

Federal High Court (Civil Procedure) Rules 2000

Commencement: 1st May 2000

In exercise of the powers conferred on me by section 254 of the Constitution of the Federal Republic of Nigeria 1999 and all powers enabling me in that behalf, I, **Mahmud Babatunde Belgore**, Chief Judge of the Federal High Court hereby make the following Rules:

Order 1

Citation, Application, etc.

1. (1) Any reference in these Rules to anything done under these Rules includes a reference to the thing done before the commencement of these Rules under any corresponding law or Rules of Court ceasing to have effect on the commencement of these Rules.

(2) Except where the context otherwise requires, any reference in these Rules to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment.
2. The Federal High Court (Civil Procedure) Rules 1999 contained in the Schedule to the Federal High Court (Civil Procedure Rules) Decree 1999 are hereby revoked.
3. (1) In these Rules, unless the context otherwise requires-

"Act" means the Federal High Court Act;

"Attorney-General" means the Attorney-General of the Federation;

"Chief Judge" means the Chief Judge of the Federal High Court;

"Court" means the Federal High Court;

"legal practitioner" means a Law Officer, a State Counsel or a Legal Practitioner entitled to practice before the Court;

"pleading" does not include a petition, summons or preliminary act;

"Registry" means the Registry of the Federal High Court in Lagos or other Divisions;

"return date" means the day endorsed on a writ for the first appearance of the parties before the Court or any other day the Court may appoint or direct and in the case of Order 23 of these Rules, where a writ is marked "Undefended List", it means the day fixed for hearing.

(2) Any word other than those defined in subsection (1) of this section shall have the same meaning as is assigned to it in the Federal High Court Act.
4. These Rules may be cited as the Federal High Court (Civil Procedure Rules) 2000 and shall come into force on 1st May 2000.

Order 2

Form and Commencement of Action

1. Subject to the provision of any enactment, civil proceedings may be begun by writ, originating summons, originating motion or petition, or any other method required by other rules of court governing any special subject matter as provided in those rules
2. (1) Subject to the provisions of any enactment or of these Rules by virtue of which any proceedings are expressly required to be begun otherwise than by writ, proceedings in which a claim-
 - (a) is made by a plaintiff for any relief or remedy for civil wrong;
 - (b) made by the plaintiff is based on an allegation of fraud;
 - (c) is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a law or independently of any contract or any such provision) or where the damages claimed consist of or includes damages in respect of death of any person or in respect of injuries to any person or in respect of damage to any property;
 - (d) is made by the plaintiff in respect of the infringement of a patent, trade mark, copyright, intellectual or any other proprietary interest of whatever kind;
 - (e) for a declaration is made by an interested person,shall be begun by writ.
- (2) Proceedings may be begun by originating summons where-
 - (a) the sole or principal question at issue is, or is likely to be, one of the construction of a written law or of any instrument made under any written law, or of any deed, will, contract or other document or some other question of law; or
 - (b) there is unlikely to be any substantial dispute of fact.
- (3) Proceedings may be begun by originating motion or petition where by these Rules or under any written law the proceedings in question are required or authorized to be so begun, but not otherwise.
3. The Forms in Appendix 6 to these Rules 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.

Order 3

Effect of Non-compliance

1. (1) Where in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure may be treated as an irregularity and if so treated, will not nullify the proceedings, or any document, judgment or order therein.
- (2) The court may on the ground that there has been such a failure as mentioned in sub-rule (1) of this rule and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein, or it may exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

2. (1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein, shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step in the proceedings with leave of court by any interlocutory application, but the application may be raised in defence.
- (2) Any application under sub-rule (1) of this rule may be made by summons or motion on notice, and the grounds or objection shall be stated in the summons or motion on notice.

Order 4 *Particulars of claim*

1. The court may, on the application of the defendant, or on its own motion, order further or better particulars to be supplied by the plaintiff.
2. Subject to any amendment granted by the court, the plaintiff shall not, at the hearing, obtain judgment for any sum exceeding that stated in the particulars, except for subsequent interests and the costs of suit, notwithstanding that the sum claimed in the writ for debt or damages exceeds the sum stated in the particulars.
3. (1) Where a party seeks, in addition to or without any order for the payment of money -
 - (a) to obtain as against any person, any general or special declaration of his rights under contract or instrument; or
 - (b) to set aside any contract, or to have any bond, bill, note, or instrument in writing delivered up to be cancelled; or
 - (c) to restrain any defendant by injunction; or
 - (d) to have an account taken between himself and any other party, and in such other cases as the nature of the circumstances makes it necessary or expedient, the plaintiff or defendant may, in the writ of summons or in any pleading, refer to and briefly describe any documents on the contents of which he intends to rely, and annex copies of such documents to the writ or pleading, or may state any reason for not annexing copies which he may have to allege.
- (2) The party shall allow the opposite party to inspect any such documents as are in his possession or power, otherwise those documents shall not be admitted.
- (3) Parties shall settle between themselves or before the Registrar or a Judge in chambers in a Division of the court where there is no legally qualified Registrar and where the settlement is before the Registrar, the Registrar shall pass the documents to a Judge in Chambers, but any document not before the registrar or the judge in chamber shall not be admitted unless the court thinks otherwise.
4. (1) Particulars of claim shall not be amended except by leave of the court, and the court may, on any application for leave to amend, grant the application if it appears to the court that the defendant shall not be prejudiced by the amendment; otherwise the court may refuse leave to grant the application.
- (2) Leave to amend shall be granted, where appropriate, on such terms as to notice, postponement of trial or costs, as justice may require.
3. 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 justice may require.

Order 5

Causes of action

1. (1) Subject to rule 3 of this Order, a plaintiff may in one action claim relief against the same defendant in respect of two or more causes of action -
 - (a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity, in respect of all the causes of action; or
 - (b) if the plaintiff claims, or the defendant is alleged to be liable, in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of the other or others; or
 - (c) with leave of court.
- (2) An application for leave under this shall be made *ex-parte* by motion before the writ or originating summons, as the case may be, is issued and the affidavit in support of the motion shall state the grounds of the application.
2. (1) Subject to sub-rule (2) of this rule, a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counter-claim in respect of that matter; and where he does so he shall add the counter-claim to his defence.
- (2) Sub-rule 1 of this rule shall apply in relation to a counter-claim as if the counter-claim were a separate action and as if the person making the counter-claim were a plaintiff and the person against whom it is made a defendant.
- (3) A counter-claim may be proceeded with notwithstanding that judgment is given for the plaintiff in his action, or that the action is stayed, discontinued or dismissed.
3. (1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counter-claim, or if two or more plaintiffs or defendant are parties to the same action, and it appears to the court that the joinder of such causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the court may order separate trials or make such other order as may be expedient.
- (2) If it appears on the application of any party against whom a counter-claim is made, that the subject matter of the counter-claim ought for any reason to be disposed of by a separate action, the court may order it to be tried separately or make such other order as may be expedient.
4. (1) Where two or more causes or matters are pending in the court and it appears to the court that -
 - (a) some question of law or fact arises in both or all of them; or
 - (b) the rights to relief claimed therein are in respect of or arise out of the same or similar transaction or series of transactions; or
 - (c) the interest of justice of the trial so demands,
the Court may order that the causes or matters be consolidated on such terms as it thinks just and the court shall give such directions as may be necessary with respect to the hearing of the causes or matters so consolidated.
- (2) An order to consolidate may be made where two or more causes or matters are pending between -
 - (a) the same plaintiffs and the same defendants; or
 - (b) the same plaintiffs and different defendants; or

(c) different plaintiffs and different defendants.

(3) Application for consolidation may be made by summons or notice for directions in chambers, or they may be made by motion in Court on notice.

Order 6

Writ of Summons

1. (1) A writ of summons shall be issued by the Registrar, other officer of the Court empowered to issue summons, on application.

(2) The application shall ordinarily be made in writing by the plaintiff's solicitor by completing Form 1 in Appendix 6 to these Rules, but the Registrar or other officer empowered to do so may, where the applicant for a writ of summons is illiterate, or has no solicitor, dispense with a written application and instead himself record full particulars of an oral application made and on that record a writ of summons may be prepared, signed and issued.
2. The writ of summons shall -
 - (a) contain the name and place of abode of the plaintiff and of the defendant so far as they can be ascertained; and
 - (b) state briefly and clearly -
 - (i) the subject matter of the claim, and the relief sought , and
 - (ii) the date of the writ, and place (called the return-place) of hearing.
3. An alteration of a writ without the leave of the Court shall render the writ void.
4. A plaintiff may unite in the same suit several causes of action, but the Court may if it thinks that the causes of action, or some of them, cannot be conveniently tried together, order separate trials or make such other order as may be necessary or expedient for the separate disposal thereof, and may make such order as to adjournment and costs as justice requires.
5. For the purposes of service of a writ of summons or for serving any other processes relating to an action in the Court, the whole Federation is within the jurisdiction of the Court.
6. (1) Every writ shall be in Form 1, 2, 3, or 4 in Appendix 6 to these Rules or forms to the like effect in all matters, causes and proceedings to which they are applicable, with such variations as circumstances may require.

(2) In proceedings for which forms are not provided or prescribed by these Rules or by any subsequent Rules or orders of Court, the Registrar may, subject to the approval of the Chief Judge, from time to time, frame the forms required.
7. The sealing of any writ or process shall not be necessary in addition to the signature of the Registrar or a Judge in Chambers except in cases where sealing may be expressly directed by these Rules or any written law or Rule of Court, or by any prescribed Form.
8. Before a writ is issued it shall be accompanied -
 - (a) by a statement of claim;
 - (b) copies of documents mentioned in the statement of claim to be used in evidence
 - (c) where the claim made by the plaintiff is for a debt or a liquidated demand only, by a statement of amount claimed in respect of the debt or demand, and for costs.

- 9.** (1) Before a writ is issued it shall be endorsed -
- (a) where the plaintiff sues in a representative capacity; with a statement of the capacity in which he sues;
 - (b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.
- (2) Before a writ is issued in an action brought by a plaintiff who in bringing it, is acting by order or on behalf of a person resident outside the jurisdiction, it shall be endorsed with a statement of that fact and with the address of the person so resident.
- 10.** (1) Where a plaintiff sues by a legal practitioner, the writ shall be endorsed with the plaintiff's address and the Legal Practitioners name or firm and a business address of his within the jurisdiction and also, if the legal practitioner is the agent of another, the name or firm and business address of his principal.
- (2) Where the plaintiff sues in person, the writ shall be endorsed with -
- (a) the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent;
 - (b) his occupation; and
 - (c) an address for service.
- 11.** (1) One or more concurrent writs may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time thereafter before the original writ ceases to be valid.
- (2) Without prejudice to the generality of the provisions of sub-rule (1) of this rule, a writ for service within the jurisdiction may be issued as a concurrent writ with one which, or notice of which, is to be served out of the jurisdiction; and a writ which or notice of which, is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.
- (3) A concurrent writ is a true copy of the original writ with such differences only (if any) as are necessary having regard to the purpose for which the writ is issued.
- 12.** (1) No writ which, or notice of which, is to be served out of the jurisdiction shall be served without leave of the Court.
- (2) If any claim made by a writ is one which by virtue of an enactment the Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction, the foregoing provisions shall not apply to the writ.
- 13.** Issue of a writ takes place upon its being signed by a Judge in Chambers
- 14.** (1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for twelve months beginning with the date of its issue, and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.
- (2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding twelve months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.

- (3) Before a writ, the validity of which has been extended under this rule, is served, it shall be marked with an official stamp showing the period for which the validity of the writ has been so extended.
- (4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served, so as to extend the validity of that other writ until the expiration of the period specified in the order.

Order 7

Originating Summons

1. The provisions of this order shall apply to all originating summonses subject, to any special provisions relating to originating summonses under any enactment or law.
2.
 - (1) Every originating summons shall be in Forms 53, 54, 55, 56 or 57 in Appendix 6 to these Rules, whichever is appropriate.
 - (2) The party taking out an originating summons (other than an *ex parte* summons) shall be described as plaintiff and the party against whom it is taken out shall be described as defendant.
3. Every originating summons shall include a statement of the questions on which the plaintiff seeks the determination or direction of the Court or, as the case may be, concise statement of the relief or remedy claimed in the proceeding begun by the originating summons with sufficient particulars to identify the causes or causes of action in respect of which the plaintiff claims that relief or remedy.
4.
 - (1) Before an originating summons is issued it shall be endorsed -
 - (a) where a plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;
 - (b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.
 - (2) Before an originating summons is issued in an action brought by a plaintiff who, in bringing it is acting by order or on behalf of a person resident outside the jurisdiction, it shall be endorsed with a statement of that fact and the address of the person so resident.
5.
 - (1) Where a plaintiff sues by a legal practitioner, the originating summons shall be endorsed with the plaintiff's address and the legal practitioner's name or firm and a business address of his within the jurisdiction and also, if the legal practitioner is the agent of another, the name or firm and business address of his principal.
 - (2) Where the plaintiff sues in person, the originating summons shall be endorsed with -
 - (a) the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent;
 - (b) his occupation; and
 - (c) an address for service.
6.
 - (1) An originating summons for service within the jurisdiction may be issued and marked as a concurrent originating summons with one for service out of the jurisdiction; and an originating summons for service of jurisdiction may be issued and marked as a concurrent originating summons with one for service within the jurisdiction.

7. (1) No originating summons which, or notice of which, is to be served out of the jurisdiction shall be issued without leave of the Court.
 - (2) If any claim made by an originating summons is one which by virtue of an enactment the court has power to hear and determine, notwithstanding that the person against whom the claim is made is not within the jurisdiction of the court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction, the provisions of this rule shall not apply to the summons.
8. An originating summons is issued upon its being signed by a Judge in Chambers.
9. (1) For the purpose of service, an originating summons (other than a concurrent one) shall be valid in the first instance for twelve months beginning with the date of its issue and a concurrent originating summons shall be valid in the first instance for the period of validity of the original summons which is unexpired at the issue of the concurrent summons.
 - (2) Where an originating summons has not been served on a defendant, the Court may by order extend the validity of the summons from time to time for such period, not exceeding twelve months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.
 - (3) Before an originating summons, the validity of which has been extended under this provision is served, it shall be marked with an official stamp showing the period for which the validity of the summons has been so extended.
 - (4) Where the validity of an originating summons is extended by order made under this rule, the order shall operate in relation to any summons (whether original or concurrent) issued in the same action which has not been served, so as to extend the validity of that other summons until the expiration of the period specified in the order.
10. Rules 2 (1) and 3 of this Order shall, so far as applicable, apply to an *ex parte* originating summons; but, save as foresaid, the foregoing provisions of this order shall not apply to *ex parte* originating summonses.

Order 8

Petition: General Provisions

1. This Order shall apply to petitions by which civil proceedings in the Court are begun, subject, in the case of petitions of any particular class, to any special provisions relating to petitions of that class made by or under any Decree or other enactment.
2. (1) Every petition shall include a concise statement of the nature of the claim made or relief or remedy required in the proceedings begun thereby.
 - (2) Every petition shall include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served a statement to that effect.
 - (3) Where a person brings a petition by a legal practitioner, the petition shall be endorsed with that person's address and the legal practitioner's name or firm and a business address of his within the jurisdiction and also, if the legal practitioner is the agent of another, the name or firm and business address of his principal.
 - (4) Where a person brings a petition in person, the petition shall be endorsed with -
 - (a) the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent;

- (b) his occupation; and
 - (c) an address for service.
3. A petition shall be presented in the Court Registry.
 4. (1) A day and time for the hearing of a petition which is required to be heard shall be fixed by the Judge.
(2) Unless the Court otherwise directs, a petition which is required to be served on any person shall be served on him not less than seven days before the day fixed for the hearing of the petition.
 5. No application in any pending cause or matter may be made by petition.

Order 9

Interlocutory applications

A - Motions Generally

1. Subject to these Rules, interlocutory applications may be made at any stage of an action.
2. (1) Where by these Rules an application is authorized to be made to the Court or to a Judge in Chambers, such application may be made by motion.
(2) The Registrar shall make up, for each day on which there are any motions to be heard, a motion list, on which he shall enter the names of each cause in which a motion is made, the party moving, and the terms of the order sought by him.
3. Every motion shall be supported by an affidavit setting out the grounds on which the party moving intends to rely, and no affidavit shall be used at the hearing unless it is duly filed.
4. Where service of a motion is required by these Rules or directed by the Court or Judge, the motion shall be served together with all affidavit on which the party moving intends to rely.
5. A motion may be heard at any time while the Court is sitting.
6. The hearing of any motion may from time to time be adjourned upon such terms as the Court may deem fit.
7. (1) No motion shall be made without previous notice to the parties affected thereby.
(2) Notwithstanding sub-rule (1) of this rule, the Court may, if satisfied that to delay the motion till after notice is given to the parties affected would entail irreparable damage or serious mischief to the party moving, make an order *ex parte* upon such terms as to costs or otherwise and subject to rule 12 of this Order and such understandings, if any, as the justice of the case demands.

B - Ex parte Motion

8. A motion *ex parte* shall be supported by affidavit which, in addition to the requirements of rule 3 of this Order, shall state sufficient grounds why delay in granting the order sought would entail irreparable damage or serious mischief to the party moving.
9. Any party moving the Court *ex parte* may support his motion by argument addressed to the Court on the facts put in evidence, and no party to the suit or proceedings, although present, other than the party moving, shall be entitled to be then heard.

10. Where a motion is made *ex parte*, the Court may make or refuse to make the order sought, or may grant an order to show cause why the order sought should not be made, or may direct the motion to be made on notice to the parties to be affected thereby.
11. Where an order is made on a motion *ex parte*, any party affected by it may, within seven days after service of it, or within such further time as the Court shall allow, apply to the Court by motion to vary or discharge it; and the Court may, on notice to the party obtaining the order, either refuse to vary or discharge it, or may vary or discharge it with or without imposing terms as to costs or security, or otherwise, as seems just.
12. (1) No order made on a motion *ex parte* shall last for more than 14 days after the party affected by the order has applied for the order to be varied or discharged or last for another 14 days after application to vary or discharge it had been concluded.

(2) If a motion to vary or discharge an *ex parte* order is not taken within 14 days of its being filed, the *ex parte* order shall automatically lapse.

C - Orders to show cause

13. An order to show cause shall specify a day when cause is to be shown, to be called the return-day to the order, which shall ordinarily be not less than three days after service.
14. A person served with an order to show cause may, before the return-day, produce evidence to contradict the evidence used in obtaining the order, or setting forth other facts on which he relies to induce the Court to discharge or vary such order.
15. On the return-day, if the person served does not appear and it appears to the Court that the service on all proper parties has not been duly effected, the Court may enlarge the time and direct further service or make such other order as seems just.
16. If the person served appears, or the Court is satisfied that service has been duly effected, the Court may proceed with the matter.
17. The Court may either discharge the order or make the same absolute, or adjourn the consideration thereof, or permit further evidence to be produced in support of or against the order, and may modify the terms of the order so as to meet the merits of the case.

D - Notice of motion

18. Unless the Court gives special leave to the contrary, there shall be at least two clear days between the service of a motion and the day named in the notice for hearing the motion.
19. Notice of motion may, with leave of the Court, be served by any person, notwithstanding that such person is not an officer of the Court.
20. Where a party acts by a solicitor, service of notice of motion on the solicitor shall be deemed good service on that party.
21. There shall be served along with the notice of motion a copy of any affidavit on which the party moving intends to rely at the hearing of the motion.
22. If at the hearing of any motion, the Court is of opinion that any person, to whom notice has not been given, ought to have or to have had such notice, the Court may either dismiss the motion, or adjourn the hearing thereof in order that the notice may be given, upon such terms as to the Court may seem fit.
23. The plaintiff may, by leave of the Court, cause any notice of motion to be served upon any defendant with the writ of summons.

E - Evidence in Interlocutory Proceedings

24. Oral evidence shall not be heard in support of any motion unless by leave of the Court.
25. The Court may, in addition to or in lieu of affidavits if it thinks it expedient, examine any witness *viva voce*, or receive documents in evidence, and may summon any person to attend to produce documents before it, or to be examined or cross-examined before it in like manner as at the hearing of a suit.
26. Such notice as the Court in each case, according to the circumstances, considers reasonable, shall be given to the persons summoned and to such persons (parties to the cause or matter or otherwise interested) as the Court considers are entitled to inspect the documents to be produced, or to examine the person summoned, or to be present at his examination, as the case may be.
27. The evidence of a witness on any such examination shall be taken in like manner as nearly as may be as at the hearing of a suit.
28. Upon the hearing of any motion the Court may, on such terms as to cost and adjournment as it may deem fit, allow any additional affidavit to be used, after the affidavit has been duly filed and served on the opposite side.

Order 10 *Affidavit*

1. Upon any motion, petition or summons, evidence may be given by an affidavit, but the Court or a Judge in Chambers may, on the application of either party, order the attendance for cross-examination of the person making the affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence unless by special leave of the Court or a Judge in Chambers.
2. Every affidavit shall be titled in the cause or matter in which it is sworn, but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff and first defendant respectively, and indicate that there are other plaintiffs or defendants, as the case may be.
3. The Court or a Judge in Chambers may receive any affidavit sworn to for the purpose of being used in any cause or matter notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.
4. Where a special time is limited for filing affidavit, no affidavit filed after that time shall be used, unless by leave of the Court or a Judge in Chambers.
5. Except by leave of the Court or a Judge in Chambers, no order made *ex parte* in Court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for and produced or filed at the time of making the motion.
6. A party intending to use any affidavit in support of an application made by him in chambers shall give notice to the other parties concerned in that behalf.
7. All affidavits, which have been previously made and read in Court upon any proceeding in a cause or matter, may be used before the Judge in Chambers.
8. Every alteration in an account verified by affidavit to be left at Chambers shall be marked with the initials of the commissioner before whom the affidavit is sworn, and the alterations shall not be made by erasure.
9. Accounts, extracts from registers, particulars of creditors, debts, and other documents referred to by affidavit, shall not be annexed to the affidavit, or referred to in the affidavit as annexed, but shall be referred to as exhibits.

10. Every certificate on an exhibit referred to in an affidavit signed by the commissioner before whom the affidavit is sworn shall be marked with the short title of the cause or matter.
11. Sections 77 to 89 of the Evidence Act, which set out provisions governing affidavits, shall apply as if they were part of these Rules.
12. A document purporting to have affixed or impressed thereon or subscribe thereto the seal or signature of a Court, Judge, Notary Public or person having authority to administer oath in any part of the Commonwealth outside Nigeria in testimony of an affidavit being taken before it or him in that part shall be admitted in evidence without proof of the seal or signature of that Court, Judge, Notary Public or person.

Order 11

Place of instituting and of trial of Suits

1.
 - (1) Subject to the provisions of any law with respect to transfer of suits or to specific subject matters, the place for the trial of any suit or matter shall be as provided in this Order.
 - (2) All suits or actions relating to taxation of companies and of other bodies established or carrying on business in Nigeria and of all other persons subject to Federal taxation shall be commenced and determined in the Judicial Division of the Court in which the headquarters or the principal office of the company or body is situate and in the case of a person subject to Federal taxation, where the person resides or carries on substantial part of his business.
 - (3) All actions for recovery of revenue, penalties and forfeitures, and also all actions against public officers, shall be commenced and tried in the Judicial Division of the Court in which the cause of action arose.
 - (4) All suits for specific performance, or upon the breach of any contract, shall be commenced and determined in the Judicial Division of the Court in which the contract is supposed to have been performed or in which the defendant resides or carries on substantial part of his business.
 - (5) All suits and actions under the Customs and Excise Tariff, Etc. Decree 1995 or under the Admiralty Jurisdiction Decree 1991 shall be commenced and determined in the jurisdiction of the Division of the Court in which the breach of the law, or contract took place or in which the port or boarder where the breach took place is situate.
 - (6) All suits and actions in respect of diplomatic, consular or foreign trade representation shall be commenced and determined in the Division of the Court in which the diplomatic, consular or foreign trade is carried out.
 - (7) All suits and actions in respect of citizenship, naturalisation and aliens, repatriation of persons who are not citizens of Nigeria, passports and visas shall be commenced and determined in the Division of the Court in which the persons resides.
 - (8) All suits and actions relating to copyright, patents, designs, trade marks and merchandise marks shall be commenced and determined in the Division in which the defendant resides.
 - (9) All other suits shall be commenced and determined in the Judicial Division in which the defendant resides or carries on substantial part of his business or in which the cause of action arose.
2. If there are more defendants than one resident in different Judicial Divisions, the suit may be commenced in any one of those Judicial Divisions, subject, however, to any order which the Court may, upon the application of any of the parties, or on its own motion, think fit to make with a view to the most convenient arrangement for the trial of the suit.

3. Where a suit is commenced in any other Judicial Division of the Court than that in which it ought to have been commenced, it may, notwithstanding, be tried in the Judicial Division in which it has been commenced, unless the Court otherwise directs or the defendant pleads specially in objection to the jurisdiction before or at the time when he is required to state his answer or to plead in the cause.
4. No proceedings which have been taken before the plea in objection shall be in any way affected thereby, but the Judge shall order the cause be transferred to the Judicial Division to which it is proved to his satisfaction, to belong, or, failing such proof, order that it be retained and proceed in the Court in which it has been commenced, and the order shall not be subject to appeal.

ORDER 12

Parties

A - General

1. (1) All persons may be joined in one action as plaintiffs in whom any right to relief (in respect of or arising out of the same transaction or in a series of transactions) is alleged to exist whether jointly, severally, or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment.

(2) If, upon the application of a defendant, it appears that the joinder may embarrass any of the parties or delay the trial of the action, the court or a Judge in Chambers may order separate trial, or make such other order as may be expedient in the circumstances.
2. Where an action is commenced in the name of the wrong person, whether juristic or non-juristic as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a Judge in Chambers, may, if satisfied that it was commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person whether juristic or non-juristic to be substituted or added as plaintiff upon such terms as may be just.
3. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative and judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities without any amendment.
4. Where in an action a person, whether juristic or non-juristic, has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim or set-off, the defendant may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of the plaintiff or any proceeding consequent thereon.
5. (1) If it appears to the Court, at or before the hearing of a suit, that all the persons may be entitled to or who claim some share or interest in the subject matter of the suit, or whom may likely to be effected by the result, have not been made parties, the Court may adjourn the hearing of the suit to a future day, to be fixed by the Court, and direct that such persons shall be made either plaintiffs or defendants in the suit, as the case may be.

(2) Where the Court directs persons to be made plaintiffs or defendants as in sub-rule (1) of this rule, the Court shall issue a notice to such persons which shall be served in the manner provided by these rules for the service of a writ of summons or in such other manner as the Court thinks fit to direct; and on proof of the due service of such notice, the person served, whether he appears or not, shall be bound by all proceedings in the cause but that a person so served, and failing to appear within the time limited by the notice for his appearance, may at any time before judgment in the suit, apply to the Court for leave to appear, and such leave may be given upon such terms (if any) as the Court thinks fit.

(3) The Court may, at any stage of the proceeding and on such terms as appear to the Court to be just, order that the name or names of any party or parties whether as plaintiffs or defendants, improperly joined, be struck out.

6. Where a person has a joint and several demand against more persons than one, either as principals or sureties, it is not necessary for him to bring before the court as parties to a suit concerning that demand all persons liable or more of the persons serially or jointly and severally liable.
7.
 - (1) If the plaintiff sues, or any defendant counter-claims in any representative capacity, it shall be so expressed on the writ.
 - (2) The Court may order any of the persons represented to be made parties either in lieu of, or in addition to the previously existing parties.
8. Where more persons than one have the same interest in one suit, one or more may, with the approval of the Court, be authorised by the other persons interested to sue or to defend the suit for the benefit of or on behalf of all parties so interested.
9. Any two or more persons claiming or alleged to be liable as partners may sue or be sued in the name of the firm in which they were partners when the cause of action arose and any party to an action may in such case apply to the Court for a statement of the names and addresses of the persons who were, when the cause of action arose, partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Court may direct.
10. Infants may sue as plaintiffs by their next friend and may defend by guardians appointed for that purpose.
11. Lunatics and persons of unsound mind may respectively sue as plaintiffs by their committees or next friend, and may in like manner defend any action by their committees or guardians appointed for that purpose.
12.
 - (1) An infant shall not enter an appearance except by his guardian *ad litem*.
 - (2) No order for the appointment of a guardian shall be necessary if the legal practitioner applying to enter such appearance makes and files an affidavit in Form 14 in Appendix 6 to these Rules with such variations as circumstances may require.
 - (3) This provision shall also apply in case where an infant is served with a petition or notice of motion, or a summons, in any matter.
13. Before the name of a person is used in any action as next friend of an infant or other party, or as relator, that person shall sign a written authority for that purpose, and the authority shall be filed in the Registry.
14.
 - (1) Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons but the Court or a Judge in Chambers may at any stage of the proceedings, order any such persons to be made parties either in addition to or in lieu of the previously existing parties.
 - (2) Sub-rule (1) of this rule shall also apply to trustees, executors and administrators sued in proceedings to enforce a security by foreclosure or otherwise.
15. Where a defendant is added or substituted, the writ of summons shall be amended accordingly and the plaintiff shall, unless otherwise ordered by the Court or a Judge in Chambers, file an amended writ and cause the new defendant to be served in the proceedings shall be continued as if the new defendant had originally been made a defendant.
16. An application to add or strike out or substitute a plaintiff or defendant may be made to the Court or Judge in Chambers at any time before trial by motion or summons or in a summary manner at the trial of the action.
17.
 - (1) Where in any action a defendant claims as against any person not already a party to the action (in this section called "the third party") that -
 - (a) he is entitled to contribution or indemnity; or

- (b) he is entitled to any relief or remedy relating to, or connected with the original subject matter of the action and substantially the same as one relief or remedy claimed by the plaintiff; or
- (c) any question or issue relating to or connected with the said subject matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but also as between the plaintiff and the defendant and the third party or between any or either of them,

the court or a Judge in Chambers may give leave to the defendant to issue and serve a third party notice.

- (2) The Court or a Judge in Chambers may give leave to issue and serve a third party notice on *ex-parte* application supported by affidavit, or, where the Court or Judge in Chambers directs a summons to the plaintiff to be issued, upon the hearing of the summons but that leave shall not be granted in cases where action was begun and an order for pleading made before the date of the commencement of this rule.

18. (1) The notice shall -

- (a) state the nature and grounds of the claim or the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed;
- (b) be in accordance with Form 23 or Form 24 in Appendix 6 to these Rules with such variations as circumstances may require; and
- (c) be sealed and served on the third party in the same manner as a writ of summons is sealed and served.

- (2) The notice shall, unless otherwise ordered by the Court or by a Judge in Chambers, be served within the time limited for delivering the defence, or, where the notice is served by a defendant to a counter-claim, the reply and with it also shall be served a copy of the writ of summons or originating summons and of any pleadings filed in the action.

19. The third party shall, as from the time of the service upon him of the notice, be a party to the action with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant.

20. The third party may enter an appearance in the action within eight days from service or within such further time as may be directed by the Court or Judge in Chambers as specified in the notice (where the third party is served in Nigeria outside the jurisdiction of the Court, the period for entering appearance shall be at least thirty days) but a third party failing to appear within that time may apply to the Court or Judge in Chambers for leave to appear, and the leave may be given upon such terms, if any, as the Court or Judge in Chambers thinks fit.

21. If a third party duly served with a third party notice does not enter an appearance or makes default in filing any pleading which he has been ordered to file, he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment given in the action, whether by consent or otherwise, and by any decision therein or any question specified in the action, and when contribution or indemnity or other relief for remedy is claimed against him in the notice, he shall be deemed to admit his liability in respect of the contribution or indemnity or other relief or remedy.

22. (1) Where a third party makes default in entering an appearance or filing any pleading which he had been ordered to file and the defendant giving the notice suffers judgment by default, the defendant shall be entitled at any time, after satisfaction of the Judgment against himself, or before the satisfaction by leave of the Court or a Judge in Chambers -

- (a) Judge in Chambers shall direct.
to enter judgment against the third party to the extent of any contribution or indemnity claimed in the third party notice, or by leave of the Court or a Judge in Chambers,

- (b) to enter such judgment in respect of any other relief or remedy claimed as the Court or a
 - (2) It shall be lawful for the Court or a Judge in Chambers to set aside or vary the judgement against the third party upon such terms as may seem just.
23. (1) If the third party enters an appearance, the defendant giving notice may, after notice of the intended application has been served upon the plaintiff, the third party, and on any other defendant, apply to the Court or a Judge in Chambers for directions, and the Court or Judge in Chambers may -
- (a) where the liability of the third party to the defendant giving the notice is established on the hearing of the application, order such judgement as the nature of the case may require to be entered against the third party in favour of the defendant giving the notice; or
 - (b) if satisfied that there is a question or issue properly to be tried as between the plaintiff and the defendant and the third party or between any or either of them as to the liability of the defendant to the plaintiff or as to the liability of the third party to make any contribution or indemnity claimed, in whole or in part, or as to any other relief or remedy claimed in the notice by the defendant or that a question or issue stated in the notice should be determined not only as between the plaintiff and the defendant but as between the plaintiff, the defendant and the third party or any or either of them, order that question or issue to be tried in such manner as the Court or Judge in Chambers may direct; or
 - (c) dismiss the application.
- (2) Any directions given pursuant to this rule may be given either before or after any judgement has been entered in favour of the plaintiff against the defendant in the action, and may be varied from time to time and may be rescinded.
 - (3) The third party proceedings may at any time be set aside by the Court or a Judge in Chambers.
24. The Court or a Judge in Chambers upon the hearing of the application for directions may, if it appears desirable to do so, give the third party liberty to defend the action either alone or jointly with the original defendant upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, pleading or documents to be filed, or amendments to be made, and give such directions as to the Court or Judge in Chambers may appear proper for having the question and the rights and the liabilities of the parties most conveniently determined and enforced, and as to the mode and extent in or to which the third party shall be bound or made liable by the decision or judgement in the action.
25. (1) Where the action is tried, the Judge who tries the action may, at or after the trial, enter such judgement as the nature of the case may require for or against the defendant giving the notice or against or for the third party, and may grant to the defendant or to the third party, any relief or remedy which might properly have been granted if the third party had been made a defendant to an action duly instituted against him by the defendant but execution shall not be issued without leave of the Court or of a Judge in Chambers until after satisfaction by the defendant of the judgement against him.
- (2) Where the action is decided otherwise than by trial, the Court or a Judge in Chambers may, on application by motion or summons, make such order as the nature of the case may require, and, where the plaintiff has recovered judgement, may cause such judgement as may be entered for or against the defendant giving notice or against or for the third party.
26. Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in that name or style as if it were a firm name and, so far as the nature of the case will permit, all provisions relating to proceedings against firms shall apply.
27. If it appears on oath or affidavit to the satisfaction of the Court that the defendant has a *bona fide* counter-claim against the plaintiff which can be conveniently tried by the Court, it shall be lawful for the Court in its

discretion to stay proceedings in the suit instituted by the plaintiff until he provides such security to comply with the orders and judgment of the Court with respect to such counter-claim as the court thinks fit.

28. Where by these Rules an act may be done by any party in an action that act may be done either by the party in person, or by his legal practitioner, or by his agent (unless an agent is expressly debarred under these Rules or any written law in force in any part of Nigeria).

B - Alteration of parties

29. (1) Where after the institution of a suit a change or transmission of interest or liability occurs in relation to any party to the suit, or 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 obtain from the Court an order requisite for curing the defect, or enabling or compelling proper parties to carry on the proceedings.
- (2) A person served with an order made pursuant to sub-rule (1) of this rule may, within such time as the Court in the order directs, apply to the court to discharge or vary the order.
30. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives.
31. If there are two or more plaintiffs or defendants, and one of them dies, and if the cause of action survives the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and against the surviving defendant or defendants.
32. (1) If there are two or more plaintiffs and one of them dies, and if the cause of action does not survive to the surviving plaintiff or plaintiffs alone, but survives to them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of the legal representative of the deceased plaintiff, enter the name of the legal representative in the suit in the place of the deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and the legal representative of the deceased plaintiff.
- (2) If no application is made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and the legal representative of the deceased plaintiff shall, after notice to appear, be interested in, and shall be bound by the judgment given in the suit, in the manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs, unless the Court otherwise directs.
33. (1) In case of the death of a sole plaintiff, or sole surviving plaintiff, the Court may, on the application of the legal representative of the deceased sole plaintiff, enter the name of the legal representative in the place of the plaintiff in the suit, and the suit shall thereupon proceed.
- (2) If no such application is made to the Court within what it may consider a reasonable time by any person claiming to be the legal 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 award to the defendant the reasonable costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased sole plaintiff or surviving plaintiff.
- (3) The court may, if it thinks proper, on the application of the defendant and upon such terms as to costs as may seem just, make such order for bringing in the legal representative of the deceased sole plaintiff or surviving plaintiff, and for proceeding with the suit in order to come to a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.
34. If any dispute arises as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been duly determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be the legal representative for the purpose of prosecuting that suit.
35. (1) If there are two or more defendants, when one of them dies the cause of action survives but does not survive against the surviving defendant or defendants alone.

- (2) 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 abode of any person who the plaintiff alleges to be the legal representative of the defendant and whom he desires to be made the defendant in his stead
 - (3) The Court shall thereupon enter the name of the legal representative in the suit in the place of the defendant, and issue an order to him to appear on a day to be therein mentioned to defend the suit and the case shall thereupon proceed in the same manner as if the legal representative had originally been made a defendant, and had been a party to the former proceedings in the suit.
- 36. (1)** The bankruptcy of the plaintiff, in any suit which the assignee or trustee might maintain for the benefit of the creditors, shall not be valid objection to the continuance of the suit, unless the assignee or trustee, declines to continue the suit, or neglects or refuses to give security for the costs thereof, within such reasonable time as the Court may order.
- (2) If the assignee or trustee neglects or refuses to continue the suit and to give the security within the time limited by the order, the defendant may, within eight days after such neglect or refusal, plead the bankruptcy of the plaintiff as a reason for abating the suit.
- 37.** Where any cause or matter becomes abated or in the case of any such change of interest as is by these Rules provided for, the legal practitioner for the plaintiff or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the registrar who shall cause an entry thereof to be made in the Cause Book opposite to the name of such cause or matter.

C - Change of Counsel of parties

- 38. (1)** A party to any cause or matter who sues or defends by a Counsel, may change his legal practitioner without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are served on every other party to the cause or matter and on the former legal practitioner, the former legal representative shall be considered the legal practitioner of the party until the final conclusion of the cause or matter
- (2) A copy of the notice endorsed with an affidavit stating that the notice has been duly filed in the registry shall also be filed.
 - (3) The party giving the notice may perform the duties prescribed by this order in person or by his new legal representative.
- 39. (1)** Where a legal practitioner who has acted for a party in a cause or matter ceases so to act and the party has not given notice of change in accordance with sub-rule (1) of rule 38 of this Order, the legal practitioner may apply to the Court for an order declaring that the legal representative has ceased to be the one acting for the party in the cause or matter and the Court may make an order accordingly.
- (2) An order under sub-rule (1) of this rule shall not be made until the legal practitioner serves on every party to the cause or matter a copy of the notice otherwise he shall be considered the legal practitioner of the party till the final conclusion of the cause or matter.
 - (3) An application for an order under this rule shall be made by originating motion supported by an affidavit stating the grounds of the application
 - (4) An order made under this rule shall not affect the rights of the legal representative and the party for whom he acted for as between themselves.
- 40.** After an order is made under rule 38 or 39 of this Order, the address of the party shall be his last known address or where the party is a body corporate, its registered or principal office for the purpose of the service on him of any document not required to be served personally.

Order 13
Service of process

A - Service within jurisdiction

1. Service of writs of summons, notices, petitions, pleading, orders, summonses, warrants and all other proceedings, documents or written communication of which service is required, shall be made by -
 - (a) the sheriff or a deputy sheriff, bailiff, officer of the Court; or
 - (b) a person appointed therefor (either especially or generally) by the Court or by a Judge in Chambers, unless another mode of service is prescribed by these Rules; or
 - (c) a solicitor filing the document who must give a written undertaking at the time of filing the document to the registrar receiving the document that his Chambers shall serve the document on the other party or his solicitor and that he would file with the registrar a proof of the service signed by the other party or his solicitor; or
 - (d) the Court or a Judge in Chambers by such other method of service as the Court or Judge in Chambers may otherwise direct.
2. Save as otherwise prescribed by any of these Rules, an originating process shall be served personally by delivering to the person to be served a copy of the document, duly certified by the Registrar as being a true copy of the original process filed, without exhibiting the original thereof.
3. No service of a writ of summons or other process on the defendant shall be necessary when the defendant by his legal practitioner undertakes in writing to accept service.
4.
 - (1) The Court may in any civil case, for reasons which seems to it sufficient, appoint any process to be executed by a special bailiff, who for the time being shall have the privileges and liabilities of an officer of Court.
 - (2) The expenses of the special bailiff shall be defrayed by the party on whose application he is appointed unless the Court in any case sees any reason to vary this rule.
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 order that service be effected either -
 - (a) by delivery of the document to an adult person at the usual or last known place of abode or business of the person to be served; or
 - (b) by delivery of the document to some person being an agent of the person to be served, or to some other person, on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or other person, come to the knowledge of the person to be served;
 - (c) by advertisement in the Federal Government Official *Gazette*, or in some newspaper circulating within the jurisdiction; or
 - (d) by notice put up at the principal Court-House of, or some other place of public resort in, the Judicial Division wherein the proceeding in respect of which the service is made is instituted, or at the usual or last known place of abode, or of business, of the person to be served; or
 - (e) by service where a party is represented by a legal practitioner, of notices, pleadings, petitions, orders, summonses, warrants and all other proceedings, documents or written communications on the legal practitioner or his clerk.

6. When a party to be served is in the service of any Ministry or non-Ministerial Department of Government or of a Local Government, the Court may transmit the document to be served and a copy thereof to the most senior officer of the Department of Government in the Judicial Division or place where the party to be served works or resides or to the Local Government in whose service the party to be served is, and such officer, or Local Government shall cause the same to be served on the proper party, accordingly.
7. Where partners are sued in the name of the partnership the writ or other document shall be served upon any one or more of the partners, or at the principal place within the Judicial Division of the business of the partnership, upon any person in that place having at the time of the service the control or management of the business and such service shall be deemed good service upon the partnership.
8. When the suit is against a corporation or a company authorized to sue and be sued in its name or in the name of an officer or trustee, the writ or other document may be served, subject to the enactment establishing that corporation or company or under which the company is registered, as the case may be, by giving the writ or document to any director, secretary, or other principal officer, or by leaving it at the office of the corporation or company.
9. Where the person on whom service is to be effected is living or serving on board of any ship, it shall be sufficient to deliver the writ or other document to the person on board who is at the time of the service apparently in charge of that ship.
10. Where the person on whom service is to be effected is a prisoner in a prison or a lunatic in any asylum, it shall be sufficient service to deliver the writ or other document at the prison or asylum to the superintendent or person appearing to be the head officer in charge of the prison or asylum.
11. Where an infant is a party to an action, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall, unless the court or Judge in Chambers otherwise orders, be deemed good personal service on the infant but that the court or judge may order that service made or to be made on an infant personally shall be deemed good service.
12. Where service is to be made upon a person residing out of, but carrying on business within, the jurisdiction in his own name or under the name of a firm through an authorised agent, and the proceeding is limited to a cause of action which arose within the jurisdiction, the writ or other document may be served by giving it to the agent, and the service shall be equivalent to personal service.

B - Service out of jurisdiction

13. Service out of jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge in Chambers whenever -
 - (a) the whole subject matter of the action is land situate within the jurisdiction (with or without rents or profits); or
 - (b) any act, deed, will, contract, obligation, or liability affecting land or hereditament situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action; or
 - (c) any relief is sought against any person domiciled, or ordinarily resident, within the jurisdiction; or
 - (d) the action is one brought against the defendant to enforce, rescind, dissolve, annul or otherwise effect a contract or to recover damages or other relief for or in respect of a breach of a contract-
 - (i) made within the jurisdiction, or
 - (ii) made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or
 - (iii) by its terms or by implication to be governed by the law in force in the jurisdiction or is brought against the defendant in respect of a breach committed within the jurisdiction of a

contract wherever made, even though the breach was preceded or accompanied by a breach out of the jurisdiction which rendered impossible the performance of the part of the contract which ought to have been performed within the jurisdiction;

- (e) the action is founded on tort or other civil wrong committed within the jurisdiction; or
 - (f) any injunction is sought as to any thing to be done within the jurisdiction or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or
 - (g) any person out of jurisdiction is a necessary or proper party to an action properly brought against some other party within the jurisdiction; or
 - (h) the action is by a mortgagee or mortgagor in relation to a mortgage of property situate within the jurisdiction and seeks relief of the nature or kind of the following that is to say, sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee; but does not seek (unless and except so far as permissible under paragraph (d) of this rule) any personal judgment order for payment of any moneys due under the mortgage; or
 - (I) the action is one brought under the Civil Aviation Act or any regulations made in pursuance of the Act or any law relating to carriage by air.
- 14. (1)** Every application for leave to serve a writ or notice on a defendant out of the jurisdiction shall be supported by affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action and showing in what place or country the defendant is or probably may be found, , and the grounds upon which application is made.
- (2) No such leave shall be granted unless it is made sufficiently to appear to the Court or a Judge in Chambers that the cause is a proper one for service out of jurisdiction under these Rules.
- 15.** Any order giving leave to effect service or give notice shall limit a time after such service or notice within which the defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given, and on whether the air mail is available to the defendant.
- 16.** Where leave is given under the foregoing provisions to serve notice of the writ of summons out of jurisdiction, the notice shall be served in the manner in which writs of summons are served.
- 17. (1)** Service out of the jurisdiction may be allowed by the Court or a Judge in chambers of the following processes or of notices thereof, that is to say -
- (a) an originating summons, where the proceedings begun by an originating summons might have been begun by a writ of summons under these Rules;
 - (b) any originating summons, petition, notice of motion or other originating proceedings -
 - (i) in relation to an infant or lunatic or person of unsound mind, or
 - (ii) under any law or enactment under which proceedings can be commenced otherwise than by writ of summons, or
 - (iii) under any rule of court whereunder proceedings can be commenced otherwise than by writ of summons;
 - (c) without prejudice to the generality of paragraph (b) of this sub-rule, any summons, order or notice in any interpleader proceedings or for the appointment of an arbitrator or umpire or to remit, set aside, or enforce an award in an arbitration held or to be held within the jurisdiction;

- (d) any summons, order or notice in any proceedings duly instituted whether by writ of summons or other such originating process as aforesaid.
 - (2) The provisions of rules 14, 15 and 16 of this Order shall apply *mutatis mutandis* to service under this rule.
18. (1) Where leave is given to serve a writ of summons or a notice of writ of summons in any foreign country other than a country with which a convention in that behalf has been made, the following procedure may be adopted -
- (a) the document to be served shall be sealed with the seal of the Court for use out of the jurisdiction, and shall be transmitted to the permanent Secretary to the Ministry of Justice by the Chief Registrar on the direction of the Chief Judge, together with a copy thereof translated into the language of the country in which service is to be effected and with a request for transmission to the Minister responsible for foreign affairs for the further transmission of the same to the Government of the country in which leave to serve the document has been given and the request shall be as in Form 7 in Appendix 6 to these Rules with such variations as circumstances may require;
 - (b) the party requesting a copy of a document for service under this section shall, at the time of requesting the same, file a *praecipe* as in Form 8 in Appendix 6 to these Rules;
 - (c) an official certificate, or declaration upon oath or otherwise, transmitted through the diplomatic channel by the Government or Court of a foreign country to which this provision applies, to the Court, shall, provided that it certifies or declares the document to have been personally served, or to have been duly served upon the defendant in accordance with the law of that foreign country, or words to that effect, be deemed to be sufficient proof of service, and shall be filed on record as, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf;
 - (d) Where an official certificate or declaration transmitted to the Court in the manner provided in paragraph (c) of this sub-rule certifies or declares that efforts to serve document have been without effect, the Court or a Judge may, upon the *ex parte* application of the plaintiff, order substituted service of the document, and the document and a copy of it and the order shall be sealed and transmitted to the permanent Secretary to the Minister of Justice in manner aforesaid together with a request in Form 9 of Appendix 6 to these Rules, with such variations as circumstances may require.
- (2) Nothing herein contained shall in any way prejudice or affect any practice or power of the Court under which when lands, funds, choses in action, rights or property within the jurisdiction are sought to be dealt with or affected, the Court may, without affecting to exercise jurisdiction over any person out of the jurisdiction, cause such person to be informed of the nature or existence of the proceedings with a view to such person having an opportunity of claiming, opposing or otherwise intervening.
- 19 (1) Where, for the purpose of an action under the Civil Aviation Act and the Convention therein set out, leave is given to serve a notice of writ of summons upon a high contracting party to the convention other than Nigeria, the provisions of this Order shall apply.
- (2) The notice shall specify the time for entering an appearance as limited in pursuance of rule 15 of this Order.
 - (3) The notice shall be sealed with the seal of the Court for service out of jurisdiction, and shall be transmitted to the Ministry of Justice, together with a copy thereof transmitted into the language of the country of the defendant, and with a request for transmission to the Minister responsible for matters relating to foreign affairs for further transmission of the same to the Government of that country.
 - (4) The request shall be in Form 10 in Appendix 6 to these Rules, with such variations as circumstances may require.
 - (5) The party bespeaking a copy of a document for service under this rule shall at the time of bespeaking the document file a *praecipe* in Form 9 in Appendix 6 to these Rules.

- (6) An official certificate from the Minister responsible for matters relating to foreign affairs transmitted by the Ministry of Justice or otherwise to the Court certifying that the notice was delivered on a specified date to the Government of the country of the defendant shall be deemed to be sufficient proof of service and shall be filed as record of and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf.
- (7) After entry of appearance by the defendant, or, if no appearance is entered after expiry of the time limited for appearance, the action may proceed to judgment in all respects as if the defendant had for the purposes of the action waived all privileges and submitted to the jurisdiction of the Court.
- (8) Where it is desired to serve or deliver a summons, order or notice in the proceedings on the defendant out of the jurisdiction, the provisions of this rule shall apply with such variation as circumstances may require.

20. Where leave is given in a civil cause or matter or where leave is not required, and it is desired to serve any writ of summons, originating summons, notice, or other document in any foreign country with which a Convention in that behalf has been or shall be made, the following procedure shall, subject to any special provisions contained in the Convention, be adopted-

(a) the party bespeaking the service shall file in the registry a request in Form 8 or Form 54 in Appendix 6 to these Rules, which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used and the request shall state the medium through which it is desired that the service shall be effected, that is, whether -

(i) directly through the diplomatic channels, or

(ii) through the foreign judicial authority,

and shall be accompanied by the original documents and a translation thereof in the language of the country in which service is to be effected, certified by or on behalf of the person making the request and a copy of each for every person to be served and any convention may require (unless the service is required to be made on a Nigerian subject directly through the diplomatic channels in which case the translation and copies thereof need not accompany the request unless the Convention expressly requires that they should do so);

(b) the document to be served shall be sealed with the seal of the Court for use out of the jurisdiction and shall be forwarded by the Registrar to the Permanent Secretary for Foreign Affairs for transmission to the foreign country;

(c) an official certificate, transmitted through the diplomatic channel by the foreign judicial authority or by a Nigerian diplomatic agent to the Court, establishing the fact and the date of the service of the document, shall be deemed to be sufficient proof of such service, and shall be filed as record of, and be equivalent to, an affidavit of service within the requirements of these Rules in that behalf.

- 21.** Rule 20 shall not apply to or render invalid or insufficient any mode of service in any foreign country with which a Convention has been or shall be made which is otherwise valid or sufficient according to the procedure of the Court and which is not expressly excluded by the Convention made with that foreign country.
- 22.** The Court or Judge, in giving leave to serve a document out of the jurisdiction under these Rules, may in an appropriate case direct that the air mail service shall be used by the party effecting service.
- 23.** Where, in any civil cause or matter pending before a court or tribunal in any foreign country with which a convention in that behalf has been or shall be made, a request for service of any document on a person within the jurisdiction is received by the Chief Judge from the consular or other authority of the country, the following procedure shall, subject to any special provisions contained in the Convention, be adopted -

- (a) the service shall be effected by the delivery of the original or a copy of the document, as indicated in the request and the copy of the translation, to the party or person to be served in person by an officer of the court, unless the Court or a Judge in Chambers thinks fit otherwise to direct;
 - (b) no court fees shall be charged in respect of the service but the particulars of charges of the officer employed to effect service shall be submitted to the Chief Registrar of the Court who shall certify the amount properly payable in respect thereof;
 - (c) the Chief Judge shall transmit to the consular or other authority making the request, a certificate establishing the fact and the date of the service in person, or indicating the reason for which it has not been possible to effect it, and at the same time shall notify to the said consular or other authority the amount of the charges certified under paragraph (b) of this rule.
24. Upon the application of the Attorney-General of the Federation, the Court or a Judge in Chambers may make all such orders for substituted service or otherwise as may be necessary to give effect to rules 13 to 22 of this Order.
25. Any order giving leave to effect service out of the jurisdiction shall prescribe the mode of service, and shall limit a time after the service within which the defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served, and the Court may receive an affidavit or statutory declaration of such service having been effected as *prima facie* evidence thereof.

C - General Provisions

26. Where the officer of court or person charged with the service of any writ or document on any person is prevented by the violence or threats of such person, or any person in concern with him, from personally serving the writ or documents, it shall be sufficient to inform the person to be served of the nature of the writ or document as near that person as practicable.
27. In all cases where service of any writ or document has been effected by a bailiff or other officer of Court, an affidavit of service sworn to by the bailiff or other officer shall, on production, without proof of signature, be *prima facie* evidence of service.
28. The costs of and incidental to the execution of any process in a suit shall be paid in the first place by the party requiring the execution, and the sheriff shall not (except by order of the Court) be bound to serve or execute any process unless the fees and reasonable expenses thereof shall have been previously paid or tendered to him.
29. Service shall not be made on a Sunday or public holiday, unless the Court directs otherwise by order endorsed on the document to be served.
30. A book shall be kept at every Court for recording service or process, in such form as the Chief Judge may direct, in which shall be entered by the officer serving the process, or by the registrar, the names of the plaintiff or complaint and the defendant, the particular Court issuing the process, the method, whether personal or otherwise, of the service, and the manner in which the person serving ascertained that he served the process on the right person, and where any process is not duly served, then the cause of failure shall be stated and every entry in the book or an office copy of any entry shall be *prima facie* evidence of the several matters therein stated.
31. In this order "Out of Jurisdiction" means out of the Federal Republic of Nigeria.

Order 14
Appearance

1. (1) A defendant shall within the time limited in the writ or other originating process enter an appearance in the manner hereinafter prescribed.
 - (2) A defendant shall enter an appearance by delivering to the Registrar, the requisite documents, that is to say, a memorandum of appearance in Form 11, or where leave was obtained before appearance, a notice in Form 12 in Appendix 6 to these Rules and a statement of defence to the action together with copies of documentary evidence therein mentioned.
 - (3) The memorandum or notice shall be accompanied, where the defendant is an infant, by an affidavit sworn to by his legal practitioner and the consent of his guardian as in Form 14 in Appendix 6 to these Rules, with such variations as the circumstances may require, and a copy thereof.
 - (4) All the documents shall be signed by the legal practitioner by whom the defendant appears or, if the defendant appears in person, by the defendant.
 - (5) On receipt of the requisite documents, the Registrar shall in all cases enter the appearance in the cause Book and stamp the copies of the memorandum of appearance with the official stamp showing the date on which he received those documents, and deliver one sealed copy thereof to the plaintiff or, as the case may be, his legal practitioner.
2. (1) A defendant appearing in person shall state in the memorandum of appearance an address for service, which shall be within the jurisdiction.
 - (2) Where a defendant appears by a legal practitioner, the legal practitioner shall state in the memorandum of appearance his place of business and an address for service which shall be within the jurisdiction, and where any legal practitioner is only the agent of another legal practitioner, he shall also insert the name and place of business of the principal legal practitioner.
3. (1) If the memorandum does not contain an address for service, it shall not be accepted.
 - (2) If any address for service is illusory or fictitious or misleading, the appearance may be set aside by the Court or a Judge in Chambers or on the application of the plaintiff.
4. If two or more defendants in the same action shall appear by the same legal practitioner and at the same time, the names of all the defendants so appearing may be inserted in one memorandum.
5. (1) A defendant may appear at any time before judgment.
 - (2) Where a defendant appears at any time after the time limited by the writ for appearance, he shall not, unless the Court or a Judge in Chambers shall otherwise order for any purpose, than if he had appeared according to the writ or other originating process.

Order 15
Default of Appearance

1. Where a writ of summons is endorsed for a liquidated demand, whether specially or otherwise, and the defendant fails, or all the defendants, if more than one, fail, to appear thereto, the plaintiff may have entered in his favour, final judgment for any sum not exceeding the sum endorsed on the writ, together with interest at the rate specified (if any), or (if no rate is specified) at the rate of six per cent per annum, to the date of the judgment, and costs.
2. Where the writ of summons is endorsed for a liquidated demand, whether specially or otherwise, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear,

the plaintiff may have final judgment entered, as in rule (1) of this Order, against those that have not appeared, and may issue execution upon the judgment without prejudice to his right to proceed with the action against those who have appeared.

3. If an appearance is entered but the defence is limited to part only, the plaintiff may have judgment entered for him for the undefended part of his claim, and the rest of the claim may be proceeded with in the normal way.
4. (1) In any case to which rules 1, 2, and 3 of this Order apply, in which the defendant fails, or all the defendants, if more than one, fail to appear, but in which by reason of payment, satisfaction, abatement of nuisance, or for any other reason it is necessary for the plaintiff to proceed with the action, the plaintiff may, by leave of the Court or a Judge in Chambers to be obtained on summons in Chambers, have judgment entered for costs.

(2) The summons under sub-rule (1) of this rule shall be filed and shall be served in the manner in which service of the writ has been effected or in such other manner as the Court or a Judge in Chambers may direct.
5. In all actions not specifically provided for in this Order, if the defendant fails to enter appearance within the stipulated time, the plaintiff may apply for the case to be set down for hearing, and upon the hearing, the Court may give any judgment that the plaintiff appears to be entitled to on the facts.
6. Where judgment is entered pursuant to any of the preceding rules of this Order, it shall be lawful for the Court or a Judge in Chambers to set aside or vary the judgment upon such terms as may be just.
7. Where a defendant or respondent to an originating summons to which an appearance is required to be entered fails to appear within the time limited, the plaintiff or applicant may apply to the Court or a Judge in Chambers for an appointment for the hearing of the summons and upon a certificate that no appearance has been entered, the Court or Judge in Chambers shall appoint a time for the hearing of the summons, upon such conditions (if any) as it or he may think fit.
8. (1) Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not adjudged a lunatic, the plaintiff shall, before further proceeding with action against the defendant, apply to the Court or a Judge in Chambers for an order that some proper person be assigned guardian of such defendant by whom he may appear and defend the action.

(2) No order pursuant to rule 1 of this Order shall be made unless it appears that application was, after the expiration of the time allowed for appearance, and at least six clear days before the day named in the notice for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care the defendant was at the time of serving such writ of summons, and also (in the case of the defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian (if any) of the infant, unless the Court or Judge in Chambers at the time of hearing the application first dispenses with the last-mentioned service.

Order 16

Arrest of Absconding Defendant

1. If in any suit for an amount or value of one thousand naira or upwards the defendant is about to leave the jurisdiction of the Court, or has disposed of or removed from the jurisdiction, his property, or any part thereof, or is about to do so, the plaintiff may, either at the institution of the suit or at any time thereafter until final judgment, make an application to the Court that security be taken for the appearance of the defendant to answer and satisfy any judgment that may be passed against him in the suit.
2. If the Court, after making such investigation as it may consider necessary, is of the opinion that there is probable cause for believing that the defendant is about to leave the jurisdiction of the Court, or that he has disposed of or removed from the jurisdiction, his property, or any part thereof, or is about to do so, 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, it shall be lawful for the Court to issue a warrant to bring the defendant before the Court, that he may show cause why he should not give good and sufficient bail for his appearance.

3. If the defendant fails to show such cause, the Court shall order him to give bail for his appearance at any time when called upon while the suit is pending and until execution or satisfaction of any judgment that may be passed, against him in the suit, or to give bail for the satisfaction of such judgment and the surety or sureties shall undertake in default of such appearance or satisfaction to pay any sum of money that may be adjudged against the defendant in the suit, with costs.
4. Where a defendant offers, 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 may accept the deposit.
5. (1) In the event of the defendant neither furnishing security nor offering a sufficient deposit, he may be committed to custody until the decision of the suit, or if judgment be given against the defendant, until the execution of the decree, if the Court so orders but the Court may at any time, upon reasonable cause being shown and upon such terms as to security or otherwise as may seem just, release the defendant.
 - (2) The application may be made to the Court in any Judicial Division in which the defendant may be, and the Court may issue the warrant for detaining and bringing the defendant before the Court where the suit is pending, and may make such further order as shall seem just.
 - (3) In case the warrant is issued by a different Court from that in which the suit is pending, the Court shall, on the request of either of the parties, transmit the application and the evidence therein to the Court in which the suit is pending, and the sufficient security for the appearance of the defendant in that Court, or send him there in custody of an officer of Court, and the Court in which the suit is pending shall thereupon inquire into and proceed with the application in accordance with the foregoing provisions, in such manner as shall seem just.
6. (1) The expenses incurred for the subsistence in prison of the person so arrested shall be paid by the plaintiff in the action in advance, and the amount so disbursed may be recovered by the plaintiff in the suit, unless the Court otherwise orders.
 - (2) The Court may release the person so imprisoned on failure by the plaintiff to pay the subsistence money, or in case of serious illness, order his removal to hospital.

Order 17

Interim Attachment of Property

1. (1) Where -
 - (a) the defendant in any suit 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 jurisdiction; or
 - (b) in any suit founded on contract or for detinue or trover in which the cause of action arose within the jurisdiction -
 - (i) the defendant is absent from the jurisdiction, or there is a probable cause to believe that he is concealing himself to evade service; and
 - (ii) the defendant is beneficially entitled to any property in the State in the custody or under the control of any other person in the State, or such person is indebted to the defendant

then, in either such case, 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 fulfill any decree that may be made against him in the suit, and on his failing to give the security, or pending the giving of such security, to direct that any property movable or immovable belonging to the defendant shall be attached until the further order of the Court.

2. The application for attachment shall contain a specification of property required to be attached, and the estimated value thereof so far as the plaintiff can reasonably ascertain the same, and the plaintiff shall, at the

time of making the application, declare that to the best of his information and belief the defendant is about to dispose of or remove his property with such intent as aforesaid.

3. (1) If the Court after making such investigation as it may consider necessary, is satisfied that the defendant is about to dispose of or remove his property with intent to obstruct or delay the execution of the decree, it shall be lawful for the Court to order the defendant, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order or produce and place at the disposal of the Court when required, the said 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.
(2) Pending the defendant's compliance with the order, the Court may by warrant direct the attachment until further order of the whole, or any portion, of the property specified in the application.
4. (1) If the defendant fails to show such cause, or to furnish the required security within the time fixed by the Court, 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.
(2) If the defendant shows such cause, or furnishes the required security, and the property specified in the application or any portion of it, shall have been attached, the Court shall order the attachment to be withdrawn.
5. The attachment shall not affect the rights of persons not 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 for the investigation of claims to property attached in execution of a decree.
6. In all cases of attachment before judgment, the Court shall at any time remove the attachment, on the defendant furnishing security as above required, together with security for the costs of the attachment, or upon an order for a non-suit or striking the matter.
7. (1) The application may be made to the Court in the Judicial Division where the defendant resides or in case of urgency, where the property proposed to be attached is situate and the Court may make such order as shall seem just.
(2) In case an order for the attachment of property is issued by a different Court from that in which the suit is pending, that Court shall, on the request of either of the parties, transmit the application and evidence therein to the Court in which the suit is so pending, retaining the property in the meantime under attachment or taking sufficient security for its value and the Court in which the suit is pending shall thereupon inquire into and proceed with the application in accordance with the foregoing provisions, in such manner as shall seem just.

Order 18

Needless detention of chattels or Ships and reparation for it

1. Where a Court on an application of a party, makes an order to hold to bail, or of sale, injunction or attachment or any warrant to stop the clearance of, or to arrest any chattel or ship upon any condition and -
 - (a) it later appears to the Court that an order made by it was applied for on insufficient grounds; or
 - (b) the suit in which the application was made is dismissed or judgment is given against the applicant by default or otherwise and it appears to the Court that there was no probable ground for instituting such a suit,

the Court may on application of the defendant made at any time before the expiration of three months from the termination of the suit, award the defendant an amount of compensation not larger than one that could be awarded for damages in any suit.

2. (1) The provisions of Rule 1 of this Order shall not take away any right of action under admiralty action

- (2) Any compensation awarded under the admiralty action shall be taken into consideration in awarding any damages under Rule 1 of this Order

Order 19

Accounts and Inquiries

1.
 - (1) Where a writ is endorsed with a claim of an account or a claim which necessarily involves taking an account, the plaintiff may, at any time, after the defendant has entered an appearance or after the time limited for appearing, apply for an order for an account under this rule.
 - (2) An application, under this rule shall be made by summons and supported by affidavit or other evidence.
 - (3) On the hearing of the application, the Court may, unless satisfied by the defendant, by affidavit or otherwise, that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.
2.
 - (1) The court may, on application made by summons at any stage of the proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made.
 - (2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgment or so that, as far as may, be each distinct account and inquiry may be designated by a number.
3.
 - (1) Where the Court orders an account to be taken, it may by the same or subsequent order give directions with regard to the manner in which the account is to be taken or vouched.
 - (2) Without prejudice to the generality of sub-rule (1) of this rule, the Court may direct that in taking the account, the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections thereto as they think fit.
4.
 - (1) Where an account has been ordered to be taken, the accounting party shall make out his account and, unless the court otherwise directs, verify it by an affidavit to which the account shall be exhibited.
 - (2) The items on each side of the account shall be numbered consecutively.
 - (3) Unless the order for the taking of the account otherwise directs, the accounting party shall lodge the account with the Court and shall at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.
5. Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of amount or in any other respect shall give him notice thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or, as the case may be, the grounds for alleging that the item is erroneous.
6.
 - (1) If it appears to the Court that there is undue delay in the prosecution of any accounts, or inquiries, or in any other proceedings under any judgment or order, the Court may require to explain the delay and may then make such order for staying the proceedings or for expediting them or for the conduct thereof and for costs as the circumstances require.,
 - (2) The Court may direct any party or legal practitioner to take over the conduct of proceedings in question and to carry out any directions made by an order under this rule and make such order as it thinks fit as to the payment of legal practitioner's costs.
7. Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained without reserving any part of the shares to meet the subsequent costs of ascertaining those other persons.

Order 20

Arbitration *A - Reference to Arbitrator*

1. In any case in which a matter is referred to one or more arbitrators under the provisions of the Federal High Court Act the arbitrators shall be nominated by the parties in such manner as may be agreed upon between them.
2. If the parties cannot agree with respect to the nomination, or if the persons nominated refuse to act, and the parties are desirous that the nomination be made by the Court, the Court shall appoint the arbitrators.
3. The court shall by an order under its seal refer to the arbitrators the matters in difference in the suit which they may be required to determine, and shall fix a time for the delivery of the award, and the time so fixed shall be stated in the order.
4. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among them, by the appointment of an umpire, or by declaring that the decision shall be with the majority, or by empowering the arbitrators to appoint an umpire, or otherwise as may be agreed between the parties, or if they cannot agree, as the Court may determine.
5. When a reference to arbitration is made by an order of court, the same process to the parties and witnesses, whom the arbitrators or umpire may desire to have examined, shall issue as in ordinary suits and persons not attending in compliance with such process, or making any other default, or refusing to give evidence, or being guilty of any contempt of the arbitrators or umpire during the investigations of the suit, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court on the representation of the arbitrators or umpire, as they would incur for the same offences in suits tried before the Court.
6.
 - (1) When the arbitrators are not able to complete the award within the period specified in the order from want of the necessary evidence or information, or other good and sufficient cause, the Court may, from time to time, enlarge the period for delivery of the award, if it thinks it proper.
 - (2) In any case in which an umpire is appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if they have allowed their time, or their extended time, to expire without making an award or have delivered to the Court, or to the umpire, a notice in writing stating that they cannot agree.
 - (3) An award shall not be liable to be set aside only by reason of its not having been completed within the period allowed by the court, unless on proof that the delay in completing the award arose from misconduct of the arbitrators or umpire, or unless the award shall have been made after the issue of an order by the Court superseding the arbitration and recalling the suit.
7.
 - (1) If, in any case of reference to arbitration by an order of Court, the arbitrators or umpire dies, or refuses or become incapable to act, it shall be lawful for the court to appoint a new arbitrator or arbitrators or umpire in the place of the person or persons so dying or refusing or becoming incapable to act.
 - (2) Where the arbitrators are empowered by the terms of the order or reference to appoint an umpire, and do not appoint an umpire, any of the parties may serve the arbitrators with a written notice to appoint an umpire and if within seven days after the notice is served, no umpire is appointed, it shall be lawful for the court upon the application of the party having served such notice as aforesaid and upon proof to its satisfaction of such notice having been served, to appoint an umpire.
 - (3) In any case of appointment under this rule, the arbitrators or umpire so appointed shall have the like power to act in the reference as if their names had been inserted in the original order of reference.
8.
 - (1) The award shall contain a conclusive finding, and may not find on the contingency of any matter of fact being afterwards substantiated or deposed to.
 - (2) The award shall comprehend a finding on each of the several matters referred.

9. It shall be lawful for the arbitrators or umpire upon any reference by an order of Court, if they think fit, and if it is not provided to the contrary, to state their award as to the whole or any part thereof in the form of a special case for the opinion of the Court.
10. The court may, on the application of either party, modify or correct an award where it appears that a part of the award is upon matters not referred to the arbitrators, (provided that, that part can be separated from the other part, and does not affect the decision on the matter referred), or where the award is imperfect in form, or contains any obvious error which can be amended without affecting the decision.
11. The Court may also on the application, make such order as it thinks just, respecting the costs of the arbitration, if any question arises about the costs or their amount, and the award contains no sufficient provision concerning them.
12. In any of the following cases the Court shall have power to remit the award, or any of the matters referred to arbitration, for reconsideration by the arbitrators or umpire, upon such terms as it thinks proper -
 - (a) if the award has left undetermined some of the matter referred to arbitration;
 - (b) If it has determined matters not referred to arbitration;
 - (c) if the award is so indefinite as to be incapable of execution;
 - (d) if an object to the legality of the award is apparent upon the face of the award.
13. (1) No award shall be liable to be set aside except on the ground of perverseness or misconduct of the arbitrators or umpire
(2) Any application to set aside on award shall be within fifteen days after the publication thereof.
14. If no application is made to set aside the award, or to remit it or any of the matters referred, for reconsideration, or if the Court has refused any such application, either party may file the award in Court, and the award shall thereupon have the same force and effect for all purposes as a judgment.

B - Arbitration Proceedings

15. Every application in this rule to the Court under the Arbitration and Conciliation Act -
 - (a) to revoke an arbitration agreement under section 2 thereof;
 - (b) to appoint an arbitrator under section 7(3) thereof;
 - (c) to stay proceedings under section 5 thereof;
 - (d) to remove an arbitrator or umpire under section 30 thereof;
 - (e) to direct an arbitrator or umpire to state the reasons for an award under section 26 thereof;
 - (f) to ask that a case on trial which is the subject of an arbitration agreement be referred to an arbitration under section 4 thereof;
 - (g) to set aside an award under section 29 thereof;
 - (h) for declaration that an award is not binding on a party to the award on the ground that it was made without jurisdiction or because the arbitrator misconducted himself or that the proceedings was arbitrary or that the award has been improperly procured under section 30 thereof;
 - (i) generally to determine any question of law arising in the course of or concerning any arbitration agreement or proceedings referred to the Court;
 - (j) to subpoena a witness to attend under section 23 thereof;

shall be made by originating motion.

16. The application in respect of rule 1 of this Order must be made on notice and within 21 days after the award or the proceedings has been made or commenced.

C - Enforcement of arbitration Awards

17. (1) An application to enforce an award on an arbitration agreement in the same manner as a judgment or order may be made *ex-parte*, but the Court hearing the application may order it to be made on notice.
- (2) The supporting affidavit shall -
- (a) exhibit the arbitration agreement and the original award or in either case certified copies of each
 - (b) state the name, as usual or last known place of abode or business of the applicant and the person against whom it is sought to enforce the award;
 - (c) state as the case may require either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

D - Registration of Foreign Arbitration Award

18. When an award is made in proceedings on an arbitration in a foreign territory to which the Foreign Judgment (Reciprocal Enforcement) Act extends, if the award was in pursuance of the law in force in the place where it was made it shall become enforceable in the same manner as a judgment given by a Court in that place and the proceeding of the Foreign Judgments (Reciprocal Enforcement) Act shall apply in relation to the award as it applies in relation to a judgment given by that Court.

Order 21

Reference to Referees

- 1.(1) In any case in which a matter is referred to a referee under the provisions of the Federal High Court Act, the Court shall furnish the referee with such part of the proceedings and such information and detailed instructions as may appear necessary for his guidance, and shall direct the parties, if necessary, to attend upon the referee during the inquiry
- (2) The instructions shall specify whether the referee is merely to transit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his investigation.
2. The Court may at any stage of the proceedings direct any such necessary inquiries or accounts to be made or taken notwithstanding that it appears that there is some special or further relief sought for, or some special issues to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.
3. (1) The referee may, subject to the order of the Court, hold the inquiry at, or adjourn it to, any place which he may deem most expedient, and have any inspection or view which he may deem expedient, for the disposal of the controversy before him.
- (2) The referee shall, as far as practicable, proceed with the inquiry from day to day.
4. Subject to any order to be made by the Court ordering the inquiry, evidence shall be taken at any inquiry before a referee, and the attendance of witnesses to give evidence before a referee may be enforced by the Court in the manner as the attendance may be enforced before the Court and every such inquiry shall be conducted in the same manner as nearly as circumstances will admit, as trials before a judge of the Court, but not so as to make the tribunal of the referee a public court or justice.

5. Subject to any order of Court, the referee shall have the same authority in the conduct of any inquiry as a Judge of the Court when presiding at any trial.
6. Nothing in these provisions contained authorises any referee to commit any person to prison or to enforce any order by attachment or otherwise, but the Court may, in respect of matters before a referee, make any order of attachment or committal it may consider necessary.
7.
 - (1) The report made by a referee in pursuance of a reference under these Rules shall be made to the Court and notice thereof served on the parties to the reference.
 - (2) A referee may in his report submit any question arising therein for the decision of the Court or make a special statement of facts from which the Court may draw such inferences as it thinks fit.
 - (3) On the receipt of a referee's report, the Court may -
 - (a) adopt the report in whole or in part;
 - (b) vary the report;
 - (c) require an explanation from the referee;
 - (d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other referee; or
 - (e) decide the question or issue originally referred to him on the evidence taken before him, either with or without additional evidence.
4. When the report of the referee has been made, an application to vary the report or remit the whole or any part of the question or issue originally referred may be made on the hearing by the Court to the further consideration of the cause or matters, after giving not less than four days notice thereof, and any other application with respect to the report may be made on the hearing without notice.
5. Where on a reference under this Order the Court or a Judge in Chambers orders that the further consideration of the cause or matter in question shall not stand adjourned until the receipt of the referee's report, the order may contain directions with respect to the proceedings on the receipt of the report and the foregoing provisions of the rule shall have effect subject to any such directions.

Order 22

Receivers

1.
 - (1) An application for the appointment of a receiver may be made by motion on notice.
 - (2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for the order.
 - (3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so *ex parte* on affidavit in an appropriate case.
 - (4) The Court hearing an application under sub-rule (3) of this rule may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property pending the hearing of a summons for the appointment of a receiver and may require such a summons, returnable on such date as the Court may direct, to be issued.
2.
 - (1) Where a judgment is given, or an order is made, directing the appointment of a receiver, then, unless the judgment or order otherwise directs, a person shall not be appointed a receiver in accordance with the judgment or order until he has given security as in Form 45 in appendix 6 to these Rules, in accordance with this rule.

- (2) Where, by virtue of sub-rule (1) of this rule, or any judgment or order appointing a person named therein to be a receiver, a person is required to give security in accordance with this rule, he shall give security as in Form 46 in Appendix 6 to these Rules, as may be approved by the Court duly to account for what he receives as a receiver and to deal with it as the Court directs.
 - (3) Unless the Court otherwise directs, the security shall be by guarantee or, if the amount for which the security is to be given does not exceed two thousand naira, by an undertaking.
 - (4) The guarantee or undertaking shall be filed in the Court Registry.
3. A person appointed a receiver shall be allowed such proper remuneration, if any, as may be fixed by the Court
4.
 - (1) A receiver shall submit accounts as in Form 44 in Appendix 6 to these Rules, to the Court at such intervals or on such dates as the Court may direct in order that they may be passed.
 - (2) Unless the Court otherwise directs, each account submitted by a receiver shall be accompanied by an affidavit as in Form 44 in Appendix 6 to these Rules, verifying it.
 - (3) The receiver's account and affidavit (if any) shall be left at the Registrar's office, and the plaintiff or party having the conduct of the cause or matter shall thereupon obtain an appointment for the purpose of passing the account.
 - (4) The passing of a receiver's account shall be certified by the Registrar.
5. The days on which a receiver shall pay into Court the amount shown by his account as due from him, or such part thereof as the Court may certify as proper to be paid in by him, shall be fixed by the Court.
6.
 - (1) Where a receiver fails to attend for the passing or any account of his, or fails to submit any accounts, make any affidavit or do any other thing which he is required to submit, make or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in Chambers to show cause for the failure, and the Court may either in Chambers or after adjournment into court, give such directions as it thinks proper including if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.
 - (2) Without prejudice to sub-rule (1) of this rule, where a receiver fails to attend for the passing of any account or fails to pay into Court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into Court, charge him with interest at the rate of ten *per centum per annum* on that sum while in his possession as a receiver.

Order 23

Computation of time

1. Where by any written law or special order made by the Court in the course of any proceedings, any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, and the time is not limited by hours, the following rules shall apply -
 - (a) the limited time does not include the day of the happening of the event, but commences at the beginning of the day next following that day;
 - (b) the act or proceeding shall be done or taken at least on the last day of the limited time;
 - (c) where the time limited is less than five days, public holiday, Saturday or Sunday shall be reckoned as part of the time;
 - (d) when the time expires on a public holiday, Saturday or Sunday the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards not being a public holiday, Saturday or Sunday.

2. The parties may not by consent enlarge or abridge any of the times fixed by the provision of these Rules for taking any step, filing any document, or giving any notice.
3. (1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these provisions, or by any judgment, order or directions, to do any act in any proceedings.
(2) The Court may extend any such period as is referred to in sub-rule (1) of this rule although the application for extension is not made until after the expiration of that period.
4. (1) Where a year or more has elapsed since the last proceeding in a cause or matter, the party who desires to proceed shall give to every other party not less than 30 days notice of his intention to proceed.
(2) A summons on which no order was made shall not be regarded as a proceeding for the purposes of this provisions.
5. Application to set aside or remit an award may be made at any time within six weeks after the award has been made and published to the parties but the Court or Judge in Chambers may by order extend the time either before or after it has elapsed.

Order 24

The undefended list

1. Whenever application is made to a Court for the issue of a writ of summons in respect of a claim to recover a debt or liquidated money demand and the application is supported by an affidavit setting forth the grounds upon which the claim is based and stating that in deponent's belief there is no defence thereto, the Court shall, if satisfied that there are good grounds for believing that there is no defence thereto, enter the suit for hearing in what shall be called the "Undefended List", and mark the writ of summons accordingly, and enter thereon a date for hearing suitable to the circumstances of the particular case.
2. There shall be delivered by the plaintiff to the Registrar upon the issue of the writ of summons as aforesaid, as many copies of the above mentioned affidavit as there are parties against whom relief is sought, and the Registrar shall annex one such copy to each copy of the writ of summons for service.
3. (1) If the party served with the writ of summons and affidavit delivers to the Registrar, not less than five days before the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit, the Court may give him leave to defend upon such terms as the Court may think just.
(2) Where leave to defend is given under this rule, the action shall be removed from the Undefended List and placed on the ordinary Cause List and the Court may order pleading, or proceed to hearing without further pleadings.
4. Where any defendant neglects to deliver the notice of defence and affidavit prescribed by rule 3(1) of this Order, or is not given leave to defend by the Court, the suit shall be heard as an undefended suit, and judgment given thereon, without calling upon the plaintiff to summon witnesses before the Court to prove his case formally.
5. Nothing herein shall preclude the Court from hearing or requiring oral evidence, if it so thinks fit, at any stage of the proceedings under rule 4 of this Order.

Order 25

Proceedings in lieu of Demurrer

1. No demurrer shall be allowed.
2. (1) A party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial.

(2) A point of law so raised may, by consent of the parties, or by order of the Court or a Judge in Chambers on the application of either party, be set down for hearing and disposed of at any time before the trial.
3. If, in the opinion of the Court or a Judge in Chambers the decision of the point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the Court or Judge in Chambers may thereupon dismiss the action or make such other order therein as may be just.
4. The Court or a Judge in Chambers may order any pleading to be struck out on the ground that it discloses no reasonable cause of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge in Chambers may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.
5. No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.

Order 26

Pleadings

1. Unless the Court gives leave to the contrary or a statement of claim is endorsed on the writ, the plaintiff shall serve a statement of claim together with copies of documentary evidence therein mentioned on the defendant, or, if there are two or more defendants, on each defendant, and shall do so either when the writ, or notice of the writ, is served on that defendant unless the Court or Judge in Chambers otherwise orders.
2. (1) Subject to sub-rule (2) of this rule, a defendant who enters an appearance in, and intends to defend, an action shall, unless the Court gives leave to the contrary, serve a defence which must include any preliminary objection he wishes to raise to the plaintiff's action together with copies of documentary evidence therein mentioned on the plaintiff at the time he files his memorandum of appearance.

(2) If a summons under Order 24 rule 1 of these Rules is served on a defendant, sub-rule (1) of this shall not have effect in relation to him unless by the order of Court made on a motion on notice he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within 14 days after the making of the order or within such other period as may be specified in the order
3. (1) A plaintiff on whom a defendant serves a defence shall serve a reply on that defendant within 14 days of service of the defence on him if it is needed for compliance with rule 6 of this Order and, if no reply is served, rule 10 of this Order shall apply

(2) A plaintiff on whom a defendant serves a counter-claim as in Form 25 in Appendix 6 to these Rules, shall, if he intends to defend it, serve on that defendant within 14 days a defence to counter-claim

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

(4) A reply to any defence shall be served by the plaintiff before the expiration of 15 days after the service on him of that defence, and a defence to a counter-claim shall be served by the plaintiff before the expiration of 15 days after the service on him of the counter-claim to which it relates

4.
 - (1) Every pleading shall contain a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, and numbered consecutively
 - (2) Dates, sums and numbers shall be expressed in figures but may also be expressed in words
 - (3) Pleadings shall be signed by a legal practitioner, or by the party if he sues or defends in prison
 - (4) The facts shall be alleged positively, precisely and distinctly, and as briefly as is consistent with a clear statement
5. In all cases in which the party pleading relies on any mis-representation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary, particulars (with dates and items if necessary) shall be stated in the pleadings
6.
 - (1) A party shall plead specifically any matter (for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality) which, if not specifically pleaded might take the opposite party by surprise.
 - (2) Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or the defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or the defendant shall be implied in his pleading.
 - (3) Without prejudice to sub-rule (1) of this rule, a defendant in an action for the recovery of land shall plead specifically every ground of defence on which he relies and a plea that he is in possession of the land by himself or his tenant is not sufficient.
7.
 - (1) A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice or written proceeding requiring particulars, may in all cases be ordered, upon such terms as to costs and otherwise, as may be just.
 - (2) Before applying for particulars by summons or notice, a party may apply for them by letter and the costs of the letter and of any particulars delivered pursuant to the delivery of the letter shall be allowable on taxation.
 - (3) In dealing with the costs of any application for particulars by summons or notice, the provisions of this rule shall be taken into consideration by the Court or Judge in Chambers.
 - (4) Particulars of a claim shall not be ordered under this rule to be filed before defence unless the Court or Judge in Chambers is of the opinion that they are necessary or desirable to enable the defendant to plead or ought for any other special reason to be so delivered.
8.
 - (1) The party at whose instance particulars have been filed under a Judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the service of the particulars upon him that he had initially.
 - (2) Except as provided in this rule, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings or give any extension of time.
9. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of, the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not adjudged a lunatic.
10.
 - (1) If there is no reply to a defence, there is an implied joinder of issue on that defence.
 - (2) Subject to sub-rule (3) of this rule -
 - (a) there is at the close of the pleadings an implied joinder of issue on the pleadings last served; and

- (b) a party may in his pleading expressly join issue on the last preceding pleading.
 - (3) There shall be no joinder of issue, implied or expressed, on a statement of claim or counter-claim.
 - (4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case, the express joinder of issue operates as a denial of every other such allegation.
11. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.
 12. (1) 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.
 - (2) The same rule shall apply where the defendant relies upon several distinct grounds of set-off or counter-claim founded upon separate and distinct facts.
 - (3) Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief and the same rule shall apply to any counter-claim made or relief claimed by the defendant in his defence.
 13. It shall not be sufficient to deny generally the facts alleged by the statement of claim, but the defendant shall deal specifically with them, either admitting or denying the truth of each allegation of fact seriatim, as the truth or falsehood of each is within his knowledge, or (as the case may be) stating that he does not know whether any given allegation is true or otherwise.
 14. (1) When a party denies all allegation of fact he shall not do so evasively but shall answer the point of substance.
 - (2) When a matter of fact is alleged with diverse circumstances it shall not be sufficient to deny it as alleged along with those circumstances, but a full and substantial answer shall be given.
 15. The defence shall admit such material allegations in the statement of claim, as the defendant knows to be true, or desires to be taken as established without proof thereof.
 16. Where any defendant seeks to rely upon any fact as supporting a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim as the case may be, and the particulars of such set-off or counter-claim shall be given.
 17. The defence of a defendant shall not debar him at the hearing from disproving any allegation of the plaintiff not admitted by the defence, or from giving evidence in support of a defence not expressly set up by the defence, except where the defence is such as, in the opinion of the court, ought to have been expressly set up by the defence, or is, in the opinion of the Court, ought to have been expressly set up by the defence, or is inconsistent with the statements thereof, or is, in the opinion of the Court, likely to the plaintiff by surprise or 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
 18. The Court, if it considers that the statement of claim and the defence filed in any suit insufficiently disclose and fix the real issues between the parties, may order such further pleadings to be filed as it may deem necessary for the purpose of bringing the parties to an issue
 19. Where the Court is of opinion that any allegations of fact, denied or not admitted by any pleading, ought to have been admitted, the Court shall make such order as may be just with respect to costs
 20. The Court may at any time, on the application of either party, strike out any pleading or any part thereof, on the ground that it discloses no cause of action, or no defence to the action, as the case may be, or on the ground that it is embarrassing, or scandalous or vexatious, or an abuse of the process of the Court; and the Court may either give or leave to amend the pleading, or may proceed to give judgment for the plaintiff or

the defendant, as the case may be, or may make such other order, and upon such terms and conditions, as may seem just

21. When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of the contract, promise, or agreement, whether with reference to any statute or otherwise
22. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.
23. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege it as a fact without setting out the circumstances from which it is inferred
24. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege the notice as a fact, unless the form or the precise terms of the notice or the circumstances from which the notice is inferred, is material
25.
 - (1) Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege the contract or relation as a fact, and to refer generally to those letters, conversations, or circumstances without setting them out in detail
 - (2) If as in sub-rule (1) of this rule, the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from those circumstances, he may state them in the alternative
26. Neither party needs in any pleadings allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied (such as consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim)
27. No technical objection shall be raised to any pleading on the ground of any alleged want of form
28. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars but in any case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same need not be alleged in the pleadings.
29. Where in any action a defence of tender before action is pleaded, the defendant shall pay into Court in accordance with rule 1 of Order 31 of these Rules the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into Court has been made
30. Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counter-claim
31.
 - (1) Where in any action a set-off or counter-claim 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 the balance, or otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case
 - (2) Sub-rule (1) of this rule shall apply *mutatis mutandis* where the balance is in favour of the plaintiff
32.
 - (1) The pleadings in an action are deemed to be closed-
 - (a) at the expiration of 15 days after service of the reply or, if there is no reply but only a defence to counter-claim, after service of the defence to counter-claim; or

- (b) if neither a reply nor a defence to counter-claim is served, at the expiration of 15 days after service of the defence
- (2) The pleadings in an action are deemed to be closed at the time provided by sub-rule (1) of this rule, notwithstanding that any request or order for particulars has been made but has not been complied with at that time

Order 27
Amendment

1. The Court or a Judge in Chambers may at any time, and on such terms as to costs or otherwise as the Court or Judge in Chambers 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
2. The Court or a Judge in Chambers may, at any stage of the proceedings allow either party to alter or amend his indorsement or pleadings, in such manner and on such terms as may be just, and all the amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties
3. Application for leave to amend may be made by either party to the Court or a Judge in Chambers at the trial of the action, and the amendment may be allowed upon such terms as to costs or otherwise as may be just
4. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, the order to amend shall, on the expiration of such limited time as aforesaid, or of the fourteen days, as the case may be, become ipso facto void, unless the time is extended by the Court or a Judge in Chambers
5. Whenever any indorsement or pleading is amended, the Court or the Judge in Chambers, as the case may be, may order that a copy of the document as amended be filed in the Registry and served on all parties to the action
6. Whenever any indorsement or pleading is amended, the indorsement or pleading shall be marked with the date of the order, if any, under which it is so amended, and of the day on which the amendment is made, in the following manner -

"Amendedday of,
pursuant to order of
dated theday of"
7. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge in Chambers on motion or summons without an appeal

Order 28
Default of Pleadings

1. If the plaintiff, being bound by these Rules or an order of Court or a Judge in Chambers to file a statement of claim, does not file it within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a Judge in Chambers to dismiss the action with costs for want of prosecution; and on hearing of the application the Court or Judge in Chambers may, if no statement on claim has been filed, order the action to be dismissed accordingly or may make such other order on such terms as the Court or judge in Chambers thinks just.
2. If the plaintiff's claim is only for a debt or liquidated demand, and the defendant does not, within the time allowed by these Rules of an order of Court of Judge in Chambers for that purpose, file a defence, the plaintiff may, at the expiration of the time, apply for final judgment for the amount claimed, with costs.

3. When in any action for a debt or liquidated demand there are several defendants, and one of them makes default as mentioned in rule 2 of this Order the plaintiff may have final judgment entered against the defendant so making default, and issue execution upon that judgment without prejudice to his right to proceed with his action against the other defendants.
4. Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant makes defaults in pleading, the plaintiff may, after expiration of the period fixed as aforesaid, for service of defence, have judgment entered against that defendant for damages to be assessed by the Court and costs, and may proceed with the action against the other defendants, if any.
5. Where the plaintiff's claim against the defendant relates to the detention of goods only, then, if that defendant makes default in pleading, the plaintiff may, after the expiration of the period fixed as aforesaid for service of the defence, have entered either -
 - (a) judgment against that defendant for the delivery of the goods or their value to be assessed by the Court and costs; or
 - (b) judgment for the value of the goods to be assessed by the Court and costs, andin either case, he may proceed with the action against the defendants, if any.
6. Where the plaintiff makes against a defendant two or more of the claims mentioned in rules 2 to 5 of this Order and no other claim, then, if the defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed as aforesaid for services of the defence, have entered against that defendant, such judgment in respect of each such claim as he would be entitled to under those rules if they were the only claims made, and proceed with the action against the other defendants, if any.
- 7.-
 - (1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 5 of this Order and defendant or all the defendant (where there are more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed as aforesaid for service of the defence, apply to the court for judgment, and on the hearing of the application the court shall give such judgment as the plaintiff appears entitled to on his statement of claim.
 - (2) Where the plaintiff makes such a claim as is mentioned in sub-rule (1) of this rule against more than one defendants, then if one of the defendants makes default as mentioned in that sub-rule, the plaintiff may -
 - (a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that sub-rule for judgment against that defendant, and proceed with the action against the other defendant; or
 - (b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment against the other defendants.
 - (3) an application under sub-rule (1) of this rule shall be summons or motion on notice.
8. A defendant who counter-claims against a plaintiff shall be treated for the purposes of rules 2 to 7 of this Order, as if he were a plaintiff who had made against a defendant the claim made in the counter-claim and, accordingly, where the plaintiff or any other person against whom the counter-claim is made fails to serve a defence to the counter-claim, those rules shall apply as if the counter-claim were a statement of claim, the defence to the counter-claim a defence and the parties making the counter-claim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period fixed by or under these Rules for service of the defence were references to the period so fixed for service of the defence to counter-claim
9. The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.
10. In this Order, a party makes default in pleading when he fails to file and serve his statement of claim or defence, as the case may be on the opposite party within the time fixed for doing so by these Rules or by the order of the Court or a Judge in Chambers.

Order 29

Interpleader

1. (1) Where -

- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be sued for or in respect of the debt or money or those goods or chattels by two or more persons making adverse claims thereto; or
- (b) claim is made to any money, goods or chattels taken or intended to be taken by a sheriff in execution under any process, or to the proceeds or value of any such goods or chattels by a person other than the person against whom the process is issued,

the person under liability as mentioned in sub-rule (1)(a) of this rule or, as the case may be, the sheriff, may apply to the Court for relief by way of interpleader.

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

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

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

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

(4) Where -

- (a) the sheriff receives a notice from an execution creditor under sub-rule (2) of this rule, disputing a claim, or the execution creditor fails, within the period mentioned in that sub-rule to give the required notice; and
- (b) the claim made under this rule is not withdrawn,

the sheriff may apply to the Court under this order.

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

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

- (2) Where the applicant is a sheriff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2(5) of this Order, the summons shall be served on any person who made a claim under rule 2(1) of this Order, to or in respect of that money, or those goods or chattels, and that person may attend the hearing of the application.

- (3) No appearance need be entered to an originating summons under this provision.

4. The applicant shall satisfy the Court or a Judge in Chambers by affidavit or otherwise or otherwise that -

- (a) the applicant claims no interest in the subject matter in dispute, other than for charges or costs; and
 - (b) the applicant does not collude with any of the claimants; and
 - (c) the applicant is willing to pay or transfer the subject matter into Court or to dispose of it as the Court or Judge in Chambers may direct.
5. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.
 6. If the application is made by a defendant, in an action, the Court or a Judge in Chamber may stay all further proceedings in the action.
 7. If the claimants appear in pursuance of the summons, the Court or a Judge in Chambers may order either that any claimant be made a defendant in any action already commenced in respect of the subject matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the later case may direct which of the claimants is to be plaintiff, and which the defendant.
 8. If a claimant, having been duly served with a summons calling on him to appear and maintain, or relinquish, his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court or a Judge in Chambers may make an order declaring him, and all persons claiming under him, forever barred against the applicant and persons claiming under him; but the order shall not affect the rights of the claimants as between themselves.
 9. The Court or a Judge in Chambers may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

Order 30

Withdrawal and Discontinuance

1. A party who has entered an appearance in an action may withdraw the appearance at any time with leave of the Court
2.
 - (1) The plaintiff in an action may, without the leave of the Court, discontinue the action, or withdraw any particular claim made by him therein, as against any or all of the defendants at any time, not later than 14 days after service of the defence of him or, if there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.
 - (2) A defendant may, without leave of the Court -
 - (a) withdraw his defence or any part of it at any time;
 - (b) discontinue a counter-claim, or withdraw any particular claim made by him therein, as against any or all of the parties against whom it is made, at any time not later than 14 days after service on him of a defence to the counter-claim or, if the counter-claim is made against two or more parties, of the defence to the counter-claim last served, by serving a notice to that effect on the plaintiff or other party concerned.
 - (3) Where there are two or more defendants to an action, not all of whom served a defence on the plaintiff and the period fixed by or under this rule for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, sub-rule (1) of this rule shall have effect as if the reference therein to the service of the defence last served, were a reference to the expiration of the period.
 - (4) Sub-rule (3) of this rule shall apply in relation to a counter-claim as it applies in relation to an action, with substitution for references to a defence, to the plaintiff and to sub-rule (1) of this rule, of references to a defence to counter-claim, to the defendant and to sub-rule (2) of this rule respectively.

- (5) If all the parties to an action consent, the action may be withdrawn without leave of the Court at any time before trial by producing to the Registrar a written consent to the action being withdrawn signed by all the parties, and the action shall thereafter be struck out.
3.
 - (1) Except as provided by rule 2 of this Order, a party may not discontinue an action or counter-claim, or withdraw any particular claim made by him therein without leave of the Court, and the Court hearing an application for the grant of the leave may order the action or counter-claim to be discontinued or any particular claim made therein to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.
 - (2) An application for the grant of leave under this rule may be made by summons or motion on notice.
4. Subject to any terms imposed by the Court in granting leave under rule 3 of this Order, the fact that a party has discontinued an action or counter-claim or withdrawn a particular claim made by him therein shall not be a defence to subsequent action for the same, or substantially the same, cause of action.
5. Where a party has discontinued an action or counterclaim or withdrawn any particular claim made by him therein, and he is liable to pay costs to any other party of the action or counter-claim to the costs occasioned to any other party by the claim withdrawn, then if, before payment of those costs, he subsequently brings an action for the same or substantially the same cause of action, the court may order the proceedings in that action to be stayed until those costs are paid.
6. A party who has taken out a summons or filed a motion in a pending cause or matter may not withdraw it without leave of the Court.

Order 31 *Admissions*

1. Any party may give notice by his pleading or otherwise in writing that he admits the truth of the whole or any part of the case of any other party.
2.
 - (1) Any party may, by leave of Court obtained in a motion on notice, call upon any other party to admit any document or fact, saving just exceptions.
 - (2) A notice containing a list and where possible true copies of the documents or as the case may be, a clear statement of each fact to be admitted shall be filed with the motion papers and served on the party being called upon to admit the same.
 - (3) The Court, if it grants the leave, shall fix the terms and conditions thereof, including the time within which the admission is to be made.
 - (4) If a party on whom a notice under sub-rule (2) of this rule is served desires to deny the existence or the authenticity of any fact or document therein specified, he shall, before the day fixed for hearing the motion, serve on the party by whom it was given, a notice stating that motion, serve on the party by whom it was given, a notice stating that he does not admit the facts or the authenticity of the documents and that he requires that the same be proved at the trial.
 - (5) A party who fails to give a notice of non-admission in accordance with sub-rule (4) of this rule in relation to any fact or document shall be deemed to have admitted that fact or the authenticity of that document unless the Court otherwise orders.
3.
 - (1) After pleadings shall have been settled and issues joined, the parties or their counsel will settle before the Chief Registrar all documents they wish to use at the trial, and leave with him two copies of each set of documents.
 - (2) No party will, without leave of the Court, be allowed to use at the trial any other document other than those already settled except those allowed under rules 2 (1) and (3) of this Order.

4. (1) Where admissions of fact are made by a party either by his pleadings or otherwise, any other party to the action may apply to the Court for such judgment or order as upon those admissions, he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment or make such order on the application as it thinks just.
- (2) An application for an order under this rule may be made by motion or summons.
5. (1) Subject to sub-rule (2) this rule and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a list of documents is served in pursuance of the provisions of Order 33 of these Rules, shall, unless, the Court otherwise orders, be deemed to admit -
 - (a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been; and
 - (b) that any document described therein as a copy is a true copy.
- (2) The provisions of the sub-rule (1) of this rule shall not apply to a document the authenticity of which the party has denied in his pleadings.
- (3) If before the expiration of 14 days after inspection of the documents specified in a list of documents or after the time limited for inspection expires, whichever is the later, the party on whom the list is served, serves on the party whose list it is, a notice stating, in relation to any document specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial, he shall not be deemed to make any admissions in relation to that document under-rule (1) of this rule.
- (4) A party by whom a list of documents is served on any other party in pursuance of any provision of Order 33 of these Rules shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the documents specified in the list as are in his possession, custody or power.
- (5) The foregoing provisions of this rule shall apply in relation to an affidavit made in compliance with an order under the provisions of Order 33 of these Rules as they apply in relation to a list of documents served in pursuance to any provision of that Order.

Order 32

Payment into and out of Court

1. (1) In any action for a debt or damages the defendant may, at any time after he has entered appearance in the action pay into Court a sum of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more causes of action are joined in the action a sum or sums of money in satisfaction of any or all of those causes of action.
- (2) On making any payment into Court under this rule, and on increasing any such payment already made, the defendant shall give notice thereof in Form 26 in Appendix 6 to these Rules to the plaintiff and every other defendant (if any), and within 7 days after receiving the notice, the plaintiff shall send the defendant a written acknowledgement of its receipt.
2. (1) Payment into Court, whether made in satisfaction of the plaintiff's claim generally or in satisfaction of some specific part thereof, operates, unless the defendant in his defence denies liability, as an admission of liability to the extent of the amount paid in, and no more, and for no other purpose.
- (2) When money is paid into Court with a defence denying liability, it shall be subject to the provisions of rule 5 of this Order.
3. Where the defendant pays money into Court, and the liability of the defendant in respect of the claim or cause of action in satisfaction of which the payment into Court is made is not denied in the defence, the plaintiff shall be at liberty to accept the same in full satisfaction and discharge of the cause of action in respect of which it is paid in, and in that case the plaintiff may forthwith apply by motion for payment of the

money to him and, on hearing the motion, the Court shall make such order as to stay of further proceedings in the suit, in whole or in part, and as to costs and other matters as seems just.

4. If the plaintiff does not so apply, he shall be considered as insisting that he has sustained damages to a greater amount or (as the case may be) that the defendant was and is indebted to him in a greater amount, than the sum paid in and in that case the Court, in disposing of costs at the hearing, shall have regard to the fact of the payment into Court having been made and not accepted.
5. When the liability of the defendant, in respect of claim or cause of action in satisfaction of which the payment into Court has been made, is denied in the pleading, the following rules shall apply -
 - (a) the plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, (whereupon all further proceedings in respect of the claim or cause of action except as to costs, shall be stayed), or the plaintiff may refuse to accept the money in satisfaction, in which case the money shall remain in Court subject to the provisions hereinafter mentioned.
 - (b) if the plaintiff accepts the money so paid in he shall be entitled, with leave of the Court, to have the money paid out to him;
 - (c) if the plaintiff does not accept the sum so paid in, but proceeds with the action in respect of the claim of cause of action or any part thereof, the money shall remain in Court;
 - (d) if the plaintiff proceeds with the action in respect of the claim or cause of action or any part thereof, and succeeds, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall, under Court order, be repaid to the defendant; and
 - (e) if the defendant succeeds in respect of the claim or cause of action, the whole amount shall, under Court order, be repaid to him;
- 6.-
 - (1) Where any money is required to be paid into or deposited in Court, the Court may, if it thinks it expedient, order that the money be paid into a savings account at a reputable commercial bank.
 - (2) The payment shall be done by Registrar and any interest payable by the bank shall accrue *pro tanto* to the benefit of the party who, at the end of the action, is entitled to the money originally paid into Court.
7. A plaintiff may, in answer to a counter-claim, pay money into Court in satisfaction thereof subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant.
8. Money paid into Court pursuant to rule 1 or 7 of this Order or under an order of the Court or a Judge shall not be paid out except in pursuance of an Order of the Court or a Judge in Chambers.
9.
 - (1) Where a person entitled to a fund in Court, or a share of the fund, dies intestate and the Court is satisfied that no grant of administration has been made and that the assets of his estate do not exceed two thousand naira in value including the value of the fund or share, it may order that the fund or share shall be paid, transferred or delivered to the person who, being a widower, widow, child, father, mother, brother or sister of the deceased, would be the prior right to a grant of administration of the estate of the deceased.
 - (2) "Fund in Court" in this rule includes money paid into a bank account under rule 6 of this Order.

Order 33

Discovery and Inspection of documents

1.
 - (1) After the close of pleadings in any cause or matter any party by leave of Court or Judge in Chambers may deliver interrogatories in writing for the examination of any other party or parties, and those interrogatories when delivered shall state clearly which of the interrogatories each of the parties is required to answer.

- (2) Interrogatories which do not relate to any matter in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness
2. (1) A copy of the interrogatories proposed to be delivered shall be filed and served with the summons or notice of application for leave to deliver them at least two clear days before the hearing thereof (unless in any case the Court or Judge in Chambers thinks it fit to dispense with this requirement)
 - (2) In deciding upon the application, the court or Judge in Chambers shall take into account any offer which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to any matter in question and leave shall be given as to such only of the interrogatories as shall be considered necessary either for disposing fairly of the action saving costs.
3. Interrogatories shall be in Form 29 in Appendix 6 to these Rules with such variations as circumstances may require.
4. If a party to an action is a body corporate of a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of an officer or other persons any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of the corporation, company, or body, and an order may be made accordingly.
5. (1) Interrogatories shall be answered by affidavit to be filed within 10 days, or within such other time as the Court or a Judge in Chambers may allow.
 - (2) Two copies of the affidavit shall be supplied to the Registrar;
6. An affidavit in answer to interrogatories shall be in Form 30 in Appendix 6 to these Rules with such variations as circumstances may require.
7. Any objections to answering any interrogatory on the ground that it is scandalous or irrelevant, or not bona fide for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground may be taken in the affidavit in answer.
8. (1) If any person interrogated omits to answer, or answer insufficiently, the party interrogating may apply to the Court or Judge in Chambers for an order requiring him to answer, or to answer further, as the case may be.
 - (2) An order may be made requiring him to answer or answer further either by affidavit or by *viva voce* examination, as the Court or Judge in Chambers may direct.
9. (1) Any party may, without filing an affidavit, apply to the Court or a Judge in Chambers, for an order directing any other party to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in issue.
 - (2) On the hearing of the application, the Court or Judge in Chambers may either refuse or adjourn the hearing, if satisfied that the discovery is not necessary or make such order, either generally or limited to certain classes of documents, as may, in its or his discretion, be thought fit.
 - (3) Discovery shall not be ordered when and so far as the Court or Judge in Chambers is of opinion that it is not necessary either for disposing fairly of the action or for saving costs.
10. (1) Where in any action arising on a marine insurance policy, an application for discovery of documents is made by the insurer, the following provisions shall apply -
 - (a) on the hearing of the application, the Court or Judge in Chambers may, subject as provided in sub-rule (2) of this rule, make and order in accordance with rule 9 of this Order;
 - (b) where in any case the Court or Judge in Chambers is satisfied, either on the original application or on a subsequent application, that it is necessary or expedient, having regard to the circumstances of the case, to make an order, for the production of ship's papers, the Court or Judge in Chambers may make the order as in Form 66 in Appendix 6 to these Rules;

- (c) in making an order under this rule the Court or Judge in Chambers may impose such terms and conditions as staying proceedings or otherwise as the Court or Judge in Chambers in its or his absolute discretion thinks just.
- (2) Rule 13 of this Order shall not apply to any application made under this rule.
- 11. The affidavit to be made by any person against whom an order for discovery of documents has been made under rule 9 of this Order or under sub-rule (a) or (b) of rule 10 of this order shall specify which, if any of the documents therein mentioned he objects to produce, and it shall, except in the case of an order made under sub-rule (b) of rule 10 of this Order be as in Form 31 in Appendix 6 to these Rules with such variations as circumstances may require.
- 12. (1) On the hearing of any application for discovery of documents the Court or Judge in Chambers in lieu of ordering an affidavit of documents to be filed may order that the party from whom discovery is sought delivers to the opposite party from whom discovery is sought delivers to the opposite party a list of the documents which are or have been in his possession, custody or power, relating to the matters in question.
 - (2) The list shall, as nearly as may be, follow the form of the affidavit as in Form 31 in the appendix to these Rules.
 - (3) The ordering of the list shall not preclude the Court or Judge in Chambers from afterwards ordering the party to make and file an affidavit of documents:
- 13. The Court or a Judge in Chambers may at any time during the pendency of an action, order the production by any party, upon oath, of such of the documents in his possession or power, relating to any matter in question in the action as the Court or Judge in Chambers shall think right, and the Court may deal with the document, when produced, in such manner as appears just.
- 14. (1) Every party to a cause or matter shall be entitled at any time, by notice in writing, to give notice to any other party in whose pleadings or affidavits reference is made to any document to produce the document for the inspection of the party giving the notice, or of his legal practitioner, and to permit him or them to take copies thereof.
 - (2) Any party not complying with the notice shall not afterwards be at liberty to put any such document in evidence on his behalf in that action, unless he shall satisfy the Court or a Judge in Chambers that the document related only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or Judge in Chambers deems sufficient for not complying with the notice, in which case the Court or Judge in Chambers may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or Judge in Chambers may think fit.
- 15. Notice to any party to produce any documents referred to in his pleadings or affidavit shall be in Form 22 in Appendix 6 to these Rules with such variations as circumstances may require.
- 16. (1) The party to whom notice is given under rule 14 of this Order shall, within 2 days from the receipt of the notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in rule 11 of this Order, or if any of the documents referred to in that notice have not been set forth by him in any such affidavit, then within 4 days from the receipt of such notice, deliver to the party giving the same a notice stating a time within 7 days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his legal practitioner, or in the case of banker's books or other books of accounts, or books in constant use for the purpose of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground.
 - (2) The notice shall be in Form 33 in Appendix 6 to these Rules with such variations as circumstances may require.
- 17. (1) If the party served with notice under rule 14 of this Order omits to notify a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his legal practitioner, the

Court or a Judge in Chambers may, on the application of the party desiring it, make an order for inspection in such place and in such manner as the Courts or Judge in Chambers may think fit.

- (2) The order shall not be made when and so far as the Court or Judge in Chambers is of opinion that it is not necessary either for disposing fairly of the action or for saving costs.
 - (3) Any application to inspect documents, except such as are referred to in pleadings, particulars of affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.
- 18.** (1) Where inspection of any business books is applied for, the Court or a Judge in Chambers may, if it or he thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and the affidavit shall state whether or not there are in the original books any and what erasures, interlineations, or alterations.
- (2) Notwithstanding that such copy has been supplied, the Court or Judge in Chambers may order inspection of the book from which the copy was made.
 - (3) Where, on an application for an order for inspection, privilege is claimed for a document, it shall be lawful for the Court or a Judge in Chambers to inspect the document for the purpose of deciding as to the validity of the claim of privilege.
 - (4) The Court or a Judge in Chambers may on the application of any party to an action at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any particular document or documents of any class or classes of documents, specified or indicated in the application, is or are, or has or have at any time been, in his possession, custody or power, when he parted with the same and what has become of it.
 - (5) Application for the order shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has or has at some time had in his possession, custody or power the particular document or documents, or the class or classes of documents specified or indicated in the application and that they relate to the matters in question in the action, or to some or one of them.
- 19.** If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof the Court or a Judge in Chambers may, is satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.
- 20.** (1) If any party fails to comply with any order to answer interrogatories or for discovery or inspection of documents, he shall be liable to committal.
- (2) The party 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, and the party interrogating may apply to the Court or a Judge in Chambers for an order to that effect and an order may be made accordingly.
- 21.** (1) Service of an order for interrogatories or discovery or inspection made against any party or his legal practitioner shall be sufficient service to found an application for an attachment for disobedience to the order.
- (2) The party against whom the application for attachment is made may show in answer to the application that he has had no notice or knowledge of the order.
- 22.** A legal practitioner upon whom an order against any party for interrogatories or discovery or inspection is served under rule 21, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to pay the costs occasioned thereby.

- 23 (1) Any party may, at the trial of a cause, matter or issue, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer.
- (2) In such case the Judge may look at the whole of the answers, and if he is of opinion that any others of them are so connected with those put in that those put in ought not to be used without them, he may direct them to be put in.
24. In any action against or by a sheriff in respect of any matters connected with the execution of his office, the Court or a Judge in Chambers may, on the application of any party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery shall be made by the officer actually concerned.
25. This Order shall apply to infant plaintiffs and defendants, and to their next friends and guardians *ad litem*
26. Any order made under the provisions of this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court or a Judge in Chambers made or given at or before trial.

Order 34

Interlocutory Injunction and Interim preservation of property

1. (1) An application for the grant of an injunction may be made by a party to an action before or after the trial of the action, whether or not a claim for injunction was included in that party's action.
- (2) Where the applicant is the plaintiff and the case is one of urgency, the application may be made *ex-parte* on affidavit but, except as aforesaid, the application shall be made by motion on notice or summons.
- (3) The plaintiff may not make such an application before the issue of the process by which the action is to be begun, except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the process and serve the process together with the *ex-parte* order obtained on the defendant and such other terms, as the Court thinks fit.
2. (1) On the application of any party to an action, the Court may make an order for the detention, custody or preservation of any property which is the subject matter of the action or as to which any question may arise therein or for the inspection of any such property in the possession of a party to the action.
- (2) For the purpose of enabling any order under sub-rule (1) of this rule to be carried out, the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the action.
- (3) Where the right of any party to a specific fund is in dispute in an action, the Court may on the application of the party, order the fund to be paid into Court or otherwise secured.
- (4) An order under this rule may be made on such terms, as the Court may think just.
- (5) An application for an order under this rule shall be made by summons or motion on notice.
- (6) Unless the Court otherwise directs, an application by the defendant for such an order may not be made before he enters an appearance.
3. (1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any action, the Court may, on the application of a party and on such terms, as it thinks just, by order authorise or require any sample to be taken of any property which is the subject matter of the action or as to which any question may arise therein, any observation to be made on the property or any experiment to be tried on or with the property.
- (2) For the purpose of enabling any order under sub-rule (1) to be carried out, the Court may by the order authorise any person to enter any land or building in the possession of any party.

- (3) Sub-rules (5) and (6) of rule 2 of this Order shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.
4.
 - (1) The Court may, on the application of any party, make an order for the sale by such person, in such manner and on such terms as may be specified in the order, of any property (other than land) which is the subject matter of the action or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other reason it is desirable to sell forthwith.
 - (2) Su-rules (5) and (6) of rule 2 of this Order shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.
5.
 - (1) Where on the hearing of an application made before the trial of a cause or matter, for an injunction or appointment of a receiver or an order under rule 2, 3, or 4 of this Order, or it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merit thereof for the purposes of the application, the Court may make an order accordingly or may make such order as respects the period before trial as the justice of the case requires.
 - (2) Where the court makes an order for early trial, it shall by the order determine the place and mode of the trial.
6. Where the plaintiff or the defendant by way of counterclaim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the court, at any time after the claim to be so entitled appears from the pleadings or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum if any for interests and costs as the Court may direct and that, upon the payment being made, the property claimed be given up to the party claiming it, but subject to the provisions of any law relating to exchange control.
7. Where an application is made under any of the foregoing provisions of this Order, the court may give directions as to the further proceedings in the action.
8. Where any real or personal property forms the subject matter of any proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all such parties.

Order 35

Transfer and Consolidation

1. A cause or matter, may before evidence is taken and at the request of either party to the suit be transferred by a Judge before whom the cause or matter is proceeded to another Court of the same Division.
2. A cause or matter may at any stage of the proceedings be reassigned to another Judge of the same Division or of any other Division by the Chief Judge whether or not the cause or matter is being heard before him
3. If for any reason a Judge hearing a cause or matter, and who has taken any step in the proceedings considers it necessary either at his own opinion or upon application of any party to the proceedings, to have the cause or matter transferred to another Court, the Judge shall refer the cause or matter to the Chief Judge for such necessary action as the Chief Judge may think expedient.
4. Where a Judge retires or is transferred to another Division and having part-heard a cause or matter which is been reheard *de novo* by another Judge, the evidence already given before the retired Judge or the Judge being transferred out of the Division can be read at the re-hearing without the witness who had given it being recalled, if the witness is dead or cannot be found but the onus of establishing that the witness is dead or cannot be found shall lie on the party that wishes to use the evidence.

Order 36

Settlement and Trial of Issues

A - 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 or of its own motion, proceed to ascertain and determine what are the material questions in controversy between the parties, and may reduce the question into writing and settle them in the form of issues which when settled may state questions of law on admitted facts, or questions of disputed facts, or questions partly of the one kind and partly of the other.
2. The Court may, if it thinks fit, direct the parties to prepare the issues and the issues shall be settled by the Court.
3. The issues may be settled without any previous notice at any stage of the proceedings, at which all the parties are actually present, or at the hearing..
4. If otherwise, notice shall be given to the parties to attend the settlement of the issues.
5. At any time before the decision of the case, if it appears to the Court necessary for the purpose of determining the real question or controversy between the parties, the Court may amend the issues or frame additional issues on such terms as to it shall deem fit.

B - Trial of Questions and Issues

6. (1) The Court may order any question or issue arising in a cause or matter, whether of fact or of law, or partly of fact and partly of law, and whether raised by the pleadings or on disagreement as to document that should be put in evidence or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.
(2) An order under his rule may be made on application by a party or by the Court or a Judge in Chambers on its or his own motion.
(3) Application by any party for the order shall be by motion on notice stating the question or issue sought to be tried.
7. If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter, or make such other order or give such judgment therein as may be just.
8. This order shall be subject to the provisions of these Rules and any written law binding on the Court regarding transfer of cases.

Order 37

Assessor

1. Where an Assessor sits with a Judge during a trial he shall only discuss with or advise the Judge on the issue he was co-opted for.
2. The Assessor shall not write any opinion in form of judgment or order and shall not dissent or concur with the judgment or order the Judge has given.
3. An Assessor shall in advising the Court limit himself to the issue in which he is an expert on and on which account he was appointed to sit with the court.
4. The Judge is not bound to accept and act on the opinion or advice of the Assessor.

5. The Assessor shall subscribe to judicial oath of secrecy before the Judge or another Judge before resuming his duty.

Order 38

Trial Proceedings in General

A - Setting Down for Hearing

1. The plaintiff shall within fifteen days of the close of pleadings apply to the Registrar for the case to be set down for trial.
2. An application for setting down shall be in writing and shall contain the following information -
 - (a) that the pleadings in the case have closed;
 - (b) that all documentary evidence, other than those settled by the Court, have been settled;
 - (c) that all interrogatories have been completed; and
 - (d) the number of witnesses the plaintiff intends to call, and the probable length of time the case is expected to take.
3. If the plaintiff fails to make an application under rule 1 of this Order, the defendant may, within fifteen days after the expiration of the time limited for the plaintiff to make his application, apply to the Registrar for the case to be set down for trial and in that event the provisions of rule 2 of this Order shall apply *mutatis mutandis* to his application.
- 4.-
 - (1) If neither the plaintiff nor the defendant makes an application under these Rules, the Registrar shall certify that fact to the Court or Judge in Chambers after the time limited for both parties to make the application
 - (2) The Court or Judge in Chambers upon receipt of the certificate of the Registrar shall cause the case to be listed for striking out and the parties to the case shall be so notified.
- 5.-
 - (1) Upon the case coming up for striking out, the Court or the Judge shall strike it out unless good cause is shown why the case should proceed to hearing.
 - (2) A plaintiff who does not want his case to be struck out under sub-rule (1) of this rule shall file in Court within three days of the service upon him of the notice of striking out, an affidavit containing the reasons for his failure to comply with rule 1 of this Order.

B - Attendance of Parties at Hearing

6.
 - (1) In every cause or matter pending before the Court, in case it appears to the satisfaction of Court that any party who may not be represented by legal practitioner is prevented by some good or sufficient cause from attending the Court in person, the Court may in its discretion permit any master, servant, clerk or member of the family of that plaintiff or defendant, or officer of the plaintiff or defendant company, who satisfies the Court that he has authority in that behalf, to appear in Court for that party.
 - (2) If, when the trial of an action is called on, neither party appears, the action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a Judge.
7. If, when a trial is called on, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him.
8. If, when a trial is called on the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, he may prove such counter-claim, so far as the burden of proof lies upon him but if the defendant admits the cause of

action to the full amount claimed, the Court may, if it thinks fit, give judgment as if the plaintiff had appeared.

9. Any judgment obtained where one party does not appear at the trial may be set aside by the Court upon such terms as may seem just, upon an application made within six days after the trial or within such longer period as the Court may allow for good cause shown.
10. The Judge may, if he thinks it expedient for the interest of justice, postpone or adjourn a trial for such time, and upon such terms, if any, as he may think fit.

C - Proceedings at the Hearing

11. The trial Judge shall, at or after trial, direct judgment to be entered as he thinks right, and no motion for judgment shall be necessary in order to obtain the judgment.
12. Trial with assessors shall, where permitted under written law, take place in such a manner and upon such terms as the Court decides.
13. The order of proceeding at the trial of a case where pleadings have been filed shall be as prescribed in the following rules.
14. The party on whom the burden of proof is thrown by the nature of the material issues or questions between the parties, according as the Court may determine, shall begin.
15. (1) The party beginning shall produce his evidence and examine his witnesses.
(2) When the party beginning has concluded his evidence, he shall ask the other party if he intends to call evidence (in which term is included evidence taken by affidavit or deposition, or under commission, and documentary evidence not already read or taken as read) and if answered in the negative, he shall be entitled to sum up the evidence already given, and comment thereon, but if answered in the affirmative, he shall wait for his general reply.
16. When the party beginning has concluded his case, the other party shall be at liberty to state his case and to call evidence, and to sum up and comment thereon.
17. If no evidence is called or read by the latter party, the party beginning shall have no right to reply, unless he has been prevented from summing up his case by statement of the other party of his intention to call evidence.
18. The case on both sides shall then be considered closed.
19. If the party opposed to the party beginning calls or reads evidence, the party beginning shall be at liberty to reply generally on the whole case, or he may, by leave of the Court, call fresh evidence in reply to the evidence given on the other side, on points material to the determination of the issues, or any of them, but not on collateral matters.
20. Where evidence in reply is tendered and allowed to be given, the party against whom the same has been adduced shall be at liberty to address the Court, and the party beginning shall be entitled to the general reply.
21. Documentary evidence shall be put in and read, or taken as read by consent.
22. (1) The Court clerk shall take charge of every document or object put in as an exhibit during the trial of action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in (or where more convenient, the witness by whom the exhibit is put in) and with a number, so that all the exhibits put in by a party are numbered in one consecutive series.
(2) The Court clerk shall cause a list of all the exhibits in the action to be made.
(3) The list of exhibits when completed shall be attached to the pleadings and shall form part of the record of the action.

- (4) For the purpose of this rules, a bundle of documents may be treated and counted as one exhibit.
 - (5) In this rule a witness by whom an exhibit is put in includes a witness in the course of whose evidence the exhibit is put in.
23. (1) Where a document or object is tendered as an exhibit and is rejected by the Court, it shall be marked "*Rejected*", and shall be retained along with accepted exhibits.
- (2) Where more exhibits than one are rejected in the same action, they shall be numbered serially.
 - (3) If the case goes on appeal, a list of the exhibits shall be transmitted to the appeal court.
24. (1) An exhibit shall not be released, after the trial, to the party who has put it in unless the period during which notice of appeal to the Court of Appeal may be given has elapsed without such notice having been given, and then only if the Judge who presided over the trial (or, in his absence, another Judge) grants leave to release such exhibits on being satisfied –
- (a) that there shall be no appeal;
 - (b) that the exhibit shall kept duly marked and labeled and shall be produced, if required, at the hearing of an appeal in the Court of Appeal (if any such appeal is lodged), or
 - (c) that the release of the exhibit shall not in any way prejudice any other party.
- (2) After a notice of appeal to the Court of Appeal has been filed, an exhibit produced at the trial shall not be released by the Court unless leave to release the exhibit is granted by the Court of Appeal.
25. (1) Any party may apply for, and on payment of the prescribed fee obtain, an office copy of the list of exhibits for the purpose of an appeal to the Court of Appeal.
- (2) Where there is an appeal to the Court of Appeal, an office copy of the list of exhibits shall be included among the documents supplied to that Court for the purpose of the appeal.
26. (1) In cases where written pleadings have not been filed the parties or either of them are incapable of understanding their effect with sufficient accuracy, the proceeding at the hearing shall be varied by the Court so far as may be necessary.
- (2) In particular, the statement of the defendant in defence where he does not admit the whole cause of action, shall be heard immediately after the plaintiff has concluded the statement of his claim and of the grounds thereof, and before any witness is examined, unless in any case the Court otherwise directs.
27. The Judge may in all cases disallow any question put in cross-examination which may appear to him to be vexatious and not relevant to any matter proper to be inquired into in the action.

Order 39

Proceedings In Forma Pauperis

1. The provision of this Order shall remain in force until statutory provisions are made for legal aid in connection with civil proceedings before the Court and thereupon shall cease to have effect.
2. The Court or a Judge in Chambers may admit a person to sue or defend *in forma pauperis*, except in bankruptcy proceedings, if satisfied that his means do not permit him to employ legal aid in the prosecution of his case and that he has reasonable ground for suing or defending as the case may be.
3. (1) The application shall, if the Court or a Judge in Chambers so directs, be accompanied by an affidavit signed and sworn by the applicant himself stating that the applicant satisfied the requirements of rule 2 of this Order as to his means, and setting forth all the material facts on which he relies in his desire to sue or defend, distinguishing between those which are within his personal knowledge and those which he

bases on information and belief, and in the latter case, setting forth the sources of his information and belief.

- (2) If the application is, in the opinion of the Court or a Judge in Chambers, worthy of consideration it shall be referred to a legal practitioner willing to act, and unless the legal practitioner certifies that in his opinion the applicant has good cause of action or good ground of defence, as the case may be, the application shall be refused.
4. Court fees payable by a person admitted to sue or defend *in forma pauperis* may be remitted either in whole or in part as the Court or a Judge in Chambers may seem right and a person so admitted to sue or defend shall not, unless the Court otherwise orders, be liable to pay or be entitled to receive any costs.
5. On granting the application, the Court or a Judge in Chambers may assign to the applicant any legal practitioner willing to be so assigned, and any legal practitioner so assigned shall not be discharged by the applicant except with leave of the Court or of a Judge in Chambers.
6. (1) Neither the legal practitioner whose opinion is sought nor the legal practitioner assigned to the applicant or any other person shall, except by leave of the Court or of a Judge in Chambers, take or agree to take or seek to obtain any payment whatsoever from the applicant or any other person in connection with the application or the action taken or defended thereunder.
(2) If the applicant pays or agrees to pay money to any person whatsoever in connection with his application or the action taken or defended thereunder, his application shall be refused or, if already granted, the order granting it shall be rescinded.
(3) If the legal practitioner assigned to the applicant discovers that the applicant is possessed of means beyond those stated in the affidavit, if any, he shall at once report the matter in writing to the Registrar.
7. (1) The Court or a Judge in Chambers may at any time revoke the order granting the application, and thereupon the applicant shall not be entitled to the benefit of this provision in any proceedings to which the application relates unless otherwise ordered.
(2) Neither the applicant nor the legal practitioner assigned to him shall discontinue, settle or compromise the action without the leave of the Court or of a Judge in Chambers.
8. The Court may order payment to be made to the legal practitioner assigned out of any money recovered by the applicant or may charge in favour of the legal practitioner assigned, upon any property recovered by the applicant, such sum as in all the circumstances may seem fit.
9. Every writ, notice or application on behalf of the applicant, except an application for the discharge of his legal practitioner, shall be signed by his legal practitioner who shall take care that no application or notice is made or given without reasonable cause.
10. No person shall be permitted to appeal in *forma pauperis* except by leave of the trial or the appellate court, and then only on grounds of law; but if so permitted the provisions of this Order shall apply *mutatis mutandis* to all proceedings on the appeal.

Order 40

Originating Summons Proceedings

1. A person claiming to be interested under a deed, will, or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.
2. A person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of the question of construction and for a declaration as to the right claimed.

3. The Court or Judge in Chambers may direct such persons to be served with the summons as it or he may think fit.
4. The application shall be supported by such evidence as the Court or a Judge in Chambers may require.
5. The Court or Judge in Chambers shall not be bound to determine any such question of construction if in its or his opinion it ought not to be determined on originating summons.
6. The Court by which an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the Court makes an order under this rule against a defendant who does not appear at the hearing, the order may be varied or revoked by a subsequent order of the Court on such terms as the Court thinks just.
7. Where in an action begun by originating summons an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party was served and is in default of appearance.
8.
 - (1) A defendant to an action begun by originating summons who has entered an appearance to the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (wherever and however arising) may make a counter-claim in the action in respect of that matter instead of bringing a separate action.
 - (2) A defendant who wishes to make a counter-claim under this rule shall at the first or any resumed hearing of the originating summons by the Court but, in any case, at as early a stage in the proceedings as is practicable, inform the Court of the nature of his claim and, without prejudice to the powers of the Court under sum-rule (3) of this rule the claim shall be made in such manner as the Court may direct.
 - (3) If it appears on the application of the plaintiff against whom a counter-claim is made under this rule that the subject matter of the counter-claim ought for any reason to be disposed of by a separate action, the Court may order the counter-claim to be struck out or may order it to be tried separately or make such other order as may be expedient.

Order 41

Procedure Relating to Evidence

1. Subject to the provisions of these Rules and of the Evidence Act, and any other enactment relating to evidence, any fact required to be proved at the trial of an action begun by writ the evidence of witnesses shall be proved by the examination of the witnesses orally and in open Court.
2.
 - (1) The Court or a Judge in Chambers may at or before the trial of an action, order or direct that all or any of the evidence therein shall be given by affidavit
 - (2) An order or direction under this rule may be made or given on such terms as to the filing and giving of copies of the affidavits or proposed affidavits and as to the production of the deponents for cross-examination as the Court or Judge in Chambers may think fit but, subject to any such terms and to any subsequent order or direction of the Court or a Judge in Chambers, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.
3.
 - (1) Without prejudice to rule 2 of this Order, the Court or a Judge in Chambers may, at or before the trial of an action, order or direct that evidence of any particular fact shall be given at the trial in such a manner as may be specified by the order or direction.
 - (2) The power conferred by sub-rule (1) of this rule extends in particular to ordering or directing that evidence of any particular fact may be given at the trial -
 - (a) by statement on oath of information or belief; or
 - (b) by the production of documents or entries in books; or
 - (c) by copies of documents or entries in books; or

- (d) in the case of a fact which is of a matter of common knowledge, either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.
4. The Court or a Judge in Chambers may, at or before the trial of an action order or direct that the number of medical or expert witnesses who may be called at the trial shall be limited as specified by the order or direction.
5. Unless, at or before the trial, the Court or a Judge in Chambers for special reasons otherwise orders or directs, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least ten days before the commencement of the trial the parties other than the party producing it, have been given an opportunity to inspect it and to agree to the admission thereof without further proof.
6. In an action, of whatever nature, arising out of an accident on land due to a collision or apprehended collision -
- (a) no plan of the place where the accident happened other than a sketch plan, shall be receivable in evidence unless, at or before the trial, the Court or Judge in Chambers authorises the reception thereof;
- (b) unless, at or before the trial, the Court or Judge in Chambers otherwise orders or directs that oral expert evidence of an engineer sought to be called on account of his skill and knowledge as respects motor vehicles shall not be receivable unless a copy of report from him containing the substance of his evidence has been made available to all parties for inspection.
7. The preceding provisions of this Order shall apply to trials of issues, references, inquiries and assessments of damages as they apply to the trial of action.
8. Office copies of all writs, records, pleadings and documents filed in the Court shall be admissible in evidence in all causes and matters and between all persons or parties, to the same extent as the original is admissible.
9. (1) The Court or Judge in Chambers may, in any action where it appears necessary for the purpose of justice, make an order for the examination upon oath before the Court, or a Judge in Chambers and at any place, of any witness or person and may empower any party to any such action to give on deposition any evidence therein.
- (2) Any order under sub-rule (1) of this rule may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court or Judge in Chambers may think fit.
- (3) The Court or a Judge in Chambers may order the party who has applied for the appointment of an examiner to pay the fees and expenses of the examiner (without prejudice to any question as to the party by whom the costs of the examination should eventually be borne) but, where the examiner is a Government servant not entitled to receive fees, the fees shall be paid into revenue.
10. An order for a commission to examine witnesses shall be in Form 60 in Appendix 6 to these Rules and the writ of commission shall be in Form 42 in Appendix 6 to these Rules with such variations as circumstances may require.
11. (1) If in any case the Court or a Judge in Chambers so orders, there shall be issued a request to examine witnesses in lieu of a commission.
- (2) Forms 61 and 62 in Appendix 6 to these Rules shall be used for such order and request respectively, with such variation as circumstances may require.
12. Where an order is made for the issue of a request to examine a witness or witnesses in any foreign country with which a Convention in that behalf has been or shall be made, the following procedure shall be adopted
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- (a) the party obtaining the order shall file in the Registry an undertaking in Form 63 in Appendix 6 to these Rules which Form may be varied as may be necessary to meet the circumstances of the particular case in which it is used.
 - (b) The undertaking shall be accompanied by –
 - (i) a request in Form 63 in Appendix 6 to these Rules, with such variation as may be directed in the order for the issue thereof, together with a translation of the request in the language of the country in which the same is to be executed,
 - (ii) a copy of the interrogatories (if any) to accompany the request, and a translation thereof, and
 - (iii) a copy of the cross-interrogatories (if any), and a translation thereof.
- 13.** Where an order is made for the examination of a witness or witnesses before the Nigerian Diplomatic Agent in any foreign country with which a Convention in that behalf has been or shall be made, such order shall be in Form 65 in Appendix 6 to these Rules which Form of order may be varied as may be necessary to meet the circumstances of the particular case in which it is used.
- 14.** (1) The Court or a Judge in Chambers may in any action at any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court or Judge in Chambers may think fit to be produced.
- (2) No person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.
- 15.** Any person willfully disobeying any order requiring his attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of court, and may be dealt with accordingly.
- 16.** Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to payment for expenses and loss of time at a trial in Court.
- 17.** Where any witness or person is ordered to be examined before officer of the Court, or before any person appointed for that purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the court and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.
- 18.** The examination shall take place in presence of the parties, their legal practitioner, or agents and the witnesses shall be subject to cross-examination and re-examination and where the parties, their legal practitioners or agents fail to attend, without good cause, the examination may be proceeded with in their absence.
- 19.** (1) The depositions taken before an officer of the Court or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the witness and when completed shall be read over to the witness and signed by him in the presence of the parties or such of them as may think fit to attend.
- (2) If the witness refuses to sign the depositions, the examiner shall sign them.
- (3) The examiner may put down any particular question or answer if there appears any special reason for doing so and may put any question to the witness as to the meaning of any answer or as to any matter arising in the course of the examination.
- (4) Any question which may be objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the legal practitioners or parties, and shall refer to the statement in the deposition, but he shall not have power to decide upon the materiality or relevancy of any question
- 20.** If any person duly summoned by subpoena to attend for examination refuses to attend, or if, having attended, he refuses to be sworn or to answer any lawful question, a certificate of the refusal, signed by the

examiner, shall be filed at the Registry, and thereupon the party requiring the attendance of the witness may apply to the Court or a Judge in Chambers *ex parte* or on notice for an order directing the witness to attend, or to be sworn or to answer any question, as the case may be.

21. If any witness objects to any question which may be put to him before an examiner, the question so put and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the Registrar to be filed, and the validity of the objection shall be decided by the Court or a Judge in Chambers.
22. In any case under the two last preceding rules, the Court or a Judge in Chambers shall have power to order the witness to pay any costs occasioned by his refusal or objection.
23. When the examination of any witness before any examiner has been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the registry, and there filed.
24. The person taking the examination of a witness under rule 23 of this Order may, and if need be shall, make a special report to the Court touching the examination and the conduct or absence of any witness or other person thereon, and the Court or a Judge in Chambers may direct such proceedings and make order upon the report as the Court or Judge in Chambers may think just.
25. Except where these Rules otherwise provide or the Court or a Judge in Chambers direct, no deposition shall be given in evidence at the hearing or trial of the action without the consent of the party against whom the same may be offered, unless the Court or Judge in Chambers is satisfied that the deponent is dead, or beyond the jurisdiction of the Court or unable from sickness or other infirmity^h to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence, saving all just exceptions, without proof of the signature to the certificate.
26. Any officer of the Court or other person directed to take the examination of any witness or person or any person nominated or appointed to take the examination of any witness or person pursuant to the provisions of any Convention now made or which may hereafter be made with any foreign country, may administer oaths.
27. Any party in any action may by *subpoena ad testificandum* or *duces tecum* require the attendance of any witness before an officer of the Court or other person appointed to take the examination, for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the action shall be bound on being served with the *subpoena* to attend before the officer or person for cross-examination.
28. The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any action at any stage.
29. The practice of the Court with respect to evidence at a trial when applied to evidence to be taken before an officer of the Court or other person in any action after the hearing or trial, shall be subject to any special directions which may be given in any action.
30. No affidavit or deposition filed or made before issue joined in any action shall, without special leave of the Court or a Judge in Chambers, be received at the hearing or trial thereof, unless within 14 days after issue joined or within such longer time as may be allowed by special leave of the Court or a Judge in Chambers, notice in writing shall have been given by the party intending to use the same to the opposite party of his intention in that behalf.
31. All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.
32. (1) Where it is intended to issue out a *subpoena*, a *praecipe* for that purpose, in Form 84 in Appendix 6 to these Rules, containing the name or firm and the place of business or residence of the legal practitioner intending to issue out the same, and where the legal practitioner is an agent only, then also the name or firm and place of business or residence of the principal legal practitioner, shall in all cases be delivered and filed at the Registry.

- (2) No *subpoena* shall be issued unless all court fees have been paid (including fee for service) and unless sufficient conduct money on the prescribed scale is deposited to cover the first day's attendance.
33. A writ of *subpoena* shall be in one of Forms 39, 40 or 41 in Appendix 6 to these Rules, with such variations as circumstances may require.
34. Where a *subpoena* is required for the attendance of a witness for the purpose of proceedings in Chambers, the *subpoena* shall issue from the registry upon a note from the Judge.
35. In the interval between the issuing out and service of any *subpoena*, the party issuing out the same may correct any error in the names of parties or witnesses, and may have the writ re-sealed upon leaving a corrected *praecipe* of the *subpoena* marked with the words "altered and re-sealed", and signed with the name and address of the legal practitioner issuing out the same.
36. (1) A *subpoena* shall be served personally unless substituted service has been ordered by the Court or a Judge in Chambers in cases where a person evades serve.
- (2) The provisions of Order 13 of these Rules shall, so far as possible, apply to service and proof of service of a *subpoena*.
37. Any *subpoena* shall remain in force from the date of issue until the conclusion of the trial of the action or matter in which it is issued.
38. (1) Any party desiring 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 clear days before the return-day a notice in writing specifying the date, nature and party to the deed or 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.
- (2) If at or before the hearing of the suit the party notified neglects or refuses to give the admission, the Court may adjourn the hearing in order to enable the party tendering the deed or instrument to obtain proof of the due execution thereof, and upon production of such proof the Court may order the costs of the proof to be paid by the party so neglecting or refusing where he be the successful party or not.
39. Where any civil or criminal matter is pending before a court or tribunal of a foreign country, and it is made to appear to the Court by *commission rogatoire*, or letter of request, or other sufficient evidence that such court or tribunal is desirous of obtaining the testimony in relation to the matter of any witness or witnesses within the jurisdiction, the Court may, on the *ex parte* application of any person shown to be duly authorized to make the application on behalf of the foreign court or tribunal, and on production of the *commission rogatoire*, or letter of request, or such other evidence as the Court may require or consider sufficient, make such order or orders as may require or consider sufficient, make such order or orders as may be necessary to give effect to the intention of the *commission rogatoire*, or letter of request.
40. (1) On the application of any party to a legal proceeding, the Court may order that the party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of the proceeding.
- (2) An order under this rule may be made either with or without summoning the bank or any other party and shall be served on the bank three days before the same is to be obeyed, unless the Court otherwise directs.

Order 42

Judgment and Orders

1. The decision or judgment in any suit shall be delivered in open Court, unless the Court otherwise directs for sufficient cause.
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 states the day on which judgment will be delivered, in which case there shall be no further notice.

3. All parties shall be deemed to have notice of the decision or judgment if 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 pronounced.
4.
 - (1) A minute of every judgment, whether final or interlocutory, shall be made, and every such minute shall be a decree of the Court, and shall have the full force and effect of a formal decree.
 - (2) A formal decree or order may be drawn up on the application of either party.
5.
 - (1) If the defendant has been allowed to set-off any demand or counter-claim against the claim of the plaintiff, the judgment shall state what amount, if any, is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.
 - (2) The judgment of the Court, with respect to any sum awarded to the defendant, shall have the same effect, and be subject to the same rules, as if the sum had been claimed by the defendant in a separate suit against the plaintiff.
6. A person directed by a decree or order to pay money or do any other act is bound to obey the decree or order without any demand for payment or performance, and if no time is therein expressed he is bound to do so immediately after the decree or order has been made (except as to costs the amount whereof may require to be ascertained by taxation), unless the Court enlarges the time by any subsequent order.
7. The Court at the time of making any judgment or order or any time afterwards, may direct the time within which the payment or other act is to be made or done, reckoned from the date of the judgment or order or from some other point of time, as the Court thinks fit, and may order interest at a rate not exceeding ten naira *per centum per annum* to be paid upon any judgment, commencing from the date thereof or afterwards, as the case may be.
8.
 - (1) When any judgment or order directs the payment of money, the Court may, for any sufficient reason, order that the amount shall be paid by installments, with or without interests.
 - (2) The order may be made at the time of giving judgment or at any time afterwards and may be rescinded upon sufficient cause at any time.
9. Every order, if and when drawn up, shall be dated the day of the week, month and year on which the same was made, unless the Court or a Judge in Chambers otherwise directs and shall take effect accordingly.
10.
 - (1) Where an order has been made not embodying any special terms, not including any special directions, but simply enlarging time for taking any proceeding or doing any act, or giving leave for –
 - (a) the issue of any writ other than a writ of attachment;
 - (b) the amendment of any writ or pleadings;
 - (c) the filing of any document; or
 - (d) any act to be done by an officer of the Court other than a legal practitioner,

It shall not be necessary to draw up the order unless the Court or a Judge in Chambers otherwise directs, but the production of a note or memorandum of that order signed by a Judge shall be sufficient authority for the enlargement of time, issue, amendment, filing or other act.

 - (2) A direction that cost of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this rule.
11.
 - (1) Orders, other than final orders, shall not be entered after being drawn up but shall be filed and a note of the filing shall be made in a book kept for the purpose.
 - (2) Every order so filed shall be deemed to be duly entered and the date of the filing shall be deemed the date of entry.

- (3) In the case of procedure orders drawn up in Chambers, no entry thereof shall be necessary before an attachment can be issued for disobedience thereof.

Order 43

Writ of Execution: General

1. In this Order, unless the context otherwise requires, "writ of execution" includes a writ of *fieri facias*, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs
 2. (1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases, that is to say where -
 - (a) six years or more have elapsed since the date of the judgment or order;
 - (b) any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;
 - (c) the judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the judgment or order, and it is sought to issue execution against the assets;
 - (d) under the judgment or order any person is entitled to relief subject to the fulfillment of any condition which it is alleged has been fulfilled;
 - (e) any goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.
 - (2) Sub-rule (1) of this rule is without prejudice to any enactment or rule by virtue of which a person is required to obtain the leave of the Court for the issue of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order.
 - (3) Where the Court grants leave, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting such leave, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.
3. A writ of execution in aid of any other writ of execution shall not issue without the leave of the Court.
 4. (1) An application for leave to issue a writ of execution may be made *ex-parte* unless the Court directs it to be made by summons.
 - (2) Such an application shall be supported by an affidavit -
 - (a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date of the application;
 - (b) stating, where the case falls within rule 2 (1)(a) of this Order, the reasons for the delay in enforcing the judgment or order;
 - (c) stating, where the case falls within rule 2(1)(b) of this Order, the change which has taken place in the parties entitled or liable to execution since the date of the judgment or order;
 - (d) stating, where the case falls within rule 2(1)(c) or (d) of this Order, that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so;

- (e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.
- (3) The Court hearing the application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in an action may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.
5. (1) Notwithstanding anything in rules 2 and 4 of this Order, an application for leave to issue a writ of sequestration shall be made to a judge by motion.
- (2) Subject to sub-rule (3) of this rule, the notice of motion, stating the grounds of the application, shall be served personally on the person against whose property it is sought to issue the writ.
- (3) The judge hearing an application for leave to issue a writ of sequestration may sit in private in any case in which there is an application to the Judge to sit in private, if the application were for an order.
6. (1) The issue of a writ of execution takes place on its being sealed by an officer of the appropriate office.
- (2) A *praecipe* for the issue of a writ shall be filed before the writ is issued.
- (3) The *praecipe* shall be signed by or on behalf of the solicitor of the person entitled to execution or if that person is acting in person, by that person.
- (4) No such writ shall be sealed unless at the time of the tender thereof for sealing -
- (a) the person tendering it produces -
 - (i) the judgment or order on which the writ is to issue, or an office copy thereof,
 - (ii) where the writ may not issue without the leave of the Court, the order granting the leave or evidence of the granting of it;
 - (b) the officer authorized to seal it is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.
- (5) Every writ of execution shall bear the date of the day on which it is issued.
- (6) In this rule "the appropriate office "means -
- (a) where the cause or matter in which execution is to issue is proceeding in a Division registry, that registry;
 - (b) where that cause or matter is an admiralty cause or matter which is not proceeding in a registry, the admiralty registry;
 - (c) in any other case, the Court registry.
7. (1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.
- (2) Where a writ has not been wholly executed the Court may by order extend the validity of the writ from time to time for a period of 12 months at any time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire or such later day, if any as the Court may allow.
- (3) Before a writ, the validity of which had been extended under this rule is executed, either the writ shall be sealed with the seal of the office out of which it was issued showing the date on which the order

extending its validity was made or the applicant for the order shall serve a notice sealed as aforesaid, on the sheriff to whom the writ is directed informing him of the making of the order and the date thereof.

- (4) The production of a writ of execution, or of the notice as is mentioned in sub-rule (3) of this rule purporting in either case can be sealed as mentioned in that sub-rule, shall be evidence that the validity of that writ, or, as the case may be, of the writ referred to in that notice, has been extended under this rule.
8. (1) Any party at whose instance a writ of execution was issued may serve a notice on the sheriff to whom the writ was directed requiring him, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.
- (2) If a sheriff on whom such notice is served fails to comply with it, the party by whom it was served may apply to the Court for an order directing the sheriff to comply with the notice.

Order 44

Garnishee Proceedings

1. (1) Where a person (in this Order referred to as "the judgment creditor") has obtained a judgment or order for the payment by some other person (in this Order referred to as "the judgment debtor") of a sum of amount in value to at least N100, not being a judgment or order for the payment of money into Court, and any other person within the jurisdiction (in this Order referred to as "the garnishee") is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or as much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.
 - (2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in sub-rule (1) or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that and the costs of the garnishee proceedings.
 - (3) An order under this rule shall not require a payment which would reduce below N5 the amount standing in the name of the judgment debtor in an account with a building society or a credit union.
2. An application for an order under rule 1 of this Order shall be made *ex-parte* supported by an affidavit -
- (a) stating the name and last known address of the judgment debtor;
 - (b) identifying the judgment or order to be enforced and stating the amount of the judgment or order and the amount remaining unpaid under it as (at) the time of the application;
 - (c) stating that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information or the grounds for his belief; and
 - (d) stating, where the garnishee is a deposit-taking institution having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held and the number of that account or, if it be the case, that all or part of this information is not known to the deponent.
3. (1) Unless the Court otherwise direct, an order under rule 1 of this Order to show cause shall be served -
- (a) on the garnishee personally, at least, 15 days before the day appointed thereby for the further consideration of the matter; and
 - (b) on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the day appointed for the further consideration of the matter.

- (2) An order under rule 1 of this Order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.
4.
 - (1) Where on the further consideration of the matter, the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may make an order absolute under rule 1 of this Order against the garnishee.
 - (2) An order absolute under rule 1 of this Order against the garnishee may be enforced in the same manner as any other order for the payment of money.
5. Where on the further consideration of the matter, the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried, without, if it orders trial before a matter, the need for any consent by the parties.
6. If in garnishee proceedings it is brought to the notice of the Court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge upon it, the Court may order that person to attend before the Court and state the nature of his claim with particulars thereof.
7. Any payment made by a garnishee in compliance with an order absolute under this Order, and any execution levied against him in pursuance of such an order, shall be a valid discharge of liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or judgment or order from which they arose is reversed.

Order 45

Habeas Corpus Proceedings

1. Where a person is alleged to be wrongfully detained, an application may be made for an order that he be produced in Court for the purpose of being released from detention.
2.
 - (1) No application under rule 1 of this Order shall be made unless leave therefor has been granted in accordance with this rule.
 - (2) Application for such leave shall be made *ex parte* to the Court and shall be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought and it shall also be supported by an affidavit verifying the facts relied on.
 - (3) The affidavit verifying the facts relied on in making the application shall be made by the person detained, but where the person detained is unable owing to the detention to make the affidavit, the application shall be accompanied by an affidavit to the like effect made by some other person, which shall also state that the person detained is unable to make the affidavit himself.
 - (4) The applicant shall file, in the Court, the application for leave not later than the day preceding the date of hearing, and shall at the same time lodge in the Court enough copies of the statement and affidavit for service on any party or parties as the court may order.
 - (5) The Court or Judge in Chambers may, in granting leave, impose such terms as to giving security for costs as it or he thinks fit.
 - (6) The Court or Judge in Chambers may -
 - (a) make an order forthwith for the release of the person being detained, the provision of sub-rule (1) of this rule notwithstanding;
 - (b) direct that an originating summons be issued in Form 2 of the Fundamental Rights (Enforcement Procedure) Rules or that the application be made by notice of motion in Form 3 of the Fundamental Rights (Enforcement Procedure) Rules; or

- (c) adjourn the *ex parte* application so that notice thereof may be given to the person against whom the order for the release of the person detained is sought.
- (7) The summons or notice of motion shall be served on the person against whom the order for the release of the person detained is sought and on such other persons as the Court or Judge in chambers may direct, and unless the Court or Judge in Chambers may direct, and, unless the Court or Judge in Chambers otherwise directs, there shall be at least five clear days between the service of the summons or motion and the date named therein for the hearing of the application.
- (8) Every party to an application under rule 1 of this Order shall supply to every other party copies of the affidavits which he proposes to use at the hearing of the application.
3. (1) Without prejudice to rule 2(6) of this Order, the Court or Judge in Chambers hearing the application may, in its or his discretion, order that the person detained be produced in Court.
- (2) An order under sub-rule (1) of this shall be a sufficient warrant to any superintendent of a prison, police officer in charge of a police station, police officer or constable in charge of the person detained or any other person responsible for his detention, for the production in Court of the person detained.
- (3) Where an order is made for the production of a person detained, the Court or Judge in Chambers by whom the order is made shall give directions as to the Court or Judge before whom, and the date on which, the order is returnable.
4. (1) Subject to sub-rules (2) and (3) of this rule, an order for production of the person detained shall be served personally on the person to whom it is directed.
- (2) If it is not possible to serve the order personally or if it is directed to a police officer, or a prison superintendent or other public official, it shall be served by leaving it with any other person or official working in the office of the police officer or the prison or office of the superintendent or the office of the public official to whom the order is directed.
- (3) If the order is made against more than one person, the order shall be served in the manner provided by the rule on the person first named in the order and copies shall be served on each of the other persons in the same manner.
- (4) There shall be served with the order (in Form in the Fundamental Rights (Enforcement Procedure) Rules) for the production of the person detained a notice (in Form 5 in the Fundamental Rights (Enforcement Procedure) Rules stating the Court or Judge in Chambers before whom and the date on which the person detained is to be brought.
5. (1) The return to an order for the release of a person detained shall be endorsed on or annexed to the order and shall state all the causes or justifications of the detainer of the person detained.
- (2) The return may be amended or another return substituted therefor, by leave of the Court or Judge in Chambers before whom the order is returnable.
6. (1) When a return to the order has been made, the return shall first be read in open court and an oral application then made for discharging or remanding the person detained or amending or quashing the return, and where that person is brought up in Court in accordance with the order, his legal representative shall be heard first, then the legal representative for the State or for any other official or person detaining him.
- (2) The legal representative for the person detained will then be heard in reply.
7. An order for the release of a person detained shall be made in clear and simple terms having regard to all the circumstances.
8. (1) An application for a writ of *habeas corpus ad testificandum* or of *habeas corpus as respondendum* shall be made on affidavit.

(2) An application for an order to bring up a prisoner, otherwise than by writ of *habeas corpus*, to give evidence in any cause or matter, civil or criminal, before any court, tribunal or justice, shall be made on affidavit.

9. A writ of *habeas corpus* shall be in Form 85, 86 or 87 in Appendix 6 to these Rules, whichever is appropriate.

Order 46

Committal for Contempt of Court

1. (1) The power of the Court to punish for contempt of court may be exercised by an order of committal.

2) An order of committal may be made by the Court where contempt of court -

(a) is committed in connection with -

(i) any proceedings before the Court

(ii) criminal proceedings,

(b) is committed in the face of the Court, or consists of disobedience to an order of the Court or a breach of an undertaking to the Court; or

(c) is committed otherwise than in connection with any proceedings.

2. (1) An application for an order of committal shall be made to the Court by motion on notice supported by an affidavit and shall state the grounds of the application.

(2) The notice of motion, affidavit and grounds shall be served personally on the person sought to be committed but the Court may dispense with personal service where the justice of the case so demands.

3. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order of committal of its own motion against a person guilty of contempt of court.

4. (1) Subject to sub-rule (2), the Court hearing an application for an order of committal may sit in private in the following, cases that is to say where -

(a) the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant or rights of access to an infant;

(b) the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder;

(c) the application arises out of proceedings in which a secret process, discovery or invention was in issue;

(d) it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private,

but except as aforesaid, the application shall be heard in open court

(2) If the Court hearing an application in private by virtue of sub-rule (1) of this rule decides to make an order of committal against the person sought to be committed, it shall in open court state -

(a) the name of that person;

- (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and
 - (c) if he is being committed for a fixed period, the length of that period.
- (3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the statement under rule 2 of this Order.
- (4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf he shall be entitled to do so.
- 5. The foregoing provisions are without prejudice to the power of the Court to commit for contempt committed in the face of the Court.
- 6.
 - (1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.
 - (2) Where execution of an order of committal is suspended by an order under sub-rule (1) of this rule, the applicant for the order of committal shall, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that sub-rule.
- 7.
 - (1) The Court may, on the application of any person committed to prison for any contempt of court, discharge him.
 - (2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or deposit it in Court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the sheriff may take possession of it as if it were the property of that person and, without prejudice to the generality of sub-rule (1) of this rule, the Court may discharge the person committed and may give such directions for dealing with the thing taken by the sheriff as it thinks fit.
- 8. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of Court to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.
- 9.
 - (1) Every writ of attachment issued in a case to which this Order applies shall be made returnable before the Court.
 - (2) If a return of *non est inventus* is made, one or more writs may be issued on the return of the previous writ.

Order 47

Application for Judicial Review

- 1.
 - (1) An application for -
 - (a) an order of *mandamus*, prohibition or *certiorari*, or
 - (b) an injunction restraining a person from acting in any office in which he is not entitled to act,shall be made by way of an application for judicial review in accordance with the provisions of this Order.
 - (2) An application for a declaration or an injunction (*not being an injunction mentioned in sub-rule (1) (b) of this rule*) may be made by way of an application for judicial review and on such an application, the Court may grant the declaration or injunction claimed if it considers that having regard to -

- (a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari;
- (b) the nature of the persons and bodies against whom relief may be granted by way of such an order; and
- (c) all the circumstances of the case,

it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

2. On an application for judicial review, any relief mentioned in rule 1 (1) or (2) of this Order may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.
3. (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.
 - (2) An application for leave shall be made *ex parte* to the Court, except during vacation when it may be made to a Judge in Chambers and shall be supported by -
 - (a) a statement, setting out the name and description of the applicant, the relief sought and the grounds on which it is sought; and
 - (b) affidavit to be filed with the application, verifying the facts relied on.
 - (3) The Applicant shall file the application not later than the day before the motion is heard and shall at the same time lodge copies of the statement and every affidavit in support.
 - (4) The Court hearing an application for leave may allow applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise on such terms, if any, as it thinks fit.
 - (5) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.
 - (6) Where leave is sought to apply for an order of *certiorari* to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired
 - (7) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.
 - (8) Where an application for leave is refused by a Judge in Chambers, the applicant may after the period of vacation make a fresh application on notice to the Court.
 - (9) An application to a Judge in Court under sub-rule (8) of this rule shall be made within 10 days after the Judge's refusal to give leave.
 - (10) Where leave to apply for judicial review is granted, then -
 - (a) if the relief sought is an order of prohibition or *certiorari* and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;
 - (b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.
4. (1) Subject to the provisions of this rule, where in any case the Court considers that there has been undue delay in making an application for judicial review or, in a case to which sub-rule (2) of this rule applies,

the application for leave under rule 3 of this Order is made after the relevant period has expired, the Court may refuse to grant -

- (a) leave for the making of the application; or
- (b) any relief sought on the application,

if in the opinion of the Court the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

- (2) In the case of an application for an order of *certiorari* to remove any judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of sub-rule (1) of this rule is three months after the date of the proceeding.
 - (3) Sub-rule (1) of this rule is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.
- 5-
- (1) Subject to sub-rule (2) of this rule, when leave has been granted to make an application for judicial review, the application shall be made by originating motion, except during vacation when it may be made by originating summons to a Judge in chambers.
 - (2) Where leave has been granted and the Court or Judge in chambers so directs, the application may be made by motion to a Judge sitting in open court or, by originating summons to a Judge in Chambers.
 - (3) The notice of motion or summons shall be served on all persons directly affected and where it relates to any proceedings in or before a Court and the object of the application is either to compel the Court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons shall also be served on the clerk or registrar of the Court and, where any objection to the conduct of the Judge is to be made, on the Judge
 - (4) Unless the Court granting leave has otherwise directed, there shall be at least 10 days between the service of the notice of motion or summons and the day named therein for the hearing.
 - (5) A motion shall be entered for hearing within 14 days after the grant of leave
 - (6) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion or summons shall be filed before the motion or summons is entered for hearing and, if any person who ought to be served under this rule has not been served, the affidavit shall state that fact and the reason for it, and the affidavit shall be before the Court on the hearing of the motion or summons.
 - (7) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person
- 6.
- (1) Copies of the statement in support of an application for leave under rule 3 of this Order shall be served with the notice of motion or summons and, subject to sub-rule (2) of this rule, no grounds shall be relied upon or any relief set out in the statement.
 - (2) The Court may on the hearing of the motion or summons allow the applicant to amend his statement whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavit to be used if they deal with new matters arising out of an affidavit of any other party to the application
 - (3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party
 - (4) Each party to the application shall supply to every other party on demand and on payment of the proper Court charges copies of every affidavit which he proposes to use at the hearing including, in the case of the applicant, the affidavit in support of the application for leave under rule 3 of this Order

7. On an application for judicial review, the Court may subject to sub-rule (2) of this rule, award damages to the applicant if-
 - (a) he has included in the statement in support of his application for leave under rule 3 of this Order a claim for damages arising from any matter to which the application relates; and
 - (b) the Court is satisfied that if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.
8. Unless the Court otherwise directs; any interlocutory application in proceedings on an application for judicial review may be made to any Judge notwithstanding that the application for judicial review has been made by motion and is to be heard by the Court.
9.
 - (1) On the hearing of any motion or summons under rule 5 of this Order, any person who desires to be heard in opposition to the motion or summons and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons.
 - (2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has filed a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion or summons.
 - (3) Where an order of certiorari is made in any such case as is referred to in sub-rule (2) of this rule, the order shall, subject to sub-rule (4), direct that the proceedings shall be quashed forthwith on their removal into the Court.
 - (4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.
 - (5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ.
10. No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.
11. Where there is more than one application pending against several persons in respect of the same matter, and on the same grounds, the Court may order the applications to be consolidated.

Order 48

Appeals and Applications under the Trade Marks Act and Patents and Designs Act

A - General

1.
 - (1) The rules under the general procedure rules shall apply with necessary modifications where there are no specific rules under this Order.
 - (2) Every appeal or application to the Court under this Order shall be begun by originating motion.
 - (3) Notice of the motion of the motion by which any appeal or application is made shall be served on the Registrar.
 - (4) Where the Registrar refers to the Court an application made to him under Trade Marks Act or the Patents and Designs Act, as the case may be, unless within one month after receiving notification of the

decision to refer, the applicant makes to that Court the application referred to it by the Registrar, the applicant shall be deemed to have abandoned the application.

2. (1) Every notice of motion by which an appeal is brought shall state the grounds of the appeal and if the appeal is against a judgment, an order or any other decision of the Registrar, the notice shall state whether the appeal is against the whole or a part of the decision, and if against part only, shall specify the part.
 - (2) The notice shall be served, and the appeal entered within 30 days after the date of the order, determination or other decision against which the appeal is brought.
 - (3) The period specified in sub-rule (2) of this rule shall be calculated from the date in which notice of the decision, or, in a case where a statement of the grounds for a decision was given later than that notice, on which the statement was given to the appellant by the person who made the decision or by a person authorized in that behalf to do so.
 - (4) The filing of an appeal under this Order shall not operate as a stay of proceedings on the judgment, determination or other decision against which the appeal is brought, unless the Court by which the appeal is to be heard so orders.
3. Unless the Court otherwise directs, an appeal under this Order shall not be heard sooner than 21 days after service of notice of the motion by which the appeal is brought.
4. (1) The notice of the motion by which an appeal is brought may be amended by the appellant without leave, by supplementary notice served not less than 7 days before the day appointed for the hearing of the appeal, on each person on whom the notice to be amended was served.
 - (2) Except with the leave of the Court hearing any such appeal, no grounds other than those stated in the notice of the motion by which the appeal is brought or any supplementary notice under sub-rule (1), may be relied upon by the appellant at the hearing; but the Court may amend the grounds so stated or make any other order, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties.
5. (1) Upon the first hearing of the motion the Court shall give directions as to the procedure of appeal.
 - (2) The Court shall have power to receive further evidence on questions of fact, and the evidence may be given in such manner as the Court may direct either by oral examination in court, by affidavit, by deposition taken before an examiner or in any other manner.
 - (3) The appellant shall apply to the Registrar for a signed copy of any note made to him of the proceedings and furnish the copy to the Court for the use of the Court; and in default of production of any such note, or if the note is incomplete, in addition to the note, the Court may hear and determine the appeal on any other evidence or statement of what occurred in those proceedings as appears to the Court to be sufficient.
 - (4) That Court may give any judgment or decision or make any order which ought to have been given or made by the Registrar, and make such further or other order as the case may require or may remit the matter with the opinion of the Court for re-hearing and determination by the Registrar.
 - (5) That Court may, in special circumstances, order such security to be given for the costs of the appeal as may be just.
 - (6) The Court shall not allow an appeal on the ground merely of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court, substantial wrong or miscarriage of Justice has been occasioned thereby.
 - (7) Where an appeal is against the refusal of a trademark application by the Registrar, the Registrar shall appear or be represented and be heard in the proceedings on the appeal.
6. (1) The Registrar –

- (a) may at his option refer any application; or
- (b) shall refer any application where the issue refers to a question of law,

to the Court for determination.

- (2) Any reference made under sub-rule (1) to the Court shall be made by originating motion and shall be served on every party to the proceedings to which the application relates.
- (3) The notice of motion shall state the grounds of the application, the question of law for determination, the contentions of the registrar and of other parties if any, on the question of law to which the reference relates and other relevant matters
- (4) Unless the Court otherwise directs, the motion shall not be heard sooner than 14 days after service of notice thereof on all parties concerned.
- (5) The Registrar shall appear or shall be represented and heard in proceedings of a matter referred to the Court.

B – Trade Marks

- 7. (1) Every action for infringement of a registered trade mark shall be commenced by a writ of summons as provided in Order 5 of these Rules.
- (2) Where in any proceedings a claim is made for relief for infringement of the right to the use of a registered trade mark, the party against whom the claim is made may, in his defence, put in issue the validity of the registration of that trade mark or make counter-claim for an order that the Register of Trade Marks be rectified by canceling or varying the relevant entry or both.
- (3) A party to any such proceedings who in his pleadings (whether a defence or counter-claim) disputes the validity of the registration of a registered trade mark shall serve along with the pleadings, particulars of the objections to the validity of the registration on which he relies in support of the allegation of invalidity.
- (4) A party to any such proceedings who counter claims for an order that the Register of Trade Marks be rectified shall serve on the Registrar of Trade Marks, a copy of the counter-claim together with a copy of the particulars mentioned in sub-rule (2); and the Registrar of Trade Marks shall take the part in the proceedings as he may think fit but may not serve a defence or other pleadings unless ordered to do so by the Court.

C – Patents and Designs

- 8. (1) An application for the nullification of a patent or a design, as the case may be, shall be by petition.
- (2) The Respondent to a petition shall serve an answer to the petition within 21 days after service of the petition on him.
- (3) A Petitioner shall serve along with his petition or other pleadings, particulars of the objections to the validity of the patent or design on which he relies.
- (4) The particulars given pursuant to sub-rule (3) of this rule shall state every ground on which the validity of the patent or design is questioned and shall include such particulars as shall clearly define every issue which it is intended to raise.
- (5) If the grounds stated in the particulars of objections include want of novelty or want of any inventive step, the particulars shall state the manner, time and place of every prior publication or user relied upon and, if prior user is alleged, shall –
 - (a) specify the name of every person alleged to have made the user;

- (b) state whether the user is alleged to have continued until the priority date of the claim in question or of the invention, as may be appropriate, and, if not, the earliest and latest date on which the user is alleged to have taken place;
 - (c) contain a description accompanied by drawings, if necessary, sufficient to identify the user; and
 - (d) if the user relates to machinery or apparatus, state whether the machinery or apparatus is in existence and where it may be inspected.
- (6) Where in the case of an existing patent or design –
- (a) one of the grounds stated in the particulars of objections is that the invention, so far as claimed in any claim of the complete specification, is not useful; and
 - (b) it is intended, in connection with the grounds stated in sub-rule 1 of this rule to rely on the fact that an example of the invention which is subject of any claim cannot be made to work, either at all or as described in the specification,

the particulars shall state that fact and identify each such claim and shall also include particulars of each such example, specifying the respect in which it is alleged that it can not work or be made to work as described.

9. (1) Except with the leave of the Judge hearing any action or other proceedings relating to a patent or a design, no evidence shall be admissible in proof of any alleged infringement, or of any objection to the validity of the patent or design, if the infringement or objections was not raised in the particulars of infringement or objection, as the case may be.
- (2) In any action or other proceedings relating to a patent or a design, evidence which is not in accordance with a statement contained in the particulars of objection to the validity of the patent or design shall not be admissible in support of an objection unless the Judge hearing the proceedings, allows the evidence to be admitted.
- (3) If any machinery or apparatus alleged to have been used before the priority date mentioned in rule 8(5)(b) of this Order is in existence at the date of service of the particulars of objections, no evidence of its user before that date shall be admissible unless it is proved that the party relying on the user offered, where the machinery or apparatus is in his possession, inspection of it to the other parties to the proceedings or where it is not, used all reasonable endeavours to obtain inspection of it for those parties.
10. (1) Every action for infringement of a patent or a design shall be commenced by a writ of summons.
- (2) In an action for infringement of a patent or a design (whether or not any other relief is claimed) and in proceedings by petition for the revocation of a patent or design –
- (a) the plaintiff or petitioner shall within one month after service of a reply or answer or after the expiration on the period fixed for service thereof, take out a summons for directions as to the place and mode of trial returnable in not less than 21 days; and
 - (b) if the plaintiff or petitioner does not take out a summons in accordance with paragraph (a) this sub-rule, the defendant or respondent, as the case may be may do so, and the summons may be heard in chambers or in Court as the Court thinks fit.
- (3) The Court hearing a summons under this rule may give directions for –
- (a) the service of further pleadings or particulars;
 - (b) the discovery of documents;
 - (c) securing the making of admissions;
 - (d) the service of interrogatories and of answers thereto;
 - (e) the taking by affidavit, of evidence relating to matters requiring expert knowledge, and for the filing of such affidavits and the service of copies thereof on the other parties;

- (f) the service on the other parties, by any party desiring to submit experimental proof, of full and precise particulars of the experiments proposed and of the facts which he claims to be able to establish thereby;
- (g) the making of experiments, tests, inspections or reports;
- (h) the hearing, as a preliminary issue, of any question that may arise (including any question as to the construction of the specification or other documents),

and otherwise as the Court thinks necessary or expedient for the purpose of defining and limiting the issues to be tried, restricting the number of witnesses to be called at the trial of any particular issue and otherwise securing that the case shall be disposed of, consistently with adequate hearing, in the most expeditious manner.

- (4) Where evidence is directed to be given by affidavit, the deponents shall attend at the trial for cross-examination unless, with the concurrence of the Court, the parties otherwise agree.
 - (5) On the hearing of a summons under this rule the Court shall consider, if necessary of its own motion, whether an independent scientific adviser shall be appointed under rule 11 to assist the Court.
 - (6) No action for infringement or petition for the revocation of a patent or design shall be set down for trial unless and until a summons under this rule in the action or proceedings, has been taken out and the directions given on the summons have been carried out or the time fixed by the Court for carrying them out has expired.
11. (1) In any proceedings under the Patents and Designs Act, the Court may at any time, and on or without the application of any party, appoint an independent scientific adviser to assist the Court by inquiring and reporting on any question of fact or of opinion not involving a question of law or construction as the Court may direct.
- (2) The Court may nominate the scientific adviser and, where appropriate, settle any question or instructions to be submitted or given to him.
- (3) Where the Court appoints a scientific adviser to inquire and report under sub-rule (1) of this rule, Order 43 of these Rules shall apply in relation to his report as they apply in relation to a report made by a referee under that Order.
12. In this Order, "Registrar" means the Registrar of Trade Marks or the Registrar of Patents and Designs, as the case may be.

Order 49

Appeals to the Court From Professional Bodies

- 1. This Order shall apply to any appeal to the Court from decisions of provisions of any written law which confers the right to appeal to the Court against any such decisions.
- 2. An appeal to the Court from a decision of any professional body other than those specified in this Order shall be by notice of motion.
- 3. The evidence upon the hearing of the appeal shall be by affidavit except in so far as the Court at the hearing may direct oral evidence to be given.
- 4. The notice of motion shall be served, before the expiration of six weeks after the date of the decision to which it relates, upon the professional body.
- 5. The notice of motion shall state the grounds of appeals, and the date mentioned in the notice for the hearing of the appeal shall be not less than twenty-eight days after the service of the notice.
- 6. (1) The appellant shall within seven days after service on the professional body of the notice of motion, file with the Registrar a copy of the notice of motion, file with the Registrar a copy of the notice and an

affidavit or affidavits setting out the reasons stated by the professional body for its decision and the facts upon which the appellant intends to rely at the hearing and thereupon the motion shall be set down for hearing.

- (2) If the notice of motion is not set down in accordance with this provision, the professional body may apply to the Court, upon notice to the appellant, for an order discharging the notice of motion and for the costs of the application.
7. The appellant shall deliver forthwith to the professional body, a copy of any affidavit filed under rule 6 to this Order in support of the motion and any person intending to oppose the motion shall, four days at least before the hearing, deliver to the appellant a copy of any affidavit intended to be filed by him in opposition to the motion.

Order 50

Stay of Execution Pending Appeal to the Court of Appeal

1. Where any application is made to the Court for a stay of execution of proceedings under any judgment or decision appealed from, such application shall be made by notice of motion supported by affidavit setting forth the grounds upon which a stay of execution or of proceedings is sought.
2. (1) The Court may make or refuse an order for a stay of execution or of proceedings.
(2) An order for stay may be made subject to such conditions as shall appear just, including the deposit in Court of any money adjudged due to any party in the judgment appealed from.
3. Where any application is made to the Court under this Order, a formal order shall be drawn up embodying the terms of the decision of the Court and bearing the date upon which the order is made.

Order 51

Sitting of the Court and Vacation

1. Subject to the provisions of the Act, the Court may, at its discretion, appoint any day or days and any place or places from time to time for the hearing of actions as circumstances require.
2. (1) The sittings of the Court for the hearing and determination of the rights and obligations of the parties shall be public
(2) Subject to the provisions of the Constitution of the Federal Republic of Nigeria, the Court may, for special reasons, hear any particular action in the presence only of the parties, with their legal practitioners (if any) and the officers of Court.
3. The several offices of the Court shall be open at such times as the Chief Judge shall direct.
4. (1) Subject to the directions of the Chief Judge, sittings of the Court for the dispatch of civil matters shall be held on every week-day except
 - (a) on any public holiday;
 - (b) during the week beginning with Easter Monday;
 - (c) during the period beginning on Christmas eve and ending on 2nd January next following.(2) There shall be an annual vacation of the Court to commence on such date in August and of such duration, not exceeding six weeks, as the Chief Judge may by notification in the *Gazette* appoint.
5. (1) Notwithstanding the provisions of rule 4 of this Order, any action may be heard by a Judge in Court during any of the periods mentioned in sub-rule (1)(b) or (C) of rule 4 of this Order (except on a Sunday or public holiday) or sub-rule (2) of this rule where the parties or their counsel agree with the trial Judge before the period of vacation to commence or continue the trial.

- (2) The Chief Judge may assign one or more Judges to be vacation Judge to attend to any urgent matters during the period of vacation.
6. The time for filing and service of pleadings shall not run during the annual Easter and Christmas vacations unless otherwise directed by the Court or a Judge in Chambers.
7. No business shall be transacted in Chambers on Sundays and public holidays.

Order 52

Costs

A – Security for Costs

1. (1) Where on the application of the plaintiff or defendant, as the case may be, to the Court it appears to the Court either at the commencement or at any stage of the proceedings -
 - (a) that the plaintiff or defendant is ordinarily resident out of jurisdiction; or
 - (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so; or
 - (c) subject to sub-rule (2) of this rule, that the plaintiff's address is not stated in writ of other originating process or is incorrectly stated therein; or
 - (d) that the plaintiff or the defendant has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

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

- (2) The Court shall not require a plaintiff to give security by reason only of sub-rule (1) (c) of this rule if he satisfies the Court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.
 - (3) The references in the foregoing rule to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counter-claim.
2. Where an order is made requiring any party to give security for costs, the security shall be given in such manner, at such time, and on such terms (if any), as the Court may direct.

B – Cost Between Party and Party

3. In every suit the costs of the whole suit, and of each particular proceeding therein, and the costs of every proceeding in the Court, shall be in the discretion of the Court as regards the person by whom they are to be paid.
4. The Court shall not order the successful party in a suit to pay to the unsuccessful party the costs of the whole suit, although the Court may order the successful party, notwithstanding his success in the suit, to pay costs of any particular proceeding therein.
5. The court may order any costs to be paid out of any fund or property to which a suit or proceedings relates.
6. When the Court adjudges or orders any costs to be paid, the amount of the costs shall be, if practicable, summarily determined by the Court at the time of making the judgment or order, and named therein.

7. In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put in establishing his claim, defence or counter-claim, but the Court may take into account all the circumstances of the case.
8. Where the Court orders costs to be paid or security to be given for costs by any party, the Court may, if it thinks fit, order all proceedings by or on behalf of the party in the same suit or proceedings, or connected therewith, to be stayed until the costs are paid or security given accordingly, but the order shall not supersede the use of any other lawful method of enforcing payment.
9. When the Court deems it to be impracticable to determine summarily the amount of any costs which it has adjudged or ordered to be paid, all questions relating thereto may either be determined upon taxation by the Court itself or may be referred by the Court to a taxing master and be ascertained by him and approved by the Court.
10. Upon any taxation of costs, the taxing master may, in determining the remuneration to be allowed, have regard, subject to any rule of Court, to the skill, labour and responsibility involved.
11. 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 judgment.
12. If upon the taxation of any bill of costs more than one sixth is deducted from the amount claimed, the Court may either make no order as to the costs of the taxation or may order the party who filed the bill of costs to pay to the other party or parties the costs of taxation.

Order 53

Fees and Allowances

1. (1) subject to the provisions of any written law and of the foregoing Orders the fees set out in Appendix 2 to these Rules shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in the Appendix.
(2) The allowances set out in Appendix 4 to these Rules shall be payable to the various categories of witnesses mentioned therein by any person at whose instance they testify.
(3) A witness who testifies at the instance of the Court acting on its own motion shall be paid out of public revenue.
2. The regulations set out in Appendix 5 to these Rules shall be observed by all officers of Court concerned with the rendering of services and or collection of fees payable under the provisions of the foregoing Order.

Order 54

Miscellaneous Provisions

1. Subject to particular rules, the Court may in all causes and matters make any order which it considers necessary for doing justice, whether the order has been expressly asked for by the person entitled to the benefit of the order or not.
2. (1) Where no specific procedure is given in any of the enactments in Appendix 1 to the Rules, the rules and procedure in these Rules shall apply with necessary modification so as to comply with the subject matter the enactment in Appendix 1 to these Rules deals with.
(2) The Chief Judge may modify or add to the list of Rules set out in Appendix 1 to these Rules.
3. All fines, forfeitures, pecuniary penalties and costs ordered to be paid may be levied by distress, seizure and sale of both movable and immovable properties of the person making default in payment.

4. In all cases in which the publication of any notice is required, the same may be made by advertisement in the Federal *Gazette*, unless otherwise provided in any particular case by any rule of Court or otherwise ordered by the Court.
5. A document shall not be filed unless it has endorsed on it, the name and number of the case, the date of filing, and whether filed by plaintiff or defendant, and on being filed the endorsement shall be initialed by the Registrar.
6. The fees set out in Appendix 3 to these Rules may be charged in respect of the duties of a notary public or of a notarial act and other duties therein mentioned.
7. The Registries of the Court shall, subject to the directive of the Chief Judge, be opened to the public on every day in the year from 8 o'clock in the forenoon to 2 o'clock in the afternoon, except on Saturdays and Sundays or on any day declared as public holiday under any written law.
8. Where a matter arise in respect of which no provisions or no adequate provisions are made in these Rules, the Court shall adopt such similar procedure in the Rules as will in its views do substantial justice between the parties concerned.
9.
 - (1) These Rules shall not apply to any cause or matter part-heard on the date when these Rules come into operation.
 - (2) Where an action is filled and no further step is taken other than the filling, other subsequent procedure shall be under this Rule.
 - (3) In all other cases where causes or matters, are pending, the Court shall give such directions as may be necessary or expedient to ensure conformity with the requirements of these Rules
 - (4) The Chief Judge may give practice directions, generally or in respect of a particular case, for carrying out any of the rules in these Rules.
10. All writ of summons, originating summons and petitions shall be recorded in a permanent form by the Registrar as in Forms 1, 2, 3, or 4 in Appendix 6 to these Rules.

Appendixes

Appendix 1

1. [Fundamental Rights \(Enforcement Procedure\) Rules 1979](#)
2. [Federal High Court \(Tax Appeals\) Rules 1992](#)
3. [Admiralty Jurisdiction Procedure Rules 1993](#)
4. [Companies Proceedings Rules 1992](#)
5. [Companies Winding-Up Rules 2001](#)
6. Bankruptcy Rules 1990

The Constitution of the Federal Republic of Nigeria
Fundamental Rights (Enforcement Procedure) Rules, 1979

Date of Commencement: 1st January 1980

Order I

1. (1) These Rules may be cited as the Fundamental Rights (Enforcement Procedure) Rules, 1979

(2) In these Rules-

"Application" includes an application for the leave of the court.

"Fundamental Right" means any of the Fundamental Rights provided for in Chapter IV of the Constitution.

"Court" means the Federal High Court or the High Court of a State.

"Judge" means a Judge of the Court.

"Legal representative" means a person admitted to practice in the Supreme Court of Nigeria who has been retained by or assigned to a party to represent him in the proceedings before the Court.

"originating summons" means every summons other than a summons in a pending cause or matter.

"Prison Superintendent" means the person in charge of the prison or any other place in which the complainant is restrained or confined.

"registrar" means the registrar of the Court hearing the application or of any court to which an order is directed.

"Rules" means these Rules or any amendment thereto and includes the Forms appended to these Rules.

"State" means one of the component parts of the Federal Republic of Nigeria.

Application for leave

2. (1) Any person who alleges that any of the Fundamental Rights provided for in the Constitution and to which he is entitled, has been, is being, or is likely to be infringed may, apply to the Court in the State where the infringement occurs or is likely to occur, for redress.

(2) No application for an order enforcing or securing the enforcement within that State of any such rights shall be made unless leave therefor has been granted in accordance with this rule.

(3) An application for such leave must be made *ex parte* to the appropriate Court and must be supported by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by an affidavit verifying the facts relied on.

(4) The applicant must file, in the appropriate Court, the application for leave not later than the day preceding the date of hearing and must at the same time lodge in the said Court enough copies of the statement and affidavit for service on any other party or parties as the Court may order.

(5) The Court or Judge may, in granting leave, impose such terms as to giving security for costs as it or he thinks fit.

- (6) The granting of leave under this rule, if the Court or Judge so directs, shall operate as a stay of all actions or matters relating to, or connected with, the complaint until the determination of the application or until the Court or Judge otherwise orders.

Time for applying for leave

3. (1) Leave shall not be granted to apply for an order under these Rules unless the application is made within twelve months from the date of the happening of the event, matter, or act complained of, or such other period as may be prescribed by any enactment or, except where a period is so prescribed, the delay is accounted for to the satisfaction of the Court or Judge to whom the application for leave is made.
- (2) Where the event, matter, or act complained of arose out of a proceeding which is subject to appeal and a time is limited by law for bringing of the appeal, the Court or Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

Order 2

1. (1) When leave has been granted to apply for the order being asked for, the application for such order must be made by notice of motion or by originating summons to the appropriate Court, and unless the Court or Judge granting leave has otherwise directed, there must be at least eight clear days between the service of the motion or summons and the day named therein for the hearing. Form No. 1 or 2 in the Appendix may be used as appropriate.
- (2) The motion or summons must be entered for hearing within fourteen days after such leave has been granted.
- (3) The motion or summons must be served on all persons directly affected, and where it relates to proceedings in or before a court, and the object is either to compel the Court or an officer thereof to do any act in relation to the proceedings or to quash them or any order made therein the motion or summons must be served on the registrar of the court, the other parties to the proceedings and, where any objection to the conduct of the Judge is made, on the Judge.
- (4) An Affidavit giving the names and addresses of, and the place and date of service on all persons who have been served with the motion or summons must be filed before the motion or summons is listed for hearing, and, if any person who ought to have been served under paragraph (3) of this rule has not been served, the affidavit must state the fact and the reason why service has not been effected, and the said affidavit shall be before the Court or Judge on the hearing of the motion or summons.
- (5) If on the hearing of the motion or summons the Court or Judge is of the opinion that any person who ought to have been served with the motion or summons has not been served, whether or not he is a person who ought to have been served under paragraph (3), the Court or Judge may adjourn the hearing on such terms, if any, as it or he may direct in order that the motion or summons may be served on that person.

Statements and affidavits

2. (1) Copies of the statement in support of the application for leave under Order I rule 2(3) must be served with the notice of motion or summons under rule 1(3) of Order 2 and, subject to paragraph (2) of this rule, no grounds shall be relied upon or any relief sought at the hearing of the motion or summons except the grounds and relief set out in the said statement.
- (2) The Court or Judge may, on the hearing of the motion or summons, allow the said statement to be amended and may allow further affidavits to be used if they deal with new matters arising out of any affidavit of any other party to the application, and where the applicant intends to ask to be allowed to amend his statement or use further affidavits he must give notice of his intention and of any proposed amendment of his statement to every other party, and must supply to every such party, copies of such further affidavits.

- (3) Every party to the application must supply to any other party copies of the affidavit which he proposes to use at the hearing.

Several applications relating to the same infringement

3. Where several applications relating to the infringement of a particular Fundamental Right are pending against several persons in respect of the same matter, and on the same grounds the applications may be consolidated by order of the Court or Judge hearing the applications.

Order 3

Application to quash any proceedings

1. (1) In the case of an application for an order to remove any proceedings for the purpose of their being quashed, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record *unless* before the hearing of the motion or summons he has served a certified copy thereof together with a copy of the application on the Attorney-General of the Federation or of the State in which the application is being heard as the case may be, or accounts for his failure to do so to the satisfaction of the Court or Judge hearing the motion or summons.
- (2) Where an order to remove any proceedings for the purpose of their being quashed is made, in any such case, the order shall direct that the proceedings shall be quashed forthwith on their removal into the Court which heard the application.

Order 4

Application for production and release of person restrained

1. (1) In an application where the applicant complains of wrongful or unlawful detention, the Court or Judge to whom the application is made *ex parte* may make an order forthwith for his release from such detention, or may
 - (a) direct that an originating summons as in the Form 2 in the Appendix be issued or that an application therefore be made by notice of motion, as in the Form 3; or
 - (b) adjourn the *ex parte* application so that notice thereof may be given to the person against whom the order for the release of the applicant is sought.
 - (2) The summons or notice of motion must be served on the person against whom the order for the release of the applicant is sought and on such other persons as the Court or Judge may direct, and, unless the Court or Judge otherwise directs, there must be at least five clear days between the service of the summons or motion and the date named therein for the hearing of the application.
 - (3) Every party to an application under Rule 1 must supply to every other party copies of the affidavits which he proposes to use at the hearing of the application.
2. Without prejudice to rule 1(1), the Court or Judge hearing an application where the applicant complains of wrongful or unlawful detention may, in its or his discretion, order that the person restrained be produced in court, and such order shall be a sufficient warrant to any Superintendent of a Prison, Police Officer in charge of a police station, police officer or Constable in charge of the complainant, or any other person responsible for his detention, for the production in court of the person under restraint.

3. Where an order is made for the production of a person restrained, the Court or Judge by whom the order is made shall give directions as to the Court or Judge before whom, and the date on which, the order is returnable.
4.
 - (1) Subject to paragraphs (2) and (3), an order for the production of the person restrained must be served personally on the person to whom it is directed.
 - (2) If it is not possible to serve such an order personally, or if it is directed to a Police Officer, or a Prison Superintendent or other public official, it must be served by leaving it with any other person or official working in the office of the police officer, or the prison or office of the superintendent or the office of the public official to whom the order is directed.
 - (3) If the order is made against more than one person, the order must be served in manner provided by the rule on the person first named in the order and copies must be served on each of the other persons in the same manner.
 - (4) There must be served with the order (in the Form 4 in the Appendix) for the production of the person restrained a notice (in the Form 5 in the Appendix) stating the Court or Judge before whom, and the date on which the person restrained is to be brought.

Return to the Order for release

5.
 - (1) The return to an order for the release of a person restrained must be endorsed on or annexed to the order and must state all the causes or justifications of the detainer of the person restrained.
 - (2) The return may be amended, or another return substituted therefor, by leave of the Court or Judge before whom the order is returnable.

Proceedings at hearing of motion or summons after order has been returned

6. An order for the release of a person restrained shall be made in clear and simple terms having regard to all the circumstances.

Order 5

Right of any other person or body to be heard

Any person or body who desires to be heard in respect of any application, motion, or summons, under these Rules, and appears to the Court or Judge to be a proper person or body to be heard, shall be heard notwithstanding that he or it has not been served with the copy of the application, motion, or summons.

Order 6

Orders which the court can make, and effect of disobedience

1.
 - (1) At the hearing of any application, motion, or summons under these Rules, the Court or Judge concerned may make such orders, issue such writs, and give such directions as it or he may consider just or appropriate for the purpose of enforcing or securing the enforcement of any of the Fundamental Rights provided for in the Constitution to which the complainant may be entitled.
 - (2) In default of obedience of any order made by the Court or Judge under these Rules, proceedings for the committal of the party disobeying such an order will be taken. Order of Committal is in the Form 6 of the Appendix.

Appendix

Form No 1

Notice of Motion for an order enforcing a Fundamental Right
[Order 2 rule 1(1)]

In the Federal High Court/High Court of..... State.

In the matter of an application by for an order
for the enforcement of a Fundamental Right

and

In the matter of Applicant

Take notice that pursuant to the leave of the Federal High Court at...../

High Court of.....State [or the Honourable Justice.....]

given on the..... day of.....19....., the.....

High Court will be moved on the.....day of.....19....., or so soon thereafter

as counsel can be heard on behalf of.....

[for an order that]

..... in terms of the relief sought in the statement accompanying the affidavit in
support of the application for leave to apply for the order on the grounds set out in the copy statement, served
herewith, used on the application for leave to apply for such order.

And take notice that on the hearing of this motion the said will use the affidavit of

..... and the exhibits therein referred to.

And also take notice that the.....

High Court (or the Honourable Justice)

by order dated directed that all proceedings in (or on) the
said

..... be stayed until after the hearing of this
motion or further order).

Dated the day of 20

(Signed)

Applicant or his Legal Representative

To
Respondent or his Legal Representative

Notice:-
Delete the High Court which is not applicable.

Form No 2

Originating Summons
[Order 2 rule 1(1). and Order 4 rule 1(1)]

In the Federal High Court at

High Court of State Division

Suit No.....

(in the matter)

Between A . B Plaintiff

and

C. D Defendant

To C .D of in theof

Let the defendant, within 14 days (or if the summons is to be served out of the jurisdiction insert here the time for Appearance fixed by the order giving leave to issue the summon and serve it out of the jurisdiction) after service of this summons on him Inclusive of the day of service, cause an appearance to be entered to this summons, which is issued on the Application of the plaintiff
..... of

By this summons the plaintiff claims against the defendant (or seeks the determination) of the Court of the following questions, namely, or as may be).

If the defendant does not enter an appearance, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.

Dated the.....day of 20

Note: This summons may not be served later than twelve calendar months beginning from the above date unless renewed by order of the Court.

This summons was taken out by.....

Of

the solicitor for the plaintiff whose address is
..... (or where the plaintiff sues in person this summons was taken out by the said plaintiff who resides at
.....

Directions for entering appearance

The defendant may enter an appearance in person or by a solicitor by handing in the appropriate forms, duly completed, at the Federal High Court at

Or the High Court of State

Sitting at
(Delete Court which is not applicable)

.....
Judge

For Service on

.....
Defendant or Solicitor acting for him.

Form No 3

Notice of Motion for an order for the production of person detained
(order 4 rule 1(i))

In the Federal High Court at /the High Court
of State.

Suit No.....

In the matter of A.B.

and

In the matter of an application for the release of person detained.

Take notice that pursuant to the direction of the Honourable Justice.....

.....of the Federal High Court at...../or

of the High Court of.....State the

High Court will be moved on the..... day of.....19, or so

soon thereafter as counsel can be heard on behalf of

for an order directed to to have the body of the said
..... before the High Court at at such time as the Court or
Judge may direct upon the grounds set out in the affidavits' of the said and
..... and the exhibits therein respectively referred to used on the application to the Honourable
Justice (or the High Court) for such order copies of which affidavits and exhibits are served
herewith.

And take notice that on the hearing of this motion the said will use the affidavits of himself and
the saidand the exhibits therein referred to.

Dated the Day of 20

Signed
Applicant or his Legal Representative

Note
Delete the High Court which is not applicable.

To

The officer or person who has custody of person detained.

Form No 4

Order for Production of Person detained
[Order 4 rule 4(4)]

Suit No.....

In the matter of the Enforcement of a Fundamental Right.

In the matter of the detention of

..... Applicant

To the Superintendent of prison or other person having custody of
At

We command you that you produce in the Federal High Court at /or in the High Court of State at on the day and at the time specified in the notice served with this order the body of being taken and detained under your custody as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called therein, that our Court (or Judge) may then and there examine and determine whether such cause is legal, and have you there then this order.

Witness this day of 20

.....
Judge

Note:-
Delete High Court which is not applicable.

To

The officer or person against whom order is sought.

Form No 5

Notice to be served with the order for the Production of person detained
[order 4 rule 4(4)]

Suit No

In the Federal High Court at /or the High Court of State at

In the matter of the application of (If in a cause already begun, here insert the title, not otherwise).

Whereas this Court (or the Honourable Justice) has made an order directed (or other person having the custody of if so) commanding him to have the body of before the said Court at on the day and at the time specified in the order together with the day and cause of his being taken and detained.

Take notice that you are required by the said Order to have the body of the said before this Court (or before the Judge aforesaid) on the day of 20 at o'clock and make a return to the said Order. In default thereof the said Court will then, or so soon thereafter as counsel can be heard, be moved to commit you to prison for your contempt in not obeying the said Order (or if in vacation application wilt then be made to one of the Judges of the said Court for a warrant for your arrest in order that you may be held to answer for your contempt in not obeying the said writ).

Dated the day of 20

(Signed)
Applicant or his Legal Representative

Note:- Delete High Court which is not applicable.

Form No 6

Order of committal
[order 6 rule 1(2)]
(Heading as in action)

Suit No

Upon motion this day made unto this Court by counsel for the plaintiff and upon reading (an affidavit of filed the day of 20, of service on the defendant of a copy of the order of the Court dated the day of 20 and notice of this motion)

And it appearing to the satisfaction of the Court that the defendant has been guilty of contempt of court in (state the contempt)

It is ordered that for his said contempt the defendant do stand committed to Prison to be there imprisoned (until further order).

It is further ordered that this order shall not be executed if the defendant complies with the following terms, namely,

Dated the day of 20

.....
Judge

These Rules are made this 5th day of December 1979

A. Fatayi-Williams
Chief Justice of Nigeria

Federal High Court Act
Chapter 34
Laws of the Federation of Nigeria 1990
Federal High Court (Tax Appeals) Rules 1992

Federal High Court Act
(Cap 134 LFN)
Companies Income Tax Act
(Cap 60 LFN)
Petroleum Profit Tax Act
(Cap 354 LFN)
Capital Gain Tax Act
(Cap 42 LFN)

Commencement : 1st November 1992

In exercise of the powers conferred on me by section 43 (1)(b) of the Federal High Court Act, section 56 (8) of the Companies Income Tax Act, section 35 (13) (a) of the Petroleum Profits Tax Act, section 45 (1) of the Capital Gains Tax Act and of all other powers enabling me in that behalf, I, *Muhammad Babatunde Belgore*, Chief Judge of the Federal High Court, hereby make the following Rules

Order I

Notice of Appeal

1. (1) Any person authorised to appeal by virtue of any Federal legislation that imposes any taxation shall give notice of the appeal (hereafter in these Rules referred to as "notice of appeal").
 - (2) The notice of appeal shall be-
 - (a) in accordance with the relevant provisions of the applicable Federal legislation ; or
 - (b) where the case so requires, in accordance with the provisions of rule 2 of this Order.
 - (3) The grounds of appeal shall set forth concisely and under distinct heads, the grounds upon which the appellant intends to rely at the hearing of the appeal, without any argument or without it being narrative and shall be numbered consecutively.
 - (4) Subject to Order III rule 5 of these Rules, no ground of appeal which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of the evidence.
 - (5) Any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the Court of its own motion or on application by the respondent.
2. Subject to the provisions of any enactment, a notice of appeal shall be given in writing to the Department of Inland Revenue within 30 days after the date upon which the decision appealed against was given.
3. The notice of appeal shall state whether the whole or part only of the decision of the Appeal Commissioners is complained of (in the latter case specifying such part) and shall-
 - (a) state the exact nature of the relief sought
 - (b) state the names and addresses of all parties directly affected by the appeal
 - (c) be accompanied by a sufficient number of copies for service on all such parties ; and
 - (d) have endorsed on it an address for service on each party.

4. At the foot of the notice of appeal, there shall be stated the address for service, at which documents intended for both the appellant and the respondent may be served in accordance with the provisions of Order XI of these Rules.
5. Any notice or document which is required by these Rules to be signed by the appellant or the respondent may be signed-
 - (a) by a person holding a special power of attorney given by the appellant or the respondent, as the case may be ; or
 - (b) by a legal practitioner representing the appellant or respondent, as the case may be.

Order II

Registration of Appeal and Service on Respondent

1. (1) Upon the filing of grounds of appeal, the Registrar shall endorse thereon the time and date of tiling the same, and the appeal shall be given a number and entered in a Register of Income Tax Appeals to be kept for that purpose.
2. (1) The Registrar shall cause a copy of the grounds of appeal to be served upon the respondent, whose address shall be furnished by the appellant in accordance with Order I rule 3 (b) of these Rules.

(2) The Registrar shall cause a copy of the respondent's answer to be served upon the appellant at least 15 days before the date fixed for the hearing of the appeal.

Order III

Grounds of Appeal

1. The appellant shall, within the period limited for filing his grounds of appeal under Order 1 of these Rules, file his grounds in support of the appeal (which grounds are hereafter in this Order referred to as "grounds of appeal").
2. All appeals under these Rules shall be brought by notice (hereafter in these Rules referred to as "the notice of appeal") and shall be filed in the Registry of the Court in accordance with the provisions of Order 1 rule 3 of these Rules.
3. An appeal shall be determined by way of a rehearing if the appellant so elects and the enabling enactment law so allows ; otherwise the appeal shall be determined upon the record of proceedings conducted before the Body of Appeal Commissioners and filed pursuant to Order V rule 2 of these Rules.
4. The Court shall not allow the appeal or base its decision on any ground not set forth by the appellant in the notice of appeal, unless the respondent has had sufficient opportunity of contesting the case on that ground.
5. Subject to the provisions of this Order, on the hearing of the appeal, it shall not be competent for the appellant to go into any other grounds other than those set forth in his notice of appeal

Provided that where, in the opinion of the Court, other grounds of appeal, than those set out in the notice of appeal, might have been given, or the statement of grounds of appeal is defective, the Court may allow amendment of the grounds of appeal upon such conditions as to service upon the respondent and as to costs as it may think fit.

Order IV

Transmission of Records of Appeal to the Court

1. It shall be the duty of the Secretary to the Body of Appeal Commissioners to cause copies of proceedings required for an appeal to be prepared with the utmost dispatch.

2. Upon receipt of a notice of appeal under Order I of these Rules, the Secretary to the Body of Appeal Commissioners shall compile the record of proceedings before and after judgment of the Body of Appeal Commissioners and shall cause the same to be authenticated and transmitted to the Chief Registrar of the Court.
3. As soon as the required number of copies of proceedings have been prepared, the Secretary to the Body of Appeal Commissioners shall forward them, duly certified by him, together with a copy of the Notice of Appeal and other documents concerning the appeal, to the Chief Registrar of the Court and the appeal shall then be deemed to have been entered and filed in the Court.
4. (1) For the purposes of rule 3 of this Order, the Secretary to the Body of Appeal Commissioners shall forward two copies to the Court and one copy each for service on each of the parties to the appeal.
(2) All documents filed in the Court pursuant to the provisions of this rule shall be the office copies of authentic documents or proceedings and shall be verified by affidavit.
(3) In this rule, the expression "authentic documents or proceedings" means copies of documents or of proceedings made from the record of proceedings served on each party by the Secretary to the Body of Appeal Commissioners and verified by affidavit.

Order

Records of Appeal and Briefs of Argument

1. Within a period not exceeding 15 days after the date of the service on him of the record of proceedings by the Secretary to the Body of Appeal Commissioners, the appellant who opts to argue his appeal based on the record pursuant to Order I of these Rules and not by way of a rehearing, shall prepare the records of appeal in accordance with the provisions of this Order and shall file and also serve every party to the appeal with a copy of the records.
2. (1) An appellant who opts to prosecute the appeal by way of a hearing in accordance with Order III rule 3 of these Rules shall, within 15 days from the date of the conclusion of evidence, file, in substitution for Counsel's oral address, a written address in terms of rule 1 of this Order of these Rules, and the provisions of Orders II to V of these Rules shall be deemed to be written address as if it were a record of appeal filed under rule 1 of this Order.
(2) The records of appeal shall contain the following documents in the order set out in this rule-
 - (a) the index;
 - (b) a brief statement giving particulars of the appeal
 - (c) copies of documents and proceedings before the Body of Appeal Commissioners which the appellant considers relevant to the appeal
 - (d) a copy of the notice of assessment
 - (e) copy of the notice of appeal ; and
 - (f) a copy of the grounds of appeal.
3. If a respondent considers that documents or proceedings which are or may assist his case have not been included in the records of appeal, he shall be at liberty to prepare at his own cost and transmit to the Registrar sufficient copies of a Supplementary records of appeal, incorporating such documents with appropriate index and the Registrar shall serve a copy of the supplementary records of appeal on each party.
4. (1) The appellant shall, within 30 days of filing the records of appeal, file in Court and serve on the respondent a written Brief being a precise statement of his argument in the appeal.
(2) The Brief shall clearly state the issue arising in the appeal.

- (3) The respondent shall file in the Court and serve on the appellant his own Brief within 30 days of service on him of the Brief of the appellant.
- (4) The appellant may also file in the Court and serve on the respondent a Reply Brief within 14 days after service of the Brief of the respondent on him and except for good and sufficient cause shown, a Reply Brief shall be filed and served at least three days before the date set down for the hearing of the appeal.
- (5) All Briefs shall be concluded with a numbered summary of the reasons upon which the argument is founded.
- (6) Briefs filed under this rule shall supersede the grounds of appeal already filed.
5. (1) The Registrar shall give 15 clear days' notice in writing to the parties of the date fixed for hearing of the appeal and such notice shall not be given before the appellant has been served with a copy of the respondent's answer in accordance with the provisions of rule 4 (4) of this Order.
 - (2) The provisions of Order XI shall apply to the service of notice of hearing.
6. (1) Oral argument shall only be allowed at the hearing of the appeal to emphasise or clarify the written argument appearing in the Briefs already filed in Court.
 - (2) The appellant shall be entitled to open and conclude the argument.
 - (3) In the case of a cross-appeal, the appeal and such cross-appeal shall be argued together with the appeal as one case and within the time allotted for one case, and the Court may, having regard to the nature of the appeal, direct the parties as to which party is to open and close the argument.
 - (4) Unless otherwise directed by the Court, a period not exceeding 30 minutes for the appellant and 40 minutes for each respondent shall be allowed for argument.
 - (5) Any request for additional time shall be made to the Court in writing not later than 15 days after service of the appellant's Brief on the respondent.
 - (6) Any request made pursuant to paragraph (5) of this rule shall state clearly and in precise terms the reasons why the argument cannot be presented within the time limit.
 - (7) A copy of such request shall be served on the respondent.
 - (8) Only one legal practitioner shall be heard for each party, unless the Court otherwise allows.
 - (9) Wherever the Court allows more than one legal practitioner for one side, the Court shall discourage divided argument coming from that party.
 - (10) Save with the leave of the Court, no oral argument may be heard in support of any argument not raised in the Brief or on behalf of any party for whom no Brief has been filed.
 - (11) When an appeal is called and no party or any legal practitioner appearing for him appears to present oral argument, but Briefs have been filed by all the parties concerned in the appeal, the appeal shall be treated as having been argued and shall be considered as such.
 - (12) When an appeal is called and it is discovered that a Brief has been filed for only one of the parties and neither of the parties concerned nor their legal practitioners appear to present oral argument, the appeal shall be regarded as having been argued on that Brief.
7. (1) If an appellant fails to file his Brief within the time provided for by these Rules or within the time as extended by the Court, the respondent may apply to the Court for the appeal to be dismissed for want of prosecution.
 - (2) If the respondent fails to file his Brief, he shall not be heard in oral argument except with leave of the Court.

- (3) Where the appellant fails to file his Brief, dismissal of an appeal under this rule (whether on the application of the respondent or not) shall amount to a dismissal on the merit

Provided that without prejudice to the power of the Court to strike out the appeal, such dismissal on the merit shall only be given where the Court is satisfied that a *prima facie* case has been made arising from the papers before the Court.

8. The Court may, where it considers the circumstances of an appeal to be exceptional, or that the hearing of an appeal shall be accelerated in the interest of justice, waive compliance with the provisions of this Order in so far as they relate to the preparation and filing of Briefs of Argument, either wholly or in part, or reduce the time limits specified in this Order to such extent as the Court may deem reasonable in the circumstances of the case.
9. (1) The Court may, as often as it thinks fit, and either before or after the expiration of the duration of the time appointed by these Rules or by any judgment, order or rule of Court, extend or abridge the time for the doing of any act or the taking of any proceeding.
- (2) The parties shall not, without the leave of the Court, by consent enlarge or abridge any of the times specified by these Rules for taking any step or filing any document or giving any notice.

Order VI

Stay of Execution

1. Notwithstanding that an appeal is pending, any tax assessed and affirmed by the Body of Appeal Commissioners shall be paid in accordance with the decision of the Body of Appeal Commissioners within one month of the decision of the Body of Appeal Commissioners, but the Court may, after the appeal had been entered, order a stay in respect of the disputed amount by the appellant, upon such terms as the Court may deem just.

Order VII

Default by Parties

1. If the appellant omits to do any act or take any proceeding within the time prescribed therefor or fixed by an order enlarging or abridging such time, or fails to attend the Court on three consecutive hearing dates, the respondent may move the Court to dismiss the appeal and the Court may thereupon give judgment dismissing the appeal.
2. A motion under rule 1 of this Order shall be made on notice to the appellant and the respondent shall supply the Registrar with a copy thereof for service on the appellant and shall pay to the Registrar the fees for by filing and service.
3. If a respondent to an appeal omits to file his Brief of Argument within the time prescribed therefor or fixed by an order enlarging or abridging such time or fails to attend Court on three consecutive hearing dates-
- (a) the Court may infer that he has no argument to urge the Court to decide in his favour on the appeal; and
- (b) unless the Court specifically calls upon him to address it on any particular point, he shall not be entitled to present any oral argument to the Court.
4. The Court may, on good cause shown by affidavit, or otherwise, dispense with service of the Motion on Notice or make an order for substituted service.

Order VIII

Setting Aside Default Judgment

1. Where judgment is given against a party in his absence and in the absence of the legal practitioner representing him, the other party shall give him notice of the judgment and attach thereto an office copy thereof.

2. The Court may in a proper case, upon motion supported by affidavit after the notice to the party who obtained the judgment in the absence of the other party, set aside the judgment and give directions for the hearing of the appeal on such terms as the Court may think just; but no such motion shall be entertained unless notice thereof has been duly filed with the Registrar within 15 days of the date on which the notice of the judgment was served; and the time hereby prescribed shall not be extended under Order V rule 9 of these Rules in any circumstance whatsoever.
3. Where a party delivers a notice of motion under rule 2 of this Order for filing, he shall supply the Registrar with a copy of the notice and of the affidavit for service on the party who obtained the judgment.

Order IX

Appeal Out of Time

1. Where an intending appellant wishes to appeal after the period set by for doing so in any provision of any tax enactment or under any provision of these Rules, he shall proceed by way of motion filed in the Court, supported by way of one or more affidavits establishing the cause which prevented him from giving notice of appeal within the period prescribed by the relevant enactment or by these Rules and by showing that there was no unreasonable delay on his part.
2. Upon hearing the motion) the Court shall have the power to enlarge the time appointed by the relevant tax enactment or by these Rules for doing any act or taking any proceeding upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for such enlargement is not made until after the expiration of the time appointed.

Order X

Abandonment of Appeal

1. An appellant may abandon his appeal by giving a written notice of abandonment to the Secretary of the Body of Appeal Commissioners, within 15 days of his appeal being entered in the Court.
2. The notice of abandonment shall be signed by any of the person 5 competent to sign documents of appeal in accordance with Order I rule 5 of these Rules.
3. Immediately after receiving a notice of abandonment, the Secretary '0 the Body of Appeal Commissioners shall notify the Registrar of the Court.
4. Where the notice of abandonment is received by the Registrar of the Court after the appeal has been entered, the Court may, on the application of the respondent, order the appellant to pay to the respondent such costs as the Court may deem just.
5. Where an appeal has been abandoned, it shall be deemed to have been dismissed.

Order XI

Service of Process

1. Where any notice or other document has to be served on any party to an appeal under these Rules, the following provisions shall apply-
 - (a) where the address for service in the town or locality of the sitting of the Court has been given by the party to be served and if any body corporate is concerned, service shall be sufficiently effected by sending the notice or other document by a bailiff of the Court delivering it at the registered address of the body corporate or the last known address of its business to an adult person employed or residing at such address, and the same shall sign for it and state his relationship to the person to be served or by registered post to the said address
 - (b) where the party to be served is represented by a solicitor who has given his address for service and if the address is in the locality of the Court, service shall be sufficiently effected by the bailiff of the Court delivering the notice or other document to any clerk or other person in the employment of such

solicitor at the address for service or otherwise by sending it by registered post to the aforesaid address whether in the locality of the Court or not

(c) where the notice or other document is sent by registered post, it shall, unless the contrary be proved, be deemed to have been served at the time when the registration slip should have reached the addressee in the ordinary course of post

2. The Federal High Court (Civil Procedure) Rules shall also apply in respect of service of any *subpoena* on any person.
3. Where service of a notice or other document on a party to an appeal service. in one of the manners specified in this Order has proved impracticable, an application may be made *ex parte* to the Court for a substituted service in accordance with the Civil Procedure Rules of the Court.

Order XII

Fees

4. The scale of fees for the time being in force in respect of civil actions in the Court shall be applied in the case of appeals under these Rules as if they were civil actions and as if the grounds of appeal were a writ of summons and the respondent's Brief were a statement of defence provided that the fees payable shall be charged at the applicable rate to writs of summons or the difference between the amount of tax payable under the assessment appealed against and the amount of the tax which the Court is asked to adjudge as being the proper amount of the tax.
5. No fee shall be payable by the Body of Appeal Commissioners.

Order XIII

Transactional Provisions

1. These Rules shall not apply to any appeal pending on the date when these Rules come into operation if the grounds of appeal and the respondent's answer have already been duly filed.
2. Where in any appeal pending as aforesaid, no grounds of appeal have been filed prior to the date when these Rules come into operation, such grounds shall be filed within 30 days from the date aforesaid and these Rules shall apply.
3. In all other cases of pending appeals which have not been heard, the Court shall give such directions as may be necessary or expedient to ensure conformity with the requirements of these Rules.

Order XIV

Miscellaneous Provisions and Revocation

1. The Federal High Court (Tax Appeals) Rules 1984 are hereby revoked.
2. These Rules shall apply to all cases pertaining to all Federal taxation brought on appeal to the Court.
3. In these Rules, unless the context otherwise requires –

"Board" means the Federal Board of Inland Revenue established by the Companies Income Tax Act, Petroleum Profit Tax Act, the Capital Gains Tax Act or other Federal taxation enactments ; or any other similar body replacing that body and performing the same duty

"Body of Appeal Commissioners" means a body established by section 53 of the Companies Income Tax Act, section 38 of the Petroleum Profits Tax Act or under any other enactment which imposes Federal taxation

"Court" means the Federal High Court

"Federal taxation" means any tax imposed by the Government of the Federation *by* an enactment

"legal practitioner" means a law officer, a state counsel or a legal practitioner entitled to practice before the Court.

4. These Rules may be cited as Federal High Court (Tax Appeals) Rules 1992 and shall come into force on 1st November 1992.

Made at Lagos this 3rd day of February 1992

M.B. Belgore
Chief Judge,
Federal High Court

Admiralty Jurisdiction Decree
(No 59 of 1991)
Admiralty Jurisdiction Procedure Rules 1993

Commencement: 2nd August 1993

In exercise of the Powers conferred on me by section 21 of the Admiralty Jurisdiction Decree 1991 and of all other power enabling me in that behalf, *I, Muhammad Babatunde Belgore*, Chief Judge of the Federal High Court, hereby make the following Rules

Order I

Citation, Application, etc.

1. These Rules may be cited as the Admiralty, Jurisdiction Procedure Rules 1993.
2. These Rules shall apply to every admiralty cause or matter brought in the Court.
3. In these Rules, unless the context otherwise requires-

"admiralty" shall bear the same meaning as in the Admiralty Jurisdiction Decree 1991

"amount claimed" includes an amount in respect of interest or cost;

"arrest warrant" means a warrant for the arrest of a ship or other property; -

"caveat" means an undertaking filed in the Registry by the owner of or person interested in a ship or property to appear to any action *in rem* filed against that ship or property and provide bail even though the ship or property is not arrested;

"caveator" means the person by whom or on whose behalf the caveat was filed;

"Court" means the Federal High Court;

"Decree" means the Admiralty jurisdiction Decree 1991;

"interested person" in relation to a proceeding or in relation to a ship or other property that is under arrest, includes an underwriter or insurer of the ship or property or of a liability in relation to the ship or property or intervener;

"Marshal" means the Admiralty Marshal;

"Registrar" means an officer of the court authorized by the Rules of Court to exercise the power or function or to perform the duty of Registrar;

"ship" includes any description of vessel used in navigation.

Order II

Form and Commencement of Suits

1. (1) Every admiralty action filed in the Court shall be commenced by a writ of summons signed by a Judge or other officer empowered to sign summonses.
(2) The writ shall be issued by the Registrar or other officer of the Court empowered to issue summons upon receipt of written Particulars of Claim filed by a plaintiff.
2. (1) Every writ of summons in an action *in rem* shall be accompanied by a Statement of Claim.

- (2) In an action *in personam*, it shall be sufficient for the Plaintiff to state his claim in his application in writing for the writ of summons briefly in a general form, or he may deliver to the Registrar at the time of making the application for the writ of summons, particulars of his claim in any form which shall give the defendant reasonably sufficient information as to the details thereof and such statement shall be affixed to Form 'A' specified in the Schedule to these Rules.
3. (1) A document filed in or issued out of the Court in an admiralty proceeding shall include as part of the heading of the document, the words "**In Admiralty**".
- (2) Where the action is an action *in rem*, a document filed shall contain the heading "**Admiralty Action in Rem**".
- (3) A proceeding commenced as an action *in personam* shall not be commenced by the same initiating process as the process by which a proceeding is commenced as an action *in rem*.
4. A writ shall be effective for service for a period of 12 months after it is issued and may not be served after that time without leave of the court.
5. (1) A limitation proceeding shall be commenced as an action in personam.
- (2) At least one of the respondents shall be named as respondent in the writ.
- (3) Other respondents need not be so named but may be identified as respondents in the writ by reference to their being members of a specified class of persons.
- (4) The writ need not be served on respondents so identified.
6. (1) No formal appearance need be filed but a Return Date shall be fixed by the Court not more than 21 days after the issue of a writ, on which date any party served with the writ shall appear in court or he represented by Counsel.
- (2) Where the writ is served simultaneously with an order for the arrest of any ship or property, an interested person may apply for the release of the arrested ship or property and the Court shall, within 3 days of the filing and serving the application for release of the ship or property, entertain the said application.
- (3) In application for the release of the arrested ship or property shall be heard by the Judge who ordered the arrest or, in his absence, by another judge.

Order III *Preliminary Acts*

1. In an action to enforce a claim for damages arising from loss of a ship or damage done to or by a ship following a collision between two or more ships, each party shall file a preliminary act, unless the Court otherwise orders.
2. The preliminary act shall contain the following particulars-
- (a) the names of the ships which came into collision and their ports of registry ;
 - (b) the date and time of the collision ;
 - (c) the place of the collision;
 - (d) the direction and force of the wind;
 - (e) the state of the weather ;
 - (f) the state, direction and force of the tidal or other current;

- (g) the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measure was taken with reference to her presence, whichever was the earlier;
 - (h) what light or combination of lights (if any) of the other ship was first seen ;
 - (i) the distance and bearing of the other ship if and when her echo was first observed by radar ;
 - (j) the distance, bearing and approximate heading of the other ship when first seen;
 - (k) what other lights or combination of lights (if any) of the other ship were subsequently seen before the collision, and when;
 - (l) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in sub-paragraph (k) of this rule up to the time of the collision, and when, and what measures (if any) other than alterations of course or speed, were taken to avoid the collision, and when ;
 - (m) the heading of the ship, the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
 - (n) what sound signals (if any) were given, and when;
 - (o) what sound signals (if any) were heard from the other ship, and when.
3. The plaintiff shall file his preliminary act within 7 days after the commencement of the proceeding and the other parties shall file their preliminary acts before filing any pleading.
 4. A preliminary act shall be filed in a closed envelope that has been sealed with the seal of the Court and bears the date of filing.
 5. (1) Where the plaintiff fails to file a preliminary act, the Court may, on an application, dismiss the proceeding or make such order on such terms as it thinks just.
 - (2) Where a defendant fails to file a preliminary act, the plaintiff may take the same step in the proceeding as may be taken in relation to a defendant who has failed to file a defense.
 - (3) In proving his case in pursuance to paragraph (2) of this rule, the plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit.
 6. The Court may at the stage of the proceeding after pleadings have been closed, on application or of its own motion, order that the Registrar open the envelopes containing the preliminary acts and may make such further order or orders as are appropriate.

Order IV
Parties

1. (1) The writ in a proceeding commenced as an action *in rem* shall specify a relevant person in relation to the maritime claim concerned as a defendant and shall be in Form B in the Schedule to these Rules.
- (2) The specification may be by reference to ownership of or other relevant relationship with the ship or other property concerned therewith.
2. The writ in a proceeding commenced as an action *in rem* against a ship or other property shall identify the ship or Property.
3. (1) Where the action is commenced against a sister ship, the ship in relation to which it is a sister ship shall also be identified in the initiating process.

- (2) A writ may identify more than one ship as a sister ship.
4. (1) The powers of the Court in relation to amendment of process and joinder of parties shall extend to-
 - (a) making an order, on such terms as are just;
 - (b) substituting for a defendant identified in rule 2 of this Order some other person ; and
 - (c) substituting for a ship some other ship.
- (2) Where the writ in a proceeding is amended by substituting for a ship some other ship, the proceeding shall be taken to have been commenced against the other ship at the time specified in the order or, if no time is specified, at the time when the order was made.

Order V
Service of Process

1. The writ in proceeding commenced as an action *in rem* against a ship or other property that is at the time of service on board a ship shall be served by securely affixing a sealed copy of the process to a mast or some other conspicuous part of the ship, or delivering the same to the master of the ship.
2. The writ in a proceeding commenced as an action *in rem* against any property that is not, at the time of service, on board a ship shall be served by securely affixing a sealed copy of the process to the property or to a package or container containing the property.
3. If access to the ship or property cannot reasonably be obtained, the process may be served on the ship or property by-
 - (a) handing a sealed copy of the process to a person apparently in charge of the ship or property ; or
 - (b) if that person refuses to accept service, placing a sealed copy of the process down in the person's presence and telling the person what the document is.
4. In the case of every arrest of a ship or other property, the appropriate officer of the Nigerian Ports PLC shall be served with a copy of the court order.
5. The writ, in a proceeding commenced as an action *in rem* against the proceeds of sale of a ship or other property that has been paid into court, shall be served by filing a sealed copy of the process in the court in which the proceeds are held.
6. Where-
 - (a) a proceeding is commenced as an action *in rem* against a ship or other property ;and
 - (b) a caveat against the arrest of the ship or property is in force or, after the proceeding is commenced, is filed, a sealed copy of the writ shall be served on the caveator as soon as practicable after the person on whose behalf it was issued becomes aware of the existence of the caveat.
7. The Admiralty Marshal shall effect the service of a writ in a proceeding commenced as an action *in rem* against a ship or other property.
8. In a proceeding commenced as an action *in rem*, a court shall not order substituted service of the writ that is to be served on a ship or other property.
9. Initiating process in a proceeding commenced as an action *in rem* may be served on any day.

10. Where a writ in a proceeding commenced as an action *in rem* has been amended, the amended writ shall, unless the Court otherwise orders, be served on each person on whom, and on each ship or on the property, on which the writ was served.
11. Where, in a proceeding commenced as an action *in rem* against a ship or other property, a solicitor acting for a defendant in the proceeding or the owner of the ship or property undertakes in writing to accept service, of the writ, or any other instrument, in relation to the proceeding, the process or instrument may be served on the solicitor in anyway in which other process of the court may be served on the solicitor or instead of being served as elsewhere provided in these Rules or as the case may be.
12. Where-
 - (a) an action *in rem* is commenced against a ship or other property which has been abandoned in Nigeria; or
 - (b) an action *in personam* is filed against a defendant who does not reside in or carry on business in Nigeria through an agent, the Court may order service on such defendant or the owner of such ship or property at the address of his last known place of business by a reputable courier company operating a courier service between Nigeria and the country of the place of business.

Order VI

Caveats

1. A caveat against the arrest of a ship or other property may be filed in the Registry in Form C in the Schedule to these Rules.
2. The caveat shall not be filed unless the Registrar is satisfied (whether because of an undertaking in writing given by the caveator or by a solicitor, or for other sufficient reason) that the caveator shall in any proceeding of the kind specified in the caveat that is commenced as an action *in rem* against the ship or property-
 - (a) appear to the suit ; and
 - (b) provide bail.
3. Without limiting the power of the Registrar under rule 2 of this Order, the Registrar may be satisfied as mentioned in that rule if there is produced to the Registrar an undertaking in writing to satisfy any judgment for the amount specified in a caveat, being an undertaking given by-
 - (a) a protection and indemnity association that is a member of the International Group of Protection and Indemnity Association ;or
 - (b) a bank within the meaning of the Banks and Other Financial Institutions Decree 1991 carrying on banking business in Nigeria ; or
 - (c) an insurance company of repute carrying on business in Nigeria.
4. (1) The filing of a caveat shall constitute an undertaking by the caveator-
 - (a) to appear in any proceeding of a kind specified in the caveat that is commenced as an action *in rem* against the ship or other property specified in the caveat; and
 - (b) to provide bail,(2) The undertaking shall be enforceable by the Court in which the proceeding is commenced.
5. (1) This rule shall apply where
 - (a) a caveat against the arrest of a ship or other property is in force;

- (b) under these Rules, a writ has been served on the caveator;
 - (c) the proceeding is a proceeding of a kind specified in the caveat; and
 - (d) the caveat specifies an amount not less than the amount claimed.
- (2) Within 3 days after having been so served, the caveator shall, unless otherwise agreed in writing between the caveator and the plaintiff-
- (a) pay into court an amount equal to-
 - (i) the amount claimed; or
 - (ii) the amount specified in the caveat, whichever is less; or
 - (b) cause a bail bond to be entered into as in Form D in the Schedule to these rules.
- (3) A caveator who fails to comply with paragraph (2) of this rule shall be taken to have failed to appear in the proceeding within the time limited for appearing.
6. The fact that there is a caveat against arrest in force shall not prevent the arrest of the ship or property to which the caveat relates.
7. Where a ship or other property is under arrest in a proceeding, a person may file in the Court a caveat against the release from arrest of the ship or property in lieu of obtaining a further arrest of that ship or property.
8. Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by, motion for an order under this rule, and on the hearing of the application, the Court unless it is satisfied that the party procuring the arrest of the party had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the party at whose instance the property was arrested to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.
9. (1) Unless sooner withdrawn or set aside, a caveat remains in force for a period of 12 months or such shorter period, not being less than 7 days, as is specified in the caveat.
- (2) Paragraph (1) of this rule shall not prevent the filing of a further caveat.
10. A caveator may withdraw a caveat by filing an instrument of withdrawal of the caveat.
11. (1) The Registrar shall establish and maintain a register, to be known as the Register of Caveats Against Arrest.
- (2) The Registrar shall establish and maintain a register to be known as the Register of Caveats Against Release.
- (3) Any register established under paragraphs (1) and (2) of this rule may be inspected by any person, without charge.

Order VII

Arrest of Ships and other Property

1. (1) A party to a proceeding commenced as an action in rem may by motion ex parte apply for an arrest warrant in respect of the ship or other property against which the proceeding was commenced.
- (2) The application shall be supported by an affidavit of the applicant or of a solicitor or agent of the applicant which shall disclose a strong

2. (1) Subject to this rule, the court may issue an arrest warrant.
 - (2) Except by leave of the Court, an arrest warrant shall not be issued if the Court is made aware that-
 - (a) a caveat against the arrest of the ship or other property is in force and-
 - (i) the proceeding is a proceeding of a kind specified in the caveat;
 - (ii) the caveat specifies an amount not less than the amount claimed by the applicant; and
 - (iii) the caveat has not expired;
 - (b) the proceeding is stayed because payment has been made into court; or
 - (c) a bail bond of not less than the amount claimed by the party has been filed.
 - (3) The court may allow an arrest warrant to issue although all the conditions required by paragraph (2) of this rule have not been complied with.
3. (1) An arrest warrant shall not, be executed for more than 6 months after it was issued.
 - (2) Paragraph (1) of this rule shall not prevent the issue of a further arrest warrant.
4. (1) An arrest warrant shall be executed only by the Admiralty Marshall.
 - (2) An arrest shall not be executed on a ship or other property unless the writ in the proceeding concerned has previously been served, or is to be served concurrently with the execution of the warrant, on the ship or property.
 - (3) A ship or other property may be arrested in a proceeding after judgement has been given in the proceeding.
 - (4) The Admiralty Marshal shall not execute an arrest warrant if the applicant so requests in writing or the Court so orders.
 - (5) Where an arrest warrant that specifies a ship or other property has been issued, the Court may, on the application of-
 - (a) the caveator if a caveat against the arrest of the ship or property is, at the time of the application, in force; or
 - (b) in any case, an interested person in relation to the ship or property and on such terms are just, that the arrest warrant be discharged, or be not executed, or be not executed within a specified time.
5. A ship or other property specified in an arrest warrant as in Form E in the Schedule to these Rules shall be under arrest from the time when the warrant is executed until it is lawfully released from arrest or is sold by the order of the Court.
 6. Execution of an arrest warrant shall be verified by affidavit.
 7. An arrest warrant may be executed on any day.

Order VIII

Custody of Ships and Property under Arrest

1. An application for an arrest warrant shall constitute an undertaking to the Court to pay to the Admiralty Marshal on demand, an amount equal to the fees and expenses of the Admiralty Marshal in relation to the arrest.
2.
 - (1) Whilst a ship is under arrest pursuant to these Rules, no port or other dues shall be payable by an interested person to any person and no application for the same shall be entertained by the Court.
 - (2) The Admiralty Marshal shall pay for all services supplied at his request to the arrested ship by the Nigerian Ports PLC or any other person necessitated by the arrest.
 - (1) The fees and expenses of the Admiralty Marshal shall be paid by the arresting party.
 - (2) Where a person is liable to pay fees or expenses, the Admiralty Marshall may-
 - (a) accept an amount of money not exceeding N5,000 as a deposit towards discharging the liability ; and
 - (b) make one or more demands for interim payments on account of those fees and expenses.
 - (3) Where another party arrests the arrested ship or files a caveat against arrest, he shall be jointly and severally liable with the first arrester to pay the Admiralty Marshal's expenses.
4.
 - (1) The Admiralty Marshal, in arresting a strip or other property, shall, subject to the Decree and these Rules, have the custody of the ship or property,
 - (2) The Admiralty Marshal shall, unless the Court otherwise orders, take all appropriate steps to retain custody of, and to preserve, the ship or property, including-
 - (a) removing from the ship, or storing, cargo that is under arrest;
 - (b) removing cargo from a ship that is under arrest and storing it ;
 - (c) removing, storing or disposing of perishable goods that are under arrest or are in a ship that is under arrest ; and
 - (d) moving the ship that is under arrest.
5.
 - (1) Where the Admiralty Marshal has the custody of a ship or other property he or a party may at any time apply to the Court for directions with respect to the ship or property.
 - (2) Notice of an application (not being an application for the release from arrest of property) made by a person, other than the Admiralty Marshal, shall be served on the Marshal.
 - (3) The Court may order the applicant to give notice of the application and of the directions, to such persons as are specified in the order.
6.
 - (1) Where-
 - (a) cargo on board a ship is under arrest but the ship is not
 - (b) a ship is under arrest but its cargo is not,a person who is entitled to immediate possession of the ship or the cargo, respectively, may apply to the Court to discharge the cargo from the ship
 - (2) Where-

- (a) the Court is satisfied that the applicant is entitled to immediate possession of the ship or the cargo, as the case may be;
 - (b) the applicant gives an undertaking in writing satisfactory to the Admiralty Marshal to pay on demand to the Marshal any fees and expenses of the Marshal in connection with the discharge ; and
 - (c) if the court so requires, the applicant indemnifies the Marshal, in a form satisfactory to the Marshal in respect of any claim against the Marshal arising from the discharge, the Court may order the discharge.
- (3) Where-
- (a) cargo on board a ship is under arrest but the ship is not ; or
 - (b) a ship is under arrest but its cargo is not, the Court may, on application of time plaintiff and subject to such terms and conditions as are just, order the discharge.
7. The Court may, at any stage of a proceeding, make appropriate orders with respect to the preservation, management or control of a ship or other property that is under arrest in the proceeding.

Order IX
Release from Arrest

1. (1) Where a ship or other property is under arrest in a proceeding and the Court is satisfied that-
- (a) an amount equal to-
 - (i) the Amount claimed, or
 - (ii) the value of the ship or property, whichever is the less, has been paid into court or
 - (b) a bail bond for an amount equal to-
 - (i) the amount claimed ; or
 - (ii) the value of the ship or property, whichever is the less, has been filed in the proceeding, the Registrar may, on written application by the relevant person release from arrest the ship or property.
- (2) Release shall not be made under paragraph (1) of this rule in relation to a ship or other property that has been arrested in a proceeding concerning a claim for salvage unless the value of the ship or property that is under arrest has been -
- (a) agreed between the parties ; or
 - (b) determined by the Court.
- (3) Where, in a proceeding, the party on whose application a ship or other property was arrested consents in writing to the release from arrest, the ship or property shall be released from arrest.
- (4) Where-
- (a) a ship or other property has been arrested in a proceeding ; and
 - (b) the proceeding has been discontinued or dismissed, the Court may release from arrest the ship or property.

- (5) Where a caveat against the release from arrest of a ship or other property is in force, release shall not be made under paragraph (1), (3) or
 - (4) of this rule in relation to the ship or property unless the Court so orders.
2.
 - (1) A party to a proceeding may apply to the Court for the release of a ship or other property that is under arrest in the proceeding.
 - (2) Where a caveat against release of the ship or other property is in force, a copy of the application shall be served on the caveator.
 - (3) On an application under paragraph (1) of this rule, the Court may order the release from arrest of the ship or property on such terms as are just.
3. The Admiralty Marshal may refuse to release a ship or other property from arrest in accordance with an order under this Order unless arrangements satisfactory to the Marshal have been made for the payment of the fees and expenses of the Marshal in connection with custody of the ship or property while it was under arrest.
4. The Order of release from arrest shall be as in Form F in the Schedule to these Rules.

Order X
Security for Costs

1.
 - (1) In every action *in rem* the Court may on the application of an interested person, if it sees fit, require any plaintiff at whose instigation a ship or other property has been arrested, either at the commencement of the suit or at anytime during the progress thereof, to give security for costs.
 - (2) Where the plaintiff's claim is in excess of one million naira or its or its foreign currency equivalent or where the plaintiff has no assets in Nigeria, and the Court is so satisfied, security for costs shall be ordered by the Court provided that in assessing the quantum of such security, the Court shall have regard to the interest rate, if any, payable by the defendant to a bank or other institution providing the security.
2. The security shall take the form of-
 - (a) a deposit of the sum specified by the Court; or
 - (b) a guarantee supplied by a protection and indemnity club, an insurance company of repute or a bank.
3. In determining the quantum of security to be provided, the Court shall have regard to all the circumstances of the case and shall not restrict itself to the costs of the legal proceedings.
4. The Court shall specify the time within which the plaintiff shall furnish security and upon the expiry of the time specified, the arrested ship or property shall be released from arrest.
5.
 - (1) A plaintiff shall be at liberty to withdraw any security provided to the Registrar upon obtaining judgment against the defendant or defendants in the action or upon discontinuance of the suit.
 - (2) In the event of the plaintiff failing in the action the defendant or defendants shall be entitled to the costs of the proceedings out of the security provided by the plaintiff and the balance of the security shall be returned to the plaintiff.
6. The master, or a member of the crew, of a ship who is a plaintiff in a proceeding for his wages or for loss of goods or clothes in a collision between two or more ships, shall not be required to give security for costs.
- 7- Where, in relation to maritime claims arising out of a collision of two or more ships-

- (a) a proceeding has been commenced as an action *in rem* and
 - (i) a counter-claim has been made ; or
 - (ii) a cross-action has been commenced, whether as an action *in personam* or an action *in rem*
- (b) a ship has been arrested, or security has been given to avoid arrest, by one of the parties ; and
- (c) the other party has not arrested a ship or given such security, the Court may, on application, order that the proceeding be stayed until appropriate security has been given to satisfy a judgment given in favor of the other party on the cross-action or counter-claim.

Order XI

Reparation for Needless Arrest

1. The Court may, upon making any order to hold to bail, or of sale, injunction, or attachment, or any warrant to stop the clearance of, or to arrest any ship as aforesaid, impose such terms and conditions as the Court may deem just.
2. In any case in which an arrest order as aforesaid has been made-
 - (a) if it afterwards appears to the Court that the arrest of any defendant, or any order of attachment, sale, or injunction, or any warrant to stop the clearance of, or to arrest any ship, was applied for insufficient grounds; or
 - (b) if the suit in which any such, application was made is dismissed, or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting such suit,

the Court may (on the application of the defendant made at an time before the expiration of three months from the termination of the suit) award against the plaintiff such amount, not exceeding the sum of twenty thousand naira, as it may deem a reasonable compensation to the defendant for any loss, injury, or expenses which he may have sustained by reason of such arrest, attachment, order of sale or injunction, as aforesaid:

Provided that the Court shall not award a large amount of compensation under this rule than the Court is competent to award in an action for damages.

3. (1) The provisions of this Order shall not take away right of action or other right which would otherwise have existed but no action shall be commenced or continued in respect of the same grounds on which the Court may have made an award of compensation.
 - (2) Further to paragraph (1) of this rule, the defendant shall be at liberty to institute an action for wrongful arrest against a plaintiff and the Court shall award costs, damages, demurrage and expenses against the plaintiff where it is satisfied that the arrest was occasioned unreasonably and without good cause.
4. Where an oral application is made immediately after the judgment of the Court is read, the Court shall, where possible, proceed to hear arguments on the issue of wrongful arrest and shall make an order granting or refusing damages.

Order XII
Payment of Bail

1. Where a sum is paid into court by way of bail or other security, the sum shall be paid by the Registrar into a short call fixed deposit account with a prime bank, and payments out of the said deposit together with any accrued interest shall be paid forthwith by the Registrar not later than seven days after a proper request for the same shall have been made.
2. Every payment into a fixed deposit account as provided in rule 1 of this Order shall be acknowledged by the manager of the bank in a letter specifying that the payment was received from the Registrar on behalf of the party who effected payment.
3. (1) The Court may by order reduce or increase the amount of bail in respect of which bail has been provided to ensure fairness between the parties.
(2) Where the court makes an order under paragraph (1) of this rule it may also make such orders as are necessary to give effect to the order.
(3) Paragraphs (1) and (2) of this rule shall not affect any other power of the Court.

Order XIII
Proceedings

1. (1) The applicant in a limitation proceeding shall not apply-
 - (a) to have the proceeding set down for hearing ; or
 - (b) for judgment in default of appearance, unless at least one of the persons named as respondent in the writ has been served with the writ.
(2) Such an applicant shall support this application with an affidavit setting out the name and, if known to the applicant, the address, of each other person who, to the knowledge of the applicant, has or may have a maritime claim against the applicant arising out of or connected with the matter in respect of which liability is to be limited.
2. (1) In a limitation proceedings where persons are identified as respondents in the writ by reference to their being members of a specified class of persons, the Court shall, after determining whether the liability of the applicant may be limited and the extent of that liability, make orders.
 - (a) specifying how the determination is to be advertised -, and
 - (b) fixing a period, being not less than one month after the latest day allowed for the advertisement of the determination, as the period within which a maritime claim against the applicant in respect of which the applicant's liability is determined may-
 - (i) prosecute that claim; or
 - (ii) apply under rule 4 of, this Order.
(2) The Court need not make an order under paragraph (1) of this rule if the Court is satisfied that all the persons included within the class of persons concerned have been served with the writ.
3. Where a determination in a limitation proceeding has not been advertised under rule 2 of this Order, the determination shall bind only persons identified as respondents in the initiating process who have been served with the writ.

4. (1) Where, in a limitation proceeding, the determination of the limit of the applicant's liability has been advertised as required under rule 2 of this Order, the Court may on application by a person who has not been served with the writ, and on such terms and condition as are just, vary or set aside.
- (2) The application shall not be made after the end of the period fixed under rule 2 (1) (b) of this Order.
- (3) The application, and the affidavits in support, shall be served on-
 - (a) the applicant in the limitation proceeding; and
 - (b) each respondent to that at proceeding who has appeared in the proceeding not less than 7 days before the application is to be determined.

Order XIV
Valuation and Sale

1. (1) The Court may, in application by a party and either before or after final judgment in a proceeding, order that a ship or other property that is under arrest in the proceeding -
 - (a) be valued;
 - (b) be valued and sold; or
 - (c) be sold without valuation.
- (2) An application under paragraph (1) of this rule shall constitute an undertaking by the party who made it to pay, on demand, to the Admiralty Marshal an amount equal to the fees and expenses of the Admiralty Marshal in complying with the order.
- (3) If the ship and other property is deteriorating in value, the Court may at any stage of the proceeding, either with or without application, order it to be sold.
2. (1) The sale of any ship or other property ordered to be sold, under Rule 1 of this Order, shall be conducted by the Admiralty Marshal.
- (2) The sale shall be by public auction 21 days after an advertisement shall have been placed in two national daily papers by the Admiralty Marshal.
3. The Admiralty Marshal shall, as soon as practicable after the sale of the ship or property
 - (a) file a return of sale;
 - (b) pay into court the proceed of sale; and
 - (c) file an account of sale and the vouchers of the account.
4. (1) The fees and expenses of the Marshal in connection with the valuation and sale of a ship or other property ordered to be sold shall be computed and filed.
- (2) A person who is an interested person in relation to the proceeds of the sale may apply to the Court for taxation of the fees and expenses of the Admiralty Marshal.

Order XV

Priorities

1. (1) Where a ship or other property has been arrested in a proceeding, a person who has obtained a judgment in any Court (including a judgment in a foreign country) against the ship or property, being a judgment that is enforceable in the court, may apply to the Court for determination of the order of priority of claims against the ship or property.
 - (2) The Court may, on the application, order that notice of the application, specifying the period within which claims may be notified, be given to be published as the Court directs.
 - (3) The determination shall not be made until after the end of the period specified in the notice.
 - (4) The Admiralty Marshal shall file a copy of the relevant part of each publication in which the notice appeared.
2. The expenses of the Admiralty Marshal in complying with an order of the Court under this Order shall be part of the expense of the sale of the ship or other property.

Order XVI

General Power of the Court

1. The Court may, on application or of its own motion and in such terms as are just-
 - (a) give any appropriate direction with respect to a proceeding ; and
 - (b) by order, extend or abridge any time prescribed by these Rules or by rules of court applicable to a proceeding, whether or not the time has ended.
2. (1) A party to a proceeding may apply to the Court for review, of a decision or other act of a Registrar in the proceeding.
 - (2) On the application, the Court may make such order as is just.
3. Each document (including each warrant) issued by or by authority of a court in a proceeding shall-
 - (a) be signed by the Registrar;
 - (b) be sealed with the seal of the court; and
 - (c) show the date on which it was sealed.

Order XVII

Effect of Non-Compliance

1. (1) Where in beginning or purporting to begin any proceeding or at any stage in the course of or in connection with any proceeding, there has by reason of anything done or left undone, been a failure to comply with the requirements of these Rules whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceeding, step taken in the proceedings, or any document, judgment or order therein.
 - (2) Subject to paragraph (3) of rule 1 of this order, the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1) of, rule 1 of this Order and on such terms as to costs or otherwise as it thinks set aside either wholly, or in part the proceeding in which failure occurred, any step in those proceedings or any documents, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

- (3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.
2. (1) An application to set aside, for irregularity, any proceedings, any step taken in any proceeding or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.
- (2) An application under this rule may be made by summons or motion and the grounds of objection shall be stated in the summons or notice of motion.

Schedule
Forms

Form A

Order 11 Rule (2)
WRIT OF SUMMONS IN ACTION IN PERSONAM
IN THE FEDERAL HIGH COURT
IN THE ADMIRALTY JUDICIAL DIVISION

SUIT NO

BETWEEN

..... PLAINTIFF

AND

.....DEFENDANT

To the Defendant

..... (name) of (address)

This writ of summons has been issued against you by the above-named plaintiff in respect of the claim set out on the back.

Unless you admit the claim you must within (14 days) after service of this writ on you, counting the day of service, return to the Registry of this Court mentioned below the accompanying acknowledgement of service.

If you fail to return the Acknowledgment within the time stated the Plaintiff may proceed with the action without further notice to you.

Issued from the Admiralty Registry of Federal High Court thisday

20.....

(Statement of Claim to be affixed to the back.)

Form B

Order IV Rule 1
WRIT OF SUMMONS IN ACTION IN REM
IN THE FEDERAL HIGH COURT
IN THE ADMIRALTY JUDICIAL DIVISION

SUIT NO

Admiralty Action in Rem against : (The Ship "X" or as may be describing the property against which action is brought)

Between

The owners of the Ship "A" or as may be describing the plaintiff (or name) --
Plaintiffs

And

The Owners of the Ship "X" or as may be describing the property against which the action is brought --
Defendants

To the Defendants and other persons interested in the Ship "X" (detailing registration of ship if known).

This Writ of Summons has been issued by the Plaintiffs against the property described above in respect of the claim set out on the back.

Within (14) days after the service of the Writ counting the day of service, you must either satisfy the claim or lodge in the registry of this Court mentioned below an acknowledgment of service.

If you fail to satisfy the claim or to lodge an Acknowledgment within the time stated, the Plaintiffs may proceed with the action and judgment may be given without further notice to you and if the property described in this Writ is under arrest of the Court it may be sold by order of the Court.

Issued from the Admiralty Registry of Federal High Court this day of.....
20

This Writ was issued by

(Statement of Claim to be affixed to the back.)

Form C

Order VI Rule 1

PRAECIPE FOR CAVEAT AGAINST ARREST

(Description of Property of giving name, if a ship)

We of(solicitors for) request a caveat against the arrest of
(description of property giving name, if a ship) and hereby undertake to acknowledge issue or service of the writ
in any action that may be begun in the Federal High Court against the said and within 14 days after receiving
notice that such an action begun, to give bail in the action in the sum not exceeding N..... more or to
pay that sum into Court.

We consent that the writ of summons and any other document in the action may be left for us at
.....

Dated theday of 20

.....
Signed

Form D
Order VI Rule 2

BAIL BOND
(Heading as in action)

Whereas this Admiralty action in rem against the above-mentioned property is pending in the Federal High Court and the parties to the said action are the above-mentioned plaintiffs and defendants:

Now, therefore, We "A. B." of "C. D." of hereby jointly severally submit ourselves to the jurisdiction of the said Court and consent that and if they, the above-mentioned defendants (or plaintiffs in the case of a counterclaim) do not pay what may be adjudged against them in this action, with costs or do not pay any sum due to be paid by them in consequence of any admission of liability therein or under any agreement by which this action in the said Court, execution may issue against us, our executors or administrators, goods, chattel, for the amount unpaid, or an amount of Naira whichever is the less.

.....
Signed

This Bail Bond was signed by the said A.B. and C.D., the sureties, thisday of 20
.....

.....
Commissioner of Oaths

Form E
Order VII Rule 5

WARRANT OF ARREST
(Heading as in action)

(Head of State)

To the Admiralty Marshal of our Federal High Court and to all singular, his substitutes, Greeting.

We hereby command you to arrest the ship berthed at Port on in our territorial waters, (together with the cargo laden therein) and to keep the same under safe arrest until you shall receive further orders from us.

Witnessed by the Presiding judge.

Form F
Order IX Rule 4

RELEASE

To the Admiralty Marshal of our Federal High Court and to all and singular his substitute, Greetings

Whereas in this action We did command you to arrest the.....and to keep the same under safe arrest until you should receive further Orders from us.

Now we do hereby command you to release the saidfrom the arrest effected by virtue of our Warrant in this action.

Witness (as in Form "E")

Made at Lagos this day **2nd** of **August** 1993

Mahmud Babatunde Belgore
Chief Judge
Federal High Court

Companies and Allied Matters Act 1990
Chapter 59
Laws of the Federation of Nigeria 1990
Companies Proceedings Rules 1992

Commencement: 1st November 1992

In exercise of the powers conferred by section 635 (1) of the Companies and Allied Matters Act and of all other powers enabling me in that behalf, I, *Muhammad Babatunde Belgore*, Chief Judge of the Federal High Court, hereby make the following Rules

1. (1) Every originating summons, notice of originating motion and petition by which any such proceedings are begun and all affidavits, notices and other documents in those proceedings shall be entitled in the matter of the company in question and in the matter of the Companies and Allied Matters Act.
(2) The originating summons by which an application for leave under section 254 (1) of the Act is made shall be entitled in the matter of the company in relation to which the Plaintiff was convicted or was guilty of such an offence or of such conduct as is mentioned in the said section and in the matter of the Act.
2. (1) Except in the case of the application mentioned in rules 5 and 6 of these Rules and applications made in proceedings relating to the winding up of companies, every application under the Act shall be made by originating summons.
(2) An originating summons under these Rules shall be in Form 1 specified in the Schedule to these Rules.
(3) An application under section 317 or 638 of the Act may be made by *ex-parte* originating summons.
3. The following applications under the Act shall be made by originating motion) namely, applications
 - (a) under section 23 (2) for an order that a company be relieved from the consequences of default in complying with conditions constituting the company a private company;
 - (b) under section 46 (8), 129 (2) or 312 (5) for an order extending the time for delivery to the Corporate Affairs Commission of any document required by that section to be delivered;
 - (c) under section 90 (1) for the rectification of the register of members of a company;
 - (d) under section 315 for an order declaring that the affairs of a company ought to be investigated by *an* inspector appointed by the Commission
 - (e) under section 319 (3) and (4) for an inquiry into any such case as is therein mentioned;
 - (f) under section 329 for an order directing that any shares in or debentures of a company shall cease to be subject to restrictions imposed by that section ; and
 - (g) under section 524 (1) for an order declaring a dissolution of a company which has not been wound up to have been void.
4. The following applications under the Act shall be made by petition, namely, applications-
 - (a) under section 46 (1) and (2) to cancel the alteration of a company, objects;
 - (b) under section 47 (1) to cancel the alteration of a condition contained in a company's memorandum
 - (c) under section 53 (3) to cancel a special resolution to which that section applies
 - (d) under section 120 to confirm a reduction of the share premium account of a company

- (e) under section 121(2) to sanction the issue by a company of shares at a discount
 - (f) under section 158 to confirm a reduction of the capital redemption reserve fund of a company
 - (g) under section 107 (1) to confirm a reduction of the share capital of 'i company;
 - (h) under section 142 (1) to cancel any variation or abrogation of the rights attached to any class of shares in a company
 - (i) under section 311 (1) for relief on the ground that the affairs of a company are being conducted in an illegal or oppressive manner
 - (j) under section 525 (6) for an order restoring the name of a company to the register, where the application is made in conjunction with an application for the winding up of the company
 - (k) under section 591(3) to sanction a scheme for a merger between two or more companies
 - (l) under section 641 for relief from liability of an. officer of a company or a person employed by a company as auditor.
5. (1) After presentation of a petition by which any such application as is mentioned in rule 6 of these Rules is made, the petitioner, except where his application is one of those mentioned in paragraph (2) of this rule, shall take out a summons for direction under this rule,
- (2) The applications referred to in paragraph (1) of the this rule are-
- (a) an application under section 121 (2) of the Act to sanction the issue by a company of shares at a discount
 - (b) an application tinder section 591 (3) of the Act to sanction a compromise or arrangement, unless there is included in the petition for such sanction an application for an order under paragraphs (a) to (j) of that subsection
 - (c) an application under section 525 (6) of the Act for an order restoring the name of a company to the register.
- (3) On the hearing of the Summons, the Court may, order, give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit, including, in particular, directions for the' publication notices and the making of any inquiry.
- (4) Where the application made by the petition is to confirm a reduction of the share capital, the share premium account or the capital redemption reserve fund of a company, then, without prejudice to the generality of paragraph (3) of this rule, the Court may give direction~
- (a) for an inquiry to be made as to the debts O{ and ci aims against, the Company or as to any class or classes of such debts or claims
 - (b) as to the proceedings to be taken for settling the list of creditors entitled to subject to the reduction and fixing the date by reference to which the list is to be made,
- and the power of the Court under section 107 (2) of the Act to direct that section 107 (2) thereof shall not apply as regards any class or classes of creditors maybe exercised on any hearing of the summons.
- (5) Rules 8 to 13 of these rules shall have effect subject to any direction given by the Court under this rule.
6. (1) Where the Court orders such an inquiry as is mentioned in paragraph (4) of rule 5 of these Rules, the company in question shall, within 14 days after the making of the order, file in the office of the Companies Court Registrar an affidavit made by an officer of the company competent to make it verifying a list containing:-

- (a) the name and address of every creditor entitled to any debt or claim to which the inquiry extends;
 - (b) the amount due to each creditor in respect of such debt or claim or in the case of a debt or claim which is subject to any contingency or sounds only in damages or for some other reason does not bear a certain value, a just estimate of the value thereof ; and
 - (c) the total of those amounts and values.
- (2) The deponent shall state in the affidavit his belief that at the date fixed by the Court as the date by reference to which the list is to be made there is no debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company other than the debts or claims to which the inquiry does not extend, and shall also state his means of knowledge of the matters deposed to.
- (3) The list shall be left at the office mentioned in paragraph (1) of this rule not later than one day after the affidavit is filed.
7. (1) Copies of the list made under rule 6 of these Rules with the omission, unless the Court otherwise directs, of the amount due to each creditor and the estimated value of any debt or claim to which any creditor is entitled, shall be kept at the registered or head office of the company and at the office of the company's Solicitor.
- (2) Any person shall be entitled during ordinary business hours, on Payment of a fee of N10, to inspect the said list at any such office and to take extracts therefrom.
8. Within 14 days after filing the affidavit required by rule 6 of these Rules creditors. the company shall send by registered post to each creditor named in the list, exhibited to the affidavit, at his last known address, a notice stating –
- (a) the amount of the reduction sought to be confirmed
 - (b) the effect of the order, directing an inquiry as to debts and claims
 - (c) the amount or value specified in the list as due or estimated to be due to that creditor and
 - (d) the time fixed by the Court within which, if he claims to be entitled to a larger amount, he shall send particulars of his debt or claim and the name and address of his solicitor, if any, to the company's solicitor.
9. After filing the affidavit required by paragraph (b) of this rule, the company shall insert, in such newspapers and at such times as the Court may direct, a notice stating--
- (a) the date of presentation of the petition and the amount of the reduction thereby sought to be confirmed;
 - (b) the inquiry ordered by the Court under rule 6 of these Rules
 - (c) the places where the list of creditors may be inspected in accordance with rule 7 of these Rules;
 - (d) the time within which any creditor not named in the list who claims to be entitled to any debt or claim to which the inquiry extends shall send his name and address, the name and address of his solicitor, if any, and particulars of his debt or claim to the company's solicitor.
10. Within such time as the Court may, from time to time, direct, the company shall file in the office of the Companies Court Registrar, an affidavit made by the company's solicitor and an officer of the company competent to make it-
- (a) proving service of the notices mentioned in rule 9 of these Rules and the advertisement of the notice mentioned in rule 9 of these Rules

- (b) verifying a list containing the names and addresses of the persons (if any) who in pursuance of such notices sent in particulars of debts or claims, specifying the amount of each debt or claim
 - (c) distinguishing in tick list those debts or claims which are-
 - (i) wholly or as to as to any and what part thereof, admitted by tile company
 - (ii) disputed by the company or alleged by the company to be outside the scope of inquiry ; and
 - (iii) stating which of the persons name in the list made under rule 6 of these Rules and which of the persons named in the list made under this rule, have been 1 }aid or consent to the reduction sought to be coil-firmed-
- 11.** If the company contend that a person is not entitled to be entered in the list of creditors in respect of any debt or claim or in respect of the full amount claimed by him in respect of any debt or claim, then, unless the company is willing to secure payment of that debt or claim by appropriating the full amount of the debt or claim the company shall, if the Court so directs, send to that person by post at his last known address a notice requiring him-
- (a) within such time as may be specified in the notice, being riot less than 4 clears day after service thereof, to file an affidavit proving his debt or claim or, as the case may be, so much thereof as is not admitted by the company ; and
 - (b) to attend the adjudication of his debt or claim at the place and time specified in the notice, being the time appointed by the Court for the adjudication of debts and claims.
- 12.** The list of creditors entitled to object to such reduction as is mentioned in rule 5(4) of these Rules as settled by the Court under section 107(2) of the Act, shall be certified and filed by the Court Registrar and the certificate shall-
- (a) specify the debts or claims (if any) disallowed by the Court;
 - (b) distinguish the debts or claims (if any)-
 - (i) the full amount of which is admitted by the company;
 - (ii) the debts or claims (if any) the full amount of which though not admitted by the company, the company is willing to appropriate;
 - (iii) the debts or claims (if any) the amount of which has been fixed by adjudication of the Court under section 107(2) of the Act;
 - (iv) other debts or claims;
 - (c) specify the total amount of the debts or claims payment of which has been secured by appropriating under section 107(2) of the Act;
 - (d) show which creditors consent to the reduction and the total amount of their debts or claims;
 - (e) specify the creditors who sought to prove their debts or claims under rule 11 of these Rules and state which of such debts or claims were allowed.
- 13.** The consent of a creditor to such reduction as is mentioned in rule 5(4) of these Rules may be proved in such manner as the Court may think sufficient.
- 14. (1)** A petition for the confirmation of any such reduction as is mentioned in rule 5(4) of these Rules shall not, where the Court had directed an inquiry pursuant to that rule, be heard before the expiration of at least 8 clear days after the filing of the certificate mentioned in rule 12 of these Rules.

- (2) Before the hearing of such a petition, a notice specifying the day appointed for the hearing shall be published at such times and in such newspapers as the Court may direct.
15. Unless the Court otherwise directs, an order section 121(2) of the Act sanctioning the issue of shares at a discount shall direct that an office copy of the order be delivered to the Registrar-General of Companies within 10 days after the making of the order or such extended time as the Court may allow and that the order shall not take effect until such copy has been so delivered.
16. Where an application to which these Rules relate is proceeding in a Judicial Division in which the company has its registered office, all affidavits made in connection with the application shall be filed in that Registry.
17. Whenever any notice of motion or notice of originating summons or any petition is to be issued or filed, such petition may be issued out or filed in the Registry of the Court in the Judicial Division in which the registered office of the company is situated or in which the company is carrying on a substantial part of its business.
18. No proceedings under the Act shall be invalidated by reason only that these Rules are not fully complied with or in respect of any other irregularity, unless the Court before which an objection is made to the proceeding, is of the view that the injustice cannot be remedied by any order of that Court.
19. In all proceedings in or before the Court concerning the operations of the Act where no provision is made by these Rules, the Federal High Court (Civil Procedure) Rules shall apply.
20. In these Rules, unless the content otherwise requires-
- "Act" means the Companies and Allied Matters Act
- "the companies court registrar" means any officer of the Court who is a registrar within the meaning of any rules for the time being in force relating to the winding-up of companies;
- "the Court" means the Federal High Court.
21. (1) These Rules shall apply to all proceedings taken out or arising from any provision of any section of Part A of the Companies and Allied Matters Act.
- (2) The forms set out in the Schedule to these Rules and any other form in use in ordinary civil proceedings of the Court where applicable or any other forms which may, from time to time, be made on order of the Chief Judge may be used.
22. These Rules may be cited as the Companies Proceedings Rules 1992 and shall come into effect on 1st day of November 1992.

Companies And Allied Matters Act
Under Section 635
Companies Winding-Up Rules

In exercise of the powers conferred by 5.375 of the Companies Act 1968 and of all other powers enabling me in that behalf I, **Atanda Fatayi-Williams**, the Chief Justice of Nigeria do hereby make the following Rules

Commencement: 1st October 1983

Citation, application, etc

1. These Rules may be cited as the Companies Winding-Up Rules.
2. (1) These Rules shall apply to the proceedings in every winding-up under the Act; and the forms in the appendix, where applicable, shall be used, provided that the Chief Registrar of the Court may, from time to time, alter any forms which relate to matters of an administrative and not of a judicial character, or substitute new forms in lieu thereof.

(2) Where the Chief Registrar alters any form, or substitutes any new form in lieu of a form prescribed by these Rules, such altered or substituted form shall be published in the *Gazette*.
3. All proceedings in respect of winding-up shall be heard in open Court unless the Court otherwise orders.
4. Every application in Court other than a petition shall be made by motion, notice of which shall be served on every person against whom an order is sought not less than five clear days before the day named in the notice for hearing the motion.
5. Every proceeding shall be dated and shall, with any necessary addition, be instituted in the matter of the company to which it relates and in the matter of the Companies and Form 1. Allied Matters Act and otherwise as in Form I and shall bear a distinctive number assigned to the suit in the Court's Registry.
6. (1) Every summons in proceedings shall be prepared by the applicant or his solicitor and issued from the Court's Registry.

(2) A summons, when sealed shall be deemed to be issued; and the person obtaining the summons shall leave in the Court's Registry, a duplicate which shall be stamped with the appropriate stamp and filed.
7. Every order whether made in Court or in Chambers, shall be drawn up by the Registrar, unless in any proceedings, or classes of proceedings, the Judge who makes the order shall direct that no order need be drawn up; and where a directive is given that no order need be drawn up, the note or memorandum of the order, signed or initialled by the Judge, making the order, shall be sufficient evidence of the order having been made.
8. All petitions, affidavits, summons, orders, proofs, notices, depositions and other proceedings in the Court shall be kept and remain of record in the office of the Registrar and subject to the directions of the Court, shall be placed in one continuous file.
9. All office copies of petitions, affidavits, depositions, papers and writings, or any parts thereof, required by the Official Receiver or any Liquidator, contributory, creditor, officer of a company, or other person entitled thereto, shall be provided by the Registrar, and shall, except as to figures, be fairly written out at length, and be sealed and delivered out without any unnecessary delay.
10. Every person who has been a director or officer of a company which is being wound up, and every duly authorised officer of the Ministry, shall be entitled, free of charge, and every contributory and every creditor

whose claims or proof have been admitted, shall be entitled, on payment of the prescribed fee, at all reasonable times during working hours, to inspect the file of proceedings and to take copies or extracts from any document therein or be furnished with such copies or extracts on payment of the prescribed fees.

11. Where in the exercise of their functions under the Act or these Rules, the Ministry or the Official Receiver requires to inspect or use the file of proceedings, the Registrar shall (unless the file is at the time required for use in Court) on request, transmit the file of proceedings to the Ministry or Official Receiver, as the case may be.

Service of Process and Enforcement of Orders

12. Service of process in any winding-up matters shall be in accordance with the procedure laid down for the service of civil processes in the Court under the Court's (Civil Procedure) Rules.
13. No 13. No service shall be deemed invalid by reason that the name, or any of the names other than the surname of the person to be served, has been omitted from the document containing the persons name, provided that the Court is satisfied that in other respects the service of the document has been sufficient.
14. Every order of the Court in any winding-up matters made in the exercise of the powers conferred by the Act and these Rules, may be enforced by the Court or by any other court as if it were a judgment or order of the Court made in the exercise of its ordinary jurisdiction.

Petition

15. Every petition shall be in the Forms 2, 3 or 4 in the Appendix with such variations as circumstances may require.
 16. (1) A petition shall be presented at the Court's Registry and the Registrar, after consultation with the Chief Judge or any other Judge in charge, as the case may be, shall appoint the time and place at which the petition is to be heard.
(2) Notice of the time and place appointed for the hearing of the petition shall be written on the petition.
 17. (1) Every petition shall, unless presented by the company, be served upon the company at the registered office, if any, of the company, and if there is no registered office thereat the principal or last known principal place of business of the company, if any, if such can be found, by leaving a copy with any member, officer or servant of the company there, or in case no such member, officer or servant can be found there, then by leaving a copy at such registered office or principal place of business, or by serving it on such member, officer or servant of the company as the Court may direct; and where the company is being wound-up voluntarily, the petition shall also be served upon the Liquidator (if any), appointed for the purpose of winding-up the affairs of the company.
(2) Affidavit of service of any such petition shall be as in Form 5 or 6 in the Appendix with such variations as circumstances may require.
 18. (1) Every petition shall be verified by an affidavit referring thereto and such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one or, in case the petition is presented by a company, by some director, secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.
(2) Affidavit of verification shall be in Form 7 or 8 in the Appendix with such variations as circumstances may require.
- 19.19.19. (1)
- (2) The order for advertisement of a petition shall be as follows-
 - (a) the petition shall be advertised fifteen clear days before the hearing;

- (b) the petition shall be advertised once or as many times as the Court may direct, in the *Gazette* and in one national daily newspaper and one other newspaper circulating in the State where the registered office, or principal or last known principal place of business, as the case may be, of such company is or was situate, or in such other newspaper as shall be directed by the Court;
 - (c) the advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor, and shall contain a note at the foot thereof stating that any person who intends to appear at the hearing of the petition, either to oppose or support the petition, must send notice of his intention to the petitioner, or to his solicitor, within the time and manner prescribed by this rule and any advertisement of a petition for the winding-up of a company by the Court which does not contain such a note shall be deemed irregular.
- (3) A petition not advertised within the time prescribed or in the manner prescribed by this Rule shall be struck out, unless, for sufficient reason given, the Court otherwise orders.
- (4) Advertisement of the petition shall be in Form 9 or 10 in the Appendix with such variation as circumstances may require.
20. After the advertisement of the petition but before the hearing date next to the date when the order for advertisement was given, every contributory, or in the case of a petition for the winding-up of a company, every creditor of the company shall be entitled to be furnished by the solicitor of the petitioner, with a copy of the petition within two days after requiring same, on paying the prescribed fee for such copy.

Provisional Liquidator

21. (1) After the advertisement of a petition for the winding-up of a company by the Court, upon the application of a creditor, or of a contributory, or of the company, and upon proof by affidavit of sufficient ground for the appointment of a Provisional Liquidator, the Court, it thinks fit and upon such terms as in the opinion of the Court shall be just and necessary, may make the appointment.
- (2) The order appointing the Provisional Liquidator shall bear the number of the petition, and shall state the nature and a short description of the property of which the Provisional Liquidator has performed any other duty prescribed by these Rules.
- (3) The Provisional Liquidator shall pay the Official Receiver such sum, if any, as the Court directs.
- (4) The order of appointment of a Provisional Liquidator shall be in Form 11 in the Appendix with such variations as circumstances may require.

Hearing of Petition and Orders made thereon

22. (1) After the hearing at which the order to advertise the petition was given by the Court, the petitioner, or his solicitor shall, on the next adjourned date, satisfy the Court that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein and the affidavit of service (if any), have been duly complied with by the petitioner.
- (2) No order (other than the one already made in respect of advertising the petition) shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, satisfied the court in the manner required by this rule.
23. (1) Every person who intends to appear on the hearing of a petition shall give, to the petitioner, notice of his intention in accordance with this rule.
- (2) The notice shall contain the address of the person intending to appear, shall be signed by him (or by his solicitor) and shall otherwise be in Form 12 with such variations as circumstances may require.

- (3) The notice shall be served or sent by post to the petitioner or his solicitor, at the address stated in the advertisement of the petition.
 - (4) The notice shall be served (or if sent by post, shall be posted in such time as in ordinary course of post to reach the address) not later than five days before the hearing.
 - (5) A person who has failed to comply with this rule shall not, without the special leave of the Court, be allowed to appear in the hearing of the petition.
24. (1) The petitioner, or his solicitor, shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition and of their respective solicitors; and such list shall be in Form 13 in the Appendix.
- (2) On the day appointed for hearing the petition, a fair copy of the list (or if no notice of intention to appear has been given, a statement in writing to that effect) shall be filed by the petitioner, or his solicitor in the Court's registry prior to the hearing of the petition.
25. (1) Affidavit in opposition to a petition shall be filed within fifteen days of the date on which the petition was advertised, and notice of the filing of every affidavit in opposition to such a petition shall be given to the petitioner or his solicitor on the day on which the affidavit is filed.
- (2) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within five days of the date on which notice of such affidavit is received by the petitioner or his solicitor.
26. When a petitioner for an order that a company be wound-up by the Court or subject to the supervision of the Court is not entitled to present a petition, or whether so entitled or not, he
- (a) fails to advertise his petition as ordered; or
 - (b) consents to withdraw his petition or to allow it to be dismissed, or the hearing adjourned; or
 - (c) fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing thereof, or on any day to which the hearing has been adjourned; or
 - (d) if appearing, does not apply for an order in terms of the prayer of his petition,
- the Court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who in the opinion of the Court, would have a right to present a petition, and who is desirous of prosecuting the petition.

Order to Wind-up a Company and Order under section 312 of the Act

27. (1) When an order for the winding-up of a company, or for the appointment of a Provisional Liquidator prior to the making of an order of the winding-up of the Company has been made, the Registrar shall, on the same day or, at the latest not later than five days thereafter, send to the Official Receiver, a notice informing him that the order has been pronounced.
- (2) The notice shall be in Forms 14 and 15 respectively, with such variations as circumstances may require.
28. It shall be the duty of the petitioner, or his solicitor, and of all other persons who have appeared on the hearing of the petition, at latest within two days of the day on which an order for the winding-up of a company or an order under section 312 of the Act is pronounced in Court to leave at the Registrar's office, all the documents required for the purpose of enabling the Registrar to complete the order forthwith.
29. (1) An order to wind-up a company or for the appointment of a Provisional Liquidator, shall contain at the foot thereof, a notice stating that it will be the duty of such other persons who are liable to make out or concur in making out the company's statement of affairs as the Official Receiver may require, to attend

on the Official Receiver at such time and place as he may appoint and to give all information he may require.

- (2) The order for the winding-up of a company, shall be in Form 16 in the Appendix, with such variations as circumstances may require .

30. (1) When an order that a company be wound-up, or for the appointment of a Provisional Liquidator has been made-

(a) three copies of the order, sealed with the Seal of the Court, shall forthwith be sent by post or otherwise by the Registrar to the Official Receiver; and

(b) the Official Receiver shall cause a sealed copy of the order to be served upon the company by registered letter addressed to it at its registered office (if any) or if there is no registered office, at its principal or last known principal place of business or upon such other person or persons, or in such other manner as the Court may direct; and if the order is that the company be wound up by the Court, shall forward, to the Commission, the copy of the order which, by section 416 of the Act is directed to be so forwarded by them or otherwise as may be prescribed.

(2) An order for the winding-up of a Company subject to the supervision of the Court (in Form 17 in the Appendix with such variations as circumstances may require), shall, before the expiration of twenty-eight days from the date thereof, be advertised by the petitioner, once in the *Gazette*, and once in two national daily newspapers in which notice of the petition was previously advertised and shall be served on such persons (if any) and in such manner as the Court shall direct.

(3) Where an order under section 312 of the Act has been made, a sealed copy of the order shall, unless the Court otherwise orders, be served by the petitioner on the company and on the Registrar-General of Companies in like manner as, under paragraph (1) (b) of this rule, the Official Receiver is required to serve a sealed copy of the order, and where such order involves a reduction of capital or the alteration of the memorandum of association, the service may be effected as the Court orders.

31. For the purposes of section 501 of the Act, a notice that-

(a) a winding-up petition has been presented; or

(b) a winding-up order has been made; or

(c) a Provisional Liquidator has been appointed; or

(d) a meeting has been called at which there is to be proposed, a resolution for the voluntary winding-up of the company; or

(e) a resolution has been passed for the winding-up of the company,

shall be in writing and shall be addressed to the sheriff, and may be served by being delivered by hand or by registered post:

Provided that where a winding-up petition is presented or winding-up order is made or a provisional liquidator is appointed in the Court other than in the head office of the Court, the filing of the petition or the making of the order or the appointment of a Provisional Liquidator shall, for the purposes of section 501 of the Act, be sufficient notice to the Registrar of the Court, that the petition has been presented or the order made or the provisional liquidator appointed, as the case may be.

Transfers of Action and Proceedings

32. (1) Where an order has been made for the winding-up of a company then if such order was made by the Court or if the proceedings have been transferred to the Court, the Judge shall, upon application of any party to the proceedings, have power, without further consent, to request the transfer to him of any action, cause or matter pending in any other court brought or continued by or against the company, and any action or proceedings by a mortgagee or debenture holder of the company against the company, for

the purpose of realising his security or by any other person for the purpose of enforcing a claim against the company's assets or property which is pending in the court.

- (2) The order of request shall be served on the Registrar of the other court in which the case to be transferred is pending.
 - (3) Where any action brought by or against a company against which a winding-up order has been made is transferred as stated in paragraph (1) of this rule, the Judge to which the action has been transferred may hear, determine, and deal with any application, matter or proceeding which, if the action had not been transferred, would have been heard and determined in the other court.
- 33.** (1) An application by the Official Receiver for the appointment of a Special Manager shall be supported by an affidavit and by a report of the Official Receiver and such report shall either recommend the amount of remuneration which, in the opinion of the Official Receiver, ought to be allowed to the Special Manager, or request the Court to fix one.
- (2) The remuneration of the Special Manager shall be stated in the order appointing him, but the Court may, at any subsequent time, for good cause shown, make an order for payment to the Special Manager of further remuneration.
- 34.** Every Special Manager shall submit accounts to the Official Receiver, and the Special Manager's accounts shall be verified by affidavit in Form 18 in the Appendix with such variations as circumstances may require, and when approved by the Official Receiver, the total of the receipts and payments shall be added by the Official Receiver to his accounts.

Statement of Affairs

- 35.** (1) A person who, under section 420 of the Act, has been required by the Official Receiver to submit and verify a statement of affairs of a company, shall be furnished by the Official Receiver with such forms and instructions as the Official Receiver in his discretion shall consider necessary.
- (2) The statement which shall be in Form 19 in the Appendix with such variations as circumstances may require shall be made out in duplicate, one copy of which shall be verified by affidavit; and the Official Receiver shall cause to be filed with the Registrar, the verified statement of affairs.
 - (3) The Official Receiver may, from time to time, hold personal interviews with any such person as is mentioned in paragraphs (a), (b), (c) or (d) of subsection (2) of section 420 of the Act for the purpose of investigating the company's affairs, and it shall be the duty of every such person to attend on the Official Receiver at such time and place as the Official Receiver may appoint and give the Official Receiver all information that he may require.
- 36.** When any person requires any extension of time for submitting the statement of affairs, he shall apply to the Official Receiver who may, if he thinks fit, give a written certificate extending the time in which the certificate shall be filed with the proceedings and shall render an application to the Court unnecessary.
- 37.** After the statement of affairs of a company has been submitted to the Official Receiver, it shall be the duty of each person who has made or concurred in making it, if and when required, to attend on the Official Receiver and answer all such questions as may be put to him and give all such further information as may be required of him by the Official Receiver in relation to the statement of affairs.
- 38.** Any default in complying with the requirements of section 420 of the Act may be reported by the Official Receiver to the Court.
- 39.** A person who is required to make or concur in making statement of affairs of a company shall, before incurring any costs or expenses in and about the preparation and making of the statement, apply to the Official Receiver for his sanction and submit a statement of the estimated costs and expenses which it is

intended to incur; and, except by order of the Court, no person shall be allowed out of the assets of the company any costs or expenses which have not before being incurred, been sanctioned by the Official Receiver.

40. (1) Any application to dispense with the requirements of section 420 of the Act shall be supported by a report of the Official Receiver showing the special circumstances which, in his opinion, render such a course desirable.
- (2) When the Court has made an order dispensing with the requirements of section 420 of the Act, it may give such consequential directions as it may see fit and in particular it may give directions as to the sending of any notices which are by these Rules required to be sent to any person mentioned in the statement of affairs.

Appointment of Liquidator in a Winding-up by the Court

41. (1) As soon as possible after the first meetings of creditors and contributories have been held, the Official Receiver or the chairman of the meeting, as the case may be shall report the result of each meeting to the Court in Form 20 in the Appendix with such variations as circumstances may require.
- (2) Upon the result of the meetings of creditors and contributories being reported to the Court, if there is a difference between the determinations of the meetings of the creditors and contributories, the Court shall, on the application of the Official Receiver, fix a time and place for considering the resolutions and determinations (if any) of the meetings, deciding differences and making such order as shall be necessary; and in any other case, the Court may, upon the application of the Official Receiver, forthwith make any appointment necessary for giving effect to any such resolutions or determinations.
- (3) When a time and place have been fixed for the consideration of the resolutions and determinations of the meetings, such time and place shall be advertised by the Official Receiver in such manner as the Court shall direct, but so that the first or only advertisement shall be published not less than seven days before the time so fixed.
- (4) Upon the consideration of the resolutions and determinations of the meetings, the Court shall hear the Official Receiver and any creditor or contributory.
- (5) If a Liquidator is appointed, a copy of the order appointing him in Form 21 in the Appendix with such variations as circumstances may require shall be transmitted to the Commission by the Official Receiver, and the Commission shall, as soon as the Liquidator has given security, cause notice of the appointment to be **gazetted**.
- (6) The expenses of gazetting the notice of the appointment shall be paid by the Liquidator, but may be charged by him on the assets of the Company.
- (7) Every appointment of a Liquidator or Committee of Inspection shall be advertised by the Liquidator in such manner as the Court directs immediately after the appointment has been made, and the Liquidator has given the required security.
- (8) If a Liquidator in a winding-up by the Court shall die, or resign, or be removed, another Liquidator may be appointed in his place in the same manner as in the case of a first appointment, and the Official Receiver shall, on the request of not less than one tenth in value of the creditors or contributories, summon meetings for the purpose of determining whether or not the vacancy shall be filled; but none of the provisions of this rule shall apply where the Liquidator is released under section 431 of the Act in which case the Official Receiver shall remain the Liquidator.

*Security by Liquidators or Special Manager
in a Winding-up by the Court*

42. In the case of a Special Manager or a Liquidator other than the Official Receiver, the following provision as to security shall have effect, namely-

- (a) the security shall be given to such officers or persons and in such manner as the Court may direct in each case;
 - (b) the Court may, as it thinks fit, either increase or diminish the amount of the security which any person has given;
 - (c) a certificate in Form 23 in the Appendix with such variations as circumstances may require shall be issued by the Registrar that a security has been given and a copy of such certificate shall be filed in the file of the case;
 - (d) the cost of furnishing the required security by a Liquidator or Special Manager, including any premium which he may pay to a bank shall be borne by him personally and shall not be charged against the assets of the company as an expense incurred in the winding-up.
43. (1) If a Liquidator or Special Manager fails to give the required security within the time stated for that purpose in the order appointing him, or any extension thereof, the Official Receiver shall report such failure to the Court who may thereupon rescind the order appointing the Liquidator or Special Manager.
- (2) If a Liquidator or Special Manager fails to keep up his security, the Official Receiver shall report such failure to the Court, which may thereupon remove the Liquidator or Special Manager, and make such order as to costs as the Court shall think fit.
- (3) Where an order is made under this rule rescinding an order for the appointment of or removing a Liquidator, the Court may direct that a meeting shall be held for the purpose of determining whether an application shall be made to the Court for another liquidator to be appointed, and thereupon the same meeting shall be summoned and the same proceedings may be taken as in the case of a first appointment of a Liquidator.

Public Examination

44. The consideration of a report made by the Official Receiver pursuant to subsection (2) of section 421 of the Act shall be before the Judge in Court or in Chambers, and the Official Receiver shall personally or by counsel, attend the consideration of the report and give the Court any further information or explanation with reference to the matters stated in the report which the Court may require.
45. Where the Judge makes an order under section 450 of the Act directing any person or persons to attend for public examination in Form 24 in the Appendix with such variations as circumstances may require-
- (a) the examination shall be held before the Judge provided that the Judge may direct that the whole or any part of the examination of any such person or persons, be held and heard and determined before any of the persons mentioned in subsection (9) of the said section;
 - (b) the Judge may, if he thinks fit, either in the order for examination or by any subsequent order, give directions as to the special matters on which any such person is to be examined;
 - (c) the Judge may, where on an examination held before one of the persons mentioned in subsection (9) of the said section, he is of the opinion that such examination is being unduly or unnecessarily protracted, or for any other sufficient cause, adjourn the examination of any person or any part of the examination, to be held before the Judge.
46. Upon an order directing a person to attend for public examination being made, the Official Receiver shall, unless the Judge shall otherwise direct, without further order, make an application for the public examination to be held.
47. A day and place shall be appointed for holding the public examination and notice of the day and place so appointed shall be given by the Official Receiver in Form 25 in the Appendix with such variations as circumstances may require to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address.

48. (1) The Official Receiver shall give notice of the time and place appointed for holding a public examination to the creditors and contributories by advertisement in such newspaper as the Court may direct and in the *Gazette*.
- (2) Where an adjournment of the public examination has been directed, notice of the adjournment shall not, unless otherwise directed by the Court, be advertised in any newspaper, but it shall be sufficient to publish in the *Gazette*, a notice of the time and place fixed for the adjourned examination.
49. If any person who has been directed by the Court to attend for public examination fails to attend at the time and place appointed for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination, the Official Receiver satisfied the Court that such person has absconded, or that there is reason for believing that he is about to abscond with the view of avoiding examination, it shall be lawful for the Court, upon it being proved, to the satisfaction of the Court, that notice of the order and of the time and place appointed for attendance at the public examination was duly served, without any further notice to issue a warrant in Form 26 in the Appendix with such variations as circumstances may require for the arrest of the person required to attend, or to make such other order as the Court shall think just.
50. The notes of every public examination shall, after being signed as required by subsection (7) of section 450 of the Act, be filed in the Court to form part of the Court's record.

Proceedings by or against Directors, Promoters and Officers

51. (1) An application made to the Court under any of the following provisions of the Act -
- (a) section 254.
 - (b) subsection (1) or (2) of section 506;
 - (c) section 507;
 - (d) subsection (2) of section 641

shall be made by a summons returnable in the first instance in Chambers.

- (2) The summons shall state the nature of the declaration or order for which application is made, and the grounds of the application, unless otherwise ordered, shall be served, in the manner in which an originating summons is required by the Rules of Court to be served on every person against whom an order is sought, not less than eight days before the day named in the summons for hearing the application. No affidavit or report shall be filed before the return of the summons.
- (3) On the return of the summons, the Court may give such directions as it thinks fit as to whether points of claim and defence are to be delivered, as to the taking of evidence wholly or in part by affidavit or orally, as to the cross examination either before the Judge in the hearing in Court or in Chambers of any deponents to affidavits in support of or in opposition to the application, as to any report it may require the Official Receiver or Liquidator to make and generally as to the procedure on the summons and for the hearing thereof.
- (4) Where any such order as is mentioned in paragraph 2 of this rule has directed that points of claim and defence shall be delivered then if subsequent to such order and before the summons has been set down for trial or adjourned for mention either party wishes to apply any further direction as to any interlocutory matter or thing he shall apply and shall give two clear days' notice in writing to the other party stating the grounds of the application before the application can be heard.
52. (1) Where the application is made by motion, the Court may at any time before making an order, require the Official Receiver or Liquidator to furnish to the Court, a report with respect to any facts or matters which are in his opinion, relevant to the application and give any directions it may see fit with regard to any of the matters mentioned in paragraph (3) of rule 51.

(2) Notice of any such intended motion shall be served on every person against whom an order is sought, not less than eight days before the day named in the notice for hearing the motion; and a copy of every report and affidavit intended to be used in support of the motion shall be served on every person to whom notice of motion is given not less than four days before the hearing of the motion.

53. (1) Where any application under section 254 of the Act is made or heard after a public examination under section 450 of the Act which has been held before the Registrar or any of the persons mentioned in subsection (9) of the said section 450, then unless the Judge shall otherwise direct, such application shall be heard and determined by such Registrar or other person; but the Judge shall personally hear all other applications under the said section 254.

(2) Where any order has been made under the said section, any application for leave arising out of such order shall be made in the winding-up of the company in relation to which such order was made and the dissolution of the company or the stay of all proceedings in such winding-up shall not be a bar to such application or to the granting of leave.

54. (1) Where in the course of the proceedings in a winding-up by the Court, an order has been made for the public examination of persons named in the order pursuant to section 450 of the Act, then in any proceedings subsequently instituted under any of the provisions of the Act mentioned in rule 50, the verified notes of the examination of each person who was examined under the order shall, subject as hereinafter mentioned, and to any order or directions of the Court as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible in evidence against any of the persons against whom the application is made who, under section 450 of the Act and the order for the public examination, was or had the opportunity of being present at the taking part in the examination.

(2) Before any notes of a public examination are used on any application, the person intending to use the same shall, not less than twenty-one days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes which it is intended to use against him, and furnish him with copies of such notes or parts of notes (except notes of the person's own depositions):

Provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be) any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application.

Witnesses and Depositions

55. (1) The Court may order the way and manner the evidence of any person to be examined under the Act and these Rules before any person other than the Court, may be taken.

(2) Where any person other than an official of the Court is nominated to take notes of evidence as mentioned in paragraph (1) of this rule, the Court shall decide the necessary fees to be paid to such person.

56. (1) If a person examined before any person other than a Judge refuses to answer to the satisfaction of the person examining him any question which he may allow to be put, the person examining shall report such refusal to the Judge, and, upon such report being made, the person in default shall be in the same position, and be dealt with in the same manner as if he had made default in answering before the Judge.

(2) The report shall be in writing, but without affidavit and shall set forth the question put, and the answer (if any) given by the person examined.

(3) Form 27 in the Appendix with such variations as circumstances may require shall be used for the report.

(4) The person examining shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the judge, and upon receiving the report, the Judge may take such action thereon as he shall think fit.

57. (1) The Official Receiver may attend in person, or by an Assistant Official Receiver, or by counsel employed for the purpose, any examination of a witness under section 449 of the Act, on whosoever application the same has been ordered, and may take notes of the examination for his own use, and put such questions to the persons examined as the court may allow.
- (2) The notes of the depositions of a person examined under section 449 of the Act, or under any order of the Court before the Court, or before any person appointed to take such an examination (other than the notes of the depositions of a person examined at a public examination under section 450 of the Act) shall be forthwith filed in the Court Registry and be opened to the inspection of any creditor, contributory, or other person, except the Official Receiver or Liquidator, or any Provisional Liquidator other than the Official Receiver, while he is acting as Provisional Liquidator, unless and until the Court shall so direct, and the Court may, from time to time, give such general or special directions as it shall think expedient as to the custody or inspection of such notes and the furnishing of copies of extracts therefrom.

Disclaimer

58. (1) Any application for leave to disclaim any part of the property of a company pursuant to subsection (1) of section 499 of the Act shall be by *ex parte* summons which shall be supported by an affidavit showing who are the parties interested and what their interests are.
- (2) On the hearing of the summons, the Court shall give such directions as it sees fit and in particular directions as to the notices to be given to the parties interested or any of them and the Court may adjourn the application to enable any such party to attend.
- (3) Where a Liquidator disclaims a leasehold interest, he shall forthwith file the disclaimer at the office of the Registrar.
- (4) The disclaimer shall contain particulars of the interest disclaimed and a statement of the persons to whom notice of the disclaimer has been given; and until the disclaimer is filed by the Liquidator, the disclaimer shall be inoperative.
- (5) A disclaimer shall be in the Form 28 and a notice of disclaimer in the Form 29 in the Appendix with such variations as circumstances may require.
- (6) Where any person claims to be interested in any part of the property of a company which the Liquidator wishes to disclaim, he shall at the request of the Liquidator, furnish a statement of the interest so claimed by him.

Vesting of Disclaimed property

59. (1) Any application under subsection (2) of section 499 of the Act for an order for the vesting of any disclaimed property in or the delivery of any such property to any person shall be supported by the affidavit filed on the application for leave to disclaim such property.
- (2) Where such an application as aforesaid to disclaimed property of a leasehold nature and it appears that there is any mortgages by demise (including a chargee by way of legal mortgage), or underleasee of such property, the Court may direct that notice shall be given to such mortgagee or underleasee that, if he does not elect to accept and apply for such a vesting order as aforesaid upon the terms required by the subsection (2) of section 499 of the Act and imposed by the Court within a time to be fixed by the Court and stated in the notice, he will be excluded from all interest in and security upon the property.
- (3) The Court may adjourn the application for such notice to be given and for such mortgagee or underleasee to be added as a party to and served with the application and if he sees fit, to make such selection and application as is mentioned in the notice.
- (4) If at the expiration of the time so fixed by the Court such mortgagee or underleasee fails to make such election and application, the Court may make an order vesting the property in the applicant and excluding such mortgagee or underleasee from all interest in or security upon the property.

*Arrangement with Creditors and Contributories in a
Winding-up by the Court*

60. If, in a winding-up by the Court, application is made to the Court to sanction any compromise or arrangement, the Court may, before giving its sanction thereto, hear a report by the Official Receiver as to the terms of the scheme, and as to the conduct of the directors and other officers of the Company, and as to any other matters which, in the opinion of the Official Receiver or the Ministry ought to be brought to the attention of the Court. The report shall not be placed upon the file, unless and until the Court shall direct it to be filed.

*Collection and Distribution of Assets in a
Winding-up by the Court*

61. (1) The duties imposed on the Court by subsection of section 439 of the Act in a winding-up by the Court with regard to the collection of the assets of the company and the by application of the assets in discharge of the company's liabilities shall be discharged by the Liquidator as an officer of the Court subject to the control of the Court.
- (2) For the purpose of the discharge by the Liquidator of the duties imposed by subsection (1) of section 439 of the Act, and paragraph (1) of this rule' the Liquidator in a winding-up by the Court shall, for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a receiver of the property appointed by the Court, and the Court may on his application, enforce such acquisition or retention accordingly.
62. The powers conferred on the court by section 440 of the Act shall be exercised by the Liquidator; and any contributory for the time being on the list of contributories trustee, receiver, banker or agent or officer of a company which is being wound up under order of the court shall, on notice (in Form 30 in the Appendix with such variations a circumstances may require) from the Liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender or transfer to or into the hands of the Liquidator any money, property, books or papers, which happened to be in his hands for the time being and to which the company is prima facie entitled.

*List of Contributories in
a Winding-up by, the Court*

63. (1) Unless the Court shall dispense with the settlement of a list of contributories, the Liquidator shall, with all convenient speed after his appointment, settle a list of contributories of the company, and shall appoint a time and place for that purpose.
- (2) The list of contributories, in Form 31 in the Appendix with such variations as circumstances may require, shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and the amount called up and the amount paid up in respect of such shares or interest and shall distinguish the several classes of contributories.
- (3) As regards representative contributories, the Liquidator, shall so far as practicable, observe the requirements of subsection (2) of section 439 of the Act.
- 64 (1) The Liquidator shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person whom he proposes to include in the list, and shall state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list and what amount has been called up and what amount paid up in respect of such shares or interest.
- (2) The notice shall be in Form 32 in the Appendix with such variations as circumstances may require.
65. On the day appointed for settlement of the list of contributories, the Liquidator shall hear any person who objects to being settled as a contributory, and after such hearing, shall finally settle the list, and issue a certificate in Form 33 in the Appendix with such variations as circumstances may require; and the list so settled shall be the list of contributories of the Company.

- 66.** The Liquidator shall forthwith give notice in Form 34 in the Appendix with such variations as circumstances may require to every person whom he has finally placed on the list of contributories stating what character and for what number of shares or interest the person has been placed on the list and what amount has been called up and what amount paid up in respect of such shares or interest and in the notice he shall inform such person that any application for the removal of that person's name from the list, or for a variation of the list, must be made to the Court by summons within thirty days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled on the list of contributories.
- 67.** (1) Subject to the power of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limit for that purpose, no application to the Court by any person who objects to the list of contributories as finally settled by the Liquidator shall be entertained after the expiration of twenty-one days from the date of the service on such person of notice of the settlement of the list.
- (2) The Court may on an application under rule 66 make an order in Form 35 in the Appendix with such variations as circumstances may require, for the setting aside or variation of the list.
- (3) The Official Receiver shall not, in any case, be personally liable to pay any costs of or in relation to an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a company.
- 68.** The Liquidator may, from time to time, vary or add to the list of contributories but any such variation or addition to list of contributories but any such variation or addition shall be made in the same manner in all respects as the settlement of the original list.

Calls

- 69.** The powers and duties of the court in relation to making calls upon contributories conferred by section 442 of the Act, shall and may be exercised, in a winding-up by the Court, by the Liquidator as an officer of the Court subject to the proviso to section 453 of the Act, and to the following conditions-
- (a) where the Liquidator desires to make any call on the contributories, or any of them for any purpose authorised by the Act, if there is a Committee of Inspection, he may summon a meeting of such Committee for the purpose of obtaining their sanction to the intended call;
- (b) the notice of the meeting, in Form 36 in the Appendix with such variations as circumstances may require, shall be sent to each member of the Committee of Inspection in sufficient time to reach him not less than fourteen days before the day appointed for holding the meeting and such notice shall contain a statement of the proposed amount of the call, and the purpose of which it is intended;
- (c) notice of the intended call and the intended meeting of the Committee of Inspection shall also be advertised, in Form 37 in the Appendix with such variations as circumstances may require, once at least in a national newspaper, or, where the winding-up is not in the head office of the Court, in a newspaper circulating in the district of the Court in which the proceedings are pending;
- (d) the advertisement shall state the time and place of the intended meeting of the Committee of Inspection, and that each contributory may either attend the said meeting and be heard, or make any communication in writing to the Liquidator or members of the Committee of Inspection to be laid before the meeting, in reference to the said intended call;
- (e) at the meeting of the Committee of Inspection, any statements or representations made either to the meeting personally or addressed in writing to the Liquidator or members of the Committee by any contributory shall be considered before the intended call is sanctioned;
- (f) the sanction of the Committee shall be given by resolution in Form 38 in the Appendix with such variations as circumstances may require, which shall be passed by a majority of the members present;

(g) where there is no Committee of Inspection, the Liquidator shall not make a call without obtaining the leave of the Court.

- 70.** In a winding-up by the Court, an application to the Court for leave to make any call on the contributories of a Company, or any of them, for any purpose authorised by the Acts, shall be made by summons in the Forms 39 and 40 in the Appendix with such variations as circumstances may require, stating the proposed amount of such call, which summons shall be served seven clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call; or if the Court so directs, notice of such intended call may be given by advertisement in Form 41 in the Appendix with such variations as circumstances may require, without a separate notice to each contributory.
- 71.** When the Liquidator is authorised by resolution or order in Form 42 in the Appendix with such variations as circumstances may require, to make a call on the contributories, he shall file with the Registrar, a document making the call in the Form 43 in the Appendix with such variations as circumstances may require.
- 72.** When a call has been made by the Liquidator in a winding-up by the court, a copy of the resolution of the Committee of Inspection or order of the Court (if any) in Forms 38, 42 and 44 in the Appendix with such variations as circumstances may require, as the case may be, shall forthwith, after the call has been made, be served upon each of the contributories included in such call, together with a notice in Form 45 in the Appendix with such variations as circumstances may require from the Liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the Court so directs.
- 73.** The payment of the amount due from each contributory on a call may be enforced by order of the Court, to be made in Chambers in Form 47 in the Appendix on summons by the Liquidator supported by an affidavit in Form 46 in the Appendix.

Proof

- 74.** In a winding-up by the Court, every creditor shall, subject as hereinafter provided, prove his debt, unless the Judge in any particular winding-up shall give directions that any creditor or class of creditors shall be admitted without proof.
- 75.** (1) A debt may be proved in any winding-up by delivering or sending through the post, an affidavit verifying the debt.
- (2) In a winding-up by the Court, the affidavit shall be so sent to the Official Receiver or if a Liquidator has been appointed, to the Liquidator; and in any other winding-up, the affidavit may be so sent to the Liquidator.
- 76.** An affidavit proving a debt may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge.
- 77.** (1) An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt in Form 48 in the Appendix, and shall specify the vouchers if any, which the same can be substantiated.
- (2) The Official Receiver or Liquidator to whom the proof is sent may at any time, call for the production of the vouchers.
- 78.** An affidavit proving a debt shall state whether the creditor is or is not a secured creditor.
- 79.** An affidavit proving a debt may in a winding-up by the Court, be sworn before any Commissioner for Oaths.
- 80.** A creditor shall bear the cost of proving his debt unless the court otherwise orders.
- 81.** A creditor proving his debt shall deduct therefrom-

(a) any discount which he may have agreed to allow for paying in cash in excess of five *per cent* of the net amount of his claim; and

(b) all trade discounts.

82. When any rent or other payment falls due at stated periods, and the order or resolution to wind-up is made at any time other than one of those periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order or resolution as if the rent or payment grew due from day to day:

Provided that where the Liquidator remains in occupation of premises demised to a company which is being wound-up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the company, or the Liquidator, of rent during the period of the company's or the Liquidator's occupation.

83. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the commencement of the winding-up, the creditor may prove for interest at a rate not exceeding four *per centum per annum* to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of the demand until the time of payment.

84. A creditor may prove for a debt not payable at the date of the winding-up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors, deducting debt only thereat, a rebate of interest at the rate of five *per centum per annum* computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

85. Unless the official Receiver or Liquidator shall in any special case otherwise direct formal proof of the debts mentioned in paragraph (e) of subsection (1) of section 494 of the Act shall not be required.

86. (1) In any case in which it appears that there are numerous claims for wages or accrued holiday remuneration by workmen and others employed by the company, it shall be sufficient if one proof for all such claims in the Form 49 in the Appendix is made either by a foreman or by some other person on behalf of all such creditors.

(2) Such proof shall have annexed thereto as forming part thereof, a schedule setting forth the names of the workmen and others and the amounts severally due to them.

(3) Any proof made in compliance with this rule shall have the same effect as if separate proofs have been made by each of the said workmen and others.

87. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the court made to the contrary, be produced to the Official Receiver, Chairman of a meeting or Liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

88. Where a Liquidator is appointed in a winding-up by the Court, all proofs of debts that have been received by the Official Receiver shall be handed over to the Liquidator, but the Official Receiver shall first make a list of such proofs, and take a receipt thereon from the Liquidator for such proofs.

*Admissions and Rejection of proof
and preferential Claims and Appeal to Court*

89. (1) Subject to the provisions of the Act, and unless otherwise ordered by the Court, the Liquidator in any winding-up may from time to time, fix a certain day, which shall be not less than thirty days from the date of the notice, on or before which the creditors of the company are to prove their debts or claims, and to establish any title they may have the priority under section 494 of the Act, or to be excluded from the

benefit of any distribution made before such debts are proved, or as the case may be from objecting to such distribution.

- (2) The Liquidator shall give notice in writing of the day so fixed by advertisement in such newspaper as he shall consider convenient, and in a winding-up by the court to every person mentioned in the statement of affairs as a creditor, who has not proved his debt, and to every person mentioned in the statement of affairs as a preferential creditor whose claim to be a preferential creditor has not been established and is not admitted, and in any other winding-up to the last known address or place of abode of each person who to the knowledge of the Liquidator, claims to be a creditor or preferential creditor of the company and whose claim has not been admitted.
 - (3) All the rules hereinafter set out as to admission and rejection of proofs shall apply with the necessary variations to any such claim to priority as aforesaid.
90. The Liquidator shall examine every proof of debt lodged with him and the grounds of the debt, and in writing, admit or reject it. in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing, to the creditor the grounds of the rejection in Form 50 in the Appendix.
 91. If a creditor or contributory is dissatisfied with the decision of the Liquidator in respect of a proof, the Court may, on the application of the creditor or contributory, reverse or vary the decision, but subject to the power of the Court to extend the time, no application to reverse or vary the decision of the Liquidator in a winding-up by the court rejecting a proof sent to him by a creditor, or person claiming to be a creditor, shall be entertained, unless notice of the application is given before the expiration of thirty days from the date of the service of the notice of rejection.
 92. If the Liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the Liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount.
 93. The Court may also expunge or vary a proof upon the application of a creditor or contributory if the Liquidator declines to interfere in the matter .
 94. For the purpose of any of his duties in relation to proofs the Liquidator, in a winding-up by the Court, may cause oaths to be administered by and affidavits taken before a Commissioner for Oaths.
 95. In a winding-up by the Court, the Official Receiver, before the appointment of a Liquidator, shall have all the powers of a Liquidator with respect to the examination, admission, rejection of proofs; and any act or decision of his in relation thereto shall be subject to the like appeal.
 96. In a winding-up by the Court, the Official Receiver, where no other Liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding-up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected.
 97. Every Liquidator in a winding-up by the Court, other than the Official Receiver, shall on the first day of every month, file with the Registrar, a certified list in Form 51 in the Appendix of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall cause the proofs to be filed with the Registrar.
 98. The Liquidator in a winding-up by the Court, including the Official Receiver when he is Liquidator, shall within five days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the Registrar with a memorandum thereon of his disallowance thereof.
 99. Subject to the power of the Court to extend the time in a winding-up by the Court, the Official Receiver as Liquidator shall, not later than twenty-one days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, in writing, either admit or reject wholly, or in part, every proof lodged with him, or require further evidence in support of it.
 100. (1) Subject to the power of the Court to extend the time, the Liquidator in a winding-up by the Court, other than the Official Receiver shall, within thirty-five days after receiving a proof, which has not previously

been dealt with, in writing, either admit or reject it wholly or in part or require further evidence in support of it:

Provided that where the Liquidator has given notice of his intention to declare a dividend, he shall, within twenty-one days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine, and in writing admit or reject or require further evidence in support of, every proof which has not been already dealt with, and shall give notice of his decision, rejecting a proof wholly or in part, to the creditors affected thereby.

- (2) Where a creditor's proof has been admitted, the notice of dividend shall be a sufficient notification of the admission.

101. The Official Receiver shall, in no case, be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

*Dividends in a Winding-up
by the Court*

102. (1) Not more than two months before declaring a dividend, the Liquidator in a winding-up by the Court, shall give notice of his intention to do so in the Form 52 in the Appendix to the Ministry of Trade and Tourism in order that the same may be gazetted, and shall at the same time, give notice in the Form 53 in the Appendix to such of the creditors mentioned in the statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall not be less than twenty-one days from the date of such notice.

- (2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the Liquidator rejecting a proof, notice of appeal shall, subject to the power of the Court to extend the time in special cases, be given within fifteen days from the date of the notice of the decision against which the appeal is made, and the Liquidator may in such case make provision for the dividend upon such proof, and the probable cost of such appeal in the event of the proof being admitted.

- (3) Where no notice of appeal has been given within the time specified in this rule, the Liquidator shall exclude all proofs which have been rejected from participation in the dividend.

- (4) Immediately after the expiration of the time fixed by this rule for appealing against the decision of the Liquidator, he shall proceed to declare a dividend, and shall give notice to the Ministry (in order that the same may be gazetted), and shall also send a notice of dividend in the Form 54 in the Appendix to each creditor whose proof has been admitted.

- (5) If it becomes necessary, in the opinion of the Liquidator and the Committee of Inspection to postpone the declaration of the dividend beyond the limit of two months, the Liquidator shall give a fresh notice of his intention to declare a dividend to the Ministry in order that the same may be gazetted; but it shall not be necessary for the Liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects, the same procedure shall follow the fresh notice as would have followed the original notice.

- (6) Upon the declaration of a dividend, the Liquidator shall forthwith transmit to the Ministry, a list of the proofs with the registrar under rule 96.

- (7) In every winding-up by the Court, the Liquidator shall, if so, required by the Ministry, transmit to the Ministry, office copies of all list of proof filed by him up to the date of the declaration of the dividend.

- (8) Dividends may, at the request and risk of the person to whom they are paid, be transmitted to him by post.

- (9) If a person to whom dividends are payable desires that they shall be paid to some other person, he may lodge with the Liquidator, a document in Form 55 in the Appendix which shall be a sufficient authority for payment of the dividend to the person therein named.

- 103.** (1) Every order by which the Liquidator in a winding-up by the Court is authorised to make a return to contributories of the company shall, unless the Court shall otherwise direct, contain or have appended thereto, a schedule or list (which the Liquidator shall prepare) setting out in a tabular form, the full names and addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares (if any) which have been made or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories and such other information as may be requisite to enable the return to be made.
- (2) The Schedule or list shall be in the Form 56 in the Appendix with such variation as circumstances shall require, and the Liquidator shall send a notice of return to each contributory.

*General Meeting of Creditors and Contributories
in relation to a Winding-up by the Court*

- 104.** Unless the Court otherwise directs, the meeting of creditors and contributories under section 425 of the Act (hereinafter referred to as the first meetings of creditors and contributories) shall be held within one month or if a Special Manager has been appointed, then within six weeks after the date of the winding-up order; and the dates of such meetings shall be fixed and they shall be summoned by the Official Receiver.
- 105.** The Official Receiver shall forthwith give notice of the dates fixed by him for the first meetings of creditors and contributories to the Ministry, who shall gazette the same.
- 106.** The first meetings of creditors and contributories shall be summoned as hereinafter provided.
- 107.** The notice of the first meetings of creditors and contributories may be in Forms 57 and 58 in the Appendix, and the notices to creditors shall state a time within which the creditors must lodge their proofs in order to entitle them to vote at the first meeting.
- 108.** (1) The Official Receiver shall also give to each of the officers of the Company who, in his opinion, ought to attend the first meetings of creditors and contributories, fifteen days' notice of the time and place appointed for each meeting; and the notice may either be delivered personally or sent by prepaid post letter, as may be convenient.
- (2) It shall be the duty of every officer who receives notice of such meeting to attend if so required by the Official Receiver, and if such officer fails to attend, the Official Receiver shall report such failure to the Court.
- 109.** (1) The Official Receiver shall also, as soon as practicable, send to each creditor mentioned in the Company's statement of affairs, and to each person appearing from the company's books or otherwise to be a contributory of the company a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the Official Receiver may think fit to make.
- (2) The proceedings at a meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.
- (3) Where prior to the winding-up order, the company has commenced to be wound-up voluntarily, the Official Receiver may, if in his absolute discretion he sees fit to do so send to the persons aforesaid or any of them, an account of such voluntary winding-up, showing how such winding-up has been conducted and how the property of the Company has been disposed of and any observations which the Official Receiver may think fit to make on such account or on the voluntary winding-up.

*General meetings of Creditors and Contributories
and of Creditors in relation to a Creditor's Voluntary Winding-up*

- 110.** (1) In addition to the first meetings of creditors and contributories and in addition also to meetings of creditors and contributories directed to be held by the Court under section 519 of the Act (hereinafter referred to as Court meetings of creditors and contributories), the Liquidator in any winding-up by the

Court may himself from time to time, subject to the provisions of the Act and the control of the Court summon, hold, and conduct meetings of the creditors or contributories (hereinafter referred to as Liquidator's meeting of creditors and contributories), for the purpose of ascertaining their wishes in all matters relating to the winding-up.

- (2) In any creditors' voluntary winding-up, the Liquidator may himself from time to time summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding-up (such meetings and all meetings of creditors which a Liquidator or a company is by the Act required to convene in or immediately before such a voluntary winding-up and all meetings of creditors in a voluntary winding-up under these Rules, are hereinafter called voluntary liquidation meetings).

111. Except where and in so far as the nature of the subject matter or context may otherwise require, the Rules as to meetings hereinafter set out shall apply to first meetings, court meetings, Liquidator's meetings of creditors and contributories, and voluntary liquidation meetings, but so however that the said Rules shall take effect as to first meetings subject and without prejudice to any express provisions of the Act and as to Court meetings, subject and without prejudice to any express directions of the Court.

112. (1) The Official Receiver or Liquidator shall summon all meetings of creditors and contributories by giving not less than fifteen days notice in Form 60 in the Appendix of the time and place thereof in the *Gazette* and in a local paper; and shall not, less than fifteen days before the day appointed for the meeting, send by post to every person appearing by the company's books to be a creditor of the company notice of the meeting of creditors, and to every person appearing by the company's books or otherwise to be a contributory of the company, notice of the meeting of contributories.

- (2) The notice to each creditor shall be sent to the address given in his proof or if he has not proved to the address given in the statement of affairs of the company if any, or to such other address as may be known to the person summoning the meeting.

- (3) The notice to each contributory shall be sent the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

- (4) In the case of meetings under section 465 of the Act, the continuing Liquidator or if there is no continuing Liquidator, any contributory may summon the meeting.

- (5) This rule shall not apply to meetings under section 472 or section 478 of the Act.

113. A certificate by the Official Receiver or other officer of the Court, or by the clerk of any such person, or an affidavit by the Liquidator, or creditor, or his solicitor or the clerk of either of such persons, or as the case may be, by some officer of the company or its solicitor or the clerk of such company or solicitor, that the notice of any meeting has been duly posted shall be sufficient evidence of such notice having been duly sent to persons to whom the same was addressed.

114. Every meeting shall be held at such place as is in the opinion of the person convening the same most convenient for the majority of the creditors or contributories or both; and different times or places or both may, if thought expedient, be named for the meetings of creditors and for the meetings of contributories.

115. (1) The costs of summoning a meeting of creditors or contributories at the instance of any person other than the Official Receiver or Liquidator, shall be paid by the person at whose instance it is summoned, who shall before the meeting is summoned, deposit with the Official Receiver or Liquidator, as the case may be, such sum as may be required by the Official Receiver or Liquidator as security for the payment of such costs.

- (2) The costs of summoning a meeting under paragraph (1) above, including all disbursements for printing, stationery, postage and the hire of room, shall be calculated in accordance with paragraph (3) hereof and shall be repaid out of the assets of the company if the court shall by order or if the creditors or contributories (as the case may be) shall by resolution, so direct.

- (3) Where the number of creditors or contributories to whom notice is required to be sent does not exceed twenty, the costs shall be N50, and for every additional of ten such creditors or contributories of part thereof, there shall be added N20.

116. (1) Where a meeting is summoned by the Official Receiver or the Liquidator, he or someone nominated by him under the authority as in the Form 61 in the Appendix shall be chairman of the meeting. At every other meeting of creditors or contributories, the chairman shall be such person as the meeting by resolution shall appoint.

- (2) This Rule shall not apply to meetings under section 472 of the Act.

117. At a meeting of creditors, a resolution shall be deemed to be passed when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution, and at a meeting of the contributories a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company.

118. The Official Receiver or as the case may be, the Liquidator, shall file with the Registrar, a copy certified by him of every resolution of a meeting of creditors or contributories in a winding-up by the Court.

119. Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall, unless the Court otherwise orders, be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.

120. The chairman may, with the consent of those present at the meeting, adjourn it from time to time and from place to place using the Form 62 in the Appendix, but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders.

121. (1) A meeting may not act for any purpose except the election of a chairman, the proving of debts and the adjournment of the meeting unless there are present or represented thereat in the case of a creditor's meeting at least three creditors entitled to vote or in the case of a meeting of contributories at least three contributories or all the creditors entitled to vote or all the contributories if the number of creditors entitled to vote or the number of contributories, as the case may be, shall not exceed three.

- (2) If within half an hour from the time appointed for the meeting, a quorum of creditors or contributories, as the case may be, is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place or to such other day or time or place as the chairman may appoint, but so that the day appointed shall be not less than fifteen nor more than thirty days from the day from which the meeting was adjourned.

122. (1) In the case of a first meeting of creditors or of an adjournment thereof, a person shall not be entitled to vote as a creditor unless he has duly lodged with the Official Receiver, not later than the time mentioned for that purpose in the notice convening the meeting, or adjourned meeting, a proof of the debt which he claims to be due to him from the company. In the case of a Court meeting or Liquidator's meeting of creditors, a person shall not be entitled to vote as creditor unless he has lodged with the Official Receiver or Liquidator, a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held:

Provided that this and the next four following rules shall not apply to a Court meeting of creditors held prior to the first meeting of creditors.

- (2) This Rule shall not apply to any creditors or class of creditors who, by virtue of these Rules or any directions given thereunder, are not required to prove their debts or to any voluntary liquidation meeting.

123. A creditor shall not vote in respect of any unliquidated contingent debt or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a Receiving Order in Bankruptcy has to

estimate the value thereof, and for the purpose of voting, but not for the purposes of dividend, to deduct it from his proof.

124. For the purpose of voting, a secured creditor shall unless he surrenders his security, state in his proof or in a voluntary liquidation in such a statement as is hereinafter mentioned, the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application, is satisfied that the omission to value the security has arisen from inadvertence.

125. The Official Receiver or Liquidator may, within thirty days after a proof or in a voluntary Liquidation a statement estimating the value of a security as aforesaid, has been used in voting at a meeting, require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty *per cent*:

Provided that where a creditor has valued his security he may at any time before being required to give it up, correct the valuation by a new proof and deduct the new value from his debt, but in that case the said addition of twenty *per cent* shall not be made if the security is required to be given up.

126. The chairman shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether a proof shall be admitted or rejected, he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

127. For the purpose of voting at a voluntary liquidation meeting, a secured creditor shall, unless he surrenders his security, lodge with the Liquidator or, where there is no Liquidator, at the Registered Office of the Company, before the meeting, a statement giving the particulars of his security, the date when it was given and the value at which he assesses it.

128. (1) The chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

(2) A list of creditors and contributories present at every meeting shall be made and kept as in Form 63 in the Appendix.

*Proxies in Relation to a Winding-up by the Court
and to meeting of Creditors in a creditor's Voluntary, Winding-up*

129. (1) A creditor or a contributory may vote either in person or by proxy where a person is authorised in the manner provided by section 231 of the Act to represent a corporation at any meeting of creditors or contributories such person shall produce to the Official Receiver or Liquidator or other, the chairman of the meeting, a copy of the resolution so authorising him.

(2) Such copy must either be under the seal of the corporation or must be certified to be a true copy by the secretary or a director of the Corporation; and the succeeding rules as to proxies shall not (unless otherwise directed by the court), apply to a court meeting of creditors or contributories prior to the first meeting.

130. Every instrument of proxy shall be in accordance with the Form 64 or 65 in the Appendix.

131. General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the Official Receiver or Liquidator or any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

132. A creditor or a contributory may give a general proxy to any person.

133. A creditor or a contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof-

(a) for or against the appointment or continuance in office of any specified person as Liquidator or member of the committee of inspection; and

(b) on all questions relating to any matter other than those above referred to and arising at the meeting or an adjournment thereof.

134. Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a Liquidator obtaining proxies or in procuring his appointment as Liquidator except by the direction of a meeting of creditors or contributories, the Court, if it thinks fit, may order that no remuneration be allowed to the person by whom or on whose behalf the solicitation was exercised notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

135. A creditor or a contributory in a winding-up by the court may appoint the Official Receiver or Liquidator and in a voluntary winding-up the Liquidator or if there is no Liquidator, the Chairman of a meeting to act as his general or special proxy.

136. No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employee in a position to receive any remuneration out of the estate of the Company otherwise than as creditor rateably with other creditors of the Company:

Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as Liquidator, he may use the said proxies and vote accordingly.

137. (1) A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodge with the Official Receiver not later than the time mentioned for the that purpose in the notice convening the meeting or the adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but before, one nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the Court otherwise directs.

(2) In every other case, a proxy shall be lodged with the Official Receiver or Liquidator in a winding-up by the Court, with the Company at its registered office for a meeting under section 472 of the Act, and with the Liquidator or if there is no Liquidator, with the person named in the notice convening the meeting, to receive the same in a voluntary winding-up not later than three o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

(3) No person shall be appointed a general or special proxy who is a minor.

138. Where an Official Receiver who holds any proxies cannot attend the meeting for which they are given he may, in writing, deputise some person under his official control to use the proxies on his behalf and in such manner as he may direct.

139. The proxy of a creditor blind or incapable of writing, may be accepted if such creditor has attached his signature or mark thereto in the presence of a witness and the witness shall comply with the provisions of the Illiterates Protection Act (CAP. 83) of the Laws of the Federation of Nigeria and Lagos 1958.

Attendance and Appearance of Parties

140. (1) Every person for the time being on the list of contributories of the company, and every person whose proof has been admitted, shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceeding as he shall, by written request, desire to have; and if the court shall have the opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the company, it may direct such costs, or a gross sum in lieu thereof, to be paid by such person who shall not be entitled to attend any further proceedings until he has paid the same.

(2) The Court may, from time to time, appoint any one or more of the creditors or contributories to represent before the court, at the expense of the company, all or any class of the creditors or contributories, upon any question or in relation to any proceedings before the court, and may remove the

person so appointed; but if more than one person is appointed under this rule to represent one class, the persons appointed shall employ the same solicitor to represent them.

- (3) No creditor or contributory shall be entitled to attend any proceedings in Chambers unless and until he has entered in a book, to be kept by the Registrar for that purpose, his name and address, and the name and address of his solicitor (if any) and upon any change of his address, or of his solicitor, his new address, and the name and address of his new solicitor.

141. Where the attendance of the Liquidator's solicitor is required on any proceeding in Court or Chambers, the Liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Court directs him to attend.

Liquidator and Committee of Inspection

142. (1) The remuneration of a Liquidator, unless the court shall otherwise order, shall be fixed by the Committee of Inspection, (or the creditors, as the case may be) and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realised, after deducting the sums (if any) paid to secured creditors (other than debenture holders) out of the proceeds of their securities and the other part on the amount distributed in dividend.

- (2) If the Ministry is of opinion that the remuneration of a Liquidator as fixed by the Committee of Inspection or the creditors, as the case may be, is unnecessarily large, the Ministry may apply to the Court, and thereupon the Court, shall fix the amount of the remuneration of the Liquidator.

- (3) This rule shall only apply to a Liquidator appointed in a winding-up by the Court.

143. Except as provided by the Act or the Rules, a Liquidator shall not, under any circumstances whatever, make any arrangement for, or accept from any solicitor, auctioneer, any other person connected with the company of which he is Liquidator, or who is employed in or in connection with the winding-up of the company, any gift, remuneration, or pecuniary or other consideration of benefit whatever beyond the remuneration to which under the Act and these Rules, he is entitled as Liquidator, nor shall he make any arrangement for giving up, or give up any part of such remuneration to such solicitor, auctioneer or other person.

144. Neither the Liquidator, nor any member of the Committee of Inspection of a Company shall, while acting as Liquidator or member of such committee, except by leave of Court, either directly or indirectly, by himself or any employer, partner, clerk, agent or servant, become purchaser of any part of the Company's assets; and any purchase made contrary to the provisions of this rule may be set aside by the Court on the application of the Ministry in a winding-up by the Court or of any creditor or contributory in any winding up, and the Court may make such order as to costs as the Court shall think fit.

145. Where the Liquidator carries on the business of the company, he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from any person whose connection with him is of such a nature as would result in his obtaining any portion of the profit (if any) arising out of the transaction.

146. (1) No member of a Committee of Inspection shall, except under and with the sanction of the Court, directly or indirectly, by himself, or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the winding-up or to receive, out of the assets, any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the Liquidator for or on account of the company.

- (2) In a winding-up by the Court, if it appears to the Ministry or in a voluntary winding-up, if it appears to the Committee of Inspection or to any meeting of creditors or contributories that any profit or payment has been made contrary to the provisions of this rule, the Ministry, Committee of Inspection or meeting, as the case may be, may disallow such payment or recover such profit, on the audit of the Liquidator's accounts or otherwise.

147. In any case in which the sanction of the Court obtained under rules 145 and 146, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the company's assets.

148. Where the sanction of the Court to a payment to a member of a Committee of inspection for services rendered by him in connection with the administration of the company's assets is obtained, the order of the Court shall specify the nature of the services, and such sanction shall only be given where the service performed is of a special nature; and except by the express sanction of the Court, no remuneration shall, under any circumstances, be paid to a member of a Committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee.

149. (1) When a Liquidator appointed by the Court has notified his appointment to the Registrar of Companies and has given security to the Court, the Official Receiver shall forthwith put the Liquidator into possession of all property of the company of which the Official Receiver may have custody:

Provided that such Liquidator, before the assets are handed over to him by the Official Receiver, shall have discharged any balance due to the Official Receiver on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the company, together with interest on such advances at the rate of ten *per centum per annum*, and the Liquidator shall pay all fees, costs, and charges of the Official Receiver which may not have been discharged by the Liquidator before being put into possession of the property of the company, whether incurred before or after he has been put into such possession.

(2) The Official Receiver shall be deemed to have a lien upon the company's assets until such balance shall have been paid and other liabilities shall have been discharged.

(3) It shall be the duty of the Official Receiver, if so requested by the Liquidator, to communicate to the Liquidator, all such information respecting the estate and affairs of the company as may be necessary or conducive to the due discharge of the duties of the Liquidator.

(4) This rule and rule 150 shall only apply in winding-up by the Court.

150. (1) A Liquidator who desires to resign from his office shall summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation shall be accepted.

(2) If the creditors and contributories by ordinary resolution, both agree to accept the resignation of the Liquidator, he shall file with the Registrar, a memorandum of his resignation and shall send notice thereof to the Official Receiver and the resignation shall thereupon take effect.

(3) In any other case, the Liquidator shall report to the Court, the result of the meetings and shall send a report to the Official Receiver and thereupon the Court may, upon the application of the Liquidator or the Official Receiver, determine whether or not the resignation of the Liquidator shall be accepted, and may give such directions and make such orders as in the opinion of the Court shall be necessary.

151. If a Receiver Order in Bankruptcy is made against a Liquidator, he shall thereby vacate his office, and for the purpose of the application of the Act and Rules, shall be deemed to have been removed.

Payments to and Withdrawals from Account

152. All payments out of the Companies Liquidation Account shall be made in such manners as the Ministry may, from time to time, direct.

153. (1) Where the Liquidator in a winding-up by the court is authorised to have a special bank account, he shall forthwith pay all moneys received by him into that account to the credit of the Liquidator of the company.

(2) All payments out of the special bank account shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it, the name of the company and shall be signed by the Liquidator, and shall be countersigned by at least one member of the Committee of Inspection, and by such other person, if any, as the Committee of Inspection may appoint.

- (3) Where application in Form 66 in the Appendix is made to the court to authorise the Liquidator in a winding-up by the Court to make his payments into and out of a special bank account, the court may grant such authorisation as in Form 67 in the Appendix for such time and on such terms as it may think fit, and may, at any time, order the account to be closed if it is of the opinion that the account is no longer required for the purpose mentioned in the application.

Books

- 154.** In a winding-up by the Court, the Official Receiver until a Liquidator is appointed by the Court, and thereafter the Liquidator, shall keep a book to be called the "Record Book" in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the Committee of Inspection, and all such matters as may be necessary to give a correct view of his administration of the company's affairs; but he shall not be bound to insert in the "Record Book" any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the Committee of Inspection, the Official Receiver or the Ministry.
- 155. (1)** In a winding-up by the Court, the Official Receiver, until a Liquidator is appointed by the Court, and thereafter, the Liquidator shall keep a book to be called the "Cash Book" which shall be in such form as the Ministry may from time to time direct) in which he shall (subject to the provisions of the rules as to trading accounts), enter from day to day the receipts and payment made by him.
- (2) In a winding-up by the Court, a Liquidator other than the Official Receiver shall submit the Record and Cash books together with any other requisite books and vouchers, to the Committee of Inspection (if any) when required, and not less than once every three months.
- (3) In a creditors' voluntary winding-up the Liquidator shall keep such books as the Committee of Inspection or if there is no such committee as the creditors direct and all books kept by the Liquidator shall be submitted to the Committee of Inspection or if there is no such committee, to the creditors with any other books, documents, papers and accounts in his possession relating to his office as Liquidator or to the company as and when the Committee of Inspection or if there is no such committee the creditors directly.

Investment of Funds

- 156(1)** Where in a winding-up by the Court or in a creditors voluntary winding-up, the Committee of Inspection are of the opinion that any part of the cash balance standing to the credit of the account of the company should be invested, they shall sign a certificate and request in Forms 68 and 69 in the Appendix, and the Liquidator shall transmit such certificate and request to the Commission.
- (2) Where the Committee of Inspection in any such winding-up are of the opinion that it is advisable to sell any of the securities in which the moneys of the Company's assets are invested, they shall sign a certificate and request to the effect, and the Liquidator shall transmit such certificate and request to the Commission.
- (3) Where there is no Committee of Inspection in any such winding-up as is mentioned in paragraphs (1) and (2) of this rule and in every members' voluntary winding-up whether under the supervision of the court or not, if a case has in the opinion of the Liquidator, arisen under section 529 of the Act for an investment of funds of the Company or a sale of securities in which the Company's funds have been invested, the Liquidator shall sign and transmit to the Commission, a certificate of the facts on which his opinion is founded, and a request to the Registrar so that the Accountant-General can make the investment or sale mentioned in the certificate and the Accountant-General may thereupon if they think fit, invest or sell the whole or any part of the said funds and securities, as provided in the said section, and the said certificate and request shall be a sufficient authority to the Accountant-General for the said investment or sale.

Accounts and Audit in a Winding-up

- 157.** The Committee of Inspection shall not less than once every three months, audit the Liquidator's Cash Book and Cash Book and certify therein in Form 70 in the Appendix under their hands, the day on which the said book was audited.
- 158.** (1) The Liquidator shall, at the expiration of six months from the date of the winding-up order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Commission, a copy of the Cash Book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the Committee of Inspection and he shall also forward-
- (a) with the accounts, a summary of the Company's statement of affairs showing thereon the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised;
- (b) at the end of every six months to the Commission, with his accounts, a report upon the position of the liquidation of the Company in such form as the Commission may direct.
- (2) When the assets of the Company have been fully realised and distributed the Liquidator shall forthwith send in his accounts to the Commission although the six months may not have expired.
- (3) The accounts sent in by the Liquidator shall be verified by him by affidavit and be in Form 71 in the Appendix.
- 159.** (1) Where the Liquidator carries on the business of the company, he shall keep a distinct account of the trading and shall incorporate in the Cash Book, the total weekly amounts of the receipts and payments on such trading account.
- (2) The trading account in Form 71 in the Appendix shall, from time to time, and not less than once in every month, be verified by affidavit, and the Liquidator shall thereupon submit such account to the Committee of Inspection (if any) or such member thereof as may be appointed by the Committee for that purpose who shall examine and certify the same.
- 160.** When the Liquidator's account have been audited, the Commission shall certify that fact upon the account, and thereupon the duplicate copy, bearing a like certificate, shall be filed with him, and that copy together with a copy of the said account delivered to the court for filing in accordance with section 429 of the Act, shall be open to the inspection of any person on payment of the same fee as is payable with respect to the inspection of the file of proceedings under rule 10.
- 161.** (1) The Liquidator shall prepare a summary of such accounts and shall, subject to any dispensation granted by the Minister under subsection (5) of section 429 of the Act, send a printed copy of that summary by post to every creditor and contributory.
- (2) The cost of printing and posting such copy shall be a charge upon the assets of the company.
- 162.** When a Liquidator has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the company, he shall, at the time when he is required to transmit his accounts to the Commission, forward to the Commission, an affidavit of no receipts or payments.
- 163** (1) Upon a Liquidator resigning or being released or removed from his office, he shall deliver over to the Official Receiver or, as the case may be, to the new Liquidator, all books kept by him, and all other books, documents, papers and accounts in his possession relating to the office of Liquidator.
- (2) The release of a Liquidator shall not take effect unless and until he has delivered over to the Official Receiver or, as the case may be, to the new Liquidator, all the books, documents, papers and accounts which he is by these Rules, required to deliver on his release.

- (3) The Court may, at any time during the progress of the Liquidation, on the application of the Liquidator or the Official Receiver, direct that such of the books, papers and documents of the company or of the Liquidator as are no longer required for the purpose of the Liquidation may be sold, destroyed or otherwise disposed of.

- 164.** (1) Where property forming part of a company's assets is sold by the Liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent.
- (2) Every Liquidator by whom such auctioneer or agent is employed shall, unless the Court otherwise orders, be accountable for the proceeds of every such sale.

Final Account in Voluntary

- 165.** The account required by sections 468 and 478 of the Act to be made up by the Liquidator as soon as the affairs of the company are fully wound up shall be in Form 72 in the Appendix.

Costs and Expenses Payable out

- 166.** (1) Where a Liquidator or Special Manager in a Liquidator winding-up by the Court receives remuneration for his services as such, no payment shall be allowed on his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.
- (2) Where a Liquidator is a solicitor, he may contract that the remuneration for his services as Liquidator shall include all professional services.

- 167.** (1) The assets of a company in a winding-up by the Court remaining after payment of the fees and expenses properly incurred in preserving, realising or getting in the assets, including where the company was previously to be wound up voluntarily such remuneration, costs and expenses, as the Court may allow to a Liquidator appointed in such voluntary winding-up shall, subject to any order of the court, be liable to the following payments, which shall be in the following order of priority, namely-

- (a) the costs of the petition, including the costs of any person appearing on the petition whose costs are allowed by the court;
- (b) the remuneration of the Special Manager (if any);
- (c) the costs and expenses of any person who makes or concurs in making the company's statement of affairs;
- (d) the charges of any shorthand writer appointed to take an examination:

Provided that where the shorthand writer is appointed at the instance of the Official Receiver, the cost of the shorthand notes shall be deemed to be an expense incurred by the Official Receiver in getting in and realising the assets of the company;

- (e) the necessary disbursements of any Liquidator appointed in the winding-up by the court, other than property incurred in preserving, realising or getting in the assets heretofore provided for;
 - (f) the costs of any person's property employed by any such Liquidator;
 - (g) the remuneration of any such Liquidator;
 - (h) the actual out-of-pocket expenses necessarily incurred by the Committee of Inspection, subject to the approval of the Ministry.
- (2) No payments in respect of bills or charges of solicitors, managers, accountants, auctioneers, brokers or other persons, other than payments for costs and expenses incurred and sanctioned under rule 39 and

payments of bills which have been allowed, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the Registrar.

- (3) The Official Receiver when acting as Liquidator may pay and allow the costs and charges of any person employed by him where such costs and charges are within the scale usually allowed by the court.
- (4) Nothing contained in this rule shall apply to or affect costs which, in the course of legal proceedings by or against a company which is being wound up by the Court, are ordered by the Court in which such proceedings are pending or a judge thereof to be paid by the company or the Liquidator, or the rights of the person to whom such costs are payable.

Statements of Liquidator to

168. The winding-up of a company shall, for the purposes of section 516 of the Act, be deemed to be concluded-

- (a) in the case of a company wound-up by order of the Court, at the date on which the order dissolving the company has been reported by the Liquidator to the Commission, or at the date of the order of the Attorney-General of the Federation releasing the Liquidator pursuant to section 43 1 of the Act;
- (b) in the case of a company wound-up voluntarily, or under the supervision of the court, at the date of the dissolution of the company, unless at such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the Liquidator, or any person who has acted as Liquidator, in which case the winding-up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies Liquidation Account kept with the Accountant-General of the Federation.

169. In a voluntary winding-up or a winding-up under the supervision of the Court, the statements with respect to the proceedings in and position of the liquidation of a company the winding-up of which is not concluded within a year after its commencement shall be sent to the Commission twice in every year as follows-

- (a) the first statement, commencing at the date when a Liquidator was first appointed and brought down to the end of twelfth month from the commencement of the winding-up, shall be sent within thirty days from the expiration of such twelve months, or within such extended period as the Ministry may sanction, and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half year for which it is sent; and in cases in which the assets of the company have been fully realised and distributed before the expiration of a half-yearly interval, a final statement shall be sent forthwith;
- (b) subject to the next succeeding Rule, Form 73 in the Appendix and where applicable Forms 75, 76 and 77 in the Appendix with such variations as circumstances may require, shall be used, and the directions specified in the Form be observed in reference to every statement;
- (c) every statement shall be sent in duplicate, and shall be verified by an affidavit in the Form 74 in the Appendix with such variations as circumstances may require.

170. Where, in a voluntary winding-up or a winding-up under the supervision of the Court, a Liquidator has not during any period for which a statement has to be sent, received or paid any money on account of the company, he shall, at the period when he is required to transmit his statement, send to the Commission, the prescribed statement in the Form 73 in the Appendix in duplicate, containing the particulars therein required with respect to the proceedings in and position of the liquidation, and with such statement shall also send an affidavit of no receipts or payments in Form 74 in the Appendix.

Unclaimed Funds and Undistributed Assets

171. (1) All money in the hands or under the control of a Liquidator of a company representing unclaimed dividends, which for six months from the date when the dividend became payable have remained in the

hands or under the control of the Liquidator shall forthwith on the expiration of the six months, be paid into the Companies Liquidation Account .

- (2) In a voluntary winding-up or a winding-up under the supervision of the Court, all other money in the hands or under the control of a Liquidator of a company, representing unclaimed or undistributed assets or held by the company in trust which, under subsection (4) of section 516 of the Act, the Liquidator is to pay into the Companies Liquidation Account, shall be ascertained as on the date to which the statement of receipts and payments sent in to the Registrar of Companies is brought down, and the amount to be paid to the Companies Liquidation Account shall be the minimum balance of such money which the Liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Ministry may authorise him to retain for immediate purposes of liquidation.
- (3) Such amount shall be paid into the Companies Liquidation Account within twenty-eight days from the date to which the statement of account is brought down.
- (4) Notwithstanding anything in this rule, any moneys in the hands of the Liquidator at the date of the dissolution of the company representing unclaimed or undistributed assets or dividends or held by the company in trust in respect of dividends or other sums due to any person as a member of the company shall forthwith be paid by him into the Companies Liquidation Account.
- (5) A Liquidator whose duty it is to pay into the Companies Liquidation Account kept by the Accountant-General of the Federation money representing unclaimed or undistributed assets of the company or held by the company in trust in respect of dividends or other sums due to any person as a member of the company, shall apply in such manner as the Ministry shall direct to the Ministry for paying-in order, which paying-in order shall be an authority to the Accountant-General of the Federation to receive the payment.
- (6) In a voluntary winding-up or a winding-up under the supervision of the Court, money invested or deposited at interest by a Liquidator shall be deemed to be money under his control, and when such money from part of the minimum balance is payable into the Companies Liquidation Account pursuant to paragraph (2) of this rule, the Liquidator shall realise the investment or withdraw the deposit, and shall pay the proceeds into the Companies Liquidation Account:

Provided that where the money is invested in Government Securities, such securities may, with the permission of the Ministry, be transferred to the control of the Ministry instead of being forthwith realised and the proceeds thereof paid into the Companies Liquidation Account; and if and when the money represented by the securities is required wholly or in part for the purposes of the Liquidation, the Ministry may realise the securities wholly or in part and pay the proceeds of realisation into the Companies Liquidation Account and deal with the same in the same way as other moneys paid into the said Account may be dealt with.

- 172.** (1) In a voluntary winding-up or a winding-up under supervision of the Court, whether the Liquidation has been concluded or not, the Liquidator shall furnish to the Ministry, particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company or held by the company in trust in respect of dividends or other sums due to any person as a member of the company, and such other particulars as the Ministry may require for the purpose of ascertaining or getting in any money payable into the Companies Liquidation Account with the Accountant-General of the Federation.
 - (2) The Ministry may require such particulars to be verified by affidavit in Form 78 in the Appendix.
- 173.** (1) In voluntary winding-up or a winding-up under the supervision of the Court, the Ministry may at any time, order any such person as is mentioned in the preceding Rule to submit to them an account verified by affidavit of the sums received and paid by him as Liquidator of the company and may direct and enforce an audit of the account.
 - (2) For the purposes of subsection (4) of section 516 of the Act, and the Rules, the Court may, if it thinks fit, make any appropriate order with respect to the discovery and realisation of the property of a debtor.
 - (3) Forms 72 to 76 in the Appendix shall be used as appropriate for the purposes of this rule.

174. An application to the Ministry for the purpose of ascertaining and getting in money payable to the Accountant General of the Federation pursuant to subsection (4) section 516 of the Act shall be made by motion, and when the winding-up is by or under the supervision of the Court or in a voluntary winding-up, shall be made to and dealt with by the Judge in court.

175. An application by a person claiming to be entitled to any money paid to Accountant-General of the Federation in pursuance of subsection (4) of section 516 of the Act, shall be made in such form and manner as the Ministry may from time to time direct, and shall, unless the Ministry otherwise directs, be accompanied by the certificate of the Liquidator that the person claiming is entitled and such further evidence as Ministry may direct.

176. A Liquidator who requires to make payments out of money paid to the Accountant-General of the Federation in pursuance of subsection (4) of section 516 of the Act either by way of distribution or in respect of the cost and expenses of the proceedings, shall apply in such form and manner as the Ministry may direct, and the Ministry may thereupon either make an order for payment to the Liquidator by the sum required by him for the purposes aforesaid, or may direct cheques to be issued to the Liquidator for transmission to the persons to whom the payments are to be made.

Release of Liquidator in a Winding-up by the Court

177. (1) A Liquidator in a winding-up by the Court before making application to the Registrar for his release, shall give notice of his intention so to do in Form 79 in the Appendix, to all the creditors who have proved their debts, and to all the contributories and shall send, with the notice, a summary of all receipts and payments in the winding-up in Form 80 in the Appendix.

(2) When the Registrar having complied with the provisions of section 431 of the Act, grants to a Liquidator his release, a notice of the order granting the release shall be gazetted; and the Liquidator shall pay for the expenses of such gazetting and he may charge such expenses against the company's assets.

178. (1) The Attorney-General of the Federation may order that the books and papers of a company which has been wound up shall not be destroyed for such period (not exceeding five years from the dissolution of the company) as he thinks proper, notwithstanding any resolution of creditors or contributories to the contrary.

(2) Any creditor or contributory may apply to the court with regard to the destruction of such books and papers.

Official Receiver

179. Where a Company against which a winding-up order has been made has no available assets, the Official Receiver shall not be required to incur any expense in relation to the winding-up without order of the Court.

180. (1) Where a Liquidator is appointed by the Court in a winding-up by the Court, the Official Receiver shall account to the Liquidator.

(2) If the Liquidator is dissatisfied with the account, he may apply to the Court to order the Official Receiver to give a better and further particulars of the issue in disagreement.

(3) The provision of these Rules as to Liquidators and their accounts shall not apply to the Official Receiver when he is a Liquidator, but he shall account in such manner as the Court may direct.

181. The Court may, in any case in which it shall see fit, extend or abridge the time appointed by the Rules or fixed by any order of the Court for doing any act or taking any proceeding.

182. (1) No proceedings under that Act or the Rules shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding, is of the opinion that injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that Court.

- (2) No defect or irregularity in the appointment or election of an Official Receiver, Liquidator or member of a Committee of Inspection shall vitiate any act done by him in good faith.

183. In all proceedings in or before the Court where no provisions is made by the Rules, the Court's (Civil Procedure) Rules shall apply.

184. (1) Unless the context otherwise requires words or expression contained in these Rules shall bear the same meaning as in the Act or any statutory modification thereof.

- (2) In these Rules, unless the context or subject-matter otherwise requires-

"Act" means the Companies and Allied Matters Act;

"Commission" means the Corporate Affairs Commission established under the Act;

"company" means a company which is being wound-up or against which proceedings to have it wound-up or proceedings under section 321 of the Act have been commenced;

"Court" means the Federal High Court established by section 228 of the Constitution of the Federal Republic of Nigeria;

"(Civil Procedure) Rules" means the Federal High Court (Civil Procedure) Rules, as amended or replaced from time to time;

"Gazette" means Federal Republic or Nigeria Official Gazette;

"head office of the Court" means where the Chief Judge and the Chief Registrar are stationed;

"Ministry" means the Federal Ministry charged with responsibility for trade and tourism;

"Registrar" includes the Chief Registrar and all other registrars of the court and any subordinate officer acting under the registrar's instructions;

"sealed" means sealed with the Seal of the Court.

- (3) The Forms prescribed for use under these Rules shall be used with such variations as circumstances may require.

Made by me on the 30th day of June 1983

A. Fatayi-Williams
Chief Justice of Nigeria
