

## VANUATU

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### MAGISTRATES' COURTS (CIVIL PROCEDURE) RULES 1976

**Cap. 2**

IN exercise of the powers conferred upon the Chief Justice section 72 of the Magistrates' Courts Regulation, the following Rules are hereby made:-

**Citation.**

1. These Rules may be cited as the Magistrates' Courts (Civil Procedure) Rules 1976.

**Application.**

2. These Rules shall apply in all civil causes or matters to which they extend in any Magistrate's Court in the New Hebrides constituted under section 4 of the Regulation, and are divided into Orders as follows:-

Order	Title
1.	Interpretation.
2.	Forms, Fees, Allowances and Costs.
3.	Computation of Time.
4.	Miscellaneous Provisions.
5.	Representation.
6.	Evidence.
7.	Commencement of Suit.
8.	Service of Process.
9.	Parties.
10.	Particulars of Claim
11.	Appointment of Guardian <u>Ad Litem</u> .
12.	Alteration of Parties.
13.	Discontinuance of Suits
14.	Place of Trial and Institution of Suits.
15.	Amendments.
16.	Admissions.
17.	Pleadings.
18.	Settlement of Issues.
19.	Inquiries and Accounts.
20.	Appearance of Parties.
21.	Arrest of Absconding Defendant.
22.	Interim Attachment of Property.
23.	Preservation of Disputed Property.
24.	Equitable Relief, Counterclaim, Set Off.
25.	Tender.
26.	Discovery and Production of Documents.
27.	Motions and Orders to Show Cause.
28.	Postponement of Hearing.
29.	Non-Attendance of Parties at Hearing.
30.	Proceedings at the Hearing.
31.	Judgment.
32.	Costs.
33.	Enforcement of Orders.
34.	Execution.
35.	Interpleader.

Revocation of  
Rules. G.N.  
200/63 p. 80.

3. The Magistrates' Courts (Fees in Civil Cases) Rules, 1963, are hereby  
revoked.

**ORDER 1**  
**Interpretation**

Interpretation.

1. In these Rules, unless the context otherwise requires -

"advocate" means any legal practitioner entitled to practise in the High Court;

"authorised representative" in relation to a party means a person, not being an advocate, who is, to the satisfaction of the court, authorised by a party to represent him in any cause or matter;

"cause" includes any action, suit or other original proceeding between a plaintiff and a defendant but does not include criminal proceedings by the Crown;

"court" means a Magistrate's Court constituted under section 4 of the Regulation;

"defendant" includes any person served with any writ of summons or process or served with notice of or entitled to attend any proceedings;  
"English" includes pidgin English;

"matter" means any legal proceeding not being a cause; "party" includes every person served with notice of or attending any proceedings, otherwise than as a witness only, although not named on the record;

"plaintiff" includes every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons or otherwise;

"the Regulation" means the Magistrates' Courts Regulation.

Cap. 2

## ORDER 2

## Forms, Fees, Allowances and Costs

- Sealing of writs. 1. No writ or process shall be rendered invalid by lack of sealing in addition to the signature of a Magistrate or clerk of court, as the case may be, unless sealing is specifically prescribed by some law or rule of court.
- Forms. Appendix A. 2. The forms in Appendix A, or forms to the like effect, may be used in all matters, causes and proceedings to which they are applicable, with such variations as circumstances may require:
- Provided that in any proceedings for which forms are not prescribed in these Rules, the Magistrate, or clerk of court, as the case may be, may frame any form required in any particular case using as a guide the appropriate form contained in the High Court (Civil Procedure) Rules, 1964, modified as circumstances may require.
- Affidavits. 3. Where by any rule of court any party to or witness in any cause or matter is required to file an affidavit in any form, such party or witness may appear before the court in which the cause or matter lies and give oral evidence of the particulars required and the record of such evidence shall be sufficient compliance with such rule.
- Fees. Appendix B. 4. The fees specified in Appendix B shall be paid by the party at whose instance they are incurred, and may afterwards be recovered as costs in the cause if the court shall so order:
- Provided that the court may in its discretion, on account of the poverty of any party, or for other sufficient reason, dispense with the payment of any such fees or any part thereof.
- Scale of costs. Appendices C and D. 5. Costs shall be allowed to advocates and taxed in accordance with the scale of costs specified in Appendix C: Provided that unless the court otherwise directs -
- (a) in defended causes or matters in which the subject matter or the amount recovered does not exceed one hundred dollars in value such costs shall be taxed in accordance with the scale specified in Part I of Appendix D; and
- (b) in undefended causes or matters such costs shall be taxed in accordance with the scale specified in Part II of Appendix D.

## ORDER 3

## Computation of Time

- Time. Computation of time shall be in accordance with the

## Cap. 1

provisions of section 65 of the Interpretation and General Clauses Regulation:

Provided that the parties to any cause or matter may by consent enlarge or abridge any time fixed by the court for taking any step, or filing any document, or giving any notice; and where such consent cannot be obtained, either party may apply to the court for an order to effect the object sought to have been obtained with the consent of the other party and such order may be made although the application for the order is not made until after the expiration of the time allowed or appointed.

## ORDER 4

## Miscellaneous Provisions

- Sittings of court.
1. The sittings of the court for the hearing of causes or matters shall ordinarily be in public; but the court may for reason to be specified in the trial record, hear any particular cause or matter or any part thereof in the presence only of the parties thereto with their advocates or other authorised representatives, if any, and the officers of the court.
- Making of orders, etc.
2. Subject to any particular rules, the court may, in all causes or matters, make any interlocutory order or ruling which it considers necessary for doing justice, whether such order or ruling has been expressly requested by the person entitled to the benefit thereof or not.
- Consolidation of cases.
3. Causes or matters pending in the court may be consolidated in the discretion of the court, and the court shall give any directions that may be necessary as to the conduct of such consolidated actions.
- Language and interpretation.
4. (1) The language of every court shall be English, and if in any cause or matter the Magistrate considers that any party thereto or any witness giving evidence therein is incapable of sufficiently understanding the English language he shall, either himself, if he is competent in the language of such party or witness, interpret the proceedings so far as may be necessary, or appoint a fit and proper person to interpret the same.
- (2) Where the Magistrate himself or any public officer acts as interpreter as aforesaid no remuneration shall be payable in respect of the interpretation, but where a person other than the Magistrate or a public officer is the interpreter that person shall be entitled to payment of the prescribed fee as remuneration for his services.

(3) The prescribed fee for interpretation shall in all cases be payable in the first place by the plaintiff and shall be taxed as costs in the cause.

(4) Before interpreting at any sessions of the court, the interpreter, not being the trial Magistrate himself, shall swear or make affirmation in the following form:-

"I swear by Almighty God (or solemnly, sincerely and truly declare and affirm) that I will do my best to interpret and explain truly to the court and witnesses all such matters as I shall be required to interpret and explain.

So help me God (omit if affirmation)."

Receipts.

5. (1) When any fee is or any costs are paid to the court, the Magistrate or the clerk of court shall issue a receipt therefor in the name of the person paying such fee or costs, as the case may be.

(2) When any fee is paid in respect of any document the Magistrate or the clerk of court shall endorse a note of the amount of the fee paid and the number of the receipt issued therefor upon the original and upon any filing copy of such document.

Court registers.

6. There shall be kept in every court a register in such form as the Registrar of the High Court may from time to time direct, in which all causes or matters instituted in the court shall be entered and numbered consecutively in each year, according to the order in which the same shall be commenced; and the particulars of each cause or matter, and a note of the steps and proceedings therein shall be entered in such register in such manner as the Registrar of the High Court may direct.

Application of High Court Rules.

7. In the event of there being no provision in these Rules to meet any particular circumstance arising in any cause or matter before the court, the court and the parties shall be guided by any relevant provision contained in the High Court (Civil Procedure) Rules, 1964.

Power to enlarge or abridge time.

8. A court or a Judge shall have power to enlarge or abridge any time prescribed by these Rules or fixed by any order in any cause or matter for the doing of any act or taking any proceedings upon such terms, if any, as the justice of the case may require; and any such enlargement may be ordered although the application therefor has not been made until after the expiration of the time prescribed or allowed:

Provided that when the time for delivering any pleading or document or filing any affidavit, answer to document or

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the doing of any act has been fixed or limited by any of these Rules or by any direction or order of any court or any Judge, the costs of the application to extend such time and of any order made therein shall be borne by the party making such application unless the court or the Judge shall otherwise order.

## ORDER 5

## Representation

Change of advocate during proceedings. 1. A party suing or defending by an advocate in any cause or matter shall be at liberty at any stage of the proceedings to change his advocate without an order of the court for that purpose upon notice in writing being filed with the Magistrate or the clerk of the court in which the cause or matter may be proceeding; but until such notice is filed, the former advocate shall be deemed to be the advocate of the party until final judgment unless allowed by the court for any special reason to cease from acting;

Provided that no such advocate shall be bound, unless under express agreement or re-engaged, to take any proceedings in relation to any appeal from such judgment.

Lay representation.

2. With the leave of the Magistrate a party to any cause or matter may be represented or assisted at every or any stage of the proceedings by some other person not being an advocate, and any undertaking given by such person to the court or order or direction communicated by the court to such person shall be as binding upon such party for all purposes of the proceedings as though it were given by or communicated to his advocate.

## ORDER 6

## Evidence

Exclusion of witnesses.

1. On the application of any party to any cause or matter, or of its own motion, the court may order witnesses on both sides to be kept out of court both before and after they have given their evidence; but this rule shall not extend to the parties themselves or to their professional or authorised representative although intended to be called as witnesses.

Preventing communication with witnesses.

2. The court may during the trial of any cause or matter take such steps as it considers necessary and proper for preventing communication with witnesses who are within the court or its precincts awaiting examination or having been examined.

- Documentary evidence. 3. Any person, whether a party or not, in any cause or matter may be summonsed to produce a document without being summonsed to give evidence and, if he cause such document to be produced in court, the court may dispense with his personal attendance.
- Affidavits evidence. 4. Before an affidavit is used in the court for any purpose the original shall be filed in the court, and the original or an office copy thereof shall alone be recognised for any purpose in the court.
- Affidavits not to be accepted in certain cases. 5. No affidavit shall be admitted if it is proved to have been sworn before a person on whose behalf the same is tendered or before his advocate or other authorised representative or before a partner or clerk of his advocate or said representative.
- Affidavits defective in form. 6. The court may permit an affidavit to be used, notwithstanding that it is defective in form according to these Rules, if the court is satisfied that it has been sworn before a person duly authorised to administer oaths.
- Amendment and reswearing of affidavit. 7. A defective or erroneous affidavit may be amended and resworn with the leave of the court on such terms as to time, costs or otherwise as the court may direct.
- Matter not to be included in affidavit. 8. No affidavit shall contain extraneous matter by way of objection or prayer or legal argument or conclusion.
- Contents of affidavit. 9. Every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness deposes either of his own personal knowledge or from information which he believes to be true.
- Grounds of belief to be stated. 10. When a witness deposes to his belief in any matter of fact, and his belief is derived from a source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances upon which his belief is based.
- Informant to be named. 11. When the belief of a deponent is derived from information received from another person, the name of his informant shall be stated and reasonable particulars shall be given respecting the informant and the time, place and circumstances of the information.
- Costs of certain affidavits. 12. The costs of any affidavit contravening any of the provisions of rules 8, 9, 10 or 11 shall be paid by the party filing the same.
- Rules for taking affidavits. 13. The following rules shall be observed by commissioners for oaths and other persons (in this rule referred to as "commissioner") before whom affidavits are sworn:-
- (a) Every affidavit taken in any cause or matter shall be headed in the court and in the cause or matter;
  - (b) It shall state the full name, trade or profession or

- other description and place of residence of the deponent;
- (c) It shall be written in the first person and divided into convenient paragraphs numbered consecutively;
- (d) Any erasure, interlineation or alteration made before the affidavit is sworn shall be attested by the commissioner who shall affix his signature or initials in the margin immediately opposite the erasure, interlineation or alteration;
- (e) Where an affidavit proposed to be sworn is illegible or difficult to read, or is in the opinion of the commissioner so written as to facilitate fraudulent alteration, he may refuse to swear the deponent and require the affidavit to be written in an unobjectionable manner;
- (f) The affidavit shall be signed by the deponent (or if he is illiterate marked with his thumbprint or his mark) in the presence of the commissioner;
- (g)(i) The jurat shall be written without erasure, interlineation or alteration (unless the same be signed or initialled as aforesaid) immediately at the foot of the affidavit and towards the left hand side of the paper and shall be signed by the commissioner;
- (ii) It shall state the date of the swearing; and the place where it is sworn;
- (iii) It shall state that the affidavit was sworn before the commissioner;
- (iv) Where the deponent is illiterate or blind it shall state the fact and also state that the affidavit was read over (or translated into his own language in the case of a deponent not having a sufficient knowledge of English) and that the deponent appeared to understand it;
- (v) Where the deponent makes his thumbprint or mark instead of signing, the jurat shall state that fact and that the thumbprint or mark was made in the presence of the commissioner;
- (vi) Where two or more persons join in making an affidavit, their several names shall be written in the jurat, and it shall appear by the jurat that each of them has been sworn to the truth of the several matters stated by him in the affidavit;
- (h) The commissioner shall not allow the affidavit when sworn to be altered in any manner without being resworn;



- (i) If the jurat has been added and signed, the commissioner shall add a new jurat on the affidavit being resworn and in the new jurat he shall mention the alteration;
- (j) The commissioner may refuse to allow the affidavit to be resworn and may require a fresh affidavit;
- (k) The commissioner may take without oath the declaration of any person affirming that the taking of any oath whatsoever is, according to his religious belief or conscience, unlawful or who, by reason of immature age or want of religious belief, ought not, in the opinion of the commissioner, to be permitted to make a sworn affidavit; and in any such case the commissioner shall record in the attestation the reason why such declaration was taken without oath.

Objections  
to evidence.

14. Any objection to the admissibility of evidence by a party to any cause or matter shall be taken at the time when the evidence is led:

Provided that an appellate court may, in its discretion, entertain any objection to the admission of evidence received in the court below although no objection was raised in that court at the time when the evidence was admitted or at all.

Objections  
to questions.

15. Where a question proposed to be put to a witness is objected to by either party to any cause or matter, the court, unless the objection appears frivolous, shall, if so required by such party, record a note of the question and the objection and shall make and record its ruling whether or not the question may be put, and if the question is allowed the court shall record the answer thereto.

Marking of  
rejected  
documents.  
Method of  
taking  
evidence.

16. Where any document tendered in evidence in any cause or matter is rejected by the court the document shall be marked as having been so tendered and rejected.

17. In the absence of any agreement between the parties, and subject to these Rules, the witnesses at the trial of any cause or matter shall be examined orally and in open court; but the court may at any time for sufficient reason to be recorded in the record direct that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing on such conditions as the court may consider just, or that any witness, whose attendance at the court ought for sufficient reason to be dispensed with, be examined before an officer of the court or other proper person:

Provided that where it appears to the court that the other party bona fide requires the production of a witness for cross-examination, and that such witness can be produced

before the court, an order shall not be made authorising the evidence of such witness to be given by affidavit.

Admission  
of evidence  
by affidavit.

18. In any cause or matter the court may in its discretion if the interests of justice appear so to require, for reasons to be recorded in the record, admit an affidavit in evidence although it is shown that the party against whom the affidavit is tendered has had no opportunity to cross-examine the person making the affidavit.

Evidence on  
commission.

19. The court may in any cause or matter in which it appears necessary in the interests of justice make an order for the examination of any witness before any officer of the court or other proper person and may order any deposition so taken to be filed in the court and may permit any party to the cause or matter to give such deposition in evidence on such terms, if any, as the court may direct:

Provided that where it is desired that evidence be taken on commission outside the New Hebrides, the court shall make application to the High Court or to a Judge thereof for such evidence to be obtained; and the High Court or such Judge may order that the proceedings be transferred to the High Court for that purpose.

The taking  
of evidence  
on commission.

20. Evidence on commission shall be taken, as nearly as may be, as evidence at the hearing of a suit, and then the record of the evidence taken shall be read over to the witness and be signed by him and countersigned by the commissioner; and if the witness refuses to sign, the commissioner shall add a note of his refusal and the recorded statement may be used as if the witness had signed it.

Evidence  
before suit  
instituted.

21. Evidence may be taken in the manner prescribed by rule 20 on the application ex parte to a court of any person before a suit is instituted where it is shown on oath to the satisfaction of the court that the person applying has good reason to anticipate that a suit will be instituted against him in the court and that some person within the jurisdiction at the time of the application can give material evidence respecting the subject matter of the suit apprehended but that he is about to leave the jurisdiction or that, from some other cause, the person applying will lose the benefit of his evidence if it be not at once taken; and the evidence so taken may be used at the subsequent hearing.

Provided that the court may impose such terms or conditions with reference to the examination of such witness and as to the admission of such evidence as the court may consider appropriate to ensure that justice be done.

Facilities for proving deed or other instrument.

22. Any party wishing to give in evidence any deed or other instrument which shows upon the face of it that it has been duly executed may deliver to the opposite party, not less than four days before the date fixed for the hearing of the suit, a notice in writing specifying the date and nature of and the parties to such deed or other instrument and requiring the opposite party to admit that the same was executed as it purports to have been saving all just exceptions as to its admissibility, validity and contents; and if, at or before the hearing of the suit, the party so notified shall refuse or neglect to give such admission, the court may adjourn the hearing to enable the party tendering such deed or other instrument to obtain proof of its execution and, upon production of such proof, the court may order that the party refusing or neglecting to give the admission required shall pay the costs of such adjournment and proof whether he be the successful party in the action or not.

## ORDER 7

## Commencement of Suit

- Commencement by writ of summons.
1. Every suit shall be commenced by a writ of summons which shall be issued by the Magistrate or the clerk of court upon application being made therefor either orally or in writing to the court.
- Contents of writ of summons. Appendix A. Forms 1 and 2.
2. The writ shall contain the name, place of residence and occupation, if any, of the plaintiff and of the defendant or, if more than one, of each of them so far as they can be ascertained, and the date (called the "return day") and place of hearing; and there shall be endorsed on the writ particulars of the claim, signed by the plaintiff or his advocate or other authorised representative, which shall state concisely and clearly the subject matter of the claim and the relief sought.
- Date of writ of summons.
3. Every writ of summons shall bear the date of the day upon which it is issued.
- Writ of summons to be void if altered.
4. Any alteration of a writ of summons without the leave of the court shall render such writ void.
- Time for service of writ.
5. Every writ of summons shall be served within such period as the court may endorse upon the writ, not being less than seven days.

Provided that the court may from time to time either on application of either party or of its own motion extend the period of service of a writ of summons which has not been

served in time or for other sufficient reason.

### ORDER 8

#### Service of Process

Service to  
be through  
court.

1. (1) Every writ of summons, petition, notice, order or other document of which service is required shall be served through the court unless a Magistrate directs that service shall be arranged by the advocate of the party requiring service to be effected, or his authorised representative or some other person:

Provided that in no case may the plaintiff in any action serve or be directed to serve a writ of summons himself upon a defendant thereto.

(2) Nothing in paragraph (1) shall be construed to prevent an officer of any company, association, club or other organisation, whether corporate or unincorporate, from personally serving a writ of summons upon any defendant to an action brought against him by such company, association, club or other organisation.

(3) Any person serving any writ of summons, petition, notice, order or other document shall, on request of the party served, endeavour to the best of his ability to explain to such party the nature of the document served.

2. Proof of service may be either by oral or by affidavit evidence:

Provided that where the service is effected by a police officer, bailiff or other officer of the court, a declaration in writing stating the date and time of service may be accepted as sufficient evidence of service until the contrary be shown, and such declaration may be endorsed on the file copy of the summons.

3. Unless in any case the court considers it just and expedient otherwise to direct, service shall be personal, that is to say, the document to be served shall be delivered to the person to be served himself.

4. Service shall be completely effected by the delivery of a duplicate or attested copy of any document without the exhibition of the original.

5. Where it appears to the court, either after or without an attempt at personal service, that, for any reason, personal service cannot be conveniently effected, the court may direct that service be effected -

(a) by delivery of the document to some adult inmate at the usual or last known place of residence or business of the person to be served; or

Proof of  
service.  
Appendix A.  
Form 3.

Appendix A.  
Form 4.  
Service to  
be personal.

Original need  
not be shown.

Substituted  
service.

- (b) by delivery thereof to some person being an agent of the person to be served, or to some other person upon it being proved that there is a reasonable probability that the document will, through that agent or other person, come to the knowledge of the person to be served; or
- (c) by advertisement in the Gazette or in any "news letter" or newspaper circulating in the jurisdiction of the court; or
- (d) by notice posted at the court house or some other place of public resort in the district wherein the proceeding in respect of which the service is made is instituted, or at the usual or last known place of residence or business of the person to be served; or
- (e) by sending the document by registered prepaid post addressed to the person to be served at his last known place of residence or business; or
- (f) by any combination of the foregoing methods:  
 Provided that if service is to be effected by method (c) or (e) aforesaid, the party requiring the service to be effected shall, before service, pay to the court the cost of the advertisement, postage or other special expense involved.

Power to vary an order for service. 6. An order for service may be varied from time to time with respect to the method of service directed by the order.

Dies non. 7. Service in civil proceedings shall not be made on a Sunday, Good Friday or Christmas Day.

Service on partners and companies. 8. (1) Where partners are sued in the name of their firm, the writ of summons or other document shall be served either upon any one or more of the partners or at the principal place of business of the partnership upon any person appearing to be over the age of eighteen years and to have, at the time of service, the control or management of the partnership business; and such service shall be deemed good service upon the firm.

(2) Where a writ of summons is issued against a firm, every person upon whom it is served shall be informed by notice in writing given at the time of the service, or endorsed on the writ of summons, whether he is served as a partner or as a person having the control or management of the partnership business or in both such capacities; and in default of such notice, the person served shall be deemed to be served as a partner.

(3) Service on a company shall be effected in accordance

## Cap. 9

with the provisions of the Companies Regulation relating to service of documents.

## Service on a prisoner.

9. Where the person to be served with a writ of summons or other document is a prisoner in a prison, it shall be sufficient service to deliver the writ or other document at the prison to the officer for the time being in charge of the prison, who shall cause the same to be served on the prisoner.

## Service on person employed in asylum or prison.

10. Where the person to be served is employed or dwells in any mental hospital or other public asylum or in a prison, it shall be sufficient service to deliver the writ of summons or other document to be served to the person in charge of such hospital, asylum or prison, who shall cause the same to be served on such person.

## Service where defendant resides out of but carries on business within jurisdiction.

11. Where the suit is against a defendant residing outside the New Hebrides but carrying on business within the New Hebrides in his own name, or under the name of a firm, through an authorised agent and such suit is limited to a cause of action which arose within the jurisdiction of the court, the writ or other document may be served by giving it to such agent, and such service shall be deemed for all purposes to be a personal service upon the defendant.

## Service out of jurisdiction.

12. Service out of the New Hebrides of any writ of summons or other document may be allowed by the court —

- (a) whenever the whole or any part of the subject matter of the suit is land or stock or other property situated within its jurisdiction, or any act, deed, or thing affecting such land, stock or property; or
- (b) whenever the contract which is sought to be enforced or rescinded, dissolved, annulled or otherwise affected in any such suit, or for the breach whereof damages or other relief are or is demanded in such suit, was made or entered into or is to be performed wholly or in part within its jurisdiction; or
- (c) whenever it is alleged that there has been a breach within its jurisdiction of any contract wherever made; or
- (d) whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situated within the jurisdiction.

## application for leave to serve out of New Hebrides.

13. Every application for leave to serve a writ of summons or other document upon a defendant out of the New Hebrides shall be supported by evidence by affidavit or otherwise, showing in what place or country the defendant is or is

probably to be found, and the grounds upon which the application is made.

Order to  
prescribe  
method of  
service.

14. Any order giving leave for service out of the New Hebrides shall prescribe the method of service to be employed and the date of the hearing, and the court may receive an affidavit of such service having been effected as prima facie evidence thereof.

Service in  
another  
District.

15. Where a writ of summons or other document is required to be served in a District of the New Hebrides other than that in which the court issuing the writ or other document exercises jurisdiction, the clerk of court from whose office the writ or other document is issued may, if the Magistrate so directs, transmit the same and a copy thereof, together with any other documents and copies thereof, to the clerk of court of that District for service.

Where service  
is refused.

16. Where the officer or person charged with the service of any writ of summons or other document on any person is prevented by the refusal of such person to receive the writ or other document, or by violence or threats of such person or of any other person acting in concert with him, from personally serving the writ or document, it shall be sufficient service to inform the person to be served of the nature of the writ or document, and to leave the same as near as practicable to such person.

Time for  
service.

17. (1) Every writ of summons shall be served within six months from the date of issue thereof and if not served within such period shall thereafter be of no effect unless renewed as prescribed by paragraph (2).

(2) The court may, if it thinks fit, on application made by the plaintiff not less than seven days before the expiry of the period of six months prescribed by paragraph (1), on ex parte notice of motion supported by oral or affidavit evidence showing the reason why service has not been effected, renew a writ of summons for one further period of six months; and any writ of summons so renewed and not served within such extended time shall thereafter be of no effect.

Witness  
summons.  
Appendix A.  
Form 5.

18. (1) Where any party to any suit or matter requires a person to be summonsed as a witness before the court in such suit or matter or to produce at the hearing in court any document or thing in his possession or power, the court shall, on application by the party, issue a witness summons:

Provided that unless it appears at the time of such application that there is a reasonable probability that the service of the summons can be effected not less than three days before the return day, the summons shall not be issued except on the

express direction of a Magistrate.

(2) The summons shall be served on the witness personally, if possible, or by one of the other methods prescribed in this Order and in any event as soon after the issue of the summons as is reasonably practicable.

(3) The party applying for a witness summons may be required, before the issue of the summons and within a period to be fixed by the court, to pay into court such sum of money as appears to a Magistrate to be sufficient to defray the travelling expenses of the witness to be summonsed in passing to and from the court in which he is required to attend together with one day's attendance; and the sum so paid into court shall be tendered to the witness at the time of the service of the summons, or, if the court so directs, the witness to be summonsed may be notified that the sum so paid into court will be paid out to him on his attendance.

#### ORDER 9

#### Parties

1. If any plaintiff or any defendant is sued in any representative capacity it shall be expressed on the writ of summons; and the court may order any of the persons represented to be made parties to the action either in lieu of or in addition to the previously existing parties.

2. Where a person has jointly with other persons an alleged ground for instituting a suit, all those other persons shall ordinarily be made parties to the suit:

Provided that where more persons than one have the same interest in one suit, the court may direct that one or more of such persons shall be authorised to sue or to defend in such suit for the benefit of or on behalf of all parties so interested.

3. Where a person has a joint and several demand against two or more persons, either as principals, sureties or partners, it is not necessary for him to bring before the court as parties to the suit concerning that demand all the persons liable thereto, and he may proceed against any one or more of them severally or jointly and severally, and where a defendant claims contribution, indemnity or other remedy or relief over against any third person, he may apply to have such third person made a party to the suit.

4. (1) If it appears to the court at or before the hearing of a suit that all the persons who may be entitled to, or who claim some share or interest in, the subject matter of the suit, or who may be likely to be affected by the result thereof, have not been made parties, the court may adjourn

Suit on  
behalf of  
others.

Joint ground  
of action.

Joint and  
several  
demand.

Non-joinder  
or misjoinder  
of parties.



the proceedings to a future date to be fixed by the court and direct that such persons shall be made parties to the suit either as plaintiffs or defendants, as the case may be; and in every such case the court shall issue a notice to such persons which shall be served in the manner prescribed in these Rules for the service of a writ of summons or in such other manner as the court may think fit to direct, and on proof of the due service of such notice the person so served, whether he shall have appeared or not, shall be bound by all proceedings in the cause:

Provided that a person so served who fails to appear within the time limited by the notice for his appearance may, at any time before judgment, apply to the court for leave to appear, and such leave may be granted upon such terms, if any, as the court may think fit.

(2) The court may, at any stage of the proceedings and on such terms as appear to the court to be just, order that the name of any party, whether as plaintiff or defendant, improperly joined be struck out.

(3) No suit shall be defeated by reason of non-joinder or mis-joinder of parties.

Proceedings  
by or against  
partners.

5. Any persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms, if any; and any party to an action may, in such case, apply to the court for a statement of the names of the persons who are co-partners in any such firm to be furnished in such manner and be verified on oath or otherwise as the court may direct.

Distinct  
causes of  
action in  
one writ.

6. In any case in which any writ of summons states two or more distinct causes of action by or against the same parties and in the same rights, the court may, either before or at the hearing, if it appears inexpedient to try the separate causes of action together, order that the trials be had separately, and may make such order as to adjournment or costs as justice requires.

Misjoinder  
of actions.

7. In any case in which a writ of summons states two or more distinct causes of action but not by or against the same parties or by or against the same parties but not in the same rights, the writ of summons may, on application by any defendant, or by the court of its own motion, be amended or dismissed, as justice may require.

0.10, 0.11, r.1.

ORDER 10

Particulars of Claim

Particulars  
of claim.

1. (1) It shall be sufficient for the plaintiff to state his claim in the writ of summons briefly in a general form, but he may deliver to the clerk of court, at the time of making application for the writ of summons, particulars of his demand in any form which shall give the defendant reasonably sufficient information as to details of his claim.

(2) Whenever the plaintiff shall deliver such particulars, he shall also deliver to the clerk of court as many duplicates thereof as there are defendants and such particulars shall be served with the writ of summons.

Provided that if the plaintiff is illiterate or in need of assistance the clerk of court may assist him in drawing such particulars for him.

Further  
particulars.

2. The court may, on application of a defendant or of its own motion, order that further and better particulars of any claim be submitted to the court for service upon the defendant.

Judgment

not to

exceed claim.

3. The plaintiff shall not, at the hearing, obtain judgment for any sum exceeding that stated in the particulars of his claim except for subsequent interest and the costs in the cause notwithstanding that the sum claimed in the writ of summons for debt or damages may exceed the sum stated in the particulars.

Amendment of

particulars

before trial.

4. Particulars of claim shall not be amended except by leave of the court, but the court may on any application for leave to amend grant such leave if it appears to the court that the defendant will not be prejudiced by the amendment; and the court may refuse leave or grant the same on such terms as to notice, adjournment or costs as appears to the court to be just.

Amendment of

particulars

at trial.

5. Any variance between the items contained in the particulars and the items proved at the hearing may be amended at the hearing, either at once or on such terms as to notice, adjournment or costs as the court may consider just.

ORDER 11

Appointment of Guardian Ad Litem

Court may  
appoint  
guardians  
ad litem  
in certain  
cases.

1. Where, on default of a defendant in answering or otherwise defending a suit after service of the writ of summons, it appears to the court that the defendant is an infant, or a person of weak or unsound mind so that he is unable by himself to defend the suit, the court may, if it thinks fit, on the application of the plaintiff or of its own motion,

0.11, rr. 2-5; 0.12, rr 1-3

Notice of appointment of guardian ad litem.

appoint by order some fit person to be guardian ad litem of the defendant for the purposes of the suit and by whom the defendant may defend it.

2. Before an order under rule 1 is made the court shall cause such reasonable notice as it thinks fit to be served upon and, so far as may be, explained to the person in whose interests the guardian is to be appointed.

Suits by infants and persons of weak mind. Guardian not liable for costs. Power to set aside judgment where no guardian appointed.

3. Infants and persons of weak or unsound mind may sue as plaintiffs by their committees or next friends on such terms as to the liability for costs and otherwise of such committees or next friends as the court shall consider just.

4. A guardian ad litem of an infant or a person of weak or unsound mind shall not be personally liable for any costs not occasioned by his own negligence or misconduct.

5. Where a judgment has been obtained or an order made against any defendant who was at the time an infant or a person of weak or unsound mind without a guardian ad litem having been appointed, the court or a Magistrate may set aside the judgment or order and direct a new trial or make such other order as the court or Magistrate may think fit.

#### ORDER 12

##### Alteration of Parties

On change of interest court may make an order enabling action to proceed.

1. Where, after the institution of a suit, any change or transmission of interest occurs in relation to any party thereto, or if any party to the suit dies or becomes incapable of carrying on the suit, or the suit in any other way becomes defective or incapable of being carried on, any person interested may apply to the court for such order as may be necessary for curing the defect or for enabling or compelling proper parties to carry on the proceedings:

Provided that any person served with such an order may, within such time as the court in the order shall direct, apply to the court to discharge or vary the order.

Death of a party.

2. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives.

Cause of action survives to surviving plaintiffs or defendants.

3. If there be two or more plaintiffs or defendants and one of them die and if the cause of action survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, as the case may be, the suit shall proceed at the instance of such surviving plaintiff or plaintiffs or against such surviving defendant or defendants.

Cause of ac- 4. If there be two or more plaintiffs and one of them dies,  
tion surviving and if the cause of action shall not survive to the surviving  
to surviving plaintiff or plaintiffs alone, but shall survive to them and  
plaintiff and to the personal representative of the deceased plaintiff  
personal rep- jointly, the court may, on the application of the personal  
resentative representative of the deceased plaintiff, enter the name of  
of deceased such representative in the suit in the place of such  
plaintiff. deceased plaintiff, and the suit shall proceed at the  
instance of the surviving plaintiff or plaintiffs and such  
personal representative of the deceased plaintiff. If no  
application shall be made to the court by any person claiming  
to be the personal representative of the deceased plaintiff,  
the suit shall proceed at the instance of the surviving  
plaintiff or plaintiffs; and the personal representative of  
the deceased plaintiff shall, after receipt of notice to  
appear, be interested in and bound by the judgment given in  
the suit in the same manner as if the suit had proceeded at  
his instance conjointly with the surviving plaintiff or  
plaintiffs, unless the court shall see cause otherwise to  
direct.

Death of 5. In the case of the death of a sole plaintiff, or sole  
sole surviving plaintiff, the court may, on the application of the  
plaintiff. personal representative of such plaintiff, enter the name of  
such representative in the place of such plaintiff in the  
suit and the suit shall thereupon proceed; but if no such  
application shall be made to the court within what the court  
may consider a reasonable time by any person claiming to be  
the personal representative of the deceased sole plaintiff  
or sole surviving plaintiff, it shall be competent for the  
court to make an order that the suit shall abate and to award  
to the defendant the reasonable costs which he may have  
incurred in defending the suit, such costs to be recoverable  
from the estate of the deceased sole plaintiff or sole  
surviving plaintiff as the case may be; or the court may, if  
it thinks proper and upon the application of the defendant  
and upon such terms as to costs as may to the court seem fit,  
make such order for bringing in the personal representative  
of the deceased sole or sole surviving plaintiff and for  
proceeding with the suit in order to reach a final determin-  
ation of the matters in dispute, as may to the court appear  
just in all the circumstances of the case.

Dispute as to 6. If any dispute arises as to who is the personal repre-  
personal sentative of a deceased plaintiff, the court may either stay  
representative. the proceedings until the fact has been duly determined in  
another action or decide, before the hearing of the suit, who

shall be admitted to be such representative for the purpose of prosecuting the suit.

Death of  
one of  
several  
defendants  
or of sole  
surviving  
defendant.

7. If there be two or more defendants and one of them dies, and the cause of action shall not survive against the surviving defendant or defendants alone, and also in the case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make an application to the court specifying the name, description and place of residence of any person whom the plaintiff alleges to be the personal representative of such deceased defendant and whom he desires to be made the defendant in his stead; and the court shall thereupon enter the name of such person in the suit in the place of such deceased defendant, and shall issue a summons for him to appear, on a day to be therein specified, to defend the suit: and the case shall thereupon proceed in the same manner as if such person had originally been made a defendant and had been a party to the former proceedings in the suit.

Bankruptcy  
of plaintiff.

8. The bankruptcy of the plaintiff in any suit which the assignee or trustee might maintain for the benefit of the creditors shall not be a valid objection to the continuance of the suit unless the assignee or trustees shall decline to continue the suit and to give security for the costs thereof within such reasonable time as the court may order; and if the assignee or trustee neglect or refuse to continue the suit and to give security for the costs within the time limited by the order, the defendant may, within twenty-one days after such neglect or refusal, plead the bankruptcy of the plaintiff as a reason for abating the suit and the court shall strike out the suit accordingly.

#### ORDER 13

##### Discontinuance of Suits

Discontinuance  
of suit.

1. (1) If, before the date fixed for the hearing, the plaintiff wishes to discontinue any suit against all or any of the defendants thereto, or to withdraw any part of his alleged claim, he shall give notice in writing of discontinuance or withdrawal to the Magistrate or the clerk of court and the same shall be served upon every defendant as to whom he desires to discontinue or withdraw. After receipt of such notice such defendant shall not be entitled to any further costs with respect to the matter so discontinued or withdrawn than those incurred up to the receipt of such notice unless the court shall otherwise order; and such defendant may apply ex parte for an order against the

plaintiff for the costs incurred before the receipt of such notice and for attending the court to obtain the order. Such discontinuance or withdrawal shall not be a defence to any subsequent suit.

**Discontinuance after date fixed for hearing.** (2) If, after the date fixed for the hearing, the plaintiff desires to discontinue any suit or to withdraw any part of his alleged claim, or if a defendant desires to discontinue or withdraw a counterclaim or any part thereof, such discontinuance or withdrawal may, in the discretion of the court, be allowed on such terms as to costs and as to any subsequent suit or otherwise as the court may consider just.

**Stay of subsequent suit.** 2. If any subsequent suit is instituted before payment of the costs of a discontinued suit for the same or substantially the same cause of action, the court may order a stay of such subsequent suit until the costs of the discontinued suit have been paid.

#### ORDER 14

##### Place of Trial and Institution of Suits

**Place of trial.** Subject to any law respecting transfer of suits, the place for trial and the institution of any cause or matter shall be regulated as follows:-

- (a) All suits arising out of the breach of any contract shall be commenced and determined in the court having jurisdiction over the place in which such contract ought to have been performed, or in which the defendant, or one of the defendants, resides or carries on business;
- (b) Any suit other than a suit founded on contract may be commenced and determined in the court having jurisdiction over the place in which the defendant, or one of the defendants, resides or carries on business;
- (c) Where any suit shall have been commenced in the wrong court, and whether or not the defendant shall plead specially in objection to the jurisdiction, the court may -
  - (i) order the proceedings to be struck out; or
  - (ii) report to the High Court, pursuant to the provisions of section 35 of the Regulation, the pendency of the proceedings.

0.15: 0.16

ORDER 15

Amendments

Clerical mistakes and accidental omissions. General power to amend.

1. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or upon application by any party to the proceedings.

2. The court may at any time, and on such terms as to costs or otherwise as the court may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

ORDER 16

Admissions

Notice of admissions.

1. Any party to a suit may give notice, by his own statement orally or in writing, that he admits the truth of the whole or any part of the claim or demand stated in the writ of summons or particulars of claim, defence or statement of any other party.

Notice to admit. Appendix A. Form 6.

2. Any party may apply to the court either orally or in writing to give notice to any other party to admit, saving just exceptions, any document or fact.

Cost of refusal to make reasonable admissions.

3. In case of refusal or neglect to admit after notice, the costs of proof of the document or fact shall be paid by the party refusing or neglecting to admit, whatever the results of the suit, unless the court is satisfied that such refusal or neglect to admit was reasonable in all the circumstances.

Admissions by defendants.

4. If any defendant shall sign a statement admitting the amount claimed in the writ of summons or any part of such amount, the court, if it is satisfied as to the genuineness of the signature of the person by whom the statement was signed and unless it sees good reason to the contrary, shall, in the case of the whole amount being admitted, enter judgment for the plaintiff for that amount or, if part of the amount is admitted and the plaintiff consents to a judgment being entered for such part, enter judgment for such part, but if the plaintiff does not consent to the entry of judgment for the admitted part only, the court shall receive such statement in evidence as an admission without further proof.

ORDER 17  
Pleadings

Court may  
order plead-  
ings to be  
filed.

1. Suits shall ordinarily be heard and determined in a summary manner without pleadings, but where it appears to the court, for reasons recorded in the minutes, that the nature and circumstances of any case render it expedient in the interests of justice to do so, the court, at any stage of the suit, either before or at the hearing, may order the plaintiff to file a written statement of his claim and may likewise order the defendant to file a written answer or statement of his defence, but the filing of a statement of claim will not necessitate, unless the court so directs, that an answer or defence shall also be filed.

Assistance to  
illiterate  
parties.

2. Where the court considers it desirable in the interests of justice that any statement of the parties to the suit or either of them should be reduced into writing but it appears that such party or parties is or are illiterate or in need of assistance, the court may direct the clerk of the court to assist in the drawing up of such statement, and, after verifying the statement so prepared by oral examination of the party making it, where necessary, the court may order that such statement be filed as a pleading.

Rules as to  
pleadings.

3. Whenever any pleading is ordered to be filed, the following rules shall be observed:-

(1) Every pleading shall contain a statement of all the material facts on which the party pleading relies, but not the evidence by which such facts are to be proved, and shall be divided into consecutively numbered paragraphs each containing, as nearly as may be, a separate allegation;

(2) The facts shall be alleged positively, precisely and distinctly and as briefly as is consistent with a clear statement;

(3) Every statement of claim shall state specifically the relief the plaintiff claims either simply or in the alternative, and may also ask for general relief, and the same rule shall apply to any counterclaim made or relief claimed by the defendant in his statement of defence;

(4) Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly; and the same rule shall apply where the defendant relies upon several distinct grounds of set-off or counterclaim founded upon separate and distinct facts;



(5) The defendant's pleadings shall deny all such material allegations in the statement of claim as the defendant intends to deny at the hearing; every allegation of fact not denied specifically or by necessary implication or stated to be not admitted shall be taken as established at the hearing;

(6) It shall not be sufficient to deny generally the facts alleged in the statement of claim, but the defendant must deal specifically with each allegation of fact, either admitting or denying the truth of each such allegation or stating that he does not know whether or not such allegation is true;

(7) When a party denies an allegation of fact he must not do so evasively but must answer the point of substance, and when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given;

(8) The defendant in his answer shall admit such material allegations in the statement of claim as he knows to be true or wishes to be taken as admitted, and such allegations may be taken as established without further proof;

(9) The answer must allege any fact not stated in the statement of claim on which the defendant relies in his defence as establishing, for instance, fraud on the part of the plaintiff, or showing that the plaintiff's right to recover, or to any relief capable of being granted on the statement of claim, has not yet accrued or is released or barred or otherwise gone;

(10) Where the defendant seeks to rely upon any facts as supporting a right of set-off or counterclaim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counterclaim and shall set out the particulars of such set-off or counterclaim;

(11) The answer of a defendant shall not debar him at the hearing from disproving any allegation of the plaintiff not admitted by the answer or from giving evidence in support of a defence not expressly set up by the answer, except where the defence is such as, in the opinion of the court, ought to have been expressly set up by the answer or is inconsistent with the statements in the answer or is, in the opinion of the court, likely to take the plaintiff by surprise and to raise new issues not fairly arising out of the pleadings as they stand and such as the plaintiff ought not to be then called upon to meet;

(12) Where the court is of the opinion that any allegations of fact denied or not admitted by any pleading ought to have been admitted, the court shall make such order with respect to costs as it shall think just;

(13) The court may order any plaintiff or defendant to verify his statement, or any part thereof, on oath or affidavit;

(14) Every pleading shall be filed and shall, if the court thinks fit, be served on the opposite party, at such time and in such manner as the court may direct.

#### ORDER 18

##### Settlement of Issues

Settlement  
of issues.

1. At any time before or at the hearing the court may, if it thinks fit, on the application of any party to the suit or of its own motion, proceed to ascertain and determine what are the material questions in controversy between the parties, and reduce such questions to writing and settle them in the form of issues, which issues, when settled, may state questions of law on admitted facts or questions of disputed facts, or questions partly of one kind and partly of the other.

Procedure  
for framing  
issues.

2. (1) For the purpose of framing issues the court may -

- (a) ascertain from each party or from his advocate or other authorised representative, what facts he admits or denies;
- (b) orally examine any party or his authorised representative, other than an advocate, appearing or present in the court;
- (c) order that any party shall appear in person on a date specified in the order and adjourn the hearing of the matter to such date;
- (d) call upon any party to produce all documents in his possession or in his power, upon which he intends to rely in support of his case and, if necessary or expedient, order any party to produce such documents on a date specified in the order and adjourn the hearing of the matter to such date; and
- (e) have regard to any allegations made in any particulars of claim, counterclaim or set-off, whether formal or informal, in the cause and to the contents of any document produced by any party.

(2) The court may at any time -

- (a) adjourn the framing of issues;
- (b) before the decision of the case amend issues already

framed, frame additional issues or strike out issues which appear to be wrongly framed or superfluous, on such terms as to costs, payment of money into court, giving of security or otherwise as the court may think fit.

Court may direct parties to prepare issues. 3. Notwithstanding rule 2, the court, if it thinks fit, may direct the parties to prepare issues for settlement by the court.

When may issues be settled. 4. The issues may be settled, without previous notice, at any stage of the proceedings at which all the parties are actually present, or at the hearing; or notice may be given to all the parties to attend on a date and at a place to be specified in the notice for settlement of the issues.

#### ORDER 19

##### Inquiries and Accounts

Questions of fact or account may be investigated by referee. 1. In any cause or matter in which all the parties interested and who are not under disability consent thereto, and also, without such consent, in any cause or matter requiring any prolonged examination of documents or accounts or any scientific or local examination which cannot, in the opinion of the court, be conveniently made by the court in the usual manner, the court may, at any time, on such terms as it may think proper, order any question or issue of fact or any question of account arising therein to be investigated or tried before a referee to be agreed between the parties or appointed by the court.

Instructions to referee. 2. Where an order has been made under rule 1, the court shall furnish the referee with such part of the record of the proceedings or relevant documents filed with the court and such other information and instructions as the court may consider necessary for his guidance, and shall direct the parties, if necessary, to attend upon the referee during the inquiry or investigation; and the instructions shall specify whether the referee is merely to transmit to the court the record of his inquiry or investigation or also to report his own opinion on the points, or any of them, referred to him.

Interim inquiries or accounts. 3. The court may, at any stage of the proceedings, direct any necessary inquiry or investigation described in rule 1 to be made or taken, notwithstanding that it may appear that there is some special or further relief sought or some other issue to be tried, as to which it is proper that the cause or matter should proceed in the ordinary manner.

0.19, rr. 4-8; 0.20, r. 1.

General  
powers of  
referee.

4. The referee may, subject to any directions by the court, hold the inquiry at or adjourn it to any place which he may consider most convenient and may make any inspection or view which he may deem expedient for the disposal of the controversy before him:

Provided that, as far as practicable, he shall proceed with the inquiry or investigation on successive days.

Evidence and  
procedure.

5. (1) Subject to any direction of the court ordering the inquiry or investigation, evidence may be taken by a referee and the attendance of witnesses may be enforced by subpoena issued through the court.

(2) Every inquiry or investigation shall be conducted, as nearly as circumstances will admit, in the same manner as a trial before a Magistrate, and the referee shall have the same authority in the conduct of such inquiry or investigation as a Magistrate when presiding at any trial, but not so as to make the tribunal of the referee a public court of justice.

Referee may  
report  
questions  
of facts  
specially.  
Effect of  
report by  
referee.

6. The referee may, before the conclusion of any inquiry or investigation before him or by his report under the reference, submit any question arising therein for the decision of the court, or may state any facts specially.

7. The record of proceedings and the report in writing of the referee shall be received in evidence in the case, unless the court may have reason to be dissatisfied with them, and the court may draw such inferences from the record of proceedings or the report as shall be just.

Powers of  
the court.

8. The court shall have power to require any explanations or reasons from the referee and to remit the cause or matter, or any part thereof, for further inquiry or consideration to the same or any other referee as often as may be necessary, and shall pass such ultimate judgment or order as may appear to it to be just and proper in the circumstances of the case.

#### ORDER 20

##### Appearance of Parties

Court may  
permit party  
to appear by  
proxy.

1. In every cause or matter pending before the court, if it shall appear to the satisfaction of the court that any plaintiff or defendant who may not be represented by any advocate is prevented by some sufficient cause from attending the court in person or requires assistance of some other person at the hearing in the court, the court may, in its discretion, permit any other person, who shall satisfy the court that he has authority in that behalf, to appear for such plaintiff or defendant:

Provided that nothing in this rule shall be construed to authorise any person other than an advocate to charge any fee for any advice given or service rendered in relation to any such cause or matter.

Appearance  
without  
authority.

2. If any person does any act or takes any proceeding in the name of or on behalf of any other person without the lawful authority of such other person and knowing himself not to be so authorised, the court may refer the matter to the High Court to be dealt with as a contempt of court pursuant to the provisions of section 7 of the Regulation.

#### ORDER 21

##### Arrest of Absconding Defendant

Defendant  
Leaving the  
New Hebrides  
or removing  
property.  
Appendix A.  
Form 7.

1. If in any suit for an amount of twenty dollars or upwards a defendant is about to leave the New Hebrides or has disposed of or removed from the New Hebrides his property or any part thereof, the plaintiff, either at the institution of the suit or at any time thereafter until final judgment, may apply to the court for an order against the defendant that security be taken for his appearance to answer any judgment which may be passed against him in the suit.

Warrant to  
arrest  
defendant.  
Appendix A.  
Form 8.

2. If the court, after making such investigation as it may consider necessary, shall be of opinion that there is cause for believing that the defendant is about to leave the New Hebrides or that he has disposed of or removed from the New Hebrides his property or part thereof and that, in either case, by reason thereof the execution of any decree which may be made against him is likely to be obstructed or delayed, the court may issue its warrant to bring the defendant before the court to show cause, if any there be, why he should not give good and sufficient bail for his appearance.

Bail for  
appearance.  
Appendix A.  
Form 9

3. If the defendant shall fail to show cause as aforesaid in rule 2, the court shall order him to give bail, with or without sureties, for his appearance at any time when called upon while the suit is pending and until execution or satisfaction of any decree which may be passed against him in the suit; and the surety or sureties shall undertake, in default of such appearance, to pay any sum of money to the plaintiff in respect of which they shall stand bound as surety not exceeding the amount of any judgment, with costs, which may be given against such defendant.

Deposit in  
lieu of  
bail.

4. Should a defendant offer, in lieu of bail for his appearance, to deposit a sum of money or other valuable property sufficient to answer the claim against him, with costs of the suit, the court shall accept the deposit.

Committal  
in default.

5. In the event of the defendant neither finding security nor offering a sufficient deposit, he may be committed to custody until the determination of the suit, or, if judgment be given against the defendant, until the execution of satisfaction of the decree, if the court shall so order:

Provided that the court may at any time, upon reasonable cause being shown and upon such terms as to security or otherwise as may seem just, order the release of the defendant.

Costs of  
executing  
warrant.

6. The court may, before issuing any warrant under this Order, require the plaintiff to deposit in court such sum as the court may think fit to defray the costs of executing the warrant and of bringing the defendant before the court.

Cost of  
subsistence  
of person  
arrested.

7. The expenses incurred for the subsistence in prison of any person arrested and committed under this Order shall be paid in advance through the court by the plaintiff in the action; and the court shall determine whatever allowance it shall think fit for the reasonable and sufficient subsistence of such person having regard to his status and way of life; and any amount so disbursed may be recovered by the plaintiff in the action as costs in the cause, if the court shall specifically so order.

#### ORDER 22

##### Interim Attachment of Property

When interim  
attachment  
may be  
ordered.

1. If the defendant, in any suit for an amount or value of twenty dollars or upwards, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property, or any part thereof, or to remove any such property from the New Hebrides, the plaintiff may apply to the court, either at the time of the institution of the suit or at any time thereafter until final judgment, to call upon the defendant to furnish sufficient security to fulfil any decree which may be made against him in the suit and, on his failing to give such security, to direct that any property, movable or immovable, belonging to the defendant shall be attached until further order of the court.

Application  
for attach-  
ment.

2. Every application referred to in rule 1 shall contain particulars of the property to be attached and the estimated value thereof so far as the plaintiff can reasonably ascertain the same, and shall be supported by oral or affidavit evidence.

Order for  
attachment.

3. If the court, after making such investigation as it may consider necessary, is satisfied that the defendant is about to dispose of or remove from the New Hebrides his

property, or any part thereof, with intention to obstruct or delay the execution of any decree which may be made against him, the court may order the defendant, within a time to be specified in the order, either to furnish security, in such sum as shall be specified in the order, or to produce and place at the disposal of the court, when required, such property, or the value of the same, or such portion thereof as may be sufficient to fulfil the decree or to appear and show cause why he should not furnish security; and the court may also in the order direct the attachment until further order of the whole or any part of the property specified in the application.

Failure to  
show cause  
or to give  
security.  
Appendix A.  
Form 10.

4. If the defendant fails to show cause or to furnish the required security within the time specified in the order, the court may direct that the property specified in the application, if not already attached, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached until further order; but if the defendant shows cause or furnishes the required security and the property specified in the application, or any part of it, shall already have been attached, the court shall order the attachment to be withdrawn.

Rights of  
third parties  
not to be  
affected.

5. The attachment of any property under this Order shall not affect the rights of persons not being parties to the suit, and, in the event of any claim being preferred to the property attached before judgment, such claim shall be investigated in the manner prescribed in Order 35 relating to interpleader proceedings.

Removal of  
attachment.

6. In all cases of attachment before judgment, the court shall, at any time, remove the attachment on the defendant's furnishing security as hereinbefore required together with security for the costs of the attachment.

#### ORDER 23

##### Preservation of Disputed Property

Orders to  
stay waste,  
damage or  
alienation.

1. In any suit in which it is shown, to the satisfaction of the court, that any property which is in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit, the court may issue an injunction to such party commanding him to refrain from doing the particular act complained of, or may give such order for the purpose of preventing him from wasting, damaging or alienating the property as the court may think necessary.

**Appointment  
of receiver.**

2. In all cases in which it may appear to the court necessary for the preservation or better management or custody of any property in dispute in a suit, the court may appoint a receiver or manager of such property and, if need be, remove the person in whose possession or custody the property may be from the possession or custody thereof, and commit the same to the custody of the receiver or manager, and the court may authorise the receiver or manager to do all things and exercise all powers required for the proper management, preservation or improvement of the property and collection of the rents and profits thereof, including the application and disposal of such rents and profits, as the court may consider necessary.

**Orders for  
sale of  
perishable  
goods.**

3. The court may, on the application of any party to a suit, or of its own motion in any suit, order the sale, in such manner and on such terms as the court may think fit, of any goods, wares or merchandise, the right to which is in dispute in the suit, which may be of a perishable nature or be likely to depreciate from keeping or which, for any other just and sufficient reason, the court may think it desirable to have sold at once.

**Orders to  
restrain  
breaches of  
contract  
or  
commission  
of tort.**

4. In any suit for restraining the defendant from committing any breach of contract or other injury, and whether the same be accompanied by a claim for damages or not, the plaintiff may, at any time after the commencement of the suit and whether before or after judgment, apply to the court for an injunction to restrain the defendant from the repetition or the continuance of the breach of contract or the wrongful act complained of, or from committing any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right, and such injunction may be granted by the court on such terms as to the duration of the injunction, keeping of account, giving of security or otherwise as the court shall consider reasonable and just;

Provided that any order for an injunction may be discharged, varied or set aside by the court on application by any party dissatisfied with such order.

**Notice of  
application.**

5. The court may in every case, before making an order or appointment under this Order, direct that such reasonable notice of the application shall be given to the opposite party as the court shall think fit.



## ORDER 24

## Equitable Relief, Counterclaim, Set-Off

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

Provided that if in the opinion of the court the set-off or counterclaim cannot conveniently be disposed of in the pending action or otherwise ought not to be allowed, the court may refuse permission to the defendant to avail himself thereof, and the court shall refuse such permission in respect of any counterclaim for an amount or value exceeding the jurisdiction in that respect of the court. - - - - -

Notice of counterclaim and set - off. 2. (1) No defendant shall be allowed to avail himself of any set-off or counterclaim unless he shall have filed with the Magistrate or the clerk of court, as the case may be, four days before the return day, a notice in original and as many copies as there are plaintiffs in the suit, stating his name and address and a concise statement of the grounds of such set-off or counterclaim and shall have paid the same fees as would be payable if he were claiming by writ of summons:

Provided that the court may, in its discretion and on such terms as to adjournment or otherwise as may appear to it to be just, allow a defendant to avail himself of a set-off or counterclaim notwithstanding that such notice has not been duly filed within the time specified above.

(2) Upon receipt of notice of set-off or counterclaim and upon payment of the prescribed fees, the Magistrate or the clerk of court shall cause a duplicate of such notice to be served upon the plaintiff or each of them.

(3) The provisions of Order 10, relating to particulars of claim, shall apply, as far as they are applicable, to every set - off or counterclaim.

Defendant may have judgment due for the balance due on counterclaim. 3. Where in any action a counterclaim is established as a defence against the plaintiff's claim, the court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

Payment into court where partial set-off.

4. The court, if it thinks fit, may order that a defence of partial set-off shall be accompanied by payment into court of the amount to which, on the defendant's own showing, the plaintiff is entitled unless the plaintiff's claim is resisted on some other ground of defence; and in default of such payment the defendant shall be liable to pay the costs of the suit even though he may succeed in his defence to the extent of the set-off on which he relies.

#### ORDER 25

##### Tender

Payment into court of amount tendered.

A defence of tender must be accompanied by payment into court of the amount alleged to have been tendered.

#### ORDER 26

##### Discovery and Production of Documents

Discovery of documents.

1. Upon the application of any party to a cause or matter, or of its own motion, the court may order any party thereto to appear and make discovery on oath or to file an affidavit as to the documents which are or which have been in his possession or power relating to any matter in question in such cause or matter.

Production of documents. Appendix A. Form 11.

2. The court may, at any time during the pendency of a cause or matter, order the production by any party thereto of any document in his possession or power relating to any matter in question in such cause or matter, and the court may deal with such documents, when produced, as shall appear to the court to be just.

Inspection of documents.

3. The court may in its discretion on the application of any party to a cause or matter compel by order any other party to allow the applicant to inspect all or any documents in the custody or control of such other party relative to such cause or matter and if necessary to take copies of the same.

Failure to comply with order for discovery, production or inspection.

4. If any party to a cause or matter fails to comply with the terms of any order for discovery, production or inspection of any document, he shall be liable to attachment, and he shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution and, if a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended the action.

## ORDER 27

## Motions and Orders to Show Cause

Motions.

1. At any stage of any cause or matter the court may entertain interlocutory applications which may be made either ex parte or after notice given to the other parties to be affected thereby; and every such application may be made either orally before the Magistrate or in writing and may, if the application is based upon facts to be stated, be supported by evidence thereof given either orally or by affidavit.

Orders to show cause.

2. Every order to show cause shall specify the day upon which cause is to be shown, to be called the return day to the order, and shall not, unless the court otherwise directs, ordinarily be less than three days after service.

General powers as to orders.

3. Upon the hearing of any order to show cause the court may discharge the order or make the order absolute, or adjourn the consideration thereof, or permit further evidence to be produced either for or against the order, and may modify the terms of the order so as to meet the merits of the case.

## ORDER 28

## Postponement of Hearing

Postponement of hearing.

1. The court may, upon the application of any party to a cause, order that the hearing thereof be postponed if the court is satisfied that the postponement is likely to have the effect of better ensuring the hearing and determination of the issues between the parties on the merits and that the application is not made for the purpose of mere delay; and any postponement may be granted subject to such terms as to costs or otherwise as the court may consider just.

Absence of witness.

2. Where an application is made under rule 1 on the ground of the absence of a witness, before granting the application the court shall require the applicant to satisfy it that the evidence of such witness is material and that the witness is likely to be available within a reasonable time.

## ORDER 29

## Non-attendance of Parties at Hearing

Non-appearance of both parties.

1. Where a cause or matter has been called for hearing and neither party appears, the court may either strike out the proceedings or, if the court has reason to believe that the parties have not settled out of court and have failed or been unable to appear for some other reason, set down the cause or matter for some other date and, without requiring

the payment of further fee, send notice to the parties of the fresh date of hearing in any manner the court thinks fit.

Non-  
appearance  
of plaintiff.

2. If the plaintiff does not appear when called but the defendant or any one of them does, the court shall, unless it sees good reason to the contrary, strike out the proceedings (except as to any counterclaim by the defendant) and make such order as to costs in favour of the defendant appearing as seems to it to be just:

Provided that if the defendant admits the cause of action to the full amount claimed, the court may in its discretion give judgment in favour of the plaintiff as if the plaintiff had appeared and the defendant had admitted his liability.

Non-  
attendance  
of defendant.

3. If the plaintiff appears and the defendant does not appear when called and has not in writing previously explained to the court good reason for his absence, the court may, upon proof of service of the writ of summons, proceed to hear the cause and give judgment upon the evidence adduced by the plaintiff, or may postpone the hearing of the cause and direct notice to be given to the defendant.

Counterclaim  
where plain-  
tiff does not  
appear.

4. Where the defendant to a cause which has been struck out under rule 2 has a counterclaim, the court may, upon proof of service upon the plaintiff of notice of the counterclaim, proceed to hear the counterclaim and give judgment upon the evidence adduced by the defendant, or may postpone the hearing of the counterclaim and direct notice of the postponement to be given to the plaintiff accordingly.

Setting aside  
judgment  
entered in  
absence of a  
party.

5. Any judgment obtained against any party in the absence of that party may, on sufficient cause being shown, be set aside by the court upon such terms as to costs or otherwise as it may think fit.

Relisting of  
cause struck  
out.

6. Any cause struck out may, by leave of the court, be relisted for hearing on such terms as to the court may seem fit.

#### ORDER 30

##### Proceedings at the Hearing

Starting the  
hearing.

1. (1) Unless, before the hearing of any cause, pleadings have been filed or issues framed in accordance with Order 17 or Order 18 respectively, the hearing shall start by the plaintiff stating his case, and the defendant shall then be called upon immediately to reply thereto stating whether he accepts liability or denies it and, if he denies it, the grounds upon which he does so.

(2) If the defendant admits liability, judgment may be

entered against him forthwith.

(3) If the defendant denies liability, the plaintiff shall be called upon to produce his evidence and examine his witnesses.

(4) Subject to rule 5, if, before the hearing, pleadings have been filed or issues framed, the hearing shall start by the plaintiff stating his case and thereafter immediately producing his evidence and examining his witnesses.

Plaintiff's  
witnesses.

2. The defendant shall have the right to cross-examine any witness and the plaintiff may then re-examine the witness with regard to any matter arising out of the cross-examination.

Defendant's  
case.

3. At the conclusion of the plaintiff's evidence -  
(a) if the defendant decides to produce no evidence, oral or documentary, the plaintiff shall be at liberty to sum up his case; and thereafter the defendant shall be entitled to state his defence and reply generally;  
(b) if the defendant decides to produce evidence, the plaintiff shall have no right to address the court at the conclusion of his own case, but the defendant shall then state his defence and produce his evidence. At the conclusion of the defendant's evidence, the defendant shall be entitled to sum up his defence and comment upon the evidence generally; and thereafter the plaintiff shall be entitled to reply generally upon the whole cause.

Defendant's  
witnesses.

4. Any witness called upon by the defendant shall be subject to cross-examination by the plaintiff and may be re-examined by the defendant in respect to any matter arising out of the cross-examination.

Right to  
begin.

5. Where by reason of the nature of the issues between the parties the burden of proof rests upon the defendant, he shall, if the court so decides, have the right to begin; and in any such case rules 1(4), 2, 3 and 4 shall be applied as though the word "defendant" were substituted therein for the word "plaintiff" and the word "plaintiff" substituted for the word "defendant".

Documentary  
evidence.

6. Documentary evidence shall be put in and read or, if all parties to the action consent thereto, a note of such consent being made on the trial record, it may be taken as read.

Marking of  
documents.

7. Every document put in evidence shall be marked at the time by the Magistrate or the clerk of court and shall be retained by the court until final judgment in the action and shall thereafter be returned to the party who put it in or from whose possession or power it came, unless for

sufficient reason it is impounded by order of the court.

Disallowance  
of vexatious  
cross-  
examination.

8. The court may in all cases disallow any question put in cross-examination to any party or other witness which may appear to it to be vexatious or not relevant to the matters in issue before the court.

#### ORDER 31

#### Judgment

Delivery of  
judgment.

1. The decision or judgment in any suit shall ordinarily be pronounced orally in open court:

Provided that the court may in its discretion, if the judgment is long or complex or otherwise difficult to deliver in simple language, hand down to each party a written copy thereof instead of pronouncing it verbatim.

Notice when  
judgment  
reserved.

2. If the court reserves judgment at the hearing, parties to the suit shall be served with notice to attend and hear judgment, unless the court, at the hearing, informs the parties of the day upon which it intends to deliver judgment, in which case there need be no further notice.

When parties  
deemed to have  
notice of  
judgment.

3. All parties shall be deemed to have notice of the decision or judgment if it is pronounced at the hearing; and all parties served with notice to attend and hear judgment shall be deemed to have notice of the judgment when it is pronounced, notwithstanding that any such party may have failed to appear to the notice.

Minute of  
judgment  
and effect  
thereof.

Appendix A.  
Form 12.

4. A minute of every judgment whether final or interlocutory shall be made on the trial record and every such minute shall be a decree of the court and shall have the full force and effect of a formal decree; but the court may in addition to such minute, upon the application of any party or of its own motion, cause a formal decree to be drawn up in any suit and delivered to the parties therein.

Where set-  
off or  
counterclaim  
is allowed.

5. If the defendant shall have been allowed to set-off any demand or counterclaim against the claim of the plaintiff, the minute of the judgment shall state what amount, if any, is due to the defendant and the judgment with respect to any sum awarded to him shall have the same effect and be subject to the same rules as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

Obedience to  
decree.

6. A person directed by any decree or order to pay money or to do any other act is bound to obey the decree or order without any further demand for payment or performance and, if no time is expressed in such decree or order for the payment or performance directed, the defendant shall be bound to make payment or effect performance immediately after the decree or order has been made, unless the court shall by some

subsequent order enlarge the time.

Court may direct time for payment or performance. Interest.

7. The court may, either upon the application of any party to any suit or of its own motion, direct a time within which payment must be made or performance be effected and may by any subsequent order enlarge or cancel or vary such time.

8. Where a judgment or order is for the payment of a sum of money, interest at five per cent. a year shall be payable thereon, unless the court otherwise orders, until the date of payment.

Payment by instalments.

9. Where any judgment or order directs payment of money the court may, either upon the application of any party to the suit or, for sufficient reason, of its own motion, direct that payment shall be made by instalments, with or without interest as limited in rule 8, and any such order may be made at the time of giving judgment or at any time thereafter and may be rescinded or varied for cause shown at any time; and also any such order may direct that upon failure of any instalment the whole amount remaining unpaid shall forthwith become due.

Judgment by consent.

10. If the plaintiff and the defendant agree as to the terms and conditions on which judgment shall be entered, the court shall, unless it sees good reason to the contrary to be entered in the record, enter judgment on the terms and conditions so agreed.

Setting aside judgments by default.

11. Any judgment or order given by default of either party to any suit may be set aside by the court or a Magistrate upon such terms as to costs or otherwise as the court or Magistrate may think fit.

#### ORDER 32

##### Costs

Costs.

1. Under the denomination of costs is included the whole of the expenses necessarily incurred by either party to any cause or matter, and in enforcing the decree or order made therein, including the expenses of summoning and of the attendance of the parties and witnesses and of obtaining copies of documents, the fees of the court and the remuneration of references.

Determination of costs.

2. All questions relating to the amount of costs shall, unless specially referred for taxation, be summarily determined by the court. Any costs referred for taxation shall, after notice of taxation to the parties, be ascertained by the Magistrate as taxing master: - - - - -

Provided that if any party to a suit is dissatisfied with the direction of the Magistrate as to the assessment or apportionment of any costs or any items thereof he may appeal

to the Registrar of the High Court or to a Judge of that Court and the Registrar or the Judge shall, either with or without hearing the parties in argument thereon in chambers, make such order as to the assessment or apportionment of the costs as may be just.

Costs in  
discretion  
of court.

3. Subject to the proviso to rule 2, the costs of every cause or matter and of each particular proceeding therein shall be in the discretion of the court; and the court may award or apportion costs in any manner it may consider just:

Provided that except for sufficient cause the court shall not order the successful party to any suit to pay the whole of the costs of the suit.

Security  
for costs.

4. (1) Where a plaintiff does not or does not ordinarily live in the New Hebrides, or is about to leave the New Hebrides, the court may direct, either of its own motion or on the application of any defendant to the suit, that the plaintiff shall pay into the court or furnish security in such sum as the court considers sufficient to cover the costs in the action, and such direction may be given at the commencement of the proceedings or at any stage thereof.

(2) If the plaintiff fails to comply with any direction given under paragraph (1), the court may stay the proceedings until the direction has been complied with.

Costs out  
of fund of  
suit.

5. The court may order costs to be paid out of any fund or property to which any cause or matter relates.

Taxation.

6. In taxation of costs between party and party nothing shall be allowed in respect of fees paid to the court beyond what was necessary having regard to the amount recovered on the judgment.

Liability of  
advocate.

7. Where upon the trial of any cause or matter it appears that such cause or matter cannot be proceeded with by reason of any advocate engaged by any party thereto having neglected to appear personally or by some proper person on his behalf, or having omitted to produce any document necessary for the use of the court and which ought to have been produced, such advocate may be ordered personally to pay the costs incurred by such failure, or such part of such costs, as the court may think fit.

#### ORDER 33

##### Enforcement of Orders

Enforcement  
of orders  
generally.

1. Any order of the court made in any cause or matter may be enforced in the same manner as a decree to the same effect.



Enforcement  
of inter-  
locutory  
orders.

Stay of pro-  
ceedings and  
judgment by  
default.

2. Any interlocutory order may be enforced by any of the methods applicable thereto by which a final order is enforceable.

3. Without prejudice to the generality of rule 2, interlocutory orders may be enforced according to the following provisions:-

(a) If a plaintiff in a suit makes default or fails to fulfil any interlocutory order, the court may, if it thinks fit, stay further proceedings in the suit until the order is complied with, or may give a judgment of non-suit against such plaintiff with or without liberty to bring a fresh suit on the same grounds of action, or may make such other order and on such terms and conditions as to costs or otherwise as the court may think fit;

(b) If a defendant in any suit makes such default or failure, the court may give judgment by default against such defendant, or make such other order and upon such terms and conditions as to costs or otherwise as the court may think fit:

Provided that any such judgment, either against a plaintiff or a defendant, may be set aside by the court, upon such terms as to costs or otherwise as the court may think just.

#### ORDER 34

##### Execution

Execution.

1. Any party in whose favour a judgment of the court is given for the payment of money may apply orally or in writing to the court for execution of the judgment if it is not satisfied.

Writ of  
execution.  
Appendix A.  
Form 13.

2. The process for the execution of any judgment shall be by writ of execution issued under the hand of the Magistrate of the court in which the judgment was given and shall be addressed to the Sheriff who shall be empowered to levy by distress and sale of the personal property of the person against whom the judgment was given (in this Order referred to as the judgment debtor) such sum as shall be specified in the writ, together with the costs of the execution, and all police officers shall, if so required, aid in the execution.

Property  
liable to  
execution.

3. All the personal property of a judgment debtor whether held in his own name or by another person in trust for him or in his behalf (except the wearing apparel and bedding of himself and his family and the tools and implements of his trade, if any, to the value of a hundred dollars) is liable to

- attachment and sale in execution of a decree or order.
- Fourteen days  
grace after  
judgment. 4. A writ of execution shall not be issued until fourteen days after the date of the decree or order:  
Provided that for special reason to be noted on the record of execution and in its discretion the court may order immediate execution in any particular case.
- Procedure on  
execution. 5. No goods seized in execution shall be sold until the expiration of five days after the seizure, unless such goods are perishable or the judgment debtor requests an earlier sale; and where the goods are estimated to be of a value of more than forty dollars, sale shall be by way of public auction after such advertisement as the court shall direct:  
Provided that where the nature of any property to be sold is such that in the opinion of the court a better price can be obtained by sale by private treaty than by public auction the court may waive the requirement for public auction and authorise sale by private treaty and the reason for waiving such requirement shall be noted on the record of execution.
- Payment before  
sale. 6. If the judgment debtor shall before actual sale pay or tender to the court or to the Sheriff or his agent the amount specified in the writ or so much thereof as the person entitled thereto (in this Order referred to as the judgment creditor) shall agree to accept in full discharge, together with the costs of the execution, the execution shall be superseded and the property discharged.
- Judgment  
summons for  
commitment.  
Appendix A.  
Form 14. 7. No order for commitment of any judgment debtor under paragraph (e) of subsection (1) of section 23 of the Regulation shall be made unless a summons (in this Order referred to as a judgment summons) to appear before the court and be examined on oath has been personally served upon the judgment debtor; and no judgment summons shall be served less than four days before the date fixed for the hearing thereof.
- Execution  
against two  
or more judg-  
ment debtors. 8. Where a decree or order has been made against two or more judgment debtors the judgment creditor may apply for execution against all or any of them.
- Execution  
against firm,  
etc.  
Appendix A.  
Form 15. 9. (1) Where the judgment debtor is a firm or a person carrying on business not in his own name and the judgment creditor applies for a judgment summons to issue against any person whom he alleges to be liable under the judgment or order to be executed as a partner or the sole member of the firm or as the person carrying on business in a name other than his own, the judgment creditor shall, before the judgment summons is issued, satisfy the Magistrate on oath or by affidavit that the person against whom the judgment summons

is sought is the person liable under the judgment or order; and that person shall be served with a copy of such evidence or affidavit together with the judgment summons.

(2) If on the date fixed for the hearing of the judgment summons such person denies his liability, the court may decide the question on the evidence then before it or may order the question to be tried and determined in an action to be commenced by writ of summons in the ordinary way.

Evidence as to means.

10. Witnesses may be called to prove the means of a judgment debtor in the same manner as witnesses may be called or summonsed to give evidence at the hearing of an action, and their expenses may be allowed as costs in the execution.

Adjournments.

11. The hearing of a judgment summons may, with the leave of the court, be adjourned from time to time.

Evidence by affidavit.

12. Where a judgment creditor at whose instance a judgment summons is issued, or a judgment debtor summonsed to appear by judgment summons, does not reside within the jurisdiction of the court in which the judgment summons is to be heard, he may forward to the court from which the summons issued an affidavit setting forth any facts which he may wish to be before the court prior to any order being made on the summons; and the court may, if it thinks fit, on the hearing of the summons admit the affidavit as evidence of the person by whom the same is made.

Provisions if receiving order has been made.

13. (1) Where, upon the return day of a judgment summons, the judgment debtor satisfies the Magistrate that a receiving order has been made for the protection of his estate, or that he has been adjudged bankrupt, or that a composition order has been made against him, and that the debt was provable therein, no order of commitment shall be made.

(2) Where an order of commitment has been made and the Magistrate who made the order shall thereafter be satisfied that the judgment debtor has had a receiving order made against him, or that he has been adjudged bankrupt or that a composition order has been made against him, and that the debt in respect to which the order was made was provable therein, if the committal order has not yet been executed, it shall be cancelled and if it has been executed the Magistrate shall order the judgment debtor to be discharged.

Order on judgment summons.

14. (1) On the hearing of a judgment summons, the Magistrate, if he is of the opinion that an order of commitment ought not to be made, may refuse to make the order, or may make a fresh order for payment of the amount remaining due and unpaid under the judgment or order, either at a specified time or by instalments.

Appendix A.  
Form 16.

(2) If an order of commitment is made, the Magistrate may direct that the execution of such order be suspended to enable the judgment debtor to pay the amount in respect of which the order is made, either by instalments or otherwise; and when such order is made, notice thereof shall be sent to the judgment debtor unless he is present in court when such direction is given.

(3) The Magistrate may from time to time upon the application of either party and after reasonable notice being given to the other party of the time and place at which the application will be heard, vary the amount of any instalments ordered to be paid by such amount as will, in the Magistrate's opinion, meet the ability of the judgment debtor to pay the same.

(4) Subject to the provisions of rule 15, all payments under an order made upon a judgment summons or an order of commitment shall be paid into court.

(5) If no order for commitment and no fresh order for payment is made on the hearing of the judgment summons, but the Magistrate considers that the judgment creditor was justified in applying for the judgment summons, the Magistrate may, instead of dismissing the summons, order that it shall stand adjourned.

(6) An order for commitment shall be executed by the Sheriff or a bailiff or a police officer.

Effect of  
payment of  
amount  
endorsed on  
commitment  
order.

15. If at any time after the issue of a commitment order, the amount endorsed on the order is paid into the court which issued the order, or to the Sheriff, or, if the judgment debtor has been delivered into the custody of the officer-in-charge of any prison to that officer, the commitment order shall cease to have effect and the court, the Sheriff or the officer-in-charge of the prison, as the case may be, shall discharge the judgment debtor forthwith; and if the amount has been paid to the Sheriff or the officer-in-charge of the prison, the Sheriff or that officer shall forthwith pay the amount into the court.

Payment out  
of court.

16. Upon receipt of any moneys paid into court, the clerk of court, or the Magistrate, shall, subject to the deduction of all proper costs, charges and expenses, pay the same to the judgment creditor.

Judgment  
creditor may  
obtain dis-  
charge of  
debtor.

17. Upon the judgment creditor lodging with the Magistrate or the clerk of court in which the commitment order was issued a request in writing that the judgment debtor, if in prison, be discharged from custody, the Magistrate or the clerk of court shall notify the officer-in-charge of the prison and

that officer shall forthwith cause the judgment debtor to be released.

Writ of execution to be lodged in court upon issue of judgment summons.

18. Upon the issue of a judgment summons against a judgment debtor, the Sheriff shall lodge with the court issuing the judgment summons any writ of execution against the property of the debtor which may have been issued in the action, whether as yet executed or not; but any such writ, if not fully executed, may be reissued by leave of the Magistrate.

Garnishee proceedings.

19. (1) Any judgment creditor may, either before or after any oral examination of the judgment debtor, apply either in person or in writing to the court which issued the judgment or order against the debtor for a summons to be served to obtain payment to him of the amount of any debt due to the judgment debtor from any other person (in this Order referred to as a garnishee) who is indebted to the judgment debtor, or so much thereof as may be sufficient to satisfy the said judgment or order together with the costs of the garnishee proceedings; and if the court upon hearing the evidence or reading the affidavit of the applicant is satisfied as to the likelihood of such amount being due to the judgment debtor from the garnishee, the court may issue a summons accordingly calling upon the garnishee to show cause why he should not pay to the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may satisfy the judgment or order together with the costs aforesaid.

Appendix A.  
Form 17.

(2) For the purposes of this rule, the garnishee shall be deemed to be within the jurisdiction of the court notwithstanding that the amount of the debt due from the garnishee to the judgment debtor is in excess of the jurisdiction of the court.

Where garnishee resides out of the jurisdiction of the court.

20. Where the garnishee is not, in respect of the debt due to the judgment debtor, within the jurisdiction of the court which issued the judgment or order, the judgment creditor may obtain from the court which issued the judgment or order a certified copy thereof, and may, upon lodging such certified copy with the court within the jurisdiction of which the garnishee resides, make application to that court in the manner provided in rule 19, and that court shall deal with the garnishee proceedings accordingly.

Service and effect of garnishee summons.

21. (1) Every garnishee summons shall be served on the garnishee not less than seven days before the return day of the summons, and, when so served, it shall bind in the hands of the garnishee all debts due and payable from him to the judgment debtor to be named in the summons.

(2) When the garnishee is a firm or a person carrying on business in a name or style other than his own, or is a company or other corporation, the summons may be served in the same manner as a writ of summons is served.

Notice to  
judgment  
debtor.  
Appendix A.  
Form 18.

22. (1) Upon the issue of any garnishee summons, the clerk of court or the Magistrate issuing the same shall cause a copy thereof to be served upon the judgment debtor in respect of whose judgment debt the garnishee summons is issued, together with a notice advising him that if he wishes to show cause why the garnishee should not be ordered to pay the debt due to him over to the judgment creditor, he must appear and show cause, if any there be, upon the return day of the garnishee summons.

(2) The copy and notice referred to in paragraph (1) shall be served on the judgment debtor after service of the garnishee summons has been effected upon the garnishee and not less than four days before the return day of the garnishee summons, and, the court may from time to time postpone the return day of the garnishee summons in order that service of the notice may be effected.

Payment into  
court by  
garnishee.

23. (1) The garnishee may at any time before the return day of the summons pay into court the amount admitted by him to be due from him to the judgment debtor, or, if the amount so admitted is more than the amount of the judgment debt, or any part thereof outstanding, together with the fees and costs endorsed on the garnishee summons, such amount as is sufficient to meet such amount, fees and costs.

Appendix A.  
Form 19.  
Form 20.

(2) Upon payment into court of any amount referred to in paragraph (1), the Magistrate or the clerk of court shall cause notice to be given to the judgment creditor and to the judgment debtor, warning the latter that the money paid into court will be ordered to be paid out to the judgment creditor, unless the judgment debtor appears on the return day of the summons and shows cause why such amount should not be so paid out.

(3) If the judgment creditor elects to accept the amount paid into court in satisfaction of his claim against the garnishee, he shall send or give notice in writing of his acceptance to the court and the court shall notify the garnishee accordingly, and thereupon all further proceedings against the garnishee shall abate and the judgment creditor shall not be liable for any costs incurred by the garnishee after receipt of such notice.

(4) If the payment into court is made by the garnishee four days before the return day of the garnishee summons,

the garnishee shall not be liable for any further costs incurred by the judgment creditor; but if he pays into court less than four days before the said return day, the court may in its discretion order the garnishee to pay such fees and costs, beyond the fees and costs, if any, paid into court by the garnishee, as the judgment creditor may have properly incurred for work done before the receipt of the notice of the payment into court and in attending the court to obtain the order for the same.

(5) Where the judgment creditor has not given notice of acceptance in accordance with paragraph (3) he may, nevertheless, accept the money paid into the court at any time before the hearing of the garnishee summons, but in such case he shall be liable for any costs which may have been reasonably incurred by the garnishee since the date of payment into court and which are allowed by the court.

(6) In default of acceptance by the judgment creditor, the proceedings against the garnishee may proceed.

Payment out  
of court of  
money paid  
in by  
garnishee.

24. Money paid into court by a garnishee and accepted by the judgment creditor shall, on application being made by the judgment creditor upon the return day of the garnishee summons, be ordered to be paid out to him: - - - - -

Provided that -

(a) before such money is paid out to the judgment creditor, the court shall satisfy itself by evidence on oath or affidavit or otherwise that the judgment creditor has not received payment of the amount payable under the judgment or order from any other source and has not obtained an order for the payment of such amount under any other garnishee proceedings; and if it appears that the judgment creditor has received payment of such amount, or any part thereof, from any other source or has received an order for payment thereof in any other garnishee proceedings, so much only of the money paid into court shall be paid out to him as will, with the amount so received, or for payment whereof an order has been obtained, make up the full amount of the judgment debt together with any fees and costs allowed to the judgment creditor in the garnishee proceedings; and the balance of the money paid into court shall be dealt with as the court shall direct;

(b) if the judgment debtor appears and shows cause why the money should not be paid out to the judgment creditor, the court may make such order as to the

money paid into the court, and as to costs, as the court may think just;

- (c) if the judgment debtor alleges, or it is made to appear to the court, that the money paid into the court belongs to or is claimed by some third person, or that any third person has, or claims to have, a lien or charge on it, the court may adjourn the proceedings and summon such third person to appear and state the nature and particulars of his claim, and may there and then dispose of the issue or direct that the issue be tried and determined in a fresh action as between such third person and the judgment creditor and, pending the determination of that action, may stay further proceedings in garnishee;
- (d) if the judgment creditor does not intend to apply for an order against the garnishee for payment of any further costs, and he obtains the consent in writing of the judgment debtor, he may apply to the court for the money in court to be paid out to him before the return day of the garnishee summons, and the court may direct that the money be paid out accordingly;
- (e) the costs of any application for payment out made under this rule, including the costs of any affidavit under paragraph (a) or of obtaining any consent under paragraph (d), may be allowed as costs in the garnishee proceedings, and may be retained as costs in the garnishee proceedings by the judgment creditor out of the money recovered by him in the garnishee proceedings.



Proceedings on return day of garnishee summons. 25. If the garnishee does not pay into court any amount admitted by him to be due to the judgment debtor or so much, together with costs, as will satisfy the judgment or order, the court shall -

(a) if the garnishee does not appear to the garnishee summons, give judgment in default against the garnishee; or

(b) if the garnishee does appear to the garnishee summons and disputes his liability, hear and determine the issue as to his liability to the judgment debtor, or if the court thinks it expedient, direct that the issue as to liability as between the garnishee and the judgment debtor shall be tried or determined in any manner in which an issue or question in an action may be tried and determined.

Claim or Lien of third person on debt.

26. Whenever, in proceedings to obtain an attachment of debts, it is alleged by the garnishee or the judgment debtor, or it is otherwise made to appear to the Magistrate, that the debt sought to be attached belongs to or is claimed by some third person, or that any third person has or claims to have a lien or charge upon it, the Magistrate may order such third person to appear and state the nature and particulars of his claim upon such debt; and after hearing the allegations of such third person and of any other person whom the Magistrate by the same or any subsequent order may order to appear, or in the event of such person not appearing when ordered, the Magistrate may decide in favour of the judgment creditor, or may order any issue or question to be tried or determined between such third person and the judgment creditor, and may bar the claim of such third person or make such other order as he may think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Magistrate may think just.

Certificate where garnishee is sued in court other than the court in which judgment obtained.

27. Where the court in which the garnishee is sued is not the court in which the judgment or order was given or made upon which he is sued, the Magistrate or clerk of court of the first-mentioned court shall send forthwith a certificate of the order of that court to the court in which the judgment or order was given or made, and shall also from time to time send notice of any payment made on, before or after the return day of the garnishee summons.

Payment by  
or execution  
levied on  
garnishee a  
discharge  
against  
debtor.

28. Payment made by or execution levied upon the garnishee, under any proceedings under this Order, shall be a valid discharge to the garnishee, as against the judgment debtor, to the amount paid or levied (inclusive of any amount allowed to the garnishee for costs and which he is by the Rules, or by order of the court allowed to deduct from the amount due from him to the judgment debtor) although such proceedings may be set aside or the judgment or order reversed.

Costs.

29. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the court; and any costs which are allowed to the judgment creditor which are not ordered to be paid by the garnishee personally shall, unless the court otherwise directs, be taxed and retained by the judgment creditor out of the money recovered by him in the garnishee proceedings, in priority to the amount due under the judgment or order obtained against the judgment debtor.

Magistrate  
may refuse  
to intervene.

30. In proceedings to obtain an attachment of debts the Magistrate may, in his discretion, refuse to intervene where, from the smallness of the amount to be recovered or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious or would, in the opinion of the court, cause undue hardship to the judgment debtor.

Costs of  
subsistence  
of judgment  
debtor on  
commitment.

31. (1) Where in the process of any execution pursuant to the provisions of this Order a commitment order is issued against a judgment debtor the judgment creditor shall pay into court in advance of the issue of the order, and from time to time thereafter, such sum as the court shall think fit to cover the reasonable and sufficient subsistence of the judgment debtor having regard to his status and way of life during the period of commitment.

(2) Such sum or sums shall be disbursed through the court in the form of a daily allowance to be fixed by the court for the subsistence of the judgment debtor during the period of his commitment.

(3) Any sum so disbursed may be recovered, in the discretion of the court, by the judgment creditor as costs in the execution.

## ORDER 35

## Interpleader

- Relief by interpleader. 1. Where any person (in this Order called the applicant) is under a liability for debt or other thing in action or any money or goods for or in respect of which adverse claims have been made upon him by two or more claimants he may apply to the court for relief by way of interpleader.
- Procedure. 2. Whether or not a writ of summons has been served upon the applicant in respect of any liability mentioned in rule 1, the applicant may at any time apply either orally or in writing to the court stating the particulars of the claims made, or likely to be made, upon him and the court shall, upon payment of the prescribed fee, summon the claimants or likely claimants, as the case may be, before it, and whether the applicant is present or not, shall hear and determine the issue between the claimants and make such order as to the disposal of the liability upon the applicant as the court shall think fit.
- Appendix A. Form 21. Magistrate may order subject matter to be brought into court. 3. A Magistrate may, before or after the issue of an interpleader summons to any claimants, direct that the applicant shall bring the subject matter into court or dispose of it in such manner as the Magistrate thinks fit pending the determination of the claims thereto.
- Sheriff's interpleader. 4. Where any person makes a claim to any goods seized by the Sheriff in the process of execution under Order 34, or in respect of the proceeds or value of such goods, the Sheriff may apply to the court for relief by way of interpleader, and thereupon the court shall summon before it the person making such claim and the judgment creditor and shall hear and determine the issue between them as well as any claim between them either of them and the Sheriff with respect to any damage arising out of the process of execution, and shall make such order in respect thereof as it shall think fit.
- Appendix A. Form 22. Costs 5. In any case of interpleader the court shall make such order as to costs as it shall consider just.

## Courts Regulation 1980 Vanuatu, s31

Appeals from  
Magistrates  
Court

31. (1) The Supreme Court shall have jurisdiction to hear and determine such appeals from the judgements of any Magistrates Court on any question of law or fact or question of mixed law and fact as provided by this Regulation or any other law and for that purpose to exercise such powers and authorities as may be prescribed by or under any law for the time being in force in the Republic: and subject to the provisions of any such law for all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, the Supreme Court shall have the powers, authority and jurisdiction vested in the Court from which the appeal is brought.
- (2) On every such appeal the procedure and the findings, whether of fact or law, of the court appealed from shall be subject to review by appellate court which shall be entitled to substitute its own judgement or opinion hereon save that the appellate court shall not interfere with the exercise by the court appealed from a discretion conferred by an written law unless the same was manifestly wrong.
- (3) The Supreme Court may in its discretion deal with the appeal on the notes of evidence recorded in the case without hearing any such evidence again.

Appellate  
jurisdiction

41. (1) Subject to any other law, an appeal shall lie in accordance with the prescribed procedure from a judgement of the Supreme Court in the exercise of its original jurisdiction, in any proceedings, to the Court of Appeal on any question of law or fact or mixed law and fact, and, subject to the provisions of any such law for all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction under this section, the Court of Appeal shall have the power, authority and jurisdiction vested in the Supreme Court.

- (2) On every such appeal the procedure and the findings, whether of fact or law, of the court appealed from shall be subject to review by the appellate court which shall be entitled to substitute its own judgement or opinion thereon save that the appellate court shall not interfere with the exercise by the court appealed from of a discretion conferred by any written law unless the same was manifestly wrong.
- (3) The Court of Appeal may in its discretion deal with the appeal on the notes of evidence recorded in the case without hearing any such evidence again.
- (4) In the exercise of the appellate jurisdiction of the Court of Appeal under this section, any judgement of the Court shall have full force and effect and may be executed and enforced in like manner as if it were an original judgment of the Supreme Court.