



ST. HELENA

## CHAPTER 32

### **CIVIL PROCEDURE ORDINANCE** and Subsidiary Legislation

#### **Non-authoritative Consolidated Text**

This is not an authoritative ‘revised edition’ for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown  
[Telephone (+290) 2270; Fax (+290) 2454; email [pa.lawofficers@legalandlands.gov.sh](mailto:pa.lawofficers@legalandlands.gov.sh)]<sup>1</sup>

Visit our [LAWS page](#) to understand the St. Helena legal system and the legal status of this version of the Ordinance.

This version contains a consolidation of the following laws—

	Page
<b>CIVIL PROCEDURE ORDINANCE</b>	<b>2</b>
Ordinance 7 of 1968 .. in force 1 May 1969	
Amended by L.N. 3 of 1989	
Amended by Ordinance 1 of 2001	
Amended by L.N. 26/2009	
<b>CIVIL PROCEDURE RULES – Section 74</b>	<b>27</b>
Legal Notice 5 of 1969	
Amended by L.N. 25/1973	
Amended by Rules made 22/11/2000	
Amended by L.N. 2/2001	

**See also:**

Courts (Rules) Ordinance, Cap. 9  
Supreme Court (Fees) Rules, Cap. 9  
Supreme Court (Miscellaneous Applications) Rules, Cap. 9  
Appeals Ordinance, Cap. 8

---

<sup>1</sup> These contact details may change during 2011 or early in 2012. In case of difficulty, email [shgwebsite@sainthelena.gov.sh](mailto:shgwebsite@sainthelena.gov.sh) or telephone (+290) 2470.

## CHAPTER 32

### CIVIL PROCEDURE ORDINANCE

#### ARRANGEMENT OF SECTIONS

##### PART I

##### PRELIMINARY

##### SECTION

1. Short title
2. Interpretation
3. Savings
4. Pecuniary jurisdiction

##### PART II

##### GENERAL

5. Courts to try all proceedings unless barred
6. Stay of proceedings
7. *Res judicata*
8. Bar to further proceedings
9. When foreign judgment not conclusive
10. Presumption as to foreign judgments
11. Jurisdiction of civil courts
12. Power of Supreme Court to withdraw and transfer cases
13. Institution of proceedings, etc
14. Service where defendant resides in Dependency
15. Power to order discovery, etc
16. Summons to witness
17. Penalty for default
18. Judgment
19. Interest
20. Costs

##### PART III

##### EXECUTION

21. Application to Orders
22. Definition of “court which pronounced judgment”
23. Court by which judgment may be executed
24. Transfer of judgment
25. Result of execution proceedings to be certified
26. Power of courts in executing transferred judgment
27. Questions to be determined by the court executing judgment
28. Execution barred in certain cases
29. Transferee

This e-version of the text is not authoritative for use in court.

30. Personal representative
31. Powers of court to enforce execution
32. Enforcement of judgment against personal representative
33. *repealed*
34. *repealed*
35. *repealed*
36. *repealed*
37. Property liable to attachment and sale in execution of judgment
38. Seizure of property in dwelling house
39. Property attached in execution of judgments of several courts
40. Private alienation of property after attachment to be void
41. Documents of title to immovable property to be lodged with court before sale
42. Purchaser's title
43. Action against purchaser not maintainable on ground of purchase being on behalf of judgment-creditor
44. Distribution of assets
45. Resistance to execution

#### PART IV

##### INCIDENTAL PROCEEDINGS

46. Power of court to issue commissions
47. Commission from another court
48. Letter of request
49. Commissions issued by foreign courts

#### PART V

##### ACTIONS IN PARTICULAR CASES

50. When aliens may sue
51. When foreign State may sue
52. Where interpleader action may be instituted

#### PART VI

##### SPECIAL PROCEEDINGS

53. Arbitration
54. Power to state case for opinion of court
55. Public nuisances
56. Public charities

#### PART VII

##### SUPPLEMENTARY PROCEEDINGS

57. Supplementary proceedings

## PART VIII

## APPEALS

*Appeals from Original Judgments and Orders*

- 58. Appeals from judgments of Magistrates' Court
- 59. Appeals from judgments of Supreme Court
- 60. Appeal from original judgment
- 61. Appeal from final judgment where no appeal from interlocutory judgment
- 62. No judgment to be reversed or modified for error or irregularity not affecting merits or jurisdiction

*Appeals from Appellate Judgments and Orders*

- 63. Second appeal
- 64. Meaning of "order" in preceding section
- 65. No second appeal in certain actions, etc

*Appeals from other Orders*

- 66. Orders from which appeal lies
- 67. Other orders
- 68. What courts to hear appeal
- 69. Limitation for appeals

*General Provisions Relating to Appeals*

- 70. Power of appellate court
- 71. Procedure in appeals from appellate judgments and orders

## PART IX

## REVISION

- 72. Revision by original court
- 73. Revision by Supreme Court

## PART X

## MISCELLANEOUS

- 74. Matters for which provision may be made by rules
- 75. Arrest other than in execution of judgment
- 76. Exemption from arrest under civil process
- 77. Assessors in Admiralty causes
- 78. Oath on affidavit: by whom to be administered
- 79. Orders and notices to be in writing
- 80. Application for restitution
- 81. Enforcement of liability of surety
- 82. Consent or agreement by persons under disability

This e-version of the text is not authoritative for use in court.

83. Execution of judgment of Supreme Court before costs are ascertained
84. Enlargement of time
85. Power to make up deficiency of court fees
86. Procedure of courts in England may be followed in certain cases
87. Saving of inherent powers of court
88. Amendment of judgments or orders
89. General power to amend

## CHAPTER 32

### CIVIL PROCEDURE ORDINANCE

*(Ordinance 7 of 1968, Legal Notice 3 of 1989, Ordinance 1 of 2001 and Legal Notice 26 of 2009)*

AN ORDINANCE TO MAKE PROVISION FOR PROCEDURE IN CIVIL COURTS IN ST. HELENA.

#### Commencement

*[1 May 1969]*

#### PART I PRELIMINARY

#### Short title

1. (1) This Ordinance may be cited as the Civil Procedure Ordinance.
- (2) This Ordinance shall extend to all civil proceeding in the Supreme Court and in the Magistrates' Court.

#### Interpretation

2. In this Ordinance, unless the context otherwise requires—
  - “**action**” means a civil proceeding commenced by plaint or in such other manner as may be prescribed by rules of court, and includes a suit;
  - “**advocate**” means any person entitled to appear and plead for another in a court;
  - “**cause**” means any action, suit or other original civil proceeding between a plaintiff and defendant, but does not include any matrimonial cause;
  - “**court**” means a court exercising civil jurisdiction;
  - “**Court of Appeal**” means the St. Helena Court of Appeal;
  - “**defendant**” includes any person served with any writ of summons or process or served with notice of, or entitled to attend any proceedings;
  - “**foreign court**” means a court situate beyond the limits of, and having no authority in, St. Helena and its Dependencies;
  - “**foreign judgment**” means the judgment of a foreign court;
  - “**Government**” means the Government of St. Helena and its Dependencies;
  - “**judge**” includes a justice of the peace exercising civil jurisdiction in a Magistrates' Court;
  - “**judgment**” means the formal expression of an adjudication in an action which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the action and includes a decree;

This e-version of the text is not authoritative for use in court.

- “judgment-creditor”** means any person in whose favour a judgment or an order capable of execution has been pronounced or made, and includes the assignee of such judgment or order;
- “judgment-debtor”** means any person against whom a judgment or an order capable of execution has been pronounced or made;
- “Magistrates’ Court”** means the court established under the provisions of the Magistrates’ Court Ordinance;
- “matter”** includes every civil proceeding in a court not in a cause;
- “mesne profits”** of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but does not include profits due to improvements made by the person in wrongful possession;
- “movable property”** includes growing crops;
- “order”** means the formal expression of any adjudication or decision of a court which is not a judgment, and includes a rule nisi;
- “Ordinance”** includes rules of court;
- “party”** includes every person served with notice of or attending any civil proceeding although not named on the record;
- “personal representative”** means a person who in law represents the estate of a deceased person, and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;
- “plaintiff”** includes every person seeking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of civil proceeding, whether that proceeding is by action, suit, petition, motion, summons or otherwise;
- “pleading”** includes any petition or summons, and the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any defence or counterclaim of a defendant;
- “prescribed”** means prescribed by rules of court;
- “rules of court”** means rules and forms made by the Chief Justice under the provisions of section 74 of this Ordinance to regulate the procedure of courts;
- “share in a corporation”** includes stock, debenture stock, debentures, or bonds;
- “signed”** includes the affixing of a mark by a person unable to write;
- “Supreme Court”**<sup>2</sup> means the St. Helena Supreme Court.

## Savings

3. In the absence of any specific provision to the contrary, nothing in this Ordinance shall be deemed to limit or otherwise affect any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

## Pecuniary jurisdiction

4. Save in so far as is otherwise expressly provided, nothing herein contained shall be so construed as to confer upon any court jurisdiction in causes or matters the amount or value of the subject matter of which exceeds the pecuniary limits, if any, of its ordinary jurisdiction.

---

<sup>2</sup> Definition of “Supreme Court” substituted by LN 26 of 2009

PART II  
GENERAL**Courts to try all proceedings unless barred**

5. Subject to the provisions of this Ordinance, any court shall have jurisdiction to try all causes and matters of a civil nature excepting causes and matters of which its cognisance is either expressly or impliedly barred.

**Stay of proceedings**

6. (1) No court shall proceed with the trial of any cause or matter in which the question in issue is also directly and substantially in issue in a previously instituted cause or matter between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such previously instituted cause or matter is pending in such court or in any other court having jurisdiction in St. Helena to grant the relief claimed, or before Her Majesty in Council.

(2) The pendency of a cause or matter in a foreign court shall not preclude a court from trying a cause or matter in which the same questions or any of them are in issue in such cause or matter in such foreign court.

**Res judicata**

7. (1) No court shall try any cause, matter or issue in which the question directly and substantially in issue has been directly and substantially in issue in a former cause or matter—

- (a) between the same parties; or
  - (b) between parties under whom the parties or any of them claim, litigating under the same title, in a court competent to try such subsequent cause, matter or issue and such question has been heard and finally determined by such court.
- (2) For the purpose of subsection (1)—
- (a) the question directly and substantially in issue therein referred to shall in the former cause or matter have been alleged by one party and either denied or admitted, whether expressly or by implication, by the other;
  - (b) any question which might or ought to have been made an issue, whether by the plaintiff or the defendant, in the former cause or matter shall be deemed to have been a matter directly or substantially in issue in such cause or matter;
  - (c) any relief claimed in a cause or matter which is not expressly granted by the judgment or order pronounced or made therein shall be deemed to have been refused;
  - (d) where persons litigate *bona fide* in respect of—
    - (i) a public right; or
    - (ii) a private right claimed in common for themselves and others,all persons interested in such right shall be deemed to claim under the persons so litigating;
  - (e) the competence of a court shall be determined irrespective of any provision relating to a right of appeal from the decision of such court.

(3) In this section, “**former cause or matter**” means a cause or matter which has been decided prior to the cause or matter in question, whether or not it was instituted prior thereto.

### Bar to further proceedings

8. Where a plaintiff is precluded by rules of court from instituting a further cause or matter in respect of any particular cause of action, he shall not be entitled to institute such further cause or matter.

### When foreign judgment not conclusive

9. A foreign judgment or order shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title, except where the judgment or order—

- (a) has not been pronounced or made by a court of competent jurisdiction;
- (b) has not been pronounced or made on the merits of the case;
- (c) appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the laws of St. Helena and its Dependencies in cases in which any such law is applicable;
- (d) was obtained in proceedings which are opposed to natural justice;
- (e) has been obtained by fraud;
- (f) sustains a claim founded on a breach of any law in force in St. Helena or any of its Dependencies.

### Presumption as to foreign judgments

10. The court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment or order, that such judgment or order was pronounced or made by a court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be rebutted by proving want of jurisdiction.

### Jurisdiction of civil courts

11. (1) All causes and matters of a civil nature shall be instituted in the Supreme Court:

Provided that in any case where the Magistrates' Court has jurisdiction by virtue of the provisions of the Magistrates' Court Ordinance, the cause or matter shall be instituted in the Magistrates' Court.

(2) Whenever for the purposes of jurisdiction or court fees it is necessary to estimate the value of the subject matter of an action capable of a monetary valuation, the plaintiff shall, when instituting the action, subject to the provisions of any rules of court, fix the amount at which he values such subject matter:

Provided that if the court is of the opinion that the relief sought is wrongly valued the court shall fix the value and amend the plaint accordingly.

(3) In any class of cause or matter where the subject matter does not admit of being satisfactorily valued, it may be prescribed by rules of court that causes or matters of that class shall be treated as if their subject matter were of such value as may be specified in such rule.

(4) In any cause or matter where it is impossible to estimate the subject matter at a monetary value in which, by reason of any finding or order of the court, a declaration of ownership of any money or property is made, no judgment or order shall be pronounced or made for an amount on the claim exceeding the pecuniary limits of the ordinary jurisdiction of the court.



(5) Notwithstanding the foregoing provisions of this section, any action may be instituted in the Supreme Court which could have been commenced in the Magistrates' Court, and in every such case if the plaintiff recovers—

- (a) a sum not exceeding £25, he shall not be entitled to any costs;
- (b) a sum exceeding £25 but not exceeding the pecuniary limits of the jurisdiction of the Magistrates' Court, he shall not be entitled to more costs than the amount to which he would have been entitled if the action had been commenced in the Magistrates' Court,

unless, in either such case, the Chief Justice allows costs on the Supreme Court scale.

### **Power of Supreme Court to withdraw and transfer cases**

12. (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the Supreme Court may at any stage—

- (a) transfer any cause or matter pending before it for trial or disposal to the Magistrates' Court; or
- (b) withdraw any cause or matter pending in the Magistrates' Court and—
  - (i) try or dispose of the same; or
  - (ii) retransfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any cause or matter has been transferred or withdrawn as aforesaid, the Magistrates' Court may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the stage at which it was transferred or withdrawn.

### **Institution of proceedings, etc**

13. Every cause or matter shall be instituted and further proceedings therein or connected therewith shall be regulated in such manner as may be prescribed.

### **Service where defendant resides in Dependency**

14. (1) Any process or document in connection with a cause or matter which is addressed to and requires to be served upon a person residing in one of the Dependencies may be forwarded by the court of issue to a court having jurisdiction in that Dependency with a request that such process or document be served on such person.

(2) Where a court in St. Helena receives a process or document issued by a court in one of the Dependencies, with a request that such process or document be served on the person named therein, it shall proceed as if such process or document had been issued by itself and shall subsequently make a return of service to the court of issue together with the record of its proceedings, if any, in relation thereto.

### **Power to order discovery, etc**

15. Subject to such conditions and limitations as may be prescribed, the court may at any time either of its own motion or on the application of any party—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding, and return of documents or other material objects producible as evidence;

- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.

### **Summons to witness**

**16.** The provisions of sections 14 and 15 of this Ordinance shall apply as well to summonses to give evidence or to produce documents or other material objects as to other processes.

### **Penalty for default**

**17.** The court may compel the attendance of any person to whom a summons has been issued under section 15 of this Ordinance, and who has failed to appear in answer to such summons, and for that purpose may—

- (a) issue a warrant for the arrest of any such person;
- (b) attach and sell his property;
- (c) impose a fine on him not exceeding £50;
- (d) order him to furnish security for his appearance, and in default commit him to prison.

### **Judgment**

**18.** The court, after a cause or matter has been heard or otherwise determined in such manner as may be prescribed, shall pronounce judgment or, as the case may be, make an order, and thereafter such judgment or order shall be entered in the prescribed manner.

### **Interest**

**19. (1)** Where an agreement for the payment of interest is sought to be enforced, and the court is of opinion that the rate agreed to be paid is harsh and unconscionable and ought not to be enforced by legal process, the court may give judgment for the payment of interest at such rate as it may think just.

**(2)** Where and in so far as a judgment is for the payment of money, the court may order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the institution of the action to the date of judgment in addition to any interest adjudged on such principal sum for any period prior to the institution of the action, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of judgment to the date of payment or to such earlier date as the court thinks fit.

### **Costs**

**20. (1)** Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all causes, matters and issues shall be in the discretion of the court and the court shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the court has no jurisdiction to try the cause or matter shall be no bar to the exercise of such powers:

Provided that the costs of any cause, matter or issue shall be awarded to the party in whose favour the judgment or order in such cause, matter or issue is pronounced or made unless the court, for reasons to be recorded in writing, otherwise orders.

(2) The court may order interest on costs to be paid at any rate not exceeding six *per centum* per annum and such interest shall be added to the costs and shall be recoverable as such.

### PART III EXECUTION

#### Application to Orders

21. The provisions of this Ordinance relating to the execution of judgments shall, so far as they are applicable, be deemed to apply to the execution of orders.

#### Definition of “court which pronounced judgment”

22. In this Part of this Ordinance, “**court which pronounced a judgment**”, or similar words having a like meaning, shall, in relation to the execution of judgments, unless the context otherwise requires, be deemed to include—

- (a) where the judgment to be executed has been pronounced by a court in the exercise of its appellate jurisdiction, the court of first instance; and
- (b) where the court of first instance has ceased to exist or to have jurisdiction to execute the judgment, the court which, if the cause or matter wherein the judgment was pronounced were instituted at the time of making the application for the execution of the judgment, would have jurisdiction to try such cause or matter.

#### Court by which judgment may be executed

23. A judgment may be executed either by the court by which it was pronounced or by the court to which it is sent for execution.

#### Transfer of judgment

24. (1) The court which pronounced a judgment may, on the application of the judgment-creditor, and in such manner as may be prescribed, send such judgment for execution to a Magistrates’ Court in one of the Dependencies—

- (a) if the person against whom the judgment is pronounced actually and voluntarily resides, or carries on business, or personally works for gain, in that Dependency; or
- (b) if such person has no property within St. Helena sufficient to satisfy such judgment and has property in that Dependency; or
- (c) if the court which pronounced the judgment considers for any other reason, which it shall record in writing, that the judgment should be executed in that Dependency.

(2) The Supreme Court may of its own motion send a judgment pronounced by it for execution to a court of inferior but competent jurisdiction.

#### Result of execution proceedings to be certified

25. The Magistrate’s Court on receiving for execution a judgment of a court in one of the Dependencies shall execute the same as if it were a judgment pronounced by itself and shall

certify to such court the fact of such execution, or if it fails to execute such judgment, the circumstances of such failure.

### **Power of courts in executing transferred judgment**

**26. (1)** A court executing a judgment sent to it shall have the same powers in executing such judgment as if it were a judgment of that court.

**(2)** All persons disobeying or obstructing the execution of the judgment shall be punishable by such court in the same manner, and its orders in executing such judgment shall be subject to the same rules of court in respect of appeal, as if it were a judgment of such court.

### **Questions to be determined by the court executing judgment**

**27. (1)** All questions arising between the parties to the cause or matter in which the judgment was pronounced, or their representatives, and relating to the execution, discharge, or satisfaction of the judgment, shall be determined by the court executing the judgment and not by separate proceedings.

**(2)** For the purposes of this section, a plaintiff whose cause or matter has been dismissed, and a defendant against whom a cause or matter has been dismissed, are parties to the cause or matter.

### **Execution barred in certain cases**

**28. (1)** Where an application has been made for the execution of a judgment, not being a judgment granting an injunction, and such application has been heard and determined, no order for the execution of such judgment shall be made upon any fresh application presented after the expiration of twelve years from—

- (a)** the date of the judgment sought to be executed; or
  - (b)** where the judgment or any subsequent order directs any payment of money, or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the judgment.
- (2)** Nothing in this section shall be deemed—
- (a)** to preclude the court from ordering the execution of a judgment upon an application presented after the expiration of the said term of twelve years where the judgment-debtor has, by fraud or force, prevented the execution of the judgment at some time within twelve years immediately before the date of the application; or
  - (b)** to limit or otherwise affect the operation of any law of limitation for the time being in force in St. Helena.

### **Transferee**

**29.** Every transferee of a judgment shall hold the same subject to the rights and remedies, if any, which the judgment-debtor might have enforced against the original judgment-creditor.

### **Personal representative**

**30. (1)** Where a judgment-debtor dies before the judgment has been fully satisfied, the judgment-creditor may apply to the court which pronounced the judgment to execute the

same against the personal representative of the deceased, or against any person who has intermeddled with the estate of the deceased.

(2) Where the judgment is executed against such personal representative, or against any such person as aforesaid, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the court executing the judgment may, of its own motion or on the application of the judgment-creditor, compel such personal representative or person to produce such accounts as it thinks fit.

### **Powers of court to enforce execution**

31.<sup>3</sup> Subject to such conditions and limitations as may be prescribed, the court may, on the application of the judgment-creditor, order execution of a judgment—

- (a) by delivery of any property specifically ordered to be delivered or recovered;
- (b) by the attachment and sale, or by sale without attachment, of any property;
- (c) by the attachment of debts;
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require.

### **Enforcement of judgment against personal representative**

32. (1) Where a judgment is pronounced against a party as the personal representative of a deceased person, and the judgment is for the payment of money out of the property of the deceased person, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor, and he fails to satisfy the court that he has duly applied such property of the deceased person as is proved to have come into his possession, the judgment may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the court in the same manner as if the judgment had been against him personally.

### **Sections 33 – 36<sup>4</sup>**

### **Property liable to attachment and sale in execution of judgment**

37. (1) The following property shall be liable to attachment or attachment and sale in execution of a judgment, namely, goods, money, bank notes, cheques, bills of exchange, promissory notes, Government securities, bonds or other securities for money, debts, salary or wages (notwithstanding that any such salary or wages may not have accrued due at the time of attachment), shares in a corporation and, save as hereinafter provided, all other movable property belonging to the judgment-debtor, or over which or the profits of which he has a disposing power which he may exercise for his own benefit, whether the same is held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following shall not be liable to such attachment or sale—

- (a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgment-debtor and of his wife and children;
- (b) tools of artisans, and where the judgment-debtor is an agriculturalist, such implements of husbandry and such livestock and agricultural produce not

<sup>3</sup> Section 31 amended by Ord. 1 of 2001

<sup>4</sup> Sections 33, 34, 35 and 36 repealed by Ord. 1 of 2001

exceeding in value the sum of £25 as may, in the opinion of the court, be necessary to enable him to earn his livelihood;

- (c) books of account;
- (d) a mere right to sue for damages;
- (e) any right of personal service;
- (f) any stipend or gratuity allowed to pensioners of the Crown or the dependents of such pensioners;
- (g) the salary or wages of any public officer or any person privately employed to the extent of one half of such salary or wages;
- (h) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (i) a right of future maintenance;
- (j) any fund or allowance declared by law to be exempt from attachment or sale in execution of a judgment.

(2) Any stipend, gratuity, pension or salary mentioned in paragraphs (f) and (g) and any fund or allowance mentioned in paragraph (j) of the proviso to subsection (1) is exempt from attachment whether before or after it is actually payable.

(3) Subject to the provisions of paragraph (g) of the proviso to subsection (1) in the case of the salary of any public officer or any person privately employed, the attachment shall be made by a written order requiring the officer or person whose duty it is to disburse the salary to withhold every month such portion as the court may direct until the further orders of the court.

(4) Nothing in this section shall be deemed to affect the provisions of the Army Act or of any similar law for the time being in force.

### **Seizure of property in dwelling house**

**38. (1)** No person in executing any process under this Ordinance directing or authorising the seizure of movable property shall enter any dwelling house after sunset and before sunrise.

(2) No outer door of a dwelling house shall be broken open unless such dwelling house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto; but when the person executing any such process has duly gained access to any dwelling house he may break open the door of any room in which he has reason to believe any such property to be.

### **Property attached in execution of judgments of several courts**

**39. (1)** Where property not in the custody of any court is under attachment in execution of judgments of the Supreme Court and the Magistrates' Court, the Supreme Court shall receive and realise such property and determine any claim thereto and any objection to the attachment thereof.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a court executing one of such judgments.

### **Private alienation of property after attachment to be void**

**40.** Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein, and any payment to the judgment-debtor of any

debt, dividend,, or other moneys contrary to such attachment shall be void as against all claims enforceable under the attachment.

### **Documents of title to immovable property to be lodged with court before sale**

**41. (1)** The court may order the sale of any immovable property in execution of a judgment, but shall not proceed further with such sale until the documents of title to such property have been lodged with the court.

**(2)** The court ordering such sale shall have power to order the judgment-debtor to deliver up the documents of title to the property ordered to be sold or to appear and show cause why such documents should not be delivered up.

**(3)** Where the court is satisfied that a judgment-debtor has wilfully refused or neglected to comply with an order made under the provisions of subsection (2), the court may commit him to prison for a period not exceeding thirty days.

**(4)** If the court is satisfied that such documents of title have been lost or destroyed or that the judgment-debtor cannot be served with an order under this section or is wilfully withholding such documents, the court shall call upon the Registrar of Lands to issue a new certificate in the manner provided by section 34 of the Registered Land Ordinance.

### **Purchaser's title**

**42.** Where immovable property is sold in execution of a judgment such sale shall become absolute on the payment of the full purchase price to the court, or to the officer appointed by the court to conduct the sale.

### **Action against purchaser not maintainable on ground of purchase being on behalf of judgment-creditor**

**43. (1)** No action shall be maintained against any person claiming title under a purchase of immovable property sold in execution of a judgment on the ground that the purchase was made on behalf of the judgment-creditor or on behalf of someone through whom the judgment-creditor claims.

**(2)** Nothing in this section shall be so construed as to bar an action to obtain a declaration that the name of any purchaser as aforesaid was inserted in the conveyance fraudulently or without the consent of the real purchaser, or prejudicially affect the right of a third person to proceed against that property, though ostensibly sold to the purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

### **Distribution of assets**

**44.** Where property of a judgment-debtor is held by any court and more judgment-creditors than one have before the receipt of such assets by such court lodged applications in court for the execution of judgments for the payment of money against such judgment-debtor and have not obtained satisfaction thereof, such property, after deducting the costs of realisation, shall be distributed amongst such judgment-creditors in accordance with the priorities of the lodging of their several applications:

Provided that where any property is sold subject to a mortgage or charge, the mortgagee or person entitled to the benefit of such charge shall not be entitled to share in any surplus arising from such sale.

**Resistance to execution**

**45.** Where the court is satisfied that—

- (a) a person has obtained a judgment for the delivery or recovery of immovable property; or
- (b) the purchaser of immovable property sold in execution of a judgment has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf, and that such resistance or obstruction was without any just cause,

the court may, at the instance of the judgment-creditor or the purchaser, as the case may be, order the judgment-debtor or such other person to be detained in prison for a period not exceeding thirty days and may further direct that the judgment-creditor or the purchaser, as the case may be, be put in possession of the property.

PART IV  
INCIDENTAL PROCEEDINGS

**Power of court to issue commissions**

**46. (1)** Subject to such conditions and limitations as may be prescribed, a court may issue a commission—

- (a) to examine any person;
- (b) to make a local investigation;
- (c) to examine or adjust accounts; or
- (d) to make a partition.

**(2)** A commission for the examination of any person may be issued—

- (a) by the Supreme Court; or
  - (b) with the leave of the Supreme Court, by the Magistrates' Court,
- to a Magistrates' Court in any of the Dependencies.

**Commission from another court**

**47.** The Magistrates' Court on receiving a commission for the examination of any person from a Magistrates' Court in any of the Dependencies, shall examine such person pursuant thereto, and such commission, when it has been duly executed, shall be returned together with the evidence taken thereunder to the court from which it was issued.

**Letter of request**

**48.** The Supreme Court may issue a letter of request to examine a witness residing at any place not within St. Helena and its Dependencies whether for the purpose of proceedings in that court or in the Magistrates' Court.

**Commissions issued by foreign courts**

**49.** Commissions issued by foreign courts for the examination of persons in St. Helena shall be executed and returned in such manner as may from time to time be prescribed.



PART V  
ACTIONS IN PARTICULAR CASES

**When aliens may sue**

**50. (1)** Alien enemies residing in St. Helena with the permission of the Governor, and alien friends, may sue in the courts of St. Helena as if they were subjects of Her Majesty.

**(2)** No alien enemy residing in St. Helena without such permission, or residing in a foreign country, shall sue in any of such courts.

**When foreign State may sue**

**51. (1)** A foreign State may sue in any court of St. Helena, if—

*(a)* such State has been recognised by Her Majesty; and

*(b)* the object of the action is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity.

**(2)** Every court shall take judicial notice of the fact that a foreign State has or has not been recognised by Her Majesty.

**Where interpleader action may be instituted**

**52.** Where two or more persons claim adversely to one another the same debt, sum of money, or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may—

*(a)* apply to the court for relief by way of interpleader; or

*(b)* where an action dealing with the same subject matter is pending, intervene by motion on notice in such action,

for the purpose of obtaining a decision as to the person to whom payment or delivery shall be made, and of obtaining indemnity for himself:

Provided that where any action is pending in which the rights of all parties can be properly determined, no application for relief by way of interpleader shall be made.

PART VI  
SPECIAL PROCEEDINGS

**Arbitration**

**53.** All references to arbitration by an order in a cause or matter, and all proceedings thereunder, shall be regulated in such manner as may be prescribed.

**Power to state case for opinion of court**

**54.** Where any persons agree in writing to state a case for the opinion of the court, the court shall try and determine the same in the manner prescribed.

**Public nuisances**

**55. (1)** In the case of a public nuisance the Chief Secretary, or two or more persons having the consent in writing of the Chief Secretary, may institute an action, though no special

damage has been caused, for a declaration and injunction, or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of action which may exist independently of its provisions.

### Public charities

**56.**<sup>5</sup> Where any breach of trust created for public purposes of a charitable or religious nature is alleged, or where the direction of the court is deemed necessary for the administration of any such trust, the Attorney General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Attorney General, may apply to the Supreme Court to obtain an order—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in trustees;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorising the whole or any part of the trust property to be let, sold, mortgaged, or exchanged,
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

## PART VII

### SUPPLEMENTARY PROCEEDINGS

### Supplementary proceedings

- 57.** In order to prevent the ends of justice from being defeated the court may—
- (a) issue a warrant to arrest a defendant and bring him before the court to show cause why he should not furnish security for his appearance, and if he fails to comply with any order for security, commit him to prison;
  - (b) direct a defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the court, or order the attachment of any property;
  - (c) grant a temporary injunction, and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold;
  - (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;
  - (e) make such other orders pending the final determination of the rights of the parties as may appear to the court to be just and convenient.

<sup>5</sup> Section 56 amended by L.N. 3/1989

PART VIII  
APPEALS*Appeals from Original Judgments and Orders***Appeals from judgments of Magistrates' Court**

**58.** Unless it is otherwise expressly provided by this Ordinance, an appeal shall lie from the judgments or from any part of the judgments, and from the orders of the Magistrates' Court to the Supreme Court.

**Appeals from judgments of Supreme Court**

**59.** Unless it is otherwise expressly provided by this Ordinance, an appeal shall lie from the judgments or any part of the judgments, and from the orders of the Supreme Court to the Court of Appeal.

**Appeal from original judgment**

**60. (1)** An appeal may lie from an original judgment or order pronounced or made *ex parte*.

**(2)** No appeal shall lie from a judgment or order pronounced or made by the court with the consent of the parties in the cause or matter.

**Appeal from final judgment where no appeal from interlocutory judgment**

**61.** Where any party aggrieved by an interlocutory judgment or order from which he is entitled to appeal does not appeal from such judgment or order, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final judgment or order.

**No judgment to be reversed or modified for error or irregularity not affecting merits or jurisdiction**

**62.** No judgment or order shall be set aside, reversed or substantially varied, nor shall any case be remanded, on appeal on account of any misjoinder of parties of causes of action or any error, defect or irregularity in any proceedings in the cause or matter, which does not affect the merits of the case or the jurisdiction of the court.

*Appeals from Appellate Judgments and Orders***Second appeal**

**63. (1)** Save where otherwise expressly provided in this Ordinance or by any other law for the time being in force,<sup>1</sup> an appeal shall lie to the Court of Appeal from every judgment or order pronounced or made on appeal by the Supreme Court, on any of the following grounds, and none other, namely that—

(a) the decision is contrary to law or to some usage having the force of law;

<sup>1</sup> See Court of Appeal Ordinance, Cap. 8

- (b) the decision failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in observing the procedure provided by this Ordinance, or by any other law for the time being in force, may have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate judgment or order pronounced or made *ex parte*.

### Meaning of “order” in preceding section

64. For the purposes of sections 60 to 63, both inclusive of this Ordinance, “order” means the formal expression of an adjudication by a court in a matter which conclusively determines the rights of the parties with regard to the matters in dispute therein.

### No second appeal in certain actions, etc

65. No second appeal shall lie in any cause or matter where the amount or value of the subject matter of the original cause or matter does not exceed £50, unless special leave has been first obtained from the Supreme Court or the Court of Appeal.

### *Appeals from other Orders*

### Orders from which appeal lies

66. (1) An appeal shall lie from the following orders, and, save as otherwise expressly provided in this Ordinance, or by any law for the time being in force, from no other orders—

- (a) an order superseding an arbitration where the award has not been completed within the period allowed by the court;
- (b) an order on an award stated in the form of a special case;
- (c) an order modifying or correcting an award;
- (d) an order staying or refusing to stay a cause or matter where there is an agreement to refer to arbitration;
- (e) an order filing or refusing to file an award in an arbitration without the intervention of the court;
- (f) an order made under any of the provisions of this Ordinance imposing a fine or directing the arrest or detention in prison of any person except where such arrest or detention is in execution of a judgment or order;
- (g) any order made under rules of court from which an appeal is expressly allowed by rules of court.

(2) No appeal shall lie from any order made on appeal under this section.

(3) In this section and in section 67, “order” means any order other than an order defined in section 64 of this Ordinance.

### Other orders

67. (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a court in the exercise of its original or appellate jurisdiction; but, on any appeal, an error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in subsection (1), where any party aggrieved by an order from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

### **What courts to hear appeal**

**68.** Where an appeal lies from any order, it shall lie to the court to which an appeal would lie from the judgment in the cause in which such order was made.

### **Limitation for appeals**

**69. (1)** Except as otherwise specifically provided in any other law, every appeal shall be entered—

- (a) within sixty days of the date of the judgment or order of the court; or
- (b) within seven days of the date of the order of a registrar,

appealed against:

Provided that the appellate court may for good cause admit an appeal notwithstanding that the period of limitation prescribed by this section has elapsed.

(2) In computing the period of limitation prescribed by this section the time taken by the court or the registrar in making a copy of the judgment or order appealed against and of the proceedings upon which it is founded shall be excluded.

### *General Provisions Relating to Appeals*

### **Power of appellate court**

**70. (1)** Subject to such conditions and limitations as may be prescribed, an appellate court in the exercise of its appellate jurisdiction shall have power—

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken;
- (e) to order a new trial.

(2) Subject as aforesaid, an appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Ordinance on courts of original jurisdiction in respect of causes or matters instituted therein.

### **Procedure in appeals from appellate judgments and orders**

**71.** The provisions of this Part of this Ordinance relating to appeals from original judgments and orders shall, as far as may be, apply to appeals—

- (a) from appellate judgments and orders; and
- (b) from orders made under this Ordinance or under any special law in which a different procedure is not provided.

PART IX  
REVISION

**Revision by original court**

**72.** Any person considering himself aggrieved by a judgment or order from which no appeal is allowed by this Ordinance, may apply for a revision of the judgment or order to the court which pronounced the judgment or made the order, and the court may make such order thereon as it thinks fit.

**Revision by Supreme Court**

**73.** The Supreme Court may call for the record of any cause or matter which has been determined under this Ordinance by the Magistrates' Court, and if it appears that the Magistrates' Court has—

- (a) exercised a jurisdiction not vested in it by law; or
- (b) failed to exercise a jurisdiction so vested; or
- (c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice,

the Supreme Court may revise the judgment or order pronounced or made in such cause or matter and may make such order therein as it thinks fit:

Provided that such power of revision shall not be exercised—

- (i) unless the parties have first been given the opportunity of being heard; or
- (ii) where, from lapse of time or other cause, the exercise of such power would involve serious hardship to any person.

PART X  
MISCELLANEOUS

**Matters for which provision may be made by rules**

**74.** The Chief Justice may make rules of court, not inconsistent with the provisions of this Ordinance, to provide for any matter relating to the procedure of the courts in the exercise of their civil jurisdiction, and without prejudice to the generality of the foregoing, such rules may provide for all or any of the following matters—

- (a) the service of writs, summonses, notices and other processes and the proof of such service;
- (b) the scale of fees and charges to be paid in respect of proceedings under the provisions of the Ordinance;
- (c) the maintenance and custody, while under attachment, of livestock and other moveable property, the fees payable for such maintenance and custody, the sale of such livestock and property, and the proceeds of such sale;
- (d) procedure by way of counterclaim and the valuation of such counterclaims for the purposes of jurisdiction;
- (e) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment of debts;
- (f) procedure where a defendant claims to be entitled to contribution, indemnity or other relief or remedy against any person whether or not a party to the cause or matter;
- (g) summary procedure—

- (i) in actions in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest; arising on a contract express or implied, or on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty, or on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only, or on a trust; or
- (ii) in actions for the recovery of immovable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined for non-payment of rent, or against persons claiming under such tenant;
- (h) procedure in actions where the plaintiff seeks to recover a sum of money not exceeding £50;
- (i) procedure by way of originating summons;
- (j) consolidation of causes, matters, appeals and other proceedings;
- (k) delegation to the registrar, or a deputy registrar or other official of the court of any judicial, quasi-judicial and non-judicial functions and duties; and
- (l) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of civil courts.

### **Arrest other than in execution of judgment**

**75.** The provisions of sections 33, 34 and 36 shall apply, so far as may be, to all persons arrested under the provisions of this Ordinance.

### **Exemption from arrest under civil process**

**76. (1)** No judge shall be liable to arrest under civil process while going to, presiding in, or returning from, his court.

**(2)** Where any cause or matter is pending before a court having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their advocates and recognised agents, and their witnesses acting in obedience to a summons shall be exempt from arrest under civil process, other than process issued by such court for contempt of court, while going to or attending such court for the purpose of such cause or matter, and while returning from such court.

**(3)** Nothing in subsection (2) shall be so construed as to entitle a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a judgment.

### **Assessors in Admiralty causes**

**77. (1)** In any Admiralty or Vice-Admiralty cause the court may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct, one or more assessors to advise the court on any matter requiring nautical or professional knowledge; and any such assessor shall attend and assist accordingly.

**(2)** Every such assessor shall receive such fees for his attendance as may be prescribed, to be paid in such manner as the court may direct.

**(3)** Any person summoned to attend as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court, after being ordered

to attend, shall be liable by order of the court which he has failed to attend or from which he has departed in manner aforesaid to a fine not exceeding £25, and—

- (a) such fine may be levied by attachment and sale of any movable property belonging to such assessor;
- (b) the court may remit or reduce any fine so imposed; and
- (c) in default of the recovery of the fine by attachment and sale, such assessor may, by order of the court, be imprisoned as a civil prisoner for the period of fifteen days, unless such fine is paid before the end of the said period.

### **Oath on affidavit: by whom to be administered**

**78.** In the case of any affidavit under this Ordinance—

- (a) any court, the registrar, a justice of the peace, or a commissioner for oaths; or
  - (b) any officer or other person whom the Supreme Court may appoint in that behalf,
- may administer the oath to the deponent.

### **Orders and notices to be in writing**

**79.** All orders or notices served on or given to any person under the provisions of this Ordinance shall be in writing.

### **Application for restitution**

**80. (1)** Where and in so far as a judgment or order is varied or reversed on appeal or revision, the court of first instance shall, on the application of the party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position they would have occupied but for such judgment or order, or such part thereof as has been varied or reversed; and for that purpose the court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation, and mesne profits, which are properly consequential on such variation or reversal.

**(2)** No action shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under subsection (1).

### **Enforcement of liability of surety**

**81. (1)** Where any person has become liable as surety—

- (a) for the performance of any judgment or order or any part of any judgment or order; or
- (b) for the restitution of any property taken in execution of a judgment or order; or
- (c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under a judgment or order of the court in any cause or matter or in any proceeding consequent thereon,

the judgment or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of judgments and orders, and such person shall for the purposes of appeal be deemed a party.

**(2)** Before the execution of any judgment or order under the provisions of subsection (1), such notice in writing as the court in each case thinks sufficient of the application for such execution shall be given to the person who has become liable as surety.



**Consent or agreement by persons under disability**

**82.** In all causes and matters in which any person under disability is a party, any consent or agreement relating to any proceeding shall, if given or made with the express leave of the court by the next friend or guardian for the cause or matter, have the same force and effect as if such person were under no disability and had given such consent or made such agreement.

**Execution of judgment of Supreme Court before costs are ascertained**

**83.** Where the Supreme Court considers it necessary that a judgment or order pronounced or made in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the cause or matter can be ascertained, the court may order that the judgment or order be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs that the judgment or order may be executed as soon as the amount of the costs shall be ascertained.

**Enlargement of time**

**84.** Where any period of time is fixed or granted by the court for the doing of any act prescribed or allowed by this Ordinance. the court may, in its discretion, from time to time enlarge such period, even though the period originally fixed or granted may have expired.

**Power to make up deficiency of court fees**

**85.** Where the whole or any part of any fee prescribed by any law for the time being in force relating to court fees has not been paid, the court may, in its discretion, at any stage of the proceedings, allow the person by whom such fee is payable to pay such whole or part, as the case may be, of such court fee; and upon such payment such fee shall be deemed to have been paid in full in the first instance.

**Procedure of courts in England may be followed in certain cases**

**86.** Where and in so far as no or insufficient provision is made by this or any other Ordinance or by rules of court in relation to the procedure to be observed in any cause or matter, such cause or matter may be—

- (a) instituted and continued; and
- (b) heard and determined,

according to the procedure and practice of and in courts of justice in England according to their respective jurisdiction and authorities.

**Saving of inherent powers of court**

**87.** Nothing in this Ordinance shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

**Amendment of judgments or orders**

**88.** Clerical or arithmetical mistakes in judgments, or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.

**General power to amend**

**89.** The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any pleadings in a cause or matter; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on any such pleading.

---

**CIVIL PROCEDURE RULES – SECTION 74**

*(Legal Notices 5 of 1969, 25 of 1973 and Rules made 22/11/2000 and LN 2/2001)  
Made by the Chief Justice*

***Preliminary*****Short title**

1. The following Orders and Rules may be cited as the Civil Procedure Rules, and shall apply, as far as practicable, and unless otherwise expressly provided, to all causes and matters arising and to all proceedings taken on any causes and matters under the Civil Procedure Ordinance, or any Ordinance amending the same, hereinafter referred to as the Ordinance.

**Interpretation**

2. Unless the context otherwise requires, words and expressions defined in the Ordinance have in these Rules the meanings thereby assigned to them.

**ORDER 1**  
***Parties*****Joinder of plaintiffs**

1. All persons may be joined in one action as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or 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.

**Joinder of defendants**

2. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if separate actions were brought against such persons, any common question of law or fact would arise.

**Separate trials**

3. Where it appears to the court that any joinder of plaintiffs or of defendants may embarrass or delay the trial of the action, the court may order separate trials or make such other order as may be expedient.

**When plaintiff in doubt from whom redress to be sought**

4. When the plaintiff is in doubt as to the persons from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

**One person may sue or defend on behalf of others**

5. (1) Where there are numerous persons having the same interest in one action, one or more of such persons may, with the permission of the court, sue or be sued, or may defend in such action, on behalf of or for the benefit of all persons so interested; but the court shall in such case give notice of the institution of the action to all such persons either by personal service or, where, from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court may direct.

(2) Any persons on whose behalf or for whose benefit an action is instituted or defended under paragraph (1) may apply to the court to be made a party to such action.

**Misjoinder and non-joinder**

6. No action shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

**Court may strike out or add parties**

7. (1) At any stage of the proceedings in any action the court may, on such terms as it thinks just—

- (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
- (b) order any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the action may be effectually and completely determined and adjudicated upon, be added as a party,

but no person shall be added as a plaintiff without his consent.

(2) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the writ of summons and of the plaint shall be served on the new defendant, and, if the court thinks fit, on the original defendants.

(3) For the purpose of limitation, the proceedings as against any person added or substituted as defendant shall be deemed to have begun only on the service of the writ of summons on him.

**Appearance of one of several plaintiffs or defendants for others**

8. (1) Where there are more plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead, or act for such other in any proceedings, and in like manner, where there are more defendants than one, any one or more of them may be authorised by any other of them to appear, plead, or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in the case.

## ORDER 2

*Actions by or against corporations***Verification of proceedings**

1. In any cause in which a corporation is a party any pleading may be signed on behalf of the corporation by the Secretary or by any director, local manager or other principal servant of the corporation in St. Helena.

**Service on corporation**

2. Subject to any statutory provision regulating service of process, where the corporation is a defendant the writ may be served—

- (a) on the secretary, or on any director, local manager or other principal servant of the corporation in St. Helena; or
- (b) by leaving it at the corporation's registered office in St. Helena or, if there is no such registered office, then at the place where the corporation carries on business.

## ORDER 3

*Actions by or against firms and persons  
carrying on business in names other than their own***Name of firm may be used**

1. Any two or more persons claiming or being liable as partners and carrying on business in St. Helena may sue or be sued in the name of the firm, if any, of which such persons were partners at the time of the accruing of the cause of action, 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, at such time, partners in such firm, to be furnished and verified in such manner as the court may direct.

**Service**

2. (1) Where persons are sued as partners in the name of their firm, the writ shall be served—

- (a) upon any of the partners; or
- (b) at the principal place at which the partnership business is carried on within St. Helena upon any person having, at the time of service, the control or management of the partnership business there; or
- (c) as the court may direct,

and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without St. Helena.

(2) In the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the action or matter, the summons shall be served upon every person in St. Helena whom it is sought to make liable.

**Appearance in action against firms**

3. Any person served as a partner under rule 2 of this Order but who denies that he was a partner or liable as such at any material time may enter a defence stating therein that he

does so as a person served as a partner of the defendant firm, but who denies that he was a partner at the material time, and in any such case the court may—

- (a) determine the question of the liability of the person so served as a preliminary issue; or
- (b) direct that the question of the liability of such person and of the defendant firm be determined on the trial of the action.

#### **Execution in actions, etc, between partners**

4. No execution shall be issued in any cause or matter between a firm and one or more of the partners therein, or in a cause or matter between firms having one or more partners in common, except by leave of the court; and, on application for leave to issue such execution, all such accountings and inquiries may be directed to be taken and made and such directions given as may be just.

#### **Actions, etc, against person carrying on business in name other than his own**

5. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

#### **ORDER 4**

#### ***Actions by or against trustees, etc***

#### **Representation of beneficiaries in actions concerning trust property**

1. In all causes and matters concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make such persons parties to the cause or matter, but the court may, if it thinks fit, order them or any of them to be made parties.

#### **Joinder of trustees, etc**

2. Where there are several trustees, executors or administrators, they shall all be made parties to a cause or matter against one or more of them:

Provided that executors who have not proved the testator's will, and trustees, executors and administrators outside St. Helena, need not be made parties.

#### **ORDER 5**

#### ***Actions by or against minors and persons of unsound mind***

#### **Minor to sue by next friend**

1. (1) Every cause or matter by a minor shall be instituted in his name by a person to be called the next friend of the minor.

(2) Before the name of any person is used in any cause or matter as the next friend of any infant, such person shall endorse on the plaint his consent to act in such capacity.

**Guardian *ad litem* for minor defendant**

2. (1) Where the defendant is a minor, the court, on being satisfied as to the fact of his minority, shall appoint a proper person to be guardian *ad litem* of such minor.

(2) No appointment shall be made under paragraph (1) unless the court is satisfied that the proposed guardian has no interest in the matters in controversy in the cause or matter adverse to that of the minor and that he is a fit person to be so appointed.

(3) No appointment shall be made under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objections which may be urged on behalf of any person served with notice under this paragraph.

**Who may act as next friend or be appointed guardian *ad litem***

3. (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian *ad litem*, provided that the interest of such person is not adverse to that of the minor, and that he is not, in the case of next friend, a defendant, or, in the case of a guardian *ad litem*, a plaintiff.

(2) Where a minor has a guardian appointed or declared by a competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian *ad litem*, unless the court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act, or be appointed, as the case may be.

(3) No person shall be appointed a guardian *ad litem* without his consent.

(4) Where there is no other person fit and willing to act as guardian *ad litem*, the court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties, or out of any fund in court in which the minor is interested, and may give directions for the payment or allowance of such costs as justice and the circumstances of the case may require.

**Representation of minor**

4. (1) Every application to the court on behalf of a minor shall be made by his next friend or by his guardian *ad litem*.

(2) Every order made in a cause or matter on any application before the court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian *ad litem*, as the case may be, may be set aside, and, where the party at whose instance such order was obtained, knew or might reasonably have known, the fact of such minority, with costs to be paid by such party.

**Agreement or compromise on behalf of minor**

5. (1) No next friend or guardian *ad litem* shall, without the leave of the court expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the cause or matter in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the court so recorded shall be voidable against all parties other than the minor.

**Retirement of next friend**

6. (1) Unless otherwise ordered by the court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(2) An application under this rule for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed and also that he has no interest adverse to that of the minor.

**Removal of next friend**

7. (1) Where the interest of the next friend of a minor is adverse to that of the minor, or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or during the pendency of the cause or matter ceased to reside in St. Helena, or for any other sufficient cause, the court, if satisfied of the sufficiency of the cause, may order the next friend to be removed and make such other order as to the costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared who desires to be himself appointed in the place of the next friend, the court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already in the action or matter as it thinks fit.

**Stay of proceedings on removal, etc, of next friend**

8. On the retirement, removal or death of the next friend of the minor, further proceedings shall be stayed until the appointment of a next friend in his place.

**Removal, etc, of guardian *ad litem***

9. The provisions of this Order relating to the retirement or removal of a next friend shall apply with all necessary modifications to the retirement or removal of a guardian *ad litem*.

**Course to be followed by minor plaintiff or applicant on attaining majority**

10. (1) A minor plaintiff, or a minor not a party to a cause on whose behalf an application is pending, shall, on attaining majority, elect whether he will proceed with the cause or application.

(2) Where he elects to proceed with the cause or application the court shall discharge the next friend and thereupon the title of the cause or application shall be corrected so as to read thus—

“A.B., late a minor, by C.D., his next friend, but now having attained majority.”

(3) Where he elects to abandon the cause or application the court shall, if he is the sole plaintiff or sole applicant, order that the action or the application be dismissed and make such order as to payment of the costs incurred by the defendant or opposite party, or which may have been paid by the next friend, as it may think fit.



(4) No order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

### **Where co-plaintiff attaining majority desires to repudiate action**

11. (1) Where a minor co-plaintiff on attaining majority desires to repudiate the cause, the court, if it finds that he is not a necessary party, shall dismiss him from the cause on such terms as to costs or otherwise as it thinks fit, after notice to the next friend, any co-plaintiff, and the defendant.

(2) The costs of all or any proceedings theretofore had in the cause shall be paid by such persons as the court directs.

(3) Where the minor co-plaintiff desiring to repudiate is a necessary party to the cause, the court may direct him to be made a defendant.

### **Moneys recovered by minors**

12. (1) In any action in which money is claimed by or on behalf of a minor suing either alone or jointly with other parties, whether for damages or otherwise, no settlement or compromise or acceptance of money paid into court, whether before or at or after the trial or hearing, shall as regards the claims of such minor be valid without the sanction of the court.

(2) All money recovered in any such action in respect of the claims of any such minor, whether by judgment or by settlement, compromise, payment into court or otherwise, whether before or at or after the trial or hearing, shall be dealt with in accordance with directions given by the court for the benefit of such minor during his minority.

(3) Directions given under this rule may include any general or special directions which the court may think fit to give, and without prejudice to the generality of the foregoing power, such directions may provide—

- (a) that the money recovered shall, as to the whole or part thereof, be paid into the Supreme Court and invested or otherwise dealt with by that court;
- (b) for the manner in which the money is to be applied or dealt with, or any payment made to the minor, or to the next friend, in respect of moneys paid or expenses incurred for or on behalf of the minor;
- (c) for the manner in which the money is to be applied or dealt with for the maintenance and benefit of the minor.

### **Application to persons of unsound mind**

13. The provisions of rules 1 to 12 of this Order, so far as they are applicable, shall extend to persons adjudged to be of unsound mind, and to persons who though not so adjudged are found by the court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interest when suing or being sued.

## **ORDER 6**

### ***Recognised agents and advocates***

### **Appearances, etc, may be in person by recognised agent or advocate**

1. (1) An application to, or appearance or act in, any court required or authorised to be made or done by a party in such court may, except where otherwise expressly provided by

any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by an advocate duly appointed to act on his behalf:

Provided that any such appearance shall, if the court so directs, be made by the party in person.

(2) Notwithstanding the provisions of paragraph (1), a person authorised by a party may, with the leave of the court, advocate the cause of such party in any proceeding, but no such person shall be entitled to charge or be paid any fee or reward for so doing.

### **Recognised agents**

2. The recognised agent of a party by whom such appearances, applications and acts may be done is—

- (a) a person holding a power of attorney authorising him to make such appearances and applications, and do such acts on behalf of a party;
- (b) a person carrying on trade or business for and in the names of a party not resident within the local limits of the jurisdiction of the court within which limits the appearance, application, or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances applications and acts.

### **Service of process on recognised agent**

3. (1) Process served on the recognised agent of a party shall be as effectual as if the same had been served on the party in person, unless the court otherwise directs.

(2) The provisions of these rules for the service on a party shall apply to the service of process on his recognised agent.

### **Agent for acceptance of service of process**

4. (1) In addition to the recognised agents described in rule 2 of this Order, any person residing within the jurisdiction of the court may be appointed an agent to accept service of process.

(2) Such appointment may be special or general, and shall be made by an instrument in writing signed by the principal, and such instrument, or, if the appointment is general, a certified copy thereof, shall be filed in court.

## **ORDER 7**

### ***Frame of action***

### **Action to include the whole claim, except part relinquished**

1. (1) Every action shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the action within the jurisdiction of any court.

(2) Where a plaintiff omits to sue in respect of or relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion omitted or relinquished.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs he shall not afterwards sue for any relief so omitted.

**Joinder of causes of action**

2. (1) Save as otherwise provided, a plaintiff may unite in the same action several causes of action against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same action.

(2) Where causes of action are united, the jurisdiction of the court as regards the action shall depend on the amount or value of the aggregate of such causes of action at the date of instituting the action.

**Claims by or against executor, etc**

3. No claim by or against an executor or administrator, as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

**Separate trials**

4. Where it appears to the court that any causes of action joined in one action cannot be conveniently tried or disposed of together, the court may order separate trials or may make such order as may be expedient.

**Declaratory judgment**

5. No action 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 8

*Institution of proceedings***Actions to be commenced by plaintiff**

1. (1) Subject to the provisions of any Ordinance for the time being in force relating to the procedure to be observed in civil proceedings before any court and of any rules, all proceedings the object of which is—

- (a) to obtain relief against any person; or
- (b) to compel any person to do or abstain from doing any act, shall be commenced by plaintiff.

(2) Every plaintiff shall be delivered by the plaintiff or his advocate to the Registrar, and shall comply with the rules, so far as they are applicable, contained in Orders 9 and 10.

(3) Notwithstanding the provisions of paragraph (2) of this rule, a plaintiff may appear before the Registrar and state verbally—

- (a) the facts which he alleges as constituting the cause of action; and
  - (b) the particulars of the relief or remedy to which he claims to be entitled,
- and thereupon the Registrar shall prepare a plaintiff for such plaintiff.

(4) In this rule, “**Registrar**” includes such officer of the court as the Chief Justice may appoint for the purpose of receiving, or as the case may be, preparing plaints.

### **Action Book**

2. The Registrar shall enter particulars of every plaint and of all proceedings subsequent thereto in a register to be kept for the purpose and called the Action Book; such entries shall be numbered according to the order in which the plaints are admitted.

### **ORDER 9**

### ***Pleadings generally***

#### **Pleading to state material facts and not evidence**

1. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for 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, numbered consecutively. Dates, sums, and numbers shall be expressed in figures.

#### **Particulars to be given where necessary**

2. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be necessary, such particulars with dates shall be stated in the pleadings.

#### **Further and better particulars**

3. The court may, at any stage of the proceedings order 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.

#### **New fact to be specially pleaded**

4. The defendant or plaintiff, as the case may be, shall raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, is if not raised would be likely to take the opposite party by surprise.

#### **Denial to be specific**

5. It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for the plaintiff in his written statement in reply to deny generally the grounds alleged in a defence by way of counterclaim, but each party must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

**Effect of document to be stated**

6. 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.

**Presumptions of law**

7. Neither party need in any pleading 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; for example, 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.

**Technical objection**

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

**Amendment of pleadings**

9. The court may, at any stage of the proceedings, allow either party to amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

**Amendment to be filed and served**

10. Whenever any pleading is amended before the trial of the action, such amended document shall be delivered to the Registrar and a duplicate of the amended document shall be served upon the opposite party in the manner provided for the service of a writ.

**Reply to amendment**

11. Where an amended pleading has been served under rule 10, the party so served shall plead to the amended pleading or amend his pleading within fifteen days of the service of the amendment, and in case the party so served does not plead again or amend within the time above-mentioned, he shall be deemed to rely on his original pleading in answer to such amendment.

**Pleading to be signed**

12. Every pleading shall be signed by the party lodging such pleading.

**Points of law may be raised by pleading**

13. Any party shall be entitled to raise by his pleading any issue on a point of law, and any issue so raised shall be disposed of by the court at or after the hearing:

Provided that by order of the court such issue may be set down for hearing and disposed of at any time before the hearing.

**Dismissal of action**

**14.** If, in the opinion of the court, the decision of the court on an issue on a 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 may thereupon dismiss the action or make such other order therein as may be just.

**Striking out or amending pleading**

**15. (1)** A court may at any stage of the proceedings order to be struck out or amended any pleading or any part of any pleading on the ground that it—

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

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

- (2)** All orders made in pursuance of this rule shall be appealable as of right.

**ORDER 10*****Plaint*****Particulars to be contained in plaint**

**1.** Every plaint shall contain the following particulars—

- (a) the name of the court in which the action is brought;
- (b) the name, description, and place of residence of the plaintiff;
- (c) the name, description, and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or defendant is a minor or person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;
- (f) the relief or remedy which the plaintiff claims;
- (g) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished;
- (h) a statement of the value of the subject-matter of the action so far as the case admits.

**Money actions**

**2.** Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed, except where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant.

**Where the subject-matter is immovable property**

**3.** Where the subject-matter of the action is immovable property, the plaint shall contain a description of the property sufficient to identify it.

**Where plaintiff sues as representative**

4. Where the plaintiff sues in a representative capacity, the plaintiff shall show that he has—
- (a) an actual existing interest in the subject-matter; and
  - (b) taken the steps, if any, necessary to enable him to institute an action concerning it.

**Limitation**

5. Where the action is instituted after the expiration of the period prescribed by the law of limitation the plaintiff shall show the grounds upon which exemption from such law is claimed.

**Relief claimed to be stated**

6. Every plaintiff shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may be given as the court may think just to the same extent as if it had been asked for; and the same rule shall apply to any relief claimed by the defendant in his statement of defence.

**Shop-books and accounts**

7. (1) Save in so far as may otherwise be provided by any enactment relating to the evidence of entries in banker's books, where the plaintiff sues on an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of delivering the plaint together with a copy of the entry on which he relies.

(2) The court, or such officer as it appoints in this behalf, shall forthwith mark the entry for the purpose of identification and after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

## ORDER 11

***Issue and service of writ of summons*****Writ of summons**

1. (1) When a cause has been duly instituted in the Supreme Court a writ of summons shall be issued to the defendant—

- (a) ordering him to deliver a defence within a time to be specified therein; or
- (b) if the Chief Justice so directs, ordering him to appear and answer the claim on a day to be therein specified for the final disposal of the action.

(2) A defendant to whom a writ of summons has been issued under paragraph (1) may enter his defence or appear, as the case may be, in manner hereinafter provided—

- (a) in person;
  - (b) by a recognised agent; or
  - (c) by an advocate duly instructed.
- (3) Every writ of summons shall be signed by the Registrar.
- (4) Every writ of summons shall be accompanied by a copy of the plaint.

**Where summons is for final disposal**

2. Where the writ of summons is for the final disposal of the action, it shall direct the defendant to produce on the day fixed for his appearance all documents in his possession or power upon which he intends to rely in support of his case, and all witnesses whom he intends to call.

**Delivery of summons for service**

3. Where the court has issued a writ of summons to a defendant—
- (a) it may be delivered for service to the plaintiff or to a police officer; or
  - (b) it may be sent to any court having jurisdiction in the place where the defendant resides.

**Mode of service**

4. (1) Service of a writ of summons shall be made by delivering or tendering a duplicate thereof signed by the Registrar.

(2) Save as otherwise prescribed, where there are more defendants than one, service of the writ shall be made on each defendant.

(3) Service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

**Service on agent by whom defendant carries on business**

5. (1) In an action against a person who does not reside within the limits of the jurisdiction of the court by which the writ of summons is issued, service on any manager, agent or principal servant of such person within such limits shall be deemed good service.

(2) For the purposes of this rule, the master of a ship shall be deemed to be an agent of the owner or charterer.

**Proof of service**

6. (1) Where a duplicate of the writ of summons is duly delivered or tendered to the defendant personally or to an agent or other person on his behalf, the defendant or such agent or other person shall be required to endorse an acknowledgement of service on the original writ of summons:

Provided that if the court is satisfied that the defendant or his agent or other person on his behalf has refused so to endorse, the court may declare the writ of summons to have been duly served.

(2) The person serving a writ of summons shall, in all cases in which the summons has been served under paragraph (1) of this rule, make and annex to the original writ of summons an affidavit of service stating the time when and the manner in which the writ was served, and the name and address of the person, if any, identifying the person served and witnessing the delivery or tender of the writ.

(3) The court may in any case examine the serving officer on oath, touching his proceedings, and may make such further inquiry in the matter as it thinks fit.



**Substituted service**

7. (1) Where the court is satisfied that for any reason the writ of summons cannot be served in the ordinary way, the court shall order the writ to be served by affixing a copy thereof in some conspicuous place in the court house, and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the court thinks fit.

(2) Substituted service under an order of the court shall be as effectual as if it had been made on the defendant personally.

(3) Where the court makes an order for substituted service it shall fix such time for the delivery of the defence or, as the case may be, the appearance of the defendant as the case may require.

**Service on members of armed forces, police officers and prisoners**

8. (1) Where the defendant is confined in a prison, the writ of summons shall be delivered to the officer in charge of the prison for service on the defendant.

(2) Where the defendant is a member of the armed forces or is a police officer, the court shall send the writ of summons for service to his commanding officer, together with a copy to be retained by the defendant.

(3) Where a writ of summons is delivered or sent to any person for service under this rule, such person shall be bound to serve it, if possible, and to return it under his signature with a written acknowledgment signed by the defendant, and such acknowledgment shall be deemed to be evidence of service.

(4) Where from any cause service is impossible, the writ of summons shall be returned to the court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

**Service out of jurisdiction**

9. Service outside the jurisdiction of the Supreme Court (that is to say, elsewhere than in St. Helena and its Dependencies) of a writ of summons or notice of a writ of summons may be allowed by the Supreme Court whenever—

- (a) the whole subject-matter of the action is immovable property situated within the jurisdiction (with or without rents and profits);
- (b) any act, deed, will, contract, obligation or liability affecting immovable property situated within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action;
- (c) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction;
- (d) the action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situated within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of St. Helena and its Dependencies;
- (e) the action is founded on any breach or alleged breach within the jurisdiction of any contract wherever made which, according to the terms thereof, ought to be performed within the jurisdiction;

- (f) any injunction is sought as to anything 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;
- (g) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction;
- (h) the action is founded on a tort committed within the jurisdiction;
- (i) any person out of the jurisdiction is a necessary party to a probate action; or
- (j) if for any other reason the Supreme Court sees fit so to order.

### **Application to be supported by evidence**

**10.** Every application for leave to serve such 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 such defendant is or probably may be found, and whether such defendant is a Commonwealth citizen or not, and the grounds on which the application is made; and no such leave shall be granted unless it appears to the court that the case is a proper one for service out of the jurisdiction under this Order.

### **Time for delivering defence**

**11.** Any order giving leave to effect such service or give such notice out of the jurisdiction shall specify a time after such service or notice within which such defendant is to deliver his defence, such time to depend on the place or country where or within which the summons is to be served or the notice given.

### **Service where defendant is Commonwealth citizen, etc**

**12.** Where leave to serve a writ of summons out of the jurisdiction has been granted under rule 9 of this Order and the defendant is a Commonwealth citizen or resides in a Commonwealth country out of St. Helena and its Dependencies, the summons shall be served in such manner as the court may order.

### **Where defendant is not Commonwealth citizen, etc**

**13.** Where the defendant is not a Commonwealth citizen or is not in a Commonwealth country, notice of the writ of summons, and not the writ itself, shall be served upon him.

### **Service in a foreign country**

**14.** The procedure for the service in a foreign country of a notice of a writ of summons or other order or process of the court shall, subject to such modifications and adaptations as may be necessary, be in accordance with the provisions of Order 11 of the Rules of the Supreme Court 1965 of England, or any rules amending or replacing the same regulating the service in a foreign country of any process of that court.

### **Service of foreign legal process in St. Helena**

**15.** Wherein any civil or commercial proceedings pending before a court or tribunal of a foreign country a letter of request from such court or tribunal for service on any person in

St. Helena of any process or citation in such proceedings is transmitted to the Supreme Court by the Governor with an intimation that it is desirable that effect should be given to the same, the following procedure shall be adopted—

- (a) the letter of request for service shall be accompanied by a translation thereof in the English language, and by two copies of the process of citation to be served, and two copies thereof in the English language;
- (b) service shall be effected by delivering to and leaving with the person to be served one copy of the process to be served, and one copy of the translation thereof, in accordance with the rules and practice of the Supreme Court of St. Helena regulating service of process;
- (c) after service has been effected the process server shall return to the Registrar of the Supreme Court one copy of the process together with the evidence of service by affidavit of the person effecting the service verified by a Commissioner for Oaths and particulars of charges for the cost of effecting such service;
- (d) the particulars of charges for the cost of effecting service shall be submitted to the Registrar of the Supreme Court, who shall certify the correctness of the charges, or such other amount as shall be properly payable for the cost of effecting service;
- (e) the Registrar shall transmit the letter of request for service received from the foreign country to the Governor, together with the evidence of service with a certificate appended thereto duly sealed with the seal of the Supreme Court.

### **General powers of the court**

**16.** The court may make all such orders for substituted service or otherwise as may be necessary to give effect to rule 15 of this Order.

### **Interpretation**

**17.** In this Order, unless the context otherwise requires—  
“**action**” includes “matter”;  
“**plaint**” includes “petition”.

### **ORDER 12**

### ***Defence and Counterclaim***

### **Delivery of defence**

**1. (1)** The defendant may, and if so required by the court at the time of the issue of the writ of summons or at any time thereafter shall, at or before the first hearing or within such time as the court may prescribe, deliver a defence.

**(2)** Where a defendant has been served with a writ of summons in the form provided by paragraph (1)(a) of rule 1 of Order 11, he shall, unless some other or further order be made by the court, enter his defence within fifteen days after the date of service of the writ of summons.

**(3)** The provisions of paragraph (3) of rule 1 of Order 8 shall, with all necessary modifications, apply to the delivery of a defence under this rule as they apply to the delivery of a plaint under that rule.

**Set-off and counterclaim**

2. A defendant in an action may set-off, or set up by way of counterclaim, against the claim of the plaintiff, any right or claim, and such set-off or counterclaim shall have the same effect as a cross-action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross-claim.

**Pleading to damages**

3. No denial or defence shall be necessary as to the amount of damages claimed, but they shall be deemed to be put in issue in all cases, unless expressly admitted.

**Persons in representative capacity**

4. If either party wishes to deny the right of any other party to claim as executor, or as trustee, whether in bankruptcy or otherwise, or in any representative or other alleged capacity or the alleged constitution of any partnership firm, he shall deny the same specifically.

**Counterclaim to be specific**

5. Where any defendant seeks to rely upon any grounds as supporting a right of counterclaim, he shall, in his statement of defence, state specifically that he does so by way of counterclaim.

**Title of counterclaim**

6. Where the defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff together with any other persons, he shall in his defence specify the names of such other persons and shall deliver to the court his defence for service on the plaintiff together with a sufficient number of copies thereof for service on such other persons.

**Claim against person not a party**

7. (1) Where any person mentioned in rule 6 of this Order is not a party to the action, he shall be served with a copy of the defence and counterclaim, together with a writ of summons issued under rule 1 of Order 11.

(2) Any person not already a party to the action who is served with a writ of summons, defence and counterclaim as aforesaid may, unless some other or further order is made by the court, deliver a reply within fifteen days after service upon him of such writ, defence and counterclaim.

**Exclusion of set-off or counterclaim**

8. Where the defendant raises any claim by set-off or sets up a counterclaim, if the court is of the opinion that the claim thereby raised ought to be disposed of in an independent action, it may order that the set-off or counterclaim be excluded, and may make such order as to the trial of such set-off or counterclaim and as to costs as it may think fit.

## Discontinuance

9. If, in any case in which the defendant sets up a counterclaim, the action of the plaintiff is stayed, discontinued or dismissed, the defendant may, notwithstanding such stay, discontinuance or dismissal, proceed with such counterclaim.

## Judgment for balance

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

## Subsequent pleadings

11. (1) A plaintiff shall be entitled to file a reply within fifteen days after the defence or the last of the defences has been served upon him, unless the time is extended.

(2) No pleading subsequent to the reply shall be filed without the leave of the court, and then shall be filed only upon such terms as the court shall think fit.

(3) Where a counterclaim is pleaded, a defence thereto shall be subject to the rules applicable to defences.

### ORDER 13

### *Third Party Procedure*

## Third party notice

1. (1) Where a defendant claims as against any person not already a party to the action (hereinafter in this Order referred to as "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 some 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 as between the plaintiff and the defendant and the third party, or between any or either of them,

the defendant may, by leave of the court, issue a notice (hereinafter in this Order referred to as "a third party notice") to that effect.

(2) The procedure incidental to an application for leave to issue a third party notice and all subsequent proceedings thereafter shall, subject to such modifications and adaptations as may be necessary, be in accordance with the provisions of Order 16 of the Rules of the Supreme Court of England 1965, or any rules amending or replacing the same regulating third party proceedings in that Court.

## ORDER 14

*Death, insolvency and marriage of parties***Procedure where one of several plaintiffs or defendants dies and right to sue survive**

1. Where there are more plaintiffs or defendants than one, and any one of them dies, and where the cause of action survives or continues to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the cause or matter shall proceed.

**Procedure in case of death of one of several parties or of sole party, etc**

2. (1) Where—

- (a) a sole plaintiff or a sole surviving plaintiff, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues; or
- (b) one of two or more plaintiffs, or one of two or more defendants dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs or, as the case may be, to the surviving defendant or defendants alone,

the court shall cause the personal representative of the deceased plaintiff or, as the case may be, of the deceased defendant, to be made a party and shall proceed with the cause or matter.

2) The personal representative of a deceased defendant so made a party may make any defence appropriate to his character as such personal representative.

**Determination of question as to personal representative**

3. Where a question arises whether any person is or is not the personal representative of a deceased party, such question shall be determined by the court.

**Action not abated by marriage of female party**

4. (1) The marriage of a female plaintiff or defendant shall not cause the cause or matter to abate, but the court may proceed with such cause or matter to judgment, and, where the judgment is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the judgment may, with the leave of the court, be executed against the husband also.

**When plaintiff's insolvency bars action**

5. (1) The insolvency of a plaintiff in any cause or matter which the assignee or receiver might maintain for the benefit of his creditors shall not cause the cause or matter to abate, unless such assignee or receiver declines to continue such cause or matter or, unless for any special reason the court otherwise directs, to give security for the costs thereof within such time as the court may direct.

(2) Where the assignee or receiver neglects or refuses to continue the cause or matter, and to give such security within the time so ordered, the defendant may apply for the dismissal of such cause or matter on the ground of the plaintiff's insolvency, and the court may make an order dismissing the cause or matter and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

(3) Where a cause or matter abates or is dismissed under this rule, no fresh cause or matter shall be brought on the same cause of action:

Provided that the plaintiff or a person claiming to be the assignee or the receiver of an insolvent plaintiff may apply for an order to revive a cause or matter which has abated or to set aside an order of dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the action or matter, the court shall revive the same or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit.

### **Procedure in case of assignment before judgment**

6. In other cases of the assignment, creation, or devolution of any interest during the pendency of a cause or matter, the cause or matter may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.

### **Application of Order to appeals**

7. In the application of this Order to appeals, so far as may be, “**plaintiff**” includes an appellant, “**defendant**” a respondent, and “**cause or matter**” an appeal.

#### **ORDER 15**

#### ***Interrogatories, discovery and inspection***

### **Discovery by interrogatories**

1. (1) In any cause the plaintiff or defendant, by leave of the court, may deliver interrogatories in writing for the examination of the opposite parties, or any one or more of such parties.

(2) The procedure incidental to the delivery of interrogatories and all subsequent proceedings thereafter shall, subject to such modifications and adaptations as may be necessary, be in accordance with the provisions of Order 26 of the Rules of the Supreme Court of England, or any rules amending or replacing the same regulating discovery by interrogatories in that Court.

### **Discovery of documents**

2. Any party may, without filing any affidavit, apply to the court for an order directing any other party to state on oath the documents which are or have been in his power relating to any matter in question therein. On the hearing of such application the court may either refuse or adjourn the same, if satisfied that such statement is not necessary, or not necessary at that stage of the proceedings; or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit:

Provided that no such order shall be made unless the court is of opinion that it is necessary either for disposing fairly of the proceedings or for saving costs.

### **Affidavit of documents**

3. The affidavit to be made by a party against whom such an order as is mentioned in rule 2 of this Order has been made shall be in Form 10 of the Appendix with such variations as the case may require.

### **Production of documents**

4. (1) It shall be lawful for the court, at any stage of the proceedings, to order the production by any party thereto of such of the documents in his possession or power, relating to any matter in question in the proceedings, as the court shall think right; and the court may deal with such documents, when produced, in any manner as shall appear just.

(2) The court may, on the application of any party, at any time, and whether an affidavit of documents has or has not been ordered or made, make an order requiring any other party to state by affidavit whether any specific document, to be specified in the application, is, or has at any time been, in his possession or power; and if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or at some time had, in his possession or power the document specified in the application, and that it relates to the matters in question in the action or matter, or to some of them.

### **Inspection of documents referred to in pleadings or affidavits**

5. Every party to a cause or matter shall be entitled at any time to give notice to any other party in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his advocate, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf unless he satisfies the court that such document relates only to his own title, he being the defendant to the cause or matter, or that he had some other cause or excuse which the court shall deem sufficient for not complying with such notice, in which case the court may allow the same to be put in evidence on such terms as to costs and otherwise as the court shall think fit.

### **Order for inspection**

6. (1) Where the party served with a notice under rule 5 of this Order fails to comply therewith or objects to the inspection of any document, the court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit:

Provided that no such order shall be made unless the court is of opinion that it is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where, on an application for an order for inspection, privilege is claimed for any document, it shall be lawful for the court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

### **Verified copies**

7. Where inspection of any business books is applied for, the court may, if it 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 such affidavit shall state whether or not there are in the original book any, and if so what, erasures, interlineations or alterations:

Provided that, notwithstanding that such copy has been supplied, the court may order inspection of the book from which the copy was made.



**Noncompliance with order for discovery**

8. Where any party fails to comply with any order for discovery or inspection of documents he shall, if a plaintiff, be liable to have the action or matter 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 seeking discovery or inspection may apply to the court for an order to that effect, and an order may be made accordingly.

**Notice to produce documents in court**

9. A notice to produce documents at the hearing shall be in Form 13 of the Appendix, with such variations as circumstances may require. An affidavit of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

ORDER 16  
*Admissions*

**Notice of admission**

1. Any party may give notice by his pleadings or otherwise in writing, that he admits the truth of the whole or any part of the case of the other party.

**Judgment on admissions**

2. Where an admission of facts has been made, either on the pleadings or otherwise, the court may, at any stage of the proceedings pronounce such judgment or make such order upon such admission as it thinks fit, without waiting for the determination of any other question between the parties.

ORDER 17  
*Security for costs*

**Security for the costs of a defendant**

1. The court may if it deems fit order a plaintiff in any cause or matter to give security for the payment of all costs incurred by any defendant.

**Effect of failure to furnish security**

2. (1) In the event of such security not being furnished within the time fixed, the court shall make an order dismissing the cause or matter unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a cause or matter is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the cause or matter.

ORDER 18  
*Payment into court*

**Defendant may pay money into court**

1. (1) In any action to recover a debt or damages, any defendant may, at the time of delivering his defence, 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) Where any payment into court is made under this rule, there shall be served upon the plaintiff and upon every co-defendant (if any) a notice specifying the fact of such payment and the cause of action in respect of which such payment is made; such notice shall aver that the sum of money paid into court is sufficient to satisfy the specified cause of action.

**Acceptance of money paid into court**

2. (1) Where money is paid into court under rule 1 of this Order, the plaintiff may within fourteen days after receipt of notice of the payment, but in any case before the trial of the action begins—

- (a) where the money was paid in respect of the cause of action or all the causes of action in respect of which he claims, accept the money in satisfaction of that cause of action, or those causes of action, as the case may be; or
- (b) where the money was paid in respect of some only of the causes of action in respect of which he claims, accept in satisfaction of any such cause or causes of action the sum specified in respect of that cause or those causes of action in the notice of payment,

and notice of such acceptance shall be given to every defendant in the action.

(2) On the plaintiff accepting any money paid into court, all further proceedings in the action, or in respect of the specified cause or causes of action, to which the acceptance relates, shall be stayed both against the defendant making the payment and against any other defendant sued jointly with or in the alternative to him.

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

(4) A plaintiff who has accepted any sum paid into court shall, subject to the provisions of rule 3 of this Order and rule 12 of Order 5, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptance relates.

**Order for payment out of court in certain cases**

3. Where a plaintiff accepts any sum paid into court and that sum was so paid—

- (a) by fewer than all the defendants sued jointly or in the alternative;
- (b) with a defence of tender before action;
- (c) in an action to which rule 12 of Order 5 relates; or
- (d) in satisfaction either of a cause of action arising under the Fatal Accidents Acts, 1846 to 1959 and the Law Reform (Miscellaneous Provisions) Act, 1934, or of a

cause of action arising under the first mentioned Acts where more than one person is entitled to the money,  
the money in court shall not be paid out except in pursuance of an order of the court, and the order shall deal with the cause of the action or of the cause or causes of action to which the payment relates, as the case may be.

### **Money remaining in court**

4. If any money paid into court in an action is not accepted in accordance with rule 2 of this Order, the money remaining in court shall not be paid out except in pursuance of an order of the court which may be made at any time before or after the trial of the action; and where such an order is made before the trial the money shall not be paid out except in satisfaction of the cause or causes of action in respect of which it was paid in.

### **Counterclaim**

5. A plaintiff against whom a counterclaim is made and any other defendant to a counterclaim may pay money into court in accordance with rule 1 of this Order; and rules 1, 2 (except paragraph 3 thereof), 3 and 4 of this Order shall apply accordingly with all necessary modifications.

### **Money paid into court under order**

6. Money paid into court under an order of the court shall not be paid out except in pursuance of an order of the court.

## **ORDER 19**

### ***Withdrawal and adjustment of actions***

#### **Withdrawal by plaintiff**

1. (1) The plaintiff may at any time before the delivery of the defendant's defence, or after the receipt thereof before taking any other proceeding in the action, by notice in writing wholly discontinue the action against all or any of the defendants or withdraw any part or parts of his plaint, and thereupon he shall pay such defendant's costs of the action or, if the action is not wholly discontinued, the costs occasioned by the matter so withdrawn. Such discontinuance or withdrawal shall not be a defence to any subsequent action.

(2) Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw or discontinue an action without leave of the court, but the court may, before or at or after the hearing upon such terms as to costs, and as to any other action, and otherwise as may be just, order the action to be discontinued or any part of the plaint to be struck out.

#### **Withdrawal by defendant**

2. The court may, in like manner, and with the like discretion as to terms, upon the application of a defendant order the whole or any part of his defence or counterclaim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence or any part thereof without such leave.

**Withdrawal by consent**

3. An action may be withdrawn prior to the hearing by either the plaintiff or the defendant upon filing a consent signed by all the parties.

**Stay of subsequent action**

4. If any subsequent action is brought before payment of the costs of a discontinued action upon the same, or substantially the same, cause of action, the court may order a stay of such subsequent action until such costs shall have been paid.

**Limitation in subsequent action**

5. In any fresh action instituted subject to terms imposed by the court under rule 1 of this Order, the plaintiff shall be bound by the law of limitation in the same manner as if the former action had not been instituted.

**Compromise**

6. Where it is proved to the satisfaction of the court that an action has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the action the court may, on the application of a party, order such agreement, compromise, or satisfaction to be recorded, and pronounce judgment in accordance therewith so far as it relates to the action.

**ORDER 20*****Setting down action for hearing; defendant failing to deliver defence, etc*****Proceedings against infants and persons of unsound mind**

1. (1) Where no defence has been delivered on or before the day fixed in the writ of summons for a defendant who is an infant or a person of unsound mind, the court shall by order assign a proper person to be guardian of such defendant by whom he may appear and defend the action.

(2) No such order shall be made unless it appears that the summons was duly served and that all the requirements as to notice contained in paragraph (3) of rule 2 of Order 5 have been complied with, unless the court dispenses with any notice required thereby.

**Affidavit of service upon non-appearance**

2. Where any defendant fails to deliver a defence on or before the day fixed in the writ of summons, and the plaintiff is desirous of proceeding upon default of delivery of defence under any of the rules of this Order, the Registrar shall cause an affidavit of service of the summons to be filed upon the record.

**Judgment upon a liquidated demand**

3. Where by the plaint a liquidated sum is claimed and the defendant fails, or all the defendants, if more than one, fail to deliver a defence on or before the day fixed in the writ of

summons, the court may, subject to the provisions of rule 2 of this Order, enter judgment for any sum not exceeding the sum claimed in the plaint together with interest, if any, at a rate not exceeding six *per centum per annum* to the date of the judgment, and costs.

### **Liquidated demand against several defendants**

4. Where by the plaint a liquidated sum is claimed and there are several defendants of whom one or more deliver a defence on or before the day fixed in the writ of summons, and another fails or others of them fail to deliver a defence, the court may, subject to the provisions of rule 2 of this Order, enter judgment as in rule 3 of this Order against such as have not delivered a defence, and execution may issue upon such judgment without prejudice to the plaintiff's right to proceed with the action against such as have delivered a defence.

### **Assessment of damages**

5. Where by the plaint the claim is for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and the defendant fails, or all the defendants, if more than one, fail to deliver a defence on or before the day fixed in the writ of summons the plaintiff may, subject to the provisions of rule 2 of this Order, enter judgment against the defendant or defendants declaring him or them to be liable on the claim and set down the action for assessment by the court of the amount of such liability, and the court may proceed to enter judgment for the amount found to be due in the course of such assessment.

### **Assessment where some defendants have delivered defences**

6. Where by the plaint the claim is as specified in rule 5 of this Order and there are several defendants of whom one or more deliver a defence and another or others fail to deliver a defence on or before the day fixed in the writ of summons, the court may, subject to the provisions of rule 2 of this Order, assess the value of the goods and the damages or either of them, as the case may be, as against the defendant or defendants who have not delivered a defence at the same time as the trial of the action against the other defendant or defendants and may proceed to enter judgment in accordance with such assessment.

### **General rule where no defence delivered**

7. In all actions not otherwise specifically provided for by the rules of this Order, if a party served with a writ of summons does not deliver a defence on or before the day fixed therein, the action may proceed, subject to the provisions of rule 2 of this Order, and the court may hear and determine the action on the evidence of the plaintiff and his witnesses.

### **Setting down action for hearing**

8. At any time after the defence or the last of the defences has been delivered, the court, upon giving notice to the parties, shall set down the action for hearing.

### **Setting aside judgment**

9. When judgment has been entered pursuant to any of the proceeding rules of this Order, it shall be lawful for the court to set aside or vary such judgment upon such terms as may be just.

**Appearance by defendant in answer to a summons**

**10.** Where a day has been fixed in a writ of summons for the defendant to appear and answer the claim, the parties shall be in attendance at the court house in person, or by their respective advocates or recognised agents, and the action shall then be heard unless the hearing is adjourned to a future day fixed by the court.

**When neither party appears, action dismissed**

**11.** Where neither party appears when the action is called on for hearing, the court may order that the action be dismissed.

**Plaintiff may bring fresh action or court may restore action to file**

**12.** Where an action is dismissed under rule 11 of this Order, the plaintiff may, subject to the law of limitation, bring a fresh action or he may apply for an order to set the dismissal aside; and if he satisfies the court that there was sufficient cause for his non-appearance the court shall set aside the dismissal and appoint a day for proceeding with the action.

**Procedure where plaintiff only appears**

**13.** Where the plaintiff appears and the defendant does not appear on the day appointed for the hearing—

- (a) if the court is satisfied that the writ of summons or notice of hearing was duly served, it may proceed to hear and determine the action in the absence of the defendant;
- (b) if the court is not satisfied that the writ of summons or notice of hearing was duly served, it shall direct a second writ or notice to be issued and served on the defendant;
- (c) if the court is satisfied that the writ of summons or notice of hearing was served on the defendant, but that the defendant was for sufficient cause unable to appear in person or deliver a defence, it shall postpone the hearing of the action to a future day to be fixed by the court and shall direct notice of such day to be given to the defendant.

**Procedure where defendant appears after commencement of hearing**

**14.** Where the court has commenced the hearing of an action in the absence of the defendant and the defendant subsequently appears in the course of such hearing and assigns good cause for his previous non-appearance, he may, upon such terms as the court directs as to costs or otherwise, be heard in answer to the action as if he had appeared on the day fixed for his appearance.

**Procedure where defendant only appears**

**15.** Where the defendant appears, and the plaintiff does not appear, when the action is called on for hearing, the court shall make an order that the action be dismissed, unless the defendant admits the claim, or part thereof, in which case the court shall enter judgment against

the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the action so far as it relates to the remainder.

### **Judgment against plaintiff by default bars fresh action**

**16. (1)** Where an action is wholly or partly dismissed under rule 15 of this Order, the plaintiff shall be precluded from bringing a fresh action in respect of the same cause of action, but he may apply for an order to set the dismissal aside, and, if he satisfies the court that there was sufficient cause for non-appearance when the action was called on for hearing, the court shall make an order setting aside the dismissal, upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the action.

**(2)** No order shall be made under this rule unless notice of the application has been served on the opposite party.

### **Procedure in case of non-attendance of one or more of several plaintiffs**

**17.** Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the court may permit the action to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

### **Procedure in case of non-attendance of one or more of several defendants**

**18.** Where there are more defendants than one, and one or more of them appear and the others do not appear, the action shall proceed and the court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

### **Setting aside judgment *ex parte* against defendant**

**19. (1)** In any case in which judgment is entered against a defendant in pursuance of the provisions of paragraph (a) of rule 13 or rule 18 of this Order, such defendant, may apply to the court for an order to set it aside; and if he satisfies the court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the action was called on for hearing, the court shall set aside the judgment against him upon such terms as to costs, payment into court, or otherwise as it thinks fit, and shall appoint a day for proceeding with the action:

Provided that, where the judgment is of such a nature that it cannot be set aside as against such defendant only, it may be set aside as against all or any of the other defendants also.

**(2)** No judgment shall be set aside under this rule unless notice thereof has been served on the opposite party.

### **Application**

**20.** The provisions of this Order shall, with all necessary modifications, apply to matters in the same manner as they apply to actions.

## ORDER 21

*Summoning and attendance of witnesses***Summons to attend to give evidence or produce documents**

1. At any time after a cause is instituted, the parties may obtain, on application to the court or to such officer as the court may appoint in that behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

**Expenses of witnesses**

2. (1) If so required by the Registrar, the party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into court such sum of money as appears to the Registrar to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the court in which he is required to attend, and for his attendance thereat. The Chief Justice may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(2) The sum so paid into court shall be tendered to the person summoned at the time of serving the summons, if it can be served personally; or, if the court so directs, the person summoned may be notified that the sum so paid into court will be paid to him on his attendance.

**Time, place, and purpose of attendance to be specified in summons**

3. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

**Summons to produce documents**

4. Any person may be summoned to produce a document without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

**Power to require persons present in court to give evidence**

5. Any person present in court may be required by the court to give evidence or to produce any document then and there in his possession or power.

**Service of summons**

6. Every summons under this Order shall be served as nearly as may be in the same manner as a writ of summons to a defendant, and the rules in Order 11 as to proof of service shall apply in the case of all summonses served under this Order; and such summonses shall be served in sufficient time to enable the person summoned to comply therewith.



**Duty of persons summoned**

7. Any person who is summoned to appear and give evidence in a cause or matter shall attend at the time and place named in the summons for that purpose, and any person who is summoned to produce a document shall either attend to produce it or cause it to be produced at such time and place.

**Procedure where witness fails to comply with summons**

8. (1) Where a person to whom a summons has been issued, either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the court shall, if the certificate of the serving officer has not been verified by affidavit, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another court, touching the service or non-service of the summons.

(2) Where the court has reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with the summons, it may issue a warrant, either with or without bail, for the arrest of such person.

**Penalty for failure to comply with witness summons**

9. Where such person arrested under the provisions of rule 8 of this Order fails to satisfy the court that he had lawful excuse for failing to comply with the summons, the court may impose upon him such fine, not exceeding £50, as it thinks fit, having regard to his condition in life and all the circumstances of the case.

**Attendance of witnesses**

10. (1) A person summoned and attending as a witness shall, unless the court otherwise directs, attend at each hearing until the action or matter has been disposed of.

(2) On the application of either party, and the payment through the court of all necessary expenses, if any, the court may require any person so summoned and attending to furnish security to attend at the next or any other hearing, or until the action or matter is disposed of, and, in default of his furnishing such security, may order him to be detained in the civil prison.

**Application of rules 8 and 9**

11. The provisions of rules 8 and 9 of this Order shall, so far as they are applicable, be deemed to apply to any person who, having attended in compliance with a summons, departs without lawful excuse in contravention of rule 10 of this Order.

**Procedure where arrested witness cannot give evidence**

12. Where any person arrested under a warrant is brought before the court in custody, and cannot, owing to the absence of the parties of any of them, give the evidence or produce the document which he has been summoned to give or produce, the court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit,

and on such bail or security being given may release him, and in default of his giving such bail or security may order him to be detained in the civil prison.

### **Consequence of refusal of a party to give evidence**

13. Where any party present in court refuses, without lawful excuse, when required by the court, to give evidence or to produce any document then and there in his possession or power, the court may pronounce judgment against him or make such order in relation to the use or matter as it thinks fit.

### **Rules as to witnesses to apply to parties**

14. Where any party is required to give evidence, or to produce document, the provisions as to witnesses shall apply to him so far as they are applicable.

#### **ORDER 22**

#### ***Consolidation of actions and test actions***

### **Consolidation of actions**

1. Where two or more actions are pending in the same court in which the same or similar questions of law or fact are involved, the court may, either upon the application of one of the parties or of its own motion, at its discretion, and upon such terms as may seem fit—

- (a) order a consolidation of such actions; and
- (b) direct that further proceedings in any or such actions be stayed until further order.

### **Test actions**

2. Where—

- (a) direct that further proceedings in any of such actions be the same defendant and such persons could, under the provisions of rule 1 of Order 1, have been joined as plaintiffs in one action; or
- (b) a plaintiff has instituted two or more actions, and under the provisions of rule 3 of Order 1 the several defendants could have been joined as co-defendants in one action,

The court may, if it is satisfied that the issues to be tried in each action are precisely similar, direct that one of such actions be tried as a test case and stay all steps in the remaining actions until such selected test action has been heard and determined.

#### **ORDER 23**

#### ***Hearing of the action, etc., and examination of witnesses***

### **Right to begin**

1. The plaintiff shall have the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant shall have the right to begin.

**Order and production of evidence**

2. (1) The party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence, if any, and may then address the court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

**Witnesses to be examined in open court**

3. The evidence of the witnesses in attendance shall be taken orally in open court in the presence of and under the personal direction and superintendence of the judge.

**Recording of evidence**

4. (1) The evidence of each witness shall be taken down in writing by or in the presence and under the personal direction and superintendence of the judge, not ordinarily in the form of question and answer but in that of a narrative.

(2) Notwithstanding anything contained in paragraph (1), the evidence given or any other proceeding at the hearing of any cause or matter may be recorded in shorthand or by mechanical means, and the transcript of anything so recorded shall, if certified by the judge to be correct, be deemed to be a record of such evidence or other proceeding for all the purposes of the action or matter.

**Particular question and answer may be provided**

5. The court may, of its own motion or on the application of any party or his advocate, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

**Objections**

6. Where a party or his advocate objects to any question put to a witness, and the court rules against the objection, the judge shall take down the question, the answer, the objection, and the name of the person making it.

**Power to examine witness immediately**

7. (1) Where a witness is about to leave the jurisdiction of the court, or other sufficient cause is shown to the satisfaction of the court why his evidence should be taken immediately, the court may, upon the application of any party or of the witness, at any time take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the court thinks sufficient of the day fixed for the examination shall be given to the parties.

(3) The evidence so taken shall be read over to the witness and, if he admits it to be correct, shall be signed by him, and the judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the action or matter.

**Court may recall witness**

8. The court may at any stage recall any witness who has been examined, and may, subject to the law of evidence for the time being in force, put such question to him as the court thinks fit.

**Power of court to inspect**

9. The court may at any stage inspect any property or thing concerning which any question may arise.

**ORDER 24*****Prosecution of actions, etc., and adjournments*****Court may grant time and adjourn hearing**

1. (1) The court may, if sufficient cause is shown, at any stage grant time to the parties, or to any of them, and may from time to time adjourn the hearing of a cause or matter.

(2) In every such case the court shall fix a day for the further hearing of the cause or matter, or may adjourn the hearing generally and may make such order as it thinks fit with respect to the costs occasioned by such adjournment.

**Procedure where no application is made to restore action adjourned generally**

2. Where the hearing of a cause or matter has been adjourned generally, the court may, if no application for restoration to the list is made within twelve months of the last adjournment, give notice to the parties to show cause why the cause or matter should not be dismissed, and if cause is not shown to the satisfaction of the court, the cause or matter shall be dismissed.

**Procedure where party fails to appear**

3. Where, on any day to which the hearing of the cause or matter is adjourned, the parties or any of them fail to appear, the court may proceed to dispose of the cause or matter in one of the modes directed on that behalf by Order 20, or make such other order as it thinks fit.

**Procedure where parties fail to produce evidence**

4. Where any party to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the cause or matter, for which time has been allowed, the court may, notwithstanding such default, proceed to decide the cause or matter forthwith.

ORDER 25  
*Affidavits***Power to order fact to be proved by affidavit**

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

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

**Power to order attendance for cross-examination**

2. Upon any application under these Rules, evidence may be given by affidavit, but the court may, at the instance of either party, order the attendance for cross-examination of the deponent.

ORDER 26  
*Production, impounding and return of documents***Endorsements on documents admitted in evidence**

1. Subject to rule 2 of this Order, there shall be endorsed on every document which has been admitted in evidence the following particulars—

- (a) the number and title of the cause or matter;
- (b) the party producing the document;
- (c) the date on which it was produced,

and the endorsement shall be signed or initialled by an officer of the court.

**Endorsements on copies of entries in books, etc**

2. (1) Save in so far as is otherwise provided by any law relating to the production in evidence of bankers' book, where a document admitted in evidence in a cause or matter is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the court may require a copy of the entry to be furnished—

- (a) where the record, book or account is produced on behalf of a party, then by that party; or
- (b) where the record, book or account is produced in obedience to an order of the court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the court shall, after causing the copy to be examined, compared and certified, mark the entry, and cause the book, account or record in which it occurs to be returned to the person producing it:

Provided that the court may accept, in the case of a copy of a public record, a certificate of correctness from the public officer in whose charge the record is.

**Recording of admitted, and return of rejected, documents**

3. (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 2 of this Order, shall form part of the record of the action or matter.

(2) Documents not admitted in evidence shall not form part of the record, and shall be returned to the persons producing them after they have been endorsed by the judge or officer of the court with the particulars mentioned in paragraphs (a), (b) and (c) of paragraph (1) of rule 1 of this Order, together with a statement of their having been rejected.

**Court may order document to be impounded**

4. Notwithstanding anything hereinbefore contained, the court may, if it sees sufficient cause, direct any document or book produced before it to be impounded and kept in the custody of an officer of the court for such period and subject to such conditions as the court thinks fit.

**Return of documents**

5. (1) Any person, whether a party or not, desirous of receiving back any document produced by him in the cause or matter and placed on the record, shall, unless the document is impounded under rule 4 of this Order, be entitled to receive back the same—

(a) when the cause or matter has been disposed of, and, if the cause or matter is one in which an appeal is allowed, when the time for filing an appeal has elapsed and no appeal has been filed; and

(b) if any appeal has been filed, when the appeal has been disposed of:

Provided that—

(i) a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes in writing to produce the original if required to do so; and

(ii) no document shall be returned which, by force of the judgment, has become wholly void or useless.

(2) On the return of a document admitted in evidence a receipt shall be given by the person receiving it.

**Court may send for court records**

6. (1) The court may of its own motion, or upon the application of any of the parties, send for, either from its own records, or from any other court, the record of any other cause or matter and inspect the same.

(2) Nothing contained in this rule shall be deemed to enable the court to use in evidence any document which under the law of evidence would be inadmissible in the cause or matter.

**Application of Order to material objects**

7. The provisions of this Order as to documents shall, so far as may be, apply to all other material objects producible as evidence.

ORDER 27  
*Commissions*

**Commission to examine witness outside St. Helena**

1. Subject to the provisions of sections 46 and 48 of the Ordinance, a court may, if it is satisfied that it is necessary to do so, issue a commission, or, as the case may be, a letter of request for the examination of any person resident in any place outside St. Helena.

**Examination of witness pursuant to commission**

2. (1) Every court in St. Helena receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

(2) Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

**Return of Commission, etc**

3. The deposition of any witness taken under a commission or letter of request shall be open to the inspection of the parties, and may, subject to all just exceptions, be read in evidence in the cause or matter by either party, and if so read shall form part of the record of the cause or matter.

**Commissions to make investigations**

4. (1) In any cause or matter in which the court deems an investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court.

(2) The commissioner, after such inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the court.

(3) The report of the commissioner and the evidence taken by him, (but not the evidence without the report) shall be evidence in the cause or matter and shall form part of the record; but the court, or, with the permission of the court, any of the parties, may examine the commissioner personally in open court touching any of the matters referred to him, or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(4) Where the court is for any reason dissatisfied with the proceedings of the commissioner, it may direct such further inquiry to be made as it shall think fit.

**Referee to examine accounts**

5. (1) In any cause or matter in which an examination of accounts is necessary, the court may refer the accounts to such person as it thinks fit, directing him to make such examination.

(2) The court shall furnish a referee appointed under the foregoing paragraph with such part of the proceedings and such instructions as appear necessary, and the instructions shall specify whether the referee is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

(3) The proceedings and report, if any, of the referee shall be evidence in the cause or matter, but where the court has reason to be dissatisfied with them it may direct such further inquiry as it shall think fit.

### **Partition of immovable property**

6. (1) Where a preliminary order for partition has been made, the court may appoint such person as it thinks fit to make the partition or separation according to the rights as declared in such order.

(2) The person appointed shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which he was appointed, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalising the value of the shares.

(3) The person appointed shall then prepare and sign a report, or, where more than one person was appointed and they cannot agree, they shall prepare and sign separate reports, appointing the share of each party and distinguishing each share (if so directed by the said order) by measurements and boundaries. Such report or reports shall be annexed to the appointment and transmitted to the court; and the court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary, or set aside the same.

(4) Where the court confirms or varies the report or reports it shall give judgment in accordance with the same as confirmed or varied; but where the court sets aside the report or reports it shall make such order as it thinks fit.

### **Expenses in advance**

7. Before issuing any commission, reference or appointment under this Order, the court may order such sum, if any, as it thinks reasonable for the expenses of the commission, reference or inquiry, to be paid within a time to be fixed into court by the party at whose instance or for whose benefit the commission, reference or appointment is issued.

### **Powers of enquiry**

8. Any person appointed under this Order may, unless otherwise directed by the order of appointment—

- (a) examine the parties and any witness whom they or any of them may produce, and any other person whom the person appointed thinks proper to call upon to give evidence in the matter referred to him;
- (b) call for and examine documents and other things relevant to the subject of the inquiry;
- (c) at any reasonable time enter upon or into any land or building mentioned in the order.

### **Attendance and examination of witnesses**

9. (1) The provisions of the Ordinance and these Rules relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be



imposed upon, witnesses shall apply to persons required to give evidence or to produce documents under this Order, and for the purposes of this rule any person appointed under this Order shall be deemed to be a judge.

(2) A commissioner appointed under this Order may apply to the court which has appointed him for the issue of any process which he may find necessary to issue to or against any witness who resides within the limits of the jurisdiction of such court, and such court may in its discretion issue such process as it considers reasonable and proper.

### **Parties to appear before commissioner**

10. (1) Where a commission is issued under the preceding rules, the court shall direct that the parties to the cause or matter shall appear before the commissioner in person or by their agents or advocate.

(2) Where all or any of the parties do not so appear, the person executing the commission may proceed in their absence.

### **ORDER 28**

### ***Arrest and attachment before judgment***

### **Where defendant may be called upon to furnish security for appearance**

1. Where at any stage of an action, the court is satisfied by affidavit or otherwise that the defendant is about to leave St. Helena in circumstances affording a reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the prosecution of his action, the court may issue a warrant to arrest the defendant and bring him before the court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum will be held on deposit by the court until the action is disposed of or until the further order of the court.

### **Security**

2. (1) Where the defendant fails to show cause why he should not furnish security, the court shall order him either to deposit in court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the action is pending and until satisfaction of the judgment that may be pronounced against him in the action, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to rule 1 of this Order.

(2) Every surety for the appearance of a defendant shall bind himself in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the action.

### **Defendant failing to furnish security**

3. Where the defendant fails to comply with any order under rule 2 of this Order, the court may commit him to prison until the determination of the action, or, where judgment is pronounced against the defendant, until the judgment has been satisfied:

Provided that no person shall be detained in prison under this rule—

- (a) in any case for a longer period than three months;
- (b) after he has complied with such order.

**Defendant may be called upon to furnish security for production of property**

4. Where at any stage of an action the court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any judgment that may be pronounced against him—

- (a) is about to dispose of the whole or any part of his property; or
- (b) is about to remove the whole or any part of his property from the limits of the jurisdiction of the court,

the court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the court, when required, the said property or the value of same, or such portion thereof as may be sufficient to satisfy the judgment, or to appear and show cause why he should not furnish security.

**Attachment of property**

5. (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required within the time fixed by the court, the court may order that such property of the defendant as appears sufficient to satisfy any judgment which may be pronounced in the action, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and any part of his property has been attached, the court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

**Mode of attachment**

6. Save as otherwise expressly provided, the attachment of property under this Order shall be made in the manner provided for the attachment of property in execution of judgments.

**Saving of other rights**

7. Attachment before judgment shall not affect the rights existing prior to the attachment of persons not parties to the action.

**Property need not be re-attached in execution of judgment**

8. Where property is under attachment by virtue of the provisions of this Order, and judgment is subsequently pronounced in favour of the plaintiff, it shall not be necessary, upon an application for execution of such judgment, to apply for a re-attachment of the property.

**ORDER 29*****Temporary injunctions and interlocutory orders*****When temporary injunctions may be granted**

1. Where in any cause or matter it is proved by affidavit or otherwise—
  - (a) that any property in dispute is in danger of being wasted, damaged, or alienated by any party or wrongfully sold in execution; or

- (b) that the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the cause or matter or until further orders.

### **Injunction to restrain repetition or continuance of breach**

2. (1) In any action for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed or not, the court may grant a temporary injunction, on such terms and subject to such conditions as it may think fit, to restrain the defendant from committing such breach of contract or injury or any injury of a like kind arising out of the same contract or relating to the same property or right.

(2) In cases of disobedience, or of breach of any such terms, the court may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in a civil prison for period not exceeding six months unless in the meantime the court directs his release.

(3) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

### **Notice to opposite party**

3. The court shall in all cases, before granting an injunction, except where it appears that the object of granting the injunction would be defeated by the delay, direct notice of the application for the same to be given to the opposite party.

### **Order may be discharged, varied or set aside**

4. Any order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order.

### **Power to order interim sale**

5. The court may, on the application of any party to an action, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property the subject-matter of such action, or attached before judgment in such action, which is subject to speedy and natural decay, or which for other just and sufficient cause it may be desirable to sell at once.

### **Detention, preservation, inspection, etc, of property**

6. (1) The court may, on the application of any party to an action, and on such terms as it thinks fit—

- (a) make an order for the detention, preservation, or inspection of any property which is the subject-matter of such action, or as to which any question may arise therein;
- (b) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the possession of any other party to such action; and

- (c) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made, or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions of these Rules as to execution of process shall apply, with all necessary modifications, to persons authorised to enter under this rule.

### **Deposit of money, etc, in court**

7. Where the subject-matter of an action is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the court may order the same to be deposited in court or delivered to such last-named party, with or without security, subject to the further direction of the court.

#### **ORDER 30**

#### ***Receivers***

### **Appointment of receivers**

1. Where it appears to the court to be just and convenient, the court may by order—
  - (a) appoint a receiver of any property, whether before or after judgment;
  - (b) remove any person from the possession or custody of the property and commit the same to the possession, custody, or management of the receiver; and
  - (c) confer upon the receiver all such powers as to bringing and defending actions and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of such documents as the owner himself has, or such of those powers as the court thinks fit.

### **Remuneration**

2. The court may, by general or special order, fix the amount to be paid as remuneration for the services of the receiver.

#### **ORDER 31**

#### ***Judgments***

### **Judgment, when pronounced**

1. In a cause where a hearing is necessary, the court, after the case has been heard, shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their advocates, if any.

### **Judgment of Chief Justice**

2. The Registrar, if so directed by the Chief Justice, may pronounce a judgment written and signed by the Chief Justice.

**Judgment to be signed**

3. (1) Every judgment in the Supreme Court shall be dated and signed by the Chief Justice.

(2) Every judgment in the Magistrates' Court shall be pronounced by the magistrate presiding over the court and shall be dated and signed by him.

(3) A judgment once signed shall not afterwards be altered or added to save as provided by section 88 of the Ordinance or on review.

**Contents of judgment**

4. Judgments in defended causes or matters shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

**Relief granted to be specified**

5. The judgment shall specify the relief granted or other determination of the cause or matter and if an order as to costs is made shall state by whom or out of what property or in what proportion such costs are to be paid.

**Entry of judgment, etc**

6. Particulars of every judgment shall be entered by the proper officer in the Action Book and every such entry shall contain—

- (a) the relief granted or other determination of the cause or matter; and
- (b) the order of the court as to costs,

and every such entry shall be signed by the judge who pronounced judgment.

**Payment by instalments**

7. Where and in so far as a judgment is for the payment of money, the court may for any sufficient reason at the time of pronouncing the judgment or at any time thereafter order that payment of the amount adjudged shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in any contract under which the money may be payable.

**Possession and mesne profits**

8. (1) Where an action is for the recovery of possession of immovable property and for rent or mesne profits, the court may pronounce judgment—

- (a) for the possession of the property;
- (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the action or directing an inquiry as to such rent or mesne profits.

(2) Where an inquiry is directed under sub-paragraph (b) of paragraph (1) of this rule, judgment in respect of the rent and mesne profits shall be pronounced in accordance with the result of such inquiry.

**Administration action**

9. (1) Where an action is for an account in respect of any property or for its due administration under the direction of the court, the court shall, before pronouncing judgment, order such accounts and inquiries to be taken and made, and give such other directions, as it thinks fit.

(2) In the administration by the court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities, respectively, as may be in force for the time being with respect to the estates of persons adjudged or declared insolvent; and all persons, who, in any such case would be entitled to be paid out of such property, may make such claims against the same as they may respectively be entitled by law to make.

**Dissolution of partnership**

10. Where an action is for the dissolution of a partnership, or the taking of partnership accounts, the court, before pronouncing judgment, may make an order, declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved, or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

**Account between principal and agent, etc**

11. In an action for an account of pecuniary transactions between a principal and an agent, and in any other cause or matter not hereinbefore provided for, where it is necessary, in order to ascertain the money due to or from any party, that an account should be taken, the court may, before pronouncing judgment, direct such accounts to be taken as it thinks fit.

**Set-off**

12. Where the defendant has been allowed a set-off against the claim of the plaintiff, the judgment shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

**Certified copies of judgment**

13. Certified copies of the judgment and entry of judgment shall be furnished to the parties on application to the court and at their expense.

**Application to orders**

14. The provisions of this Order shall apply, with all necessary modifications, to orders in the same manner and to the same extent as they apply to judgments.

## ORDER 32

*Execution of judgments and orders***Payment of money under judgment**

1. (1) All moneys payable under a judgment shall be paid as follows, namely—
  - (a) into the court whose duty it is to execute the judgment;
  - (b) direct to the judgment-creditor; or
  - (c) otherwise as the court which pronounced the judgment directs.
- (2) Where any payment is made under paragraph (1)(a), notice of payment shall be given to the judgment-creditor.

**Execution of judgment**

2. Where a judgment-creditor desires to execute the judgment he shall apply to the court which pronounced such judgment—
  - (a) for the execution of such judgment; and
  - (b) where he desires that the judgment be executed by another court in accordance with the provisions of Part III of the Ordinance, for an order transferring such judgment for execution by that court.

**Form of application for execution**

3. Every application for the execution of a judgment shall be in Form 30 in the Appendix and shall specify the mode in which the assistance of the court is required, that is to say—
  - (a) by delivery of any property specifically ordered to be delivered;
  - (b) by the arrest and detention in prison of the judgment-debtor;
  - (c) by the attachment of the salary of the judgment-debtor;
  - (d) by the attachment and sale of any property of the judgment-debtor;
  - (e) otherwise, as the nature of the relief may require.

**Execution of judgment by another court**

4. A court sending a judgment for execution to another court under the provisions of Part III of the Ordinance shall send—
  - (a) a certified copy of the entry in the Action Book;
  - (b) a certificate stating that satisfaction of the judgment has not been obtained by execution within the jurisdiction of the court by which it was pronounced, or, where the judgment has been executed in part, the extent to which satisfaction has been obtained and what part of the judgment remains unexecuted;
  - (c) a certified copy of any order for the execution of the judgment, or, if no such order has been made, a certificate to that effect; and
  - (d) a certified copy of the application for execution.

**Execution of judgments of other courts**

5. (1) A court in St. Helena which receives a judgment for execution shall cause any copies of judgments, orders or applications and all certificates received by it to be filed without any further proof of the judgment or order for execution, or of the copies thereof,

unless the court for any special reasons to be recorded under the hand of the judge, require such proof.

(2) Any such court shall, if it has been informed by the court which pronounced the judgment that an appeal has been lodged from such judgment—

(a) stay the execution of such judgment; or

(b) in any case where the property or person of the judgment-debtor has been seized in execution of the judgment, order the restitution of such property or the release of the judgment-debtor,

pending the hearing and determination or other disposal of such appeal.

### **Application for attachment of movable property not in judgment-debtors possession**

6. Where an application is made for the attachment of any movable property belonging to a judgment-debtor, but not in his possession, the judgment-creditor shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

### **Application for execution by joint judgment-creditor**

7. (1) Where a judgment has been pronounced jointly in favour of more persons than one, any one or more of such persons may, unless the judgment imposes any condition to the contrary, apply for the execution of the whole judgment for the benefit of them all, or where any of them has died, for the benefit of the survivors and the personal representative of the deceased.

(2) Where the court allows the judgment to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

### **Procedure on receiving application for execution**

8. On receiving an application for the execution of a judgment as provided in rule 2 of this Order and on being satisfied that such application complies with the provisions of rule 3 thereof, the court shall, subject to the provisions hereinafter contained, order execution of the judgment according to the nature of the application.

### **Execution of cross claims under same judgment**

9. Where an application is made to a court for the execution of a judgment under which two parties are entitled to recover sums of money from each other, then—

(a) if the two sums are equal, satisfaction for both shall be entered upon the judgment; and

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction of the smaller sum shall be entered upon the judgment.

### **Simultaneous executions**

10. The court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.



**Process for execution**

**11. (1)** When the preliminary measures, if any, required by the foregoing rules of this Order have been taken, the court shall, unless it sees cause to the contrary, issue its process for the execution of the judgment.

**(2)** Every such process shall bear date the day on which it is issued, and shall be signed by the judge or such officer as the court may appoint in this behalf, and shall be delivered to the proper officer to be executed.

**Endorsement of process**

**12. (1)** The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the court.

**(2)** Where the endorsement is to the effect that such officer is unable to execute the process, the court may examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

**Stay of execution pending action between judgment-creditor and judgment-debtor**

**13.** Where an action is pending in any court between the judgment-debtor as plaintiff and the judgment-creditor as defendant, the court may, on such terms as to security or otherwise as it thinks fit, stay execution of the judgment against the property or person of the judgment debtor until the pending action has been decided.

**Judgment for payment of money**

**14.** Every judgment for the payment of money, including a judgment for the payment of money as an alternative to some other relief, may be executed by the detention in a civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both detention and attachment.

**Judgment for specific movable property**

**15.** Where the judgment is for the delivery or recovery of any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor.

**Judgment for specific performance or injunction**

**16. (1)** Where the party against whom a judgment for specific performance of a contract or for an injunction has been pronounced has had an opportunity of obeying the judgment and has wilfully refused to obey it, the judgment may be enforced by the detention of such party in a civil prison.

(2) Where the judgment for the specific performance of a contract or for an injunction has not been obeyed, the court may, *in lieu* of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the judgment-creditor or some other person appointed by the court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and may be recovered as if they were included in the judgment.

### **Enforcement of judgments for specific performance, etc. against corporation**

17. (1) Where the judgment-debtor in any judgment mentioned in rules 15 and 16 of this Order is a corporation, the judgment may be enforced by the attachment of the property of the corporation.

(2) Where any attachment under paragraph (1) has remained in force for three months, if the judgment-debtor has not obeyed the judgment and the judgment-creditor has applied to have the attached property sold, such property may be sold; and out of the proceeds the court may award to the judgment-creditor such compensation as it thinks fit, and shall pay the balance, if any, to the judgment-debtor.

(3) Where the judgment-debtor has obeyed the judgment and paid all costs of executing the same which he is bound to pay, or where at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

### **Judgment for delivery of immovable property**

18. (1) Where the judgment is for the recovery or delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the judgment who refuses to vacate the property.

(2) Where possession of any building or enclosure is to be delivered, and the person in possession being bound by the judgment does not afford free access thereto, the court, through its officers, may remove or open any lock or bolt or break open any door or do any other act necessary for putting the judgment-creditor in possession.

(3) Where a judgment is for the recovery or delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the judgment to relinquish such occupancy, the court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property and notifying the occupant in such manner as may be suitable of the substance of the judgment with regard to the property.

### **Arrest of judgment-debtor**

19. (1) Where an application is for the execution of a judgment for the payment of money by the arrest and detention in a civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the court shall issue a warrant for his arrest.

(2) Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with it to bring him before the court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs, if any, to which he is liable, be sooner paid.

**Subsistence allowance**

**20. (1)** No judgment-debtor shall be arrested in execution of a judgment unless the judgment-creditor pays into court such sum as may be prescribed under the provisions of section 34 of the Ordinance for the subsistence of the judgment-debtor for a period of seven days from the time of his arrest.

**(2)** Where a judgment-debtor is committed to a civil prison in execution of a judgment the court shall specify the amount of subsistence allowance payable in respect of his detention according to the scales prescribed under the provisions of section 34 of the Ordinance, due allowance being made for any amount previously paid under the provisions of paragraph (1) of this rule.

**(3)** The amount fixed by the court shall be paid by the judgment-creditor to the officer of the court appointed for that purpose by such instalments, if any, and at such times as the court may direct.

**(4)** Sums paid by the judgment-creditor for the subsistence of the judgment-debtor in a civil prison shall be deemed to be costs in the cause or matter:

Provided that the judgment-debtor shall not be detained in a civil prison or arrested on account of any sum so paid.

**Proceedings on appearance of judgment-debtor**

**21. (1)** Where a judgment-debtor is brought before the court after being arrested in execution of a judgment for the payment of money, and it appears to the court that the judgment-debtor is unable, after providing for the reasonable maintenance and support of himself and such of his family as are dependent on him, to pay the amount of the judgment, or, if that amount is payable by instalments, the amount of any instalment thereof, the court may, upon such terms as it thinks fit, make an order disallowing the application for his arrest and detention or directing his release, as the case may be.

**(2)** Before making an order under paragraph (1), the court may take into consideration any of the following matters, namely—

- (a)** that the judgment is for a sum for which the judgment-debtor was bound in any capacity of trust to account;
- (b)** the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the cause in which the judgment was pronounced, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the judgment-creditor in the execution of the judgment;
- (c)** any undue preference given by the judgment-debtor to any of his other creditors;
- (d)** refusal or neglect on the part of the judgment-debtor to pay the amount of the judgment or some part thereof when he has, or since the date of the judgment has had, the means of paying it.

**(3)** While the matters mentioned in paragraph (2) are being considered, the court may, in its discretion, order the judgment-debtor to be detained in a civil prison or release him on his furnishing security, to the satisfaction of the court, for his appearance when required by the court.

**(4)** A judgment-debtor released under this rule may be re-arrested.

**(5)** Where the court grants the application for the execution of the judgment by the detention of the judgment-debtor, it shall, subject to the provisions of the Ordinance, commit him to a civil prison:

Provided that the court may in its discretion order that the warrant for such committal to the civil prison be and shall remain suspended on payment by the judgment-debtor of such periodic sums as shall be specified in the order.

### **Examination of judgment-debtor**

**22.** Where a judgment is for the payment of money, the judgment-creditor may apply to the court for an order that—

- (a) the judgment-debtor; or
- (b) in the case of a corporation, any officer thereof; or
- (c) any other person,

be orally examined as to any or what debts are owing to the judgment-debtor, and whether the judgment-debtor has any and what property or means of satisfying the judgment, and the court may make an order for the attendance and examination of such judgment-debtor, officer or other person, and for the production of any books or documents.

### **Attachment of movable property**

**23.** Where the property to be attached is movable property in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody, or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that—

- (a) when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it forthwith; and
- (b) when the property seized is livestock, the court may make such arrangement for the custody and maintenance thereof as it may deem sufficient.

### **Attachment of property not in possession of judgment debtor**

**24. (1)** In the case of the attachment of movable property not in the possession of the judgment-debtor, except property deposited in or of the custody of any court, the attachment shall be made by a written order prohibiting the person in possession of the same from giving it over to the judgment-debtor.

**(2)** A copy of such order shall be affixed on some conspicuous part of the court house, and another copy shall be sent to the person in possession of the property.

### **Attachment of share in movables as co-owner**

**25.** Where the property to be attached consists of the share or interest of the judgment-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way and a copy of such notice shall be served upon any co-owner.

### **Attachment of salary**

**26. (1)** Where the property to be attached is the salary of a public officer or of any person privately employed, the court may order that the amount shall, subject to the provisions of section 37 of the Ordinance, be withheld from such salary either in one payment or by

monthly instalments, as the court may direct; and upon notice of the order to the person whose duty it is to disburse such salary such person shall withhold and remit to the court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable proportion of such salary is already being withheld and remitted to a court in pursuance of a previous and unsatisfied order of attachment, the person whose duty it is to disburse such salary shall forthwith return the subsequent order to the court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of paragraph (2), shall, without further notice or other process, bind the Government or private employer, as the case may be, while the judgment-debtor is in St. Helena, and while he is elsewhere if he is in receipt of any salary payable out of the revenues of the Government, and the Government or employer, as the case may be, shall be liable for any sum paid in contravention of this rule.

### **Attachment of property in custody of court or public officer**

27. Where the property to be attached is in the custody of a court or public officer, the attachment shall be made by a notice to such court or officer requesting that such property, and any interest or dividend becoming payable thereon, shall be held subject to the further orders of the court from which the notice is issued:

Provided that, where such property is in the custody of a court, any question of title or priority arising between the judgment-debtor, claiming to be interested in such property by virtue of any assignment or otherwise, shall be determined by such court.

### **Order for payment of coin or currency notes**

28. Where the property attached is current coin or currency notes, the court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the judgment, be paid over to the party entitled under the judgment to receive the same.

### **Determination of attachment**

29. Where any property has been attached in execution of a judgment, but by reason of the default of the judgment-creditor the court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date, and upon the dismissal of such application the attachment shall cease.

### **Investigation of objections to attachment or claims to attached property**

30. (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a judgment on the ground that such property is not the property of the judgment-debtor or is otherwise not liable, by virtue of the provisions of section 37 of the Ordinance or of any other written law, to attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he were a party to the action.

(2) Where the property to which the claim or objection applies has been advertised for sale, the court ordering the sale may postpone it pending the investigation of the claim or objection.

(3) The claimant or objector shall adduce evidence to show that at the date of the attachment he had an interest in the property attached.

### **Procedure after investigation**

31. (1) Where upon an investigation under rule 30 of this Order the court is satisfied that for the reason stated in the claim or objection the property was not liable to attachment, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

(2) Where the court is satisfied that the property was, at the time it was attached, liable to attachment, the court shall disallow the claim.

### **Saving of actions to establish right to attached property**

32. Where a claim is preferred to, or an objection is made to the attachment of, any property the claimant may institute proceedings to establish the right which he claims to the property in dispute, but, subject to the result of such proceedings, if any, the attachment order shall be conclusive.

### **Sale of attached property**

33. (1) Any court executing a judgment may, on the application of the judgment-creditor, order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the judgment, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the judgment to receive the same.

(2) Save as otherwise prescribed, every sale in execution of a judgment shall be conducted by an officer of the court or by such other person as the court may appoint in this behalf, and shall be made by public auction.

(3) Where any property is ordered to be sold by public auction in execution of a judgment the court shall cause a copy of the order to be served on the judgment-debtor and shall cause public notice of the intended sale to be given in such manner as the court thinks fit.

(4) The costs of advertising the sale shall be deemed to be costs of the sale.

### **Time of sale**

34. Save with the consent in writing of the judgment-debtor, no sale under this order shall take place, except in the case of property if the nature described in the proviso to rule 23 of this Order, until after the expiration of at least fifteen days from the date on which the public notice of the sale has been given as provided in rule 33 of this Order.

### **Adjournment or stoppage of sale**

35. (1) The court may, in its discretion, adjourn any sale under these rules to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment under this Order.

(2) Every sale shall be stopped if the amount of the debt and costs (including the costs of the sale) is tendered to the officer conducting the sale, or proof is given to his satisfaction that such amount has been paid into the court which ordered the sale.

### **Restrictions on buying property**

**36. (1)** No judgment-creditor in a judgment in execution of which property is sold shall, without the express permission of the court, bid for or purchase the property.

**(2)** Where a judgment-creditor purchases with such permission, the purchase-money and the amount due on the judgment may, subject to the provisions of section 44 of the Ordinance, be set off against one another, and the court executing the judgment shall enter satisfaction of the judgment in whole or in part accordingly.

**(3)** Where a judgment-creditor purchases, by himself or through another person, without such permission, the court may, if it thinks fit on the application of the judgment-debtor, by order set aside the sale to the judgment-creditor; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the judgment-creditor.

**(4)** No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire, any interest in any property sold.

### **Irregularity in sale**

**37.** No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute an action against him for compensation, or (if such person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

### **Delivery of property sold**

**38. (1)** Where the property sold under the provisions of rule 33 of this Order is property of which actual seizure has been made, it shall be delivered to the purchaser.

**(2)** Where the property sold is in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession ordering him to deliver possession of the property to the purchaser.

### **Rules of Supreme Court of England to apply in cases not provided for**

**39.** The Rules of the Supreme Court 1965 of England, or any rules amending or replacing the same, shall, with all necessary modifications and adaptations, apply in any case for which no or insufficient provision is made by this Order as they apply to the enforcement of judgments of the Supreme Court of England.

### **Application to orders**

**40.** The provisions of this Order shall apply, with all necessary modifications, to orders in the same manner and to the same extent, as they apply to judgments.

ORDER 33  
*Interpleader*

**Institution of proceedings**

1. (1) Where any person who is or who may be sued by two or more persons, claiming adversely to each other, for property in this hands but in which he himself claims no interest, may seek relief by way of interpleader proceedings in the manner prescribed in this Order.

(2) Interpleader proceedings may be instituted—

- (a) in any case where no action is pending, by an originating summons;
- (b) in a case where an action is pending, by motion on notice in that action.

**Matters to be proved by applicant**

2. In all proceedings by way of interpleader the applicant shall satisfy the court by affidavit or otherwise—

- (a) that the applicant claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) that there is no collusion between the applicant and any of the claimants;
- (c) that the applicant is willing to pay or transfer the subject-matter into court or to dispose of it as the court may direct.

**Stay of action**

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

**Order upon summons**

4. In any case where interpleader proceedings have been initiated by originating summons, if the claimants appear in pursuance of the summons, the court may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute *in lieu* of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be the plaintiff and which the defendant.

**Summary procedure**

5. The court may, with the consent of both claimants, or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable to do so, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just.

**Order on claimant's failure to appear**

6. 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 may make an order declaring him and all persons claiming under him being for ever barred



against the applicant and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves.

#### ORDER 34

#### *Procedure in Magistrates' Court*

#### **Application of Order**

1. This Order shall apply to the Magistrates' Court only.

#### **Pleadings**

2. Subject to the provisions of rule 3 of this Order, an action may be instituted in the Magistrates' Court by lodging a plaint in accordance with Order 4, and after service on the defendant of a writ of summons pursuant to rule 1 of Order 11 requiring him to appear and answer the claim, such action may be tried and determined without further pleadings, unless the court otherwise orders.

#### **Actions for debts not exceeding £200**

3. (1)<sup>6</sup> All actions where the plaintiff seeks to recover a sum not exceeding £200 from the defendant in respect of—

- (a) a debt arising out of a contract;
- (b) a partnership account;
- (c) a claim in tort;
- (d) a claim for a distributive share under an intestacy, or to a legacy when no question of validity is in dispute;
- (e) a penalty imposed on or an amount due by the provisions of any written law or by the rules of any lawful society,

may, at the option of the plaintiff, be instituted, heard and determined in the manner provided by this rule.

(2) Every action under the provisions of paragraph (1) of this rule shall be commenced by complaint made verbally or in writing to the court, and if the plaintiff claims on an account, such account shall be presented in duplicate when the complaint is made.

(3) The court shall issue a summons to the defendant, and such summons shall state the complaint made by the plaintiff and shall be accompanied by a copy of the account, if any, presented under paragraph (2).

(4) On the day specified in the summons—

- (a) the plaintiff, or his clerk or agent; and
- (b) the defendant,

may appear, and if, after hearing the evidence given by such persons and any witnesses who may be called by them respectively, the court is satisfied of the justice of the claim, it shall pronounce judgment accordingly, but shall otherwise dismiss the complaint.

(5) If the plaintiff does not appear at the time and place specified in the summons, and is not represented, the court may, on the application of the defendant, dismiss the complaint.

(6) If the defendant does not appear at the time and place specified in the summons the court may, upon proof of service of the summons, proceed to hear and determine the complaint, unless for sufficient reason it thinks fit to order an adjournment.

---

<sup>6</sup> Paragraph 3(1) of Order 34 amended by Rules made on 22 November 2000

(7)<sup>7</sup> Judgment shall not be pronounced in any proceedings under this rule for an amount exceeding £200, exclusive of costs.

### Rules to apply

4. (1) The provisions of these Rules relating to the service of process, summoning and examination of witnesses, adjournment of hearing and execution proceedings shall apply, with all necessary modifications, to proceedings under this Order.

(2) Notwithstanding the provisions of paragraph (1) of this rule, in all actions which have been instituted under the provisions of rule 3 of this Order, it shall be sufficient for the court to make in writing a brief summary of the evidence of the parties and their witnesses.

### ORDER 35

#### *Miscellaneous applications by originating summons*

### Executors, administrators, etc

1. The executor or administrator of a deceased person, and a trustee under any deed or instrument and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir, or personal representative of a deceased person, or as the beneficiary under the terms of any deed or instrument, or as claiming by assignment, or otherwise, under any such creditor or other person as aforesaid, may take out an originating summons, returnable before the Chief Justice sitting in chambers, for such relief of the nature or kind following as may by the summons be specified and the circumstances of the case may require, that is to say, the determination, without the administration of the estate or trust, of any of the following questions—

- (a) any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or beneficiary;
- (b) the ascertainment of any class of creditors, devisees, legatees, heirs, or others;
- (c) the furnishing of any particular accounts and the vouching, when necessary, of such accounts;
- (d) the payment into court of any money in the hands of the executors, administrators or trustees;
- (e) directing the executors, administrators or trustees to do, or abstain from doing, any particular act in their character as executors, administrators or trustees;
- (f) the approval of a sale, purchase, compromise, or other transaction;
- (g) the determination of any question arising directly out of the administration of the estate or trust.

### Administration of estate or trust

2. Any of the persons named in rule 1 of this Order, may in like manner apply for and obtain an order for—

- (a) the administration of the personal estate of the deceased;
- (b) the administration of the real estate of the deceased;
- (c) the administration of the trust.

---

<sup>7</sup> Paragraph 3(7) of Order 34 amended by Rules made on 22 November 2000

## Partnership

3. When the existence of a partnership, or the right to a partnership, or the fact of the dissolution thereof, is not in dispute, any partner in a firm or his representatives may take out an originating summons returnable before the Chief Justice sitting in chambers against his partners or former partners or their representatives, if any, for the purpose of having the partnership dissolved (if it be still subsisting) and for the purpose of taking the accounts of and winding up such partnership.

## Practice upon application for summons

4. (1) An originating summons shall be in Form 48 of the Appendix, and shall specify the relief sought. The person entitled to apply shall present it with an affidavit setting forth concisely the facts upon which the right to the relief sought by the summons is founded, and the Chief Justice, if satisfied that the facts as alleged are sufficient, and the case is a proper one to be dealt with on an originating summons, shall sign the summons and give such directions for service upon persons or classes of persons and upon other matters as may then appear necessary.

(2) The originating summons when so signed shall be filed, and entered in the register.

## Evidence and directions upon hearing of summons

5. On the hearing of the summons, if the parties do not agree to the correctness and sufficiency of the facts set forth in the summons and affidavit, the Chief Justice may order the summons to be supported by such further evidence as he may deem necessary and may give such directions as he may think just for the trial of any issues arising thereupon, and may make any amendments necessary to make the summons accord with existing facts, and to raise the matters in issue between the parties.

## Power of court on hearing of summons

6. The Chief Justice hearing an originating summons may, if he thinks fit, adjourn the same into court for taking evidence or hearing arguments; and, if it appears to him that the matters in respect of which relief is sought cannot properly be disposed of in a summary manner, may refuse to make any order on the summons, and may dismiss the same, referring the parties to an action in the ordinary course, making such orders as to costs as may appear to be just.

### ORDER 36

### *Appeals to the Supreme Court*

## Form of appeal

1. (1) Every appeal to the Supreme Court shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the Registrar.

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the judgment or order appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

(3)<sup>8</sup> A copy of the said memorandum shall be served within 28 days of the date of the judgment appealed from upon every person affected by the appeal.

### **Grounds which may be taken in appeal**

2. The appellant shall not, except by leave of the court, urge, or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Supreme Court in deciding the appeal shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the court under this rule:

Provided that the Supreme Court shall not rest its decision on any such other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

### **Appeal by one of several plaintiffs or defendants**

3. Where there are more plaintiffs or more defendants than one, and the judgment or order appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole judgment or order, and thereupon the Supreme Court may reverse or vary the judgment or order in favour of all the plaintiffs or defendants, as the case may be.

### **Stay of proceedings**

4. An appeal to the Supreme Court shall operate as a stay of proceedings under a judgment or order appealed from, except so far as the Supreme Court may order.

### **Register of appeals**

5. Where a memorandum of appeal is lodged, the Registrar shall cause to be endorsed thereon the date of presentation, and the appeal shall be entered in a book to be kept for that purpose, to be called the Register of Appeals.

### **Security for costs**

6. (1) The Supreme Court may, in its discretion, at any time after an appeal is lodged, demand from the appellant security for the costs of the appeal:

Provided that the court shall demand such security in all cases in which the appellant is residing out of St. Helena and is not possessed of property within St. Helena other than the property, if any, to which the appeal relates.

(2) Where such security is not furnished within such time as the court orders, the court shall dismiss the appeal.

### **Record of Magistrates' Court**

7. (1) When a memorandum of appeal is lodged, the Registrar shall send notice of the appeal to the Magistrates' Court.

(2) The Magistrates' Court shall send to the Registrar with all practicable despatch the record of its proceedings in the action or matter to which the appeal relates.

---

<sup>8</sup> Paragraph 1(3) of Order 36 inserted by L.N. 25/1973

**Notice of hearing**

8. (1) The Chief Justice shall appoint a day for hearing of the appeal and notice of the day so appointed shall be served on the respondent or on his advocate in the manner provided for the service on a defendant of a writ; and all the provisions of these Rules applicable to a writ, and to proceedings with reference to the service thereof, shall apply to such notice.

(2) The notice to the respondent shall declare that if he does not appear in the Supreme Court on the day so appointed, the appeal may be heard in his absence.

**Non-appearance, of parties**

9. (1) Where on the day appointed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the court may make an order that the appeal be dismissed.

(2) Where the appellant appears and the respondent does not appear, the appeal may be heard in the absence of the respondent.

**Reinstatement of appeal**

10. Where an appeal is dismissed under rule 9 of this Order, the appellant may apply to the Supreme Court for the reinstatement of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the court shall reinstate the appeal on such terms as to costs or otherwise as it thinks fit.

**Re hearing on application of respondent**

11. Where an appeal is heard in the absence of the respondent and judgment is pronounced against the respondent, he may apply to the Supreme Court to re-hear the appeal; and if he satisfies the court that the notice of hearing was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit.

**Power to direct respondents to be added**

12. Where it appears to the Chief Justice at the hearing of an appeal that any person who was a party to the action or matter in the Magistrates' Court, but who has not been made a party to the appeal, is interested in the result of the appeal, the court may adjourn the hearing to a future day to be appointed by the court and direct that such person be made a respondent.

**Remand by Supreme Court**

13. Where the Magistrates' Court has disposed of the action or matter upon a preliminary point, and the judgment or order is reversed on appeal, the Chief Justice may, if he thinks fit, by order remand the case, and may further direct what issue or issues, shall be tried in the case so remanded, and shall send a copy of his judgment and order to the Magistrates' Court, with directions to re-admit the action or matter under its original number in the register, and proceed to determine the action or matter; and the evidence, if any, recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

**Supreme Court, may determine case finally**

**14.** Notwithstanding the provisions of rule 13 of this Order, where the evidence upon the record is sufficient to enable the Supreme Court to pronounce judgment, the Supreme Court may finally determine the action or matter, notwithstanding that the judgment of the Magistrates' Court from the judgment or order of which the appeal is preferred has proceeded wholly upon some ground other than that on which the Supreme Court proceeds.

**Additional evidence in Supreme Court**

**15. (1)** The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Supreme Court; but—

- (a) if the Magistrates' Court has refused to admit evidence which ought to have been admitted; or
- (b) if the Supreme Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment; or
- (c) for any other substantial cause,

the Supreme Court may allow such evidence or document to be produced, or witness to be examined.

**(2)** Whenever additional evidence is allowed to be produced by the Supreme Court, the court shall record the reason for its admission.

**Taking additional evidence**

**16. (1)** Wherever additional evidence is allowed to be produced, the Supreme Court may either take such evidence or direct the Magistrates' Court to take such evidence and send it when taken to the Supreme Court.

**(2)** Where additional evidence is directed or allowed to be taken, the Supreme Court shall specify the points to which the evidence is to be confined and record on its proceedings the points so specified.

**Power of the Supreme Court on Appeal**

**17. (1)** The Supreme Court may on appeal—

- (a) confirm, vary or reverse the judgment of the Magistrates' Court; or
- (b) order that the judgment or order of the Magistrates' Court be set aside and that a new trial be held; or
- (c) if the parties to the appeal agree as to the form which judgment on appeal shall take, pronounce judgment or make an order accordingly.

**(2)** The Supreme Court shall have power to pronounce any judgment and make any order which ought to have been pronounced or made in the Magistrates' Court and to pronounce or make such further or other judgment or order as the case may require; and such power may be exercised by the court notwithstanding that the appeal is as to part only of the judgment or order and may be exercised in favour of all or any of the respondents although such respondents have not filed any appeal or cross appeal.

## Judgment on appeal

**18. (1)** The judgment or order of the Supreme Court on an appeal shall be dated, drawn up, sealed and signed in the same manner as a judgment in an action.

**(2)** Certified copies of the judgment or order shall be furnished to the parties on application to the Supreme Court and on payment of the requisite charges.

## Copy of judgment to be sent to Magistrates' Court

**19.** A copy of the judgment or order on appeal, certified by the Supreme Court, or such officer as it appoints in this behalf, shall be sent to the Magistrates' Court, and shall be filed with the original proceedings, and an entry of the judgment of the Supreme Court shall be made in the register.

### ORDER 37

### *Appeals from Orders*

## Appeals from orders as of right

**1.** An appeal shall lie as of right under the provisions of section 66 of the Ordinance from the following orders, namely—

- (a) an order under rule 5 of Order 14 refusing to set aside the abatement or dismissal of an action or matter;
- (b) an order under rule 6 of Order 15 giving or refusing to give leave;
- (c) an order under rule 8 of Order 15;
- (d) an order under rule 2 of Order 17 rejecting an application for an order to set aside the dismissal of an action or matter;
- (e) an order under rule 6 of Order 19 recording or refusing to record an agreement;
- (f) an order made under rule 16 of Order 20 rejecting an application for an order to set aside the dismissal of an action or matter;
- (g) an order under rule 19 of Order 20 rejecting an application for an order to set aside a judgment or order pronounced *ex parte*;
- (h) an order under rule 13 of Order 21 pronouncing judgment against a party;
- (i) an order under rule 2 or rule 5 of Order 28;
- (j) an order under rule 1, rule 2, rule 4 or rule 7 of Order 29;
- (k) an order under rule 1 of Order 30;
- (l) an order under rule 36 of Order 32 setting aside or refusing to set aside a sale;
- (m) orders in interpleader suits under rule 3 or rule 6 of Order 33;
- (n) an order made upon the hearing of an originating summons under Order 33;
- (o) an order of refusal under rule 10 of Order 36 to reinstate or under rule 11 thereof to rehear an appeal.

## Appeals from orders by leave

**2. (1)** An appeal under these rules shall not lie from any other order save with the leave of the court making the order or of the court to which an appeal would lie if leave were given.

**(2)** Applications for leave to appeal shall in the first instance be made to the court making the order sought to be appealed from.

**Practice**

3. The provisions of Order 36 shall apply, so far as may be, to appeals under this Order.

**ORDER 38*****Revision*****Power of Supreme Court to call for records**

1. The Supreme Court may call for and examine the record of any civil proceedings before the Magistrates' Court for the purpose of satisfying itself as to the correctness, legality or regularity of such proceedings.

**Powers of Supreme Court on revision**

2. (1) In the case of any proceedings in the Magistrates' Court the record of which has been called for, or which otherwise comes to its knowledge, when it appears that in such proceedings an error material to the merits of any case or involving a miscarriage of justice has occurred, the Supreme Court may exercise any of the powers conferred on it as a court of appeal by the provisions of Order 37.

(2) Where an appeal lies from any judgment or order of the Magistrates' Court and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

(3) In exercising its powers under this rule, the Supreme Court may, if it thinks fit, call for and receive from the Magistrates' Court a report on any matter connected with the case.

**Discretion of court as to hearing parties**

3. No party shall have the right to be heard either personally or by advocate before the Supreme Court when exercising its powers of revision:

Provided that the court may, if it thinks fit, when exercising such powers hear any party either personally or by advocate.

**Supreme Court order to be certified to lower court**

4. When a case is revised by the Supreme Court, it shall certify its decision or order to the Magistrates' Court, and that court shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

**ORDER 39*****Procedure on Applications*****Form of application**

1. All applications to the court, save as otherwise expressly provided by these rules, shall be made in writing addressed to the court.



**Notice to parties**

2. A copy of every such application shall, save where otherwise expressly provided by these rules, be served on all parties affected thereby:

Provided that the court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as to the court may seem just, and any party affected by such order may move to set it aside.

**Contents of application**

3. Every application shall state in general terms the grounds on which it is made, and, where an application is supported by evidence on affidavit, a copy of such affidavit shall be served on all parties affected by the application.

**Want of notice**

4. If upon the hearing of any application, the court is of the opinion that sufficient notice has not been given or that any person to whom notice has not been given ought to have had such notice, the court may either dismiss the application or adjourn the hearing thereof in order that such notice may be given upon such terms, if any, as the court may think fit to impose.

**Applications to be heard in chambers**

5. All applications, including applications by summons, shall be in chambers.

**Transfer from court to chambers, etc**

6. (1) Notwithstanding anything in these rules contained, the court may in any case direct that any business be disposed of in chambers which it deems may be more conveniently disposed of in chambers than in court.

(2) The court may direct that any application made in chambers be disposed of in court which it deems may be more conveniently disposed of in court than in chambers.

**ORDER 40*****Time*****Month defined**

1. Where by these rules or by any judgment or order given or made the time for doing any act or taking any proceedings is limited by months, and where the word “month” occurs in any document which is part of any legal procedure under these rules, such time shall be computed by calendar months unless otherwise expressed.

**Exclusion of Sundays, etc**

2. Where any time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceedings, Sunday, Christmas Day, Good Friday,

and any other day appointed as a public holiday shall not be reckoned in the computation of such limited time.

### **Time expiring on Sunday or Close day**

3. Where the time for doing any act or taking any proceedings expires on a Sunday or other day on which the Registry are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the Registry is next open.

### **Power to enlarge time**

4. (1) Where a time has been fixed for doing any act or taking any proceedings under these rules or by order of the court, the court shall have power to enlarge such time upon such terms, if any, as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court otherwise orders.

(2) The time for delivering, amending or filing and pleading, answer or other document may be enlarged by consent in writing of the parties or their advocates without application to the court.

### **Computation of days**

5. In any case in which any particular number of days not expressed to be clear days is prescribed under these rules or by an order or direction of the court, the same shall be reckoned exclusive of the first day and inclusive of the last day.

### **Time of day of service**

6. Service of writs, pleadings, notices, summonses, orders, rules and other proceedings shall normally be effected before six o'clock in the afternoon, except on Saturdays when it shall normally be effected before one o'clock in the afternoon. Service effected after six o'clock in the afternoon on any week-day except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day; service effected after one o'clock in the afternoon of Saturday shall for the like purpose be deemed to have been effected on the following Monday.

## **ORDER 41** ***Miscellaneous***

### **Costs of service**

1. (1) Every process issued under the Ordinance or these rules shall be served at the expense of the party on whose behalf it is issued unless the court otherwise directs.

(2) The fee chargeable for such service shall be paid before the process is issued.

## Service of orders and notices

2. All orders, notices and documents required by the Ordinance or these rules to be given to or served on any person shall be served in the manner provided for the service of writs.

## Use of forms

3. The forms used for the purposes of the Ordinance or these rules shall, with such variation as the circumstances of each case may require, be those contained in the Appendix and such other forms as may be from time to time approved by the Chief Justice.

## Rules of procedure not contained in these rules

4. Any special rules of procedure not contained in these rules which may have been or may be made under the provisions of any written law shall, where they conflict with these rules, prevail and be deemed to govern the procedure in the matter therein mentioned.

### ORDER 42

### *Powers and Duties of the Registrar*

## General

1. (1) Wherever in the Ordinance or rules of court it is provided that any act or thing shall or may be done by such officer as the court may appoint, then, in default of any appointment, that act or thing shall or may be done by the Registrar.

(2) For the purposes of this rule the Registrar shall be deemed to be a court.

## Reference to Chief Justice

2. If any matter appears to the Registrar to be proper for the decision of the Chief Justice, the Registrar may refer the same to the Chief Justice who may either dispose of the matter or refer the same back to the Registrar with such directions as he may think fit.

## Appeals from Registrar

3. Any person aggrieved by an order of the Registrar may appeal therefrom to the Supreme Court. Such appeal shall be by notice on motion.

## Registers and accounts

4. (1) The Registrar shall—

- (a) register all judgments and orders and keep a record of all proceedings of the Supreme Court; and
- (b) cause to be registered all judgments and orders and cause to be kept a record of all proceedings of the Magistrates' Court.

(2) The Registrar shall—

- (a) have custody and keep an account of all moneys, fees and fines paid or payable into court;

- (b) keep an account of all moneys paid out of court;
  - (c) from time to time, as directed by the Chief Justice, submit his accounts to be audited by the person and in the manner prescribed for that audit of public funds; and
  - (d) pay to the Consolidated Fund the amount of fines, fees and other moneys in his custody at such intervals as the Financial Secretary may direct.
- (3) For the purposes of paragraph (2) of this rule, “**court**” includes the Magistrates’ Court.
- 

## APPENDIX

### ARRANGEMENT OF FORMS

Form number	Subject matter
1.	Notice to minor defendant and guardian.
2.	Plaint.
3.	Writ of summons to deliver a defence.
4.	Writ of summons to appear and answer claim.
5.	Affidavit of process server to accompany return of a summons or notice.
6.	Certificate of service of foreign process.
7.	Third party notice.
8.	Summons to personal representative of a deceased defendant.
9.	Order for affidavit as to documents.
10.	Affidavit as to documents.
11.	Order to produce documents for inspection.
12.	Notice to produce documents.
13.	Notice to produce (General form).
14.	Notice to defendant.
15.	Summons to witness.
16.	Warrant of arrest of witness.
17.	Warrant of committal.
18.	Notice to parties of the day fixed for examination of a witness about to leave the jurisdiction.
19.	Commission to examine absent witness.
20.	Commission for a local investigation, or to examine accounts.
21.	Commission to make a partition.
22.	Warrant of arrest before judgment.
23.	Security for appearance of a defendant arrested before judgment.
24.	Order for committal.

This e-version of the text is not authoritative for use in court.

25. Direction to defendant to furnish Security.
26. Security for the production of property.
27. Attachment before judgment, on proof of failure to furnish security.
28. Temporary injunction.
29. Appointment of a receiver.
30. Application for execution.
31. Order sending judgment for execution to another court.
32. Certificate of non-satisfaction of judgment.
33. Warrant of attachment of movable property in execution of a judgment for money.
34. Warrant for seizure of specific movable property.
35. Warrant to the bailiff to give possession of land, etc.
36. Notice to show cause (General form).
37. Warrant of arrest in execution.
38. Warrant of committal of judgment debtor to prison.
39. Order for the release of a person imprisoned in execution of a judgment.
40. Attachment in execution—prohibitory order where the property to be attached consists of movable property to which the defendant is entitled subject to a lien or right of some other person to the immediate possession thereof.
41. Order to attach salary.
42. Attachment—prohibitory order, where the property consists of money or of any security in the custody of a court of justice or public officer.
43. Order for payment to the judgment-creditor of coin or currency notes in the hands of a third party.
44. Notice to attaching creditor.
45. Warrant of sale of property in execution of judgment for money.
46. Notification of sale.
47. Notice to person in possession of movable property sold in execution.
48. Originating summons (General form).
49. Memorandum of appeal.
50. Notice to Magistrates' Court of pending appeal.
51. Notice to respondent of the day fixed for the hearing of the appeal.
52. Notice to a party joined by the Court as a respondent.
53. Notice to surety of his liability under a judgment.

**APPENDIX***Form 1.***NOTICE TO MINOR DEFENDANT AND GUARDIAN**

(O. 5, r. 2)

(Title)

To ..... minor defendant .....,  
natural guardian.

Whereas it is necessary for the purposes of the above action to appoint a guardian to the minor defendant, take notice that unless you .....  
(*insert name of natural guardian*) apply to the Court within ..... days to be appointed as such guardian, the Court will proceed to appoint some other person to act as guardian to the minor for the purposes of the said action.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 2.

**FORM OF PLAINT**  
(Orders 8, 9 and 10)

In the ..... Court, St. Helena.

Plaint

Plaintiff	Name Address Occupation	
Defendant	Name Address Occupation	
Particulars of Claim		
Relief Claimed		
Value of subject matter of action		

The Plaintiff is/not a minor. The Defendant is/not a minor.

	£
Amount claimed:	
Fee paid:	
Service fee:	

Plaintiff

\_\_\_\_\_

Form 3.

**WRIT OF SUMMONS**

(O. 11, r. 1)

(Title)

To ..... (*name, description and address*)

WHEREAS ..... has instituted an action against you, particulars whereof are set out in the copy of the Plaint served herewith, you are hereby summoned to deliver a defence in the action within fifteen days of the date of service hereof on you, exclusive of the day of such service.

TAKE NOTICE that in default of your delivering a defence in the action you will not be allowed to dispute the plaintiff's claim in the action, and judgment may be given against you.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

NOTICE: If you admit the claim you should pay the amount claimed into court together with the costs of the action to avoid execution of the judgment against your person or property or both.

\_\_\_\_\_



Form 4.

**WRIT TO SUMMONS TO APPEAR AND ANSWER CLAIM**

(O. 11, r. 1)

(Title)

To ..... (*name, description and address*)

WHEREAS ..... has instituted an action against you particulars whereof are at out in the copy of the Complaint served herewith, you are hereby summoned to appear in this Court in person, on the ..... day of ....., 20....., at ..... o'clock in the ..... noon, to answer the claim; and you are directed to produce on that day all the documents on which you intend to rely in support of your defence.

TAKE NOTICE that, in default of your appearance on the day above-mentioned, the action will be heard and determined in your absence, and judgment may be given against you.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

- NOTICE:
- 1 If you so desire, you can have a summons from this court to compel the attendance of any witness and the production of any document that you have a right to call on the witness to produce, on applying to the court and on depositing the necessary expenses.
  - 2 If you admit the claim, you should pay the amount claimed into Court, together with the costs of the action, to avoid execution of the judgment against your person or property or both.

\_\_\_\_\_

Form 5.

**AFFIDAVIT OF PROCESS SERVER TO ACCOMPANY  
RETURN OF SUMMONS OR NOTICE**

(O. 11, r. 6)  
(Title)

The Affidavit of .....

I, ..... make oath/affirm and say as follows—

1. I am a process server of this Court.

2. On the ..... day of ....., 20..... I received a writ of summons/notice issued by the ..... Court in Action No. .... in the said Court, dated the ..... day of ....., 20..... for service on .....

3. The said ..... was at the time personally known to me and I served the said writ/notice on him/her on the ..... day of ....., 20....., at about ..... o'clock in the ..... noon at ..... by tendering a copy thereof to him/her and requiring his/her signature to the original writ/notice.

4. *(Here state whether the person served signed or refused to sign the process, and in whose presence)*

or

3. The said ..... not being personally known to me, ..... accompanied me to ..... and pointed out to me a person whom he stated to be the said ....., and I served the said writ/notice on him/her on the ..... day of ....., 20....., at about ..... o'clock in the ..... noon at by tendering a copy thereof to him/her and requiring his/her signature to the original summons/notice.

4. *(Here state whether the person served signed or refused to sign the process, and in whose presence)*

or

*If substituted service has been ordered under Order 11, rule 7, state fully and exactly the manner in which the summons was served.*

.....  
(Signature of Process Server)

Sworn/Affirmed by the said ..... before me this

..... day of ....., 20.....

Commissioner for Oaths.

\_\_\_\_\_

*Form 6.*

**CERTIFICATE O SERVICE O FOREIGN PROCESS**

(O. 11, r. 15)

(Title)

I, ..... Registrar of the Supreme Court of  
St. Helena, hereby certify that the documents annexed hereto are as follows—

1. The original letter of request for service of process received from the  
Court or Tribunal at ..... in the .....  
of ..... in the matter of .....  
versus .....; and
2. The process received with such letter of request; and
3. The evidence of service upon ....., the person  
named in the letter of request, together with the verification of a  
Commissioner for Oaths.

AND I CERTIFY that such service so proved, and the proof thereof, are such as  
are required by the law and practice of the Supreme Court of St. Helena regulating the  
service of legal process in St. Helena and the proof thereof.

Dated this ..... day of ....., 20.....

Registrar.

\_\_\_\_\_

Form 7.

**THIRD PARTY NOTICE**

(O. 13, r. 1)

(Title)

Notice filed on the ..... day of ....., 20.....

To .....

Take notice that this action has been brought by the plaintiff against the defendant  
(*State particulars of claim*).

The defendant claims to be entitled to contribution from you to the extent of (*state proportion*) of any sum which the plaintiff may recover against him, on the ground that (*state ground*).

or

The defendant claims to be entitled to contribution from you to the extent of (*state proportion*) of any sum which the plaintiff may recover against him, on the ground that (*state ground*).

or

The defendant claims to be entitled to (*state remedy or relief*) on the ground that (*state ground*).

or

The defendant claims that (*state question or issue between plaintiff and defendant*) is substantially the same as is in issue between the defendant and you and should be determined in these proceedings.

*And the defendant claims to be indemnified by you against liability for any costs which the plaintiff may recover against him in defending this action to the extent of the whole (or as may be) of such costs, and further claims against you the costs of these third party proceedings.*

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant C.D., or your liability to the defendant C.D. you must deliver a defence within ..... days after service of this notice.

Defendant.

\_\_\_\_\_

Form 8.

**SUMMONS TO PERSONAL REPRESENTATIVE OF DECEASED DEFENDANT**

(O. 14, r. 2)

(Title)

To .....

WHEREAS the plaintiff ..... instituted an action in this Court on the ..... day of ....., 20....., against the defendant ..... who has since died, and whereas the said plaintiff has made an application to this Court alleging that you are the personal representative of the said ....., deceased, and desiring that you be made the defendant in his stead:

You are hereby summoned to attend in this Court on the ..... day of ....., 20....., at ..... to defend the said action and, in default of your appearance on the day specified, the said action will be heard and determined in your absence.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 9.

**ORDER FOR AFFIDAVIT AS TO DOCUMENTS**

(O. 15, r. 2)

(Title)

Upon hearing ..... It is ordered that the ..... do within ..... days from the date of this order answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this action and that the costs of this application be .....

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 10.

**AFFIDAVIT AS TO DOCUMENTS**

(O. 15, r. 3)

(Title)

I, the above-named defendant C.D., make oath and say as follows—

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first schedule hereto.
2. I object to produce the documents set forth in the second part of the first schedule hereto (*state grounds of objection*).
3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this action set forth in the second schedule hereto.
4. The last-mentioned documents were last in my possession or power on .....  
..... (*state when and what has become of them, and in whose possession they now are*).
5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my advocate or agent or of any other person on my behalf, any account, book of account, voucher, receipt letter, memorandum, paper or writing, or any copy of or extract from any document, or any other document whatsoever, relating to the matters in question in this action or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

\_\_\_\_\_

Form 11.

**ORDER TO PRODUCE DOCUMENTS FOR INSPECTION**

(O. 15, r. 4)

(Title)

UPON hearing ..... and upon reading the affidavit of ..... dated the ..... day of ....., 20..... .

It is ordered that the ..... do, at all reasonable times, on reasonable notice, produce at ..... the following documents, namely ....., and that the ..... be at liberty to inspect and peruse the documents so produced and make notes of their contents. In the meantime it is ordered that all further proceedings be stayed and that the costs of this application be .....

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

*Form 12.***NOTICE TO PRODUCE DOCUMENTS**

(O. 15, r. 5)

(Title)

Take notice that the plaintiff/defendant requires you to produce for his inspection the following documents referred to in your plaint/defence/affidavit dated the ..... day of ....., 20.....

(Describe documents required)

(Sgd.) .....

Plaintiff/Defendant

To ....., Defendant/Plaintiff.

\_\_\_\_\_

*Form 13.***NOTICE TO PRODUCE (GENERAL FORM)**

(O. 15, r. 9)

(Title)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this action all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power containing any entry, memorandum or minute relating to the matters a question in this action, and particularly .....

To A.B., Plaintiff/Defendant

To C.D., Defendant/Plaintiff

\_\_\_\_\_

Form 14.

**NOTICE TO DEFENDANT**

(O. 20, r. 13)

(Title)

To ..... (Name, description and place of residence)

WHEREAS this day was fixed for the hearing of the above action and a summons was issued to you and the Plaintiff has appeared in this Court and you did not so appear, but from the return of the process server it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons.

NOTICE is hereby given to you that the hearing of the action is adjourned this day and that the ..... day of ....., 20..... is now fixed for the hearing of the same and that in default of your appearance on the day last mentioned the action will be heard and determined in your absence.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 15.

**SUMMONS TO WITNESS**

(O. 21, r. 3)

(Title)

To .....

WHEREAS your attendance is required to ..... on behalf of the ..... in the above action, you are hereby required personally to appear before this Court on the ..... day of ....., 20....., at ..... o'clock in the ..... noon, and to bring with you (*or to send to this Court*)

(*A sum of ..... being your travelling and other expenses and subsistence allowance for one day, is sent herewith*)

If you fail to comply with this order without lawful excuse, the Court may compel your attendance and you may be liable to a fine or imprisonment.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

NOTICE: If you are summoned only to produce a document and not to give evidence, you will be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.



Form 16.

**WARRANT OF ARREST OF WITNESS**

(O. 21, r. 8)

(Title)

To ....., the Bailiff of the Court.

WHEREAS ..... has been duly served with a summons but has failed to attend: You are hereby ordered to arrest and bring the said ..... before the Court.

You are further ordered to return this warrant on or before the ..... day of ....., 20....., with an endorsement certifying the day and manner in which it has been executed, or the reason why it has not been executed.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

Form 17.

**WARRANT OF COMMITTAL**

(O. 21, r. 10)

(Title)

To ....., The Officer in charge of the Prison:

WHEREAS the plaintiff/defendant in the above-named action has made application to this Court that security be taken for the appearance of ..... to give evidence/produce a document, on the ..... day of ....., 20....., and whereas the Court has called upon the said ..... to furnish such security, which he has failed to do: This is to require you to receive the said ..... into your custody in the civil prison and to produce him before this Court at ..... on the said day and on such other day or days as may be hereafter ordered.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

Form 18.

**NOTICE TO PARTIES OF THE DAY FIXED FOR  
EXAMINATION OF A WITNESS ABOUT TO LEAVE THE JURISDICTION**

(O. 23, r. 7)

(Title)

To ....., Plaintiff/Defendant

WHEREAS application has been made to the Court by .....  
that the examination of ....., witness required by the said  
..... may be taken immediately; and it has been shown to the  
Court's satisfaction that the said witness is about to leave the Court's jurisdiction (*or  
any other good and sufficient reason to be stated*): Take notice that the examination  
of the said witness ..... will be taken by the Court on the .....  
day of ....., 20.....

Dated this ..... day of ....., 20.....

Registrar.

Form 19.

**COMMISSION TO EXAMINE ABSENT WITNESS**

(O. 27, rr. 1, 10)

(Title)

To the Magistrates' Court at .....

WHEREAS the evidence of ..... is required  
by the ..... and whereas .....: You  
are requested to take the evidence of such witness. The evidence may be taken in the  
presence of the parties or their agents, if in attendance, who will be at liberty to  
question the witness on the points specified, and you are further requested to make  
return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any court having  
jurisdiction on your application.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

Form 20.

**COMMISSION FOR AN INVESTIGATION, OR TO EXAMINE ACCOUNTS**

(O. 27, rr. 4, 5)

(Title)

To .....

WHEREAS it is deemed requisite, for the purposes of this action, that a commission for ..... should be issued: You are hereby appointed Commissioner for the purpose of .....

Process to compel the attendance before you of any witnesses, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

*(A sum of £ ....., being your fee in the above, is herewith forwarded).*

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 21.

**COMMISSION TO MAKE A PARTITION**

(O. 27, r. 6)

(Title)

WHEREAS it is deemed requisite for the purposes of this action that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in the judgment of this Court dated the ..... day of ....., 20.....: You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said judgment, and to allot such shares to the several parties. You are hereby authorised to award sums to be paid to any party by any other party for the purpose of equalising the value of the shares.

Process to compel the attendance before you of any witness, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction to your application.

*(A sum of £ ....., being your fee in the above, is herewith forwarded).*

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

Form 22.

**WARRANT TO ARREST ABSCONDING DEBTOR**

(O. 28, r. 1)

(Title)

To .....

The Bailiff of the Court.

WHEREAS ....., the plaintiff in the above action, claims the sum of £..... as noted in the margin and has proved to the

satisfaction of the Court that there is probable cause for believing that the defendant is about to leave St. Helena.

	£	pence
Principal		
Interest		
Costs		
Total		

These are to command you to demand and receive from the said ..... the sum of £..... as sufficient to satisfy the plaintiff's claim, and unless the said sum of £..... is forthwith delivered to you by or on behalf of the said ....., to take the said ..... into custody,

And to bring him before this Court, in order that he may show cause why he should not furnish

security to the amount of £..... for his personal appearance before the Court until such time as the said action shall be fully and finally disposed of, and until satisfaction of any judgment that may be passed against him in the action.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

Form 23.

**SECURITY FOR APPEARANCE OF A DEFENDANT  
ARRESTED BEFORE JUDGMENT**

(O. 28, r. 2)

(Title)

To .....

WHEREAS at the instance of ....., the plaintiff in the above action, ..... the defendant, has been arrested and brought before the Court.

And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security.

Therefore I ..... have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when called upon while the action is pending and until satisfaction of any judgment that may be passed against him in the said action; and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said action.

Witness my hand at ..... this ..... day of .....,  
20.....

Witness:

1. ....
2. ....

.....  
Surety.

\_\_\_\_\_

Form 24.

**ORDER FOR COMMITTAL**

(O. 28, r. 3)

(Title)

To .....

WHEREAS ....., plaintiff in this action, has made application to the Court that security be taken for the appearance of ....., the defendant, to answer any judgment that may be passed against him in the action; and whereas the Court has called upon the defendant to furnish such security or to offer a sufficient deposit in lieu of security, which he has failed to do: It is ordered that the defendant ..... be committed to the civil prison until the decision of the action; or, if judgment be pronounced against him, until satisfaction of the judgment.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 25.

**DIRECTION TO DEFENDANT TO FURNISH SECURITY**

(O. 28, r. 4)

(Title)

To ....., Defendant.

WHEREAS ..... has proved to the satisfaction of the Court that you are about to .....

These are to direct you on or before the ..... day of ..... 20....., to furnish security in the sum of £..... to produce and place at the disposal of this Court when required ..... or the value thereof, or such portion of the value as may be sufficient to satisfy any judgment that may be passed against you; or to appear and show cause why you should not furnish security.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 26.

**SECURITY FOR PRODUCTION OF PROPERTY**

(O. 28, r. 4)

(Title)

WHEREAS at the instance of ....., plaintiff in the above action, ....., the defendant, has been directed by the Court to furnish security in the sum of £..... to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed: Now therefore, I, ..... have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the judgment; and in default of his so doing, I bind myself, my heirs and executors, to pay to the said Court at its order, the said sum of £..... or such sum not exceeding the said sum as the said Court may adjudge.

Witness my hand at ..... this ..... day  
of ....., 20..... .

Schedule

Witness:

.....  
Surety.

Form 27.

**ATTACHMENT BEFORE JUDGMENT  
ON PROOF OF FAILURE TO FURNISH SECURITY**

(O. 28, r. 5)

(Title)

To ....., Bailiff of the Court.

WHEREAS the Court has called upon ....., the defendant, to furnish security to fulfil any judgment that may be passed against him in the action, which he has failed to do these are to command you to attach ..... the property of the said ..... and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the ..... day of ....., 20....., with an endorsement certifying the date on which and the manner in which it has been executed, or the reason it has not been executed.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 28.

**TEMPORARY INJUNCTION**

(O. 29, r. 1)

(Title)

Upon hearing the plaintiff A.B., and upon hearing the evidence of ..... and .....;

This Court doth order that an injunction do issue to restrain the defendant C.D., his servants, agents and workmen from (*specify nature of restraint imposed*) until the hearing of this action or until the further order of this Court.

Dated this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_



Form 29.

**APPOINTMENT OF A RECEIVER**

(O. 30, r. 3)

(Title)

To .....

WHEREAS ..... has been attached in execution of a judgment passed in the above action on the ..... day of ....., 20....., in favour of ....., you are hereby appointed receiver of the said property under Order 30 of the Civil Procedure Rules, with full powers under the provisions of that Order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on .....  
You will be entitled to remuneration at the rate of ..... *per centum* upon your receipts under the authority of this appointment.

Given under my hand this ..... day of ....., 20.....

Chief Justice.

Form 30.

## APPOINTMENT FOR EXECUTION

(O. 32, r. 3)

In the ..... Court.

I, ....., judgment-creditor, hereby apply for execution of the judgment set forth below—

1.	No. of Case	789								
2.	Names of Parties.	A.B.—Plaintiff. C.D.—Defendant.								
3.	Date of Judgment.	.....								
4.	Whether any appeal preferred from judgment.	No.								
5.	Payment or adjustment made, if any.	None.								
6.	Previous application made, if any, with date and result.	£ ..... recorded on application, ..... dated .....								
7.	Amount with interest due upon the judgment or other relief granted thereby with particulars of any cross judgment.	£ ..... principal (interest of 6 <i>per centum</i> from date of judgment till payment).								
8.	Amount of costs, if any, awarded.	<table border="1"> <tr> <td>£</td><td>pence</td></tr> <tr> <td>As awarded in judgment.</td><td></td></tr> <tr> <td>Subsequently incurred.</td><td></td></tr> <tr> <td>Total .....</td><td></td></tr> </table>	£	pence	As awarded in judgment.		Subsequently incurred.		Total .....	
£	pence									
As awarded in judgment.										
Subsequently incurred.										
Total .....										
9.	Against whom to be executed.	Against the defendant, C.D.								
10.	Mode in which the assistance of the Court is required.	I pay the total amount of £ ..... (together with interest on the principal sum up to date of payment) and the costs of taking out this execution, be realised by attachment and sale of defendant's movable property as per annexed list and paid to me.								

I, ....., declare that what is stated herein is true to the best of my knowledge and belief.

Dated this ..... day of ....., 20.....

(Sgd) .....  
Judgment creditor.

*Form 31.***ORDER SENDING JUDGMENT FOR EXECUTION TO ANOTHER COURT**

(O. 32, r. 4)

(Title)

WHEREAS the judgment-creditor in the above action has applied to this Court for a certificate to be sent to the ..... Court at ..... for execution of the judgment in the above action, alleging that the judgment-debtor resides or has property within the local limits of the jurisdiction of the said Court and it is deemed necessary and proper to send a certificate to the said Court under rule 4 of Order 32, of the Civil Procedure Rules.

Ordered

That a copy of this Order be sent to the ..... Court at ..... with a certified copy of the entry of judgment and of any order which may have been made for execution the same and a certificate of non-satisfaction.

Dated this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

*Form 32.***CERTIFICATE OF NON-SATISFACTION OF JUDGMENT**

(O. 32, r. 4)

(Title)

Certified that no \* satisfaction of the judgment of this Court in Action No. .... a copy, which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Dated this ..... day of ....., 20.....

Chief Justice/Magistrate.

\* *If partial, strike out "no" and state to what extent.*

\_\_\_\_\_

Form 33.

**WARRANT OF ATTACHMENT OF MOVABLE PROPERTY  
IN EXECUTION OF A JUDGMENT FOR MONEY**

(O. 32, rr. 14, 38)

(Title)

To .....

The Bailiff of the Court.

WHEREAS ..... was ordered by judgment of this Court passed on  
the ..... day of ....., 20..., in Action No. ....

---

Judgment..... £ pence

to pay the plaintiff the sum of  
£..... as noted in the margin;  
and whereas the said sum of  
£..... has not been paid:

Interest .....

Costs .....

Costs of execution

Further interest

Principal .....

These are to command you to attach  
the movable property to the said  
..... as set forth in the  
schedule hereunto annexed, or which  
shall be pointed out to you by the  
plaintiff and unless the said  
..... shall pay to you the  
said sum of £..... together  
with £..... the costs of this  
attachment, to hold the same until  
further orders from this Court.

---

Total ....

You are further commanded to  
return this warrant on or before the  
..... day of .....,

with an endorsement certifying the day on which and manner in which it has been  
executed, or why it has not been executed.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

Schedule

\_\_\_\_\_

*Form 34.*

**WARRANT FOR SEIZURE OF SPECIFIC MOVABLE PROPERTY**  
(O. 32, r. 15)  
(Title)

To .....

The Bailiff of the Court.

WHEREAS ..... was ordered by judgment of this Court passed on the ..... day of ....., 20....., in Action No. .... to deliver to the plaintiff the movable property (or a ..... share in the movable property) specified in the schedule hereunto annexed, and whereas the said property (or share) has not been delivered:

These are to command you to seize the said property (or share) has not been delivered: said movable property) and to deliver it to the plaintiff or to such person as he may appoint in his behalf.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

Schedule

\_\_\_\_\_

Form 35.

**WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC**  
(O. 32, r. 18)  
(Title)

To .....

The Bailiff of the Court.

WHEREAS the undermentioned property in the occupancy of .....  
..... has been adjudged to .....  
the plaintiff, you are hereby directed to put the said .....  
in possession of the same, and you are hereby authorised to remove any person bound  
by the judgment who may refuse to vacate the same.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

Schedule

\_\_\_\_\_

Form 36.

**NOTICE TO SHOW CAUSE (GENERAL FORM)**  
(Title)

To .....

WHEREAS the above-named ..... has made application  
to this Court that ..... :

You are hereby warned to appear in this Court on the ..... day of  
....., 20....., at ..... o'clock in the .....  
noon, to show cause against the application, failing wherein, the said application will  
be heard and determined *ex parte*.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 37.

**WARRANT OF ARREST IN EXECUTION**

(O. 32, r. 19)

(Title)

To .....

The Bailiff of the Court.

WHEREAS..... was adjudged by a judgment of the Court in Action  
No. .... dated the ..... day of ....., 20.....

	£	pence
Principal		
Interest		
Costs		
Execution		
Total		

to pay to the judgment-creditor the sum of £ .....  
as noted in the margin, as noted and whereas the  
said sum of £..... has not been paid to the  
said judgment-creditor in satisfaction of the said  
judgment: These are to command you to arrest the  
said judgment-debtor and unless the said  
judgment-debtor shall pay to you the said sum of  
£....., together with £..... for  
the costs of executing this process, to bring the said  
judgment-debtor before the Court with all  
convenient speed. You are further commanded to  
return this warrant on or before the ..... day  
of ....., with an endorsement  
certifying the day on which and manner in which it  
has been executed, or the reason why it has not  
been executed.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 38.

**WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO PRISON**

(O. 35, r. 21)

(Title)

To .....

The Officer in Charge of the Prison:

WHEREAS ....., who has been brought before this Court this ..... day of ....., 20....., under a warrant in execution of a judgment which was pronounced by the said Court on the ..... day of ....., and by which judgment it was ordered that the said ..... should pay £ .....; And whereas the said ..... has neither obeyed the judgment nor satisfied the Court that he is entitled to be discharged from custody; you are hereby commanded and required to take and receive the said ..... into the civil prison and keep him imprisoned therein for a period not exceeding ..... or until the said judgment shall be fully satisfied or the said ..... shall be otherwise entitled to be released according to the terms and provisions of section 35 of the Civil Procedure Ordinance, and the Court does hereby fix £ ..... per day as the rate of allowance for the subsistence of the said ..... during his confinement under this warrant of committal.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_



Form 39.

**ORDER FOR THE RELEASE OF A PERSON  
IMPRISONED IN EXECUTION OF A JUDGMENT**  
(Section 35 and 36 of the Ordinance)  
(Title)

To .....

The Officer in Charge of the Prison:

Under orders passed this day, you are hereby directed to set free  
..... judgment-debtor, now in your custody.

Dated this ..... day of ....., 20.....

Chief Justice/Magistrate.

Form 40.

**ATTACHMENT IN EXECUTION-PROHIBITORY ORDER WHERE THE  
PROPERTY TO BE ATTACHED CONSISTS OF MOVABLE PROPERTY  
TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT  
OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF**  
(O. 32, r. 24)  
(Title)

To .....

WHEREAS ..... has failed to satisfy a judgment passed against  
..... on the ..... day of .....,  
20..... in Action No. .... . It is ordered that you, the said  
....., are hereby prohibited and restrained, until further notice  
of the Court, from delivering the said property to any person or persons whatsoever.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

Form 41.

**ORDER TO ATTACH SALARY**

(O. 32, r. 26)

(Title)

To .....

WHEREAS ....., judgment-debtor in the above-named case is a ..... (*describe office of judgment-debtor*) receiving his salary at your hands; and whereas ..... judgment-creditor in the said case, has applied to this Court for an attachment of the salary of the said ..... to the extent of £..... due to him under the judgment: You are hereby required to withhold the said sum of £..... from the salary of the said ..... in full (if the amount does not exceed one half of the monthly salary) or else in monthly instalments of one half of the salary until satisfaction of the judgment in full, and to remit the said sum (or monthly instalments) to this Court.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 42.

**ATTACHMENT-PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF MONEY OR ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR PUBLIC OFFICER**

(O. 32, r. 27)

(Title)

To .....

The plaintiff having applied for an attachment of certain money amounting to £ ..... /a certain security, namely ....., now in your hands ..... (*here state how the property is supposed to be in the hands of the person addressed, on what account, etc.*), I request that you will hold the said money/security subject to the further order of the Court.

Dated this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 43.

**ORDER FOR PAYMENT TO THE JUDGMENT-CREDITOR  
OF COIN OR CURRENCY NOTES IN THE HANDS OF A THIRD PARTY**

(O. 32, r. 28)

(Title)

To .....

WHEREAS in the above-named action the judgment-creditor has applied to this Court for an Order of attachment of certain money in ..... (here state whether coin or currency notes or both) amounting to £ ..... now in your hands, which money he alleges to be the property of the above-named judgment-debtor.

You are hereby commanded of the aforesaid sum of money to pay over to the above-named judgment-creditor the sum of £ .....

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 44.

**NOTICE TO ATTACHING CREDITOR**

(O. 32, r. 30)

(Title)

WHEREAS ..... has made application to this Court for the removal of attachment on ..... placed at your instance in execution of the judgment in Action No. .... this is to give you notice to appear before this Court on ..... the ..... day of ....., 20....., to support your claim as attaching creditor.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 45.

**WARRANT OF SALE OF PROPERTY  
IN EXECUTION OF JUDGMENT FOR MONEY**  
(O. 32, r. 33)  
(Title)

To .....

These are to command you to sell by auction on the date mentioned in the notification of sale (a copy of which will be forwarded to you) and subject to the conditions of sale therein contained the property attached under an Order of this Court dated the ..... day of ..... 20..... as described in the Schedule on the reverse hereof, or so much thereof as shall realise the amount owing under the judgment in this action as set out in the notification of sale.

You are further commanded to return this warrant on or before the ..... day of ....., 20..... with an endorsement certifying the manner in which it has been executed or the reason why it has not been executed.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

The Schedule hereto

\_\_\_\_\_

Form 46.

**NOTIFICATION OF SALE**  
(O. 32, r. 33)  
(Title)

Notice is hereby given that in pursuance of an Order for sale in satisfaction of the judgment in the above action a sale by public auction will be held by ..... at ..... commencing at ..... o'clock on the ..... day of ....., 20..... The amount to be realised by the sale is £ ..... (balance of) amount of the judgment. £ ..... further costs and £..... interests up to the ....., 20..... amounting in all to £..... together with further interest at ..... *per centum* per annum on the (balance of the) amount of the judgment up to the date of sale and the costs of the sale.

The conditions of sale are as follows—

1. The subject matter of the sale is the property of the above-named judgment-debtor(s) specified in the Schedule hereto.
2. The property will be put up in one lot or in such lots as the officer or other person conducting the sale shall determine.
3. It shall be in the discretion of the officer conducting the sale to adjourn it, subject to the provisions of rule 35 of Order 32 of the Civil Procedure Rules.
4. If the debt above specified including further interest and costs of sale is paid in full before the knocking-down of any lot, the sale shall be stopped.
5. No bid by or on behalf of the judgment-creditor will be accepted nor will any sale to him be valid without the express permission of the Court previously obtained.
6. The officer or other person conducting the sale shall withdraw any lot if the highest bid therefor appears so clearly inadequate as to make it advisable so to do.
7. Subject to conditions 5 and 6 the highest bidder shall be declared to be the purchaser. The purchase price shall be paid at the time of the sale and in default of payment immediately the property shall forthwith again be put up for sale and the first auction shall be void.

The Schedule hereto

Short description of the property with name of owner where more judgment debtors than one.	Details of known encumbrances and claims to which the property is liable.
--	---

This notification of sale was settled by the Court on the ..... day of  
....., 20.....

Registrar.

\_\_\_\_\_

*Form 47.*

**NOTICE TO PERSON IN POSSESSION OF  
PROPERTY SOLD IN EXECUTION**  
(O. 32, r. 38)  
(Title)

To .....

WHEREAS ..... has become the purchaser at a public sale in execution of the judgment in the above action of (specify property) now in your possession, you are hereby prohibited from delivering possession of the said ..... to any person except the said .....

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_

Form 48.

**ORIGINATING SUMMONS (GENERAL FORM)**

(O. 35, r. 4)

In the Supreme Court of St. Helena between

A.B. .... Plaintiff.

and

C.D. .... Defendant.

*(Entitle the proceedings as arising in the administration of an estate, or of a trust, or out of a sale and purchase of immovables, or of a partnership, or any other matter stated in Order 35, Rules 1, 2 or 3).*

To ..... *(state the name and address of persons to be served).*

WHEREAS the above-named A.B., ..... of .....  
who claims to be interested in the above-named matter ..... *(state nature and particulars of claim)* has applied for the determination of the following questions ..... *(state the questions).*

YOU ARE HEREBY REQUIRED, if you desire to be heard upon the determination of any of the said questions, to appear personally or by advocate at ..... *(state time and place)*, when this Court will proceed to make such orders, whether by way of declaration or otherwise, as the Court may think just and expedient.

Dated this ..... day of ....., 20.....

Chief Justice.

\_\_\_\_\_

*Form 49.***MEMORANDUM OF APPEAL**

(O. 36, r. 1)

(Title)

The Registrar of the Supreme Court.

..... above-named appeals to the Supreme Court from the judgment of the Magistrates' Court in Action No. .... dated the ..... day of ....., and sets forth the following grounds of objection to the judgment appealed from namely—

1. ....

2. ....

Dated this ..... day of ....., 20.....

Appellant.

\_\_\_\_\_

*Form 50.***NOTICE TO MAGISTRATES' COURT OF PENDING APPEAL**

(O. 36, r. 7)

(Title)

To the Magistrates' Court.

You are hereby directed to take notice that the ..... in the above action has preferred an appeal to this Court from the judgment passed by you therein on the ..... day of ..... .

You are requested to send with all practicable despatch all material papers in the action.

Dated this ..... day of ....., 20.....

Registrar.

\_\_\_\_\_



Form 51.

**NOTICE TO RESPONDENT OF THE DAY FIXED  
FOR THE HEARING OF THE APPEAL**

(O. 36, r. 8)

(Title)

Appeal from the Magistrates' Court.

To ....., respondent.

Take notice that an appeal from the judgment of the Magistrates' Court in this case has been presented by ..... to this Court, and that the ..... day of ....., has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself or by someone by law authorised to act for you in this appeal, it will be heard and decided in our absence.

Given under my hand this ..... day of ....., 20.....

Registrar.

\_\_\_\_\_

Form 52.

**NOTICE TO A PARTY JOINED BY THE COURT AS A RESPONDENT**

(O. 36, r. 12)

(Title)

To .....

WHEREAS you were a party to Action No. .... in the Magistrate's Court, and whereas ..... has preferred an appeal to this Court from the judgment passed against him in the said case and it appears to this Court that you are interested in the result of the said appeal: This is to give you notice that this Court has directed you to be made a respondent in the said appeal and has adjourned the hearing thereof till the ..... day of ....., at ..... a.m. If no appearance is made on your behalf on the said day and at the said hour the appeal will be heard and decided in your absence.

Given under my hand this ..... day of ....., 20.....

Chief Justice.

\_\_\_\_\_

Form 53.

**NOTICE TO SURETY OF HIS LIABILITY UNDER A JUDGMENT**  
(Title)

To .....

WHEREAS you ..... did on .....  
become liable as surety to the performance of any judgment which might be passed  
against the said ....., defendant in the above action, and whereas a  
judgment was passed on the ..... day .....,  
against the said defendant for the payment of .....,  
and whereas application has been made for execution of the said judgment against  
you: Take notice that you are hereby required, on or before the ..... day  
of ....., to show cause why the said judgment should not be  
executed against you, and if no sufficient cause will be, within the time specified,  
shown to the satisfaction of the Court, an order for its execution shall be forthwith  
issued in the terms of the said application.

Given under my hand this ..... day of ....., 20.....

Chief Justice/Magistrate.

\_\_\_\_\_