided that any co-defendant or third party may pay money into Court to abide the order of the Court for the purpose of meeting the contingent claim of a defendant depending upon the result of the action, but when making any such payment shall file in the Prothonotary's office a memorandum to that effect.

Rule 276. The memorandum to be filed by a co-defendant or third party paying money into Court shall be in the Form No. 22 or in the Form No. 23 in Schedule I, as may be necessary, and the notice of acceptance of any such payment in whole or in part shall be in the Form No. 24 in Schedule I, and a copy of every memorandum so filed shall forthwith thereafter be served by the co-defendant or third party on the defendant who served the notice of claim, and a copy of every notice of acceptance so filed shall forthwith thereafter be served by the accepting defendant on the co-defendant or third party who paid the money into Court.

Rule 277. When in any action any money is paid into Court by any party and not accepted by the opposite party, the Court may order the same to stand as security for any costs awarded to the party who paid it in, or otherwise to be applied in payment of such costs.

Rule

25. Assessment of Damages.

Rule 278. Whenever damages are assessed in respect of any continuing cause of action or ground of counter-claim they shall be assessed up to the time of the assessment. Damages continuing to be assessed up to time of assessment. V. 296.

26. Dismissal for want of Prosecution and Discontinuance.

5 Rule 279. If the plaintiff in any action fails to take any step within the prescribed time against, or as regards any defendant, such defendant may move to dismiss the action as against himself for want of prosecution, and on the hearing of the motion the Court may either enlarge the time for taking such step or stay proceedings against such defendant for a limited period, or may if satisfied that the plaintiff has not used reasonable diligence dismiss the action against such defendant, or may make such other order as may be just. On failure of plaintiff to take a step within prescribed time, defendant may move to dismiss the action. V. 297.

10 Rule 280. Whenever by reason of the failure of the plaintiff to take any step within the prescribed time against any defendant, or by reason of the failure of any defendant to take any step within the prescribed time, or by reason of any other default of any defendant, any other defendant is delayed, such other defendant may move that the action be dismissed as against him, or that the action be proceeded with as if the defendant in default had not been made a party thereto, and on the hearing of the motion the Court may, if it appears that the defendant moving is, or may be, in any way prejudiced by the delay, either stay proceedings against such defendant for a limited period, or order that the action be proceeded with as if the defendant in default had not been made a party, or may, if satisfied that the plaintiff has not used reasonable diligence, dismiss the action against the moving defendant, or may make such other order as may be just. A defendant delayed by reason of such failure of plaintiff or of another defendant, may move to dismiss the action, or that it be proceeded with as if defendant in default had not been party. V. 293.

25 Rule 281. A plaintiff may, at any time before the hearing or motion for judgment, obtain from the Court (ex parte) an order dismissing his claim with costs against himself, without prejudice to any counter-claim that may have then been delivered, and whenever any such order is made the action shall, if a counter-claim has been delivered, continue for the purpose of determining the counter-claim. And a defendant may, at any time before the hearing or motion for judgment, obtain in like manner an order dismissing his counter-claim with costs. Ex parte order dismissing claim or counter-claim may be obtained by plaintiff or defendant. V. 299.

30 Rule 282. The Court or a Judge may, before or at the hearing of an action or motion for judgment, make an order allowing the plaintiff to discontinue the action against all or any of the defendants upon such terms as to costs and as to any other action and otherwise as may be just and without prejudice to any counter-claim. Plaintiff may be allowed to discontinue action against all or some defendants. V. 300.

35 Rule 283. When an action is discontinued and a subsequent action for substantially the same cause of action is brought before payment of the costs of the discontinued action, the Court or a Judge may order that the subsequent action be stayed until payment of the costs of the discontinued action. Fresh action may be stayed till payment of cost of discontinued action. V. 301.

27. Special Case.

40 Rule 284. The parties to any action may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Questions of law may be stated by parties in form of special case. V. 302.

45 Rule 285. Every special case shall be printed, or written, or partly printed and partly written, and shall be divided into paragraphs numbered consecutively, and shall state concisely such facts as may be necessary to enable the Court to decide the questions raised thereby, and shall be signed by counsel for the respective parties, except any party not represented by a solicitor, who may sign it himself, and shall be left by the plaintiff with the Prothonotary to be filed, and if it is not so left by him within one week after signature, any other party may obtain an order from a Judge compelling him to leave the same. Special case to be divided into paragraphs, to be signed by counsel or party, and filed with Prothonotary. V. 303.

50 Rule 286. No special case to which a married woman (not suing or defending separately from her husband), an infant, or a person of unsound mind is a party, shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case are true so far as they affect the interest of such married woman, infant, or person of unsound mind. Certain special cases not to be set down without leave of Court or Judge. V. 304.

Rule

55

Special Case.

Prothonotary to set down special case for argument. V. 305.

Rule 287. Subject to the last preceding rule, whenever any special case is left with the Prothonotary he shall set the same down for argument at the then next sittings of the Full Court.

Court and parties may refer to whole contents of documents.

Rule 288. Upon the argument of a special case the Court and the parties shall be at liberty to refer to the whole contents of any document therein referred to, and the Court shall be at liberty to draw from the facts stated in the case and the contents of the documents therein referred to any inferences of fact or law which might have been drawn therefrom if the same had been proved. 5

Court may draw inferences of fact or law. V. 306.

Parties to special case may agree for payment of sum of money with or without costs. V. 307.

Rule 289. The parties to a special case may enter into an agreement in writing that upon the judgment of the Court being given in the affirmative or negative on the questions of law raised by the special case a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of such parties to the other, either with or without costs, and the Court may order the payment of such sum, with or without costs, as the case may be. 10 15

Order II.—Ancillary Proceedings.

1. Motions and other applications to the Court.

All applications to Court except in certain cases to be made by motion. V. 310.

Rule 290. No application for a rule nisi or order to show cause shall hereafter be made, and no petition shall, except where expressly required by Statute, be presented; but except as aforesaid all applications to the Court other than at the trial of issues or the hearing of an action shall be made by motion. 20

Court may make order ex parte in certain cases. V. 311.

Rule 291. Whenever the Court is satisfied that irreparable or serious mischief would ensue from delay, the Court may make an order ex parte on such terms and subject to such undertaking (if any) as may be just, and any party affected by such an order may move to set it aside. 25

Save as otherwise provided motion not to be made without notice. V. 312.

Rule 292. Save as otherwise provided in the rules and subject to the provisions hereinafter contained as to service, no motion shall be made without previous notice to the parties who may be affected thereby. Notices of motion shall be in the Form No. 1 in Schedule III.

Notice of motion, how served. V. 313.

Rule 293. Notices of motion may be served in the manner heretofore in use: Provided that where personal service is required, and it appears to the Court or a Judge that from any cause prompt personal service cannot be effected, the Court or Judge may make such order for substituted service as may be just. 30

Certain notices of motion to state grounds. V. 314.

Rule 294. Every notice of motion to set aside an order, or to remit or enforce an award, or for attachment, shall state in general terms the grounds of the application. 35

Two clear days' notice required. V. 315.

Rule 295. Unless the Court gives special leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

Hearing of motion or petition may be adjourned from time to time. V. 316.

Rule 296. The hearing of any motion or petition may from time to time be adjourned upon such terms (if any) as the Court shall think fit, and, when on the hearing of a motion or petition the Court shall be of opinion that any person to whom notice has not been given ought to have had, or to have, such notice, the Court may, upon such terms as may be just, either dismiss the motion or petition or adjourn the hearing thereof to enable such notice to be given. 40

Notices may be served without leave subject to any Act or rule. V. 317.

Rule 297. Subject to the provisions of any Act or rule, a plaintiff may, without leave, serve any notice of motion or other notice or any petition upon any defendant on whom a claim with summons endorsed has been served, and, subject as aforesaid, any such defendant may, without leave, serve any notice of motion or other notice or any petition upon a plaintiff. 45

Petitions and service of petitions. V. 318.

Rule 298. Subject to the provisions of any Act or rule, every petition (not being a petition of course) presented to the Court, and every copy of the same shall have at the end thereof a statement of the names of the persons (if any) on whom it is intended to serve the same, and a notice that the same will be heard on a certain day or so soon thereafter as counsel can be heard. If no person is intended to be served a statement to

Motions and other applications to the Court.

to that effect shall be made at the end of the petition and of every copy thereof. Every petition must, when service is necessary, be served at least two clear days before the hearing. Service of every petition which requires to be served shall be effected in the manner heretofore in use, subject to the provisions hereinbefore contained as to service with respect to notices of motion.

10 Rule 299. In the case of applications under Statutes directing the purchase-money of any property sold to be paid into Court, any person claiming to be entitled to the money so paid in, or any part thereof, must file an affidavit not only verifying his title to the same or to such part thereof, but also, save as hereinafter mentioned, stating that he is not aware of any right in or claim made by any other person to the money or to such part thereof as aforesaid. If the applicant is aware of any such right or claim he must in his affidavit state or refer to and except the same.

Affidavit to be filed in applications under Statutes directing purchase money to be paid into Court. V. 319.

15 Rule 300. When the plaintiff in any action claims a mandamus to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, and judgment is given for the plaintiff, the Court may either then or at any time thereafter command the defendant to perform the duty either forthwith or within, or on the expiration of, such time, and upon such terms as may be just. The Court may also extend the time for performance of the duty. This rule shall apply, mutatis

When judgment given Court may command performance of duty. V. 320.

20 Rule 301. No writ of mandamus shall hereafter be issued in an action, but the mandamus shall be by order, and such order shall have the same effect as a writ of mandamus formerly had.

Writ of mandamus not to issue in action. V. 321

25 Rule 302. When a prima facie case of liability under a contract is established to the satisfaction of the Court, the Court may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

Court may make order for preservation or interim custody of subject matter of litigation. V. 322.

30 Rule 303. The Court may at any time after the commencement of an action order that any goods which are of a perishable nature, or likely to injure from keeping, or which for any other reason it may be desirable to have sold at once, be sold by any person and in such manner and on such terms as may be just.

Or may after action order sale of goods of perishable nature. V. 323.

35 Rule 304. The Court may at any time after the commencement of an action make an order upon such terms as may be just for the detention, preservation, inspection, or examination, of any property, or thing, being the subject-matter of the litigation, or as to which any question may arise therein, and may for that purpose authorise any person to enter upon any land, or into any building, being in the possession of any party to the action, or may authorise any samples to be taken, or any observation to be made, or experiment to be tried, which may seem necessary.

Or may after action make order for detention, &c., of any property. V. 324.

40 Rule 305. Any Judge may at any time inspect any property or thing concerning which any question may arise before him in Court.

Judge may inspect property. V. 325.

45 Rule 306. When an action is brought to recover specific property, other than land, and the defendant does not dispute the plaintiff's title to such property, but claims to retain the same by virtue of a lien or otherwise as security for any sum of money, the Court may, whenever those facts appear upon the pleadings, or are established by affidavit before answer, order that the plaintiff be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the Court may direct, and that upon such payment into Court being made the property be given up to the plaintiff.

Property retained by defendant under claim of lien may be ordered to be given up on payment into Court of amount in respect of which lien is claimed. V. 326.

50 Rule 307. When a defendant seeks by his counter-claim to recover specific property other than land, and the plaintiff does not dispute the defendant's title to such property, but claims to retain the same by virtue of a lien or otherwise as security for any sum of money, the Court may whenever those facts appear upon the pleadings or are established by affidavit before reply, order that the defendant be at liberty to pay into

55 Court to abide the event of the counter-claim, the amount of money in respect of which the lien or security is claimed, and such further sum if any for interest and costs as the Court may direct, and that upon such payment into Court being made the property be given up to the defendant.

Property retained by plaintiff under claim of lien may be ordered to be given up on payment into Court of amount in respect of which lien is claimed. V. 327.

Rule

Motions and other applications to the Court.

No writ of injunction to be issued. V. 323.

Rule 308. No writ of injunction shall be issued, but any party may be enjoined by order of the Court, and such injunction shall have the same effect as a writ of injunction formerly had.

Plaintiff or defendant may apply to Court for injunction. V. 329.

Rule 309. Whenever an injunction has been or might have been claimed by the plaintiff he may at any time apply to the Court for an injunction to restrain the defendant from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract, and a defendant who has or might have claimed an injunction against the plaintiff shall have a similar right of application to the Court for an injunction as against him.

Application to discharge or vary certificate of Chief Clerk when to be made. V. 330.

Rule 310. The time within which an application may be made by motion to discharge or vary any certificate of the Master-in-Equity which has been signed and adopted by the Judge in Chambers shall be eight days after the day of filing such certificate.

Leave to compound a penal action. V. 331.

Rule 311. When leave to compound a penal action is given, the order to compound the action shall expressly state that the defendant undertakes to pay the sum for which the Court has given him leave to compound the same: Provided that when the action is one in which part of the penalty goes to the Crown, such leave shall not be given unless notice shall have first been given to the proper officer. When leave is given to compound a penal action in which part of the penalty goes to the Crown the Queen's portion of the composition shall be paid into the hands of the Prothonotary for the use of Her Majesty.

Application to set aside or remit an award when to be made. V. 332.

Rule 312. An application to set aside or remit an award may be made to the Full Court at any time before the last day of the sittings of the said Court next after such award has been made and published to the parties.

Court may before hearing or trial order accounts to be taken or inquiries made. V. 333.

Rule 313. When a claim asks for or involves the taking of accounts, or making of inquiries, the plaintiff may at any time before the hearing or trial apply to the Court for an order that proper accounts be forthwith taken, or inquiries made, and such order with all necessary directions shall be made when the defendant has failed to deliver an answer, or does not, after the answer has been delivered, satisfy the Court that there is some preliminary question to be determined.

Such order may be made at any stage notwithstanding that other relief is sought for. V. 334.

Rule 314. The Court may at any stage of the proceedings direct any necessary accounts or inquiries to be taken or made, notwithstanding that it may appear that there is some other relief sought for, or some issue of fact or question of law to be determined, as to which it may be proper that the action should proceed in the ordinary manner.

Motions in action and petitions to be heard in Sydney unless Court or Judge permit same to be heard where action was commenced. V. 335.

Rule 315. Every motion in an action other than a motion for judgment made immediately after the trial of issues, and every petition heard by the Court in an action, shall, wherever the action is commenced, be heard in Sydney, unless the Court or a Judge permits the same to be heard in the place where the action was commenced; but the Court or Judge may at any time before notice of motion has been given if notice is required or before the petition is presented, or the Court may at the hearing if necessary, convenient, or just, give such permission, provided that in such case the notice of motion, if there be one, or the petition shall state where the motion or petition will be heard, if permission has been given to have it heard elsewhere than in Sydney, or it shall state that it is intended to ask the permission of the Court to have it heard in some other place.

Chief Justice may give general and any Judge special directions as to listing motions and petitions. V. 336.

Rule 316. The Chief Justice may from time to time give such general directions (if any) as he thinks fit respecting the listing of motions and petitions, and, subject to any such directions, any Judge may from time to time give special directions respecting the listing of motions and petitions in the Court in which he for the time being presides.

If mover or petitioner does not appear motion or petition to be dismissed or to lapse. V. 337.

Rule 317. If when a motion or petition is called or comes on in due course for hearing, the party on whose behalf the notice of motion was given, or the petitioner as the case may be, does not appear, and any respondent appears, the motion or petition shall at the option of any such respondent be dismissed with costs as against him, but without prejudice to any renewed motion or petition to the like effect, but otherwise shall be allowed to lapse.

Rule

Interpleader.

- Rule 318. If when a motion or petition is called or comes on in due course for hearing the mover or petitioner appears, but any respondent does not appear, the mover or petitioner shall as regards such non-appearing respondent be entitled to such order as upon the evidence may appear just. If respondent does not appear mover or petitioner to be entitled to order. V. 338.
- 5 Rule 319. Any order obtained on the hearing of a motion or petition against a party not appearing, may upon application made within reasonable time afterwards, and upon its being proved to the satisfaction of the Court that it would be unfair that such order should stand as against such party without his being heard, be set aside upon such terms as may be just, provided that any such application shall if possible be made to the Judge before whom the motion or petition was called or came on for hearing. Order against party not appearing may be set aside on terms. V. 339.
- 10 Rule 320. Upon the hearing of any motion or petition the mover or petitioner shall begin, the respondents shall be heard in answer, and the mover or petitioner shall have the right of reply. If there be several respondents having separate interests and appearing by separate counsel they shall be heard in such order as they may agree upon or as the Court may direct. If several respondents having the same or similar interests appear by separate counsel, the Court may refuse to hear counsel for more than one such respondent or set of respondents as the case may be, and, if they cannot agree, shall determine which of such counsel shall be heard. Procedure upon hearing of motion or petition. V. 340.
- 15 Rule 321. Only one counsel shall be heard for the mover or petitioner in opening and replying, and only one shall be heard in answer for each respondent or set of respondents having a separate interest unless the Court shall otherwise permit. Counsel. V. 341
- 20

Order III.—Interpleader.

- Rule 322. Relief by way of interpleader may be granted—
- 25 First—When the applicant is under liability for any debt, money, goods, or chattels for or in respect of which he is or expects to be sued by two or more parties making adverse claims thereto. When relief by interpleader may be granted.
- Secondly—When the applicant is a sheriff or other officer charged with the execution of process of the Court, and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued.
- 30 Rule 323. The applicant must satisfy a Judge by affidavit that he claims no interest in the subject-matter in dispute other than a lien for fees or other charges or costs that he does not collude with any of the claimants, and that he is willing to pay or transfer the subject-matter into Court or to dispose of it as the Judge may direct. Affidavit in support.
- 35 Rule 324. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another. Absence of common origin of titles not to bar relief.
- 40 Rule 325. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims and either to maintain or relinquish them. Summons to claimants. Particulars of claims.
- Rule 326. If the application is made by a defendant in an action the Judge may stay all further other proceedings in the action. Proceedings may be stayed.
- 45 Rule 327. If the claimants appear in pursuance of the summons the Judge, may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter, in lieu of or in addition to the applicant, or may on the request of both claimants, or on the request of any claimant, if having regard to the value of the subject-matter it seems desirable to do so, dispose of the merits of their claims in a summary manner and on such terms as may be just, or may direct in what other manner the question in dispute shall be determined, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff and which defendant, and the mode in which and the number of jurors (if any), with which such trial shall be had. Powers of Judge on return of summons.
- 50

Rule

Interpleader.

Alleged lien of applicant may be protected.

Rule 328. On any application for relief by way of interpleader the Judge may provide for the protection of any alleged lien of the applicant for charges or costs.

Claimant not appearing or refusing to comply with order may be declared barred.

Rule 329. If a claimant having been duly served with a summons, calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the summons, or having appeared neglects or refuses to comply with any order made after his appearance, the Judge may make an order declaring him and all persons claiming under him for ever barred against the applicant and persons acting under his authority; but the order shall not affect the rights of the claimants as between themselves.

Issues to be settled by Judge, and left by plaintiff with Prothonotary to be filed.

Rule 330. If on an application for relief by way of interpleader the Judge directs that issues of fact shall be tried, the issues shall be thereupon settled by the Judge, and a copy thereof shall, within two days after the same shall have been settled, be left by the party made plaintiff with the Prothonotary to be filed; and if the plaintiff fail to leave such copy to be filed within the prescribed time, any defendant may leave a copy of the issues to be filed within four days after the settlement thereof; and if no copy be left to be filed as is hereinbefore provided the trial of the issues shall be deemed to be abandoned, and the Judge may declare the claimants, or any of them, and all persons claiming under them for ever barred against the applicant and persons acting under his authority, and may make such further or other order as may be just.

Rules as to trial of issues or hearing of actions to apply to interpleader.

Rule 331. The rules as to trial of issues or hearing of actions shall, with the necessary modifications, apply to trials with or without a jury directed in interpleader proceedings.

Judge may order sale of chattels seized in execution and claimed.

Rule 332. When goods or chattels have been seized, in execution, by a sheriff or other officer charged with the execution of process of the Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods and chattels by way of security for debt, the Judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just.

In interpleader proceedings one order may be made in several actions or matters.

Rule 333. When in any interpleader proceeding it is necessary or expedient to make one order in several actions or matters pending in the Court, such order may be made by the Judge, before whom the interpleader proceedings may be taken, and shall be intitled in all such actions or matters.

Costs in interpleader proceedings.

Rule 334. The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just.

Evidence.

Rule 335. Evidence in interpleader proceedings in Chambers may be given orally or by affidavit as the Judge may direct.

SCHEDULES.

SCHEDULE I.

FORM 1.

Summons to be endorsed on a claim when all the defendants are within the jurisdiction. 40

In the Supreme Court of New South Wales.

18 , No.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, &c.

To [Fill in names and addresses, as far as known, of all the defendants, or when defendants are sued as partners in the name of their firm, or a defendant is sued in the name of his firm, then the name and principal place of business of the firm.] 45

We command you that within twenty-one days after you have been served with this summons, and the claim whereon the same is endorsed, or within such further time as

SCHEDULE I.—*continued.*

1. That &c. [*or That in the event of, &c.*] [*here set forth relief or contingent relief sought in consecutive paragraphs*].

Take notice that you the defendant G.H. will henceforth be deemed a party to this action not only in respect of the plaintiff's claim against you, but also for the purpose of defending yourself against my claim against you as set forth in this notice. 5

[*Or*]

Take notice that you [*third party*] will henceforth be deemed a party to this action for the purpose of defending yourself against my claim against you as set forth in this notice. 10

[*Or otherwise as the case may require.*]

The day of

(Official seal of Prothonotary.)

Memorandum [*as on claim substituting defendant for plaintiff. See Form No. 1.*]

Rule 92.

FORM 4.

15

Interrogatories.

In the Supreme Court of New South Wales.

Between A.B. and C.D., plaintiffs, }
and
E.F., G.H., and J.K., defendants. }

18 . No.

20

Interrogatories on behalf of [the above-named plaintiff *or* the above-named defendant *or* a third party] for the examination of the [defendant *or* third party *or* plaintiff].

[*Here set forth interrogatories numbered consecutively—*]

1. &c.

25

The defendant is required to answer the interrogatories numbered [*and so forth as to any defendant required to answer different interrogatories*].

The plaintiff is required to answer the interrogatories numbered [*and so forth as to any plaintiff required to answer different interrogatories*].

The third party is required to answer the interrogatories numbered [*and so forth as to any third party required to answer different interrogatories*].

30

Signed [To be signed by plaintiff's, defendant's, or third party's solicitor when plaintiff, defendant, or third party is represented by a solicitor, or otherwise by plaintiff, defendant, or third party, as the case may require.]

Delivered the day of

35

Rule 92.

FORM 5.

Answers to Interrogatories.

In the Supreme Court of New South Wales.

Between A.B. and C.D., plaintiffs, }
and
E.F., G.H., and J.K., defendants. }

18 . No.

40

The answer of the [defendant, *or* plaintiff, *or* third party] to the interrogatories delivered by the [plaintiff, *or* third party, *or* defendant] on the day of

In answer to the said interrogatories, I, the said make oath and say 45 as follows:—

[*Here set forth in consecutive paragraphs the answers to the interrogatories or to so many and such parts of the same as the party interrogated does not object to answer—*]

1. &c.

I

SCHEDULE I.—continued.

I object to answer the interrogatories numbered _____ and the following parts of the interrogatories numbered _____ namely,

My reasons for objecting as aforesaid are [here set forth in consecutive paragraphs 5 the reasons for objecting to answer so many and such parts of the interrogatories as the party interrogated may object to answer—]

1. &c.

[Omit or vary this form as to objections as the case may require.]

FORM 6.

Rule 97.

10 Application by notice for discovery of documents.

In the Supreme Court of New South Wales.

Between &c. [parties.] 18 . No.

To [Describing party from whom discovery of documents is sought.]

[N.B.—Discovery of documents may be sought by any party both as to the subject of the action and the counter-claim or notice of claim, and this form varied accordingly.]

15 Take notice that you, the said _____, are hereby required to make and file an affidavit specifying by sufficient description all such documents as are or have been in your custody or under your control relating to or connected with the subject of this action [or of the counter-claim of _____ in this action or of the notice of claim of _____ in this action] and stating so far as you are able what has 20 become of any such documents as have been but are not now in your custody or under your control.

And further take notice that you are hereby required at any reasonable time or times when so requested in writing to produce to [the party seeking discovery] or to Mr. _____ of _____ his 25 solicitor or to any clerk of his said solicitor authorized by his said solicitor in writing to attend at such production either at the office of his said solicitor or at your address for service or at his address for service as you may select by your affidavit or at such other place as may be mutually agreed upon such of the said documents as shall appear by your affidavit to be in your custody or under your control excepting such as by your affidavit 30 you may lawfully object to produce. And that you must permit the said _____ or his said solicitor or any clerk of his said solicitor authorized

as aforesaid upon any such production to inspect and peruse the documents produced, and take copies thereof or extracts therefrom, and that any documents so produced must be produced by you at the trial of the issues in this action, or at the hearing of this 35 action, if demanded, without further notice.

The _____ day of _____

Signed _____ [Solicitor of party seeking discovery of documents or the party himself when not represented by a solicitor.]

FORM 7.

Rule 100.

40 Affidavit of documents.

In the Supreme Court of New South Wales.

Between A.B. and C.D., plaintiffs, }
and } 18 . No. .
E.F., G.H., and J.K., defendants. }

45 I, _____, make oath, and say—

[N.B.—When the documents of which discovery is sought relate to or are connected with both the subject of the action and of the counter-claim or notice of claim, this form must be varied accordingly.]

1. I have in my custody, or under my control, documents relating to, or connected with the subject of this action [or of the counter-claim of _____ or of the notice of claim of _____], all of which are specified in the first and 50 second parts of the First Schedule [or when the party from whom discovery is sought does not object to the production of any of the documents in the First Schedule] hereunder written.

SCHEDULE I.—continued.

2. I object to produce such of the said documents as are specified in the second part of the said First Schedule.
3. [*In this and following paragraphs, if necessary, set forth succinctly the reasons of the deponent's objections, and verify the facts so far as deponent is able.*] 5
4. I have had, but have not now, in my custody or under my control, documents relating to, or connected with, the subject of this action [*or of the counter-claim of* , or of the notice of claim of], all of which are specified in the Second Schedule hereunder written.
5. The documents specified in the said Second Schedule, and numbered respectively , were last in my custody, or under my control [*state when*]. The documents so specified and numbered , were, &c. [*and so forth*].
6. [*State what has become of the documents specified in the Second Schedule, and in whose possession they are, so far as deponent is able.*]
7. To the best of my knowledge, remembrance, information, and belief, I have 15 not now, and never had, in my custody or under my control, any document relating to, or connected with the subject of this action [*or of the counter-claim of* , or "of the notice of claim of "], other than the documents specified in the First and Second Schedules hereto.
8. The place selected by me for the production of any of the said documents, 20 which I may be lawfully requested to produce, is [*state which of the places mentioned in the notice or order for discovery*].
- Sworn, &c.

FORM 8.

Summons to be endorsed on a Claim when all the Defendants reside out of the Jurisdiction. 25

In the Supreme Court of }
New South Wales. }

18 . No.

VICTORIA, &c. [*as in Form No. 1.*]

To &c.

We command you G.H. [*British subject resident abroad*] that within 30 days [*time allowed by the Court or a Judge in the first instance*] after you have been served with this summons and the claim whereon the same is endorsed, and you J.K. [*foreigner resident abroad*] that within days [*time allowed by the Court or a Judge in the first instance*] after receiving notice of this action, or within such further 35 time as may be allowed by the said Court or by a Judge of the said Court, you appear and defend this action by delivering an answer to the said claim, pursuant to the rules of the said Court. And take notice that in default of your so doing you must abide by such order as the Court may make against you.

Witness, &c. [*as in form No. 1.*]

[*Memorandum as in Form No. 1.*] 40

[*Statement and notice when required as in Form No. 2.*]

N.B.—This summons is intended for service out of the jurisdiction, and must be served within twelve months from its issue, including the day of issue.

FORM

SCHEDULE I—continued.

FORM 9.

Notice in lieu of Service of Summons to be served upon a defendant residing out of the Jurisdiction and not being a British subject.

5 In the Supreme Court of }
 New South Wales. }
 Between A.B. and C.D., plaintiffs, }
 and } 18 . No. .
 E.F., G.H. and J.K., defendants. }

10 To J.K., of
 Take notice that A.B., of , and C.D., of , have commenced an action against you J.K., of , and G.H., of , and E.F., of , in Her Majesty's Supreme Court, at Sydney, in the Colony of New South Wales, in Australia, by a summons issued out of that Court, and endorsed on a claim 15 filed with the Prothonotary of the said Court whereof the claim on which this notice is endorsed is a duplicate.

And you are hereby required within days [the number allowed by the Court or a Judge in the first instance] after receiving this notice, or within such further time as may be allowed by the said Court or by a Judge of the said Court, to appear 20 and defend the said action by delivering an answer to the said claim pursuant to the rules of the said Court.

And take notice that, in default of your so doing, you must abide by such order as the Court may make against you.

Signed
 25 [Plaintiff's Solicitor] [or] Plaintiff [when plaintiff not represented.]

Memorandum.—[See Commencement Rules 8 and 9.]

[Statement and Notice when required as in Form No. 2.] [See Commencement Rule 12.]

FORM 10.

30 Summons to be endorsed on a Claim when some of the defendants reside within and some out of the Jurisdiction.

In the Supreme Court of }
 New South Wales. } 18 . No.

VICTORIA, &c. [as in Form No. 1.]

35 To
 We command you E.F. [party resident within the jurisdiction] that within twenty-one days after you have been served with this summons and the claim whereon the same is endorsed, or within such further time as may be allowed by the Court or a Judge, you deliver an answer to the said claim pursuant to the rules of the said Court, and we 40 command you G.H. [British subject resident abroad] that within days [time allowed by the Court or a Judge in the first instance] after you have been served with this summons and the claim whereon the same is endorsed, and you J.K. [foreigner resident abroad] that within days [time allowed by the Court or a Judge in the first 45 instance] after receiving notice of this action, or within such further time as may be allowed by the said Court or by a Judge of the said Court you appear and defend this action by delivering an answer to the said claim pursuant to the rules of the said Court. And take notice that in default of your so doing you must abide by such order as the Court may make against you.

Witness, &c. [as in Form No. 1.]

50 Memorandum.—[Statement and notice when required.]

N.B.—This summons is intended for service within [or out of as the case may require] the jurisdiction and must be served within twelve months from its issue including the day of issue.

FORM

SCHEDULE I.—*continued.*

Rule 159.

FORM 11.

Memorandum of appointment of guardian ad litem.

In the Supreme Court of New South Wales.

Between [*parties*]. 18 . No. 5

I of having been requested to act as guardian *ad litem*
 on behalf of the defendant and having consented so to act, and the requisite
 affidavit having been filed showing that I am a fit person and have no interest adverse
 to that of the said defendant. Now know ye that I am appointed guardian *ad litem* of
 the said 10

The day of

[*Signature of person appointed.*]

Rule 159.

FORM 12.

Affidavit for appointment of guardian ad litem.

In the Supreme Court of New South Wales.

15

Between [*parties*]. 18 . No.

I of make oath and say as follows:—
 A.B. of is a fit and proper person to act as guardian *ad litem* of the
 above-named infant defendant and has no interest in the subject of this action
 or in any way relating thereto or connected therewith adverse to that of the said infant. 20
 Sworn, &c.

Rule 178.

FORM 13.

Notice to be endorsed on every office copy of an order served under Rule 177 of heading "Parties."

In the Supreme Court of New South Wales.

25

Between [*parties*]. 18 . No.

Take notice, that by virtue of the order made in this action with an office copy,
 whereof you have been served, you will from the date of such service be bound by the
 proceedings in this action in the same manner as if you had originally been made a party
 and will be at liberty to attend any further proceedings in this action. 30

Provided and further take notice that within twenty-one days after service of
 such office copy upon you or within such other time as the Court or a Judge may direct
 you may apply to the Court to discharge, vary, or add to the said order.

FORM 14.

Notice of hearing of action.

35

In the Supreme Court of New South Wales.

Between [*parties*]. 18 . No.

To the above-named plaintiffs A.B. and C.D. [*or*] To the above-named
 defendants E.F. and G.H. [*or*] To the above-named defendant J.K. [*or*
otherwise as occasion may require]. 40

The day of

Take notice that this action has been set down in the list for hearing at
 [*place*] on the day of or so soon thereafter as the same can be heard.

[*Signed*]Solicitor for [*or otherwise as the case may require*]. 45

FORM

Rule 260.

SCHEDULE I.—*continued.*

FORM 18.

Memorandum of payment into Court by a defendant.

In the Supreme Court of New South Wales.

Between [*parties*]. 18 . No. 5

Memorandum.—The defendant has paid into Court the sum of pounds in satisfaction of the following items of debt [*or damages or debt and damages*] claimed by the plaintiff and distributed as follows:—

Items of debt [*or damages, or debt and damages*] £ s. d. 10

1. [*Set forth the items consecutively and*2. *the amounts intended to satisfy each.*]

3. &c.

Dated the day of

[*To be signed by the solicitor for the defendant, paying in, or by the defendant himself when not represented by a solicitor.*] 15

[*If the plaintiff's claim is undivided and the money is paid in to satisfy the whole, say simply, the defendant has paid into Court the sum of pounds in satisfaction of the plaintiff's claim.*]

Rule 264.

FORM 19.

Plaintiff's notice accepting money paid into Court. 20

In the Supreme Court of New South Wales.

Between [*parties*]. 18 . No.

Notice.—The plaintiff accepts, in satisfaction of the following items of debt [*or damages, or debt and damages*] claimed by him, the following sums paid into Court by the defendant in respect thereof:— 25

Items of debt [*or damages, or debt and damages*] £ s. d.

1. [*Here set forth the items*2. *consecutively and amounts.*]

3. &c.

Dated the day of 30

[*To be signed by the plaintiff's solicitor, or by the plaintiff himself when not represented by a solicitor.*]

[*If the claim is undivided and the sum paid in is accepted in satisfaction of the whole, say, the plaintiff accepts in satisfaction of his claim the sum of pounds paid into Court by the defendant in respect thereof.*] 35

Rule 268.

FORM 20.

Memorandum of payment into Court by a plaintiff.

In the Supreme Court of New South Wales.

Between [*parties*]. 18 . No.

Memorandum.—The plaintiff has paid into Court the sum of 40 pounds in satisfaction of the following items of debt [*or damages or debt and damages*] for which the defendant has counter-claimed, and distributed as follows:—

Items of debt [*or damages or debt and damages*] £ s. d.

1. [*Set forth the items consecutively*2. *and the amounts intended to satisfy each.*]

3. &c. 45

Dated the day of To

SCHEDULE I—continued.

[To be signed by the solicitor for the plaintiff paying in, or by the plaintiff himself when not represented by a solicitor.]

[If the defendant's counter-claim is undivided, and the money is paid in to satisfy the whole, say, simply the plaintiff has paid into Court the sum of pounds in satisfaction of the counter-claim of the defendant.

FORM 21.

Rule 272.

Defendant's notice accepting money paid into Court by plaintiff.

10 In the Supreme Court of New South Wales.

Between [parties]. 18 . No.

Notice.—The defendant accepts in satisfaction of the following items of debt [or damages or debt and damages] for which he has counter-claimed the following sums paid into Court by the plaintiff in respect thereof:—

15 Items of debt [or damages or debt and damages] £ s. d.

1. [Here set forth the items
2. consecutively and amounts.]
3. &c.

Dated the day of

20 [To be signed by the defendant's solicitor or by the defendant himself when not represented by a solicitor.]

[If the counter-claim is undivided, and the sum paid in is accepted in satisfaction of the whole, say, the defendant accepts in satisfaction of his counter-claim the sum of pounds paid into Court by the plaintiff

25 in respect thereof.]

FORM 22.

Rule 275.

Memorandum of payment into Court by a co-defendant and third party in satisfaction or part satisfaction of the claim of a defendant.

In the Supreme Court of New South Wales.

30 Between [parties]. 18 . No.

Memorandum.—The defendant G.H. and third party L.M. have paid into Court the sum of pounds, in satisfaction of the following items of debt [or damages or debt and damages] claimed against them by the defendant E.F., and distributed as follows:—

35 Items of debt [or damages or debt and damages] £ s. d.

1. [Set forth the items consecutively
2. and the amounts intended to satisfy each.]
3. &c.

Dated the day of

40 [To be signed by the solicitor for the defendant and third party paying in, or by those parties themselves when not represented by a solicitor.]

[If the claim of the defendant claimant is undivided, and the money is paid in to satisfy the whole, say the defendant and third party have paid into Court the sum of pounds, in satisfaction of the claim of the defendant .]

[N.B.—This form may be varied to meet the case of a co-defendant only or third party only paying the money into Court.]

FORM

SCHEDULE I.—continued.

Rule 225.

FORM 23.

Payment into Court by co-defendant and third party to abide the Order of the Court.

N.B.—This form may be varied to meet the case of a co-defendant only or third party only paying the money into Court.

In the Supreme Court of New South Wales.

Between [parties]. 18 . No. 5

Memorandum.—The defendant G.H. and third party L.M. have paid into Court the sum of _____ pounds to abide the order of the Court for the purpose of meeting the contingent claim of the defendant E.F. set forth in his notice of claim.

Dated the _____ day of _____

[To be signed by the solicitor for the parties paying in the money or by the parties 10 themselves when not represented by a solicitor.]

Rule 270.

FORM 24.

Defendant's Notice accepting money paid into Court by a co-defendant and third party, or by a co-defendant only, or by a third party only.

In the Supreme Court of New South Wales. 15

Between [parties]. 18 . No.

Notice.—The defendant E.F. accepts in satisfaction of the following items of debt [or damages or debt and damages] claimed by him against the defendant G.H. and third party L.M. [or against the defendant G.H. or against the third party L.M.] the following sums paid into Court by them [or him] in respect thereof:— 20

Items of debt [or damages or debt and damages] £ s. d.

1. [Here set forth the items
2. consecutively and amounts.]
3. &c.

Dated the _____ day of _____ 25

[To be signed by the solicitor of the accepting defendant or by the accepting defendant himself when not represented by a solicitor.]

[If the claim of the accepting defendant is undivided and the sum paid in is accepted in satisfaction of the whole, say, the defendant E.F. accepts in satisfaction of his claim against the defendant G.H. and the third party L.M. [or against the defendant G.H. or 30 against the third party L.M.] the sum of _____ pounds paid into Court by them [or him] in respect thereof.]

Part II. Order I.
3. Pleadings. Rule 27.

SCHEDULE II.

FRAMES OF PLEADINGS.

Frame of claim. 35

In the Supreme Court of New South Wales.

Between A.B. and C.D. plaintiffs)
and) 18 . No.
E.F., G.H. and J.K. defendants.)

Claim. 40

[State the facts on which the plaintiffs as near as possible in the manner adopted under the Common Law Procedure Act of 1853.]

[Particulars of special damage when necessary should be included in the statement of facts and alleged in a separate paragraph.]

The

SCHEDULE II—continued.

The plaintiffs claim

1. £

[If the sum claimed is divisible, add]

5

Divided as follows :—

Item 1 &c. [set forth the several items of damage or debt numbered consecutively, as for instance :—

Item 1. £ Damages for the trespass

2. £ Damages for the slander

10

[or]

Item 1. £ Principal

2. £ Interest at per cent. from the day of

2. An order restraining the defendant E.F. from &c.

15

3. An order commanding the defendant G.H. to &c. [and so forth or otherwise according to the relief sought].

[Signed]

Frame of answer.

In the Supreme Court of New South Wales.

20

Between A.B. and C.D. plaintiffs

and

E.F., G.H. and J.K. defendants.

18 . No.

The answer of the defendants E.F. and G.H.

25

[State in paragraphs numbered consecutively what allegations in the claim the answering defendants deny what facts they rely on for defence and what objections in law they desire to raise, as for instance :—]

[Signed]

Delivered the day of

30

[The following memorandum is to be appended when the answering defendants are represented by a solicitor whose address or the address of whose firm is not more than three miles from the office of the Prothonotary :—]

35

Memorandum.—The name [or firm] and place of business of these defendants' solicitor is , and such place of business being not more than three miles from the office of the Prothonotary, the above address will be the address for service of these defendants.

[The following memorandum is to be appended when the answering defendants are represented by a solicitor whose place of business or the place of business of whose firm is more than three miles from the office of the Prothonotary :—]

40

Memorandum.—The name [or firm] and place of business of these defendants' solicitor is , but such place of business being more than three miles from the office of the Prothonotary the address for service of these defendants will be

[The following memorandum is to be appended when the defendants defend in person :—]

45

Memorandum.—The place of residence of the defendant, E.F., is , and his occupation

The place of residence of the defendant, G.H., is , and his occupation

The address for service of these defendants is , being within three miles from the office of the Prothonotary.

50

[Endorse the answer as follows :—]

A.B. and another v. E.F. and others. 18. No.

The answer of the defendants, E.F., and G.H.

c 60—E

Frame

SCHEDULE II—continued.

Frame of counter-claim.

[When a defendant does not desire to answer he may deliver a counter-claim without delivering an answer, and the action may be continued between the plaintiffs and such defendant, for the purpose of determining the counter-claim, but the delivery of such counter-claim will not prevent the plaintiff's from proceeding against the defendant, as provided under the heading Default of Pleading.]

In the Supreme Court of New South Wales.

Between A.B. and C.D., plaintiffs, }
and } 18 . No. . 10
E.F., G.H. and J.K., defendants. }

The counter-claim of the defendant, J.K., against the plaintiffs.

[State the facts on which the defendant, J.K., relies, &c., for his counter-claim.]

The defendant, J.K., counter-claims against the plaintiffs.

1. &c. [As in *Frame of Claim mutatis mutandis.*] 15

[Signed]

Delivered the day of

Memorandum.—[In the first, second, or third forms of the memorandum in *Frame of Answer*, according as the defendant is represented by a solicitor, whose place of business or the place of business of whose firm is not more than three miles from the office of the Prothonotary, or represented by a solicitor, whose place of business or the place of business of whose firm is beyond three miles from the office of the Prothonotary, or not represented by a solicitor.]

[Endorse as follows :—]

A.B. and another v. E.F. and others. 18 . No. . 25
The counter-claim of the defendant, J.K., against the plaintiffs.

Frame of notice of claim under subsection (3) of section 62 of the Act.

[As in *Form No. 3 of Schedule I.*]

Frame of reply to a counter-claim.

In the Supreme Court of New South Wales. 30

Between A.B. and C.D., plaintiffs, }
and } 18 . No.
E.F., G.H. and J.K., defendants. }

The reply of the plaintiffs [or of the plaintiff A.B. or as may be] to the counter-claim of the defendants [or of the defendants E.F. and G.H. or as may be]. 35

1. &c. [State in paragraphs numbered consecutively what allegations in the counter-claim the replying plaintiff's deny what facts they rely on for defence to the counter-claim and what objections in law they desire to raise.]

[Signed]

Delivered the day of 40

[Endorse as follows :—]

A.E. and another v. E.F. and others. 18 . No. .

The reply of the plaintiffs [or as may be] to the counter-claim of the defendants [or as may be].

Frame

