

# THE TERRITORY FOR THE SEAT OF GOVERNMENT.

## Court of Petty Sessions Ordinance (No. 2) 1930.

I, ALEXANDER JOHN McLACHLAN, Vice-President of the Executive Council, acting for and on behalf of the Attorney-General, in pursuance of the powers conferred upon me by the *Court of Petty Sessions Ordinance (No. 2) 1930*, do hereby make the following Rules under the said Ordinance, to come into operation forthwith.

Dated this first day of July, 1932.

A. J. McLACHLAN  
for and on behalf of the Attorney-General.

### RULES OF THE COURT OF PETTY SESSIONS.

#### PART I.—PRELIMINARY.

1. These Rules may be cited as the Court of Petty Sessions Short title,  
Rules.

2. These Rules are divided into Parts, as follows:—

Parts,

- Part I.—Preliminary.
- Part II.—Title of Proceedings.
- Part III.—Offices.
- Part IV.—Parties.
- Part V.—Appointment of Guardian *ad litem*.
- Part VI.—Default Summons and Service.
- Part VII.—Discontinuance, Confession, Admission, and Payment into Court.
- Part VIII.—Special Defence.
- Part IX.—Change of Parties.
- Part X.—Examination *de bene esse*.
- Part XI.—Proceedings under Acts of New South Wales continued in force as Laws of the Territory.
- Part XII.—Fees.
- Part XIII.—Motions.
- Part XIV.—Securities.
- Part XV.—Amendment.
- Part XVI.—Affidavits.
- Part XVII.—Enforcement of Orders.
- Part XVIII.—Attachment of Debts and Imprisonment of Fraudulent Debtors.
- Part XIX.—Miscellaneous.

3.—(1.) In these Rules, unless the contrary intention appears—

Definitions,

“Clear days” means that in all cases in which any particular number of days is prescribed for the doing of any act or for any other purpose the same is to be reckoned exclusive both of the first day and of the last day.

“the Ordinance” means the *Court of Petty Sessions Ordinance (No. 2) 1930*.

(2.) Any reference to a Form shall be read as a reference to a Form in the First Schedule to these Rules.

#### PART II.—TITLE OF PROCEEDINGS.

4. The general form of heading and conclusion of all notices and admissions, judgments, orders and warrants, in respect of actions or proceedings upon complaints, shall be in accordance with Forms 1 and 2.

Form of heading and conclusion of notices.

PART III.—OFFICES.

Office hours.

5. The office of the Clerk shall be kept open from ten o'clock in the morning until half-past twelve o'clock in the afternoon and from half-past one o'clock to four o'clock in the afternoon on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays, but shall be closed on any such day as is appointed a public holiday or as is directed by the Attorney-General:

Provided that on every day on which any Court sits, the office shall be kept open from a quarter-past nine o'clock in the morning.

Duties of Clerk.

6. The Clerk shall—

- (a) register all records, orders and convictions of the Court;
- (b) keep an account of all proceedings of the Court;
- (c) take charge, and keep an account, of all Court fees, fines, penalties and costs and other moneys payable or paid into Court, and of all moneys paid out of Court;
- (d) enter an account of all such fees, fines, penalties, costs and moneys in a ledger belonging to the Court to be kept by him for that purpose; and
- (e) in the month of July of each year make out a correct list of all sums of money belonging to suitors in the Court which have been paid into Court and have remained unclaimed for five years before the first day of such month, specifying the names of the parties for whom or on whose account the same were so paid into Court; and a copy of such list shall be put up and remain during the Court hours in some conspicuous part of the Court House and in the Clerk's office.

Documents to be filed and numbered.

7. The Clerk shall file all documents delivered to him in any action or matter in respect of a complaint and shall distinguish them by the number of the complaint.

Affidavit of service of summons to be filed.

8. Any police officer or other person to whom a summons issued in respect of a complaint has been delivered for service shall, within two days after the service of the summons, file with the Clerk an affidavit of service, and if the summons has not been served, the officer or person shall forthwith endorse thereon the reason for the non-service, sign the endorsement and return the summons to the Clerk.

Particulars of warrant of execution to be entered in book.

9. Any police officer charged with the execution of a warrant of execution shall enter in a book, which shall be kept by the Clerk for that purpose, every warrant of execution and shall state from time to time therein what has been done under the warrant; and if the same be not executed within one month from the date of delivery for execution thereof, why it has not been executed; and the Clerk shall at all reasonable times give to a suitor or his solicitor every information which may reasonably be required as to the execution or non-execution of any warrant which has been issued on behalf of such suitor.

Moneys received under warrant of commitment to be paid to Clerk.

10. Any person levying or receiving any money by virtue of a warrant of execution shall, except where he is by law required to retain the same, pay over the money to the Clerk who shall give an acknowledgment in writing for the same.

Notice where levy under warrant of execution not made.

11. Where a police officer charged with the execution of a warrant of execution is for any reason unable to make a levy at the address furnished by the execution creditor, he shall within twenty-four hours after attempting to make a levy, send to the execution creditor a notice in accordance with Form 3.

Return where levy under warrant of execution made.

12. Where any police officer charged with the execution of a warrant of execution has made a levy or sold any interest of a judgment debtor or person against whom an order has been made, he shall make a return in accordance with Form 4, which return shall be annexed to the warrant and transmitted to the Clerk for allowance of the fees and charges of the police officer.

PART IV.—PARTIES.

Infants may sue by next friend.

13. Infants may sue as complainants by their next friends and may defend actions or proceedings upon complaints by their guardians appointed for that purpose; but nothing herein contained shall affect the right of an infant to sue as if he were of full age in respect of any cause of action for wages or piece-work or for work as a servant.

14. Any person of unsound mind, or any incapable person, may sue as complainant by his committee or the person entrusted with the care and management of his property, if any, or, if none, by his next friend; and may defend actions or proceedings upon complaints by such committee or person, if any, or, if none, by his guardian *ad litem*.

Lunatic may sue by his committee.

15. An action or proceedings upon a complaint shall not become abated by reason of the marriage, death or bankruptcy of any of the parties if the cause of action survives or continues and shall not become defective by the assignment, creation or devolution of any estate or title *pendente lite* but the action or proceedings may be continued in the prescribed manner and, whether the cause of action survives or not, there shall be no abatement by reason of the death of any party between the verdict or finding of the issue of fact and the judgment. The order may in such cases be entered up in the prescribed manner notwithstanding the death of any such party.

Marriage, &c., not to abate action or proceeding.

16.—(1.) Where an infant desires to make a complaint by his next friend in respect of any claim, other than a claim for the recovery of any sum of money due to him in respect of any cause of action for wages or piece-work or for work as a servant, the next friend shall at the time of making the complaint either attend at the office of the Clerk and give an undertaking in accordance with Form 5 to be responsible for costs, or transmit such undertaking to the Clerk and, if such undertaking is not given at the office of the Clerk, it shall be attested by a solicitor, a magistrate, or a justice of the peace. The complaint shall not be entered until the undertaking has been given, and on entering into the undertaking, the next friend shall be liable in the same manner as if he himself were the complainant and the action shall proceed in the name of the infant by the next friend and the undertaking shall be filed by the Clerk.

Procedure where infant sues by next friend.

(2.) An order of the Court shall not be necessary for the appointment of a next friend.

(3.) If the infant fails in or discontinues his action or proceeding and does not pay the amount of the costs ordered to be paid by him to the defendant, proceedings may be taken for the recovery of such amount from the next friend as for the recovery of any money ordered by an order made upon a complaint to be paid.

#### PART V.—APPOINTMENT OF GUARDIAN AD LITEM.

17. Where it appears on the face of the proceedings that any defendant to an action upon a complaint is an infant, the following provisions shall apply:—

Appointment of guardian ad litem of infant.

- (a) At any time after the service of the summons and not less than six clear days before the return day, a guardian *ad litem* to the infant may be appointed by the Clerk on application made to him on behalf of such infant on an affidavit in accordance with Form 6 accompanied by a written consent of the proposed guardian to act as such guardian;
- (b) Where the appointment of a guardian *ad litem* is made the Clerk shall forthwith send notice by post of the appointment to the complainant or his solicitor;
- (c) Where an application for the appointment of a guardian *ad litem* is not made on behalf of the infant within the time hereinbefore limited, the Clerk shall on the sixth day before the return day send notice by post to the complainant that an application has not been made;
- (d) The complainant shall thereupon before proceeding further with the action or matter against the infant apply to the Court for an order that some proper person be assigned guardian *ad litem* of the defendant by whom he may appear and defend and if necessary for a postponement of the hearing;
- (e) An application by a complainant shall be made on an affidavit in accordance with Form 7, and notice of the application, together with a copy of the affidavit, shall, three clear days at least before the day in the notice named for hearing the application, be served upon or left at the dwelling house of the person with whom or under whose care the defendant was at the time of service of the summons, and shall also (in the case of a defendant

not residing with or under the care of his father or guardian) be served upon or left at the dwelling house of the father or guardian (if any) of the infant:

Provided that the Clerk may on the application of the complainant, dispense with such last-mentioned service; and

- (f) On the hearing of the application, the Court, if satisfied with the proposed guardian, may appoint him to act as guardian, but if it is not so satisfied, the Court may appoint any other person willing to act as guardian, or in default of such person, the Court may appoint the Clerk to act as guardian and the action or matter shall thenceforth proceed as if a guardian had been appointed on behalf of the defendant. The Court may, if necessary, on the hearing of the application postpone the hearing.

Procedure where defendant in course of proceedings, is found to be an infant.

18. Where it does not appear on the face of the proceedings, but is made to appear in the course of the proceedings, that any defendant to an action or proceeding in respect of a complaint is an infant, the following provisions shall apply:—

- (a) If on any defendant appearing at the hearing, it appears that the defendant is an infant and the defendant names a person as his guardian who then assents so to act, such person shall be appointed guardian accordingly; but if the defendant does not name a guardian, the Court may appoint as guardian any person in Court who is willing to act as guardian; or in default of any such person, the Court may appoint the Clerk to act as guardian; and the action or proceeding shall thenceforth proceed as if the infant had named a guardian and the name of the guardian appointed shall be entered accordingly;
- (b) In any other case, on its being made to appear that any defendant is an infant the action or matter shall not proceed against the defendant until a guardian *ad litem* has been appointed; and
- (c) Such appointment may be made at any time within six days of its being made to appear that the defendant is an infant, on application made on behalf of such defendant in accordance with paragraphs (a) and (b) of the last preceding rule; and if no such application is made within a period of six days, the Clerk shall send notice to the complainant in accordance with paragraph (c) of the same rule; and thereupon the complainant shall, before proceeding further with the action or matter against such defendant, apply for an appointment in accordance with paragraphs (d) to (f) of the same rule. The hearing shall, if necessary, be postponed to allow an application for the appointment of a guardian to be made.

Appointment of guardian *ad litem* to be entered on summons.

19. Where a guardian is appointed under either of the last two preceding rules, the appointment shall be entered on the summons and on all subsequent proceedings.

Guardian *ad litem* not personally liable for costs.

20. A guardian *ad litem* to an infant shall not be personally liable for any costs not occasioned by his personal negligence or misconduct.

Court may set aside order against infant where no guardian *ad litem* appointed.

21. Where an order upon a complaint has been made against a defendant who was at the time an infant without a guardian *ad litem* having been appointed to him, the Court may set aside the order and order a fresh hearing or make such other order as is just. Any person charged with the execution of any warrant or other process against a defendant who ascertains or has reason to believe that the defendant was an infant at the time the order was made against him, shall forthwith report the matter to the Clerk, and the Clerk shall forthwith apply to the Court for a direction as to the execution or stay of execution of the process against the defendant.

Court may require guardian *ad litem* to be appointed.

22. At any time during the proceedings under any order upon a complaint, the Court may, if it thinks fit, require a guardian *ad litem* to be appointed for any infant against whom such order has been made.

Part V. to apply to lunatics, &c.

23. This Part shall apply to defendants who are of unsound mind or incapable.

PART VI.—DEFAULT SUMMONS AND SERVICE.

24. Where judgment for any amount of money has been entered by the Court or the Clerk against a defendant in pursuance of the provisions of section 139 of the Ordinance, the judgment shall have the effect of, and operate and be enforceable as, an order made by the Court upon a complaint for the payment of such amount to the complainant by the defendant, and shall be in accordance with Form 8.

Default judgment.

25. A default summons shall be served within a period of twelve months from its date, but if any defendant therein named shall not have been served therewith, the complainant may before the expiration of twelve months, apply to a Magistrate or the Clerk, and if the Magistrate or the Clerk is satisfied that reasonable efforts have been made to serve the defendant, or that there is some other good reason why service has been delayed, he may issue a successive summons for a further period of twelve months, and so from time to time during the currency of the successive summons, and each successive summons shall be a continuance of the action on and from the day on which the complaint was entered.

Successive default summonses.

26. Where a default summons has not been returned to the Clerk within twelve months from the date of its issue, it shall be struck out unless the time for its service has been extended.

Default summons not returned within twelve months to be struck out.

27. Where, after service of a default summons has been effected on any defendant, notice of intention to defend has not been given by him or leave to defend has not been obtained, and three months shall have elapsed from the expiration of the time for giving the notice of defence, judgment shall not be entered and the summons shall be struck out.

Default summons to be struck out after three months where no action taken.

28. Where a default summons has been served and the defendant has given the prescribed notice of defence thereto, the Clerk shall send by post or otherwise to the complainant, notice of the day on which the hearing will take place.

Hearing.

29. A default summons may, at the request of the complainant, be exchanged for an ordinary summons upon the former being filed in Court within twelve months of its issue.

Default summons may be exchanged for ordinary summons.

30. The total amount of solicitor's or attorney's costs to be entered on a default summons, and where judgment is entered for which judgment shall be given, shall be the amounts respectively set forth in the following scale:—

Costs.

	£	£	£	£
Where the subject matter exceeds ..	5	10	30	100
But does not exceed ..	10	30	100	200
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Amount of Solicitor's or Attorney's costs to be entered ..	0 15 0	1 0 0	1 10 0	2 0 0
Amount of Solicitor's or Attorney's costs for which judgment may be given where judgment is entered pursuant to the non-entry of a defence ..	0 5 0	0 7 6	0 10 0	0 15 0

31. A judgment for any amount of money entered in the Australian Register of Judgments kept by the Clerk in pursuance of the provisions of the *Service and Execution of Process Act 1901-1931*, shall have the effect of, and operate and be enforceable as, an order made by the Court upon a complaint for the payment of such amount, together with an amount equal to the fees paid to the Clerk for entering the judgment in such register, the amount of which fees shall be inserted by the Clerk in the judgment.

Effect of judgment entered in Australian Register of Judgments.

32. Where an ordinary summons upon a complaint has not been served, successive summonses may be issued either before or after the return day without any order of the Court and without entering a new plaint. Successive summonses shall bear the same date and number as the summons first issued and such summonses shall be a continuance of the first summons:

Successive ordinary summonses.

Provided that a successive summons shall not, except by leave of the Court, be issued on a complaint after three months from the date of entry.

PART VII.—DISCONTINUANCE, CONFESSION, ADMISSION, AND PAYMENT INTO COURT.

Notice of discontinuance.

33. If the complainant desires to discontinue an action or matter in respect of a complaint against all or any of the parties thereto, he shall give notice thereof in writing by post or otherwise to the Clerk and to every party as to whom he so desires to discontinue the action or matter. After the receipt of such notice, the party may apply *ex parte* for an order against the complainant for the costs incurred before the receipt of such notice and of attending the Court to obtain the order.

Effect of notice of discontinuance.

34. A discontinuance under the last preceding rule shall not be a defence to any subsequent action, but, if after such discontinuance, a subsequent action is brought for the same or substantially the same cause of action before payment of the costs allowed on such discontinuance, the Court may, if it thinks fit, order a stay of the subsequent action until the costs have been paid or security has been given for payment of them.

Statement of confession or agreement.

35.—(1.) In any complaint whether the defendant has been summoned upon such complaint or not—

- (a) the defendant may sign a statement confessing the amount of the debt or demand for which the complaint has been entered or any part thereof; or
- (b) the complainant and defendant may sign a statement of any agreement upon the amount of such debt or demand and of the terms and conditions upon which the same is to be paid or satisfied,

and may lodge the statement of confession or agreement with the Clerk.

(2.) Any such statement shall be signed in the presence of the Clerk or of a Magistrate, solicitor or a justice of the peace.

Effect of statement of confession or agreement.

36.—(1.) The Clerk shall receive any statement of confession or agreement lodged with him and shall as soon as convenient thereafter send notice of any such confession to the complainant or his solicitor and thereupon it shall not be necessary for the complainant otherwise to prove the debt or demand so agreed upon.

(2.) The Clerk, in case of any statement of confession or agreement, shall upon proof by affidavit of the signature of the defendant (if the statement was not made in the presence of the Clerk) make an order for the payment by the defendant of the debt or demand so confessed or for the part thereof so confessed if the complainant is willing to accept such part in satisfaction of his claim or for the amounts and upon the terms and conditions agreed upon as the case may be and such order shall to all intents and purposes be the same as if it had been an order of the Court.

Delivery of confession to Clerk.

37. Any confession under the last preceding rule shall be delivered to the Clerk five clear days before the return day:

Provided that, in any case where a default summons has been served, the confession shall be filed within the time prescribed for filing the notice of intention to defend the action:

Provided further that at any time before the hearing the defendant may confess and admit the claim in accordance with Form 9, subject however to payment of such costs as the complainant has incurred in consequence of the defendant not having delivered the confession in the prescribed manner.

Confession as to costs.

38. In any case of confession under Rules 35, 36 and 37 of these Rules, the defendant may confess the amount of the complainant's costs beside the Court fees, and an order may be made accordingly, otherwise the complainant may apply *ex parte* to the Court for his costs.

Admission may be filed.

39. Where a defendant desires to admit the truth of the statement in the complaint and to submit to the judgment of the Court thereon, he may in the presence of the Clerk, or of a Magistrate, solicitor, or justice of the peace, sign an admission in accordance with Form 10, of the truth of the statement, and the signature of the defendant thereto shall be verified by affidavit unless signed in the presence of the Clerk. Such admission shall be filed at least five clear days before the return day and the Clerk shall transmit a copy thereof by post to the complainant or his solicitor. The complainant shall not, unless the Court otherwise orders, be allowed any costs incurred after the service upon him of the copy provided that the complainant or his attorney shall be entitled, notwithstanding such admission, to his costs of attending on the day of hearing to obtain an order.

40. Any party to a complaint may give notice in writing to any other party that he admits the truth of the whole, or of any part, of the claim of the other party, and no costs incurred after the receipt of the notice in respect of the proof of any matter admitted therein shall be allowed; but the costs of any steps taken prior to the receipt of the notice may be allowed if the Court is of opinion that they were not taken unnecessarily or prematurely.

Either party may admit truth of claim of other party.

41. Any party to a complaint may, by notice in writing in accordance with Form 11, at any time not later than six clear days before the return day, call on any other party to admit for the purposes of the action or issue only any specific fact or facts mentioned in the notice, and in case of refusal or neglect to admit the same by the delivery of a written admission of the fact or facts as prescribed, signed by the party or his solicitor within three clear days before the return day, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing whatever the result of the action may be, unless at the hearing the Court shall certify that the refusal to admit was reasonable or unless the Court shall at any time otherwise order:

Notice to admit facts.

Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular action, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice:

Provided further that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as it deems just.

42.—(1.) Where a defendant has filed notice of grounds of defence to a default summons only as to part of the complainant's claim, the complainant may on filing a notice admitting the truth of the grounds of defence have judgment entered for the unanswered part of his claim and the prescribed sum for costs.

Effect of filing notice of certain grounds of defence to a default summons.

(2.) The complainant shall thereupon serve a copy of the notice on the defendant and shall also notify him that judgment has been entered.

(3.) In any such case the complainant shall not be at liberty to sue out execution until after the lapse of five clear days from the service of the notices referred to in the last preceding sub-rule.

(4.) The Court may, in its discretion, order the complainant to pay any costs reasonably incurred by the defendant after filing his notice of grounds of defence.

43.—(1.) A defendant in an action or proceeding upon a complaint may pay into Court five clear days before the return day or, where a default summons has been served, within the time prescribed for filing notice of grounds of defence such sum of money as he considers a full satisfaction of the claim of the complainant, together with the complainant's costs up to the time of such payment payable in respect of the amount so paid in unless the payment into Court is made under a defence of tender in which case he may make such payment without costs.

Payment into Court in full satisfaction of claim.

(2.) Notice in accordance with Form 12 hereto of such payment shall be forthwith communicated by the defendant to the complainant or his solicitor and may be sent by post.

(3.) Every such payment shall be taken to admit the claim in respect of which the payment is made, unless the defendant, at the time of paying the money into Court, files with the Clerk a notice in accordance with Form 13, stating that notwithstanding such payment the defendant denies his liability.

(4.) If the complainant elects to accept the sum paid in full satisfaction and gives notice of acceptance in the prescribed manner, the Clerk shall pay over the same to the complainant; but, if notice is not given, such sum of money shall remain in Court to abide the order of the Court.

(5.) If the complainant elects to proceed and recovers a sum not larger than the sum so paid into Court, the complainant shall, subject to the general discretion of the Court as to costs, pay to the defendant the costs incurred by the latter after such payment into Court. An order shall be made for such costs, and they shall be a first charge upon the sum paid into Court.

44.—(1.) The defendant may at any time after the time prescribed by the last preceding rule pay money into Court and notice thereof shall forthwith be given by him to the complainant or his solicitor and may be sent by post but the defendant shall not be permitted except by leave of the Court or with the consent of the complainant to give notice denying liability at the time of payment.

Payment into Court after prescribed time.

(2.) Where money is paid into Court after the time prescribed by the last preceding rule, or where it is in any case paid in without costs, if the complainant does not elect to accept the money so paid in satisfaction, he may proceed as if no such payment had been made, and unless the Court otherwise orders, he shall be entitled to costs on such sum as he may recover whether that sum be less than the sum paid into Court or not.

Notice of acceptance of sum paid into Court.

45.—(1.) If the complainant elects to accept in satisfaction of his claim the sum of money paid into Court by the defendant whether the same has been paid in due time or not, or with or without costs or with or without notice of denial of liability, he shall send to the Clerk and to the defendant by post or leave at the Clerk's office or at the defendant's residence or place of business, a notice in accordance with Form 14, stating such acceptance within such reasonable time before the return day as the time of payment by the defendant has permitted.

(2.) Thereupon the action shall abate except as herein provided, and the complainant shall not be liable to any costs incurred by the defendant after receiving such notice.

(3.) In any such case the Court may, in its discretion, order the defendant to pay such fees and costs beyond the fees and costs (if any) paid into Court by the defendant as the complainant may have properly incurred for work done before the receipt of notice of payment into Court and in attending the Court to obtain the order for the same and for expenses paid to witnesses.

(4.) If the complainant intends to apply for such costs, he shall give notice of his intention in his notice of acceptance of the sum paid in in accordance with Form 14, but where the time of payment into Court by the defendant does not permit of notice of acceptance being given the complainant may apply for such costs without giving such notice.

(5.) In default of such notice of acceptance by the complainant, the action or proceeding shall proceed.

Payment into Court in answer to set off.

46. A complainant may, in answer to a set-off, 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.

Payment into Court of Court fees and costs.

47. Where a defendant pays into Court any sum admitted by him to be due after deducting any amount claimed by him as a set-off, he must pay into Court in respect of the Court fees and costs, the amount of the Court fees and costs, if any, payable in respect of the amount paid in by him.

Payment into Court under a defence of tender.

48. Where a defendant pays money into Court under a defence of tender, the complainant may accept the same in satisfaction of his claim in accordance with Rule 45, but he shall not be entitled to take out of Court the amount so accepted nor to any costs without the order of the Court, and the Court may make such order as it deems just as to the costs of either party, and may order any costs awarded to the defendant to be deducted from such amount and paid to the defendant.

Payment into Court of sum less than sum claimed with notice of denial of liability.

49. Where a defendant pays into Court a sum less than the sum claimed with a notice of denial of liability and the complainant does not accept the same in satisfaction of his claim and give notice of acceptance in accordance with Rule 45, the complainant may nevertheless accept the same at any time before the case is called on and opened, subject to the payment from the sum in Court of any costs which may have been reasonably incurred by the defendant since the date of the payment into Court and which may be allowed by the Court. In any other case, the money shall not be paid out until after the hearing and order and, if the complainant recovers less than the amount paid into Court, the balance of the amount shall be repaid to the defendant, unless the Court otherwise orders, and the Court may order any costs awarded to the defendant to be set-off against the amount recovered by the complainant and, if the defendant succeeds, the whole amount paid into Court shall be repaid to him unless the Court otherwise orders.

Payment into Court by infant or person of unsound mind.

50.—(1.) Where money has been paid into Court in an action by an infant or person of unsound mind or incapable person, it shall not be paid out of Court except in pursuance of an order of the Court; and, in making such order, the Court shall have regard to the interest of the complainant under disability and may make any order it deems just as to the disposal or investment of the money for the use of the complainant.

(2.) This rule shall not apply to any case in which an infant sues as if he were of full age, for money due to him for wages or piece-work or for work as a servant.

51. Money paid into Court whether under a judgment or order or otherwise, shall be paid out on proof to the satisfaction of the Clerk that the person applying for the money is entitled or authorized to receive it.

Payment of money out of Court.

#### PART VIII.—SPECIAL DEFENCE.

52. Where in an action or proceeding in respect of a complaint any person has been improperly or unnecessarily joined as a co-complainant and a defendant has set up a set-off, he may obtain the benefit thereof by establishing his set-off as against the parties other than the co-complainant so joined, notwithstanding the misjoinder of such complainant or any proceeding subsequent thereon.

Special defence in cases of misjoinder of co-complainant.

53. Where the defence to a complaint is a tender, such defence shall not be available unless the defendant pays into Court (which may be without costs) the amount alleged to have been tendered.

In case of tender, amount to be paid into Court.

#### PART IX.—CHANGE OF PARTIES.

54. Where by reason of any event occurring after the commencement of any action or matter upon a complaint, there is any creation, change, transmission, or devolution of the interest, estate or title of the complainant or of the defendant before judgment, or it becomes necessary before judgment that any party should be made a party or that any person already a party should be made a party in another capacity, an order that the person to or upon whom such interest, estate or title has come or devolved shall be substituted for, or made a joint complainant or joint defendant with, the original complainant or the original defendant, or that any person not already a party shall be made a party, or that any person already a party shall be made a party in another capacity, and that the proceedings shall be carried on between the continuing parties and such new party may be obtained before or at the hearing on application to the Court.

Change of parties.

55. An order obtained as in the last preceding rule mentioned shall, unless the Court otherwise directs, be served upon any of the continuing parties, other than the party making the application, if he is one of the continuing parties and also upon each new party other than the party making the application if he is a new party, according to the rules as to the service of summonses at least five clear days before any further proceedings are taken in the action or matter and in the case of a person who is not already a party, a copy of the summons in the action or matter and a notice in accordance with Form 15 shall be annexed to the order and served therewith. The order shall from the time of such service, subject nevertheless to the next following rule, be binding on the persons served therewith, and every person served therewith who is not already a party to the action or matter shall be bound to appear in the same manner as if he had been served with a summons. Such order for adjournment shall be made as is necessary to give effect to this rule.

Order changing parties to be served on other parties.

56. Where any person not already a party to the action or matter is served with such order as is mentioned in the two last preceding rules, that person may, on or before the day fixed for proceeding with the action or matter, apply to the Court to discharge or vary the order.

Discharge or variation of order changing parties.

57. When the complainant or defendant in any action or matter upon a complaint dies and the cause of action survives but the person entitled to proceed fails to proceed, the defendant (or the person against whom the action or matter may be continued) may apply to the Court for an order directing the complainant (or the person entitled to proceed) to proceed within such time as is ordered, and in default of such proceeding, the action or matter may be struck out and the Court may award costs to the defendant or (as the case may be) to the person against whom the action or matter might have been continued in the same manner as in any other cases of striking out.

Action where complainant or defendant dies.

58. This Part shall not apply to any case expressly provided for by section 63 of the *Bankruptcy Act 1924-1932*.

Effect of Bankruptcy Act, s. 63.

#### PART X.—EXAMINATION DE BENE ESSE.

59.—(1.) Where by evidence on oath a Magistrate or the Clerk is satisfied that any person is able to give material evidence or to produce relevant documents relating to any information or complaint pending before the Court, and that the person is absent from the Territory,

Examination of persons de bene esse.

or is expected to die or is unable from sickness or infirmity to attend at the hearing, the Magistrate or Clerk may take in Court or at some convenient place or authorize any justice of the peace or practising barrister or solicitor to take at some convenient place, the examination of such person *de bene esse*.

(2.) Any evidence so taken shall be admissible at the hearing subject to all just exceptions, unless it is proved that the person is at the time of the hearing within a convenient distance of the Court and able to attend.

(3.) In every case, the opposite party shall have sufficient notice of the time and place appointed for taking such examination, and may cross examine such witness in the usual manner.

(4.) The Magistrate or Clerk may either direct the whole costs of taking such evidence to be paid by the party applying or make the same costs in the cause.

Payment of  
conduct money.

60. Any person required to attend for the purpose of being examined or producing any documents shall be entitled to the like conduct money and payment for expense and loss of time as upon attendance at a hearing in Court.

Examiner to be  
supplied with  
documents.

61. Where any person is ordered to be examined before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.

Place of  
examination.

62. The examination shall take place in the presence of the parties, their counsel, and solicitors, and the persons examined shall be subject to cross-examination and re-examination.

Depositions to  
be taken down  
and signed.

63. The depositions taken before any 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 think fit to attend. If the witness refuses 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 particular 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 are objected to and the answers thereto shall be taken down by the examiner in the depositions, and he shall not have power to decide upon the materiality or relevancy of any question.

Act on where  
witness objects  
to answer  
question.

64. If any witness objects to answer any question which is 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 Clerk to be there filed with the depositions and the validity of the objection shall be decided by the Court.

Original  
depositions to  
be filed with  
Clerk.

65. When the examination of any witness before any examiner is concluded, the original depositions authenticated by the signature of the examiner shall be transmitted by him to the Clerk to be filed.

Examiner may  
furnish special  
report to Court.

66. The person taking the examination of a witness under these Rules may, and, if need be, shall make a special report to the Court touching the examination, and the conduct or absence of any witness or other person thereon, and the Court may direct such proceedings and make such order as upon the report it deems just.

#### PART XI.—PROCEEDINGS UNDER ACTS OF NEW SOUTH WALES CONTINUED IN FORCE AS LAWS OF THE TERRITORY.

Proceedings  
under New  
South Wales  
Acts continued  
in force in  
Territo. y.

67. Proceedings in the Court in respect of an information or complaint under the *Deserted Wives and Children Act, 1901*, the *Master and Servants Act, 1902*, or the *Infants Protection Act, 1904*, or any other Act of the State of New South Wales which, by virtue of the provisions of the *Seat of Government Acceptance Act 1909*, has been continued in force as a law of the Territory, shall, subject to the law of the Territory under which such proceedings are instituted, be heard and determined by the Court according, as nearly as may be, to the provisions regulating proceedings before the Court with respect to offences punishable summarily.

#### PART XII.—FEES.

Fees.

68. The fees specified in the Second Schedule to this Ordinance shall be paid in respect of the matters respectively specified therein and shall be paid in advance.

PART XIII.—MOTIONS.

69. Except, where by these Rules or by the Ordinance or by any law in force in the Territory it is provided that application to the Court for an order or judgment shall be made in any other manner, the application shall be made upon motion.

Applications to be made by motion.

70. A motion shall be made upon notice of motion and if the application is not *ex parte*, a copy of the notice shall be served upon the opposite party at least twenty-four hours before the time at which it is stated in the notice the application will be made.

Notice of motion to be served on opposite party.

PART XIV.—SECURITIES.

71. Where, under section 148 of the Ordinance, time is allowed for the payment of any sum or payment of any sum is directed to be made by instalments, and it is ordered that the person liable to pay such sum shall give security with or without sureties for the due payment thereof, such security, if given by an oral or written acknowledgment, shall be in accordance with Form 16.

Forms of security.

72. Where any security is not entered into at the Court House where the conviction or order was made, the person before whom it is entered shall forward it to the Court.

Security to be forwarded to Court.

PART XV.—AMENDMENT.

73. Any application to amend defects and errors in any proceeding or to add or strike out or substitute a complainant or defendant may be made to the Court at any time.

Application to amend defects and errors.

74.—(1.) An action upon a complaint shall not be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in any action deal with the matter in controversy as far as regards the rights and interests of the parties actually before it. The Court may, at any stage of the proceedings either upon or without the application of either party and on such terms as it deems just, order that the name of any party improperly joined, whether as complainant or defendant, be struck out and that the name of any party, whether as complainant or defendant, who ought to have been joined or whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon, and settle all the questions involved in, the action or proceeding, be added.

Misjoinder or non-joinder of parties.

(2.) A person who, under these Rules, may sue as a complainant only by his next friend, shall not be added as a complainant suing without a next friend or as the next friend of any such person without his written consent thereto.

75. Where a defendant in an action upon a complaint is substituted, an order shall be drawn up and a copy thereof shall be served on the defendant together with a copy of the summons and a notice in accordance with Form 17, as to the day upon which he is to attend at the Court according to the Rules applicable to the service of the original summons in the action.

Order adding defendant.

76. A complainant may file and deliver amended particulars of demand and a defendant may deliver an amended notice of any special defence set up or intended to be set up by him at any time before the return day without obtaining any order for the purpose, but the Court at the hearing, if satisfied that the opposite party has not had a reasonable opportunity of preparing his case to meet any new matter introduced by such amendment or for any cause which it deems sufficient, may disallow the amendment or may adjourn the hearing and make such order as to costs as it thinks fit.

Amended particulars of demand and amended notice of special defence may be filed.

77. The complainant may, at any time before an action or matter is called on for hearing, or in opening his case when called on, abandon any part of his claim and such abandonment shall be entered on the complaint provided that, if the defendant succeeds, he shall be allowed costs on the scale which would have been applicable to the amount originally claimed and also any costs properly incurred by him in respect of that part of the complainant's claim which is abandoned unless the Court otherwise orders.

Abandonment of any part of claim.

PART XVI.—AFFIDAVITS.

78. All affidavits to be used in the Court shall be expressed in the first person of the deponent and in direct narration and be drawn up in paragraphs and numbered and shall be endorsed with the year and number of the action, the surnames of the parties, the name of the deponent and date when sworn and the general form of heading and conclusion and indorsement of such affidavits shall, except where otherwise provided by these Rules, be in accordance with Form 18.

Form of affidavit.

**Affidavit not to be sworn before party's solicitor.** 79. An affidavit shall not be filed which has been sworn before any person who was, at the time of the swearing of the same, the solicitor acting for the party on whose behalf the affidavit is to be used or the agent, correspondent, partner or clerk of such solicitor, or who is the party himself.

**Affidavit to be explained to blind or illiterate persons.** 80. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind the officer shall certify in the jurat that the affidavit was read to the deponent and that the deponent seemed to understand it. No such affidavit shall be used in evidence in the absence of this certificate unless the Court is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

**Court may receive affidavit notwithstanding defect.** 81.—(1.) The Court may receive any affidavit sworn for the purpose of being used in any action or matter notwithstanding any defect by misdescription of parties or otherwise in the title or jurat or other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

(2.) Affidavits to be used in the Court shall and may be sworn and taken before a magistrate, the Clerk, a commissioner for affidavits or a justice of the peace.

#### PART XVII.—ENFORCEMENT OF ORDERS.

**Date of warrant of execution.** 82. A warrant of execution shall bear the date of the day on which it is issued and shall continue in force for twelve months from such date or for such shorter period as is prescribed or as the Court directs.

**Fees to be lodged before warrant is executed.** 83. A person to whom a warrant of execution has been delivered for execution shall not be required to execute the same until the judgment creditor deposits with the Clerk a sum of money sufficient to cover the fees for executing the same including the fees for making the levy and keeping possession of the goods until sold and, if in any case the amount so deposited proves to be insufficient, the person may withdraw from possession if the execution creditor refuses after demand made by such person to so deposit such further sum as is found necessary.

**Conditional order suspending execution of warrant not to be acted upon.** 84. A person charged with the execution of any process shall not be required to act upon any conditional order for suspending its execution but only upon an absolute order in writing to that effect which order may be at any time withdrawn by the same party lodging with the person a written instruction to execute the said process.

**Endorsement of amounts to be levied on warrant.** 85. The Clerk shall, on issuing a warrant of execution, endorse on the warrant the amount to be levied disintinguishing the amount adjudged to be paid and the amount of the costs of issuing the warrant; and shall prepare and deliver to the person charged with the execution of the warrant a notice in accordance with Form 19, and the person upon levying shall deliver such notice to the party against whom the execution has issued or leave the same at the place where the execution is levied.

**Debtor may select goods to be sold first.** 86. Where the debtor alleges that his goods are more than sufficient to satisfy the execution he may point out to the person executing the warrant what part or parts he will have sold first; but if the same be not sufficient to satisfy such execution then the person making the execution shall proceed to sell the whole of the goods or such other parts thereof as are sufficient to satisfy the execution including all costs.

**Sales by auction.** 87. All goods sold in execution shall be sold publicly and for ready money to the highest bidder at or as near the place where the same were levied as is convenient for the sale thereof and the person charged with the execution of the warrant shall affix notice of the sale upon or near the door of the house or the place where the sale is made four days at least before the day appointed for the sale.

**Removal of goods outside town to town for sale.** 88. Where any goods are levied upon in a place not situated in or part of any town, the person making the levy shall if required by the party whose goods are taken and on payment of all expenses of removal by such party, remove the goods so levied upon to the next town for sale; and, in any case of a sale not being conducted in a town, a written notice of the intended sale shall be posted at the Court House or some convenient public place four days prior to the sale taking place.

88. Where goods taken in execution are removed, the person executing the warrant shall give to the execution debtor a sufficient inventory of the goods so removed and shall also give to the execution debtor notice in writing of the time when and place where such goods will be sold. The inventory and notice shall be given to the execution debtor personally or sent to him by post to his place of residence if known, or if the residence is not known, they shall be left at or sent by post addressed to the execution debtor at the place from which the goods are removed. The inventory shall be given or sent at the time of, or immediately after, the removal of the goods and the notice shall be sent at least twenty-four hours before the time fixed for the sale.

Inventory to be handed to debtor.

89. Where goods are sold in execution, the person charged with the execution of the warrant shall, on the request of the execution debtor, furnish him with a detailed account in writing of the sale and of the application of the proceedings thereof.

Account sales to be supplied to debtor.

90. A possession fee shall not be payable where the execution is paid out at the time of the levy, but if the person making the levy shall remain in possession more than one hour and the execution shall be paid out on the day of levy the possession fee for that day shall be charged.

Possession fee, when payable.

91. Where—

- (a) any change has taken place after judgment upon a complaint by death or otherwise in the parties entitled to take proceedings to enforce the judgment or order or in the parties liable to such proceedings;
- (b) a husband is entitled or liable to proceedings upon a judgment or order upon a complaint for or against a wife; or
- (c) six years have elapsed since the date of the judgment or order upon a complaint,

Issue of process where death in parties occurs after judgment, &c.

the party alleging himself to be entitled to enforce the judgment or order may apply upon affidavit to the Court for leave to issue the necessary process accordingly, and the Court may, if satisfied that the party so applying is entitled to issue such process, make an order to that effect or may order that any issue or question necessary to determine the rights of the parties be tried and determined in an action to be commenced by complaint and summons in the ordinary way, and in either case, the Court may impose such terms as to costs or otherwise as it deems just.

#### PART XVIII.—ATTACHMENT OF DEBTS AND IMPRISONMENT OF FRAUDULENT DEBTORS.

92. Summonses under section 170 or section 181 of the Ordinance may be issued by a Magistrate or the Clerk at any time on the *ex parte* application of the person entitled to enforce the order.

Summonses under ss. 170 or 181 of Ordinance.

93. Where a person has been duly summoned to appear before the Court in pursuance of the provisions of section 170 or section 181 of the Ordinance and fails so to appear the Court may order him to appear before it to show cause why he should not be dealt with for disobeying the summons.

Failure to appear when summoned.

94. A summons under section 170 or section 181 of the Ordinance or an order made under the last preceding rule shall be served on the person to whom it is directed in accordance with the provisions of the Ordinance relating to the service of summonses issued upon informations.

Service of summons.

95. If a person who has been ordered in pursuance of Rule 94 of these Rules to appear before the Court,

Failure to obey summons.

- (a) duly appears before the Court in obedience to the order but is unable to satisfy the Court that there was a just cause or reasonable excuse for his failure to obey the summons; or
- (b) does not appear before the Court in obedience to the order and proof of the service of the order upon him and of the payment to him of a sum reasonably sufficient to cover his travelling expenses to and from the Court is furnished,

such person shall be subject to all the penalties to which a witness duly summoned to attend at the Court and failing to appear at the time appointed would be liable and the Court may, where such person has appeared in obedience to the order whether he satisfies the Court

that there was a just cause or reasonable excuse for his failure to obey the summons or otherwise order that he be examined then or at a time and place to be appointed by the Court and where he has not appeared in obedience to the order and the proof hereinbefore mentioned in this rule is furnished issue its warrant to bring and have that person before the Court to be examined at a time and place to be mentioned in the warrant.

Payment of reasonable travelling expenses to person summoned.

97. Where the person to whom a summons under section 170 or section 181 of the Ordinance or an order under Rule 94 of these Rules is directed does not reside within a mile of the place at which in the summons or the order he is summoned or directed to appear, payment or a tender of payment of a sum reasonably sufficient to cover travelling expenses shall be made at the time of effecting service.

PART XIX.—MISCELLANEOUS.

Clerk may sign for solicitor.

98. Any documents whatsoever to which a signature of the solicitor on the record or his agent is required shall be equally valid if signed by a clerk of the solicitor or agent respectively.

Forms may be altered.

99. The forms in the First Schedule or forms to the like effect may be used for the purpose to which they are respectively applicable, and instruments in these forms shall be deemed sufficient but those forms or any of them may be altered for the purpose of adapting them to circumstances.

THE SCHEDULES.

THE FIRST SCHEDULE.

FORM 1.

Rule 4.

*Court of Petty Sessions Ordinance (No. 2) 1930.*

GENERAL FORM OF HEADING AND CONCLUSION OF ALL NOTICES AND ADMISSIONS.

Territory for the Seat of Government }  
 Court of Petty Sessions } No. of complaint of 19  
 To wit. }

Between—

A. .... B. ....  
 Complainant.  
 and  
 C. .... D. ....  
 Defendant.

Dated this day of , One thousand nine hundred and

FORM 2.

Rule 4.

*Court of Petty Sessions Ordinance (No. 2) 1930.*

GENERAL FORM OF HEADING AND CONCLUSION OF JUDGMENTS, ORDERS AND WARRANTS.

Territory for the Seat of Government }  
 Court of Petty Sessions }  
 To wit. }

Between—

A. .... B. ....  
 Complainant.  
 and  
 C. .... D. ....  
 Defendant.

Dated the day of 19

By the Court.

Clerk of Petty Sessions.

Rule 11.

FORM 3.

*Court of Petty Sessions Ordinance (No. 2) 1930.*

NOTICE WHERE LEVY UNDER WARRANT OF EXECUTION NOT MADE.

Take notice that I have not made a levy under the warrant of execution against the defendant's goods for the following reasons:—

.....  
 Officer of Police.

To the complainant.

FORM 4.

Rule 12.

Court of Petty Sessions Ordinance (No. 2) 1930.

RETURN WHERE LEVY MADE UNDER WARRANT OF EXECUTION.

A.B. v. C.D.

Return to annexed warrant of execution from to  
the Clerk of the Court of Petty Sessions holden at Canberra.

No. of Plaintiff 19  
No. of Warrant

	£	s.	d.	£	s.	d.
Gross amount levied or received ..						
Costs of execution and payments in deduction ..						
For fee for levy ..						
Mileage ..						
Man in possession.....days ..						
Conveyance for keeper ..						
Meals for keeper ..						
For rent to landlord as per receipt attached ..						
Extra possession under claim..... days ..						
Extra possession meals for keeper ..						
Advertisement in on 19....						
Stamps and Telegrams ..						
Net amount to be paid to the credit of the execution creditor ..				£		

I hereby certify that the above charges are correct and that the sum of £ was paid into Court this day of

.....  
Clerk of Petty Sessions.

FORM 5.

Rule 16.

Court of Petty Sessions Ordinance (No. 2) 1930.

UNDERTAKING BY NEXT FRIEND AS TO COSTS.

I, the undersigned E.F., being the next friend of A.B., who is an infant and who is desirous of entering a complaint in the Court of Petty Sessions against C.D., of hereby undertake to be responsible for the costs of the said C.D. of and incidental to such complaint in manner following:

Namely, if the said A.B. fail to pay to the said C.D. when and in such manner as the Court shall order all such costs of and incidental to such complaint and the proceedings in connexion therewith as the Court shall direct him to pay to the said C.D. I will forthwith pay the same to the said C.D.

.....  
Signature of Next Friend.

FORM 6.

Rule 17.

Court of Petty Sessions Ordinance (No. 2) 1930.

AFFIDAVIT ON APPLICATION ON BEHALF OF INFANT FOR APPOINTMENT OF GUARDIAN AD LITEM.

I, , make oath and say as follows:—

1. The summons herein was served on the defendant C.D. on the day of
2. The defendant C.D. is an infant.
3. E.F. of is a fit and proper person to act as guardian *ad litem* of the above-named defendant C.D. and has no interest in the matters in question in this action adverse to that of the defendant C.D. and the consent of the said E.F. to act as such guardian is hereto annexed.

Sworn at this day of  
One thousand nine hundred and  
Before me—

FORM OF CONSENT TO BE ANNEXED TO AFFIDAVIT.

I, E.F., of consent to act as guardian *ad litem* of C.D. an infant a defendant in this action.

.....  
Signature of Guardian.

## FORM 7.

Rule 17.

*Court of Petty Sessions Ordinance (No. 2) 1930.*  
**AFFIDAVIT IN SUPPORT OF APPLICATION BY COMPLAINANT FOR  
 APPOINTMENT OF GUARDIAN AD LITEM TO DEFENDANT.**

I, \_\_\_\_\_ of \_\_\_\_\_ make oath and say as follows:—

1. I am informed by the Clerk of the Court that the summons herein was on the \_\_\_\_\_ day of \_\_\_\_\_ served on the defendant C.D. who is an infant and that no application has been made to the Court on behalf of the said C.D. for the appointment of a guardian *ad litem*.
2. G.H. of \_\_\_\_\_ is a fit and proper person to act as guardian *ad litem* of the above-named defendant C.D. and has no interest in the matters in question adverse to that of the defendant C.D.
3. The consent of the said G.H. to act as such guardian is hereto annexed.

Sworn at this \_\_\_\_\_ day of \_\_\_\_\_  
 One thousand nine hundred and \_\_\_\_\_  
 Before me—

## FORM OF CONSENT TO BE ANNEXED TO AFFIDAVIT.

I, G.H. of \_\_\_\_\_ do consent to act as guardian *ad litem* of C.D. an infant a defendant in this action.

## FORM 8.

Rule 24.

*Court of Petty Sessions Ordinance (No. 2) 1930.*

## DEFAULT JUDGMENT.

It is this day adjudged that the complainant do recover against the defendant the sum of \_\_\_\_\_ for debt and \_\_\_\_\_ for costs.  
 And it is ordered that the defendant do pay the same to the plaintiff.

## FORM 9.

Rule 37.

*Court of Petty Sessions Ordinance (No. 2) 1930.*

## CONFESSION OF CLAIM OR PART OF CLAIM.

I, the defendant, do hereby confess and admit that the sum of \_\_\_\_\_ the amount claimed [or the sum of \_\_\_\_\_ being part of the amount claimed] by the complainant in this action, is due to him from me.

## FORM 10.

Rule 39.

*The Court of Petty Sessions Ordinance (No. 2) 1930.*

## DEFENDANT'S ADMISSION.

I, the undersigned defendant, admit the truth of the allegations in the complaint, and hereby submit to the judgment of the Court thereon.

## FORM 11.

Rule 41.

*The Court of Petty Sessions Ordinance (No. 2) 1930.*

## NOTICE TO ADMIT FACTS.

Take notice that the complainant [or the defendant] herein requires the defendant [or the complainant] to admit for the purposes of this action or proceeding only, the several facts respectively hereunder specified; and the defendant [or the complainant] is hereby required not later than three clear days before the return day, to admit the several facts, saving all just exceptions to the admissibility of such facts as evidence in the action or proceeding.

The facts, the admission of which is required, are—

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
 To E.F., solicitor for the defendant or plaintiff.

## FORM 12.

Rule 43 (2).

*The Court of Petty Sessions Ordinance (No. 2) 1930.*

## NOTICE OF PAYMENT INTO COURT IN FULL SATISFACTION OF CLAIM.

Take notice that the defendant has paid into Court a sum of £ \_\_\_\_\_ in full satisfaction of your demand in this action, together with your costs herein.

Defendant [or defendant's solicitor].

To the complainant.

FORM 13.

The Court of Petty Sessions Ordinance (No. 2) 1930.

NOTICE OF PAYMENT INTO COURT WITH DENIAL OF LIABILITY.

Take notice that the above-named defendant [or C.D., one of the above-named defendants] has paid into Court the sum of £ in satisfaction of the whole of the complainant's claim herein [or of so much of the complainant's claim as relates to (here describe the part of the claim or cause of action in respect of which the payment is made)] together with the sum of £ for costs.

And further take notice that notwithstanding such payment the defendant denies his liability.

Defendant [or defendant's solicitor].

To the Clerk of the Court, and to the complainant.

Rule 45.

FORM 14.

The Court of Petty Sessions Ordinance (No. 2) 1930.

NOTICE OF ACCEPTANCE OF SUM PAID INTO COURT.

Take notice that the complainant accepts the sum of £ paid by the defendant into Court in satisfaction of the claim in respect of which it is paid in.

[But the complainant will apply to the Court on the day of at o'clock in the noon for an order directing the defendant to pay the costs properly incurred by the complainant before the receipt of notice of payment into Court, and in attending the Court to obtain such order].

Complainant [or complainant's solicitor].

To the Clerk of the Court and to the defendant.

Rule 55.

FORM 15.

The Court of Petty Sessions Ordinance (No. 2) 1930.

ORDER CHANGING PARTIES.

I hereby give you notice that by an order of this Court dated the day of 19 a copy of which is hereunto annexed together with a copy of the summons in this action it was ordered that the proceedings in this action should be carried on between the complainants [name the continuing complainants] and the defendants [name the continuing defendants] and you X.Y. as [state the character in which the new party is added].

And further take notice that the further proceedings in this action have been adjourned to the day of at o'clock in the noon and that if you do not attend at the Court at upon the day and at the hour above-mentioned either in person or by your solicitor such order will be made or proceedings taken as the Court may think fit.

And further take notice that at or before the hearing you may apply to the Court to discharge the said order of the day of 19

Rule 71.

FORM 16.

The Court of Petty Sessions Ordinance (No. 2) 1930.

SECURITY.

Territory for the Seat of Government.

To wit—

[Name in full] hereinafter called the defendant was this day [or on the day of ] by a certain conviction of the Court of Petty Sessions at Canberra in the Territory for the Seat of Government adjudged to pay the sum of [by instalments of for every days the first instalment to be paid on ] and to give security for the due payment thereof. Now therefore the said and his sureties of in the said

Territory and of in the said Territory hereby undertake that the said will pay the sum adjudged at the time and in manner thereby directed and hereby severally acknowledge themselves bound to forfeit and pay to the sum of in case the said fails to perform this undertaking.

(Sgd.) [When not taken orally.]

Defendant.  
Sureties.

Taken [orally] before me this day of 19

Magistrate.

FORM 17.

*The Court of Petty Sessions Ordinance (No. 2) 1930.*

ORDER ADDING DEFENDANT.

It is ordered that E.F. of \_\_\_\_\_ be added as a defendant in this action and that the hearing of this action be adjourned to the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon.

FORM 18.

*Court of Petty Sessions Ordinance (No. 2) 1930.*

GENERAL FORM OF HEADING AND CONCLUSION OF AFFIDAVITS.

Territory for the Seat of Government }  
 Court of Petty Sessions } No. of complaint \_\_\_\_\_ of 19\_\_\_\_  
 To Wit. }  
 Between—  
 A. .... B. ....  
 Complainant.  
 and  
 C. .... D. ....  
 Defendant.

I, \_\_\_\_\_ of [state address and occupation] make oath and say—

1. ....
2. ....

Sworn at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_  
 One thousand nine hundred and \_\_\_\_\_  
 Before me—

FORM 19.

*Court of Petty Sessions Ordinance (No. 2) 1930.*

NOTICE TO BE SENT WITH ALL WARRANTS OF EXECUTION AGAINST THE GOODS.

Take notice that the warrant of execution against your goods on the judgment obtained against you in this action is for the following amount:—

	£	s.	d.
Amount for which judgment was obtained			
Since paid by you			
Remaining due on judgment			
Costs of this warrant			
Total amount to be levied			

The costs of keeping possession of such of your goods as may be seized are Ten shillings each day for each person necessarily engaged in keeping possession.

If you pay the amount to be levied within an hour of the entry of the person charged with the execution of the warrant you will not be required to pay to him any further sum than the amount directed to be levied as stated above, and the levy fee of £

Your goods are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at your request.

THE SCHEDULES—continued.  
THE SECOND SCHEDULE.

Rule 68.

Court of Petty Sessions Ordinance (No. 2) 1930.

FEEES PAYABLE TO CLERK OF PETTY SESSIONS.

1. PROCESS TO INITIATE PROCEEDINGS AND TO BRING PARTIES BEFORE THE COURT.

	s.	d.
1. Preparing warrant to apprehend .. .. .	2	0
2. Execution of warrant to apprehend .. .. .	2	0
3. Preparing warrant on disobedience of summons .. .. .	2	0
4. Execution of warrant on disobedience of summons .. .. .	2	0
5. Preparing search warrant .. .. .	2	0
6. Execution of search warrant .. .. .	2	0
7. Preparing application to vary order for maintenance .. .. .	1	6
8. Entering application for hearing .. .. .	1	6
9. Order for hearing .. .. .	1	6
10. Notice of hearing copy and service .. .. .	1	6
11. Filing notice of motion on <i>ex parte</i> application .. .. .	2	0

2. PROCESS TO OBTAIN THE ATTENDANCE OF A WITNESS.

	s.	d.
1. Summons of a witness, and copy for service (each witness) .. .. .	1	6
2. Warrant for witness .. .. .	2	0
3. Execution of warrant .. .. .	2	6

3. PROCESS TO ENFORCE ADJUDICATION.

	s.	d.
1. Copy minute of order for service .. .. .	1	6
2. Warrant of commitment in default of payment of penalty or money .. .. .	1	0
3. Execution of warrant of commitment .. .. .	2	0

4. PROCESS IN RESPECT OF PROCEEDINGS UNDER THE CONTRACTORS DEBTS ACT, 1897, OF THE STATE OF NEW SOUTH WALES IN ITS APPLICATION TO THE TERRITORY.

	s.	d.
1. Every certificate and every notice in the form of the Second, Third, and Fifth Schedules to the Act with copies for service .. .. .	1	6
2. Preparing affidavit in support of application for leave to serve notice of action under section fourteen .. .. .	2	0
3. Filing affidavit .. .. .	2	6

5. COMPLAINTS.

	s.	d.
1. Preparing notice of intention to defend or particulars of set-off or excuse .. .. .	2	0
2. Filing .. .. .	1	6
3. Warrant of execution including application therefor and filing same .. .. .	3	0
4. Deposition of claim .. .. .	1	6
5. Preparing application for examination of judgment debtor .. .. .	2	0
6. Filing application for examination of judgment debtor .. .. .	1	6
7. Order for examination of judgment debtor .. .. .	2	0
8. Garnishee order with copy for service .. .. .	2	0
9. Judgment for complainant (default judgment) .. .. .	1	6
10. Warrant of attachment .. .. .	2	6
11. Filing any affidavit document or notice not hereinbefore provided for .. .. .	1	6
12. Preparing any document not hereinbefore provided for .. .. .	1	6
13. Inspection of record one matter only .. .. .	1	0
14. Copy of certificate or judgment or order .. .. .	2	0
15. Exchanging a default summons for an ordinary summons .. .. .	1	6
16. Issuing every concurrent or successive ordinary or default summons .. .. .	1	6

FEEES TO BE TAKEN FOR SERVICE OF PROCESS OR EXECUTION OF WARRANTS BY OFFICER OF POLICE OR OTHER PERSONS CHARGED WITH THE EXECUTION OF WARRANTS.

	s.	d.
1. For service or attempted service of any process and making affidavit of service if service made .. .. .	3	0
2. For every mile or fraction of a mile over two miles from the Court House he travels to serve summons or execute other process, but not counting the return journey .. .. .	2	0
3. For possession under and warrant of execution per diem .. .. .	10	0
4. For making a levy .. .. .	4	0
5. For conducting every sale under a warrant of execution .. .. .	10	0
6. Collection fee where amount of warrant paid on demand .. .. .	2	0
7. For executing warrant of attachment .. .. .	5	0