

RULES OF CIVIL PROCEDURE. ^{(1) (2)}

Rules of the Central Court for Regulating Civil Procedure made under "The Courts and Laws Adopting Ordinance of 1888."

PRELIMINARY.

1. These rules may be cited for all purposes as the "*Rules of Civil Procedure.*"⁽¹⁾

(1) The *Rules of Civil Procedure* (made under *The Courts and Laws Adopting Ordinance of 1888* as affected by the *Central Court Ordinance, 1925*) comprise the original *Rules of Civil Procedure*, as amended by the other Rules referred to in the following Table:—

TABLE.

PART I.—RULES MADE BY THE CHIEF MAGISTRATE.

Description.	Date on which made by Chief Magistrate.	Date on which approved by Legislative Council.	Date on which published in British N.G. Govt. Gaz.	Date on which took effect.
<i>Rules of Civil Procedure</i> ^(a)	23.9.1889	24.9.1889	23.11.1889	23.11.1889 (British N.G. Govt. Gaz. of 23.11.1889)

(a) Continued in force in the Territory of Papua by Section 6(1) of the *Papua Act, 1905*.

PART II.—RULES MADE BY THE CHIEF JUDICIAL OFFICER.

Description.	Date on which made by Chief Judicial Officer.	Date on which approved by Legislative Council.	Date on which published in Papua Govt. Gaz.	Date on which took effect.
<i>Rules of the Central Court for Regulating Civil Procedure and the Admission of Barristers and Solicitors</i>	(Undated)	13.1.1910	2.2.1910	2.2.1910 (Papua Govt. Gaz. of 2.2.1910)
<i>Probate and Administration Rules</i> ^(b)	5.5.1914	(b)	4.6.1914	4.6.1914 (Papua Govt. Gaz. of 4.6.1914)

(b) Made under the *Probate and Administration Ordinance, 1913-1940*. Under this Ordinance approval by the Legislative Council was not required.

PART III.—RULES MADE BY A JUDGE OF THE SUPREME COURT.

Description and number and year.	Date on which made by a Judge of the Supreme Court.	Date on which approved by Legislative Council.	Date on which published in Papua Govt. Gaz.	Date on which took effect.
<i>Amending Rules</i> (S.R. 1941, No. 15)	3.9.1941	17.10.1941	25.10.1941	25.10.1941 (Papua Govt. Gaz. of 25.10.1941)

(2) These Rules have been affected by the *Rules for Regulating Civil Procedure (Writs of Summons)* made by the Chief Magistrate on 23.10.1899, published in British N.G. Govt. Gaz. of 16.12.1899, and printed on p. 624, and also by the *Rules of the Central Court for Regulating Civil Procedure* made by the Chief Judicial Officer on 8.3.1906, published in British N.G. Govt. Gaz. of 31.3.1906, and printed on p. 625.

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2. In the construction of these rules unless there is anything in the subject or context repugnant thereto the several words hereinafter mentioned or referred to shall have or include the meanings following—

“Court” shall mean the Central Court⁽³⁾ of the Possession of British New Guinea or the Chief Magistrate⁽⁴⁾ of such Court.

“Judgment” shall include decree or decretal order.

“Service” shall include substituted service or any other mode of service.

“Sheriff” shall include any officer duly authorized to serve writs or other documents or to execute process.

3. If at any time there shall be no officer appointed to perform any duty in connection with the Civil jurisdiction of the Court or if there be an officer appointed but his services are not available the Chief Magistrate⁽⁴⁾ may perform any such duty himself or empower any other person whom he may see fit to perform it.

4. Whenever anything is required to be proved by any party to any action or proceeding the same may be proved by the evidence of any person if such evidence be the best evidence that can be furnished to the Court.

5. Whenever any document instrument or paper or any endorsement or memorandum or entry on any document instrument or paper or in any book is required to be signed or sealed by any party to any action or proceeding and whenever anything is required to be done by any party to any action or proceeding the same may unless the Court directs or requires some particular person to sign or seal or do the thing himself be signed sealed or done by any duly qualified representative of the party.

UNIFORMITY OF PROCEDURE.

6. All actions and suits that have hitherto been commenced by writ bill information citation or otherwise shall be commenced by a proceeding to be called an action and all other proceedings in and applications to the Court shall be made by motion or if the Court shall in any case permit by summary application without previous formality.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(4) See Section 4 of the *Central Court Ordinance*, 1925.

WRITS OF SUMMONS.⁽⁵⁾

7. Every action shall be commenced by a Writ of Summons in the form contained in the Schedule hereto or as near thereto as circumstances admit of. The Writ shall bear date of the day on which it was issued and shall be sealed. Every Writ shall be issued in duplicate one duplicate for service the other for filing after service has been effected.

8. Every Writ shall set out the names place of residence and occupation of the plaintiff and (so far as the same are known to the Plaintiff) of the defendant and every Writ shall specify the time within which the defendant if he wishes to do so may file and serve a Notice of Defence.

9. If the plaintiff or the defendant be a body Corporate or a Company or a Firm the name of the Corporation Company or Firm shall be deemed to properly designate the name of and their place of business shall be deemed the residence of the plaintiff or defendant as the case may be and in the case of a Company or Corporation their occupation need not be set out.

10. The plaintiff shall also in all cases indorse on the Writ the name of some place of abode or business which must not be more than one mile from the Court House prefixing to such indorsement the words "Address for Service."⁽⁶⁾ All proceedings in the same action that require to be served on the plaintiff shall be deemed to have been duly served if left for the plaintiff at such place on any day except Saturday Sunday or a Court holiday between the hours of nine in the morning and four o'clock in the afternoon and if the day be a Saturday between the hours of nine in the morning and one in the afternoon.

PLAINTIFF'S CLAIM.

11. The plaintiff's claim shall be indorsed on the Writ of Summons and shall be headed "Plaintiff's Claim."

12. The claim need not be drawn up or worded in any prescribed or precedent form or manner but it shall set out as fully and precisely as possible what it is that the plaintiff claims or wants.

13. If the claim be to obtain possession of any land or to have any dispute as to any title or interest in any land decided the name situation area and boundaries of the land (unless the same be the whole of an island) must be accurately described in the claim.

(5) For particulars of rules regulating the issue of writs by a Judge of the Supreme Court, see the *Rules for Regulating Civil Procedure (Writs of Summons)*, printed on p. 624.

(6) See Rule 3 of the *Rules for Regulating Civil Procedure (Writs of Summons)*, printed on p. 624.

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14. If the claim be in respect of any matter for which detailed accounts are usually rendered by a creditor to a debtor full details of account must be given. Such details need not be inserted in the claim itself but may if referred to in the claim be written on a separate paper.

15. There shall be no limit to the number or nature of separate or different causes of action that may be inserted in one claim by the same plaintiff against the same defendant.

16. It shall not be necessary to claim any costs or expenses in a Writ of Summons.

17. The claim shall be signed by or on behalf of the plaintiff.

18. The Court may at any time amend alter or add to a claim in any way that it shall think fit or it may at any time order or direct that any cause of action or any portion of a claim must if the plaintiff wishes to proceed with it be proceeded for in a fresh action.

SERVICE OF WRITS OF SUMMONS.

19. A Writ of Summons so far as circumstances will admit of may be served in any of the ways in which by the Rules of the District Courts of the Colony of Queensland of the first January, 1886,⁽⁷⁾ a summons to appear to a plaint in any such Court is permitted to be served. A Writ of Summons may be served by any person.

20. The person that undertakes the service of a Writ of Summons shall after it has been served and before it is filed in Court have an affidavit of service indorsed on or annexed to the Writ that is to be filed.

21. The Court shall in every case have power to decide that a Writ has been duly served no matter in what manner it may have been served.

SERVICE OF WRIT OF SUMMONS OUT OF THE JURISDICTION.

22. Service of a Writ of Summons out of the jurisdiction of the Court may at the discretion of the Court be allowed if it be made to appear to the satisfaction of the Court—

(7) No Rules of the District Courts of the Colony of Queensland were made on 1.1.1886. District Court Rules were made in Queensland on 1.1.1866 and published in the Queensland *Govt. Gaz.* of 4.1.1866. These rules were amended from time to time (the last of such amendments being made on 13.12.1878) before their repeal by the *District Courts Act, 1891* (Queensland). The Rules of the District Courts of the Colony of Queensland of 1.1.1866 relating to service of a summons to appear to a plaint are printed on p. 626.

The figures, "1886" have now been omitted and the figures "1866" inserted in their stead by the Fourth Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

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- (1) That the subject matter of the action so far as it concerns the defendant is
 - (a) Land or other property situate or lying within the Possession, or
 - (b) Shares or stock of a Company or joint stock Company having its principal or a place of business within the Possession, or
 - (c) Any deed will document or thing affecting any such land shares stock or property or
- (2) That any contract in respect of which relief is sought in the action against the defendant by way of enforcing rescinding dissolving annulling or otherwise affecting such contract or by way of recovering damages or other remedy against the defendant for a breach thereof was made or entered into within the Possession or
- (3) That the relief sought against the defendant is in respect of a breach which took place within the Possession of a contract wherever made or
- (4) That any act or thing sought to be restrained or removed or for which damages are sought to be recovered was done or is situate within the Possession or
- (5) That at the time when the liability sought to be enforced against the defendant arose he was within the Possession.

23. When a person desires to serve a Writ of Summons out of the jurisdiction he shall file a motion paper asking for leave to serve such Writ out of the jurisdiction. Such motion paper shall be accompanied by affidavit showing in what place and country the defendant is to be or may probably be found and whether the defendant is a British subject or not and what is the nature of the plaintiff's claim.

24. If the Court shall give leave to serve the Writ an Order shall be taken out which Order shall prescribe the way in which the Writ is to be served and the period after service within which the defendant may enter a Notice of Defence.

25. When the last named order has been filed the Writ of Summons shall be drawn up and issued and served in terms of such order.

NOTICE OF DEFENCE.

26. The period after a Writ of Summons has been served within which the defendant may file a Notice of Defence shall be as under-mentioned. In all cases the period shall be computed exclusive of the day upon which the defendant was served.

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- (a) In the case of a defendant residing not more than 25 miles from the Court House at Port Moresby eight days.⁽⁸⁾
- (b) In the case of a defendant residing more than 25 miles from the said Court House eight days for the first 25 miles and 5 days for every 50 miles or fraction of 50 miles over and beyond the first 25 miles.⁽⁸⁾
- (c) In the case of a defendant residing in any of the islands of the Trobriand, Woodlark, D'Entrecasteaux, or Louisiade Groups of Islands, or in any island in the neighbourhood of any of the said groups 5 days in addition to the time to be allowed for distance as above specified in paragraph (b).

27. For the purposes of Writs of Summons and Notices of Defence distance shall be the distance by the most generally used route or course between the said Court House and the defendant's residence. If there be any doubts as to whether a place is under or over a certain distance from the Court House it shall be taken to be over such distance.

28. The Court may notwithstanding anything contained in these rules permit a defendant to file a Notice of Defence and defend an action even after judgment has been on an *ex parte* application pronounced in favour of the plaintiff.

29. If a defendant served with a Writ of Summons wishes to defend the action he shall prepare according to the form given in the Schedule hereto a Notice of Defence in duplicate whereof one duplicate shall be filed and the other served at the plaintiff's address for service within the period allowed by the Writ of Summons for so doing.

30. The Notice of Defence shall be dated and signed by the defendant or by some one on his behalf.

31. The defendant shall also indorse on the Notice of Defence the name of some place of abode or business which must not be more than one mile from the Court House at Port Moresby prefixing to such indorsement the words "Address for Service." All proceedings in the same action that require to be served on the defendant shall be deemed to have been duly served if left for the defendant at such place on any day except Saturday Sunday or a Court holiday between the hours of nine in the morning and four o'clock in the afternoon and if the day be a Saturday between the hours of nine in the morning and one in the afternoon.⁽⁸⁾

(8) See also the *Rules of the Central Court for Regulating Civil Procedure*, printed on p. 625.

32. A defendant who has filed a Notice of Defence shall be entitled to avail himself of any legal or equitable defence that he could have availed himself of had he pleaded it except a set-off or counter claim.

SET-OFF AND COUNTER CLAIM.

33. If a defendant wishes to avail himself of a set-off or Counter claim he shall file and serve the same with the Notice of Defence.

34. The Counter claim or Set-off shall be headed "Defendant's Counter Claim and Set-off" and shall if possible be signed by the person that signs the Notice of Defence.

35. A Counter claim shall be drawn up in the same way as nearly as circumstances will admit of as a plaintiff's claim is drawn up. But the defendant shall therein state precisely whether the whole of any Counter claim or any portion or portions and if so which portion or portions is or are pleaded in satisfaction of or as a settlement of the whole or any portion or portions of the plaintiff's claim and in the latter case of which portion or portions of the plaintiff's claim.

36. The Court may at any time amend alter or add to a Counter claim or Set-off in any way that it shall think fit or it may at any time order or direct that any portion of a Counter claim or Set-off must if the defendant wishes to proceed with it be proceeded for in a fresh action.

37. It shall not be necessary for a plaintiff to plead or reply to a Set-off or Counter claim but the plaintiff shall in all cases be entitled to avail himself of any legal or equitable defence or replication that he could have availed himself of had he pleaded or replied it.

DEFENDANT MAY PAY MONEY INTO COURT.

38. If a defendant admits the plaintiff's claim he may pay the amount claimed into Court in satisfaction of the plaintiff's claim at any time before trial. If the defendant does this and gives the plaintiff written notice that he has done so he will only be liable to pay the plaintiff such costs as the latter had incurred or become liable to pay at the time that he received such notice.

39. A defendant may at the time that he files a Notice of Defence pay into Court a less sum than the plaintiff claims as satisfaction of the plaintiff's claim or he may at such time pay any sum into Court in satisfaction of part of the plaintiff's claim. If he does so he must at the times that he files and serves the Notice of Defence

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file and serve the defendant⁽⁹⁾ with a notice stating the amount paid in and specifying distinctly for what purpose the money is paid in.

40. If the amount paid into Court be the amount of the plaintiff's claim or if the amount paid in be less than the plaintiff's claim but it be accepted by the plaintiff in satisfaction of his claim and if the defendant pays the plaintiff's costs before the expiration of two clear days from the day upon which such costs have been fixed by mutual agreement or taxation the action shall be deemed to be at an end. But if the defendant does not pay the costs the plaintiff may proceed and obtain judgment *ex parte* for the costs.

41. If the money paid in by the defendant be the amount of the plaintiff's claim or if less be accepted by the plaintiff in satisfaction of his claim the plaintiff shall be entitled to take the money out of Court at any time.

42. If the money paid in by the defendant be paid in in satisfaction of part of the plaintiff's claim or if it being less than the amount of the plaintiff's claim be paid in in satisfaction of the plaintiff's claim but be not accepted as such by the plaintiff the money shall remain in Court subject to the Order of the Court.

DEFENDANT MAY ADMIT PLAINTIFF'S CLAIM.

43. If the defendant admits the plaintiff's claim he may instead of filing a Notice of Defence file a notice that he admits the plaintiff's claim. Such notice shall be signed by the plaintiff⁽¹⁰⁾ or by his duly constituted representative in duplicate in the presence of and be signed as a witness by a European Officer in the service of the Government of the Possession. One duplicate shall be filed and one served upon the plaintiff.

44. Where the defendant files a notice of admission as last aforesaid the plaintiff may proceed forthwith to have the action tried *ex parte*. But the only matter that the plaintiff shall need to prove at such trial will be the genuineness of the Notice of Admission.

45. If the Notice of Admission be signed in the presence of the Chief Magistrate or the Registrar of the Court judgment may be forthwith entered for the plaintiff without any trial.

(9) The word "defendant" appeared in the *Rules of Civil Procedure* as published in British N.G. Govt. Gaz. The word "plaintiff" has now been inserted in its stead by the Fourth Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

(10) The word "plaintiff" appeared in the *Rules of Civil Procedure* as published in British N.G. Govt. Gaz. The word "defendant" has now been inserted in its stead by the Fourth Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

MOTIONS.

46. Motions or applications shall be made to the Court on a motion paper which is to be filed in Court. Every motion paper shall be as nearly as circumstances will admit of in accordance with one of the forms given in the Schedule hereto and shall be dated and be signed by the person on whose behalf it is filed or by some one on his behalf.

47. The motion paper shall set out what it is that the applicant wishes the Court to do and shall give such details and particulars as will enable the Court to gather from the motion paper itself what the applicant wants.

48. Every motion paper and the affidavits (if any) intended to be used at the hearing of the application shall be filed in Court not less than two clear days exclusive of Sundays and holidays before the day upon which the motion is to be heard by the Court.

49. Except in *ex parte* applications a copy of the motion paper and copies of all affidavits (if any) intended to be used at the hearing of the application shall be served upon the opposite party or upon any person whom the applicant seeks to affect by the application not less than one clear day exclusive of Sundays and holidays before the day upon which the motion is to be heard by the Court.

ORDERS OF THE COURT.

50. Orders may be in the form in the Schedule hereto or as near thereto as circumstances will admit of.

51. Except when otherwise ordered orders shall be drawn up engrossed and sealed in duplicate one duplicate to be filed and the other duplicate to be kept by the person entitled to take out the order.

52. A copy of every order shall be served upon every person whom the Court directs to be served with the order by the person that takes out the order.

53. The Court shall when it determines any application or matter direct whether it shall be or shall not be necessary to take out an order.

54. Orders shall be dated as of the day upon which they were made.

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FILING DOCUMENTS AND COPIES.

55. Except in cases where the original or duplicate original of a document is or is to be filed in Court the person to whom the original belongs shall file a copy thereof in Court.

56. Except where it is otherwise specially provided for an ordinary filing fee shall be paid on the filing of any document or copy of a document in Court.

57. It shall not be necessary to file a præcipe in any case or process.

WITNESSES.

58. The attendance of a Witness may be enforced by subpœna. Subpœnas shall as nearly as circumstances will admit of be in accordance with the form given in the Schedule hereto. Subpœnas shall be sealed in duplicate one duplicate to be filed the other to be given to the person issuing the subpœna. A subpœna shall be served a reasonable time before the time at which the witness is ordered to attend before the Court. The names of any number of witnesses up to four may be inserted in one subpœna.

59. If a person subpœnaed resides within five miles of the place which he is ordered to attend at he shall not be entitled to demand any payment on account of his expenses until after he has attended to give evidence in pursuance of such subpœna.

60. If a person entitled to demand payment of his expenses before attending Court demands his expenses before so attending he shall then be entitled to the following expenses:—

If he be an aboriginal native of the Possession or a native of any other place living after the manner of aboriginal natives of the Possession he shall be entitled to maintenance and travelling expenses. If he be any other description of person he shall be entitled to maintenance and travelling expenses and in addition to the sum of ten shillings a day for every day that he must necessarily be absent from his then residence in obeying the subpœna. The acceptance of any sum for allowances and expenses shall not prejudice the right of a witness to recover any further sum after he has obeyed the subpœna if he shall be entitled to any further sum.

61. If a person subpœnaed as a Witness shall reside at a place the usual mode of communication between which place and the place at which he is subpœnaed to attend is wholly or partly by water he shall be entitled to demand that the person who subpœnas him shall provide a proper mode of conveying him on the water for that portion of the journey that is usually performed by water.

62. Nothing herein contained shall prevent any person that may subpoena another person from coming to any agreement with such other person as to that other person's allowances and expenses.

63. Witnesses expenses shall be computed in accordance with the scale in the Schedule hereto.

NOTICE TO PRODUCE PAPERS, ETC.

64. If a party to an action desires that the opposite party in the action shall produce at the trial any books or papers that he thinks necessary to his case and that he believes to be in the possession or under the control of the opposite party he may serve the opposite party with a Notice to Produce.

65. A Notice to Produce shall be as nearly as circumstances will admit of in the form given in the Schedule hereto. It shall be signed by the persons giving it or by someone on his behalf and shall be made out in duplicate. One duplicate shall be filed and the other duplicate served at least one clear day before the day of trial.

TRIAL OF UNDEFENDED ACTIONS.

66. When a defendant has not filed a Notice of Defence within the period allowed him for doing so the plaintiff may by an *ex parte* motion apply to the Court to try the action *ex parte*.

67. Upon the hearing of such motion the plaintiff must prove to the satisfaction of the Court that the Writ of Summons has been duly served and that the defendant has not filed a Notice of Defence within the time allowed him for doing so.

68. Upon such motion being made the Court may order or direct that the trial shall be had *ex parte* at any time that the Court thinks fit and at such time the Court may proceed to try the case *ex parte*.

69. The plaintiff shall at the trial prove his case to the satisfaction of the Court.

70. At the trial of the action the Court may give judgment for the whole or any portion of the plaintiff's claim or allow the defendant to come in and defend or make such order or take such course as it may deem expedient.

TRIAL OF DEFENDED ACTIONS.

71. When a defendant has filed a Notice of Defence in an action such action shall be deemed as being set down for trial at the Civil

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Sittings of the Court that shall first take place after the expiration of a certain period of time. The period of time shall be fourteen clear days inclusive of Sundays and Court holidays and such fourteen days shall be reckoned from but exclusive of the last day that was allowed by the Writ of Summons for filing a Notice of Defence.

72. The Court may if it shall so order, try a defended case at any time and at any place.

73. If the plaintiff shall not appear and proceed with his case when the action comes on for trial the Court may strike out the case. If the defendant have filed a counter claim and set-off the Court may also proceed to try the same *ex parte* and may give judgment for the defendant for the whole or any portion of such counter claim and set-off but the defendant shall not be entitled to judgment for any part of a counter claim and set-off that is pleaded in satisfaction of the whole or a part of the plaintiff's claim.

74. If notwithstanding that the plaintiff does not appear when the action comes on for trial the defendant shall appear and admit the plaintiff's claim or any part thereof the Court may give judgment for the plaintiff for so much of the plaintiff's claim as the defendant admits.

75. If by reason of the non-appearance of the plaintiff when the action comes on for trial the whole or any part of the plaintiff's claim is struck out the effect of such striking out shall be the same as the effect of a judgment upon the merits for the defendant but in any case of mistake surprise or accident the Court may if it shall see fit to do so permit the plaintiff to bring a fresh action in respect of all or any of the matters so struck out.

76. If the defendant shall not appear to defend the action when it comes on for trial the Court may proceed to the trial of the action as if it were an undefended action tried *ex parte* and give judgment for the whole or any part of the plaintiff's claim. If the defendant have filed a counter claim and set-off the Court shall strike out so much of such counter claim and set-off as the plaintiff does not admit. But notwithstanding such striking out the defendant may with the permission of the Court which permission shall be purely discretionary bring an action in respect of the matter so struck out.

77. In all actions in which there is a counter claim and set-off the defendant shall whether the whole or any part of the plaintiff's claim shall be allowed or whether the plaintiff shall be non-suit or have judgment given against him be entitled to recover in such action the amount (if any) by which that portion of the counter claim and set-

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off that has been allowed exceeds that portion of the plaintiff's claim that has been allowed.

78. At the time that the Court delivers judgment it shall if possible fix the costs that are to be allowed to or paid by any party. If the costs cannot then be ascertained the Court shall fix the costs as soon after they have been ascertained as possible. But in any case the costs shall be deemed as having been fixed on the day that the judgment was delivered.

SPECIAL CASE.

79. The parties to a defended action may instead of having the action tried in the ordinary way have the action decided by a special case.

80. A special case shall as near as circumstances will admit of be in the form in the Schedule hereto. It shall be signed by each of the parties to the action or by some person or persons on behalf of each of the parties. It shall be filed in Court.

81. If the parties to the action or either of them desire to be heard in argument on the special case the party or parties so desiring shall state so at the foot of the special case whereupon the Court shall fix a time to hear argument but if neither party desires to be heard in argument then the Court may proceed to decide the matter at any time after the case has been filed.

82. The decision of the Court on the special case shall be made known to the parties to the action either in writing or verbally.

83. At the time that the Court gives its decision on the special case it shall also give judgment in accordance with such decision which judgment shall be the judgment in the action.

PARTIES CAN BE REPRESENTED BY OTHER PERSONS.

84. Any person having a right to be heard before the Court in any action or proceeding may if the Court approve have his case entirely conducted by some other person in lieu of conducting it himself. For the purposes of any particular action or proceeding the person conducting the case of another shall have the same privileges as that other person would have if he conducted his own case.

JUDGMENTS.

85. A minute of every judgment in such form as the Chief Magistrate⁽⁴⁾ shall determine shall as soon as possible after judgment has

(4) See Section 4 of the *Central Court Ordinance, 1925.*

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been pronounced be entered in a book to be kept for that purpose. And such entry shall have the full force and effect of a formal judgment.

86. Whenever the Court shall deliver a written judgment the original or a copy thereof signed by the Chief Magistrate⁽⁴⁾ shall be filed in the action or other proceeding and such written judgment shall be deemed the formal judgment in the matter. In such case a minute of the judgment shall not be entered in the book as aforesaid but instead of such minute a memorandum making reference to the written judgment shall be entered in the aforesaid book.

87. Judgments and minutes of judgments shall be dated as of the day upon which judgment was given.

88. In all judgments for the payment of money the Court may order that the amount be paid by instalments with or without interest.

EXECUTION.

89. Any form of execution on a judgment except execution against any freehold or leasehold estate may be taken out at the expiration of six clear days after the date of judgment.

90. The Court may at any time grant immediate execution or limit or control the right to issue execution or stay any execution.

91. Whenever a person that is entitled to issue execution desires to enforce execution against any freehold or leasehold estate in land he may by motion apply *ex parte* to the Court for leave to put an execution in force against any freehold or leasehold estate in land. The Court may thereupon grant or refuse leave as it sees fit. If the Court grants leave it may impose any conditions or directions as to the time and mode of sale under the execution. (*See next rule*).

92. The person applying for leave under the preceding rule shall by affidavit furnish to the Court such particulars as he has been enabled to ascertain of any personal property belonging or supposed to belong to the person against whom he desires to enforce execution.

SITTINGS OF THE COURT.

93. The ordinary sittings of the Court shall be held at such times and places as the Chief Magistrate⁽⁴⁾ shall from time to time determine.

(4) See Section 4 of the Central Court Ordinance, 1925.

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94. All sittings of the Court whether in open Court or in Chambers shall unless otherwise ordered by the Court be taken to begin at eleven o'clock in the forenoon.

95. The Court may hold special sittings at any place and at any time if it shall deem it expedient to do so.

OPEN COURT AND CHAMBERS.

96. The trial of all actions, whether defended or undefended, and the hearing of all appeals from inferior Courts shall take place in open Court.

97. All other matters unless the Court shall direct that they be taken in open Court may be taken in Chambers.

98. Any matter that can be taken in Chambers may be taken on any day at any time and in any place that the Court sees fit.

LANGUAGE.

99. Every document except as is hereinafter provided that is issued from or filed in the Court shall be in English.

100. The Court may permit any document (even if the same be an affidavit or declaration) written in a language that is not English to be filed in Court if along with such document a translation in English of such document verified by oath affirmation or declaration be filed.

101. All the proceedings in the Court shall be conducted in English evidence if given in any other language being finally interpreted into English.

102. The Court may at any time direct that any words or figures written or spoken in English shall be translated or interpreted into any other language or any dialect and that any words or figures written or spoken in any language that is not English shall be interpreted or translated into English.

103. It shall be the duty of the person that desires to avail himself of any document written in or any evidence to be given in a language that is not English to furnish a proper translation of such document or a proper interpreter or interpreters to interpret such evidence.

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104. The Court may reject any translation or interpretation or any interpreter or may determine that any translation or interpretation must be performed by some particular person.

105. The Court shall be the sole judge of whether any person does or does not understand any interpreter or any interpretation or translation.

106. The expense of interpretation or translation shall in the first instance be borne by the person that desires to avail himself of the evidence or matter that requires to be interpreted or translated.

Costs.

107. The allowing or disallowing of Costs and the amount to be allowed shall in all cases be absolutely in the discretion of the Court.

108. The Court may at any time direct that any person's Costs in any matter shall be taxed. If the Court does so the person whose Costs are to be taxed shall file an account of the Costs he claims to be entitled to and furnish the Court with a copy thereof. The officer appointed for such purpose shall if there be an opposite party indorse on such Copy the time at which he will tax such Costs and such Copy shall be served by the person whose Costs are to be taxed upon the opposing party at least twenty-four hours before the time so appointed for taxing.

109. At the time appointed for taxation the Court or an officer appointed for such purpose shall tax the Costs. If the taxation shall in the first instance be conducted by any person other than the Chief Magistrate⁽⁴⁾ and either party shall take exception to such person's decision such person shall nevertheless complete the taxation. If when the taxation is completed either party desires that the Costs shall be re-taxed by the Chief Magistrate⁽⁴⁾ they shall on such person paying the re-taxation fee be re-taxed by the Chief Magistrate⁽⁴⁾ as soon as it may be convenient. On the re-taxation the Chief Magistrate⁽⁴⁾ may allow or disallow any items he pleases.

110. All or any of the following expenses may be allowed as Costs to a party to or affected by or interested in any action or other proceeding that is to say—

Fees of Court—Sheriff's and bailiff's fees.

Expenses under an execution.

Witnesses expenses.

Engrossing or copying papers.

(4) See Section 4 of the *Central Court Ordinance*, 1925.

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Serving any process.

Interpretation or translation.

Reports statements of account plans.

Work performed by a specialist.

Expenses of attending a trial or hearing whether the person shall be a necessary witness or not. Such expenses to be computed in accordance with scale of witnesses expenses.

Expenses of an Agent attending a trial or hearing in place of his principal whether he be a necessary witness or not. Such expenses to be computed in accordance with the scale of witnesses expenses.

Moneys out of pocket.

111. So far as practicable Costs shall be allowed in accordance with the scales in the Schedule hereto.

FEEES OF COURT, ETC.

112. The fees to be charged by the Court and by Sheriffs and Bailiffs shall be the fees set out in the scales in the Schedule hereto so far as such scales can be applied. In matters not provided for by such scales the fees shall be the same as would be payable in analogous matters in the Supreme Court of Queensland under the highest scale of fees allowed by the Rules of Court of such Court referred to in the Order in Council of the said Colony of the seventh day of December, A.D., 1876.⁽¹¹⁾

113. If it shall appear to the satisfaction of the Court that any person is unable or ought not to be called upon to pay any Court fee it shall be lawful for the Court to dispense with the payment thereof or any part thereof upon such terms as it shall think fit.

FEEES OF COMMISSIONERS FOR AFFIDAVITS, ETC.

114. Commissioners for Affidavits being out of the Possession and Commissioners for Affidavits that are not officials of the Court shall be entitled to keep for their own use all fees that they may receive.

115. Commissioners for Affidavits that are officials of the Court shall be entitled to keep for their own use only such fees as they may receive for work done out of office hours. Fees received for work done in office hours shall be Court fees.

(11) See the *Rules of Court of the Supreme Court (Solicitors' Costs and Fees and Court Fees)* (Queensland, adopted), printed on p. 632.

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116. No Commissioner for Affidavits shall be allowed to charge any fee in Criminal matters nor to demand any fee from the Government for a Government matter. But Commissioners shall be bound in such matters to administer Oaths if required to do so without fee.

117. No officer of the Court shall be permitted to keep for his own use any Court fee for drawing any proceeding whether the same be drawn in or out of office hours and whether the same be drawn at the request of any person or by direction of the Court.

118. Officers of the Court shall with the sanction of the Court be entitled to keep for their own use the fees payable by any suitor or person for engrossing or copying documents and papers if the engrossing or copying as the case may be done out of office hours.

119. Any officer of the Court acting as an Arbitrator with the sanction or by the direction of the Court in any proceeding before the Court or by the direction of the Court taking accounts or evidence or preparing reports in any such proceeding shall be entitled to keep for his own use such remuneration as shall be payable by any person or party to or interested in any such proceeding and as shall be fixed and allowed by the Court.

SEALING DOCUMENTS.

120. Excepting as it is provided in these rules to the contrary any document or instrument originating or issuing from the Court shall be authentic and complete if it bear the seal of the said Court whether such document or instrument be signed or not by any person. But the Chief Magistrate⁽⁴⁾ may at any time if he shall see fit himself sign any document or instrument or direct that it be signed by any officer of the Court.

Rule 121 rep.
by Rules
gazetted on
2.2.1910, r. 1.(12)

[121. *Where any copy is required to be an Office Copy it shall be taken to be one if marked "Office Copy" and sealed on some part of each sheet of the Copy with the Seal of the Court.*]⁽¹²⁾

122. Where any instrument or document originating or issuing from the Court requires to be sealed it shall be sufficiently sealed if sealed with the General Seal of such Court unless there be a Special Seal provided for sealing such instrument or document.

(4) See Section 4 of the *Central Court Ordinance, 1925.*

(12) Rule 121 was repealed by Rule 1 of *Rules of the Central Court for Regulating Civil Procedure and the Admission of Barristers and Solicitors* gazetted on 2.2.1910. *Semble*, in view of the terms of Rules 2-5 inclusive of the Rules gazetted on 2.2.1910, it was intended to repeal Rule 131 and not Rule 121 of the *Rules of Civil Procedure.*

Rule 121 has now been re-inserted in its original form by the Fourth Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

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GENERAL POWERS OF THE COURT.

123. The Court shall have power in any action matter or proceeding to do any of the following things—

To take oral evidence. To amend alter vary revoke rescind or suspend any proceeding. To extend the time prescribed for doing anything either before or after such time has expired. To permit anything to be done notwithstanding that the time for doing it may have expired. To call and take the evidence of any person although such person has not been called by any party in the action matter or proceeding. In deciding a case to take any matter or ground into consideration although such matter or ground may not have been raised nor relied upon by any party to the action matter or proceeding. To order that any proceeding matter or thing taken or done or to be or proposed to be taken or done in the future shall be advertised or made public or communicated to any particular person or persons in any way that the Court thinks fit.

* * * * *

Rules 124-128
rep. by Rules
gazetted on
4.6.1914, r. 1.

HOLIDAYS.

129. The following days shall be holidays in the Court and the offices thereof that is to say—Good Friday Easter Eve Easter Monday Christmas Day Boxing Day and New Year's Day or if any of such days happen to fall on a Sunday then the ensuing Monday or if that be a holiday the ensuing Tuesday shall also be a holiday. All days proclaimed or fixed as general public holidays or as holidays in the Government offices shall also be holidays in the Court and the offices thereof.

OFFICE HOURS.

130. The offices of the Court shall be open to the public from 10 a.m. till 1 p.m. and from 2 p.m. till 4 p.m. on all week days except Saturdays. On Saturdays they shall be so open from 10 a.m. till 12 noon.

Am. by S.R.
1941, No. 15.

PRACTICE WHEN THESE RULES MAKE NO PROVISION.

[131. *When any matter is not provided for in these Rules or by any Ordinance law or enactment of the Possession the practice and procedure of the District Courts of the Colony of Queensland as regulated by the District Court Acts of the said Colony 31 Vic. No. 30 36 Vic.*

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No. 11 and 42 Vic. No. 9 and by the Rules of such Courts of January 1st 1866 and December 12th 1866 shall so far as circumstances will admit of govern the matter or if such last mentioned Acts and Rules do not provide for the said matter then the practice and procedure of the Supreme Court of the Colony of Queensland as regulated by "The Judicature Act" of the said Colony and the Rules contained in the Schedule to such Act and the Rules of the seventh day of December 1876 made under the provisions of the said last named Act shall so far as circumstances will admit of govern the matter. Provided in all cases that any practice or procedure as aforesaid can be followed and applied without contravening any Ordinance law enactment or regulation of the Possession.]⁽¹³⁾

EXISTING POWERS OF COURT.

132. Nothing in these rules shall be deemed to control or abridge any power or authority now vested in the Central Court.⁽³⁾

SCHEDULE.

I.

Writ of Summons.

In the Central Court
of British New Guinea.

Between Thomas Jones, plaintiff,
and
John Jones, Defendant.

To John Smith of Granville, in the Possession of British New Guinea,
Trader.

You are hereby summoned before this Court to answer the claim of Thomas Jones, of Dinner Island, in the Possession of British New Guinea, Trader, particulars of which claim are indorsed hereon. If you wish to defend this action you must file a Notice of Defence in this Court and serve a duplicate of such Notice at the plaintiff's address for service before the expiration of eight days from the day upon which this Writ of Summons is served upon you.

Dated this tenth day of January, 1889.

(L.S.)

ADDRESS FOR SERVICE.

The store of Mr. William Robinson, situate in Granville.

Plaintiff's Claim.

The plaintiff claims from the defendant the sum of £78 2s 10d for goods supplied to and money lent to the defendant and for interest. An account giving full details of how such sum is made up is annexed hereto.

(Sgd.)

W. JACKSON,
for
THOMAS JONES,

Plaintiff.

(3) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

(13) See now Rule 3 of the Rules of the Central Court for Regulating Civil Procedure and the Admission of Barristers and Solicitors (gazetted on 2.2.1910), printed on p. 669, and footnote (12) printed on p. 616. *Semble* Rule 131 was impliedly repealed by Rule 3 of the Rules of the Central Court for Regulating Civil Procedure and the Admission of Barristers and Solicitors.

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II.

Notice of Defence.

In the Central Court
of British New Guinea.

Between Thomas Jones, plaintiff,
and
John Smith, defendant.

I am defending this action.

Dated this fifteenth day of January, 1889.

(Sgd.) J. SMITH,
Defendant.

ADDRESS FOR SERVICE.

The defendant's residence in Granville.

III.

Motion Paper.

In the Central Court
of British New Guinea.

Between John Brown, plaintiff,
and
James White, defendant.

This Honorable Court will, on the fourth day of June, 1889, be asked on behalf of the abovenamed John Brown, to allow the said John Brown to serve out of the jurisdiction of this Honorable Court a Writ of Summons upon the abovenamed James White.

Dated this first day of June, 1889.

(Sgd.) J. BROWN.

IV.

Motion Paper.

(To be used in Matters other than actions.)

In the Central Court
of British New Guinea.

In the Matter of the Will of Thomas Jones, of
Hall Sound, in the Possession of British
New Guinea, Trader, deceased.

This Honorable Court will, on the fourth day of June, 1889, be asked on behalf of Timothy White, of Granville, British New Guinea, Trader, the duly constituted Attorney of Elizabeth Jones, of Brisbane, in the Colony of Queensland, Widow of the deceased Thomas Jones, and sole executrix named in his will to grant Probate of the said Will to the said Timothy White.

Dated this first day of June, 1889.

(Sgd.) T. WHITE.

V.

Order of Court.

In the Central Court
of British New Guinea.

In the Matter of the Will of Thomas Jones, &c.

It is hereby ordered that Probate of the Will of the abovenamed Thomas Jones, deceased, be and the same is hereby granted to Timothy White, of Granville, British New Guinea, Trader, the duly constituted Attorney of Elizabeth Jones, the sole executrix named in the said Will.

Dated this fourth day of June, 1889.

(L.S.)

COURTS—

VI.

Writ of Subpœna.

In the Central Court
of British New Guinea.

Between Thomas Brown, plaintiff,
and
John Williams, defendant.

To James White, of Granville, in the Possession of British New Guinea,
Trader.

You are hereby required to attend before this Court at Granville in the Possession of British New Guinea on Tuesday, the sixth day of August, 1889, at eleven o'clock in the forenoon, to give evidence in the above cause on behalf of the plaintiff and then and there to have and produce* [a letter dated the seventh day of January, 1889, written by the plaintiff to you].

Therefore fail not at your peril.

Dated this third day of August, 1889.

(L.S.)

* NOTE.—If you do not want the witness to bring and produce anything at the trial do not put any words after the word “produce.”

VII.

Notice to Produce.

In the Central Court
of British New Guinea.

Between James Jones, plaintiff,
and
John Smith, defendant.

Take Notice that you are hereby required to produce to the Court on the trial of this action a Lease dated the fourth day of August, 1889, made between the plaintiff of the one part and the defendant of the other part, &c., &c.

And also all other documents, letters, copies of letters, books, papers, and writings, whatsoever containing any entry, memorandum, or minute, reference, or other matter, in anywise relating to the matters in question in this action.

Dated this sixth day of October, 1889.

(Sgd.)

J. SMITH,
for
T. JONES,

Defendant.

To the plaintiff.

VIII.

Special Case.

In the Central Court
of British New Guinea.

Between William Thomas, plaintiff,
and
James Robinson, defendant.

FACTS.

The defendant on the 21st August, 1889, wrote a letter to the plaintiff. The plaintiff on the 1st day of September, 1889, wrote a letter in reply to the defendant. The defendant received the reply on the 12th September, 1889. Copies of these letters are filed herewith. There is no dispute as to the quantity, quality, and price of the bêche-de-mer mentioned in these letters nor as to its

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being in the plaintiff's store on the 14th September, 1889, nor as to the plaintiff's power to sell and give delivery thereof. Nothing passed between the parties except the said letters. The bêche-de-mer mentioned in the said letters was completely destroyed by fire in the plaintiff's store at Dinner Island on the 14th September, 1889.

Plaintiff's Contention.

The plaintiff contends that when the bêche-de-mer was destroyed it belonged to the defendant and was lying in the store at defendant's risk and that the purchase money was due and payable from the defendant to the plaintiff at the time the bêche-de-mer was destroyed and is now due and payable by the defendant to the plaintiff.

Defendant's Contention.

The defendant contends that he was not in any event liable to pay for the bêche-de-mer unless it was actually shipped by the plaintiff on board of the vessel to be provided by the defendant and that as this never was done he is not liable at all.

Questions for the Court.

Whether the defendant is or is not bound to pay the plaintiff the price of the said bêche-de-mer or any part of such price.

Dated this second day of October, 1889.

(Sgd.)	T. JONES,	
		Plaintiff.
(Sgd.)	T. SMITH,	
		Defendant.

SCALE OF COURT FEES.

	£	s.	d.
Issuing Writ of Summons, including filing			5 0
Filing Notice of Defence			3 0
Filing Motion Paper			2 0
Every Order of the Court including filing same or duplicate or copy ..			5 0
Issuing subpœna including filing			3 0
Judgment on Notice of Admission by Defendant of Plaintiff's claim signed before the Chief Magistrate or Registrar			5 0
*Hearing undefended action			10 0
*Hearing defended action			1 0 0
*Filing special case and hearing			1 0 0
*Hearing an appeal from inferior Court			1 0
Issuing any execution including filing copy			5 0
Filing any document for filing which no special fee is provided ..			1 0
Every search			1 0
Drawing any document for a suitor by an officer of the Court—			
The first three folios or under			5 0
Every folio over the first 3 folios			1 0
For engrossing or Copying per folio			0 8
Marking a Copy as an Office Copy for every 10 folios or fraction of 10 folios			1 0
Every attestation of a document by the Chief Magistrate under his hand and the Seal of the Court			10 0

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	£	s.	d.
Every attestation of a document under the Seal of the Court Certified to by an Officer of the Court	5	0	
Every Oath administered by the Chief Magistrate or a Commissioner for Affidavits at his office or residence for the time being ..	1	0	
If administered at some place (not the office or residence for the time being of the Chief Magistrate or Commissioner) distant not more than one mile from such office or residence	5	0	
If administered at a place distant more than one mile from such office or residence for every mile or fraction of a mile over and above the first mile, an additional fee of	4	0	
Marking every exhibit to an affidavit	1	0	
On every bond or security given to the Court or an officer thereof to include filing	5	0	
For any Certificate not specially provided for	2	6	
Every Commission issuing under the Seal of the Court	1	0	0
Taxing a Bill of Costs	2	0	
Re-taxing a Bill of Costs by the Chief Magistrate	5	0	
Blank forms of process each	0	6	
On money paid into Court by defendant before judgment in satisfaction of plaintiff's claim to be paid by defendant for every £ paid in	0	3	

*NOTE.—This fee is to be paid by the plaintiff or in the case of appeals by the appellant prior to hearing, and includes fee for entering up judgment.

SCALE OF INTERPRETATION FEE.

For translating any document or words including a fair engrossment of the translation—			
The first 3 folios and under	5	0	
Every folio or fraction of a folio after the first three ..	1	6	
For attending Court, interpreting evidence—			
The first two hours or under	10	0	
Every hour or fraction of an hour after the first hour ..	4	0	

SHERIFFS AND BAILIFFS CHARGES.

For service of any process or document—			
If the place at which service is effected be distant not more than one mile from the office of the Sheriff or bailiff ..	3	0	
If distant more than one mile from the office of the Sheriff or bailiff, for every mile one way only beyond the first mile	2	0	
Where a document shall be handed to a Sheriff or bailiff to be sent by post to some person who is to undertake the service the foregoing fees shall be reckoned from the office of such last named person, but in such case a fee of 5s shall be paid to the Sheriff or bailiff, half of which shall belong to him and half to the person to whom the document is sent for service	5	0	
For arrests—			
If effected within one mile of the Sheriff's or bailiff's office ..	10	0	
If effected more than one mile, but not over seven miles from such office	1	0	0
If effected more than seven miles from such office	1	10	0
For every day or fraction of a day occupied after the first day	1	0	0

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	£	s.	d.
For conveying arrested persons to gaol for every day or fraction of a day occupied after the day of arrest	1	0	0
Travelling expenses reasonably incurred in addition to foregoing.			
Receiving money upon deposit for arrest and paying same into Court	10	0	
Taking bail	10	0	
Assignment of bail bond	10	0	
Receiving any Writ of execution including precept or instructions to Bailiff	5	0	
For taking possession under execution if the place be within a mile of the Sheriff's or bailiff's office	5	0	
Every mile or fraction of a mile over the first mile (one way only) ..	3	0	
Possession money <i>per diem</i>	10	0	
For executing every Writ of execution—For the first £100 or fraction of £100 of the gross amount realized, Commission at the rate of £5 per cent.; and for everything over the first £100, Commission at the rate of £2 10s per £100. Exclusive of moneys out of pocket.			
Receiving and entering every order or Notice of Suspension or withdrawal of execution	2	0	
In cases of arrest or execution where the process is to be put in force at a place distant from the Sheriff's or bailiff's office by a person residing at or near such place such process shall, if practicable, be sent by post to such person and the fees charged and computed as is prescribed in the case of service of process.			
Interpleader Matters.			
Such remuneration for trouble, loss of time and expenditure, as the Court may determine.			

SCALE OF ALLOWANCES TO WITNESSES.

For loss of time—			
Gentlemen, Professional Men, Merchants, Bankers, Storekeepers, Planters, Master Mariners, Managers of Plantations, Banks or Businesses, <i>per diem</i>	1	1	0
Subordinate Ships Officers, Handicraftsmen, Artificers, Overseers, Shopmen, Storekeepers Assistants, Clerks, <i>per diem</i> ..	15	0	
Other witnesses, <i>per diem</i>	10	0	
Aboriginal Natives of the Possession or Natives of any other place living after the manner of Aboriginal Natives of the Possession, <i>per diem</i>	1	0	
Females according to their station in life up to £1 <i>per diem</i> .			
For Maintenance—			
For all Witnesses except Natives as aforesaid for every day or fraction of a day beyond the first day that the Witness is necessarily absent from his residence	10	0	
Native witnesses unless proper food and lodging be provided for them for every day or fraction of a day that they are necessarily absent from their homes	1	6	
Travelling expenses—			
In the case of any Witness residing more than five miles from the place at which he is subpoenaed to attend, a reasonable allowance for the cost of transporting himself and luggage to and from his residence to the Court. (<i>See also Rule 61.</i>)			

NOTE.—Where for the whole or a portion of the time that a Witness is absent from his home he is living on board of a vessel and is supplied on such vessel with food he shall not be allowed maintenance, but the cost of living on board the vessel shall, unless it is allowed as travelling expenses, be allowed him instead.