KATSINA HIGH COURT (CIVIL PROCEDURE)

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SCHEDULE

ORDERS

ORDER 1

- FORM AND COMMENCEMENT OF ACTION.

1. Subject to the provisions of any Act, civil proceedings may be begun by writ, originating summons, originating motion or petition as hereinafter provided.

2. (1) Subject to any provision of an Act or of these rules by virtue of which any proceedings are expressly required to be begun otherwise than by writ, the following proceeding shall be begun by writ, that it to say proceedings:-

(a) in which a claim is made by a plaintiff for any relief or remedy for any tort or other civil wrong;

(b) in which a claim made by the plaintiff is based on an allegation of fraud;

(c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a law or independently of any contract or any such provision) or where the damages claimed consist of or include damages in respect of death of any person or in respect of personal injuries to any person or in respect of damage to any property;

(d) in which a claim is made by the plaintiff in respect of the infringement of a patent, trade mark, copy-right, intellectual or any other proprietory interest of whatever kind;

(e) in which a claim for a declaration is made by an interested person.

(2) Proceedings may be begun by originating summons where:-

(a) the sole or principal question at issue is, or likely to be one of the construction of a written law or any instrument made under any written law, or of any deed, will, contract or other document or some other question of law; or

(b) there is likely to be any substantial dispute of fact.

(3) Proceedings may be commenced by originating motion or petition where by these rules or under any written law the proceedings in question are required or authorized to be so begun, but not otherwise.

ORDER 2

- EFFECT OF NON-COMPLIANCE

1. (1) Where in beginning or purporting to begin any proceeding or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure may be treated as an irregularity and if so treated, will not nullify the proceedings, or any document, judgment or Order therein.

(2) The Court may on the ground that there has been such a failure as mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or Order therein, or it may exercise its powers under these rules to allow such amendments (if any) to be made and to make such Order (if any) dealing with the proceedings generally as it thinks fit.

2. (1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or Order therein shall not be allowed unless it is made within a reasonable time and before any party applying has taken any fresh step after becoming aware of the irregularity.

(2) Any application under the foregoing paragraph may be made by summons or motion on notice, and the grounds of objection shall be stated in the summons or notice of motion.

ORDER 3

- PARTICULARS OF CLAIM

1. The Court may, on the application of the defendant, or on its own motion, order further or better particulars to be supplied by the plaintiff.

2. Subject to any amendment granted by the Court, the plaintiff shall not, at the hearing, obtain a judgment for any sum exceeding that stated m the particulars, except for subsequent interest and the costs of suit, notwithstanding that the sum claimed in the writ for debt or damages exceeds the sum stated in the particulars.

3. (1) Where a party seeks (in addition to or without any order for the payment of money) to obtain as against any person any general or special declaration of his rights under any contract or instrument, or to set aside any contract, or to have any bond, bill, note, or instrument in writing delivered up to be cancelled, or to restrain any defendant by injunction or to have an account taken between himself and any other party, and in such other cases as the circumstances makes it necessary or expedient, the plaintiff or defendant may, in the writ of summons or in any pleadings, refer to and briefly describe any documents on the contents of which he intends to rely, and annex copies of such documents to the writ or pleading, or may state any reason for not annexing copies which he may have to allege.

(2) Such party shall allow the opposite party to inspect any such documents as are in his possession or power.

ORDER 4

- CAUSES OF ACTION

1. ﷺ (1) Subject to rule 3, a plaintiff may in one action claim relief against the same defendant in respect of all the causes of action;-

(a) if the plaintiff claims, and the defendant is alleged to be liable; in the same capacity in respect of the causes of action; or

(b) if the plaintiff claims, or the defendant is alleged to be liable, in the capacity or executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of the other or others; or

(c) with leave of court

(d) An application for leave under this rule shall be made ex parte by motion before the writ or originating summons, as the case may be, is issued and the affidavit in support of the motion shall state the grounds of the application

2.- (1) Subject to rule 2(2) a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counter-claim in respect of that matter: and where he does so he shall add the counter-claim to his defence.

(2) Rule 1 shall apply in relation to a counter-claim as if the counter-claim were a separate action and if the person making the counter-claim were a plaintiff and the person against whom it is made a defendant.

(3) A Counter-claim may be proceeded with notwithstanding that judgment is given for the plaintiff in his action or that the action is stayed, discontinued or dismissed.

3.ﷺ(1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counter-claim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the court that the joinder of such causes of action or of parties, as the case may be, may embarrass or delay trial or is otherwise inconvenient, the court may order separate trials or make such other order as may be expedient.

(2) If it appears on the application of any party against whom a counter-claim is made that the subject matter of the counter-claim ought for any reason to be disposed of by a separate action, the court may order it to be tried separately or make such other order as may be expedient.

ORDER 5

- WRIT OF SUMMONS

1. A writ of summons shall be issued by the Registrar, or other officer of the Court empowered to issue summonses, on application. The application shall ordinarily be made in writing by the plaintiffs solicitor by completing Form 1 in the Appendix to these rules, but the Registrar or other officer as aforesaid, where the applicant for a writ of summons is illiterate, or has no solicitor, may dispense with a written

application and instead himself record full particulars of an oral application made and on that record a writ of summons may be prepared, signed and issued.

2. The writ of summons shall contain the name and place of abode of the plaintiff and of the defendant so far as they can be ascertained; it shall state briefly and clearly the subject matter of the claim, and the relief sought for, and the date of the writ, and place (called the return-place of hearing).

3. Any alteration of a writ without leave of the Court shall render the writ void.

4. A plaintiff may unite in the same suit several causes of action, but Several the Court if it thinks that such causes of action, or some of them, cannot be conveniently tried together, may order separate trials or may make such other order as may be necessary or expedient for the separate disposal thereof and may make such order as to adjournment and costs as justice requires.

5. Causes or matters pending in the same Court may by order of the Court be consolidated and the Court shall give such directions as may be necessary with respect to the hearing of the causes or matters so matters, consolidated.

6. Subject to the provisions of these rules or of any written law in force in the State, no writ or summon for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of Court or a Judge in chambers.

7. Writs of summons shall be printed on opaque foolscapsize paper of good quality.

8. (1) Every writ shall be in Form 1, 2, 3, or 4 or forms to the like effect in all matters, causes and proceedings to which they are applicable, with such variations as circumstances may require.

(2) In proceedings for which forms are not provided or prescribed by these rules or by any subsequent Rules or Orders of Court, the Chief Registrar may, subject to the approval of the Court, from time to time, frame the forms required.

9. The sealing of any writ or process shall not be necessary in addition to the signature of the Registrar or other officer by whom the same shall be signed, except in cases where sealing may be expressly directed by these rules or any written law or Rule of Court, or by any prescribed form.

10. Before a writ is issued it shall be endorsed:-

(a) with a statement of claim or, if the statement of claim is not endorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;

(b) where the claim made by the plaintiff is for a debt or a liquidated demand only, with a statement of the amount claimed in respect of the debt or demand, and for costs.

11. (1) Before a writ is issued it shall be endorsed:-

(a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;

(b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.

(2) Before a writ is issued in an action brought by a plaintiff who in bringing it is acting by order or on behalf of a person resident outside the jurisdiction, it shall be endorsed with a statement of that fact and with the address of the person so resident.

12.(1) Where a plaintiff sues by a legal practitioner, the writ shall be endorsed with the plaintiffs address and the legal practitioner's name or firm and a business address of his within the jurisdiction and also, if the legal practitioner is the agent of another, the name or firm and business address of his principal.

(2) Where the plaintiff sues in person, the writ shall be endorsed with:-

(a) the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent;

(b) his occupation; and

(c) an address for service.

13.(1) One or more concurrent writs may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time thereafter before the original writ ceases to be valid.

(2) Without prejudice to the generality of the provisions of paragraph (1), a writ for service within the jurisdiction may be issued as a concurrent writ with one which, or notice of which, is to be served out of the jurisdiction; and a writ which or notice of which, is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.

(3) A concurrent writ is a true copy of the original writ with such differences only (if any) as are necessary having regard to the purpose for which the writ is issued.

14. No writ which, or notice of which, is to be served out of the jurisdiction shall be issued without leave of the Court.

Provided that if any claim made by a writ is one which by virtue of an enactment the Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction, the foregoing provisions shall not apply to the writ.

15. Issue of a writ takes place upon its being signed by the Registrar or other officer of the Court duly authorised to sign the writ.

16. (1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for twelve months beginning with the date of its issue, and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, the court may by order extend the validity of the writ from time to time for such period, not exceeding twelve months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.

(3) Before a writ, the validity of which has been extended under this provision, is served.it shall be marked with an official stamp showing the period for which the validity of the writ has been so extended.

(4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order.

##@ORDER 6@## - ORIGINATING SUMMONS

1. The provisions of this Order shall apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses that class made by these rules or by or under any Act or other written law.

2.(1) Every originating summons shall be in Form 54, 55, 56, 57 or 58 in the Appendix whichever is appropriate.

(2) The party taking out an originating summons (other than an exparte summons) shall be described as plaintiff and the party against whom it is taken out shall be described as defendant.

3. Every originating summons shall include a statement of the questions on which the plaintiff seeks the determination or direction of the Court or, as the case may be, concise statement of the relief or remedy claimed in the proceeding begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy.

4.(1) Before an originating summons is issued it shall be endorsed:-

(a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;

(b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.

(2) Before an originating summons is issued in an action brought by a plaintiff who in bringing it is acting by order or on behalf of a person resident outside the jurisdiction, it shall be endorsed with a statement of the fact and with the address of the person so resident.

5.(1) Where a plaintiff sues by a legal practitioner, the originating summons shall be endorsed with the plaintiff's address and the practitioner's name or firm and a business address of his within the jurisdiction and also, if the legal practitioner is the agent of another, the name or firm and business address of his principal.

(2) Where the plaintiff sues in person, the originating summons shall be endorsed with:-

(a) the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent;

(b) his occupation; and

(c) an address for service.

6. An originating summons for service within the jurisdiction may be issued and marked as a concurrent originating summons with one for service out of the jurisdiction; and an originating summons for service out of jurisdiction may be issued and marked as a concurrent originating summons with one for service within the jurisdiction.

7. No originating summons which, or notice of which, is to be served out of the jurisdiction shall be issued without leave of the Court:

Provided that if any claim by an originating summons is one which by virtue of an enactment the Court has power to hear and determine notwithstanding that the person whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction, the foregoing provisions shall not apply to the summons.

8. Issue of an originating summons takes place upon its being signed "Issue", by the Registrar or other officer of the Court duly authorised to sign summonses.

9. (1) For the purpose of service, an originating summons (other than a concurrent one) is valid in the first instance for twelve months and beginning with the date of its issue and a concurrent originating summons is valid in the first instance for the period of validity of the original summons which is unexpired at the date of issue of the concurrent summons.

(2) Where an originating summons has not been served on a defendant the court may by order extend the validity of the summons from time to time for such period, not exceeding twelve months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.

(3) Before an originating summons, the validity of which has been extended under this provision, is served, it shall be marked with an official stamp showing the period for which the validity of the summons has been so extended.

(4) Where the validity of an originating summons is extended by order made under this rule, the order shall operate in relation to any other summons (whether original or concurrent) issued in the same action which has not been served, so as to extend the validity of that other summons until the expiration of the period specified in the order.

10. Rules 2(1) and 3(1) shall, so far as applicable, apply to an ex parte originating summons; but, save as aforesaid, the foregoing provisions of this Order shall not apply to ex parte originating summonses.

ORDER 7 - PETITION: GENERAL PROVISIONS

1. This Order shall apply to petitions by which civil proceedings in the Court are begun, subject, in the case of petitions of any particular class, to any special provisions relating to petitions of that class made by or under any Act or Law.

2.(1) Every petition shall include a concise statement of the nature of the claim made or relief or remedy required in the proceedings begun thereby.

(2) Every petition shall include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served, a statement to that effect.

(3) Where a person brings a petition by a legal practitioner, the petition shall be endorsed with that person's address and the legal practitioner's name or firm and business address of his within the jurisdiction and also, if the legal practitioner is the agent of another, the name or firm and business address of his principal.

(4) Where a person brings a petition in person, the petition shall be endorsed with:-

(a) the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent;

(b) his occupation; and

(c) an address for service.

3. A petition shall be presented in the Court Registry.

4. (1) a day and time for the hearing of a petition which is required to be heard shall be fixed by the Registrar.

(2) Unless the Court otherwise directs, a petition which is required to be served on any person shall be served on him not less than seven days before the day fixed for the hearing of the petition.

5. No application in any pending cause or matter may be made by petition.

ORDER 8 - INTERLOCUTORY APPLICATIONS

IMOTIONS GENERALLY

1. Interlocutory applications may be made at any stage of an action.

2. _(l) Where by these Rules any application is authorised to be made to the Court or a Judge in Chambers [or [Registrar], such application may be made by motion.

(2) The Registrar shall make up, for each day on which there are any motions to be heard, a motion list, on which he shall enter the names of each cause in which a motion is made, the party moving, and the terms of the order sought by him.

3. Every motion shall be supported by affidavit setting out the grounds on which the party moving intends to rely; and no affidavit shall be used at the hearing unless it is duly filed.

4. Where service of a motion is required by these rules or directed by the Court or Judge, such motion shall be served together with all affidavits on which the party moving intends to rely.

5. A motion may be heard at any time while the Court is sitting.

6. The hearing of any motion may from time to time be adjourned upon such terms as the Court may deem fit.

7 (1) No motion shall be made without previous notice to the parties affected thereby.

(2) Notwithstanding paragraph (1), the Court, if satisfied that to delay the motion till after notice is given to the parties affected would entail irreparable damage or serious mischief to the party moving, may make an order ex parte upon such terms as to costs or otherwise and subject to such undertakings, if any, as the justice of the case demands.

II Ex PARTE MOTIONS

8. A motion ex parte shall be supported by affidavit which, in addition to the requirements of rule 3, shall stale sufficient grounds why delay in granting the order sought would entail irreparable damage or serious mischief to the party moving.

9. Any party moving the Court ex parte may support his motion by argument addressed to the Court on the facts put in evidence, and no, party to the suit or proceeding, although present, other than the party moving shall be entitled to be then heard.

10. Where a motion is made ex parte, the Court may make, or refuse to make the order sought, or may grant an order to show cause why the order sought should not be made, or may direct the motion to be made on notice to the parties to be affected thereby.

11. Where an order is made on a motion ex parte, any party affected by it may, within seven days after service of it, or within such further time as the Court shall allow, apply to the Court by motion to vary or discharge it; and the Court, on notice of the party obtaining the order, either may refuse to vary or discharge it, or may vary or discharge it with or without imposing terms as to costs or security, otherwise, as seems just.

III ORDERS TO SHOW CAUSE

12. An order to show cause shall specify a day when cause is to be shown to be called the return-day to the Order which shall ordinarily be not less than three days after service.

13. A person served with an order to show cause may, before the return-day, produce evidence to contradict the evidence used in obtaining the order, or setting forth other facts on which he relies to induce the Court to discharge or vary such order.

14. On the return-day, if the person served does not appear and it appears to the Court that the service on all proper parties has not been duly effected, the Court may enlarge the time and direct further service or make such other order as seems just.

15. If the person served appears, or the Court is satisfied that service has been duly effected, the Court may proceed with the matter.

16. The Court may either discharge the order or make the same absolute, or adjourn the consideration thereof, or permit further evidence to be produced in support of or against the order, and may modify the terms of the order so as to meet the merits of the case.

IV NOTICE OF MOTION

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

18. Notice of motion may, without leave of the Court, be served by any person, notwithstanding that such person is not an officer of the Court.

19. Where a party acts by a solicitor, service of notice of motion on such solicitor shall be deemed good service on such party.

20. Along with the notice of motion there shall be served a copy of any affidavit on which the party moving intends to rely at the hearing of such motion.

21 If at the hearing of any motion, the Court shall be of opinion that any person, to whom notice has not been given, ought to have or to have had such notice, the Court may either dismiss the motion, or adjourn the hearing thereof in order that such notice may be given, upon such terms as to the Court may seem fit.

22 The plaintiff may, by leave of the Court, cause any notice of Service with motion to be served upon any defendant with the writ of summons.

V EVIDENCE IN INTERLOCUTORY PROCEEDINGS

23 Oral evidence shall not be heard in support of any motion unless by leave of the Court. Where the party moving is illiterate, the Court may direct evidence to be taken by the Registrar, or other fit officer of Court, and the minutes of such evidence may be used as an affidavit.

24. In addition to or in lieu of affidavits the Court may, if it thinks it expedient, examine any witness viva voce, or receive documents in evidence and may summon any person to attend to produce documents before it, or to be examined or cross-examined before it in like manner as at the hearing of a suit.

25. Such notice as the Court in each case, according to the circumstances, considers reasonable, shall be given to the persons summoned, and to such persons (parties to the cause or matter or otherwise interested) as the court considers entitled to inspect the documents to be produced, or to examine the person summoned, or to be present at his examination, as the case may be.

26. The evidence of a witness on any such combination shall be taken in like manner as nearly as may be as at the hearing of suit.

27. Upon the hearing of any motion the Court may, on such terms as to cost and adjournment as it may deem fit, allow any additional affidavit to be used, after such affidavit has been duly filed and served on the opposite side.

28. A registrar hearing any application by virtue of the provisions of these Rules shall have and exercise all the powers conferred by these Rules on the Court or a Judge when dealing with such applications.

29 No Registrar other than one who is also a qualified legal practitioner shall have the power to hear and determine any application which by these rules is conferred upon a Registrar.

30 In any judicial division where there is no legally qualified Registrar, any application which by these rules is authorised to be determined by a Registrar shall be made to a Judge who in his absolute discretion may take such application in Court or in chambers.

31.- (1) Upon the determination of any application by a Registrar, any party dissatisfied with the ruling or decision of the Registrar in the matter may within fourteen days of the decision or ruling apply to the Court or to a Judge in Chambers for a redress in the following manner and circumstances:-

(a) where the aggrieved party is the mover of the application before the Registrar, he shall renew his application before the Court or a Judge;

(b) where the aggrieved party is the respondent to the application before the Registrar, he shall apply to the Court or a Judge for an order setting aside the order of the Registrar about which he is dissatisfied.

(2) (a) Any application under sub-paragraph (a) or (b) of paragraph (1) of this rule shall be supported by affidavit showing the grounds upon which redress is sought.

(b) There shall be attached to the application a copy of the ruling or decision of the Registrar with which the party is dissatisfied and copies of all affidavits and documents used in support of the application before the Registrar.

ORDER 9 - AFFIDAVITS

1. Upon any motion, petition or summons, evidence may be given by affidavit; but the Court or a Judge in Chambers may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence unless by special leave of the Court or a Judge in Chambers.

2. Every affidavit shall be instituted in the cause or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendants, it shall be sufficient to state the full name of the first plaintiff and first defendant respectively, and indicate that there are other plaintiffs or defendants as the case may be.

3 The Court or a Judge in Chambers may receive any affidavit sworn for the purpose of being used in any cause or matter notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in form thereof, and may direct a memorandum to be made on the document that it has been so received.

4 Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Court or a Judge in Chambers.

5 Except by leave of the Court or a Judge in Chambers no order made ex parte in Court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion.

6 The party intending to use any affidavit in support of any application made by him in chambers shall give notice to the other parties concerned in that behalf.

7 All affidavits wh.ch have been previously made and read in Court upon any proceeding in a cause or matter may be used before the Judge in Chambers.

8 Every alteration in an account verified by affidavit to be left at Chambers shall be marked with the initials of the commissioner before whom the affidavit is sworn, and such alterations shall not be made by erasure.

9. Accounts, extracts from registers, particulars of creditors' debts, and other documents referred to by affidavit, shall not be annexed to the affidavit, or referred to in the affidavit as annexed but shall be referred to as exhibits.

10 Every certificate on an exhibit referred to in an affidavit signed by Certificate the commoner before whom the affidavit is sworn shall be marked with the short title of the cause or matter.

11. Sections 77 to 89 of the Evidence Act which set out provisions governing affidavits, shall apply as if they were part of these rules.

12. A document purporting to have affixed or impressed thereon or subscribed thereto the seal of signature of a Court, Judge, Notary Public or person having authority to administer oath in any part of the Commonwealth outside Nigeria in testimony of an affidavit being taken before it or him in that part shall be admitted in evidence without proof of the seal or signature of that Court, Judge, Notary Public or person.

ORDER 10

- PLACE OF INSTITUTING AND OF TRIAL OF SUITS

1. All suits relating to land, or any mortgage or charge thereon, or any other interest therein, or for any injuries thereto, and all actions relating to personal property distrained or seized for any cause, shall be commenced and determined in the Judicial Division in which the land is situated, or the distress or seizure took place.

2. All actions for recovery of penalties and forefeitures, and also all actions against public officers, shall be commenced and tried in the Judicial Division in which the cause of action arose.

3. All suits for specific performance, or upon the breech of any contract shall be commenced and determined in the Judicial Division in which such contract ought to have been performed or in which the defendant resides or carries on business.

4. All other suits shall be commenced and determined in the Judicial Division in which the defendant resides or carries on business or in which the cause of action arose. If there are more defendants than one resident in different Judicial Divisions, the suit may be commenced in any one of such Judicial Divisions; subject, however, to any order which the Court may, upon the application of any of the parties, or on its own motion, think fit to make with a view to the most convenient arrangement for the trial of such suit.

5. In case any suit shall be commenced in any other Judicial Division than that in which it ought to have been commenced, the same may, notwithstanding, be tried in the Judicial Division in which it shall have been so commenced, unless the Court shall otherwise direct, or the defendant shall plead specially in

objection to the jurisdiction or at the time when he is required to state his answer or to plead in such cause.

6. No proceedings which may have been taken previously to such plea in objection shall be in any way affected thereby; but the Judge shall order that the cause be transferred to the Judicial Division to which it may be proved to his satisfaction to belong, or, failing such proof, that it be retained and processed in the court in which it has been commenced and such order shall not be subject to appeal.

ORDER 11 - PARTIES

A—GENERAL

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

Provided that if, upon the application of any defendant, it shall appear that such joinder may embarrass any of the parties or delay the trial of the action, the Court or a Judge in Chambers may order separate trials, or make such other order as may be expedient in the circumstances.

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

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

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

5.—(1) If it shall appear to the Court, at or before the hearing of a suit, that all the persons who may be entitled to, or whom claim some share or interest in the subject matter of the suit, or who may be likely to be affected by the results, have not been made parties, the Court may adjourn the hearing of the suit to a future day, to be fixed by the Court, and direct that such persons shall be made either plaintiffs or defendants in the suit, as the case may be. In such case the Court shall issue a notice to such persons which shall be served in the manner provided by these rules for the service of a writ of summons or in such other manner as the Court thinks fit to direct; and on proof of the due service of such notice, the person so served, whether he shall have appeared or not, shall be bound by all proceedings in the cause:

Provided that a person so served, and failing to appear within the time limited by the notice for his appearance, may at any time before judgment in the suit, apply to the Court for leave to appear, and such leave may be given upon such terms (if any) as the Court shall think fit.

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

6. Where a person has a joint and several demand against more persons than one, either as principals or sureties, it is not necessary for him to bring before the Court as parties to a suit concerning that demand all the persons liable thereto, and he may proceed against any one or more of the persons severally or jointly and severally liable.

7. If the plaintiff sues, or any defendant counterclaims, in any representative capacity, it shall so be expressed on the writ. The Court may order any of the persons represented to be made parties either in lieu of, or in addition to, the previously existing parties.

8. Where more persons than one have the same interest in one suit, one or more of such persons may, with the approval of the Court, be authorised by the other persons interested to sue or to defend in such suit for the benefit of or on behalf of all parties so interested.

9. Any two or more persons claiming or alleging to be liable as partners may sue or be sued in the name of the firm in which they were partners when the cause of action arose; and any party to an action may in such case apply to the Court for a statement of the names and addresses of the persons who were, when the cause of action arose, partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Court may direct.

10. Infants may sue as plaintiffs by their next friends and may defend by guardians appointed for that purpose.

11. Lunatics and persons of unsound mind may respectively sue as plaintiffs by their committees or next friends, and may in like manner defend any action by their committees or guardians appointed for that purpose.

12. An infant shall not enter an appearance except by his guardian ad litem.

No order for the appointment of such guardian shall be necessary if the legal practitioner applying to enter such appearance shall make and file an affidavit in Form 14 in the Appendix with such variations as circumstances may require.

This provision shall also apply in cases where an infant is served with a petition or notice of motion, or a summons, in any matter.

13. Before the name of any person shall be used in any action as next friend of any infant or other party, or as a relation, such person shall sign a written authority for that purpose, and the authority shall be filed in the Registry.

14. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are executors, trustees or representatives, without joining any of the person beneficially interested in the trust or estate, and shall be considered as representing such

persons; but the Court or a Judge in Chambers may at any stage of the proceedings, order any such persons to be made parties either in addition to or in lieu of the previously existing parties. This rule shall also apply to trustees, executors and administrators sued in proceedings to enforce a security by foreclosure or otherwise.

15 Where a defendant is added or substituted, the writ of summons Where shall be amended accordingly and the plaintiff shall, unless otherwise ordered by the Court or a Judge in Chambers, file an amended writ and cause the new defendant to be served in the same manner as original defendants are served and the proceedings shall be continued as if the new defendant had originally been made a defendant.

16 Any application to add or strike out or substitute a plaintiff or defendant may be made to the court or a Judge in Chambers at any time before trial by motion or summons, or in a summary manner at the trial of the action.

17.—(1) Where in any action a defendant claims as against any person not already a party to the action (in this section called "the third party"):-

(a) that he is entitled to contribution or indemnity or;

(b) that 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) that any question or issue relating to or connected with the said subject matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but also as between the plaintiff and the defendant and the third party or between any or either of them; the Court or a Judge in Chambers may give leave to the defendant to issue and serve a third party notice.

(2) The Court or a Judge in Chambers may give leave to issue and serve a third party notice on an ex parte application supported by affidavit, or, where the Court or Judge in Chambers directs a summons to the plaintiff to be issued, upon the hearing of the summons:

Provided that leave shall not be granted in cases where the action was begun and an order for pleadings made before the date of the commencement of this rule.

18.—(1) The notice shall state the nature and grounds of the claim or the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed. It shall be in accordance with Form 23 or Form 24 with such variations as circumstances may require, and shall be scaled and served on the third party in the same manner as a writ of summons is sealed and served.

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

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

20. The third party may enter an appearance in the action within eight days from service or within such further time as may be directed by the Court or Judge in Chambers as specified in the notice (where the third party is served in Nigeria outside the jurisdiction of the High Court of the State, the period for entering appearance shall be at least thirty days):

Provided that a third party failing to appear within such lime may apply to the Court or Judge in Chambers for leave to appear, and such leave may be given upon such terms, if any. as the Court or Judge in Chamber shall think fit.

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

22. Where a third party makes default in entering an appearance or filing any pleading which he had been ordered to file and the defendant giving the notice suffers judgment by default, such defendant shall be entitled at any lime, after satisfaction of the judgment against himself, or before such satisfaction by leave of the Court or a Judge in Chambers, to enter judgment against the third party to the extent of any contribution or indemnity claimed in the third party notice, or by leave of the Court or a Judge in Chambers to enter such judgment in respect of any other relief or remedy claimed as the Court or a Judge in Chambers shall direct.

Provided that it shall be lawful for the Court or a Judge in Chambers to set aside or vary such judgment against the third party upon such terms as may seem just.

23.—(1) If the third party enters an appearance, the defendant giving notice may, after notice of the intended application has been served upon the plaintiff, the third party and on any other defendant, apply to the Court or a Judge in Chambers for directions, and the Court or Judge in Chambers may:-

(a) where the liability of the third party to the defendant giving the notice is established on the hearing of the application, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant giving the notice; or

(b) if satisfied that there is a question or issue properly to be tried as between the plaintiff and the defendant and the third party or between any or either of them as to the liability of the defendant to the plaintiff or as to the liability of the third party to make any contribution or indemnity claimed, in whole or in part, or as to any other relief or remedy claimed in the notice by the defendant or that a question or issue stated in the notice should be determined not only as between the plaintiff and the defendant but as between the plaintiff, the defendant and the third party or any or either of them, order such question or issue to be tried in such manner as the Court or Judge in Chambers may direct; or

(c) dismiss the application.

(2) Any directions given pursuant to this rule may be given either before or after any judgment has been entered in favour of the plaintiff against the defendant in the action, and may be varied from time to time and may be rescinded.

(3) The third party proceedings may at any time be set aside by the Court or a Judge in Chambers.

24. The Court or a Judge in Chambers upon the hearing of the application for directions may, if it shall appear desirable to do so, give the third party liberty to defend the action either alone or jointly with the original defendant upon "such terms as may be just; or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, pleadings or documents to be filed, or amendments to be made, and give such directions as to the Court or Judge in Chambers shall appear proper for having the question and the rights and the liabilities of the parties most conveniently determined and enforced, and as to the mode and extent in or to which the third party shall be bound or made liable by the decision or judgment in the action.

25.—(1) Where the action is tried, the Judge who tries the action may, at or after the trial, enter such judgment as the nature of the case may require for or against the defendant giving the notice or against or for the third party, and may grant to the defendant or to the third party, any relief or remedy which might properly have been granted if the third party had been made a defendant to an action duly instituted against him by the defendant:

Provided that execution shall not be issued without leave of the Court or of a Judge in Chambers until after satisfaction by the defendant of the judgment against him.

(2) Where the action is decided otherwise than by trial, the Court or a Judge in Chambers may, on application by motion or summons, make such order as the nature of the case may require, and, where the plaintiff has recovered judgment, may cause such judgment as may be just to be entered for or against the defendant giving notice or against or for the third party.

26. Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm name: and, so far as the nature of the case will permit, all provisions relating to proceedings against firms shall apply.

27. In probate actions, any person not named in the writ may intervene and appear in the action on filing an affidavit showing how he is interested in the estate of the deceased.

28. Any person not named as a defendant in a writ or summons for the recovery of land may by leave of the Court or Judge in Chambers appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant.

29. Any person appearing to defend an action for the recovery of land as landlord, in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

30. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court or a Judge in Chambers to appear and defend, he shall enter an appearance, according to the foregoing rules of this Order, and shall forthwith pay the proper fees for notice of such appearance to be given by the Registrar to the plaintiff's legal practitioner, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

31. Where a plaintiff, on whose behalf or by whom a suit is instituted or carried on, either alone or jointly with another person, is out of the jurisdiction, or is only temporarily therein, he shall assign a fit place within the jurisdiction where notices or other papers issuing from the Court may be served on him.

32. If it shall be made to appear on oath or affidavit to the satisfaction of the Court that the defendant has a bona fide counter-claim against such plaintiff which can be conveniently tried by the Court, it shall be lawful for the Court in its discretion to stay proceedings in the suit instituted by such plaintiff until he shall provided such security to comply with the orders and judgment of the Court with respect to such counter-claim as the Court shall think fit.

33. Where by these rules any act may be done by any party in an action, such act may be done either by the party in person, or by his legal practitioner, or by his agent (unless an agent is expressly debarred under these rules or any written law in force in the State).

B—ALTERATION OF PARTIES

34.—(1) Where after the institution of a suit any change or transmission of interest or liability occurs in relation to any party to the suit, or any party to the suit dies or becomes incapable of carrying on the suit, or the suit in any other way becomes defective or incapable of being carried on, any person interested may obtain from the Court any order requisite for curing the defect etc, or enabling or compelling proper parties to carry on the proceedings.

(2) But any persons served with such an order may, within such time as the Court in the order directs, apply to the Court to discharge or vary the order.

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

36. If there be two or more plaintiffs or defendants, and one of them dies, and if the cause of action survives, the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and against the surviving defendant or defendants.

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

38. In case of the death of a sole plaintiff, or sole surviving plaintiff the Court may, on the application of the legal representative of such plaintiff, enter the name of such representative in the place of such plaintiff, plaintiff in the suit, and the suit shall thereupon proceed; if no such application shall be made to the Court within what it may consider a reasonable time by any person claiming to be the legal representative of the deceased sole plaintiff or sole surviving plaintiff, it shall be competent for the Court to make an order that the suit shall abate, and to award to the defendant the reasonable cost which he may have incurred in defending the suit, to be recovered from the estate of the deceased sole plaintiff or surviving plaintiff; or the Court may, if it thinks proper on the application of the defendant

and upon such terms as to costs as may seem just make such order for bringing in the legal representative of the deceased sole plaintiff or surviving plaintiff, and for proceeding with the suit to a final determination of the matters in dispute, as may appear just and proper in the circumstances of the case.

39 If any dispute arises as to who is the legal representative of a deceased plaintiff, it shall be competent to the Court either to stay the suit until the fact has been duly determined in another suit, or to decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting that suit.

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

41. The bankruptcy of plaintiff, in any suit which the assignee or trustee might maintain for the benefit of the creditors, shall not be a valid objection to the continuance of such suit, unless the assignee or trustee shall decline to continue the suit, or shall neglect or refuse to give security for the costs thereof, within such reasonable time as the Court may order if the assignee or trustee neglects or refuses to continue the suit and to give such security within the time limited by the order, the defendant may within eight days after such neglect or refusal, plead the bankruptcy of the plaintiff as a reason for abating the suit.

42. Where any cause or matter becomes abated or in the case of any such change of interest as is by these rules provided for the legal practitioner for the plaintiff or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the registrar, who shall cause an entry thereof to be made in the Cause Book opposite to the name of such cause or matter.

43 Where any cause or matter shall have been standing for one year m the Cause Book marked as "abated" or standing over generally such cause or matter at the expiration of the year shall be struck out of the Cause Book.

ORDER 12 - SERVICE OF PROCESS

A—SERVICE WITHIN JURISDICTION

1. Service of writ of summons, notices, petitions, pleadings, orders, summonses, warrants and of all other proceedings, documents or written communications of which service is required, shall be made by the Sheriff or a deputy sheriff, bailiff, officer of the Court, or by a person appointed therefor (either especially or generally) by the Court or by a Judge in Chambers, unless another mode of service is prescribed by these rules, or the Court or Judge in Chambers otherwise directs:

Provided that when a party is represented by a legal practitioner, service of notices, pleadings, petitions, orders, summonses, warrants and of all other proceedings, documents or written communications of which personal service » not required may be made by or on such legal practitioner or his clerk under his control.

2. Save as otherwise prescribed by any of these rules, an originating process shall be served personally by delivering to the person to be served a copy of the document, duly certified by the Registrar as being a true copy of the original process filed, without exhibiting the original thereof.

3. No service of a writ of summons or other process on the defendant shall be necessary when the defendant by his legal practitioner undertakes in writing to accept service. be served.

4. The Court may in any civil case, for reasons which shall seem to it sufficient, appoint any process to be executed by a special bailiff, who for the time being shall have the privileges and liabilities of an officer of court. The expense of such special bailiff shall be defrayed by the party on whose application he is appointed unless the Court in any case sees reason to vary this rule.

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

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

(b) by delivery thereof to some person being an agent of the person to be served, or to some other person, on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or other person, come to the knowledge of the person to be served;

(c) by advertisements in the Slate Gazette, or in some newspapers circulating within the jurisdiction; or

(d) by notice put up at the principal court-house of, or some other place of public resort in, the Judicial Division wherein the proceeding in respect of which the service is made is instituted, or at the usual or last known place of abode, or of business, of the person to be served.

6. When a party to be served is in" the service of any Ministry or Department of Government or of a Local Government, the Court may transmit the document to be served and a copy thereof to the senior officer of the Department of Government in the Judicial Division or place where the party to be served works or resides or to the Local Government in whose service is the party to be served, and such officer, or Local Government shall cause the same to be served on the proper party accordingly.

7. Where the partners are sued in the name of their firm, the writ or other document shall be served either upon any one or more of the partners, or at the principal place within the judicial division of the business of the partnership upon any person having at the time of the service the control or management of the partnership business there; and such service shall be deemed good service upon the firm.

8. When the suit is against a corporation or a company authorized to sue and be sued in its name or in the name of an officer or trustee, the writ or other document may be served, subject to the enactment establishing such corporation or company or under which it is registered, as the case may be, by giving

the same to any director, secretary, or other principal officer, or by leaving it at the office of the corporation or company.

9. Where the person on whom service is to be effected is living or serving on board of any ship, it shall be sufficient to deliver the writ or other document to the person on board who is at the time of such service apparently in charge of such ship.

10. Where the person on whom service is to be effected is a prisoner in a prison, or a lunatic in any asylum, it shall be sufficient service to deliver the writ or other document at the prison or asylum to the superintendent or person appearing to be the head officer in charge.

11. Where an infant is a party to an action, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall, unless the Court or a Judge in Chambers otherwise orders, be deemed good personal service on the infant.

Provided that the Court may order that service made or to be made on an infant personally shall be deemed good service.

12. Where service is to be made upon a person residing out of, but carrying on business within, the jurisdiction in his own name or under the name of a firm through an authorized agent, and the proceeding is limited to a cause of action which arose within the jurisdiction, the writ or other document may be served by giving it to such agent, and such service shall be equivalent to personal service.

B—SERVICE OUT OF JURISDICTION

13. Service out of jurisdiction of a writ or summons or notice of a writ of summons may be allowed by the Court or a Judge in Chambers whenever:-

(l) the whole subject matter of the action is land situate within the jurisdiction (with or without rents or profits); or

(2) any act deed will, contract, obligation, or liability affecting land, or hereditament's situate within the jurisdiction, is sought to be construed rectified, set aside, or enforced in the action; or

(3) any relief is sought against any person domiciled, or ordinarily resident, within the jurisdiction; or

(4) 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 situate within the jurisdiction) of the trusts of any written instrument, which ought to be executed according to the law in force in the jurisdiction; or

(5) the action is one brought against the defendant to enforce, rescind, dissolve annul or otherwise affect a contract or to recover damages or other relief for or in respect of a breach of a contract:-

(a) made within the jurisdiction; or

(b) made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or

(c) by its terms or by implication to be governed by the law in force in the jurisdiction is brought against the defendant in respect of a breach committed within the jurisdiction of a contract wherever made

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

(6) the action is founded on a tort or other civil wrong committed within the jurisdiction; or

(7) any injunction is sought as to anything to be done within the jurisdiction, any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or

(8) any person out of jurisdiction is a necessary or proper party to an action properly brought against some other party within the jurisdiction, or

(9) the action is by a mortgagee or mortgagor in relation, to a mortgage of property situate within the jurisdiction and seeks relief of the nature or kind following that is to say: sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgage but does not seek (unless and except so far as permissible under paragraph (5) of this rule), any personal judgment or order for payment of any moneys due under the mortgage; or

(10) the action is one brought under the Civil Aviation Act or any regulations made in pursuance of such Act or any law relating to carriage by air.

14. "Out of Jurisdiction" in this Order means out of the Federal Republic of Nigeria.

15. 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 upon which the application is made, and no such leave shall be granted unless it shall be made sufficiently to appear to the Court or a Judge in Chambers that the case is a proper one for service out of the jurisdiction under these rules.

16. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given, and on whether the air mail is available to such defendant.

17.—(1) When the defendant is neither a Commonwealth citizen nor in any Commonwealth country, notice of such writ and not the writ itself, is to be served upon him.

(2) Where leave is given under the foregoing provision to serve notice of the writ of summons out of the jurisdiction such notice shall be served in the manner in which writs of summons are served.

18.—(1) Service out of the jurisdiction may be allowed by the Court or a Judge in Chambers of the following processes or of notices thereof, that is to say:-

(a) an originating summons, where the proceedings begun by an originating summons might have been begun by a writ of summons within these rules;

(b) any originating summons, petition, notice of motion or other originating proceedings:-

(i) in relation to any infant or lunatic or person of unsound mind; or

(ii) under any law or enactment under which proceedings can be commenced otherwise than by writ of summons; or

(iii) under any Rule of Court whereunder proceedings can be commenced otherwise than by writ of summons;

(c) without prejudice to the generality of the last foregoing paragraph, any summons, order or notice in any interpleader proceedings or for the appointment of an arbitrator or umpire or to remit, set aside, or enforce an award in an arbitration held or to be held within the jurisdiction;

(d) any summons, order or notice in any proceedings duly instituted whether by writ of summons or order such originating process as aforesaid.

(2) Where the person on whom an originating summons, petition, notice of motion, or other originating proceedings or a summons, order, or notice is to be served is neither a Commonwealth citizen nor residing within the Commonwealth countries, a copy of the document concerned shall be served, together with an intimation in writing that a process in the form of the copy has been issued or otherwise launched.

(3) The provisions of rules 15, 16, and 17(2) of this Order shall apply mutatis mutandis to service under this rule.

19. Where leave is given to serve a writ of summons or a notice of a writ or summons in any foreign country other than a country with which a convention in that behalf has been made, the following procedure may be adopted:-

(a) the document to be served shall be sealed with the seal of the Court for use out of the jurisdiction, and shall be transmitted to the Permanent Secretary to the Ministry of Justice by the Chief Registrar on the direction of the Chief Judge, together with a copy thereof translated into the language of the country to which service is to be effected and with a request for transmission to the Minister responsible for External Affairs for the further transmission of the same to the Government of the country in which leave to serve the document has been given. Such request shall be in Form 7 in the Appendix with such variations as circumstances may require;

(b) the party bespeaking a copy of a document for service under this section shall, at the time of bespeaking the same, file a praecipe in Form 8 of the Appendix;

(c) an official certificate, or declaration upon oath or otherwise, transmitted through the diplomatic channel by the Government or Court of a foreign country to which this provision applies, to the Court, shall, provided that it certifies or declares the document to have been personally served, or to have been duly served upon the defendant in accordance with the law of such foreign country, or service, and shall be filed as record of, and be equivalent to affidavit of service within the requirements of these rules in behalf;

(d) where an official certificate or declaration, transmitted to the Court in manner provided in the last preceding paragraph certifies or declares that efforts to serve a document have been within effect, the Court or a Judge may, upon the ex parte application the plaintiff, order substituted service of such

document, and the document and copy of the same, and the order shall be sealed and transmitted to the Permanent Secretary to the Ministry of Justice in manner aforesaid together with a request in Form 9 of theAppendix, with such variations as circumstances may require. Nothing herein contained shall in any way prejudice or affect any practice or power of the Court under which when lands, funds choses in action, rights or property within the jurisdiction are sought to be dealt with or affected, the Court may, without affecting to exercise jurisdiction, over any person out of the jurisdiction cause such person to be informed of the nature or existence of the proceedings with a view to such person having opportunity of claiming, opposing or otherwise intervening.

20.—(1) Where, for the purposes of an action under the Civil Aviation Act and the Convention therein set out, leave is given to serve a notice of writ of summons upon a high contracting party to the Convention other than Nigeria, the provisions of this rule shall apply.

(2) The notice shall specify the time for entering an appearance as limited in pursuance of rule 16.

(3) The notice shall be sealed with the seal of the Court for service out of the jurisdiction, and shall be transmitted to the Ministry of Justice together with a copy thereof translated into the language of the country of the defendant, and with a request for transmission to the Minister responsible for External Affairs for further transmission of the same to the Government of that country.

(4) The request shall be in Form 10 in the Appendix, with such variations as circumstances may require.

(5) The party bespeaking a copy of a document for service under this rule shall at the time of bespeaking the same file a praecipe in Form 9 in the Appendix.

(6) An official certificate from the Minister responsible for External Affairs transmitted by the Ministry of Justice or otherwise to the Court Government of the country of the defendant shall be deem sufficient proof of service and shall be filed as record of, and be an affidavit of service within the requirements of these rule behalf.

(7) After entry of appearance by the defendant, or if no appeal entered, after expiry of the time limited for appearance, the proceed to judgment in all respects as if the defendant has purposes of the action waived all privileges and submitted jurisdiction of the Court.

(8) Where it is desired to serve or deliver a summons, order of the proceedings on the defendant out of the jurisdiction, the pro this rule shall apply with such variation as circumstances may

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

(a) the party bespeaking such service shall file in the registry in Form 8 or Form 66 in the Appendix, which form may as may be necessary to meet the circumstances of the case, in which it is used. Such request shall state through which it is desired the service shall be effected whether:-

(i) directly through the diplomatic channels; or

(ii) through the foreign judicial authority, and shall panied by the original document and a translation the language of the country in which service is to be certified by or on behalf of the person making the n

a copy of each for every person to be served and a copies which the convention may require (unless required to be made on a Nigerian subject directly to diplomatic channels in which case the translation ; thereof need not accompany the request unless expressly requires that they should do so);

(b) the documents to be served shall be sealed with the Court for use out of the jurisdiction and shall be forward Registrar to the Permanent Secretary for External , transmission to the foreign country;

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

Rule 21 Shall not apply to or render invalid or insufficient any mode of service in any foreign country with which a Convention has been or shall be made which is otherwise valid or sufficient according to the procedure of the Court and which is not expressly excluded by the Convention made with such foreign country.

23. The Court or Judge, in giving leave to serve a document out of the jurisdiction under these rules, may in an appropriate case direct that the air mail service shall be used by the party effecting service.

24 Where in any Civil Cause or matter pending before a court or tribunal in any foreign country with which a Convention in that behalf has been or shall be made, a request for service of any document on a person within the jurisdiction is received by the Chief Judge from the consular or other authority of such country the following procedure shall, subject to any special provisions contained in the Convention, be adopted:-

(a) the service shall be effected by the delivery of the original or a copy of the document, as indicated in the request, and the copy of the transmission, to the party or person to be served in person by an officer of the court, unless the Court or a Judge in Chambers thinks fit otherwise direct;

(b) no court fees shall be charged in respect of the service. The particulars of charges of the officer employed to effect service shall be submitted to the Chief Registrar of the Court who shall certify the amount properly payable in respect thereof;

(c) the Chief Judge shall transmit to the consular or other authority making the request a certificate establishing the fact and the date of the service in person, or indicating the reason for which it has not been possible to effect it, and at the same time, shall notify the said consular or other authority the amount of the charges certified under paragraph (b) hereof.

25. Upon the application of the Attorney-General, the Court or a Judge in Chambers may make all such order for substituted service otherwise as may be necessary to give effect to rules 13 to 23.

26. Any order giving leave to effect service out of the jurisdiction shall prescribe the mode of service, and shall limit a lime after such service within which the defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served, and the Court may receive an affidavit or statutory declaration of such service having been effected as prima facie evidence thereof.

C—GENERAL PROVISIONS

27. Where the officer of Court or person charged with the service of any writ or document or any person is prevented by the violence or threats of such person, or any other person is concert with him, from personally serving the writ or documents, it shall be sufficient to inform the person to be served of the nature of the writ or document as near such person as practicable.

28. In all cases where service of any writ or document shall have effected by a bailiff or other officer of Court an affidavit of service sworn to by such bailiff or other officer shall on production, without proof of signature, be prima facie evidence of service.

29. The costs of and incidental to the execution of any process in a suit shall be paid in the first place by the party requiring such execution, and the sheriff shall not (except by order of the court) be bound to serve or execute any process unless the fees and reasonable expenses thereof shall have been previously paid or tendered to him.

30. Service shall not be made on a Sunday or public holiday, unless the Court directs otherwise by order endorsed on the document to be Sunday served.

31. A book shall be kept at every Court for recording service or process, in such forms as the Chief Judge may direct, in which shall be entered by the officer serving the process, or by the registrar, the names of the plaintiff or complainant and the defendant, the particular court issuing the process, the method, whether personal or otherwise, of the service, and the manner in which the person serving ascertained that he served the process on the right person, and where any process shall not have been duly served, then the cause of failure shall be stated and every entry in such book or an office copy of any entry shall be prima facie evidence of the several matters therein stated.

ORDER 13 - APPEARANCE

1. —(1) A defendant shall within the time limited in the writ or other originating process enter an appearance in the manner hereinafter prescribed.

(2) A defendant shall enter an appearance by delivering to the Registrar the requisite documents, that is to say, a memorandum of appearance in Form 11, or where leave was obtained before appearance, a notice in Form 12. Such memorandum or notice shall be accompanied, where the defendant is an infant, by an affidavit sworn to by his legal practitioner and the consent of his guardian as in Form 14 in the Appendix, with such variations as the circumstances may require, and a copy thereof. All such documents shall be signed by the legal practitioner by whom the defendant appears or, if the defendant appears in person, by the defendant.

(3) On receipt of the requisite documents, the registrar shall in all cases enter the appearance in the Cause Book and stamp the copies of the memorandum of appearance with the official stamp showing the date on which he received those documents, and deliver one sealed copy thereof to the plaintiff or, as the case may be, his legal practitioner.

2. —(1) A defendant appearing in person shall state in the memorandum of appearance an address for service which shall be within the jurisdiction.

(2) Where a defendant appears by a legal practitioner, the legal practitioner shall state in the memorandum of appearance his place of business and an address for service which shall be within the

jurisdiction, and where any legal practitioner, is only the agent of another legal practitioner, he shall also insert the name and place of business of the principal legal practitioner.

3. If the memorandum does not contain an address for service, it shall not be accepted. If any such address is illusory or fictitious or misleading, the appearance may be set aside by the Court or a Judge in Chambers on the application of the plaintiff.

4. It two or more defendants in the same action shall appear by the same legal practitioner and at the same time, the names of all the defendants so appearing may be inserted in one memorandum.

5. A defendant may appear at any time before judgment. If he appears at any time after the time limited by the writ for appearance, he shall not, unless the Court or a Judge in Chambers shall otherwise order, be entitled to any further lime for delivering his defence, or for any purpose, than if he had appeared according to the writ or other originating process.

6. Any person appearing in an action for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the action, describing that part with reasonable certainty in his memorandum of appearance. Such appearance shall be in as Form 13.

7. A defendant before entering an unconditional appearance shall be at liberty (without obtaining an order to enter, or entering, a conditional appearance) to take out a summons to set aside the service upon him of the writ or other process, or to discharge the order authorising such service.

8. The provisions of this Order shall not apply in actions commenced before the coming into Operation of these rules.

ORDER 14 - DEFAULT OF APPEARANCE

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

Provided that this rule shall not apply to an action by a money lender or an assignee for the recovery of money lent by a money lender, or to an action for the enforcement of any agreement or security relating to any such money.

2. Where the writ of summons is endorsed for a liquidated demand, whether specially or otherwise, and there arc several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may have final judgment entered as in the preceding rule, against those that have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with the action against those who have appeared.

3—(1) Where the action is for the recovery of land, with or without any other related claim, and no appearance is entered within the time limited for appearance, the plaintiff shall be at liberty to have judgment entered for him.

(2) If an appearance is entered but the defence is limited to part only, the plaintiff may have judgment entered for him for the undefended part of his claim, and the rest of the claim may be proceeded with in the normal way.

4. In any case to which rules 1, 2, and 3 apply, in which the defendant fails, or all the defendants, if more than one, fail, to appear, but in which by reason of payment, satisfaction, abatement of nuisance, or for any other reason it is unnecessary for the plaintiff to proceed with the action, he may, by leave of the Court or a Judge in Chambers have judgment entered for costs.

5. In all actions not specially provided for in this Order, if the defendant fails to enter appearance within the stipulated time, the plaintiff may apply for the case to be set down for hearing, and upon such hearing, the Court may give any judgment that the plaintiff appears entitled to on the facts

6. Where judgment is entered pursuant to any of the preceding rules of this Order, it shall be lawful for the Court or a Judge in Chambers to set aside or vary such judgment upon such terms as may be just.

7. Where a defendant or respondent to an originating summons to which an appearance is required to be entered fails to appear within the time limited, the plaintiff or applicant may apply to the Court or a Judge in Chambers for an appointment for the hearing of such summons and upon a certificate that no appearance has been entered, the Court or Judge shall appoint a time for the hearing of such summons, upon such conditions (if any) as it or he shall think fit.

8. Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not adjudged a lunatic, the plaintiff shall before further proceeding with action against the defendant, apply to the Court or a Judge in Chambers for an order that some proper person be assigned guardian of such defendant by whom he may appear and defend the action. But no such order shall be made unless it appears that application was, after the expiration of the time allowed for appearance, and at least six clear days before the day named in such notice for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian (if any) of such infant, unless the Court or Judge in Chambers at the time of hearing such application shall dispense with such last-mentioned service.

9.—(1) In an action brought by a money lender or an assignee for the recovery of money lent by a money lender or the enforcement of any agreement or security relating to any such money, an application for leave to enter judgment in default of appearance shall be made by notice returnable not less than four clear days after service of the notice.

(2) The notice shall not be issued until the time limited for entering appearance has expired, and a proper affidavit of service of the writ has been filed.

(3) The notice shall be in accordance with Form 60 in the Appendix with such variations as circumstances may require, and shall be served personally.

(4) After the hearing of the application, whether the defendant appears or not, the Court or Judge in Chambers may exercise the relevant powers of the Court under the Money-lender's Law.

10. The provisions of this Order shall not apply in actions commenced before the coming into operation of these rules.

ORDER 15 - ARREST OF ABSCONDING DEFENDANT

1. If in any suit for an amount or value of one thousand Naira or Defendant upwards the defendant is about to leave the jurisdiction of the Court, or has disposed of or removed from the jurisdiction, his property, or any part thereof, or is about to do so, the plaintiff may, either at the institution of the suit or at any time thereafter until final judgment, make an application to the Court that security be taken for the appearance of the defendant to answer and satisfy any judgment that may be passed against him in the suit.

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

3. If the defendant fails to show such cause, the Court shall order him to give bail for his appearance at any time when called upon while the suit is pending and until execution or satisfaction of any judgment that may be passed against him in the suit, or to give bail for the satisfaction of such judgment; and the surety or sureties shall undertake in default of such appearance or satisfaction to pay any sum of money that may be adjudged against the defendant in the suit, with costs.

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

5.—(1) In the event of the defendant neither furnishing security nor offering sufficient deposit, he may be committed to custody until the decision of the suit, or, if judgment be given against the defendant, until the execution of the decree, if the Court shall so order:

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

(2) The application may be made to the Court in any Judicial Division in which the defendant may be, and such Court may issue the warrant for detaining and bringing the defendant before the Court where the suit is pending, and may make such further order as shall seem just.

(3) In case the warrant shall be issued by a different Court from that in which the suit is pending, such Court shall, on the request of either of the parties, transmit the application and the evidence therein to the Court in which the suit is pending, and take sufficient security for the appearance of the defendant in that Court, or send him there in custody to an officer of Court, and the Court in which the suit is pending shall thereupon examine into and proceed in the application in accordance with the foregoing provisions, in such manner as shall seem just.

6. The expenses incurred for the subsistence in prison of the person so arrested shall be paid by the plaintiff in the action in advance, and the amount so disbursed may be recovered by the plaintiff in the suit, unless the Court shall otherwise order. The Court may release the person so imprisoned on failure by the plaintiff to pay the subsistence money, or in case of serious illness order his removal to hospital.

ORDER 16 - INTERIM ATTACHMENT OF PROPERTY

1. (a) Where the defendant in any suit with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property, or any part thereof, or to remove any such property from the jurisdiction; or

(b) where, in any suit founded on contract or for detinue or trover in which the cause of action within the jurisdiction:-

(i) the defendant is absent from jurisdiction, or there is probable cause to believe that he is concealing himself to evade service; and

(ii) the defendant is beneficially entitled to any property in the State in the custody or under the control of any other person in the State, or such person is indebted to the defendant, then in either such case the plaintiff may apply to the Court either at the time of the institution of the suit or at any time thereafter until final judgment to call upon the defendant to furnish sufficient security to fulfil any decree that may be made against him in the suit, and on his failing to give such security, or pending the giving of such security, to direct that any property movable or immovable belonging to the defendant shall be attached until the further order of the Court.

2. The application shall contain a specification of the property required to be attached, and the estimated value thereof so far as the plaintiff can reasonably ascertain the same, and the plaintiff shall, at the time of making the application, declare that to the best of his information and belief the defendant is about to dispose of or remove his property with such intent as aforesaid.

3. If the Court after making such investigation as it may consider necessary, shall be satisfied that the defendant is about to dispose of or remove his property with intent to obstruct or delay the execution of the decree, it shall be lawful for the Court to order the defendant, within a time to be fixed by the Court either to furnish security in such sum as may be specified in the order to produce and place at the disposal of the Court when required the said property, or the value of the same, or such portion thereof as may be sufficient to fulfil the decree, or to appear and show cause why he should not furnish security. Pending the defendant's compliance with such order, the Court may by warrant direct the attachment until further order of the whole, or any portion, of the property specified in the application.

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

5. The attachment shall not affect the rights of persons not parties to the suit, and in the event of any claim being preferred to the property attached before judgment, such claim shall be investigated in the manner prescribed for the investigation of claims to property attached in execution of a decree.

6. In all cases of attachment before a judgment, the Court shall at any time remove the same, on the defendant furnishing security as above required, together with security for the costs of the attachment, or upon an order for a non-suit or striking out the cause or matter.

7. The application may be made to the Court in the Judicial Division where the defendant, or in case of urgency, where the property proposed to be attached, may be, and such Court may make such order as shall seem just. In case an order for the attachment of property shall be issued by a different Court from that in which the suit is pending, such Court shall, on the request of either of the parties, transmit the application and evidence therein to the Court in which the suit is so pending, retaining the property in the meantime under attachment or taking sufficient security for its value and the Court in which the suit is pending shall thereupon examine into and proceed with the application in accordance with the foregoing provisions, in such manner as shall seem just.

ORDER 17 - ACCOUNTS AND INQUIRIES

1_(i) Where a writ is endorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant has entered an appearance or after the time limited for appearing, apply for an order for an account under this rule.

(2) An application under this rule shall be made by summons and supported by affidavit or other evidence.

(3) On the hearing of the application, the Court may, unless satisfied by the defendant by affidavit or otherwise that there is some preliminary question to be tried, order than an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

2.—(1) The Court may, on application made by summons at any stage of the proceedings in a cause or matter, direct any necessary accounts or inquires to be taken or made.

(2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgment or order so that, as far as may be, each distinct account and inquiry may be designated by a number.

3. —(1) Where the Court orders an account to be taken, it may by the same or subsequent order give directions with regard to the manner in which the account is to be taken or vouched.

(2) Without prejudice to the generality of paragraph (1), the Court may direct that in taking the account the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections thereto as they think fit.

4. —(1) Where an account has been ordered to be taken, the accounting party must make out his account and, unless the Court otherwise directs verify it by an affidavit to which the account shall be exhibited.

(2) The items on each side of the account shall be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs the accounting party shall lodge the account with the Court and shall at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

5. Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of amount or in any other respect shall give him notice thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or as the case may be, the grounds for alleging that the item is erroneous.

6. In taking any account directed by any judgment or order, all just allowances shall be made without any direction to that effect.

7. —(1) If it appears to the Court that there is undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court may require the party having the of conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or for expediting them or for conduct thereof and for costs as the circumstances require.

(2) The Court may direct any party or legal practitioner to take over the conduct of proceedings in question and to carry out any directions made by an order under this rule and may make such order as it thinks fit as to the payment of legal practitioner's costs.

8. Where some of the persons entitled to share in a fund are ascertained and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained without reserving any part of these shares to meet the subsequent costs of ascertaining those other persons.

ORDER 18 - REFERENCE TO ARBITRATOR

1. In any case in which a matter is referred to one or more arbitrators under the provisions of the High Court Law, the arbitrators shall be nominated by the parties in such manner as may be agreed upon between them.

2. If the parties cannot agree with respect to the nomination, or if the persons nominated refuse to act, and the parties are desirous that the nomination shall be made by the Court, the Court shall appoint arbitrators.

3. The Court shall by an order under its seal refer to the arbitrators the matters in difference in the suit which they may be required to determine, and shall fix a time for the delivery of the award and the time so fixed shall be stated in the order.

4. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among them, by the appointment of an umpire, or by declaring that the decision shall be with the majority, or by empowering the arbitrators to appoint an umpire or otherwise as may be agreed between the parties, or, if they cannot agree as the Court may determine.

5. When a reference to arbitration is made by an order of Court, the same process to the parties and witnesses, whom the arbitrators or umpire may desire to have examined, shall issue as in ordinary suits;

and persons not attending in compliance with such process, or making any other default, or refusing to give evidence, or being guilty of any contempt of the arbitrators or umpire during the investigations of the suit, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court on the representation of the arbitrators or umpire, as they would incur for the same offences in suits tried before the Court.

6. When the arbitrators are not able to complete the award within the period specified in the order from want of the necessary evidence or information, or other good and sufficient cause, the Court may from time to time enlarge the period for delivery of the award, if it shall think proper. In any case in which an umpire is appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if they shall have allowed their time, or their extended time, to expire without making an award or shall have delivered to the Court, or to the umpire, a notice in writing stating that they cannot agree:

Provided that an award shall not be liable to be set aside only by reason of its not having been completed within the period allowed by the Court, unless on proof that the delay in completing the award arose from misconduct of the arbitrators or umpire, or unless the award shall have been made after the issue of an order by the Court superseding the arbitration and recalling the suit.

7. If, in any case of reference to arbitration by an order of Court, the arbitrators or umpire shall die, or refuse or become incapable to act, it shall be lawful for the Court to appoint a new arbitrator or arbitrators, or incapacity, umpire in the place of the person or persons so dying, or refusing or becoming incapable to act. Where the arbitrators are empowered by the terms of the order or reference to appoint an umpire, and do not appoint an umpire, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven days after such notice shall have been served, no umpire be appointed, it shall be lawful for the Court upon the application of the party having served such notice as aforesaid and upon proof to its satisfaction of such notice having been served, to appoint an umpire.

In any case of appointment under this rule, the arbitrators or umpire so appointed shall have the like power to act in the reference as if their names had been inserted in the original order of reference.

8. The award shall contain a conclusive finding, and may not find on the contingency of any matter of fact being afterwards substantiated or deposed to. It shall comprehend a finding on each of the several matters referred.

9. It shall be lawful for the arbitrators or umpire upon any reference by an order of Court, if they shall think fit, and if it is not provided to the contrary, to state their award as to the whole or any part thereof in the form of a special case for the opinion of the Court.

10. The Court may, on the application of either party, modify or correct an award where it appears that a part of the award is upon matters not referred to the arbitrators (provided such part can be separated from the other part and does not affect the decision on the matter referred) or where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

11 The Court may also, on such application, make such order as it thinks just respecting the costs of the arbitration, if any question arises about such cases or their amount, and the award contains no sufficient provision concerning them.

12. In any of the following cases the Court shall have power to remit the award, or any of the matters referred to arbitration, for reconsideration by the arbitrators or umpire, upon such terms as it thinks proper:

(a) if the award has left undetermined some of the matters referred to arbitration;

(b) if it has determined matters not referred to arbitration;

(c) if the award is so indefinite as to be incapable of execution; or

(d) if an objection to the legality of the award is apparent upon the face of the award.

13. No award shall be liable to be set aside except on the ground of perverseness or misconduct of the arbitrators or umpire. Any application to set aside an award shall be made within fifteen days after the publication thereof.

14. If no application is made to set aside the award, or to remit it or any of the matters referred, for reconsideration, or if the Court has refused any such application, either party may file the award in Court and the award shall thereupon have the same force and effect for all purposes as a judgment.

ORDER 19 - REFERENCE TO REFEREES

1. In any case in which a matter is referred to a referee under the Provisions of the High Court Law, the Court shall furnish the referee with such part of the proceedings and such information and detailed instructions as may appear necessary for his guidance, and shall direct the parties, if necessary, to attend upon the referee during the inquiry. 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 investigation.

2. The Court may at any stage of the proceedings direct any such necessary inquiries or accounts to be made or taken notwithstanding that it may appear that there is some special or further relief sought for, or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

3. The referee may, subject to the order of the Court, hold the inquiry at, or adjourn it to, any place which he may deem most expedient, and have any inspection or view which he may deem expedient, for the disposal of the controversy before him. He shall, as far as practicable, proceed with the inquiry from day to day.

4. Subject to any order to be made by the Court ordering the inquiry, evidence shall be taken at any inquiry before a referee, and the attendance of witnesses to give evidence before a referee may be enforced by the Court in the same manner as such attendance may be enforced before the Court; and every such inquiry shall be conducted in the same manner as nearly as circumstances will admit as trials before a Judge of the Court, but not so as to make the tribunal of the referee a public court of justice.

5. Subject to any order of Court, the referee shall have the same authority in the conduct of any inquiry as a Judge of the Court when presiding at any trial.

6. Nothing in these provisions contained shall authorize any referee to commit any person to prison or to enforce any order by attachment or otherwise, but the Court may, in respect of matters before a referee, make any order of attachment or committal it may consider necessary.

7.—(1) The report made by a referee in pursuance of a reference under these rules shall be made to the Court and notice thereof served on the parties to the reference.

(2) A referee may in his report submit any question arising therein for the decision of the Court or make a special statement of facts from which the Court may draw such inferences as it thinks fit.

(3) On the receipt of a referee's report, the Court may:-

(a) adopt the report in whole or in part;

(b) vary the report;

(c) require an explanation from the referee;

(d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other referee; or

(e) decide the question or issue originally referred to him on the evidence taken before him, either with or without additional evidence. ,

(4) When the report of the referee has been made, an application to vary the report or remit the whole or any part of the question or issue originally referred may be made on the hearing by the Court or the further consideration of the cause or matter, after giving not less than four days notice thereof, and any other application with respect to the report may be made on that hearing without notice.

(5) Where on a reference under this Order the Court or a Judge in Chambers orders that the further consideration of the cause or matter in question shall not stand adjourned until the receipt of the referee's report, the order may contain directions with respect to the proceedings on the receipt of the report and the foregoing provisions of the rule shall have effect subject to any such directions.

ORDER 20 - RECEIVERS

1.—(1) An application for the appointment of a receiver may be made by motion or notice.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

(3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so ex parte on affidavit in an appropriate case.

(4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property pending the hearing of a summons for the appointment of a receiver and may require such a summons, returnable on such date as the Court may direct, to be issued.

2.—(1) Where a judgment is given, or order made, directing the appointment of a receiver, then, unless the judgment or order otherwise directs, a person shall not be appointed a receiver in accordance with the judgment or order until he has given security in accordance with this rule.

(2) Where, by virtue of paragraph (1), or any judgment or order appointing a person named therein to be receiver, a person is required to give security in accordance with this rule, he shall give security approval by the Court daily to account for what he receives as a receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee or, if the amount for which the security is to be given does not exceed two thousand naira, by an undertaking.

(4) The guarantee or undertaking shall be filed in the Court Registry.

3. A person appointed a receiver shall be allowed such proper remuneration, if any, as may be fixed by the Court.

4. —(1) A receiver shall submit account to the Court at such intervals or on such dates as the Court may direct in order that they may be passed.

(2) Unless the court otherwise directs, each account submitted by a receiver shall be accompanied by an affidavit verifying it. The receiver's account and affidavit (if any) shall be left at the Registrar's office, and the plaintiff or party having the conduct or the cause or matter shall thereupon obtain an appointment for the purpose of passing such account.

(3) The passing of a receiver's account shall be certified by the Registrar.

5. The days on which a receiver shall pay into court the amount shown by his account as due from him, or such part thereof as the Court may certify as proper to be paid in by him, shall be fixed by the Court.

6.—(1) Where a receiver fails to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to submit, make or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in Chambers to show cause for the failure, and the Court may, either in Chambers or after adjournment into court, give such directions as it thinks proper including if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1), where a receiver fails to attend for the passing of any account of his or fails to submit any account or fails to pay into account on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into court, charge him with interest at the rate of ten per centum per annum on that sum while in his possession as a receiver.

ORDER 21 - COMPUTATION OF TIME

1. Where by any written law or any special order made by the Court in the course of any proceedings, any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, and such time is not limited by hours, the following rules shall apply:-

(a) the limited time does not include the day of the date of or the happening of the event, but commences at the beginning of the day next following that day;

(b) the act or proceeding shall be done or taken at latest on the last day of the limited time;

(c) where the time limited is less than five days, no public holiday, Saturday or Sunday shall be reckoned as part of the time;

(d) when the time expires on a public holiday, Saturday or Sunday the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards not being a public holiday, Saturday or Sunday.

2. The parties may not by consent enlarge or abridge any of the times fixed by the provision of these rules for taking any step, filing any document, or giving any notice.

3.—(1) The Court may, on such terms as it thinks just, by order extend extend or abridge the period within which a person is required or authorised by these provisions, or by any judgement, order or direction, to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.

4. Where a year or more has elapsed since the last proceeding in a cause or matter, the party who desires to proceed shall give to every other party not less than 30 days notice of his intention to proceed. A summons on which no order was made is not a proceeding for the purposes of this provision.

5. Application to set aside or remit an award may be made at any time within six weeks after such award has been made and brought to the parties.

Provided that the court of Judge in Chambers may by order extend the said time either before or after it has elapsed.

ORDER 22 - THE UNDEFENDED LIST

1. Whenever application is made to a court for the issue of a writ of summons in respect of a claim to recover a debt or liquidated money demand and such application is supported by an affidavit setting forth the grounds upon which the claim is based and stating that in the deponent's belief there is no defence thereto, the Court shall, if satisfied that there are good grounds for believing that there is no defence thereto, enter for hearing in what shall be called the "Undefended List , and mark the writ of summons accordingly, and enter thereon a date for hearing suitable to the circumstance of the particular case.

2. There shall be delivered by the plaintiff to the Registrar upon the issue of the writ of summons as aforesaid, as many copies of the above be served mentioned affidavit as there are parties against whom relief is sought, and the Registrar shall annex one such copy to each copy of the writ of summons for service.

3. -(1) If the party served with the writ of summons and affidavit as provided in Rules 1 and 2 hereof delivers to the Registrar not less than 5 days before the date fixed for hearing a notice in writing that he

intends to defend the suit, together with an affidavit disclosing a defence on the merit the Court may give him leave to defend upon such terms as the Court may think just.

(2) Where leave to defend is given under this rule, the action shall be removed from the Undefended List and placed on the ordinary Cause List; and the Court may order pleadings or proceed to hearing without further pleadings.

4. Where any defendant neglects to deliver the notice of defence and affidavit prescribed by rule 3(1) or is not given leave to defend by the Court, the suit shall be heard as an undefended suit, and judgment given thereon, without calling upon the plaintiff to summon witnesses before the court to prove his case formally.

5. Nothing herein shall preclude the Court from hearing or requiring oral evidence , should it so think fit, at any stage of the proceedings under rule 4.

ORDER 23 - PROCEEDINGS IN LIEU OF DEMURRER

1. No demurrer shall be allowed, abolished.

2. Any party shall be entitled to raise by his pleading any point of law, and any points so raised shall be disposed of by the Judge who tries the cause at or after the trial;

Provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.

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

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

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

ORDER 24 - PLEADINGS

1. Unless the Court gives leave to the contrary, or a statement of claim is endorsed on the writ, the plaintiff shall serve a statement of claim, on the defendant, or, if there are two or more defendants, on each defendant and shall do so either when the writ, or notice of the writ, is served on that defendant or at any time after service of the writ or notice but before the expiration of 30 days after the defendant enters an appearance.

Provided that in land cases, the plaintiff shall serve his statement of claim on a defendant not later than 60 days after the defendant enters an appearance, unless the Court gives leave to the contrary.

2.-(1) Subject to paragraph (2), a defendant who enters an appearance in, and intends to defend, an action shall, unless the Court gives leave to the contrary, serve a defence on the before the expiration of 30 days after the statement of claim is served on him.

Provided that in land cases, unless the court gives leave to the contrary, a defendant shall serve his defence on the plaintiff not later than 60 days after the statement of claim is served on him.

(2) If a summon under order 21 rule 1 is served on a defendant, paragraph (1) shall not have effect in relation to him unless by the order of court made on a motion on notice he is given leave to defend the action and, in that case, shall have effect as if required him to serve his defence within 30 days after the making of the order or within such other period as may be specified in the order.

3.-(1) A plaintiff on whom a defendant serves a defence shall serve a of reply on that defendant if it is needed for compliance with rule 6, and, if no reply is served rule 10 shall apply.

(2) A Plaintiff on whom a defendant serves a counter-claim shall, if he intends to defend it, serve on that defendant a defence to counter-claim.

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

(4) A reply to any defence shall be served by expiration of 30 days after the service on him of that counter-claim to shall be served by the plaintiff before the expiration of 30 days after the service on him of the counter-claim to which it relates.

4.-(1) Every pleading shall contain, and contain only a statement in a summary form of the material facts on which the party pleadings relies or his claims 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 but may also be expressed in words. Pleadings shall be signed by a legal practitioner, or by the party if he sues or defends in person.

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

5. —(1) 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, particulars (with dates and items if necessary) shall be stated in the pleadings.

(2) In an action for libel or slander, if the plaintiff alleges that the words or matter complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of his allegation.

6. —(1) A party shall plead specifically any matter for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality—which, if not specifically pleaded might take the opposite party by surprise.

(2) Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or the defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or the defendant shall be implied in his pleading.

(3) Without prejudice to paragraph (1), a defendant in an action for the recovery of land shall plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.

7.-(1) A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any particulars, pleading, notice or written proceeding requiring particulars, may in all cases be ordered upon such terms as to costs and otherwise as may be just.

(2) Before applying for particulars by summons or notice, a party may apply for them by letter. The costs of the letter and of any particulars delivered pursuant thereto shall be allowable on taxation.

In dealing with the costs of any application for particulars by summons or notice, the provisions of rule, shall be taken into consideration by the Court or Judge in Chambers.

(4) Particulars of a claim shall not be judged under this rule to be filed before defence unless the Court or Judge in Chambers shall be of the opinion that they are necessary or desirable to enable the defendant to plead, or ought for any other special reason to be so delivered.

8. The party at whose instance particulars have been filed under a Order for Judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the service of the particulars upon him that he had initially. Save as provided in this rule, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time.

9. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, a lunatic, or person of unsound mind not adjudged lunatic.

10.-(1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

(2) Subject to paragraph (3):-

(a) there is at the close of the pleadings an implied joinder of issue on the pleading last served; and

(b) a party may in his pleading expressly join issue on the next preceeding pleading.

(3) There can be no joinder of issue, implied or expressed, on a statement of claim or counter-claim.

(4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an implied or express joinder, of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operate as a denial of every other such allegation.

11. No pleading, not being a petition or summons, shall, except by Pleadings way of amendment, raise any new ground of claim or contain any Consistent, allegation of fact inconsistent with the previous pleading of the party pleading the same.

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

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

13. It Shall not be sufficient to deny generally the facts alleged by the be made statement of claim, but the defendant shall deal specifically with them, generally but either admitting or denying the truth of each allegation of fact seriatim, as the truth of falsehood of each is within his knowledges (as the case may be) stating that he does not know whether any given allegation is true or otherwise.

14. When a party denies an allegation fact he shall not do so evasively, but shall answer the point of substance. And when a matter of fact is alleged with diverse circumstances it shall not be sufficient to deny it as alleged along with those circumstances, but a full and substantial

answer shall be given.

15. The defence shall admit such material allegations in the statement of claim as the defendant knows to be true, or desires to be taken as established without proof thereof.

16. Where any defendant seeks to rely upon any facts as supporting a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim as the case may be, and the particulars of such set-off or counter-claim shall be given.

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

18. The Court, if it considers that the statement of claim and the defence filed in any suit insufficiently disclose and fix the real issues between the parties, may order such further pleadings to be filed as it may deem necessary for the purpose of bringing the parties to an issue.

19. Where the Court is of opinion that any allegations of fact, denied or not admitted by any pleading, ought to have been admitted, the Court shall make such order as may be just with respect to costs.

20. the Court may at any time, on the application of either party strike out any pleading or any part thereof, on the ground that it discloses no cause of action, or no defence to the action, as the case may be, or on the ground that it is embarrassing, or scandalous, or vexatious or an abuse of the process of the Court; and the Court may either give leave to amend such pleading, or may proceed to give judgment for the plaintiff or the defendant, as the case may be, or may make such other order, and upon such terms and conditions, as may seem just.

21. When a contract, promise, or agreement is alleged in any pleading a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise or agreement alleged, or the matters of fact from which the same may be implied by law and not as a denial of the legality or sufficiency m law of such contract, promise, or agreement, whether with reference to any statute or otherwise.

22. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

23. —(1) Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances condition from which the same is to be inferred.

(2) Notwithstanding paragraph (1), where in an action for libel or slander the defendants pleads that any of the words or matters complained of are fair comment on a matter of public interest or were published upon a privileged occasion the plaintiff shall, if he intends to allege that the defendant was actuated by express malice deliver a reply giving particulars of the facts and matters from which such malice is to be inferred.

(3) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interests, or pleads to the like effect, he shall give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

24. Wherever it is material to allege notice to any person of any fact, Notice, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice or the circumstances from which such notice is to be inferred, is material.

25. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

26. 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 (e.g. consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim).

27.—(1) In probate actions it shall be stated with regard to every defence which is pleaded what is the substance of the case on which it is intended to rely; and further where it is pleaded that the testator was not of sound mind, memory and understanding, particulars of any specific instances of delusion shall be delivered before the case is set down for trial, and, except by leave of the Court or a Judge in Chambers, no evidence shall be given of any other instances at the trial.

(2) In a probate action the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law and only intends to cross-examine the witness produced in support of the will; and he shall thereupon be at liberty to do so, and shall not in any event be liable to pay the costs of the other side unless the Judge shall be of opinion that there was no reasonable grounds for opposing the will.

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

29. The provisions of the foregoing rules of this Order shall not apply in actions where a summons has been issued before the date of commencement of these rules. In such cases, the former High Court rules shall be applied as if they were still in force.

30. Whenever a statement of claim is filed, the plaintiff may therein Claim alter, modify, or extend his claim without any amendment of the endorsement of the writ:

Provided that this rule shall not apply where the writ has been specially endorsed:

Provided further that the plaintiff may not completely change the cause of action endorsed on the writ without amending the writ.

31. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars; but in any case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same need not be alleged in the pleadings.

32. Where in any action a defence of tender before action is pleaded the defendant shall pay into Court in accordance with rule 1 of order 31 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into Court has been made.

33. Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiffs claim, whether or not it is also added as a counter-claim.

34. —(1) Where in any action a set-off or counter-claim is established as a defence against the plaintiffs claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

(2) Paragraph (1) shall apply mutatis mutandis where the balance is in favour of the plaintiff.

35.—(1) The pleadings in an action arc deemed to be closed:-

(a) at the expiration of 30 days after service of the reply or, if there is no reply but only a defence to counter-claim, after service of the defence to counter-claim; or

(b) if neither a reply nor a defence to counter-claim is served, at the expiration of 30 days after service of the defence.

(2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

ORDER 25 - AMENDMENT

1. The Court or a Judge in Chambers may at any time, and on such terms as to costs or otherwise as the Court or Judge may think just, amend any defect or error in any proceedings, and all necessary

amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

2. The Court or a Judge in Chambers may, at any stage of the proceedings allow either party to alter or amend his indorsement or pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

3. Application for leave to amend may be made by either party to a Judge in Chambers or to the Court at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just.

4. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as, aforesaid, or of such fourteen days, as the case may be, become ipso facto void, unless the time is extended by the Court or a Judge.

5. Whenever any indorsement or pleading is amended, the Court or the Judge in Chambers, as the case may be, may order that a copy of the document as amended shall be filed in the Registry and served on all parties to the action.

6. Whenever any indorsement or pleading is amended, the same when amended shall be marked with the date of the order, if any, under which it is so amended, and of the day on which such amendment is made, in manner following viz:

"Amended.....day of pursuant to order of dated the of…… of ……."

7. Clerical mistakes in judgments or orders, or errors arising therein Clerical

from any accidental slip or omission, may at any time be corrected by the Court or a Judge in Chambers on motion or summons without an appeal, omissions.

ORDER 26 - DEFAULT OF PLEADINGS

1. If the plaintiff, being bound by these rules or an order of Court or a Judge in Chambers to file a statement of claim, does not file it within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a Judge in Chambers to dismiss the action claim, with costs, for want of prosecution; and on hearing of such application the Court or Judge may, if no statement of claim shall have been filed, order the action to be dismissed accordingly, or may make such other order on such terms as the Court or Judge shall think just.

2. —(1) If the plaintiffs claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed by these rules or an order of Court or a Judge in Chambers for that purpose, file a defence, the demand, plaintiff may, at the expiration of such time, apply for final judgment for the amount claimed, with costs.

(2) In actions by a money-lender or an assignee for the recovery of money lent by a money-lender or the enforcement of any agreement or security relating to any such money, judgment shall not be entered in default of defence except in accordance with the provisions of order 14 Rule 9.

3. When in any action for a debt or liquidated demand there are several defendants, if one of them makes default as mentioned in rule 2(1), the plaintiff may, subject to rule 2(2), have final judgment entered against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

4. Where the plaintiffs claim against a defendant is for unliquidated damages only, then, if that defendant makes default in pleading, the plaintiff may, after the expiration of the period fixed as aforesaid, for service of defence, have judgment entered against that defendant for damages to be assessed by the Court and costs, and may proceed with the action against the other defendants, if any.

5. Where the plaintiffs claim against the defendant relates to the detention of goods only, then, if that defendant makes default in pleading, the plaintiff may, after the expiration of the period fixed as aforesaid for service of the defence, have entered either:-

(a) judgment against that defendant for the delivery of the goods or their value to be assessed by the Court and costs; or

(b) judgment for the value of the goods to be assessed by the Court and costs; and

in either case he may proceed with the action against the other defendants, if any.

6.—(1) Where the plaintiffs claims against a defendant is for the possession of land then, if that defendant makes default in pleading the plaintiff may, after the expiration of the period fixed as aforesaid for service of the defence, and on producing a certificate by his legal practitioner or (if he sues in person) an affidavit stating that he is not claiming any relief in the action of the nature of mortgage action, have judgment entered for possession of the land as against that defendant and for costs, and proceed with the action against the other defendants, if any.

(2) Where there are more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for the possession of the land has been entered against all the defendants.

7. Where the plaintiff makes against a defendant two or more of the claims mentioned in rules 2 to 6, and no other claim then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed as aforesaid for service of the defence, have entered against that defendant such judgment in respect of each such claim as he would be entitled to under those rules as if that were the only claim made, and proceed with the action against the other defendants, if any.

8. —(1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 6, then if the defendant or all the defendants (where there are more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed as aforesaid for service of the defence apply to the Court for judgment and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

(2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph the plaintiff may:-

(a) if his claim against the defendant is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or

(b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment against the other defendants.

(3) An application under paragraph (1) shall be by summons or motion on notice.

9. A defendant who counter-claims against a plaintiff shall be treated for the purposes of rules 2 to 8 as if he were a plaintiff who had made against a defendant the claim made in the counter-claim and, accordingly, where claim, the plaintiff or any other person against whom the counter-claim is made fails to serve a defence to the counter-claim, these rules shall apply as it the counter-claim were a statement of claim, the defence to the counter-claim a defence and the parties making the counter-claim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period fixed by or under these rules for service of the defence were references to the period so fixed for service of the defence to counter-claim.

10. The court may, on such terms as it thinks fit, set aside or vary any judgment entered in pursuance of this Order.

11. In this Order, a party makes default in pleading when he fails to file and serve his statement of claim or defence, as the case may be, on the opposite party within the time fixed for doing so by these rules or by the order of the Court or a Judge in Chambers.

ORDER 27 - INTERPLEADER

1.—(1) Where:-

(a) a person is under a liability in respect of a debt or in respect of any money goods or chattels and he is, or expects to be sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto; or

(b) claim is made to any money, goods or chattels taken or intended to be taken by a sheriff in execution under any process, or to the proceeds or value of any such goods or chattels by a person other than the person against whom the process is issued, the person under liability as mentioned in paragraph (1)(a) or, as the case may be, the sheriff, may apply to the Court for relief by way of interpleader.

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

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

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

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

(3) Where:-

(a) the sheriff receives a notice from an execution creditor under paragraph (2) disputing a claim, or the execution creditor fails, within the period mentioned in that paragraph to give the required notice; and

(b) the claim made under this rule is not withdrawn, the sheriff may apply to the Court under this Order.

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

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

(2) Where the applicant is a sheriff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2(4), the summons shall be served on any person who made a claim under rule 2(1) to or in respect of that money, or goods or chattels, and that person may attend the hearing of the application.

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

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

(a) that the applicant claims no interest in the subject matter in dispute, other than for charges or costs; and

(b) that the applicant does not collude with any of the claimants; and

(c) that the applicant is willing to pay or transfer the subject matter into court or to dispose of it as the Court of a Judge in chambers may direct.

5. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.

6. If the application is made by a defendant in an action the Court or a Judge in Chambers may stay all further proceedings m the action.

7. If the claimants appear in pursuance of the summons, the Court or a Judge in Chambers may order either that any claimant be made a defendant in any action already commenced in respect of the subject matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants

be stated and tried, and in the latter case may direct which of the claimants is to be the plaintiff, and which the defendant.

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

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

ORDER 28 - WITHDRAWAL AND DISCONTINUANCE

1. A party who has entered an appearance in an action may withdraw the appearance at any time with leave of the Court.

2.—(1) The plaintiff in an action may, without the leave of the court, discontinue the action, or withdraw any particular claim made by him therein, as against any or all of the defendants at any time not later than 14 days after service of the defence on him or, if there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.

(2) A defendant may, without leave of the Court:-

(a) withdraw his defence or any part of it at any time; or

(b) discontinue a counter-claim, or withdraw any particular claim made by him therein, as against any or all of the parties against whom it is made, at any time not later than 14 days after service on him of a defence to the counter-claim or, if the counter-claim is made against two or more parties, of the defence to the counter-claim last served;

by serving a notice to that effect on the plaintiff or other party concerned.

(3) Where there are two or more defendants to an action not all of whom serve a defence on the plaintiff and the period fixed by or under this rule for service by any of those defendants of his defence expire after the latest date on which any other defendant serves his defence paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period.

(4) Paragraph (3) shall apply in relation to a counter-claim as it applies in relation to an action, with the substitution for reference to a defence, to the plaintiff and to paragraph (1), of references to a defence to counter-claim, to the defendant and to paragraph (2) respectively.

(5) If all the parties to an action consent, the action may be withdrawn without leave of the Court at any time before trial by producing to the Registrar a written consent to the action being withdrawn signed by all the parties, and the action shall thereafter be struck out.

3.—(1) Except as provided by rule 2, a party may not discontinue an action or counter-claim, or withdraw any particular claim made by him therein without leave of the Court, and the Court hearing an

application for the grant of such leave may order the action or counter-claim to be discontinued or any particular claim made therein to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.

(2) An application for the grant of leave under this rule may be made by summons or motion on notice.

4. Subject to any terms imposed by the Court in granting leave under rule 3, the fact that a party has discontinued an action or counter-claim or withdrawn a particular claim made by him therein shall not be a defence to subsequent action for the same, or substantially the same, cause of action.

5. Where a party has discontinued an action or counter-claim or withdrawn any particular claim made by him therein, and he is liable to pay costs to any other party of the action or counter-claim or the costs occasioned to any other party by the claim withdrawn, then if, before payment of those costs, he subsequently brings an action for the same or substantially the same cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.

6. A party who has taken out a summons or filed a motion in a pending cause or matter may not withdraw it without leave of the Court.

ORDER 29 - ADMISSIONS

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

2.—(1) Any party may, by leave of Court obtained in a motion on notice, call upon any other party to admit any document or fact, saving admit just exceptions.

(2) A notice containing a list and where possible true copies of the documents or, as the case may be, a clear statement of each fact, to be admitted shall be filed with the motion papers and served on the party being called upon to admit the same.

(3) The Court, if it grants such leave, shall fix the terms and conditions thereof, including the time within which the admission is to be made.

(4) If a party on whom a notice under paragraph (2) is served desires to deny the existence of the authenticity of any fact or document therein specified he shall, before the day fixed for hearing the motion, serve on the party by whom it was given a notice stating that he does not admit the facts or the authenticity of the documents and that he requires that the same be proved at the trial.

(5) A party who fails to give a notice of non-admission in accordance with paragraph (4) in relation to any fact or document shall be deemed to have admitted that fact or the authenticity of that document unless the court otherwise orders.

(6) Except where rule 4(3) applies, a party to a cause or matter may serve on any other party a notice requiring him to produce the documents specified in the notice at the trial of the cause of matter.

3. Where admissions of fact are made by a party either by his pleadings or otherwise, any other party may apply to the Court for such judgment or order as upon those admissions he may be entitled to,

without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just. An application for an order under this rule may be made by motion or summons.

4 —(1) Subject to paragraph (2) and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a list of documents is served in pursuance of the provisions of Order 31, shall, unless, the Court otherwise orders, be deemed to admit:-

(a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been; and

(b) that any document described therein as a copy is a true copy.

This paragraph does not apply to a document the authenticity of which the party has denied in his pleading.

(2) If before the expiration of 14 days after inspection of the documents specified in a list of documents or after the time limited for inspection expires, whichever is the later, the party on whom the list is served, serves on the party whose list it is, a notice stating, in relation to any document specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial, he shall not be deemed to make any admissions in relation to that document under paragraph (1).

(3) A party by whom a list of documents is served on any other party in pursuance of any provision of Order 31 shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the documents specified in the list as are in his possession, custody or power.

(4) The foregoing provisions, of this rule apply in relation to an affidavit made in compliance with an order under the provisions of Order 31 as they apply in relation to a list of documents served in pursuance to any provision of that Order.

ORDER 30 - PAYMENTS INTO AND OUT OF COURT

1 -(1) In any action for a debt or damages the defendant may, at any time after he has entered appearance in the action, pay into Court a sum of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all of those causes of action.

(2) On making any payment into Court under this rule, and on increasing any such payment already made, the defendant shall give notice thereof in Form 26 to the plaintiff and every other defendant (if any); and within 7 days after receiving the notice the plaintiff shall send the defendant a written acknowledgement of its receipt.

2. _(1) Payment into court, whether made in satisfaction of the plaintiffs claim generally or in satisfaction of some specific part thereof, operates unless the defendant in his defence denies liability, as an admission of liability to the extent of the amount paid in, and no more,and for no other purpose.

(2) When money is paid into Court with a defence denying liability it shall be subject to the provisions of rule 5.

3. Where the defendant pays money into Court, and the liability of the defendant in respect of the claim or cause of action in satisfaction of which the payment into Court is made is not denied in the defence, the plaintiff shall be at liberty to accept the same in full satisfaction and discharge of the cause of action in respect of which it is paid in, and in that case the plaintiff may forthwith apply by motion for payment of the money to him; and, on hearing the motion, the Court shall make such order as to stay of further proceedings in the suit, in whole or in part, and as to costs and other matters as seems just.

4. If the plaintiff does not so apply, he shall be considered as insisting that he has sustained damages to a greater amount, or (as the case may be) paid in that the defendant was and is indebted to him in a greater amount, than the sum paid in; and in that case the Court, in disposing of costs at the hearing, shall have regard to the fact of the payment into Court having been made and not accepted.

5. When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court has been made, is denied in the pleading, the following rules shall apply:-

(a) the plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made the sum so paid in, (whereupon all further proceedings in respect of such claim or cause of action except as to cost shall be stayed), or the plaintiff may refuse to accept the money in satisfaction in which case the money shall remain in Court subject to the provision hereinafter mentioned;

(b) if the plaintiff accepts the money so paid in he shall be entitled, with leave of the Court, to have the money paid out to him;

(c) if the plaintiff does not accept the sum so paid in, but proceeds with the action in respect of such claim or cause of action or any part thereof, the money shall remain in Court. If the plaintiff proceeds with the action in respect of such claim or cause action or any part thereof and succeeds, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff s claim and the balance (if any) shall, under Court order, be repaid to the defendant. If the defendant succeeds in respect of such claim or cause of action, the whole amount shall, under Court order, by repaid to him.

6. Where any money is required to be paid into or deposited in Court, the Court may, if it shall think it expedient, order that the money be paid into a savings account at a reputable commercial bank. Such payment shall be done by the Registrar, and any interest payable by the bank shall accrue pro tanto to the benefit of the party who, at the end of the action, is entitled to the money originally paid into Court.

7. A plaintiff may, in answer to a counter-claim, pay money into Court in satisfaction thereof subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant.

8. Money paid into Court pursuance to rule 1 or 7 under an order of the Court or a Judge shall not be paid out except in pursuance of an Order of the Court or a Judge.

9. Where a person entitled to a fund in Court, or a share of such fund, dies intestate and the Court is satisfied that no grant of administration has been made and that the assets of his estate do not exceed two thousand naira in value including the value of the fund or share, it may order that the fund or share shall be paid, transferred or delivered to the person who, being a widower, widow, child, father, mother,

brother or sister of the deceased, would have the prior right to a grant of administration of the estate of the deceased. "Fund in Court" in this rule includes money paid into a bank account under rule 6.

ORDER 31 - DISCOVERY AND INSPECTION OF DOCUMENTS

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

Provided that interrogatories which do not relate to any matter question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

2. A copy of the interrogatories proposed to be delivered shall be filed and served with the summons or notice of application for leave to deliver them at least two clear days before the hearing thereof (unless in any case the Court or Judge in Chambers shall think fit to dispense with this requirement). In deciding upon such application the Court or judge in Chambers shall take into account any offer which may be made on party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to any matter in question, and leave shall be given as to such interrogatories only as shall be considered necessary either for disposing fairly of the action or for saving costs.

3. Interrogatories shall be in Form 30 with such variations as Circumstances may require.

4. If any party to an action is a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of an officer or other persons, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be accordingly.

5. Interrogatories shall be answered by affidavit to be filed within 10 davs or within such other time as the Court or a Judge in Chambers may allow. Two copies of the affidavit shall be supplied to the registrar.

6. An affidavit in answer to interrogatories shall be in Form 31 such variations as circumstances may require.

7. Any objections to answering any interrogatory on the ground that it is scandulous or irrelevant, or not bona fide for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

8. If any person interrogated omits to answer or answer insufficiently, the party interrogating may apply to the Court or a Judge in Chambers for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit of by viva voce examination, as the Court or Judge may direct.

9. Any party may, without filing any affidavit apply to the Court or a Judge in Chambers, for an order directing any other party to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in issue. In the hearing of such application the Court or

Judge in Chambers may either refuse or adjourn the same, is satisfied that such discovery is not necessary, or make such order, either generally or limited to certain classes of documents, as may, in its or his discretion, be thought fit:

Provided that discovery shall not be ordered when and so far as the Court or Judge shall be of opinion that it is not necessary either for disposing fairly of the action or for saving costs.

10. Where in any action arising on a marine insurance policy an application for discovery of documents is made by the insurer, the following provisions shall apply:-

(a) on the hearing of the application, the Court or Judge in Chambers may, subject as provided in the next paragraph, make an order in accordance with rule 9;

(b) where in any case the Court or Judge in Chambers is satisfied, either on the original application or a subsequent application, that it is necessary or expedient, having regard to the circumstances of the case, to make an order for the production of ship's papers; the Court or Judge in Chambers may make such an order in Form 68;

(c) in making an order under this rule the Court or Judge in Chambers may impose such terms and conditions as to staying proceedings or otherwise as the Court or Judge in Chambers in its or his absolute discretion shall think just;

(d) rule 13 shall not apply to any application made under this rule.

11. The affidavit to be made by any person against whom an order for discovery of documents has been made under rule 9 or under Paragraph (a) or paragraph (b) of rule 10 shall specify which if any of the documents mentioned he objects in the case of an order made under paragraph (b) of rule 10 be in Form 32 with such variations as circumstances may require.

12. On the hearing of any application for discovery of documents the Court or Judge in Chambers in lieu of ordering an affidavit of documents to be filed may order that the party from whom discovery is sought shall deliver to the opposite party a list of the documents which are or have been in his possession, custody or power relating to the matters in question. Such list shall, as nearly be, follow the form of the affidavit in Form 32.

Provided that the ordering of such list shall not preclude the Court or Judge in Chambers from afterwards ordering the party to make and file an affidavit of documents.

13. It shall be lawful for the Court or a Judge in Chambers at any time Production during the pendency of an action to order the production by any party, upon oath, of such of the documents in his possession or power, relating to any matter in question in such action as the Court or Judge in Chambers shall think right and the Court may deal with such documents, when produced, in such manner as shall appear just.

14 -(1) Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other party in whose pleadings or affidavits reference is made to any document produce such document for the inspection of the party giving such notice of his legal practitioner, and to permit him or them to take copies thereof.

(2) Any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action, unless he shall satisfy the Court or a Judge in Chambers that

such document relates only to his own title, he being a defendant to the cause or matter or that he had some other cause or excuse which the Court or Judge in Chambers shall deem sufficient for not complying with such notice, in which case the Court or Judge in Chambers may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or Judge in Chambers may think fit.

15. Notice to any party to produce any documents referred to in his pleadings or affidavit shall be in Form 33 with such variations as circumstances may require.

16. The party to whom notice is given under rule 14 shall, within 2 days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in rule 11, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within 7 days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his legal practitioner, or in the case of banker's books or other books of accounts, or books in constant use for the purpose of any trade or business at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what grounds. Such notice shall be in Form 34 with such variations as circumstances may require.

17. —(1) If the party served with notice under rule 14 omits to notify a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his Legal Practitioner, the Court or Judge in Chambers may, on the application of the party desiring it, make an order for inspection in such place and in such manner as the Court or Judge may think fit:

Provided that the order shall not be made when and so far as the Court or Judge in Chambers shall be of opinion that it is not necessary either for disposing fairly of the action or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

18.—(1) Where inspection of any business books is applied for, the copies. Court or a Judge in chambers may, if it or he shall think fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and varified 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 what erasures, interlineations, or alterations:

Provided that, notwithstanding that such copy has been supplied, the Court or Judge in Chambers may order inspection of the book from which the copy was made.

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

(3) The Court or Judge in Chambers may, on the application of any party to an action at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any particular document or documents or any

class or classes of documents, specified or documents indicated in the application, is or are, or has or have at any time been in his possession, custody, or power when he parted with the same and what has become of it. Application for such order shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has or had at some time had in his possession, custody or power the particular document or documents, or the class or classes of documents specified or indicated in the application, and that they relate to the matters in question in the action, or to some or one of them.

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

20. If any party fails to comply with any order to answer interrogatories or for discovery or inspection of documents, he shall be liable to committal. He shall also if a plaintiff, be liable to have his action dismissed for want of discovery, prosecution, and, if a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a Judge in Chambers for an order to that effect, and an order may be made accordingly.

21. Service of an order for interrogatories or discovery or inspection made against any part or legal practitioner shall be sufficient service to found an application for an attachment for disobedient to the order. But the party against whom the application for attachment is made may show discovery, in answer to the application that he has no notice or knowledge of the order.

22. A legal practitioner upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to pay the costs occasioned thereby.

23. Any party may, at the trial of a cause, matter or issue, use in answer to in evidence any one or more of the answers or any part of an answer of the stones opposite party to interrogatories without putting in the others or the whole of such answer.

Provided always, that in such case the Judge may look at the whole of the answers, and if he shall be of opinion that any others of them are so connected with those put in that those not put in ought not to be used without them, he may direct them to be put in.

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

25. This Order shall apply to infant plaintiffs and defendants, and to their next friends and guardians ad litem.

26. Any order made under the provisions of this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court or a Judge in Chambers made or given at or before trial.

ORDER 32 - INTERLOCUTORY INJUNCTIONS AND INTERIM PRESERVATION OF PROPERTY

1.—(1) An application for the grant of an injunction may be made by for any party to an action before or after the trial of the action, whether or not a claim for injunction was included in that party's action.

(2) Where the applicant is the plaintiff and the case is one of urgency, such application may be made ex parte on affidavit but, except as aforesaid, such application shall be made by motion on notice or summons.

(3) The plaintiff may not make such an application before the issue of the process by which the action is to be begun, except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the process and such other terms, if any, as the Court thinks fit.

2. —(1) On the application of any party to an action the Court may make an order for the detention, custody or preservation of any property which is the subject matter of the action or as to which any question may arise therein or for the inspection of any such property in the possession of action, of a party to the action.

(2) For the purpose of enabling any order under paragraph (1) to be carried out, the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the action.

(3) Where the right of any party to a specific fund is in dispute in an action, the Court may, on the application of the party, order the fund to be paid into court or otherwise secured.

(4) An order under this rule may be made on such terms, if any as the Court thinks just.

(5) An application for an order under this rule shall be made by summons or motion on notice.

(6) Unless the Court otherwise directs, an application by the defendant for such an order may not be made before he enters an appearance.

3. —(1) Where it considers it necessary or expedient for the purpose of Power to obtaining full information or evidence in any action, the Court may, on the application of a party and on such terms, if any, as it thinks just, by be taken, order authorise or require any sample to be taken of any property which is the subject matter of the action or as to which any question may arise therein, any observation to be made on such property or any experiment to be tried on or with such property.

(2) For the purpose of enabling any order under paragraph (1) to be carried out, the Court may by the order authorise any person to enter any land or building in the possession of any party.

(3) Paragraph (5) and (6) of rule 2 shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

4. —(1) The Court may, on the application of any party, make an order for the sale by such person, in such manner and on such terms (if any) as may be specified in the order, of any property (other than land) which is the subject matter of the action or as to which any question arises therein and which is of a perishable nature or likely to deterioriate if kept or which for any other reason it is desirable for sell forthwith.

(2) Paragraphs (5) and (6) of rule 1 shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

5. Where on the hearing of an application made before the trial of a early trial. cause or matter, for an injunction or appointment of a receiver or an order under rule 2, 3 or 4, or it appears to the Court that the matter in dispute can be better dealth with by an early trial than by considering the whole merit thereof for the purposes of the application, the Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires.

Where the Court makes an order for early trial, it shall by the order determine the place and mode of the trial.

6. Where the plaintiff, or the defendant by way of counter-claim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings (if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum if any for interests and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it, but subject to the provisions of the Exchange Control Acts.

7. Where an application is made under any of the foregoing provisions of this Order, the court may give directions as to the further proceedings in the action.

8. Where any real or personal property forms the subject matter of any proceedings, and the court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all such parties.

ORDER 33 - TRANSFERS AND CONSOLIDATION

TRANSFERS

1. Where a Judge has, ordered the transfer of any action from the Magistrate's Court to the Court or to another District Court, a copy of the order duly certified by the registrar shall forthwith be sent to the registrar of the Magistrate's Court who shall transmit to the Court or the Magistrate's Court, as the case may be, the process and proceedings in every such action, and an attested copy of all entries in the

books of that Court relating thereto and thenceforth all proceedings in the action shall be taken in the Court to which the transfer is made as if the action had been commenced therein.

2. —(1) On receipt by the Court of the documents mentioned in the last preceding rule, the registrar shall notify the party who applied for the transfer or, where the transfer was not made on application of any party, the plaintiff, to attend at the Registry of the Court and pay the fees for filing the documents, if any. Such payment shall be without prejudice to the question how the costs shall ultimately be borne.

(2) Such notification shall be effected by serving a notice personally on the party concerned or where an address for service has been given by such party in the Magistrate's Court, service may be effected by leaving the notice with an adult person resident or employed at the address for service given in the Magistrate's Court.

3. —(1) The registrar shall, on payment of the prescribed fees, if any, file the document received from the District Court and make an entry of such filing in the Cause Book.

(2) The Registrar shall then serve notice on the parties to attend in person or by their legal practitioners before the Court on the day and at the time specified in the notice. The fees for the service of this notice shall be defrayed in the first instance by the party who has paid the fees for riling as provided by rule 2(1).

4.—(1) If the plaintiff fails to attend in compliance with notice given Party failing under rule 3(2), the Court shall record his default and the defendant may apply by summons for an order dismissing the action. The provisions of paragraph (2) of rule 2 shall apply to the service of such summons on the plaintiff.

(2) Upon an application by a defendant to dismiss the action, the court may either dismiss the action upon such terms as may be just or make such other order on such terms as he shall think just.

(3) If the defendant fails, or all the defendants if more than one fail to attend in compliance with a notice given under rule 3(2), the plaintiff, after having caused an address for service to be entered in the Cause Book may, by leave of the Court to be obtained on summons, have judgment entered for him with costs or obtain the order prayed for in the transferred proceedings. The provisions of paragraph (2) of rule 2 shall apply to the service of such summons on the defendant or the defendants.

5. The references in rule 4 to the plaintiff and the defendant shall, in relation to proceedings commenced otherwise than by plaint, by construed as references to the applicant and the respondent.

CONSOLIDATION

6.—(1) Actions pending in the High Court may be consolidated by order of the Court or of a Judge in Chambers where it appears that the

issues are the same in all the actions and can therefore be properly tried

and determined at one and the same time.

(2) An order to consolidate may be made where two or more actions are pending between the same plaintiff and the same defendant, or between the same plaintiff and different defendants or between different plaintiffs and the same defendant, or between different plaintiffs and different defendants:

Provided that where actions are brought by the same plaintiff against different defendants, they shall not be consolidated without the consent of all the parties unless the issues to be tried are precisely similar.

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

(4) Where an order for consolidation has been made, it shall be drawn up at the expense of the party or parties who applied for consolidation and shall be recorded in the Cause Book.

(5) In the application of these provisions to proceedings not begun by a writ of summons, references to the plaintiff and the defendant shall be construed as references to the applicant and the respondent.

7. "Magistrate's Court" in this order includes the District Court in the Northern States.

ORDER 34 - SETTLEMENT AND TRIAL OF ISSUES SETTLEMENT OF ISSUES

1. At any time before or at the hearing, the Court may, if it thinks fit, on the application of any party, or of its own motion, proceed to ascertain and determine what are the material questions in controversy between the

parties, and may reduce such questions into writing and settle them in the form of issues which issues when settled may state questions of law on admitted facts, or questions of disputed facts, or questions partly of the one kind and party of the other.

2. The Court may, if it thinks fit, direct the parties to prepare such Court may issues, and the same shall be settled by the Court.

3. The issues may be settled without any previous notice at any stage of the proceedings, at which all the parties are actually present, or at the hearing. If otherwise, notice shall be given to the parties to attend the settlement of the issues.

4. At any time before the decision of the case, if it shall appear to the Court may Court necessary for the purpose of determining the real question or controversy between the parties, the Court may amend the issues or frame additional issues on such terms as to it shall seem fit.

TRIAL OF QUESTIONS AND ISSUES

5._(1) The Court may order any question or issue arising in a cause or etc., matter, whether of fact or of law, or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

(2) An order under this rule may be made on application by a party or by the Court or a Judge in Chambers on its or his own motion.

(3) Application by any party for such order shall be by motion on notice stating the question or issue sought to be tried.

6. If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter, or preliminary make such other order or give such judgment therein as may be just.

7. This Order shall be subject to the provisions of these rules and any

subject to written law in force in the State regarding transfer of cases.

ORDER 35 - APPLICATIONS AND PROCEEDINGS IN CHAMBERS

1. The business which may be disposed of in Chambers by a Judge of shall consist of the following matters, in addition to the matters which chambers. under any other rule or any written law may be disposed of in Chambers:-

(a) applications to serve a writ or other process out of the jurisdiction;

(b) applications for substituted service of a writ or other process;

(c) applications to have cases heard during vacations;

(d) applications for enlargement of time;

(e) applications for a writ of attachment or for a garnishee order;

(f) applications for payment or transfer to any person of any cash or securities standing to his credit in any cause or matter where there has been a judgment or order declaring the rights or where the title depends only upon proof of the identity of the birth, marriage or death of any person;

(g) applications as to the guardianship and maintenance of advancement of infants;

(h) any matter relating to the adoption of children;

(i) applications connected with the management of property;

(j) such other matters of an interlocutory nature as the Judge may think fit to dispose of in Chambers.

2. The provisions of Order 8 with regard to interlocutory applications by the way of motion in Court shall apply mutatis mutandis to applications to a Judge in Chambers.

3. Subject to the provisions of the High Court Law, any order or

chambers direction made or given by a Judge in Chambers shall have the same effect as if such order or direction had been made or given in Court.

ORDER 36 - TRIAL PROCEEDINGS IN GENERAL SETTING DOWN FOR HEARING

1. The plaintiff shall within thirty days of the close of pleadings apply to the Registrar for the case to be set down for trial.

2. Such application shall be in writing and shall contain the following information:-

(a) that the pleadings in the case have closed; and

(b) the number of witnesses the plaintiff intends to call, and the probable length of time the case will take.

3. If the plaintiff fails to make an application under rule 1, the defendant may, within fourteen days after the expiration of the time allowed for the plaintiff to make his application, apply to the Registrar for the case to be set down for trial and in that event the provisions of rule 2 of this Order shall apply mutatis mutandis to his application.

4. -(1) If neither the plaintiff nor the defendant makes an application under these rules, the Registrar shall certify such fact to the Court or Judge in Chambers after the time limited for both parties to make the down.

(2) The Judge or Court upon receipt of the certificate of the Registar shall cause such case to be listed for striking out and the parties to the case shall be so notified.

5. -(l) Upon the case coming up for striking out, the court or the Judge shall strike out unless good cause be shown why the case should proceed to hearing.

(2) A plaintiff who does not want his case to be struck out under paragraph (1) of this rule shall file in Court within three days of the service upon him of the notice of striking out an affidavit containing the reasons for his failure to comply with rule 1 of this Order.

ATTENDANCE OF PARTIES AT HEARING

6 -(1) In every cause or matter pending before the Court, in case it shall appear to the satisfaction of the Court that any party who may not be represented by legal practitioner is prevented by some good or sufficient cause from attending the court in person, the court may in its discretion permit any master, servant, clerk or member of the family of such plaintiff or defendant, or officer of the plaintiff or defendant company, who shall satisfy the Court that he has authority in that behalf, to appear in Court for such party.

(2) If, when the trial of an action is called on, neither party appears the action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a Judge.

7. If, when a trial is called on the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him.

8. If, when a trial is called on the defendant appears, and the plaintiff does not appear the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such counter-claim, so far as the-burden of proof lies upon him:

Provided that if the defendant shall admit the cause of action to the full amount claimed, the Court may, if it thinks fit, give judgment as if the plaintiff had appeared.

9. Any judgment obtained where one party does not appear at the trial may be set aside by the Court upon such terms as may seem just, upon an application made within six days after the trial or within such longer period as the Court may allow for good cause shown.

10. The Judge may, if he thinks it expedient for the interests of justice, postpone or adjourn a trial for such time, and upon such terms, if any, as he may think fit.

PROCEEDINGS AT THE HEARING

11. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in Chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without leave

of the Court, unless 7 days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

12. The trial Judge shall, at or after trial, direct judgment to be entered as he shall think right, and no motion for judgment shall be or necessary in order to obtain such judgment.

13. The Registrar, or other proper officer present at any trial or hearing, shall make a note of times at which such trial or hearing shall commence and terminate respectively, and the time actually occupied thereby of each day on which the same shall take place for communication to the Taxing Officer if required.

14. Trial with assessors shall, where permitted under a written law, takes place in such a manner and upon such terms as the Court shall decide.

15. The order of proceeding at the trial of a case where pleadings have Order of been filed shall be as prescribed in the following rules.

16. The party on whom the burden of proof is thrown by the nature of the material issues or questions between the parties, according as the Court may determine, shall begin.

17. The party beginning then shall produce his evidence and examine his witnesses. When the party beginning has concluded his evidence, he shall ask the other party if he intends to call evidence (in which term is included evidence taken by affidavit or deposition, or under commission, and documentary evidence not already read or taken as read); and if answered in the negative, he shall be entitled to sum up the evidence already given, and comment thereon; but if answered in the affirmative, he shall wait for his general reply.

18. When the party beginning has concluded his case, the other party shall be at liberty to state his case and to call evidence, and to sum up and comment thereon.

19. If no evidence is called or read by the latter party, the party beginning shall have no right to reply, unless he has been prevented from summing up his case by statement of the other party of his intention to call evidence.

20. The case on both sides shall then be considered closed.

21. If the party opposed to the party beginning calls or reads evidence, the party beginning shall be at liberty to reply generally on the whole case, or he may, by leave of the Court, call fresh evidence in reply to the evidence given on the other side, on points material to the determination of the issues, or any of them, but not on collateral matters.

22. Where evidence in reply is tendered and allowed to be given, the party against whom the same has been adduced shall be at liberty to address the Court, and the party beginning shall be entitled to his general reply.

23. Documentary evidence shall be put in and read, or taken as read by consent.

24.—(1) The court clerk shall take charge of every document or object put in as an exhibit during the trial of an action and shall mark or label every exhibit with a letter indicating the party by whom the exhibit is put

in (or where more convenient the witness by whom the exhibit is proved) and within a number, so that all the exhibit put in by a party (or proved by a witness) are numbered in one consecutive series.

(2) The court clerk shall cause a list of all the exhibits in the action to be made.

(3) The list of exhibits when completed shall be attached to the pleadings and shall form part of the record of the action.

(4) For the purpose of this rule, a bundle of documents may be treated and counted as one exhibit.

(5) In this rule a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

25. Where a document or object is tendered as an exhibit and is rejected by the Court, it shall be marked "Rejected", and shall be retained along with accepted exhibits. Where more exhibits than one are rejected in the same action, they shall be numbered serially. If the case goes on appeal a list of such exhibits shall be transmitted to the appeal court.

26. —(1) An exhibit shall not be released, after the trial, to the party who has put it in unless the period during which notice of appeal to the Court of Appeal may be given has elapsed without such notice having been given, and then only if the Judge who presided over the trial (or, in his absence, another Judge) grants leave to release such exhibit on appeal being satisfied:-

(a) that there will be no appeal;

(b) that the exhibit will be kept duly marked and labelled and will be produced, if required, at the hearing of an appeal in the Court of Appeal (if any such appeal is lodged); or

(c) that the release of the exhibit will not in any way prejudice any other party.

(2) After a notice of appeal to the Court of Appeal has been filed, an exhibit produced at the trial shall not be released by the High Court unless leave to release such exhibit is granted by the Court of Appeal.

27. —(1) Any party may apply for, and on payment of the prescribed fee obtain, an office copy of the list of exhibits for the purpose of an appeal to the Court of Appeal.

(2) Where there is an appeal to the Court of Appeal, an office copy of the list of exhibits shall be included among the documents supplied to that Court for the purpose of the appeal.

28. In cases where written pleadings have not been filed, or the parties either of them are incapable of understanding their effect with leadings sufficient accuracy, the proceeding at the hearing shall be varied by the Court so far as may be necessary. In particular, the statement of the defendant in defence where he does not admit the whole cause of action, shall be heard immediately after the plaintiff has concluded the statement of his claim and of the grounds thereof, and before any witness is examined, unless in any case the Court shall direct otherwise.

29. The Judge may in all cases disallow any question put in cross- examination which may appear to him to be vexatious and not relevant to any matter proper to be inquired into in the action.

ORDER 37 - ORIGINATING SUMMONS PROCEEDINGS

1. Any person claiming to be interested under a deed, will, or other written instrument may apply by originating summons for the determination on

of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.

2. Any person claiming any legal or equitable right in a case where the Construction determination of the question whether he is entitled to the right depends men, upon a question of construction of an enactment, may appeal by originating summons for the determination of such question of construction, and for a declaration as to the right claimed.

3. The Court or a Judge in Chambers may direct such persons to be served with the summons as it or he may think fit.

4. The application shall be supported by such evidence as the Court or Evidence a Judge in Chambers may require.

5. The Court or Judge in Chambers shall not be bound to determine any such question of construction if in its or his opinion it ought to be determined on originating summons.

6. The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the court makes an order under this rule against a defendant who does not appear at the hearing, the order may be varied or revoked by subsequent order of the Court on such terms as it thinks just.

7. Where in an action begun by originating summons an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party was served and is in default of appearance.

8.— (1) A defendant to an action begun by originating summons who has entered an appearance to the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however arising) may make a counter-claim in the action in respect of that matter instead of bringing a separate action.

(2) A defendant who wishes to make a counter-claim under this rule shall at the first or any resumed hearing of the originating summons by the Court but, in any case, at as early a stage in the Proceedings as is practicable, inform the Court of the nature of his claim and, without prejudice to the powers of the Court under paragraph (3), the claim shall be made in such manner as the Court may direct.

(3) If it appears on the application of the plaintiff against whom a counter-claim is made under this rule that the subject matter of the counter-claim ought for any reason to be disposed of by a separate action, the Court may order the counter-claim to be struck out or may order it to be tried separately or make such other order as may be expedient.

ORDER 38 - PROCEDURE RELATING TO EVIDENCE

1. Subject to the provisions of these rules and of the Evidence Act and any other enactment relating to evidence, any fact required to be provided at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

2.—(1) The Court or a Judge in Chambers may at or before the trial of an action, order or direct that all or any of the evidence therein shall be given by affidavit.

(2) An order or direction under this rule may be made or given on such terms as to the filing and giving of copies of the affidavits or proposed affidavits and as to the production of the deponents for cross-examination as the Court or Judge in Chambers may think fit but, subject to any such terms to any subsequent order or direction of the Court or a Judge in Chambers, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.

3. —(1) Without prejudice to rule 2, the Court or a Judge in Chambers Particular may, at or before the trial of an action, order or direct that evidence of facts-any particular fact shall be given at the trial in such a manner as may be specified by the order or direction.

(2) The power conferred by paragraph (1) of this rule extends in particular to ordering or directing that evidence of any particular fact may be given at the trial:-

(a) by statement on oath of information or belief; or

(b) by the production of documents or entries in books; or

(c) by copies of documents or entries in books; or

(d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.

4. The Court or a Judge in Chambers may, at or before the trial of an action order or direct that the number of medical or expert witnesses who may be called at the trial shall be limited as specified by the order or evidence.

5. Unless, at or before the trial, the Court or a Judge in Chambers for special reasons otherwise orders or directs, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least ten days before the commencement of the trial the parties, other than the party producing it, have been given an opportunity to inspect it and to agree to the admission thereof without further proof.

6. In an action, of whatever nature, arising out of an accident on land due to a collision or apprehended collision:-

(a) no plan of the place where the accident happened other than a sketch plan, shall be receivable in evidence unless, at or before the trial, the Court or Judge in Chambers authorises the reception thereof;

(b) unless, at or before the trial the Court or Judge in Chambers otherwise orders or directs, the oral expert evidence of an engineer sought to be called on account of his skill and knowledge as respects motor vehicles shall not be receivable unless a copy of a report from him containing the substance of his evidence has been made available to all parties for inspection.

7. Any order or direction under rules 2, 3, 4, 5 and 6 may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court or a Judge in Chambers, made or given at or before the trial.

8. The preceding provisions of this Order shall apply to trials of issues, references, inquiries and assessments of damages as they apply to the trial of action.

9. Office copies of all writ, records, proceedings and documents of a11 proceedings and documents filed in evidence in all causes and matters and

between all persons or parties, to the same extent as the original would be

admissible.

10.—(1) The Court or Judge in Chambers may in any action where it appears necessary for the proper dispensation of justice make an order for the examination upon oath before the Court or a Judge in Chambers or any officer of the Court, or any other person, and at any place, of any witness or person and may empower any party to any such action to give on deposition any evidence therein.

(2) Any order under paragraph (1) may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court or Judge in Chambers may think fit. The Court or a Judge in Chambers may order the party who has applied for the appointment of an examiner to pay the fees and expenses of such examiner (without prejudice to any question as to the party by whom the costs of the examination should eventually be borne):

Provided that, where the examiner is a Government servant not entitled to receive fees, such fees shall be paid into State Revenue.

11. An order for a commission to examine witnesses shall be in Form 62 and the writ of commission shall be in Form 43 with such variations as circumstances may require.

12. If in any case the Court or a Judge in Chambers shall so order, there shall be issued a request to examine witnesses in lieu of commission Forms 63 and 64 shall be used for such order and request respectively, with such variation as circumstances may require.

13. Where an order is made for the issue of a request to examine a witness or witnesses in any foreign country with which a Convention in that behalf has been or shall be made, the following procedure shall be adopted:-

(1) The party obtaining such order shall file in the Registry an undertaking in Form 5 which Form may be varied as may be necessary to meet the circumstances of the particular case in which it is used.

(2) Such undertaking shall be accompanied by:-

(a) a request in Form 66, with such variation as may be directed in the order for the issue thereof, together with a translation of such request in the language of the country in which the same is to be executed;

(b) a copy of the interrogatories (if any) to accompany the request, and a translation thereof and;

(c) a copy of the cross-interrogatories (if any), and a translation thereof.

14. Where an order is made for the examination of a witness or witnesses before the Nigerian Diplomatic Agent in any foreign country with which a Convention in that behalf has been or shall be made, such order shall be in Form 67 which Form of order may be varied as may be necessary to meet the circumstances of the particular case in which it is used.

15. The Court or a Judge in Chambers may in any action at any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court or Judge in Chambers think fit to be produced:

Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial.

16. Any persons wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document to order for shall be deemed guilty of contempt of Court, and may be dealt with accordingly.

17. Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in Court.

18. Where any witness or person is ordered to be examined before any officer of the Court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on pleadings, whose application the order was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.

19. The examination shall take place in the presence of the parties, their legal practitioners, or agents and the witnesses shall be subject to cross-examination and re-examination.

Provided that where parties, their legal practitioners or agents fail to attend, without good cause, the examination may be proceeded with in their absence.

20. The depositions taken before an officer of the Court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner, not ordinarily by

question and answer, but so as to represent as nearly as may be the statement of the witness and when completed shall be read over to the witness and signed by him in the presence of the parties, or such of them as may think fit to attend. If the witness shall refuse to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there should appear any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon in the deposition, but he shall not have power to decide upon the materiality or relevancy of any question.

21. If any person duly summoned by subpoena to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer shall be filed at the Registry, and thereupon the party requiring the attendance of the witness may apply to the Court or a Judge in Chambers ex parte or on notice for an order directing the witness to attend, or to be sworn or to answer any question, as the case may be.

22. If any witness shall object to any question which may be put to him before an examiner, the question so put and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the Registrar to be filed, and the validity of the objection shall be decided by the Court or a Judge in Chambers.

23. In any case under the two last preceding rules, the Court or a Judge in Chambers shall have power to order the witness to pay any costs occasioned by his refusal or objection.

24. When the examination of any witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the Registry and there filed.

25. The person taking the examination of a witness under rule 24 may, and it need be shall, make a special report to the Court touching such examination, and the conduct or absence of any witness or other person thereon, and the Court or a Judge in Chambers may direct such proceedings and make such order as upon the report the Court or Judge in Chambers may think just.

26. Except where these rules otherwise provide, or the Court or a Judge in Chambers directs, no deposition shall be given in evidence at not to be

the hearing or trial of the action without the consent of the party against

whom the same may be offered, unless the Court or Judge in Chambers is satisfied that the deponent is dead, or beyond the jurisdiction of the consent or Court or unable from sickness or other infirmity to attend the hearing of Judge or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence

saving all just exceptions, without proof of the signature to such certificate.

27. Any officer of the Court, or other person directed to take the examination of any witness or person, or any person nominated or appointed to take the examination of any witness or person pursuant to the provisions of any Convention now made or which may hereafter be made with any foreign country, may administer oaths.

28. Any party in any action may by subpoena ad testificandum or ducestecum require the attendance of any witness before an officer of the of witness Court, or other person appointed to take the examination, for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the or to hearing or trial; and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the action shall be bound on being served with such subponea to attend before such officer or person for cross-examination.

29. The practice with reference to the examination, cross-examination as

and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any action at any stage.

30. The practice of the Court with respect to evidence at a trial when applied to evidence to be taken before an officer of the Court or other person in any action after the hearing or trial, shall be subject to any special directions which may be given in any action.

31. No affidavit or deposition filed or made before issue joined in any action shall, without special leave of the Court or a Judge in Chambers, be received at the hearing or trial thereof, unless within one month after, issue joined, or within such longer time as may be allowed by special leave of the Court or a Judge, notice in writing shall have been given by the party intending to use the same to the opposite party of intention in that behalf.

32. All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

33. Where it is intended to issue out a subpoena, a praecipe for that purpose, in Form 86, containing the name or firm and the place of business or residence of the legal practitioner intending to issue out the same, and where the legal practitioner is agent only, then also the name or firm and place of business or residence of the principal legal practitioner, shall in all cases be delivered and filed at the Registry. No subpoena shall be issued unless all court fees have been paid (including fee for service) and unless sufficient conduct money on the prescribed scale is deposited to cover the first day's attendance.

34. A writ of subpoena shall be in one of Forms 40, 41 or 42, with such variations as circumstances may require.

35. Where a subpoena is required for the attendance of a witness for the purpose of proceedings in Chambers such subpoena shall issue from the Registry upon a note from the Judge.

36. In the interval between the issuing out and service of any subpoena, the party issuing out the same may correct any error in the names of parties of witnesses, and may have the writ re-sealed upon leaving a corrected praecipe of such subpoena marked with the words "altered and re-sealed" and signed with the name and address of the legal practitioner issuing out the same.

37. A subpoena shall be served personally unless substituted service has been ordered by the Court or a Judge in Chambers in cases where a person evades service.

The provisions of order 12 shall, so far as possible, apply to service and proof of service of a subpoena.

38. Any subpoena shall remain in force from the date of issue until Duration of the conclusion of the trial of the action or matter in which it is issued, subpoena.

39. Any party desiring to give in evidence any deed or other instrument which shows upon the face of it that it has been duly executed, may deliver to the opposite party not less than four clear days before the return-day a notice in writing specifying the date nature and party to such deed or instrument, and requiring the opposite party to admit that the same was executed as it purports to have been, saving all just exceptions as to its admissibility, validity and contents and if at or before the hearing of the suit the party notified shall neglect or refuse to give such admission, the Court may adjourn the hearing in order to enable the party tendering such deed or instrument to obtain proof of the due execution thereof, and upon production of such proof the Court may order the costs of such proof to be paid by the party so neglecting or refusing, whether he be the successful party or not.

40. Where any civil or criminal matter is pending before a court or tribunal of a foreign country, and it is made to appear to the Court by commission rogatory, or letter of request, or other sufficient evidence that tribunals, such court or tribunal is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction, the Court may, on the exparte application of any person shown to be duly authorised to make the application on behalf of such foreign court or tribunal and on production of the commission rogatory, or letter of request, or such other evidence as the Court may require or consider sufficient, make such order or orders as may be necessary to give effect to the intention of the commission rogatory, or letter of request.

41. On the application of any party to a legal proceeding, the Court may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An inspection, order under this rule may be made either with or without summoning the

bank or any other party; and shall be served on the bank three days before the same is to be obeyed, unless the Court otherwise directs.

ORDER 39 - JUDGMENTS AND ORDERS

1. The decision or judgment in any suit shall be delivered in open Court, unless the Court otherwise directs for sufficient cause.

2. If the Court reserves judgment at the hearing, parties to the suit shall be served with notice to attend and hear judgment, unless the Court at the hearing stated the day on which judgment will be delivered, in which case there shall be no further notice.

3. All parties shall be deemed to have notice of the decision or judgment if pronounced at the hearing, and all parties served with notice to attend and hear judgment shall be deemed to have notice of the judgment when pronounced.

4. A minute of every judgment, whether final or interlocutory, shall be made, and every such minute shall be a decree of the Court, and shall have the full force and effect of a formal decree. A formal decree or order may be drawn up on the application of either party.

5. If the defendant shall have been allowed to set off any demand or counter-claim against the claim of the plaintiff, the judgment shall state what amount is due to the plaintiff, and what amount, if any, is due to the defendant, and shall be for the recovery of any sum which shall appear to be due to either party. The judgment of the Court, with respect to any sum awarded to the defendant, shall have the same effect, and be subject to the same rules, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

6. A person directed by a decree or order to pay money or do any other act is bound to obey the decree or order without any demand for payment or performance, and if no time is therein expressed he is bound to do so immediately, after the decree or order has been made (except as, to costs the amount whereof may require to be ascertained by taxation) unless the court shall enlarge the time by any subsequent order.

7. The Court at the time of making any judgment or order, or at any time afterwards, may direct the time within which the payment or other act is to be made or done, reckoned from the date of the judgment order, or from some other point of time, as the Court thinks fit, and may order interest at a rate not exceeding ten naira per centum per annum to be paid upon any judgment, commencing from the date thereof or afterwards as the case may be.

8. When any judgment or order directs the payment of money, the Court may, for any sufficient reason, order that the amount shall be paid by instalments, with or without interest. Such order may be made at the time of giving judgment, or at any time afterwards, and may be rescinded upon sufficient cause at any time.

9. Every order, if and when drawn up, shall be dated the day of the week, month, and year on which the same was made, unless the Court or a Judge in Chambers shall otherwise direct, and shall take effect accordingly.

10. Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act, or giving leave:-

(a) for the issue of any writ other than a writ of attachment;

(b) for the amendment of any writ or pleadings;

(c) for the filing of any document; or

(d) for any act to be done by an officer of the Court other than a legal practitioner;

it shall not be necessary to draw up such order unless the Court or a Judge in Chambers shall otherwise direct; but the production of a note or memorandum of such order signed by a Judge shall be sufficient authority for such enlargement of time, issue, amendment, filing or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this section.

11.—(1) Orders, other than final orders, shall not be entered after being drawn up but shall be filed, and a note of the filing shall be made in a book kept for the purpose.

(2) Every order so filed shall be deemed to be duly entered, and the date of such filing shall be deemed the date of entry. In the case of procedure orders drawn up in Chambers, no entry thereof shall be necessary before an attachment can be issued for disobedience thereof.

ORDER 40 - HABEAS CORPUS PROCEEDINGS

1. Where a person is alleged to be wrongfully detained, an application may be made for an order that he be produced in Court for the purpose of being released from detention.

2. —(1) No application under rule 1 shall be made unless leave therefor has been granted in accordance with this rule.

(2) Application for such leave shall be made ex parte to the Court and shall be supported by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought; it shall also be supported by an affidavit verifying the facts relied on.

(3) The affidavit verifying the facts relied on in making the application shall be made by the person detained; but where the person detained is unable owing to the detention to make the affidavit, the application shall be accompanied by an affidavit to the like effect made by some other persons, which shall also state that the person detained is unable to make the affidavit himself.

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

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

(6) The Court or Judge may:-

(a) make an order forthwith for the release of the person being detained, the provision of paragraph 1 notwithstanding;

(b) direct that an originating summons be issued in Form 2 of the Fundamental Rights (Enforcement) Rules, 1979, or that the application be made by notice of motion in Form 3 of the Fundamental Rights (Enforcement) Rules, 1979; or

(c) adjourn the ex parte application so that notice thereof may be given to the person against whom the order for the release of the person detained is sought.

(7) The summons or notice of motion shall be served on the person against whom the order for the release of the person detained is sought and on such other persons as the Court or Judge may direct, and, unless the Court or Judge otherwise directs, there shall be at least five clear days between the service of the summons or motion and the date named therein for the hearing of the application.

(8) Every party to an application under rule 1 shall supply to every other party copies of the affidavits which he proposes to use at the hearing of the application.

3.—(1) Without prejudice to rule 2(6), the Court or Judge hearing the application may, in its or his discretion, order that the person detained be produced in Court.

(2) An order under paragraph (1) of this rule shall be a sufficient warrant for any Superintendent of a Prison, Police Officer in charge of a police station, Police Officer or Constable in charge of the person detained or any other person responsible for his detention, for the production in Court of the person detained.

(3) Where an order is made for the production of a person detained, the Court or Judge by whom the order is made shall give directions as to the Court or Judge before whom, and the date on which, the order is returnable.

4 -(1) Subject to paragraphs (2) and (3), an order for production of Service of the person detained shall be served personally on the person to whom it is directed.

(2) If it is not possible to serve such an order personally, or if it is directed to a Police Officer, or a Prison Superintendent or other public Official, it shall be served by leaving it with any other person or official working in the office of the Police Officer, or the prison or office of the Superintendent or the office of the public official to whom the order is directed.

(3) If the order is made against more than one person, the order shall be served in manner provided by the rule on the person first named in the order and copies shall be served on each of the other persons in the same manner.

(4) There shall be served with the order (in Form 4 in the Fundamental Rights (Enforcement) Rules, 1979) for the production of the person detained a notice (in Form 5 in the Fundamental Rights (Enforcement) Rules, 1979) stating the Court or Judge before whom, and the date on which, the person detained is to be brought.

5-(1) The return to an order for the release of a person detained shall

be endorsed on or annexed to the order and shall state all the causes or justifications of the detainer of the person detained.

(2) The return may be amended, or another return substituted therefor, by leave of the Court or Judge before whom the order is returnable.

6. When a return to the order has been made, the return shall first, be read in open court and an oral application then made for discharging or remanding the person detained or amending or quashing the return, and where that person is brought up in court in accordance with the order, his legal representative shall be heard first, then the legal representative for the State or for any other official or person detaining him. The legal representative for the person detained will then be heard in reply.

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

8. —(1) An application for a writ of habeas corpus ad testificadum or of habeas corpus ad respondendumshall be made on affidavit.

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

9. A writ of habeas corpus shall be in Forms 94, 95 or 96 in the Appendix, whichever is appropriate.

ORDER 41 - COMMITTAL FOR CONTEMPT OF COURT

1.—(1) The power of the Court to punish for contempt of court may be

for contempt exercised by an order of commital.

(2) An order of commital may be made by the Court where contempt of court:-

(a) is committed in connection with:-

(i) any proceedings before the court;

(ii) criminal proceedings;

(iii) proceedings in an inferior court.

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

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

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

(2) The notice of motion, affidavit and grounds shall be served personally on the persons sought to be committed.

Provided that the Court may dispense with personal service where the justice of the case demands.

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

4 .—(1) Subject to paragraph (2), the Court hearing an application for an order of commital may sit in private in the following cases, that is to say:-

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

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

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

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

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

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

(a) the name of that person;

(b) in general terms the nature of the contempt of court in respect of which the order of commital is being made; and

(c) if he is being committed for a fixed period, the length of that period.

(3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the statement under rule 2.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf he shall be entitled to do so.

5. The foregoing provisions are without prejudice to the powers of the Court to commit for contempt committed in the face of the Court.

6.—(1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for each period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal shall, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

ORDER 42 - APPLICATION FOR JUDICIAL REVIEW

1. (1) An application for:-

(a) an order of mandanmus, prohibition or certiorari; or

(b) an injunction restraining a person from acting in any office in which he is not entitled to act;

shall be made by way of an application for judicial review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (1)(b) may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction if it considers that having regard to:-

(a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari;

(b) the nature of the persons and bodies against whom relief may be granted by way of such an order; and

(c) all the circumstances of the case,

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

2. On an application for judicial review any relief mentioned in rule 1 (1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

3. (1) No application for judicial review shall be made unless the leave of the court has been obtained in accordance with this rule.

(2) An application for leave shall be made ex parte to the court, except in vacation when it may be made to a judge in chambers and shall be supported: -

(a) by a statement, setting out the name and description of the applicant, the relief sought and the grounds on which it is sought; and

(b) by affidavit, to be filed with the application, verifying the facts relied on.

(3) The applicant shall file the application not later than the day before the motion is heard and shall at the same time lodge copies of the statement and every affidavit in support.

(4) The Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise on such terms, if any, as it thinks fit.

(5) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(6) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(7) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(8) Where an application for leave is refused by a Judge in Chambers, the applicant may make a fresh application to another Judge in Court.

(9) An application to a Judge in court under paragraph (8) shall be made within 10 days after the Judge's refusal to give leave.

(10) Where leave to apply for judicial review is granted, then:-

(a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

4. (1) Subject to the provisions of this rule, where in any case the for relief Court considers that there has been undue delay in making an application for judicial review or, in a case to which paragraph (2) applies, the application for leave under rule 3 is made after the relevant period has expired, the court may refuse to grant:-

(a) leave for the making of the application: or

(b) any relief sought on the application, if in the opinion of the court the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of any person or would be detrimental to good administration.

(2) In the case of an application for an order of certiorari to remove any judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of paragraph (1) is three months after the date of the proceeding.

(3) Paragraph (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

5. (1) Subject to paragraph (2), when leave has been granted to make an application for judicial review, the application shall be made by originating motion, except in vacation when it may be made by originating summons to a Judge in Chambers.

(2) Where leave has been granted and the Judge or Court so directs, the application may be made by motion to a judge sitting in open court or, by originating summons to a Judge in Chambers.

(3) The notice of motion or summons shall be served on all persons directly affected and where it relates to any proceedings in or before a court and the object of the application is either to compel the Court or an officer of the Court to do any act i n relation to the proceedings or to quash them or any order made therein, the notice or summons shall also be served on the clerk or registrar of the Court and, where any objection to the conduct of the Judge is to be made, on the judge.

(4) Unless the Court granting leave has otherwise directed, there shall be at least 10 days between the service of the notice of motion or summons and the day named therein for the hearing.

(5) A motion shall be entered for hearing within 14 days after the grant of leave.

(6) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion or summons shall be filed before the motion or summons is entered for hearing and, if any person who ought to be served under this rule has not been served, the affidavit shall state that fact and the reason for it, and the affidavit shall be before the Court on the hearing of the motion or summons.

(7) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn

the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.

6. (1) Copies of the statement in support of an application for leave under rule 3 shall be served with the notice of motion or summons and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may on the hearing of the motion or summons allow the applicant to amend his statement whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Each party to the application shall supply to every other party on demand and on payment of the proper court charges copies of every affidavit which he proposes to use at the hearing including, in the case of the applicant, the affidavit in support of the application for leave under rule 3.

7. On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if:-

(a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates; and

(b) the Court is satisfied that if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

8. Unless the Court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to any judge notwithstanding that the application for judicial review has been made by motion and is to be heard by the Court.

9. (1) On the hearing of any motion or summons under rule 5, any person who desires to be heard in opposition of the motion or summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons.

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has filed a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion or summons.

(3) Where an order of certiorari is made in any such case as referred to in paragraph (2), the order shall, subject to paragraph (4), direct that the proceedings shall be quashed forthwith on their removal into the Court.

(4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the Court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ.

10. No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

11. Where there is more than one application pending against several persons in respect of the same matter, and on the same grounds, the Court may order the applications to be consolidated.

ORDER 43 - APPEALS FROM MAGISTRATE'S COURT, ETC.

1. Every appeal shall be brought by notice of appeal which shall be lodged in the lower court within 30 days of the decision appealed from and served on all other parties affected by the appeal within that period.

2.(1) The notice of appeal shall set out the reference number of the proceedings in which the decision complained of was given, the names of the parties, the date of such decision and the grounds for appeal in full.

(2) Where the appellant complains only of a part of the decision, the notice of appeal shall specify the part complained of; otherwise the appeal shall be taken to be against the decision as a whole.

(3) The notice of appeal shall give an address within the Judicial Division in which is situated the lower court appealed from, to which notices may be sent for the appellant, and such notices may be sent to him by registered post.

(4) The notice of appeal shall be in Form 97 in the Appendix to these Rules and may be varied to suit the circumstances of the case but so that no variation of substance shall be made.

3. (1) The Registrar of the lower court shall, within three months of the decision appealed from, prepare as many certified copies of the proceedings required for the consideration of the appeal as there are parties on record.

(2) Except where the fees for preparing such copies are remitted, a deposit decided upon by the Registrar as likely to cover such fees, shall be made by the appellant before the preparation of such copies.

4. The Registrar of the lower court shall within 7 days of preparing the copies aforesaid send the same to the Registrar of the Court in the Judicial Division in which the lower court is situated, and the appeal shall be decided by the Judge of that Division.

5. When notifying a party of the day fixed for the hearing of the appeal, the Registrar of the Court shall send him a copy of the proceedings.

6. The times prescribed in rules 1 to 4 may be enlarged at any time by the Court on such terms (if any) as may seem fit, after notice given to the respondent by the appellant of his application for enlargement of time.

7. Where the time available for the taking of any step has expired before such step has been taken or completed, the respondent may, on notice to the appellant, apply to the Court to strike out the appeal, and the Court shall strike out, or enlarge time for sufficient reason shown.

8. All civil appeals from lower courts shall be heard by at least one Judge of the Court.

9. The appeal shall come on for hearing at such time and at such place as the Registrar of the Court shall notify to the parties.

10. (1) If, on the day of hearing or at any adjournment of the case, the appellant does not appear, the appeal shall be struck out and the: decision shall be affirmed, unless the Court thinks fit, for sufficient cause, to order otherwise.

(2) If in any such case the respondent appears, the judgment shall be with costs of the appeal against the appellant, unless the Court expressly orders otherwise; but if the respondent does not appear, the costs of the appeal shall be at the discretion of the Court.

11. If, on the day of hearing and at any adjournment of the case, the appellant appears the court shall, whether the respondent appears or not, proceed to the hearing or further hearing and determination of the appeal, and shall give judgment according to the merits of the case without regarding any imperfection or defect of form:

Provided that if it appears or is proved to the Court that the appellant has not complied with the requirements precedent to the hearing of an appeal hereinbefore contained, the court shall dismiss the appeal and affirm the decision, with or without costs of the appeal against the appellant.

12. On the hearing, it shall not be competent for the appellant to go into any other reasons for appeal other than those set forth in his notice of grounds for appeal:

Provided that where, in the opinion of the Court, other grounds for appeal than those set forth in the memorandum of grounds for appeal should have been given or the statement of grounds of appeal is defective, the Court, in its discretion, may allow such amendments of the memorandum of grounds for appeal upon such condition service upon the respondent and as to costs as it may think fit.

13. (1) The respondent may give notice that he intends at the hearing to ask the Court to confirm the judgment of the lower court on grounds other than those stated by that court.

(2) The notice shall be accompanied by a clear statement of the grounds on which the respondent intends to ask the Court to confirm the judgment of the lower court.

(3) Such notice and grounds shall be filed in court within 14 days of service on the respondent of the notice and grounds for appeal, and shall be served on the appellant or his legal practitioner.

14. (1) The respondent may file grounds for appeal against any part of the judgment of the lower court.

(2) Such grounds shall be filed by the respondent within 14 days of service on him of the appellant's notice and grounds for appeal, and shall be served on the appellant or his legal practitioner before hearing.

15. (1) No objection on account of any defect in the form of setting forth any ground for appeal shall be allowed, unless the Court is of opinion that the ground of appeal is so imperfectly or incorrectly stated

as to be insufficient to enable the respondent to enquire into the subject matter thereof or to prepare for the hearing.

(2) In any case where the Court is of opinion that any objection to any reason for appeal ought to prevail, the Court may, if it thinks fit, cause the reason for the appeal forthwith to be amended upon such terms and conditions, if any, as the court may think just.

16. On any appeal from a decision of a lower court, no objection shall be taken or allowed to any proceeding in such court for any defect or error which might have been amended by that court, or to any complaint, summons, warrant, or other process to or of such court for any alleged defect therein in substance or in form, or for any variance between any complaint or summons and the evidence adduced in support thereof in such court:

Provided however, that if any error, defect, or variance mentioned in this rule appear s to the Court at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, it shall be lawful for the Court either to refer the case back to the lower court with directions to re-hear and determine the same or to reverse the decision appealed from, or to make such other order for disposing of the case as justice may require.

17. No objection shall be taken or allowed, on any appeal, to any notice of appeal which is in writing or to any recognizance entered into under this Order for the due prosecution of such appeal for any alleged error or defect thereon: but if any such error or defect appears to the Court to be such that the respondent on such appeal has been thereby deceived or misled, it shall be lawful for the Court to amend the same and, if it is expedient to do so, also to adjourn the further hearing of the appeal, the amendment and the adjournment, if any, being made on such terms as the Court may deem just.

18. The Court may, in any case where it may consider it necessary that evidence should be adduced, either:-

(a) order such evidence to be adduced before the Court on some day to be fixed in that behalf; or

(b) refer the case back to the lower court to take such evidence, and may in such case either direct the lower court to adjudicate afresh after taking such evidence and subject to such directions in law, if any, as the Court may think fit to give, or direct it, after taking such evidence, to report specific findings of fact for the information of the Court, and on any such

reference the case shall, so far as may be practicable and necessary, be dealt with as if it were being heard in the first instance.

19. (1) When additional evidence is to be taken by the lower court and specific findings of facts reported, it shall certify such evidence to the court which shall there upon proceed to dispose of the appeal.

(2) The appellant or his legal practitioner shall be present when the additional evidence is taken.

(3) Evidence taken in pursuance of rule 18 shall be taken as if it were evidence taken at the trial before the lower court.

(4) When forwarding to the court any additional evidence taken by a lower court in pursuance of rule 18, the lower court may express its opinion on the demeanour of the witnesses and of the value of their

evidence and may also, if it is the same court against whose decision the appeal has been made, state whether or not it would have come to a different decision had the additional evidence been brought forward at the trial.

20. The fees in Part 1B of the First schedule shall be chargeable in civil appeals save where the same would have to be paid by a Government officer acting in his official capacity or where the lower court or the Court waives or remits the same on the ground of the poverty of the person chargeable therewith where it appears that there are substantial grounds of appeal.

21. Allowances may be made to witnesses in accordance with the provisions of the First Schedule.

22. (1) On application being made for stay of execution under any enactment establishing the lower court, the lower court or the court may impose one or more of the following conditions:-

(a) that the appellant shall deposit a sum fixed by the Court not exceeding the amount of the money or the value of the property affected by the decision or judgment appealed from, or give security to the satisfaction of the Court for the said sum;

(b) that the appellant shall deposit a sum equal to the amount of the costs allowed against him or give security to the satisfaction of the Court for the said sum;

(c) that the appellant shall, when the decision or judgment appealed from relates to possession of lands or houses, give security to the satisfaction of the Court for the performance of the decision or judgment in the event of the appeal being dismissed;

(d) that the appellant's property shall be seized and attached pending the making of a deposit or the giving of security as aforesaid including a deposit or security for the expenses incidental to the seizure and attachment;

(e) that the appellant's property shall be seized, and attached and sold and the net proceeds deposited in court pending determination of the appeal.

(2) Any order made on any such application shall limit the time (not being more than thirty days) for the performance of the conditions imposed, and direct that in default of such performance within the time so limited execution may issue or proceed.

(3) An application for stay of execution under the enactment establishing the lower court may be made at any time after lodgement of the notice of appeal and shall in the first instance be made to the lower court:

Provided that where execution has been ordered by the Court the application shall not be made to the lower court but to the Court.

(4) The application may be ex parte but the Court may direct notice thereof to be given to the other party to the appeal. Where an order is made ex parte the Registrar of the Court shall notify the other party of the order made.

(5) Where the appellant proposes to give security instead of making a deposit, the application shall state the nature of the security and the name of the surety proposed (if any).

(6) Any party dissatisfied with an order made by the lower court may apply to the Court by motion (original or interlocutory, as the case may require) with notice to the other party for a review of the order, and the Court may thereupon make such order as may seem just.

(7) An appeal shall not operate as a stay of execution under the decision or judgment appealed from except so far as the lower court or the Court may order; and no intermediate act or proceeding shall be invalidated except so far as either court may direct.

23. The Court may make such order as to the payment of costs by or to the appellant as it may deem to be just and such order may be made also in any case where an appeal has not been entered into or prosecuted.

24. (1) The Court may, in special circumstances, upon application on notice by motion (original or interlocutory as the case may require), supported by affidavit, order the appellant to deposit such sum or give such security as may seem fit for the respondent's costs of appeal including the costs incidental to the application.

(2) The order shall limit the time (not exceeding thirty days) within which the deposit or security shall be made or given and may direct that in default of its being made or given within the time so limited the appeal shall without further order stand dismissed.

(3) Where an appeal so stands dismissed the respondent shall be entitled to all reasonable costs occasioned by the appeal and the amount of such costs may be stated in the order in anticipation or may be assessed at any time by the Court of its own motion or on application made ex parte or on notice as the Court may see fit.

(4) Where an appeal so stands dismissed the appellant shall take no further step or proceeding therein save by leave of the Court for reinstatement of the appeal, which may be granted on such terms (if any) as may seem fit upon application by motion on notice given within a month of such dismissal (but not otherwise).

(5) Subject and without prejudice to the discretion of the Court to grant costs where it seems proper on an application made under paragraph (1), costs shall not normally be granted to the applicant save where the net proceeds of execution levied on the appellant's goods are insufficient to satisfy the amount payable under the judgment or decision appealed from.

25. (1) When a case is decided on appeal the Court shall certify its judgment or order to the lower court in which the decision appealed against was pronounced.

(2) The lower court to which the court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the Court, and, if necessary, the records shall be amended in accordance therewith.

26. After the pronouncement of the judgment of the Court, the lower court from which the appeal came shall have the same jurisdiction and power to enforce, and shall enforce, any decision which may have been affirmed, modified, amended, or substituted by the Court or any judgment which may have been pronounced by the Court, in the same manner in all respects as if such decision or judgment had been pronounced by itself.

27. Any order given or made by the Court may be enforced by the Court or by the lower court as may be most expedient.

28. The court may, if it deems fit, enlarge any period of time prescribed by this Order.

29. In this Order

"the lower court" means the Court whose judgment is appealed against and includes a Magistrate's Court in the southern States and a District Court in the northern States, but does not include an arbitrator, a referee or an auditor;

"judgment" includes an order or a ruling.

ORDER 44 - APPEALS TO THE HIGH COURT FROM DECISIONS OF AUDITORS

1. This Order shall apply to any appeal to the Court from a decision of an auditor made under the provisions of any written law which confers the right to appeal to the High Court against any such decision.

2. An appeal to the court from a decision of an auditor shall be by notice of motion.

3. The evidence upon the hearing of the appeal shall be by affidavit except in so far as the Court at the hearing may direct oral evidence to be given.

4. The notice of motion shall be served, before the expiration of six weeks after the date of the decision to which it relates, upon the auditor in charge of the audit in respect of which the decision has been made and also upon the local government or other body in relation to whose accounts or to the accounts of whose officer the decision was given, if that local government or other body is not the appellant.

5. The notice of motion shall state the grounds of appeal, and the date mentioned in the notice for the healing of the appeal shall be not less than twenty-eight days after the service of the notice.

6. (1) The appellant shall within seven days after service on the auditor of the notice of motion, file with the Registrar a copy of such notice and an affidavit or affidavits setting out the reasons stated by the auditor for his decision and the facts upon which the appellant intends to rely at the hearing and thereupon the motion shall be set down for hearing.

(2) If the notice of motion is not set down in accordance with this provision, either the local government or other body or the auditor may apply to the Court, upon notice to the appellant, for an order discharging the notice of motion and for the costs of the application.

7. The appellant shall deliver forthwith to the local government or other body and to the auditor a copy of any affidavit filed under rule 6 in support of the motion and any person intending to oppose the motion shall within four days at least before the hearing, deliver to the appellant a copy of any affidavit intended to be filed by him in opposition to the motion.

8. Where under rule 4 notice of motion is served on an auditor other than the auditor who gave the decision, that auditor may appear in opposition thereto in all respects as if he were the auditor by whom the decision was given, and these provisions shall apply accordingly.

ORDER 45 - STAY OF EXECUTION PENDING APPEAL TO THE COURT OF APPEAL

1. Where any application is made to the Court for a stay of execution or of proceedings under any judgment or decision appealed from, such application shall be made by notice of motion supported by affidavit setting forth the grounds upon which a stay of execution or of proceedings is sought.

2. (1) The Court may make or refuse an order for a stay of execution or of proceedings.

(2) An order for stay may be made subject to such conditions as shall appear just, including the deposit in court of any money adjudged, due to any party in the judgment appealed from.

3. Where any application is made to the Court under this Order a formal order shall be drawn up embodying the terms of the decision of the Court and bearing the date upon which the order is made.

ORDER 46 - MISCELLANEOUS PROVISIONS

1. Subject to particular rules, the Court may in all causes and matters make any order which it considers necessary for doing justice, whether such order has been expressly asked for by the person entitled to the benefit of the order or not.

2. All fines, forfeitures, pecuniary penalties and costs ordered to be paid may be levied by distress, seizure and sale of the movable and immovable property of the person making default in payment.

3. In all cases in which the publication of any notice is required, the same may be made by advertisement in the State Gazette, unless otherwise provided in any particular case by any rule of court or otherwise ordered by the Court.

4. The several offices of the Court shall be open at such times as the Chief Judge shall direct.

5. A document shall not be filed unless it has endorsed on it the name and number of the case, the date of filing, and whether filed by plaintiff or defendant, and on being filed such endorsement shall be initialled by the Registrar.

6. The fees set out in the Second Schedule may be charged in respect of the duties of a notary public or of a notarial act.

ORDER 47 - SITTINGS OF THE COURT AND VACATION

1. Subject to the provisions of the High Court Law, the court may at discretion, appoint any day or days and any place or places from time to time for the hearing of actions as circumstances require.

2. The sittings of the Court for the hearing and determination of the rights and obligations of the parties shall be public:

Provided that, subject to the provisions of the Constitution of the Federal Republic of Nigeria, the Court may, for special reasons, hear any particular action in the presence only of the parties with their legal practitioners (if any) and the officers of court.

3. The several offices of the Court shall be open at such times chief Judge shall direct.

4. (1) Subject to the direction of the Chief Judge, sittings of the Court for despatch of civil matters shall be held on every week day except:

(a) on any public holiday :-

(b) during the week beginning with Easter Monday;

(c) during the period beginning on Christmas Eve and ending on 2nd January next following.

(2) There shall be an annual vacation of the Court to commence on such date in August and of such duration, not exceeding six weeks, as the Chief Judge may by notification in the Gazette appoint.

5. (1) Notwithstanding the provisions of Rule 4, any action may be heard by a Judge in court during any of the periods mentioned in paragraph (1) (b) or (c) of Rule 4 (except on a Sunday or public holiday) or paragraph (2) where such action is urgent or a Judge, at the request of all the parties concerned, agrees to hear the action.

(2) An application for an urgent hearing shall be made by summons in Chambers, and the decision of the Judge on such an application shall be final.

6. The time for filing and service of pleadings shall not run during the annual vacation unless otherwise directed by the Court or a Judge in Chambers.

7. No business shall be transacted in Chambers on Sundays and public holidays.

ORDER 48 - PROBATE AND ADMINISTRATION

GRANT OF PROBATE OR ADMINISTRATION IN GENERAL

1. (1) Subject to the provisions of rules 39 and 40, when any person to the jurisdiction of the Court dies, all petitions for the granting of any letters of administration of the estate of the deceased person, with or without a will attached, and all applications on other matters connected therewith shall be made to the Probate Registrar.

(2) In regard to any such application, the Chief Judge shall have power to request the Court of any Judicial Division to take measures and make such orders as may appear necessary or expedient for the interim preservation of the property of the deceased within such Judicial Division, for the discovery or preservation of the will of the deceased or for any other purposes connected with the duties of the Court under this Order, and every court shall carry out such request as far as possible and report to the Chief Judge.

(3) No grant of administration with the will annexed shall issue within seven days of the death of the deceased, and no grant of administration (not with the will annexed) shall issue within fourteen days of such death.

2. The Court shall, when the circumstances of the case appear so to require, forthwith on the death of a deceased person, or as soon after as may be, appoint and authorize an officer of the Court, or some other fit person, to take possession of his property within its jurisdiction, or put under seal, and so keep it until it can be dealt with according to law.

3. If any person other than the person named executor or administrator, or an officer of the Court or person authorized by the Court, takes possession of and administers or otherwise deals with the property of any deceased person, he shall, besides the other liabilities he may incur, be liable to such fine not exceeding five thousand naira as the Court, having regard to the condition of the person so interfering with the property and the other circumstances of the case, may think fit to impose.

4. (1) Any person having in his possession or under his control any paper or writing of any person deceased, being or purporting to be testamentary shall forthwith deliver the original to the Probate Registrar of the Court.

(2) If any person fails to do so for fourteen days after having had knowledge of the death of the deceased, he shall be liable to such fine not exceeding five thousand naira as the Court having regard to the condition of such person so in default and the other circumstances of the case, thinks fit to impose.

5. Where it appears that any paper of the deceased, being or purporting to be testamentary, is in the possession of, or under the control of any person, the Court may in a summary way, whether a suit or proceeding respecting probate or administration is pending or not, order him to produce the paper and bring into court

6. Where it appeal s that there are reasonable grounds for believing that any person has knowledge of any paper being or purporting to be testamentary (although it is not shown that the paper is in his possession or under his control), the Court may in a summary way, whether a suit or proceeding for probate or administration is pending or not, order that he may be examined respecting the same in court, or on interrogatories, and that he do attend for that purpose, and after examination that he do produce the paper and bring it into court.

7. The Court may of its own motion, or on the application of any person claiming an interest under a will, give notice to the executors (if any) therein named, to come in and prove the will, or to renounce probate, and they, or some or one of them, shall, within fourteen days after notice, come in and prove or renounce accordingly.

8. If any person named executor in the will of the deceased takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within one month after the death, or after the termination of any suit or dispute respecting probate or administration, he may, independently of any other liability, be deemed guilty of a contempt of court, and shall be liable to such fine, not exceeding five thousand naira, as the Court thinks fit to impose.

9. The Court shall require evidence, in addition to that offered by the applicant, where additional evidence in that behalf seems to the Court necessary or desirable, in regard to the identity of the deceased or of the applicant or in regard to the relationship of the applicant to the deceased, or in respect to any persons in existence with a right equal or prior to that of the applicant to the grant of probate or administration sought by the applicant, or in regard to any other matter which may be considered by the Court relevant to the question whether the applicant is the proper person to whom the grant should be made:

Provided that the Court may refuse the grant unless the applicant produces the required evidence on these points or any of them as required by the Court.

10. Where it appears to the Court that some person or persons other than the applicant may have at least an equal right with the applicant to the grant sought, the Court may refuse the grant until due notice of the application has been given to such other person or persons and an opportunity given for such person or persons to be heard in regard to the application:

Provided that the Court may in its discretion refuse the grant unless and until all persons entitled to the grant in priority to the applicant shall have expressly renounced their prior right.

11. Every applicant for a giant of letters of administration shall file in the Court true declaration of all the personal property of the deceased and the value thereof:

Provided that for the purpose of the fees payable on letters of administration, the value of the property in respect of which the grant is made shall be deemed not to include:-

(a) any gratuity payable by the Government of the Federation of Nigeria, or the Government of a State, to the estate of any person formerly employed by either of such Governments or by a statutory corporation;

(b) any sum of money payable to an estate from a Provident Fund established under the provisions of any written law.

12. (1) In no case shall the Court issue letters of administration until inquires which the Court sees fit to institute have been answered to its satisfaction.

(2) The Court shall, however, afford as great a facility for the obtaining of letters of administration as is consistent with due regard to the prevention of error and fraud.

13. A notice to prohibit a grant of administration may be filed in the Court.

14. (1) The notice shall remain in force three months only from the day of filings but it may be renewed from time to time.

(2) The notice shall not affect a grant made on the day on which the notice is filed.

(3) The person filing the notice shall be warned by a warning in writing delivered at the place mentioned in the notice as his address.

(4) Notices in the nature of citations shall be given in such manner as the Court directs.

15. Suits respecting administration shall be instituted and carried on as nearly as may be in the like manner and subject to the same rules of procedure as suits in respect of ordinary claims.

CUSTODY OF WILLS

16. Any person may, in his lifetime, deposit for safe custody in the court his own will, sealed up under his own seal and the seal of the Court.

17. (1) Every original will, of which probate or administration with will annexed is granted, shall be filed and kept in the Probate Registry, in such manner as to secure at once the due preservation and convenient inspection of the same.

(2) A copy of every such will, and of the probate or administration, shall be preserved in a book kept for the purpose at the Registry.

18. (1) No original will shall be delivered out for any purpose without the direction in writing of the court where the will is filed.

(2) A certified transcript, under the seal of the Court of the probate or administration with the will annexed may be obtained from the court.

PROBATE OR ADMINISTRATION WITH WILL ANNEXED

19. (1) On receiving an application for administration with will annexed the Court shall inspect the will and see whether it appears to be signed by the testator, or by some other person in his presence, and by his direction, and to be subscribed by two witnesses according to the enactment relative thereto, and shall not proceed further if the will does not appear to be so signed and subscribed.

(2) If the will appears to be so signed and subscribed, the court shall then refer to the attestation clause (if any), and consider whether the wording thereof states the will to have been, in fact, executed in accordance with those enactments.

20. If there is no attestation clause, or if the attestation clause is insufficient, the Court shall require an affidavit from at least one of the subscribing witnesses, if either of them is living, to prove that the will was, in fact, executed in accordance with those enactments. The affidavit shall be engrossed and form part of the probate, so that the probate may be a complete document on the face of it.

21. If on perusal of the affidavit it appears that the will was not, in fact, executed in accordance with those enactments, the Court shall refuse probate.

22. If both the subscribing witnesses are dead, or if from other circumstances such an affidavit cannot be obtained from either of them, resort for such an affidavit shall be had to other persons (if any) present at the execution of the will; but if no such affidavit can be obtained, proof shall be required of

that fact, and of the handwriting of the deceased and of the subscribing witnesses, and also of any circumstances raising a presumption in favour of the due execution of the will.

23. Where the testator was blind or illiterate, the Court shall not grant administration with the will annexed, unless the Court is first satisfied, by proof or by what appears on the face of the will, that the will was read over to the deceased before its execution, or that he had at that time knowledge of its contents.

24. (1) The Court, on being satisfied that the will was duly executed, shall carefully inspect it to see whether there are any interlineations or alterations, or erasures, or obliteration appearing in it and requiring to be accounted for.

(2) Interlineations, alterations, erasures, and obliteration are invalid unless they existed in the will at the time of its execution unless, if made afterwards, they have been executed and attested in the mode required by the said enactments; or unless they have been made valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

(3) Where interlineations, alterations, erasures, or obliteration appear in the will (unless duly executed or recited in or otherwise identified by the attestation clause), an affidavit in proof of their having existed in the will before its execution shall be filed.

(4) If no satisfactory evidence is adduced respecting the time when an erasure or obliteration was made, and the words erased or obliterated are not entirely effaced, and can, on inspection of the will, be ascertained, they shall form part of the probate.

(5) Where any words have been erased which might have been of importance, an affidavit shall be required.

25. (1) Where a will contains a reference to any document of such a nature as to raise the question whether it ought or ought not to form a constituent part of the will, the Court shall require the production of the document, with a view to ascertaining whether or not it is entitled to probate; and if it is not produced, a satisfactory account of its non production shall be proved.

(2) A document cannot form part of a will unless it was in existence at the time when the will was executed.

(3) If there are vestiges of sealing wax or wafers, or other marks, on the will leading to the inference that some document has been at some time annexed or attached thereto, a satisfactory account of them shall be proved, or the production of the document shall be required, and if it is not produced, a satisfactory account of its non-production shall be proved.

26. Where a person appointed executor in a will survives the testator, but either dies without having taken probate, or having been called on by the Court to take probate does not appear, his right in respect of the executorship wholly ceases; and, without further renunciation, the representation of the testator and the administration of his property may go and be committed as if that person had not been appointed executor.

27. (1) Every will or copy of a will to which an administrator with the will annexed is sworn, shall be marked by the administrator and by the person before whom he is sworn.

(2) The provisions respecting wills apply equally to codicils.

28. (1) In every case where evidence is directed or allowed to be given by affidavit, the Court may require the personal attendance of the deponent if within the jurisdiction, before the Court, to be examined viva voce respecting the matter of his affidavit.

The examination may take place before any affidavit has been sworn or prepared, if the Court thinks fit.

(ADMINISTRATION NOT WITH WILL)

29. (1) The Court in granting letters of administration shall proceed as far as may be as in cases of probate.

(2) The Court shall ascertain the time and place of the deceased's death, and the value of the property to be covered by the administration.

30. (1) The person to whom administration is granted shall give a bond, with two or more responsible sureties, to the Probate Registrar of the Court, conditioned for duly collecting, getting in, and administering the personal property of the deceased, such sureties to be to the satisfaction of the Probate Registrar.

(2) The Court may, if it thinks fit, take one surety only.

(3) The bond shall be in a penalty of double the amount under which the personal estate of the deceased is sworn, unless the Court in any case thinks it expedient to reduce the amount.

(4) The Court may also in any case direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the court thinks reasonable.

31. The Probate Registrar may, on being satisfied that the condition of the bond has been broken, assign the same to some person, and that person may thereupon sue on the bond in his own name, as if it had been originally given to him instead of the Probate Registrar, and may recover thereon, as trustee for persons interested, the full amount recoverable in respect of any breach of the bond.

ADMINISTRATION OF PROPERTY

32. Any person claiming to be a creditor or legatee, or the next of kin, or one of the next of kin, of a deceased, may apply for and obtain summons from the Court requiring the executor or administrator as the case may be of the deceased to attend before the Court and show cause why an order for the administration of the property of the deceased should not be made.

33. (1) On proof of service of the summons or on appearance of the executor or administrator, and on proof of all such other things (if any) as the Court may direct, the Court, may if it thinks fit, make an order for the administration of the property of the deceased.

(2) The Court shall have discretionary power to make or refuse any such order or to give any special directions respecting the carriage or execution of it, and in the case of applications for such an order by two or more different persons or classes of persons, to grant the same to such one or more of the claimants or classes of claimants, as the Court thinks fit.

(3) If the Court thinks fit the carriage of the order may subsequently be given to such person and on such terms, as the thinks fit.

34. On making such an order, or at any time afterwards, the Court may, if it thinks fit, make any further or other order which may appeal requisite to secure the proper collection, recovery for safe-keeping and disposal of the property or any part thereof.

35. In a case of intestacy, where the special circumstances of the case appear to the Court so to require, the Court may, if it thinks fit, on the application of any person having interest in the estate of the deceased, or of its own motion, grant letters of administration to an officer of the Court, to a Consular Officer, or to a person in the service of the Government.

36. (1) The officer or person so appointed shall act under the direction of the Court, and shall be indemnified thereby.

(2) The Court shall require and compel him to file in the Court accounts of his administration at intervals not exceeding three months.

37. Where a person has died intestate as to his personal estate leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall, at the time of the death of such person be resident out of the jurisdiction, and it shall appear to the Court to be necessary or convenient in any such case to appoint some person to be the administrator of the personal estate of the deceased, or of any part thereof, the Court may appoint such person as it shall think fit, to be such administrator upon his giving such security, if any, as the Court shall direct, and every such administration may be limited as the Court shall think fit.

38. The Court may direct that any administrator (with or without the will annexed) shall receive out of the personal and real estate of the deceased such reasonable remuneration as the Court shall think fit, not exceeding a fee of ten naira and in addition thereto a sum not exceeding five per centum on the amount of the realised property, or, when not converted into money, on the value of the property duly administered and accounted for by him:

Provided that where the Court shall be satisfied that by reason of exceptional circumstances the administration of the property has required an extraordinary amount of labour to be bestowed on it, the Court may allow in respect of such property a higher rate of remuneration.

ADMINISTRATION OF ESTATE OF FOREIGN CITIZENS

39. (1) Where any citizen of any country other than Nigeria dies within the jurisdiction without leaving within the jurisdiction a widow or next of kin, then if any such person dies within a Government station, or had his usual place of residence therein, the Magistrate having jurisdiction within such station, or if he does not die within a Government station, or had not his usual place of residence therein, then the Local Government Secretary in charge of the station in which he died, shall collect and secure all moneys and other property belonging to the-deceased, and shall then request the Secretary to the Government to inform the nearest consular officer of such country of the death of the deceased, and transmit to him a list of the money and property of the deceased.

(2) In the case last mentioned in which it is declared that a Local Government Secretary shall collect and secure all money and other property of the deceased, such Local Government Secretary may appoint any Administrative Officer attached to his Local Government or, with his consent, any Magistrate or any Administrative Officer attached to any other Local Government to act in his place.

40. Application may be made to the court by any such consular officer, or by any person authorized by him in writing and under the consular seal, for leave to administer the estate of the deceased, and the Court may make such order as to security for payment of debts and the method of administration as the Court shall think fit, and vary such order when and so often as is expedient.

ADMINISTRATION GENERALLY

41.(1) Every person to whom a grant of probate or letters of administration shall have been made, and every administrator appointed by the Court shall, if called upon by the Courts so to do, file in court the accounts of his administration, and shall thereafter file such further periodic accounts as the Court may direct until the completion of the administration.

(2) Any such executor or administrator who fails within any such period to file his accounts as aforesaid shall be liable to such penalty not exceeding one hundred naira as the Court may think fit to impose. Every such fine shall on non-payment be enforceable by distress and failing sufficient distress, by imprisonment for a term not exceeding six months.

(3) When an account is filed in court under this rule, the Court shall scrutinize such account and if it appears to the Court that by reason of improper unvouched or unjustifiable entries or otherwise such account is not a full and proper account, the Court may give written notice to the person filing the account to remedy such defects as there may be within such time as to the Court may seem reasonable for the purpose; and on failure to remedy such defects within such time the person who filed such defective account shall be deemed to have failed to file an account within the meaning of this rule and proceedings may be taken against such person accordingly.

(4) The court may, on the motion of any party interested, or of its own motion, summon any executor or administrator failing as aforesaid, to show cause why he should not be punished.

(5) The Court may for good cause shown extend the time for such filing of accounts.

(6) Any executor or administrator who has been granted an extension of time to file such accounts, and who fails within such extended time to file such accounts, shall be liable to the penalty set out above, and the procedure for bringing him before the Court shall be as set out above.

(7) It will be the duty of the Probate Registrar to bring to the notice of the Court the fact that any executor or administrator has failed to file his accounts as required by this rule.

(8) Such accounts shall be open free of charge to the inspection of all persons satisfying the Probate Registrar that they are interested in the administration.

(9) In this rule the word "accounts" shall mean and include an inventory, an account of the administration, the vouchers in the hands of the executor or administrator relating thereto, and an affidavit in verification.

42. The duties imposed and powers conferred upon the Court by rules 5, 6, 7, 9, 10, 11, 12, 14, 17, 18, 19, 20, 21, 22, 28, 31, 38, 40 and 41 (1), (3), (5), (7) and (8) shall be performed and exercised by the Probate Registrar on behalf of the Court subject to any directions which the Chief Judge may give restricting or enlarging this delegation to the Probate Registrar of the duties and powers of the Court under this Order:

Provided always that the Court shall have power, either of its own motion, or on the application of any person interested, to review any exercise by the Probate Registrar of the powers delegated to him. On such review the court shall have power to cancel anything which may have been done by the Probate Registrar in such exercise of his delegated powers or otherwise and make such order in the premises as may to the Court seem just.

43. The Court may refuse to entertain any application under the last preceding rule if it considers there has been unreasonable delay by the applicant in making his application.

44. The grant of letters of administration under this Order shall be signed by the Probate Registrar on behalf of the Court.

ORDER 49 - PROBATE (NON-CONTENTIOUS) PROCEDURE

1. (1) Any person having in his possession or under his control any paper or writing of any deceased person, being or purporting to be testamentary, shall forthwith deliver the original to the Probate Registrar of the Court.

(2) If any person fails to do so for fourteen days after having had knowledge of the death of the deceased, he shall he liable to such fine not exceeding one hundred naira as the Court having regard to the condition of such person so in default and the other circumstances of the case, thinks fit to impose.

2. Where it appears that any paper of the deceased, being or purporting to be testamentary, is in his possession, or under the control, of any person, the Court may in a summary way, whether a suit or proceeding respecting probate or administration is pending or not, order him to produce the paper and bring it into court.

3. Where it appears that there are reasonable grounds for believing that any person has knowledge of any paper being or purporting to be testamentary (although is not shown that the paper is in his possession or under his control), the Court may in a summary way, whether a suit or proceeding for probate or administration is pending or not, order that he may be examined respecting the same in court, or on interrogatories and that he do attend for that purpose, and after examination that he do produce the paper and bring it into court.

4. The Court may of its own motion, or on the application of any person claiming an interest under a will, give notice to the executors (if any) therein named, to come in and prove the will, or to renounce probate, and they, or some one of them, shall within fourteen days after notice, come in and prove or renounce accordingly.

5. If any person named as executor in the will of the deceased takes possession and administers or otherwise deals with any part of the property of the deceased, and does not apply for probate within one month after the death, or after the termination of any suit or dispute respecting probate or administration, he may independently of any other liability, be deemed guilty of a contempt of court, and shall be liable to such fine, not exceeding one hundred naira, as the Court thinks fit to impose.

6. (1) When any person subject to the jurisdiction of the Court dies, all petitions for the grant of probate of his will and all applications on other matters connected with it shall be made to the Probate Registrar of the said court.

(2) In regard to any such application, the Chief Judge shall have power to request the Court of any Judicial Division to take measures and make such order as may appear necessary or expedient for the interim preservation of the property of the deceased within such Judicial Division, for the discovery or preservation of the will of the deceased or for any other purposes connected with the duties of the court under this Order, and every court shall carry out any such request as far as practicable and report to the Chief Judge.

7. (1). A person applying for a grant through a legal practitioner may apply otherwise than by post at the Probate registry.

(2) Every legal practitioner through whom an application for a grant is made shall give the address of his place of business within jurisdiction.

8. (1) A personal applicant may apply for a grant otherwise than by post at the Probate registry.

(2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be attended by any person acting or appearing to act as his adviser.

(3) No personal application shall be received or proceeded with if:-

(a) it becomes necessary to bring the matter before the Court on motion or by action;

(b) an application has already been made by a legal practitioner on behalf of the applicant and has not been withdrawn;

(c) the Registrar otherwise directs.

(4) After a will has been deposited in the registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the Registrar so directs.

(5) A personal applicant shall produce a certificate of the death of the deceased or such other evidence of the death as the Registrar may approve.

(6) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared in the registry, or may himself prepare such papers and lodge them unsworn.

(7) Unless the Registrar otherwise directs, every oath, affidavit or guarantee required of a personal application shall be sworn or executed by all the deponents or sureties before an authorized officer.

9. (1) The Registrar shall not allow any grant to issue until all inquiries which he may see fit to make have been answered to his satisfaction.

(2) The Registrar may require proof of the identity of the deceased or of the applicant for the grant beyond that contained in the oath.

(3) No grant of probate of administration with the will annexed shall issue within seven days of the death of the deceased.

10. (1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances of the case, which shall be contained in an affidavit sworn by the applicant and by such other papers as the Registrar may require.

(2) Unless otherwise directed by the Registrar, the oath shall state where the deceased died domiciled.

11. Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name or as to any other reason that there may be for the inclusion of the other name in the grant.

12. Every will in respect of which an application for a grant is made shall be marked by the signatures of the applicant and the person before whom the oath is sworn, and shall be exhibited to any affidavit which may be required under this Order as to the validity, terms, conditions or date of execution of the will:

Provided that where the Registrar is satisfied that compliance with this rule might result in the loss of the will, he may allow a photostat copy thereof to be marked or exhibited in lieu of the original document.

13. (1) Where the Registrar considers that in any particular case a photostat copy of the original will would not be satisfactory for purposes of record he may require an engrossment suitable for photostat reproduction to be lodged.

(2) Where a will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the will in the form in which it is to be proved.

(3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the will and, if it is one to which paragraph (2) of this rule applies, it shall be made bookwise on durable paper following continuously from page to page.

(4) Where any pencil writing appears on a will, there shall be lodged a copy of the will or of the pages or sheets containing the pencil writing, in which there shall be underlined in red those portions which appear in pencil in the original.

14. (1) Where a will contains no attestation clause or the attestation clause is insufficient or where it appears to the Registrar that there is some doubt about the due execution of the will, he shall before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the will was executed.

(2) If no affidavit can be obtained in accordance with the last foregoing paragraph the Registrar may, if he thinks fit having regard to the desirability of protecting the interest of any person who may be prejudiced by the will, accept evidence on affidavit from any person he may think fit to show that the signature on the will is the handwriting of the deceased, or of any other matter which may raise a presumption in favour of the due execution of the will.

(3) If the Registrar, after considering the evidence:-

(a) is satisfied that the will was not duly executed, he shall refuse probate and shall mark the will accordingly;

(b) is doubtful whether the will was duly executed, he may refer the matter to the Court on motion.

15. Before admitting to proof a will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason gives rise to doubt as to the testator having had knowledge of the contents of the will at the time of its execution the Registrar shall satisfy himself that the testator had such knowledge.

16. (1) Where there appears in a will any obliteration, interlineations, or other alteration which is not authenticated in the manner prescribed by Law, or by the re-execution of the will or by the execution of a codicil, the Registrar shall require evidence to show whether the alteration was present at the time the will was executed and shall give directions as to the form in which the will is to be proved:

Provided that this paragraph shall not apply to any alteration which appears to the Registrar to be of no practical importance.

(2) If from any mark on the will it appears to the Registrar that some other document have been attached to the will or if a will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the will the Registrar may require the document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as he may think fit.

(3) Where there is doubt as to the date on which a will was executed, the Registrar may require such evidence as he thinks necessary to establish the date.

17. Any appearance of attempted revocation of a will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the Registrar's satisfaction.

18. The Registrar may require an affidavit from any person he may think fit for the purpose of satisfying himself as to any of the matters referred to in rules 15, 16 and 17, and in any such affidavit sworn by an attesting witness or other person present at the time of the execution of a will, the deponent shall depose to the manner in which the will was executed.

19. If it appears to the Registrar that there is prima facie evidence that a will is one to which section 9 of the Wills Act 1837, or any provision of the equivalent enactment in force in the State, applies, the will may be admitted to proof if the Registrar is satisfied that it was made by the testator in accordance with the provisions of that section or enactment, as the case may be.

20. Where evidence as to the law of any country or territory outside the State is required on any application for a grant the Registrar may accept an affidavit from any person whom having regard to the particulars of his knowledge or experience given in the affidavit, he regards as suitably qualified to give expert evidence of the law in question.

21. Where the deceased died after the commencement of this Order, the person or persons entitled to a grant of probate or administration with the will annexed shall be determined in accordance with the following order of priority:-

(a) the executor;

(b) any residuary legatee or devisee holding in trust for any other persons;

(c) any residuary legatee or devisee for life;

(d) the ultimate residuary legatee or devisee, including one entitled on the happening of any contingency, or, where the residue is not wholly disposed of by the will, any person entitled to share in the residue not so disposed of or the personal representative of any such person:

Provided that:-

(i) unless the Registrar otherwise directs, a residuary legatee or devisee whose legacy or devise is vested in interest shall be preferred to one entitled on the happening of a contingency; and

(ii) where the residue is not in terms wholly disposed of, the Registrar may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained

at the time of the application for the grant, allow a grant to be made (subject however to rule 53) to any legatee or devisee entitled to or to a share in, the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the will;

(e) any specific legatee or devisee or any creditor or, subject to paragraph (3) of rule 44, the personal representative of any such person or where the estate is not wholly disposed of by will, any person who, notwithstanding that the amount of the estate is such that he has not immediate beneficiary interest therein, may have a beneficial interest in the event of an accretion thereto;

(f) any specific legatee or devisee entitled on the happening of any contingency, or any person having no interest under the will of the deceased who would have been entitled to a grant if the deceased had died wholly intestate.

22. Where a gift to any person fails by reason of the fact that he is an attesting witness or the spouse of an attesting witness, such person shall not have any right to a grant as a beneficiary named in the will, without prejudice to his right to a grant in any other capacity.

23. Every applicant for a grant of probate or letters of administration with the will attached shall file in the Court a true declaration of all the personal property of the deceased and the value thereof

Provided that for the purpose of the fees payable on probate and such letters of administration the value of the property in respect of which the grant is made shall be deemed not to include:-

(a) any gratuity payable by the Government of the Federation of Nigeria, or the Government of a State, to the estate of any person formerly employed by either of such Governments or by a Statutory Corporation;

(b) any sum of money payable to an estate from a Provident Fund established under the provisions of any written law.

24. (1) In no case shall the Court issue probate or letters of administration with the will attached until all inquiries which the Court sees fit to institute have been answered to its satisfaction.

(2) The Court shall, however, afford as great a facility for the obtaining of probate or such letters of administration as is consistent with due regard to the prevention of error and fraud.

25. A notice to prohibit a grant of probate or administration with the will attached may be filed in the Court.

26. (1) The notice shall remain in force three months only from the day of filling, but it may be renewed from time to time. The notice shall not affect a grant made on the day on which the notice is filed.

(2) The person filing the notice shall be warned by a warning in writing delivered at the place mentioned in the notice as his address.

(3) Notices in the nature of citations shall be given in such manner as the Court directs.

27. Suits respecting probate or administration shall be instituted and carried on as nearly as may be in the like manner and subject to the same rules of procedure as suits in respect of ordinary claims.

CUSTODY OF WILLS

28. Any person may, in his lifetime, deposit for safe custody in the Court his own will, sealed up under his own seal and the seal of the Court.

29. (1) Every original will, of which probate or administration with will annexed is granted, shall be filed and kept in the Probate Registry, in such manner as to secure at once the due preservation and convenient inspection of it.

(2) A copy of every such will and of the probate or administration shall be preserved in a book kept for the purpose in the Registry.

30. No original will shall be delivered out for any purpose without the direction in writing of the Court where the will is filed. A certified transcript, under the seal of the Court of the Probate or administration with the will annexed may be obtained from the Court.

PROBATE OR ADMINISTRATION WITH WILL ANNEXED

31. (1) On receiving an application for probate or for administration with will annexed, the court shall inspect the will, and see whether it appears to be signed by the testator, or by some other person in his presence, and by his direction, and to be subscribed by two witnesses according to the enactments relative thereto, and shall not proceed further if the will does not appear to be so signed and subscribed.

(2) If the will appears to be so signed and subscribed, the Court shall then refer to the attestation clause (if any), and consider whether the wording thereof states the will to have been, in fact, executed in accordance with those enactments.

32. (1) If there is no attestation clause, or if the attestation clause is insufficient, the Court shall require an affidavit from at least one of the subscribing witnesses, if either of them is living, to prove that the will was, in fact, executed in accordance with those enactments.

(2) The affidavit shall be engrossed and form part of the probate, so that the probate may be a complete document on the face of it.

33. If on perusal of the affidavit it appears that the will was not, in fact, executed in accordance with those enactments, the Court shall refuse probate.

34. If both the subscribing witnesses are dead, or if from other circumstances such an affidavit cannot be obtained from either of them, resort to such an affidavit shall be had to other persons (if any) present at the execution of the will, but if no such affidavit can be obtained, proof shall be required of that fact, and of the handwriting of the deceased and of the subscribing witnesses, and also of any circumstances raising a presumption in favour of the due execution of the will.

35. Where the testator was blind or illiterate, the Court shall not grant probate of the will, or administration with the will annexed, unless the Court is first satisfied, by proof or by what appears on the face of the will, that the will was read over to the deceased before its execution, or that he had at that time knowledge of its contents.

36. (1) The Court, on being satisfied that the will was duly executed, shall carefully inspect it so see whether there are any interlineations or alterations, or erasures, or obliterations appearing in it, and requiring to be accounted for.

(2) Interlineations, alterations, erasures, and obliterations are invalid unless they existed in the will at the time of its execution or unless, if made afterwards, they have been executed and attested in the mode required by the said enactments, or unless they have been made valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

(3) Where interlineations, alterations, erasures, or obliterations appear in the will (unless duly executed or recited in or otherwise identified by the attestation clause), an affidavit in proof of their having existed in the will before its execution shall be filed.

(4) If no satisfactory evidence is adduced respecting the time when an erasure or obliteration was made, and the words erased or obliterated are not entirely effaced, and can by inspection of the will, be ascertained, they shall form part of the probate.

(5) Where any words have been erased which might have been of importance, an affidavit shall be required.

37. (1) Where a will contains a reference to any document of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will, the Court shall require the production of the document, with a view to ascertaining whether or not it is entitled to probate; and if it is not produced, a satisfactory account of its non-production shall be proved. A document cannot form part of a will unless it was in existence at the time when the will was executed.

(2) If there are vestiges of sealing wax or wafers, or other marks on the will, leading to the inference that some document has been at some time annexed or attached thereto, a satisfactory account of them shall be proved or the production of the document shall be required, and if not produced, a satisfactory account of its non-production shall be proved.

38. Whether a person appointed executor in a will survives the testator, but either dies without having taken probate, or having been called on by the Court to take probate, does not appear, his right in respect of the executorship wholly ceases, and without further renunciation, the representation to the testator and the administration of his property may go and be committed as if that person had not been appointed executor.

39.——(1) Every will or copy of a will to which an executor of an administrator with the will annexed is sworn shall be marked by the executor or administrator and by the person before whom he is sworn.

(2) The provisions respecting wills apply equally to codicils.

40. In every case where evidence is directed or allowed to be given by affidavit, the Court may require the personal attendance of the deponent, if within the jurisdiction, before the Court, to be examined

viva voce respecting the matter of his affidavit. The examination may take place before any affidavit has been sworn or prepared, if the Court thinks fit.

41 (1) Where all the persons entitled to the estate of the deceased under a will have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace in the order of priority for a grant of probate the assignor or, if there are two or more assignors, the assignors with the highest priority, in the absence of proving executor.

(2) Where there are two or more assignees, probate may be granted with the consent of the others to anyone or more (not exceeding four) of them.

(3) In any case where probate is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the Registry.

42. In the absence of a proving executor an application to join with a person entitled to a grant of administration with the will attached a person:-

(a) in a lower degree shall, in default of renunciation by all persons entitled in priority to such last mentioned person, be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Registrar may require;

(b) An application to join with a person entitled to a grant of administration with the will attached a person having no right thereto shall be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as personal representative and such other evidence as the Registrar may require:

Provided that there may without any such application be joined with a person entitled to administration with the will attached:-

(i) on the renunciation of all other persons entitled to join in the grant, any kin of the deceased having no beneficial interest in the estate;

(ii) unless the Registrar otherwise directs, any person whom the guardian of an infant may nominate for the purpose;

(iii) a trust corporation.

43. (1) An application to add a personal representative shall be made to Registrar and shall be supported by an affidavit by the applicant, the consent of the person proposed to be added as personal representative and such other evidence as the Registrar may require.

(2) On any such application the Registrar may direct that a note shall be made on the original grant of the addition of a further personal representative, or he may impound or revoke the grant or make such other order as the circumstances of the case may require.

44. (1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.

(2) A dispute between persons entitled to a grant in the same degree shall be brought by application before the Registrar.

(3) If an application under this rule is brought before the Registrar he shall not allow any grant to be sealed until such application is finally disposed of.

(4) Unless the Registrar otherwise directs, probate or administration with the will attached shall be granted to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same degree, and to a person not under disability in preference to an infant entitled in the same degree.

45. (1) Nothing in rules 21, 42 or 44 shall operate to prevent a grant being made to any person to whom a grant may, or may require to be made under any enactment.

(2) The rules mentioned in the last foregoing paragraph shall not apply where the deceased died domiciled outside the State, except in a case to which the proviso to rule 47 applies.

46. When the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant of administration with the will attached and has consented to such administration being granted to the person or persons who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or one or more (not exceeding four) of such persons:

Provided that a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever its value may be.

47. Where the deceased died domiciled outside the State, the Registrar may order that a grant do issue:-

(1) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled;

(2) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;

(3) if there is no such place as is mentioned in paragraph (1) or (2) of this rule or if in the opinion of the Registrar the circumstances so require, to such person as the Registrar may direct;

(4) if a grant is required to be made to, or if the Registrar in his discretion considers that a grant shall be made to, not less than two administrators, to such person as the Registrar may direct jointly with any such person as is mentioned in paragraph (1) or (2) of this rule or with any other person:

Provided that without any such order as aforesaid:-

(a) probate of any will which is admissible to proof may be granted:

(i) if the will is in English or in the local vernacular, to the executor named therein;

(ii) if the will describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of the will to that person;

(b) where the whole of the estate in the State consists of immovable property, a grant limited thereto may be made in accordance with the law which would have been applicable if the deceased had died domiciled in the State.

48. (1) Where a person entitled to a grant resides outside the State a grant may be made to his lawfully constituted attorney for his use and benefit, limited until such person shall obtain a grant or in such other way as the Registrar may direct:

Provided that where the person entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any.

(2) Where the Registrar is satisfied by affidavit that it is desirable for a grant to be made to the lawfully constituted attorney of a person entitled to a grant and resident in the State, he may direct that a grant be made to the attorney for the use and benefit of such person, limited until such person shall obtain a grant or in such other way as the Registrar may direct.

49. (1) Where the person to whom a grant would otherwise be made is an infant, a grant for his use and benefit until he attains the age of eighteen years shall, subject to paragraph (3) and (5) of this rule, be granted:-

(a) to both parents of the infant jointly, or to any guardian appointed by a court of competent jurisdiction; or

(b) if there is no such guardian able and willing to act and the infant has attained the age of sixteen years, to any next of kin nominated by the infant or, where the infant is a married woman, to any such next of kin or to her husband if nominated by her.

(2) Any person nominated under sub-paragraph (b) of the last foregoing paragraph may represent any other infant whose next of kin he is, being an infant below the age of sixteen years entitled in the same degree as the infant who made the nomination.

(3) Notwithstanding anything in this rule, administration for the use and benefit of the infant until he attains the age of eighteen years may be granted to any person assigned as guardian by order of a court in default of, or jointly with, or to the exclusion of, any such person may be made as is mentioned in paragraph (1) of this rule; and such an order on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the Court, an affidavit of fitness sworn by a responsible person.

(4) Where a grant is required to be made to not less than two persons and there is only one person competent and willing to take a grant under the foregoing provisions of this rule, a grant may, unless the Registrar otherwise directs, be made to such person jointly with any other person nominated by him as a fit and proper person to take the grant.

(5) Where an infant who is sole executor has no interest in the residuary estate of the deceased, administration with the will attached for the use and benefit of the infant until he attains the age of eighteen years shall, unless the Registrar otherwise directs, be granted to the person entitled to the residuary estate.

(6) An infant's right to administration may be renounced only by a person assigned as guardian under paragraph (3) of this rule authorized to renounce by the Registrar.

50. (1) Where one of two or more executors is an infant, probate may be granted to the other executor or executors not under disability, with power reserved for making the like grant to the infant on his attaining the age of eighteen years and administration for the use and benefit of the infant until he attains the age of eighteen years may be granted under rule 49 if and only if the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefor.

(2) An infant executor's right to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.

51. (1) Where the Registrar is satisfied that a person entitled to a grant is by reason of mental or physical incapacity incapable of managing his affairs a grant for his use and benefit limited during his incapacity or in such other way as the Registrar may direct, may be made:-

(a) in the case of mental incapacity, to the person authorised by the Court to apply for the grant; or

(b) where there is no person so authorised, or in the case of physical incapacity:-

(i) if the person incapable is entitled as executor and has no interest in the residuary estate of the deceased, to the person entitled to such residuary estate;

(ii) if the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate, or to such other person as the Registrar may by order direct.

(2) Unless the Registrar otherwise directs, no grant shall be made under this rule unless all persons entitled in the same degree as the person incapable have been cleared off.

(3) In the case of mental incapacity, notice of intended application for a grant under this rule shall, unless the Registrar otherwise directs, be given to the person alleged to be so incapable.

52. (1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to grant of administration in some other capacity unless he expressly renounces such right.

(2) Unless the Registrar otherwise directs, no person who has renounced a grant in one capacity may obtain a grant in some other capacity.

(3) A Renunciation of probate or administration may be retracted at any time on the order of the Registrar:

Provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after grant has been made to some other person entitled in a lower degree.

53. In any case in which it appears that the State is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Attorney-General, and the Registrar may direct that no grant shall issue within a specified time after the notice has been given.

54. (1) The Registrar shall not require a guarantee as a condition of making a grant except where it is proposed to make it:-

(a) by virtue of rule 21 (5) to a creditor or the personal representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;

(b) under rule 46 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate be entitled to his estate;

(c) under rule 48 to the attorney of a person entitled to a grant;

(d) under rule 49 for the use and benefit of a minor;

(e) under rule 51 for the use and benefit of a person who is by reason of mental or physical incapacity incapable of managing his affairs;

(f) to an applicant who appears to the Registrar to be resident elsewhere than in the State; or

(g) except where the Registrar considers that there are special circumstances making it desirable to require a guarantee.

(2) Notwithstanding that it is proposed to make a grant as aforesaid, a guarantee shall not be required, except in special circumstances, on an application for administration where the applicant or one of the applicants is the Administrator-General or a trust corporation.

(3) Every guarantee entered into by a surety for the purpose of this Order shall be in Form 98 in the Appendix to these Rules.

(4) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an authorised officer, commissioner for oaths or other person authorised by law to administer an oath.

(5) Unless the Registrar otherwise directs:-

(a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed one thousand naira or a corporation is a proposed surety, and in those cases one will suffice;

(b) no person shall be accepted as a surety unless he is resident in the State;

(c) no officer of the judiciary shall become a surety;

(d) the limit of the liability of the surety or sureties under a guarantee shall be the gross amount of the estate as sworn on the application for the giant;

(e) every surety, other than a corporation, shall justify.

(6) Where the proposed surety is a corporation, there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed the guarantee in the manner prescribed by its constitution, and containing sufficient information as to the financial position of the corporation to satisfy the Registrar that its assets are sufficient to satisfy all claims which may be made against it under any guarantee which it has given or is likely to give.

55. (1) An application for the resealing of probate or administration with the will attached granted by the court of a place not within the State shall be made by the person whom the grant was made or by any person authorised in writing to apply on his behalf.

(2) On any such application:-

(a) an Inland Revenue affidavit shall be lodged as if the application were one for a grant in the State;

(b) the application shall be advertised in such manner as the Registrar may direct and shall be supported by an oath sworn by the person making the application.

(3) On the application for the resealing of such a grant:-

(a) the Registrar shall not require sureties except where it appears to him that the grant is made to a person or for a purpose mentioned in paragraph (a) to (f) of rule 54(1) or except where he considers that there are special circumstances making it desirable to require sureties;

(b) rules 8(4) and 54(2), (4), (5) and (6) shall apply with any necessary modifications; and

(c) a guarantee entered into by a surety shall be in Form 99 in the Appendix to these Rules.

(4) Except by leave of the Registrar, no grant shall be resealed unless it was made to such a person as is mentioned in sub-paragraphs (a) and (b) of rule 54(1) of the Order, or to a person to whom a grant could be made under a provision to that rule.

(5) No limited or temporary grant shall be resealed except by leave of the Registrar.

(6) Every grant lodged for resealing shall include a copy of any will to which the grant relates or shall be accompanied by a copy thereof certified as correct by or under the authority of the Court by which the grant was made.

(7) The Registrar shall send notice of the resealing to the Court which made the grant.

(8) Where notice is received in the Registry from outside the State of the resealing of a grant made in the State, notice of any amendment or revocation of the grant shall be sent to the Court by which it was resealed.

56. If the Registrar is satisfied that a grant should be amended or revoked, he may make an order accordingly:

Provided that except in special circumstances no grant shall be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made.

57. (1) Any person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat in the registry.

(2) Any person who wishes to enter a caveat (in this rule called 'the caveator') may do so by completing Form 100 in the appropriate book at the registry and obtaining an acknowledgement of entry from the proper officer, or by sending through the post at his own risk a notice in Form 100 to the registry in which he wishes the caveat to be entered.

(3) Where the caveat is entered by a legal practitioner on the caveator's behalf, the name of the caveator shall be stated in Form 100 in the Appendix to these Rules.

(4) Except as otherwise provided by this rule, a caveat shall remain in force for six months from the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

(5) The Registrar shall maintain an index of caveats in the registry and on receiving an application for a grant in the registry he shall cause the index to be searched and shall notify the applicant in the event of a caveat having been entered against the sealing of a grant for which application has been made.

(6) The Registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof.

Provided that no caveat shall operate to prevent the sealing of a grant on the day on which the caveat is entered.

(7) A caveator may be warned by the issue from the registry of a warning in Form 101 at the instance of any person interested (in this rule called "the person warning") which shall state his interest and, if he claims under a will the date of the will, and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning or a copy thereof shall be served on the caveator.

(8) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the registry and the caveat shall thereupon cease to have effect and, if he has been warned, the caveator shall fortwith give notice of withdrawal of the caveat to the person warning.

(9) A caveator having an interest contrary to that of the person warning may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under paragraph (11) of this rule, enter an appearance in the registry by filing Form 102 and making an entry in the appropriate book, and shall forthwith thereafter serve on the person warning a copy of form 102 sealed with the seal of the registry.

(10) A caveator having no interest contrary to that of the person warning but wishing to show cause, against the sealing of a grant to that person may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under paragraph (11) of this rule issue and serve a summons for directions, which shall be returnable before the Registrar.

(11) If the time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file in the registry an affidavit showing that the warning was duly served and that he has not received a summons for directions under the last foregoing paragraph and thereupon the caveat shall cease to have effect.

(12) Upon the commencement of a probate action the Probate Registrar shall, in respect of each caveat then in force (other than a caveat entered by the plaintiff), give to the caveator notice of the commencement of the action and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action.

(13) Unless the Registrar otherwise directs:-

(a) any caveat in force at the commencement of proceedings by way of citation or motion shall, unless withdrawn pursuant to paragraph (8) of this rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings shall cease to have effect;

(b) any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;

(c) the commencement of a probate action shall whether or not any caveat has been entered, operate to prevent the sealing of a grant until application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such action, and upon such application any caveat entered by a party who had notice of the action, or by a caveator who was given notice under paragraph (12) of this rule, shall cease to have effect.

(14) Except with the leave of the Registrar, no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under paragraphs (11) or (13) of this rule.

58. (1) Every citation shall be settled by the Registrar before being issued.

(2) Every averment in a citation, and such other information as the Registrar may require shall be verified by an affidavit sworn by the person issuing the citation (in this Order called the citor) or, if there are two or more citors, by one of them:

Provided that the Registrar may in special circumstances accept an affidavit sworn by the citor's legal practitioner.

(3) The citor shall enter a caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless the Registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(5) Every will referred to in the citation shall be lodged in the Registry before the citation is issued, except where the will is not in the citor's possession and the Registrar is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within eight days of service of the citation upon him inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under paragraph (5) of rule 59 or paragraph (2) of rule 60, enter an appearance in the registry by filing in Form 102 and making an entry in the appropriate books, and shall forthwith thereafter serve on the citor a copy of Form 102 sealed with the seal of the Registry.

59. (1) A citation to accept or refuse a grant may be issued at the instance of any person who would be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or the executors of the last survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased:

Provided that no citation to take a grant shall issue while proceedings as to the validity of the will are pending.

(4) A person cited who is willing to accept or take a grant may apply ex parte to the Registrar for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may:-

(a) in the case of a citation under paragraph (1) of this rule apply to the Registrar for an order for a grant;

(b) in the case of a citation under paragraph (2) of this rule, apply to the Registrar for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;

(c) in the case of a citation under paragraph (3) of this rule, apply to the Registrar by summons (which shall be served on the person cited) for an order requiring such person to take a grant within a specified time or for a grant to himself or some other person specified in the summons.

(6) An application under the last foregoing paragraph (5) shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance but has not applied for a grant under paragraph (4) of this rule, or has failed to prosecute his application with reasonable diligence, the citor may :-

(a) in the case of a citation under paragraph (1) of this rule, apply by summons to the Registrar for an order for a grant to himself;

(b) in the case of a citation under paragraph (2) of this rule, apply by summons to the Registrar for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in sub-paragraph (b) of paragraph (5) of this rule;

(c) in the case of a citation under paragraph (3) of this rule, apply by summons to the Registrar for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons,

and the summons shall be served on the person cited in each case.

60. (1) A citation to propound a will shall be directed to the executors named in the will and to all persons interested thereunder and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired, the citor may:-

(a) in the case where no person cited has entered an appearance, apply to the Registrar for an order for a grant as if the will were invalid;

(b) in the case of a citation under paragraph (2) of rule 59, apply by summons to the Registrar for an order striking out the appearance and for the endorsement of the grant of such a note as is mentioned in sub-paragraph (b) of paragraph 5 or rule 59;

(c) in the case of a citation under paragraph (3) of rule 59, apply by summons to the Registrar for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the summons. And the summons shall be served on the persons cited in each case.

61. All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

62. (1) An application for an order requiring a person to bring in a will or to attend for examination may, unless a probate action has been commenced, be made to the Court by summons, which shall be served on every such person as aforesaid.

(2) An application for the issue by the Registrar of a subpoena to bring in a will shall be supported by an affidavit setting out the grounds of the application, and if any person served with the subpoena denies that the will is in his possession or control he may file an affidavit to that effect.

63. An application for an order for a grant limited to part of an estate may be made to the Registrar and shall be supported by an affidavit stating:-

(a) where the application is made in respect of the real estate only or any part thereof, or real estate together with personal estate, or in respect of a trust estate only;

(b) whether the estate of the deceased is known to be insolvent;

(c) that the persons entitled to a grant in respect of the whole estate in priority to the applicant have been cleared off.

64. An application for an order for grant of administration ad colligenda bona may be made to the Registrar, and shall be supported by an affidavit setting out the grounds of the application.

65. An application for leave to swear to the death of a person in whose estate a grant is sought may be made to the Registrar and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance effected on the life of the presumed deceased.

66. (1) An application for an order admitting to proof a codicil, or a will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original will is not available, may be made to the Registrar:

Provided that where a will is not available owing to its being retained in the custody of a foreign court official, a duly authenticated copy of the will may be admitted to proof without any such order as aforesaid.

(2) The application shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to:-

(a) the due execution of the will;

(b) its existence after the death of the testator; and

(c) the accuracy of the copy or other evidence of the contents of the will together with any consents in writing to the application given by any person not under disability who would be prejudiced by the grant.

67. An application for an order for a grant of special administration where a personal representative is residing outside the State shall be made to the court on motion.

68. (1) Where a surviving spouse who is the sole personal representative of the deceased is entitled to a life interest in part of the residuary estate and elects to have the life interest redeemed, he may give written notice of the election to the Registrar by filing a notice in Form 103 in the Appendix to these Rules in the registry.

(2) A notice filed under this rule shall be noted on the grant and the record shall be open to inspection.

69. (1) Where copies are required of original wills or other documents deposited under the provisions of any written law, such copies may be photostat copies sealed with the seal of the registry and issued as office copies and, where such office copies are not available, copies certified under the hand of a Registrar to be true copies shall be issued only if it is required that the seal of the Court be affixed thereto.

(2) Copies, not being Photostat copies, of original wills or other documents deposited as aforesaid shall be examined against the documents of which they purport to be copies if so required by the person demanding the copy, and in such case the copy shall be certified under the hand of a Registrar to be a true copy and may in addition be sealed with the seal of the Court.

70. (1) Every bill of costs (other than a bill delivered by a legal practitioner to his client which falls to be taxed under the Legal Practitioners Act) shall be referred to the Registrar for taxation and may be taxed by him or such other taxing officer as the Chief Judge may appoint.

(2) The party applying for taxation shall file the bill and give notice to any other parties entitled to be heard on the taxation, and shall at the same time if he has not already done so, supply them with a copy of the bill.

(3) If any party entitled to be heard on the taxation does not attend, within a reasonable time after the time appointed the taxing officer may proceed to tax the bill upon being satisfied that such party had due notice of the time appointed.

(4) The fees payable on taxation shall be paid by the party on whose application the bill is taxed and shall be allowed as part of the bill.

71. The Registrar may require any application to be made by motion or by summons.

72. All powers exercisable under this Order by a Judge in Chambers may be exercised by the Registrar.

73. (1) Any person aggrieved by a decision or requirement of the Registrar may appeal by summons to a Judge.

(2) If, in the case of an appeal under the last foregoing paragraph, any person besides the appellant appeared or was represented before the Registrar from whose decision or requirement the appeal is brought the summons shall be issued within seven days thereof for hearing on the first available day and shall be served on every such person concerned.

74. (1) A Judge or the Registrar may direct that a notice of motion or summons for the service of which no other provision is made in this Order shall be served on such person or persons as the Judge or Registrar may direct.

(2) Where by the provisions of this order or by any direction given under the last foregoing paragraph a notice of motion or summons is required to be served on any person it shall be served not less than five days before the hearing of the motion or summons.

75. Unless the Registrar otherwise directs or this Order provides, any notice or other document required to be given or served on any person may be given or served by leaving it at, or by sending it by prepaid registered post to, that person's address for service or, if he has no address for service his last known address.

76. Every affidavit used in non-contentious probate business shall satisfy the requirements of Order 9.

77. The provisions of order 22 shall apply to the computation, enlargement and abridgement of time under this Order.

78. Subject in any particular case to any direction given by a Judge, this Order shall apply to any proceeding which is pending on the date on which these rules come into operation as well as to any proceeding commenced on or after that date:

Provided that where the deceased died before the commencement of these rules, the right to a grant shall, subject to the provisions of any enactment, be determined by the principles and rules in accordance with which the Court would have acted at the date of the death.

79. Suits respecting probate shall be instituted and carried on as nearly as possible in the like manner and subject to the same rules of procedure as suits in respect of ordinary civil claims.

80. (1) The Interpretation Law shall apply to the interpretation of this Order.

(2) In this Order, unless the context otherwise requires:-

"authorised officer" means any officer of a registry who is for the time being authorised by law to administer any oath or to take any affidavit required for any purpose connected with his duties;

"gross value: in relation to any estate means the value of the estate without deduction for debts, incumbrances, funeral expenses or estate duty;

"oath" means the oath required by this Order to be sworn by every applicant for grant;

"personal applicant" means a person other than a trust corporation who seeks to obtain a grant without employing a legal practitioner, and "personal application" has a corresponding meaning;

"Registrar" means the Probate Registrar, being the Chief Registrar of the High Court of the State;

"Registry" or "Probate Registry" means the probate Registry at the State High Court;

"will" includes a codicil and any testamentary document or copy or reconstruction thereof.

(3) Unless the context otherwise requires, any reference in this Order to any rule or enactment shall be construed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment.

ORDER 50 - PROCEEDINGS UNDER THE LEGITIMACY LAW

1. Order "petitioner" means a person applying for a legitimacy declaration, and "petition" has a corresponding meaning.

2. The practice and rules of the Court shall so far as practicable govern all proceedings under the Legitimacy Law, subject nevertheless to the particular provisions of this Order.

3. (1) A petition shall be headed "In the matter of the Legitimacy Law", and “In the matter of (the person to be declared legitimated)", and shall be according to prescribed form, with such variations and additions as the circumstances may require, and shall state among other matters:-

(a) the place and date of the marriage concerned;

(b) the status and residence of each of the parents and the occupation and domicile of the father of the person whose legitimacy the Court is asked to declare:-

(i) at the date of his birth; and

(ii) at the date of the marriage;

(c) whether there are other living issue of the parents of such person as aforesaid and the respective names and dates of the birth of all such issue;

(d) the person (if any) affected by the legitimation of such person as aforesaid and the value so far as is known of the property (if any) thereby involved;

(e) whether any and if so what previous proceedings under the Legitimacy Law, or otherwise with reference to the paternity of such person as aforesaid, or the validity of the marriage leading to his legitimation have been taken in any court;

(f) that there is no collusion.

(2) A petition shall also include an undertaking by the petitioner (if not an infant or person of unsound mind) to pay the costs of the respondents if the Court shall do direct.

(3) If the petitioner is an infant or person of unsound mind, he shall petition by a next friend and the full names, occupation or description, and residence or place or business of the next friend shall be stated in the petition and there shall be lodged by him with the petition an undertaking to be responsible for costs.

4. If the petitioner, does not reside in the State, the petition shall state an address within the State at which the petitioner may be served with any summons, notice, order or court or other process.

5. Where it appeal s on the presentation of a petitioner that the petitioner does not reside in the State, the petition shall not be filed until security for costs, by deposit of money or otherwise, has been given to the satisfaction of the Registrar:

Provided that where the petition is filed through a legal practitioner an undertaking by him, in form to be approved by the Registrar, to be responsible for the cost shall be sufficient.

6. The respondents to a petition shall be the Attorney-General of the State and all persons whose interests may be affected by the legitimacy declaration asked for, and the Court may at any time direct any persons not made respondents to be made respondents and to be served with the petition and affidavit, and may adjourn the hearing of the petition for that purpose on such terms as to costs or otherwise as may be just.

7. The petition shall be accompanied by an affidavit made by the petitioner, or by his next friend (if any) verifying the facts of which he has personal knowledge and deposing as to his belief in the truth of the other facts alleged in the petition, and the affidavit shall be filed with the petition.

8. (1) There shall be filed with the petition as many copies of the petition and the affidavit as there are respondents to be served and also two copies for the use of the Court.

(2) There shall be lodged with the petition every birth, death or marriage certificate intended to be relied upon at the hearing.

9. (1) A copy of the petition and a copy of the affidavit shall be delivered or sent by registered post by the petitioner to the Attorney-General at least two months before the petition is presented or filed.

(2) Any document or notice addressed to the Attorney-General shall be addressed to him at Attorney-General's Chambers, Ministry of Justice, Katsina State.

10. (1) A sealed copy of the petition and affidavit shall, unless the court otherwise directs, be served by a bailiff or by a police constable fifty-six days at least before the hearing on every respondent (other than the Attorney-General) personally and the petition and every copy to be served on a respondent (other than the Attorney-General) shall be endorsed with a notice in the prescribed form.

(2) At least fifty-six days notice of the day whereon the petition will first be heard shall be given by the Registrar to the Attorney-General.

11. (1) A respondent may within twenty-eight days after service of the petition upon him file an answer to the petition.

(2) Every answer which contains matters other than a simple denial of the facts stated in the petition shall be accompanied by an affidavit made by the respondent verifying such other matter as far as he has personal knowledge thereof, and deposing to his belief in the truth of the rest of such other matter.

(3) There shall be filed with the answer as many copies of the answer and the affidavit (if any) as there are other parties to be served and also two copies for the use of the Court.

(4) The Registrar shall within forty-eight hours of receiving them send by post one sealed copy of the answer and the affidavit (if any) to the petitioner, the Attorney-General, and any other respondents.

12. Evidence on the hearing of the petition shall be given orally:

Provided that the court or a Judge in Chambers may, on application made before or at the hearing, for good cause shown, direct that any particular fact or facts alleged in the petition or answer may be proved by affidavit.

13. The Court may make such orders as to costs as it shall think just.

14. A copy of the order made on the hearing of a petition sealed with the seal of the Court shall be supplied by the Registrar to any party to the proceedings on payment of the prescribed fee.

ORDER 51 - PROCEEDINGS IN FORMA PAUPERIS

1. The provisions of this order shall remain in force until statutory provisions are made for legal aid in connection with civil proceedings before the Court and thereupon shall cease to have effect.

2. The Court or a Judge in Chambers may admit a person to sue or defend in forma pauperis, except in bankruptcy proceedings, if satisfied that his means do not permit him to employ legal aid in the prosecution of his case and that he has reasonable ground for suing or defending as the case may be.

3. (1) The application shall, if the Court or a Judge in Chambers so directs, be accompanied by an affidavit signed and sworn by the applicant himself stating that the applicant satisfies the requirements of rule 2 as to his means, and setting forth all the material facts on which he relies in his desire to sue or defend, distinguishing between those which are within his personal knowledge and those which he bases an information and belief, and in the latter case, setting forth the sources of his information and belief.

(2) If the application is, in the opinion of the Court or a Judge in Chambers, worthy of consideration, it shall be referred to a legal practitioner willing to act, and unless such legal practitioner shall certify that in his opinion the applicant has a good cause of action or good ground of defence, as the case may be, the application shall be refused.

4. Court fees payable by a person admitted to sue or defend in forma pauperis may be remitted either in whole or in part as to the Court or a Judge in Chambers may seem right; and a person so admitted to sue or defend shall not, unless the Court otherwise directs, be liable to pay or be entitled to receive any costs.

5. On granting the application the Court or a Judge in Chambers may assign to the applicant any legal practitioner willing to be so assigned, and any legal practitioner so assigned shall not be discharged by the applicant except with leave of the Court or of a Judge in Chambers.

6. (1) Neither the legal practitioner whose opinion is sought nor the legal practitioner assigned to the applicant nor any other person shall except by leave of the Court, or of a Judge in Chambers, take or agree to take or seek to obtain any payment whatsoever from the applicant or any other person in connection with the application or the action taken or defended thereunder.

(2) If the applicant pays or agrees to pay money to any person whatsoever in connection with his application or the action taken or defended thereunder, his application shall be refused or, if already granted, the order granting it shall be rescinded.

(3) If the legal practitioner assigned to the applicant discovers that the applicant is possessed of means beyond those stated in the affidavit, if any, he shall at once report the matter in writing to the Registrar.

7. (1) The Court or a Judge in Chambers may at anytime revoke the order granting the application, and thereupon the applicant shall not be entitled to the benefit of this provision in any proceedings to which the application relates unless otherwise ordered.

(2) Neither the applicant nor the legal practitioner assigned to him shall discontinue, settle or compromise the action without the leave of the Court or of a Judge in Chambers.

8. The Court may order payment to be made to the legal practitioner assigned out of any money recovered by the applicant, or may charge in favour of the legal practitioner assigned, upon any property recovered by the applicant, such sum as in all the circumstances may seem fit

9. Every writ, notice or application on behalf of the applicant, except an application for the discharge of his legal practitioner, shall be signed by his legal practitioner, who shall take care that no application or notice is made or given without reasonable cause.

10. No person shall be permitted to appeal in forma pauperis except by leave of the trial or the appellate court, and then only on grounds of law; but if so permitted the provisions of this Order shall apply mutatis mutandis to all proceedings on the appeal.

ORDER 52 - COSTS

SECURITY FOR COSTS

1.(1) Where, on the application of the defendant to an action or other proceeding in the Court it appears to the court:-

(a) that the plaintiff is ordinarily resident out of jurisdiction ;or

(b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so; or

(c) subject to paragraph (2), that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein; or

(d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation, then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just.

(2) The Court shall not require a plaintiff to give security by reason only of paragraph (1)(c) if he satisfies the Court that the failure to state his address or the misstatement thereof was made innocently and without intention to deceive.

(3) The references in the foregoing rule to a plaintiff and defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counter-claim.

2. Where an order is made requiring any party to give security for costs, the security shall be given in such manner, at such time, and on such terms (if any), as the Court may direct.

COSTS BETWEEN PARTY AND PARTY

3. In every suit the costs of the whole suit, and of each particular proceeding therein, and the costs of every proceeding in the Court, shall be in the discretion of the Court as regards the person by whom they are to be paid.

4. The Court shall not order the successful party in a suit to pay to the unsuccessful party the costs of the whole suit, although the Court may order the successful party, notwithstanding his success in the suit, to pay the costs of any particular proceeding therein.

5. The Court may order any costs to be paid out of any fund or property to which a suit or proceeding relates.

6. When the Court adjudges or orders any costs to be paid, the amount of such costs shall be, if practicable, summarily determined by the Court at the time of making the judgment or order, and named therein.

7. In fixing the amount of costs, the principle to be observed is that the party who is in the right is to be indemnified for the expenses to which he has been necessarily put in establishing his claim, defence or counter-claim, but the Court may take into account all the circumstances of the case.

8. Where the Court orders costs to be paid, or security to be given for costs by any party, the Court may, if it thinks fit, order all proceedings by or on behalf of that party in the same sui t or proceedings, or connected therewith, to be stayed until the costs are paid or security given accordingly, but such order shall not supersede the use of any other lawful method of enforcing payment.

9. When the Court deems it to be impracticable to determine summarily the amount of any costs which it has adjudged or ordered to be paid, all questions relating thereto may either be determined upon taxation by the Court itself or may be referred by the Court to a taxing master and be ascertained by him and approved by the Court.

10. Upon any taxation of costs, the taxing master may, in determining the remuneration to be allowed, have regard, subject to any rule of court, to the skill, labour and responsibility involved.

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

12. If upon the taxation of any bill of costs more than one-sixth is deducted from the amount claimed, the Court may either make no order as to the costs of the taxation or may order the party who filed the bill of costs to pay to the other party or parties the costs of taxation.

13. Where a plaintiff is successful in any action which might have been brought by him in an inferior tribunal, the Court may take into account the smaller costs which would have been involved to the parties to the action if it had been taken in such inferior tribunal and may, in its discretion, grant to the successful plaintiff modified costs or no costs and may grant to any other party such extra costs as the

Court is satisfied such other party has incurred by reason of the action being taken in the Court instead of in the inferior tribunal, unless the Court is of opinion that the action was one which for some special reason it was proper to bring in the Court.

ORDER 53 - FEES AND ALLOWANCES

1. Subject to the provisions of any written law and of the foregoing Orders:

(1) The fees set out in the 1st, 2nd, 3rd and 4th Schedules shall be payable by any person commencing the respective proceedings or desiring the respective services for which they are specified in the said Schedules

(2) The allowances set out in Part II of the First schedule shall be payable to the various categories of witnesses mentioned therein by any person at whose instance they testify:

Provided that a witness who testifies at the instance of the Court acting on its own motion shall be paid out of public revenue.

2. The regulations set out in the Fourth schedule shall be observed by all officers of court concerned with the rendering of services, and or collection of fees payable, under the provisions of the foregoing Order.

APPENDIX

APPENDIX I

Form No. Title

1. General form writ of summons.

2. Specially endorsed writ.

3. Writ for Service out of the jurisdiction or where Notice of writ is to be served out of the jurisdiction.

4. Specially endorsed writ for service out of the jurisdiction.

5. Notice of writ to be served out of the jurisdiction.

6. Form of memorandum for renewed Writ.

7. Request to Minister of External Affairs to transmit Notice of Writ to Foreign Government

8. Request for service abroad.

9. Letter forwarding Request for Substituted Service.

10. Request to Minister of External Affairs to transmit Notice of writ to Foreign Government

11. Forms of entry of Appearance. Memorandum of Appearance.

12. Notice of entry of Appearance, after leave obtained.

13. Entry of Appearance limiting Defense.

14. Affidavit for entry of Appearance as Guardian.

15. Notice of entry of Appearance to Defendant or his Solicitor.

16. Personal service of writ of Summons (within or without the jurisdiction).

17. Affidavit of service: Service on a partner in a firm

18. Service on officer of a corporation.

19. Personal service of Originating Summons requiring Appearance.

20. Substituted service by post to one address.

21. Service of Writ by advertisement and form of advertisement.