

WESTERN SAMOA

THE SUPREME COURT (CIVIL PROCEDURE RULES) 1980

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Schedule

His Highness, Malietoa Tanumafili II, Head of State

At the Government House at Apia this... day of... 1980.

PURSUANT to the Judicature Ordinance 1961 the Head of State acting on the advice of the Prime Minister and with the concurrence of the Rules Committee constituted by and under Section 40 thereof, hereby makes the following rules:-

RULES

PART I  
Preliminary

- 1. Title - These Rules may be cited as The Supreme Court (Civil Procedure) Rules 1980.
- 2. Commencement - These Rules shall come into force on the 21st day of January 1980 and shall apply to
  - (a) Any proceedings commenced on or after that day;
  - and
  - (b) Any steps taken on or after that day in respect of any proceedings commenced before that day.
- 3. Interpretation - In these rules, unless the context otherwise requires -

"Copy" in relation to any document issued out of the office of the Court, means a duplicate of the original, signed by the person who signed the original, and, if the original is required to be sealed, means a sealed duplicate signed as aforesaid and includes a copy certified as such by the Registrar under the seal of the Court:

"Court" means the Supreme Court of Western Samoa and in relation to any act, jurisdiction or discretion which may under these Rules be done or exercised by the Registrar, includes the Registrar:

"Infant" means an infant within the provisions of the Infants Ordinance 1961 and its amendments:

"Order" means a final decision of the Court and includes any decision of an interlocutory or interim nature.

"Mentally defective person" means a person who owing to his mental condition requires oversight care or control of himself or his property for his own good or in the public interest:

"Registrar" means and includes the Registrar of the Supreme Court and any Deputy-Registrar thereof.

4. Construction - These rules shall be so construed as to secure the just, speedy and inexpensive determination of any proceeding.

PART II  
Offices Records and Accounts

5. Registrar to keep records and accounts - (1) The Registrar shall -

(a) Keep a record of all actions, petitions, motions applications, summonses, warrants, writs, and other processes filed in or issued out of the Court, and of all returns thereto, and of all judgments and writs and other proceedings of the Court, whether done in or out of Court:

(b) Keep account of all moneys paid into or out of Court.

(2) The record and account required by this rule shall be kept by entries in books belonging to the Court, in accordance with this Part of these rules or in accordance with written directions given under the authority of the Secretary for Justice.

6. Books to be kept - The following books shall be kept by the Registrar and shall be records of the Court: -

- (a) Divorce Book
- (b) Motions Book
- (c) Minute Book
- (d) Actions Book
- (e) Warrant Book
- (f) Search Book
- (g) Trust Account

7. Court Holidays - The days for the time being appointed to be observed as holidays in the Public Service shall be holidays on which the office of the Court shall be closed.

8. Trust Account - The trust account shall be kept in the manner prescribed by the Treasury Regulations for the time being in force, and the Law Trust Cash-book shall be in the form prescribed by those regulations.

9. Searches - (1) Subject to any special provisions of any Act or rule, no person shall be entitled to search any book or document, other than the divorce book, motions book or actions book, without the leave of the Registrar. Any person aggrieved by the refusal of the Registrar to grant leave to search may apply to a judge who may in his discretion grant or refuse such leave.

### PART III Commencement of Proceedings

10. Commencement of Civil Proceedings - Subject to the provisions of any Act or any rules made thereunder, every civil proceeding in the Supreme Court shall be instituted either by way of action, or by way of motion, in accordance with these rules.

11. Actions - The following proceedings shall be instituted by way of action:

- (a) Every proceeding for the recovery of debt or damages
- (b) Every proceeding for the recovery of land or chattels
- (c) Every proceeding for an order for specific performance

12. Other civil proceedings - Except where otherwise provided by any Act or by any rules made thereunder or by any order of the Court, all other civil proceedings shall be commenced by way of motion.

PART IV  
Actions

13. Commencement of actions - Every action shall be commenced by filing with a Registrar of the Court a statement of claim intituled "In the Supreme Court of Western Samoa", setting forth the names and descriptions of the plaintiff and defendant, the nature of the cause of action, and the relief claimed.

14. Duties of Registrar in actions - (1) Upon the filing of the statement of claim the Registrar shall -

(a) Enter the action in the Actions book of the Court and fix a day for the hearing; and

(b) Issue a summons in form 1; and

(c) Annex to the summons and to every copy thereof to be served a copy of the statement of claim.

(2) The time and place of trial shall be such as the Registrar thinks fit having regard to the residence of the parties to the action the place where the cause of action has arisen, and any other relevant circumstances, and shall be stated in the summons accordingly.

15. Particulars - (1) A statement of claim shall specify particulars of the claim which the plaintiff seeks to establish, including such particulars of time, place, names of persons, dates of instruments, and other circumstances as may suffice to ensure that the Court and the opposite party are fully and fairly informed of the cause of action.

(2) In any action for the recovery of the price of goods sold and delivered or payment for services rendered whereof particulars have already been delivered in writing by the plaintiff to the defendant, whether the claim is for a balance of account or otherwise, it shall be a sufficient compliance with this rule if the statement of claim is in the form 2.

(3) Where the action is against the Government and is instituted against the Attorney General, the statement of claim shall give, in addition to the particulars required by the foregoing provisions of this rule, particulars of the Government Departments and officers of the Government concerned.

(4) If the plaintiff sues, or the defendant is sued, in a representative capacity, the statement of claim shall state that capacity.

(5) If the plaintiff claims to recover special damages, the statement of



16. Further particulars - The Court may require a plaintiff at or before the trial of the action to file a fuller and more explicit statement of his claim, and may stay further proceedings in the action until this has been done.

17. Amendment of statement of claim - A plaintiff may at any time before or during the trial amend his statement of claim with the leave of the Court.

PART V  
Service of Actions

18. Who may effect service - The summons to a defendant may, as the Registrar thinks fit be served either by a police officer or by an officer of the Court or by the plaintiff or his agent.

19. Personal service - The summons shall be served on the defendant in person. Where there are more defendants than one, a separate summons shall, except in the case of a firm of partners, be issued and served on each defendant.

20. Service on corporation - The summons may be served upon a company or corporation by leaving the same at any place of business of the company or corporation with any person in apparent authority there.

21. Service on members of a firm - When partners are sued as partners they may be sued either in the firm name or in the names of the partners and in either case the summons may be served by delivering it to any one of the partners or by leaving it at any place of business of the firm.

22. Service on agent - When a defendant is not in Western Samoa but has in the state an attorney or agent authorised to defend actions on his behalf, the summons may with leave of the Court be served upon that attorney or agent.

23. Court may dispense with personal service in certain cases - (1) If it appears to the Court that reasonable efforts have been made to effect service of the summons, and either that the summons has come to the knowledge of the defendant or that prompt personal service thereof cannot be effected, the Court may order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as the Court thinks fit to impose.

(2) If in an action for the recovery of land the defendant cannot be found or if his place of residence is not known or admission thereto cannot be obtained for the purpose of serving the summons, or if from any cause it is impracticable to serve the summons, the summons may be posted on some conspicuous part of the premises sought to be recovered not less than twenty-eight clear days before the day fixed for the

hearing and such posting shall be deemed good service on the defendant.

24. When service to be effected - (1) No summons shall be served after the expiration of twelve months from the date of issue thereof except with the leave of the Court which may be granted upon an ex parte motion by the plaintiff upon such conditions as the Court thinks fit to impose.

(2) Service shall be effected not less than ten clear days before the day of hearing provided that in proceedings governed by Section 11 of the Government Proceedings Act 1974 the period allowed shall be 28 clear days.

25. Renewal of summons - (1) If in any action a summons has become or is likely to become inoperative by reason of not being served in due time, the Registrar may on the request of the plaintiff extend the time for a further period not exceeding twelve months or for successive periods not exceeding twelve months in each case, and shall in each such case mark the summons with the word "Renewed" and the date of the renewal, or he may issue a new summons.

(2) No summons shall without the leave of the Court be extended under the provisions of subclause (1) of this rule for periods exceeding in the aggregate five years from the date of issue of the summons.

(3) A request for renewal under subclause (1) of this rule may be made either within or after the expiration of the original or extended period of validity of the summons, but if that period has expired the extension shall not be granted as of right but only with the leave of the Court.

26. When process may not be served or executed - No process shall be served or executed on a Sunday, or on Christmas Day, Good Friday, or Anzac Day. If any process is so served or executed, the service or execution shall be void and have no effect.

27. Where summons may be served - The summons may be served anywhere in Western Samoa, but not elsewhere except in accordance with the provisions of rule 28 of these rules for service out of Western Samoa.

28. Service of summons out of Western Samoa - (1) A summons may be served out of Western Samoa, by leave of the Court, -

(a) Where the cause of action or some material part thereof has arisen in Western Samoa;

(b) Where the subject-matter of the action is property situated in Western Samoa.

(2) Every application for an order for leave to serve a summons out of Western Samoa shall be by ex parte motion supported by evidence by affidavit or otherwise, showing in what place or country the defendant is or probably may be found, and the grounds on which the application is made.

29. Proof of service - Proof of service may be made either by affidavit in form 3 or by a witness at the hearing.

PART VI  
Parties

30. Plaintiff not Resident in Western Samoa - (1) In any civil proceeding and at any stage thereof the Supreme Court may require a plaintiff or applicant resident out of the jurisdiction of the Supreme Court to deposit any sum of money as security for costs, and may stay the proceeding pending the making of that deposit.

(2) When any sum has been so deposited as security for costs, it shall be disposed of in such manner as the Court directs.

31. Who may be joined as Plaintiffs - (1) All persons may be joined as plaintiffs in one action in whom any right to relief in respect of or arising out of the same transaction or event or series of transactions or events is alleged to exist, whether jointly, severally, or in the alternative where, if they brought separate actions, any common question or law or fact would arise.

Provided that if on the application of any defendant it appears that any joinder may embarrass any party or delay the hearing, the Judge may order separate hearings, or make such other order as he thinks fit.

(2) Judgment may be given for any plaintiff for the relief to which he is entitled, without any amendment, but any defendant, though unsuccessful, may be awarded extra costs caused by joining any person who is not found entitled to relief.

32. Order joining parties - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as appear to the Court to be just, order that the name of any party improperly joined, whether a plaintiff or a defendant be struck out, and that the name of any person who ought to have been joined or whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added, whether as plaintiff or defendant provided however that no person shall be added as a plaintiff without his own consent.

33. Action in Name of Wrong Plaintiff - Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court may at any time, if satisfied that it has been so commenced through a mistake made in good faith, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff, upon such terms as may seem just.

34. Who may be joined as Defendants - (1) All persons may be joined as defendants in one action against whom the right to any relief in respect of or arising out of the same transaction or event or series of transactions or events is alleged to exist, whether jointly severally, or in the alternative, where if separate actions were brought any common question of law or fact would arise.

(2) Judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities without any amendment.

(3) The Court may make such order as to costs as in the event shall appear to it to be just, and in particular may order an unsuccessful defendant or unsuccessful defendants to pay the costs of the successful defendant or defendants or if the costs of the successful defendant or defendants are awarded against the plaintiff or plaintiffs may order such costs to be paid by the unsuccessful defendant to the plaintiff or plaintiffs.

(4) Where two or more persons are made defendants, whether as jointly or as severally liable, the plaintiff may have judgment against any one or more of the defendants and may issue execution thereon, without prejudice to his right to proceed with the action against any other defendant.

35. Misjoinder - No action shall be deemed improperly constituted because of the joinder of plaintiffs or defendants or of different causes of action; but the Court may, in any case in which such joinder is considered embarrassing or otherwise inexpedient, order any party or cause of action to be struck out.

36. Representative proceedings - Where there are numerous persons having the same interest in an action, one or more of them may sue or be sued, or may be authorised by the Court to defend in the action, on behalf of or for the benefit of all persons so interested.

37. Infants, and persons of unsound mind - Infants and persons of unsound mind may sue and be sued by a guardian ad litem admitted for that purpose by the Court.

38. Removal of guardian ad litem - A guardian ad litem may be removed by the Court upon sufficient cause being shown.

39. Retirement of guardian ad litem - A guardian ad litem shall not be permitted to retire without the leave of the Court.

40. Appointment of new guardian ad litem - In case of the death, retirement, or removal of a guardian ad litem a fresh guardian shall be appointed by the Court.

41. Guardian ad litem liable for costs - The guardian ad litem shall be liable for the costs of the action.

42. Statement of claim may be filed before appointment of guardian ad litem - In an action against an infant or a mentally defective person, the statement of claim may be filed before the appointment of a guardian ad litem, but no further steps in the action shall be taken until such an appointment has been made.

43. Third-party Notice - (1) Where a defendant claims as against any person already a party to the action (in this Part called the third party):

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

(b) That he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) That any question or issue in the action should properly be determined not only as between the plaintiff and the defendant, but also as between the plaintiff the defendant, and the third party, or as between any or either of them; or

(d) That any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the plaintiff and the defendant, and should properly be determined as aforesaid;

the defendant may move the Court on notice for leave to issue and serve a third party notice, and shall attach a copy of the proposed third party notice to the motion.

(2) Notice of the motion shall be served on the plaintiff and filed in the Court office within 10 days after the service of the summons, inclusive of the day of service, and the provisions of Rule 65 hereof shall apply, and on receipt of the

notice by the Registrar all other proceedings in the action shall be stayed until the day fixed for the hearing of the application.

(3) On the hearing of the application the Judge may grant or refuse leave, and, if leave is granted, shall give directions as to the time for service of the third-party notice and as to the date of hearing.

(4) The notice shall be in the form 4 and shall state the nature and grounds of the claim or the nature of the question or issue sought to be determined, and the nature and extent of any relief or remedy claimed.

(5) The notice shall be served on the third-party in accordance with the rules relating to personal service, and shall be accompanied by a copy of the summons in the action and of the statement of claim annexed thereto.

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

44. Default by Third Party - (1) If a third party disputes the plaintiff's claim as against the defendant by whom the notice has been given, or his own liability to the defendant -

- (a) He shall within 10 days after the service of the third-party notice on him, inclusive of the day of service serve on the plaintiff and the defendant and file in the Court Office a statement of defence and Rule 100 hereof shall apply with the necessary modifications; and
- (b) He shall appear at the Court on the day fixed for the hearing of the action.

(2) If the third party does not file a statement of defence, he shall be deemed to admit the validity of and be bound by any judgment given in the action, and by any decision therein on any question specified in the notice and when contribution or indemnity or some other relief or remedy is claimed against him in the notice he shall be deemed to admit his liability in respect thereof.

(3) If the third party does not file a statement of defence and the defendant by whom the notice has been given suffers judgment in the action that defendant shall be entitled, at any time after satisfaction of the judgment against

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him, or before such satisfaction by leave of the Judge to enter judgment against the third party to the extent of any contribution or indemnity claimed in the third-party notice or, by leave of the Judge to enter such judgment in respect of any other relief or remedy claimed as the Judge may direct.

Provided that it shall be lawful for the Judge to set aside or vary any such judgment against the third party upon such terms as he thinks just.

45. Procedure at the Hearing involving third party - (1) Subject to any directions which may have been given by the Court before the hearing, the Judge shall have full power at the hearing to direct what part the third party shall take in the hearing and generally how the hearing shall be conducted.

(2) As between the defendant by whom the third-party notice has been given and the third party, the Judge may grant to either party any relief or remedy which might properly have been granted if the claim against the third party had been made in a separate action, and may give such judgment for either party against the other as may be just.

Provided that except with the leave of the Judge execution against the third party shall not be issued until the defendant has satisfied the judgment in the same action given against him.

46. Fourth and Subsequent Parties - (1) Where a third party makes a claim against any person not already a party to the action such a claim as is defined in Rule 43 (1) hereof, the provisions of this Part regulating the rights and procedure as between the defendant and the third party shall apply as between the third party, and that other person, and for that purpose the expressions "third party" and "third-party notice" shall apply to and include every fourth or subsequent party and every notice issued in respect of a claim so made.

(2) Where a person served with a notice under this rule by a third party in turn makes such a claim as is defined in Rule 43 (1) hereof against another person not already a party to the action, this Part, as applied by this rule, shall have effect as regards that further person any other further person or persons so served, and so on successively.

47. Co-defendants - Where a defendant makes a claim against any other defendant in the same action such a claim as is defined in Rule 43 (1) hereof, he may without any leave issue and serve on that other defendant a notice making the claim, and the same procedure shall be adopted for the determination of the claim as would be appropriate

under this Part if that other defendant were a third party.

Provided that nothing contained in this rule shall prejudice the rights of the plaintiff against any defendant.

48. Partners may sue and be sued in name of firm - (1) Two or more persons claiming or alleged to be liable as partners and carrying on business within Western Samoa may sue or be sued in the name of the firm in which they were partners when the cause of action arose.

(2) Where partners sue or are sued in the name of their firm in accordance with this rule, a statement that the plaintiffs are suing, or that the defendants are sued as a firm shall be included in the title of the action.

(3) Where partners sue or are sued in the name of their firm the partners shall, on demand made in writing by or on behalf of any other party, forthwith deliver to the party making the demand and file in the Court office a statement of the names and places of residence of all the persons constituting the firm.

(4) If the partners fail to comply with the demand, the Court may, on application by any other party, order them to furnish and verify, by oath or otherwise, a statement of the names and places of residence of the persons who were partners in the firm when the cause of action arose.

(5) If the partners fail to comply with the order, the Court may -

(a) If the partners are plaintiffs, direct all proceedings to be stayed until the order is obeyed;

(b) If the partners are defendants, order that they be debarred from defending the action.

(6) When the names and places of residence of the partners have been stated the proceedings shall continue in the name of the firm.

49. Action not in firm's name - Nothing in the last preceding rule shall be construed to prevent partners from suing or being sued otherwise than in the firm's name.

50. Action between a firm and its members - The provisions of these rules as to actions by or against firms shall apply to actions between a firm and one or more of its members, and between firms having one or more members in common, if the firm carries on business within Western Samoa, but no execution shall be issued without leave of the Judge, and on an application for leave to issue execution all such



accounts and inquiries may be directed to be taken and made and all such directions may be given, as may be just.

51. Business in another name - A person carrying on business in a name other than his own may be sued in that name as if it were the name of a firm, and, so far as the nature of the case will permit, all the provisions of these rules relating to actions against firms shall apply.

PART VII  
Witnesses & Evidence

52. Witness summons - (1) A Judge, Registrar or Deputy Registrar of the Supreme Court may in any proceeding before the Court, issue a summons to any person requiring him to appear before the Court at the time and place mentioned in the summons there to give evidence in that proceeding or to produce any document to the Court in that proceeding.

(2) A summons to a witness in any civil proceeding may be in form 5.  
*SCHEME OF EXHIBITION*  
Any witness summons may be served either by an officer of the Court or by the party at whose instance the witness is summoned or his agent.

*52* Witness failing to appear or failing to answer - Any person who

(a) Having been served with a witness summons, neglects or fails without sufficient cause shown by him to appear or to produce any documents, books, papers, writings, maps, photographs, films or recordings which he is required to produce by the terms of his summons; or

(b) Whether summoned to attend or not, being present in Court and being required to give evidence or to produce any documents, books, papers, writings, maps, photographs, films or recordings then in his possession, refuses, without sufficient cause shown by him, to be sworn or to give evidence or to produce that document; or

(c) Having been sworn to give evidence in any proceeding, neglects or fails without sufficient cause shown by him to appear at such time as the Court directs for the purpose of giving further evidence in the proceeding - shall be liable to a fine not exceeding one hundred tala;

(d) Nothing in this section shall limit or affect any power of the Court to commit for contempt of court.

54. Witnesses' expenses - Witnesses in civil proceedings, whether summoned or not shall be entitled to such payment in respect of their expenses and loss of time as the Court awards.

56. Examination of witnesses out of Court - (1) The Court may, in any civil proceeding where it appears necessary for the purposes of justice, make an order for the examination on oath before any officer of the Court or any other person or persons, and at any place either in or out of Western Samoa, of any witness or persons, and may order any deposition so taken to be filed in the Court, and may empower any party to the proceeding to give the deposition in evidence therein.

(2) Forms 6 to 9 may be used in respect of the examination of witnesses under this rule.

57. Affidavits - (1) Affidavits in the Supreme Court may be sworn in Western Samoa before -

(a) A solicitor of the Supreme Court of Western Samoa; or

(b) A Registrar or Deputy Registrar of the Supreme Court or Magistrates Court of Western Samoa; or

(c) A Postmaster; or

(d) A Collector of Customs; or

(e) A Medical Officer; or

(f) Any other person from time to time authorised for that

purpose by the Head of State by notice in the Western Samoa Gazette.

58. Use of affidavit on notice - Where a party desires to use at the hearing of an action any affidavit by any witness as to particular facts, as to which no order has been made, he may, not less than five clear days before the hearing, give notice, accompanied by a copy of the affidavit, to the party against whom it is to be used; and unless the last-mentioned party, not less than two clear days before the hearing, gives notice to the other party that he objects to the use of the affidavit, he shall be taken to have consented to the use thereof and the affidavit may be used at the hearing unless the Judge otherwise orders.

59. Affidavits sworn out of Western Samoa - In any civil proceeding in the

Supreme Court any affidavit made out of Western Samoa may, with the leave of the Court, be received in evidence if made in any manner which would make the affidavit admissible in civil proceedings in the Supreme Court of Western Samoa under the laws for the time being in force in Western Samoa.

60. Witnesses may be ordered out of Court - The Court may, if it thinks fit, at any time during any proceedings, order any or all witnesses other than the witness under examination to go and remain outside the Court until required to give evidence and any witness who disobeys any such order shall be guilty of contempt of Court.

61. How evidence to be taken - In any civil proceedings in the Supreme Court evidence may be taken either orally or by affidavit, but subject to the provisions of R.58 in actions and other proceedings inter partes such affidavits shall not be admissible without the leave of the Court.

62. Admission by any party - Any party to any proceedings may give notice to any other party that he admits the truth of the whole or any part of the case of the other party, and no costs incurred after the receipt of the notice in respect of the proof of any matters admitted therein shall be allowed. Such an admission may be contained in a statement of defence.

63. Notice to admit specific facts - (1) Any party may, by notice in the form 10 call on any one or more of the opposite parties to admit, for the purpose of the action only, any specific facts mentioned in the notice.

(2) If the party served with the notice does not admit the facts mentioned in the notice by delivering a written admission thereof, in the form 11 within three days after receiving the notice, he shall pay the costs of proving such facts, whatever the result of the proceedings may be, unless the Court otherwise orders:

Provided that -

(a) Any admission made in pursuance of the notice shall be used only for the purpose of the particular proceedings, and shall not be used against the party making it on any other occasion, or in favour of any person other than the party to whom it is made.

(b) The Court may at any time allow any party to amend or withdraw any admission so made.

64. Notice to admit documents - (1) Where a party desires to adduce any

document in evidence, he may, not less than five clear days before the hearing give to any other party who is competent to make admissions a notice, in the form 12 requiring him to inspect and admit the document.

PART VIII  
Interlocutory Motions

65. General Procedure - (1) Where by any Act or rule any application in the course of any proceedings, whether before or after judgment, is expressly or by implication authorised to be made to the Court or to the Judge or to the Registrar then, subject to the provisions of the particular Act or rule applicable thereto and so far as not inconsistent therewith, the following provisions shall apply:

- (a) The application may be made by motion either in Court or in Chambers, and either ex parte or on notice, provided that any party or person against whom an order has been made ex parte may at any time move to rescind the order;
- (b) If made ex parte, the application shall be in the form 13;
- (c) If made on notice, the application shall be in the form 14 and shall be served on the opposite party and filed in the Court office not later than twenty-four hours before the time appointed for the hearing of the application, unless the Judge or Registrar dispenses with notice or gives leave for shorter notice;
- (d) An affidavit in support shall be necessary in the first instance, but the Judge or Registrar may direct further evidence to be adduced in such manner as he thinks fit;
- (e) Upon the hearing of the application the Judge or Registrar may make such order as may be just;
- (f) If the Registrar has power to hear and determine the application the applicant shall, unless the Judge otherwise orders, make the application to the Registrar in the first instance;
- (g) Where the application is made to the Registrar, the Registrar may, if in doubt as to the proper order to be made, refer the application to the Judge forthwith or at the next convenient opportunity, and the Judge may hear the application and make such order as may be just;

(1) The costs of interlocutory applications shall be in the discretion of the Court, and if allowed shall be costs in the proceedings unless the Judge or Registrar otherwise orders:

(1) Where the Registrar has made an order to which this rule applies any party who is dissatisfied therewith may apply to the Judge on notice to vary or rescind the order, and on hearing the application the Judge may vary or rescind the order and may make such order as may be just.

(2) The jurisdiction of the Court to hear and determine any application in the course of any proceedings, whether before or after judgment, may be exercised by the Registrar, unless there is a provision to the contrary in any Act or rule.

66. Power to impose terms - The Court may, as a condition of granting any interlocutory application, impose such terms and conditions as it thinks fit, and without prejudice to the generality of the foregoing provisions, may make orders requiring any party -

- (a) To give security; or
- (b) To give an undertaking; or
- (c) To pay money into Court; or
- (d) To pay all or any part of the costs of the proceedings.

67. Directions - (1) In any proceedings the Judge may at any time, on the application on notice of any party, or of his own motion, give such directions as he thinks proper.

(2) Without prejudice to the generality of the last preceding sub-clause, the Judge may at any time, on the application on notice of any party, or of his own motion, direct any party to file or deliver any particulars which the Judge thinks necessary for defining the issues in the proceedings.

68. Adjournment - (1) The Judge or Registrar may at any time and from time to time upon application, or of his own motion, adjourn the hearing of any proceedings on such conditions as he thinks fit.

(2) Where all the parties to the proceedings desire an adjournment the application shall be deemed to be sufficiently made if there is filed with or sent to

the Registrar a request in writing signed by the parties, or signed by one party stating in the request that the other parties consent.

(3) If the hearing of the proceedings is adjourned sine die, the Registrar shall, on the request of either party, fix a day for hearing, and the party making the request shall give notice to all other parties of the day and time so fixed.

69. Enlargement or Abridgment of Time - (1) Subject to the provisions of these rules, any of the times fixed by these rules for -

- (a) Taking any steps in any proceedings; or
- (b) Filing any document; or
- (c) Giving any notice -

may be enlarged or abridged by consent of all parties or by the Court on the application of any party.

(2) An order enlarging time may be made although the application therefor not made until after the expiration of the time allowed or appointed.

70. No Cause of Action - Where in any proceedings no cause of action is disclosed the Judge may, on the application of the defendant order the proceedings to be struck out.

71. Application for Interim Order - Where any party desires before the hearing an immediate order -

- (a) In the nature of an injunction or
- (b) For the appointment of a receiver; or
- (c) For taking any accounts; or
- (d) For making any inquiries -

may apply to the Judge, who may, on proof of the facts rendering the order immediately necessary, make such order as he thinks fit.

72. Recovery of goods where Lien claimed - (1) Where in any action the plaintiff claims the recovery of specific property other than land, and the defendant admits the title of the plaintiff but claims to retain the property by virtue of a lien, or otherwise as security for the payment of a sum of money, the Court may order that the plaintiff be at liberty to pay into Court, to abide the event of the action, the sum of money in respect of which the defendant claims to retain the property, and such further sum (if any) for costs as the Court may think fit, and that upon such payment into Court being made the defendant shall return the property to the plaintiff.

73. Preservation or Interim Custody of Subject-matter - When a prima facie case of liability under any contract is established, and there is claimed as matter of defence, a right to be relieved wholly or partially from that liability, the Judge may make an order for the preservation or interim custody of the subject-matter of the action, or may order that the amount in dispute be brought into Court or otherwise secured.

74. Order for Detention, etc. of Property - (1) The Judge on the application of any party to any proceedings, may make any order for the detention, preservation, inspection, surveying, measuring, or weighing of any property or thing being the subject of the proceedings or as to which any question may arise therein, and may authorise any person to enter upon or into any land or building in the possession of any party to the proceedings, and authorise any samples to be taken, or any observations, plan, or model to be made, or any experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

(2) Where an order is made for the inspection, surveying, measuring, or weighing of any property, or the making of any experiment, or the taking of any sample, or the making of any plan or model, by any person named in the order, the order may authorise any Registrar to examine upon oath and take the deposition of the person so named as to the result, accuracy, or fairness of what he has done in pursuance of the order and may also empower any party to give in evidence the deposition so taken.

75. Order for sale of perishables - The Judge, on the application of any party to any proceedings, may order the sale, by any person to be named in the order, of any subject-matter of the proceedings which-

- (a) Is of a perishable nature; or
- (b) Incurs charges for food or keep; or
- (c) Should for any other sufficient reason be sold at once.

76. Order need not be prepared and filed - (1) Except where otherwise provided in any Act or rule, it shall not be necessary, unless the Court otherwise directs, to prepare and file an order made under the provisions of this Part.

(2) Where an order is required to be filed it shall be prepared by the party obtaining the order, signed by the Judge or Registrar, and filed in the Court, and a copy thereof shall be served on every other party affected thereby.

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77. Interrogatories - Either party may at any time after the commencement of an action, by leave of the Court or a Judge, deliver interrogatories for the examination of the opposite party, with a note at the foot thereof stating which of such interrogatories each of such parties is required to answer. Such interrogatories may be in the form 15.

78. Interrogatories in defamation action - In an action for defamation, where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief shall be allowed.

79. Affidavit in support - The application for such leave shall be made upon an affidavit of the party proposing to interrogate, or of his solicitor or agent if from absence or other unavoidable cause such party is unable to make the affidavit himself.

80. Corporations or companies - If any party to an action is a body corporate company, or body of persons empowered by law to sue in the name of a public officer, any opposite party may, by leave of the Court or a Judge, deliver interrogatories for the examination of any member or officer of such body corporate, company, or body of persons.

81. Answers by affidavit - Interrogatories shall be answered by affidavit in the form 16 in the Schedule hereto, to be filed within ten days, or such other time as the Court or a Judge may direct.

82. Affidavit to set out interrogatories - The affidavit in answer to interrogatories shall set out above or opposite to each answer the interrogatory to which it relates.

83. Order for answer, or further answer - If any person interrogated omits to answer or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer or to answer further, as the case may be. And an order may be made on such application, or at any subsequent time, requiring him to answer or answer further, either by affidavit or to attend at such place before the Court Registrar, or such other person as the Court or a Judge may appoint, to be orally examined as to the matters he has omitted to answer or answered insufficiently.

84. Answers by Government - If, in civil proceedings to which the Government



is a party or third party, an order is made requiring the Government to answer interrogatories, the order shall direct by what officer of the Government the interrogatories are to be answered.

85. Using answers to interrogatories at trial - Any party may, at the trial of an action or issue, use in evidence any one or more of the answers of the opposite party to interrogatories without putting in the others:

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

86. Discovery of Documents - (1) In any action where a statement of defence, or counter-claim has been filed, any party may issue as of course against any other party, without any application to the Court, an order for discovery on oath of the documents which are or have been in his possession or power relating to any matter in question in the proceedings.

(2) The order shall be in form 17 and shall be served by the applicant on the party against whom it is issued.

(3) The affidavit of documents to be made by a party against whom an order for discovery is issued shall be filed in the Court and a copy thereof shall be served on the party issuing the order within 10 days after the service of the order, or within such further time as the Court, on application, may order.

87. Inspection of Documents - (1) Any party to any proceedings may at any time give to any other party notice, to produce any document for the inspection of the party giving the notice, and to permit him to take copies thereof.

(2) Any party not complying with such a notice shall not afterwards be at liberty to put any such document in evidence unless he satisfies the Court that it relates only to his own title, he being a defendant in the proceedings, or that he had some other cause or excuse which the Court deems sufficient for not complying with the notice, in which case the Court may allow the document to be put in evidence on such terms as to costs and otherwise as it thinks fit.

(3) The party to whom the notice is given shall, within two days after the receipt thereof, produce the documents for inspection, or deliver to the party giving it a notice stating a time, being a time within three days from the delivery thereof, and the place at which the documents, or such of them as he does not object to producing may be inspected, and stating which, if any, of the documents he objects to

to producing and on what grounds.

(4) The inspection shall be given at the address for service, or at the place of residence or business of the party giving the inspection, or at his solicitor's office, whichever is most convenient.

Provided that inspection of books of account or books in constant use for the purposes of any trade or business may be given at their usual place of custody.

(5) If any party served with a notice under subclause (1) of this rule fails to produce or to give notice of a time and place for inspection in accordance with subclauses (3) and (4) of this rule, the Court may on application make an order for inspection at such time and place as the Court thinks fit.

Provided that the Court shall not make an order for inspection of documents if and so far as the Court is of opinion that it is not necessary either for disposing fairly of the proceedings or for saving costs.

(6) An application for an order for the inspection of documents shall be supported by an affidavit showing -

- (a) Of what documents inspection is sought.
- (b) The grounds on which inspection of them is claimed.
- (c) That they are in the possession or power of the other party.

88. Business Books - Where inspection of any business books is applied for the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has compared the copy with the original entries. Every such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations.

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

89. Parts of Books may be sealed - Where it is shown to the satisfaction of the Court that certain parts of books or documents do not relate to the matters in dispute, the person producing them may be allowed to close up those parts.

90. Privilege - Where, on an application for an order for inspection, privilege is claimed for any document, the Court may inspect the document for the purpose of deciding whether the claim of privilege is valid.

91. Possession of specified documents - (1) The Court may at any time, on the

application of any party to proceedings, make an order requiring any other party to state by affidavit whether any particular document or class of documents specified or indicated in the application is or has at any time been in his possession, custody or power, and if not then in his possession, custody, or power, when he parted with it and what has become of it.

(2) The application shall be supported by affidavit stating that in the belief of the deponent the party against whom the application is made has or at some time has had in his possession, custody, or power the particular document or class of documents specified or indicated in the application, and that it relates to a matter in question in the proceedings.

92. Order for Production of Documents - The Court may at any stage of the proceedings order the production by any party thereto of any documents in his possession, custody, or power relating to any question in the proceedings, and the Court may deal with the documents when produced in such manner as may be just.

93. Non-compliance with Order - If any party fails to comply with an order for discovery of documents, or for inspection, or any order made under Rule 91 or Rule 92 hereof, the following provisions shall apply:-

- (a) If the party failing to comply with the order is a plaintiff the Court may order the action to be dismissed for want of prosecution or stayed until the order is complied with;
- (b) If the party failing to comply with the order is a defendant, the Court may order that he be debarred from defending the action altogether, or allowed to defend only on such terms as the Court thinks fit.

94. Application of this Part to Government proceedings - In any civil proceedings to which the Government is a party or third party, the provisions of this part of these rules shall have effect, subject to the following modifications:-

- (a) An order against the Government under this Part may be made only by a Judge;
- (b) An order for discovery against the Government under Rules 77 or 86 hereof shall not be issued without the leave of a Judge obtained upon an application of which not less than 7 clear days' notice has been given to the Government;

(c) An order for inspection under Rule 87(5) or Rule 88 hereof, or an order under Rule 91 or Rule 92 hereof, shall not be made against the Government except on an application of which not less than seven clear days' notice has been given to the Government;

(d) Any affidavit to be made in answer to any order made against the Government under this Part shall be made by such officer of the Government as the Judge shall direct;

(e) Nothing in this Part, or in any other thereunder, shall be construed as requiring disclosure, whether to the Court or to any person, of the existence of any document if in the opinion of a Minister of the Government it would be injurious to the public interest to disclose the existence of the document.

95. This Part to apply to Infants and to Mentally Defective Persons - (1)

This part of these rules shall apply to parties who are infants or mentally defective persons.

(2) The Court may at any time give directions as to compliance with this Part by the infant or mentally defective person, if capable, or by the guardian, next friend, committee, or administrator, as the case may require.

PART IX  
Confession Defence Counterclaim  
Set off and Setting down

96. Confession, defence, and counterclaim in action - Subject to the provisions of section 11(2) of the Government Proceedings Act 1974, a defendant in an action who admits his liability for the whole or party of the claim, or who disputes his liability for the whole or part of the claim or who desires to set up a counterclaim, may, within 10 days after the service of the summons on him, inclusive of the day of service, file in the Court office a confession in form 18 or 19 or a statement of defence, or a statement of counterclaim, as the case may be.

97. Judgment in absence of defence etc. - (1) If the defendant in an action does not within the time fixed by rule 96 of these rules file a counterclaim or a statement of defence or pay into Court or file a confession for the total amount of the claim and costs a Judge may on the application of the plaintiff made upon the date

- 20 -

of hearing appointed in the summons or on any adjourned date therefrom enter judgment against the defendant for the amount of the claim, or any part thereof, and costs:

Provided that if, after the said period of 10 days has elapsed and before judgment has been entered, the defendant files in the Court office and serves on the plaintiff a statement of defence, or a counterclaim, or files a confession in the Court office, judgment shall not be entered under this rule, but the procedure prescribed by rule 98 or 100 of these rules, whichever is applicable shall be followed.

(2) Where twelve months have elapsed from the date of service, judgment shall not be entered against the defendant, except with the leave of the Court granted on the ex parte application of the plaintiff.

98. Judgment on confession - Where the defendant in any action does not file a counterclaim, but before judgment is entered files a confession to the whole claim, a Judge may on the application of the plaintiff enter judgment on confession accordingly.

99. Payment or confession of part of claim - (1) If before judgment is entered the defendant in any action pays into Court, or files in the Court office a confession for part of the claim, and does not file a statement of defence or a counterclaim, the plaintiff may either -

- (a) Have judgment entered for the full amount of the claim or any part thereof under the provisions of rule 98 or rule 99 of these rules; or
- (b) Accept the amount paid into Court in satisfaction of the claim; or
- (c) Have the case set down for hearing under the provisions of rule 100.

100. Setting down - (1) If, before judgment is entered, the defendant files in the Court office and serves on the plaintiff a statement of defence, or a counterclaim the Court or Registrar shall adjourn the proceedings sine die until the parties or one of them file in the Court a request in form 20 to set the proceedings down for hearing, whereupon the Registrar shall fix a day for the hearing of the action and shall give not less than fourteen days' notice to the plaintiff and to the defendant, in form 21.

(2) The party initiating the request to set down shall forward the form of request to the opposing party or parties for signature, before filing the same in

Court and if the opposing party or parties shall fail to return the form of request, duly signed, within 14 days of receipt thereof, the party initiating the request may apply unilaterally to set down the proceedings.

101. Payment of Claim and Costs in undefended Action for Moneys - (1) In any action where the only relief claimed is the payment of moneys, a defendant who has not filed and served a statement of defence may, in satisfaction of the claim, pay into the Court the whole amount of the claim and costs stated on the summons:-

- (a) Within 10 days after the service of the summons on him, inclusive of the day of service; or
- (b) Subject to the provisions of subclause (2) of this rule, at any time after the expiration of the said period of 10 days and before judgment is given or entered, as the case may be.

(2) The Court may award to the plaintiff by way of costs an amount not exceeding the costs allowable for preparing for hearing together with any necessary expenses or disbursements already incurred.

(3) Where any payment into Court is made under this rule the defendant may send to the plaintiff notice of the payment, whereupon all proceedings in the action, except those authorised by this rule, shall be stayed, and the defendant shall not be liable for any costs incurred after the receipt by the plaintiff of the notice of payment into Court and the plaintiff shall be entitled to have the amount in Court paid out to him without any order of the Court.

(4) If the defendant pays into Court the amount of the claim without the costs, the plaintiff may have judgment entered by the Judge for the amount so unpaid, together with the costs of entering judgment.

102. Delivery of Land or Chattels - (1) In an action where the relief claimed is the recovery of land or the possession of chattels the defendant may at any time within 10 days after service of the summons, inclusive of the day of service, deliver possession of the land or of the chattels claimed, or any part thereof, to the plaintiff and pay into Court a sum of money by way of compensation for the detention thereof or damage thereto, together with the costs incurred by the plaintiff up to the time of the payment.

(2) If the plaintiff accepts the money so paid, the action shall be

deemed to be struck out.

103. Payment into Court with or without Denial of Liability - (1) A defendant in an action may at any time within seven days after service of the summons, inclusive of the day of service, pay moneys into Court:-

(a) In satisfaction of the claim or, where several causes of action are joined in one action, in satisfaction of one or more of the causes of action; or

(b) On account of a sum admitted by him to be due to the plaintiff.

(2) Moneys may be paid into Court under the last preceding subclause by one or more of several defendants sued jointly or in the alternative.

(3) A payment made under this rule shall be deemed to be made with an admission of liability, unless accompanied by a notice stating that liability for the amount paid in is denied or that it is made with a defence of tender before action.

(4) Where the amount paid into Court under this rule is less than the amount claimed, the payment shall be deemed to be made on account of the amount claimed, unless accompanied by a notice stating that it is made in satisfaction of the claim or, where several causes of action are joined in one action, in satisfaction of one or more of the causes of action.

(5) Where money is paid into Court under this rule the defendant shall file a notice in the form 22 and forthwith serve a copy on the plaintiff.

104. Acceptance of Moneys paid into Court - (1) Where the amount paid into

Court is less than the amount of the claim, or where the whole amount of the claim is paid into Court but there is a claim for some relief other than the payment of money, and the plaintiff elects to accept the sum or any one or more of specified sums paid into Court in satisfaction of his claim, the plaintiff may, within three days after service on him of notice of payment into Court, and without payment of any fee, deliver at the Court office and serve on the defendant notice of acceptance, and thereupon the following provisions shall apply:-

(a) On receipt by the Registrar of the notice of acceptance all proceedings in the action, or, as the case may require, in respect of any cause of action to which the notice relates shall be stayed;

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(b) Except in a case to which Rule 106 hereof applies, the plaintiff shall be entitled to have the account and sums paid out to him without any order of the Court.

(2) If the plaintiff fails to give notice of acceptance within the time limited by subclause (1) of this rule, he may give notice of acceptance subsequently, but the money in Court shall not be paid out without either:

- (a) An order of the Court; or
- (b) The written consent of the defendant filed in the office of the Court.

and, except where paragraph (b) of this subclause applies, the plaintiff to pay any costs reasonably incurred by the defendant in payment into Court, including the costs of attending Court on that order.

105. Election not to accept moneys paid in - Subject to the provisions of Rule 107/hereof, if in any case to which the said Rule 107 applies the plaintiff does not accept in satisfaction the sum paid into Court and elects to proceed, but fails at the hearing to recover a greater sum of money than any costs reasonably incurred by the defendant after the date of payment into Court.

106. Where no payment out without order - Where payment into Court is made -

- (a) By one or more of several defendants sued jointly or in the alternative, or
- (b) With a defence of tender before action, the money in Court shall not be paid out without an order of the Judge.

107. Counter-claim - A plaintiff or other person made defendant to a counter-claim may pay money into Court as if he were defendant to an action, and thereupon the foregoing provisions of this Part shall apply with the necessary modifications.

108. Set-off by way of defence - Every defendant may set off, by way of defence, any claim or demand whatsoever, that he may have in respect of the same, in the capacity in which he is sued against the plaintiff in the capacity in which he sues.

PART X  
Discontinuance

109. Discontinuance of action - (1) The plaintiff may at any time before trial, discontinue his action, either wholly or as to any cause of action, by filing

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in the Court a memorandum of discontinuance in form 23.

(2) A copy of that memorandum shall be served upon the defendant.

(3) On any such discontinuance the Court may award to the defendant such costs of the action as it thinks fit.

110. Discontinuance not to bar subsequent proceedings - The discontinuance of an action shall not be a defence to any subsequent action on the cause of action discontinued, provided the costs of the previous action so awarded have been paid.

PART XI  
Reference for Inquiry  
and Report

111. Reference for inquiry and report - (1) A Judge may refer to the Registrar or a referee for inquiry and report

(a) Any proceedings which require any prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the Judge, conveniently be made before him;

(b) Any proceedings where the question in dispute consists wholly or in part of matters of account;

(c) With the consent of the parties, any other proceedings;

(d) Any question arising in any proceedings.

(2) Where any proceedings or question are referred as aforesaid, the Judge may direct how the reference shall be conducted and may remit any report for further inquiry and report, and, on consideration of any report or further report may give such judgment or make such order in the proceedings as may be just.

(3) The Judge may, after deciding or reserving any question of liability, refer to the Registrar or the Referee and an Accountant any more matter of account which is in dispute, and after deciding the question of liability, may give judgment on the Registrar's report.

112. How effected - (1) An order for the reference of any proceedings or question to the Registrar or a referee for inquiry and report, shall be in the form

24.

(2) The order may be made: -

(a) On an application by any party at the hearing on notice;

or

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- (b) On an application by any party at the hearing; or
  - (c) At any stage of the proceedings by the Judge of his own motion.

113. Conduct of reference for inquiry and report - Subject to any order of the Judge as to the conduct of the reference -

- (a) The Registrar or referee shall fix a day and place for holding the inquiry, and shall give notice, in form 25 to all parties entitled to attend the proceedings;
- (b) The Registrar may hold the inquiry in Court or in his office or at any place convenient to the parties;
- (c) A referee, other than the Registrar, may hold the inquiry at any place convenient to the parties;
- (d) The Registrar or referee may inspect any property or thing concerning which any question may arise;
- (e) The attendance of witnesses may be enforced by summons, and inquiry shall be conducted in the same manner, as nearly as circumstances will permit, as if the inquiry were the hearing of an action;
- (f) The Registrar or referee shall have the powers of a Judge with respect to discovery and production of documents and in the conduct of the inquiry.

Provided that nothing in this paragraph shall authorize the Registrar or referee to commit any person or to enforce any order by committal.

- (g) The Registrar or referee may submit any question arising in the inquiry for the decision of the Judge.

114. Report - (1) The report of the Registrar or referee shall be in writing and shall be filed in the Court office, and shall be open to inspection by the parties and the Registrar shall, on the filing of the report give notice thereof to all parties :

- (2) When the report has been filed -
  - (a) If the further consideration of the proceedings has been adjourned to a day named, any party may apply on that day to the Judge to adopt the report, or may give not

- less than three clear days' notice of his intention to apply on that day to vary the report or to remit it or any part thereof for further inquiry or report;
- (b) If the further consideration of the proceedings has not been adjourned to a day named, any party may on not less than three clear days' notice apply to the Judge to adopt or vary the report or remit it or any part thereof for further inquiry and report.

PART XII  
hearing and Judgment

115. Parties may be represented by counsel, etc. - In any civil proceeding in the Supreme Court, any party thereto may be represented either by a barrister or solicitor of the Supreme Court of Western Samoa, or by any person entitled by law to practice as barrister or solicitor in Western Samoa, or, with the leave of the Court, by any other agent, but any such leave may be at any time withdrawn.

116. Where both parties appear - If in any action both parties appear, the Court may give judgment by consent of the parties or may proceed with the hearing and determination of the action.

117. Where plaintiff does not appear - If on the trial of any action the plaintiff does not appear, the Court may either adjourn the trial or strike out the proceedings.

118. Where defendant does not appear - Where the defendant does not appear and the claim is for a liquidated amount, the Court may give judgment by default without hearing.

119. Unliquidated claims to be proved - In any action, for an unliquidated claim, the claim shall be proved whether the defendant appears in the action or not.

120. Nonsuit - The plaintiff in any action may at any time before judgment elect to be nonsuited, and the Court may nonsuit the plaintiff without his consent.

121. Nonsuit not to bar subsequent proceedings - After a nonsuit the plaintiff shall not be debarred from commencing a further action on the same cause of action, all the costs of the first action having been first paid.

122. Trial by Judge alone - All actions or other civil proceedings shall be tried by a Judge alone.

123. Parties may state case on question of law - (1) The parties to any

action may concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court.

(2) Every such special case shall concisely state such facts and documents as may be necessary for the decision of the questions raised therein.

(3) On the argument of the special case the Court shall be at liberty to draw from the facts and documents so stated any inference of fact which might have been drawn therefrom if proved at the trial.

(4) On the argument of the questions of law raised in the special case the Court may give judgment in the action, or may order the issues of fact or any of them to be tried before giving judgment.

124. Entry of judgment - (1) Every judgment of the Supreme Court shall be deemed to be complete when a minute thereof has been made in the record books of the Court and signed by the Judge giving the same.

(2) When necessary, the judgment may at any time thereafter be drawn up under the seal of the Court.

125. Power to amend judgment, etc. - A Judge of the Supreme Court, may at any time amend any minute or judgment of the Court or other record of the Court in order to give effect to the true intent of the Court in respect thereof or truly to record the course of any proceeding.

126. Interest on judgment debt. - Every judgment debt in excess of \$200 shall carry interest at the rate of 8 percent per annum from the time of judgment being given until the same is satisfied, and such interest may be levied under any writ of execution upon the judgment.

127. Delivery of Decision - (1) In any proceedings the Judge, if he thinks fit, may forthwith deliver his judgment or make his order, or he may reserve his decision on any question of fact or law.

(2) Where a Judge has reserved his decision he may deliver it at any adjourned or subsequent sitting of the Court or of any other Court, or may draw up his decision in writing, sign it, and send it to the Registrar who shall deliver it to the parties on an appointed day.

128. Minute of Judgment or Order - Forthwith on the delivery of judgment or the making of an order, a memorandum of the decision shall be entered in the civil record book or minute-book, and the memorandum shall thereupon be signed by the Judge

or Registrar delivering the judgment or making the order.

129. Orders need not be drawn up - Subject to the provisions of any Act or rule, no order need be drawn up or served unless the Court otherwise directs.

130. Counter-claim - (1) If a counter-claim is proved -

(a) To an amount less than that proved on the claim, the plaintiff shall have judgment for the balance of his claim after deducting the amount proved on the counter-claim;

(b) To an amount exceeding that proved on the claim, or if the claim is not proved, the defendant shall have judgment for the excess or the amount of the counter-claim, as the case may be.

(2) If a counter-claim is not proved, the defendant may be nonsuited or judgment may be given against him as the Court thinks fit.

131. Hire purchase or Conditional-purchase Agreement - (1) Where the relief sought is the recovery of goods and moneys payable under a hire purchase or conditional-purchase agreement, the Court may enter a judgment for possession and reserve leave to the plaintiff to apply on notice for such further relief as he may be entitled to.

(2) An application for further relief under this rule may be heard and determined by the Judge by whom leave was so reserved or by any other Judge.

132. Time for doing any act to be stated - Every judgment or order requiring any person to do an act, other than the payment of money or costs, shall state the time within which the act is to be done.

133. Payment in Reduction of Amount - A person liable to pay money under a judgment or order may at any time pay money into Court in reduction of the amount payable by him.

134. New Order for payment of unsatisfied Judgment - (1) Where there is an unsatisfied judgment or order the party entitled to enforce it may apply on notice, in the form 26 to the Court in which it was given or made, for an order that the amount due and unpaid be paid by instalments, or, if already payable by instalments, by the same or smaller instalments, and the Court may thereupon make an order accordingly.

(2) Where a judgment has been given or an order made for the payment of

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any sum of money, and it appears to the Court that the person liable under the judgment or order is unable to pay, in one sum, the sum ordered to be paid, the Court may on the application of that person made on notice in the form 26 order the amount unpaid under the judgment or order to be paid by instalments, and may from time to time vary any such order.

(3) If it appears to the Court that the person liable under any order for payment by instalments is able to pay the sum ordered to be so paid either in one sum or by larger or earlier instalments than those ordered, the Court may on the application of the person entitled to enforce the order, made on notice in the form 26, order the amount unpaid to be paid in one sum, or by larger or earlier instalments than those previously ordered, and may from time to time vary any such order.

(4) Any order made under this rule shall be entered in the civil record book against the entry in which the original judgment or order was recorded.

135. Stay of Judgment, and C. - (1) An order to suspend or stay any judgment, order or execution under these Rules shall be in the form 27.

(2) Where an order suspending or staying a judgment, order, or execution has been made, and execution has issued, the warrant shall be recalled, but the Judge may order the person named therein to pay the costs of the warrant and any fees or expenses incurred by the officer executing the warrant before the recall of the warrant and may authorise the officer executing the warrant to sell a portion of the goods seized sufficient to realise those costs, fees, and expenses and the expenses of the sale, and any such warrant may be reissued by leave of the Judge.

136. Where Deed directed to be prepared - Where a judgment or order directs any deed to be prepared and executed it may state by which party and at whose expense the deed shall be prepared, and to whom it shall be submitted for approval, and, if the parties cannot agree upon the form of the deed, the Judge may, upon the application of any party on notice, settle the deed himself.

137. Sale of Personal property - (1) Where an order directs any personal property to be sold, the property may be sold by public auction or private contract as the Judge directs.

(2) Where any personal property is directed to be sold by public auction or to be detained or preserved, the Registrar shall, if the Judge so directs, superintend the sale, detention, or preservation and where any such property is

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directed to be sold by private contract it shall be the duty of the Registrar, unless the Judge otherwise directs, to see that the directions of the Judge are carried out.

(3) This rule shall not apply to any execution issued to enforce any judgment.

138. Where Possession ordered to be taken until security given - (1) Where a warrant directs the officer executing the warrant to take possession of any goods until security is given by some party for the safe keeping of the goods, or for the payment of their value in default of safe keeping, but does not specify the amount of the security, the officer executing the warrant shall cause to be made an inventory and appraisalment of the goods of which he takes possession.

(2) Upon receiving as a deposit the amount of the appraisalment or sufficient security, to be approved by the Registrar, for the safe keeping of the goods, and for the delivery up of possession thereof upon request, the officer executing the warrant shall relinquish possession thereof on condition that the goods shall be redelivered to him on request, or held to abide the order of the Court.

PART XIII  
Reinstatement, Setting Aside  
and Rehearing

139. Reinstatement - (1) When any proceedings have been struck out under the provisions of Rule 117 hereof any application for reinstatement shall be made by way of motion ex parte and, if the proceedings are reinstated, notice of reinstatement in the form 28 shall be served on the defendant personally at least seven clear days before the hearing.

(2) Any order for reinstatement made pursuant to this rule shall be subject to such order for costs as the Court thinks fit.

140. Setting aside Judgment or Order given in Absence of Defendant - (1) Where in any proceedings a defendant, or a defendant to a counter-claim, does not appear at the hearing and a judgment or order is given or made against him in his absence, the judgment or order, and any execution thereon, may (on application) be set aside and a new hearing may be granted.

(2) The application may, if the parties are present, be made on the day on which the judgment or order was given or made, and in any other case shall be made on notice.

(3) Notice of a new hearing pursuant to this rule shall be in the form 29 and shall be served on the plaintiff seven clear days before the date fixed for

the new hearing.

141. Rehearing - (1) The Court shall in every proceeding have the power to order a rehearing to be had upon such terms as it thinks reasonable, and in the meantime to stay proceedings :

Provided that a rehearing shall not be granted on an application made more than fourteen days after the judgment or order, unless the Court is satisfied that the application could not reasonably be made sooner.

(2) The application shall be served on the opposite party not less than three clear days before the day fixed for hearing, and shall state the grounds thereof, which shall be verified by affidavit.

(3) The application shall not operate as a stay of proceedings unless the Court so orders.

(4) On receipt of the application the Registrar shall, unless otherwise ordered, retain any money in Court until the application has been heard.

(5) An application for a rehearing may be heard by the Judge who heard the proceedings or, if that Judge is not available, by any other Judge.

(6) An order for a rehearing shall be in the form 30, and shall be served on the opposite party.

(7) The rehearing need not take place before the Judge by whom the proceedings were originally heard.

(8) The court upon rehearing may either affirm, reverse or vary the judgment.

PART XIV  
Garnishee Proceedings

142. Garnishee proceedings - Any judgment or order of the Court or a Judge thereof for the payment of a sum of money may be enforced by garnishee proceedings for the attachment of moneys due to the judgment debtor.

143. How effected - Any person who has obtained a judgment or order (in this Part referred to as the Judgment creditor) for the payment of money may take garnishee proceedings in accordance with these rules in the Court in which he has judgment, to obtain payment to him of the amount of any debt owing or accruing to the judgment debtor from any other person (referred to as the sub-debtor) or so much thereof as maybe sufficient to satisfy that judgment or so much thereof as may be sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

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144. Commencement of proceedings - (1) When a judgment creditor desires to take garnishee proceedings he shall file in the Court in which he has the judgment or order an affidavit in the form 31.

(2) On the filing of the affidavit the Registrar shall issue a garnishee summons to the sub-debtor in the form 32 and a notice to the Judgment debtor in the form 33.

145. Service, and effect of service - The summons shall be served on the sub-debtor personally, and the notice shall be served on the judgment debtor personally, in each case not less than ten clear days before the day of hearing. When served on the sub-debtor it shall bind in the hands of the sub-debtor so much of the debts owing or accruing from the sub-debtor to the judgment debtor as will satisfy the debt due under the judgment or order and the costs entered on the summons.

146. Payment into Court by sub-debtor - (1) The sub-debtor may at any time before the day of hearing, pay into Court -

(a) The amount admitted to be due from him to the Judgment debtor; or

(b) If the amount admitted is more than sufficient to satisfy the amount due under the judgment or order and the costs entered on the summons, a sum sufficient to satisfy that amount and those costs.

(2) If the amount admitted to be due from him to the judgment debtor is less than the amount claimed to be owing under the summons, the judgment creditor may file in the Court and serve on the judgment debtor and sub-debtor a notice that he accepts the amount, and the sub-debtor will be deemed to be discharged from the proceedings.

147. Payment out of Court of moneys paid by sub-debtor - Moneys paid into Court by the sub-debtor may be paid out before the day of hearing by the Registrar on production of the consent in writing of the Judgment debtor. In the absence of such consent the Judge may on the day of hearing, after hearing the judgment creditor and the judgment debtor, if he appears, make such order in the proceedings, including an order as to costs, as may be just.

148. Garnishee order where sub-debtor does not pay into Court or appear - (1) If the sub-debtor -

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(a) Does not, before the day of hearing, pay into Court the amount admitted to be due from him to the judgment debtor, or so much thereof as is sufficient to satisfy the amount in respect of which the judgment or order is unsatisfied and the costs entered on the garnishee summons; and

(b) Does not, on the day of hearing, appear and dispute the debt alleged to be due from him to the judgment-debtor - the Judge may, if the judgment debtor does not appear and show cause to the contrary make an order for the payment by the sub-debtor to the judgment creditor of the amount due from the sub-debtor to the judgment debtor, or so much thereof as is sufficient to satisfy the judgment or order against the judgment debtor, and for costs, and an entry thereof shall be made in the civil-record book.

(2) Subject to section 17 of the Government Proceedings Act, 1974 every such garnishee order may be enforced as a judgment of the Court.

149. Order in other cases - (1) Where the sub-debtor disputes liability he shall, within 10 days after the service of the summons on him, file in the Court office a notice in the form 34 and serve a copy thereof on the judgment creditor and on the judgment debtor. No fee shall be payable for filing the notice.

(2) Where notice has been given to the judgment creditor as aforesaid, or where the amount paid into Court under Rule 146 hereof is not accepted, the Judge may, after hearing the judgment creditor, the sub-debtor and the judgment debtor, or such of them as appear, -

(a) Determine the question of the liability of the sub-debtor and make such order as to the payment to the judgment debtor, and as to costs, as may be just; or

(b) Order that any issue necessary for determining the question of the liability of the sub-debtor be tried in the same manner as an action, is tried and direct which of the persons interested, including such a third person as is referred to in the next succeeding rule, shall be plaintiff and which shall be defendant; or

(c) Order that the judgment creditor be at liberty to sue the

sub-debtor for the amount alleged to be due by him to the judgment debtor, if it is less than the judgment debt, or, if it is greater, then for the amount of the judgment debt with costs of suit.

(3) Subject to the provisions of section 17 of the Government Proceedings Act 1974 every order for payment made under this rule may be enforced as a judgment of the Court.

(4) Notwithstanding anything contained in the foregoing provisions of this rule, the sub-debtor may at any time before the hearing apply to the Judge for an order - that the garnishee proceedings be referred to Registrar of any Court for inquiry and report under Part XI of these rules and on any such application as aforesaid the Judge may make such order as he thinks fit.

150. Where debt is stated to belong to third party - (1) If in garnishee proceedings it is suggested that the debt belongs to or is claimed by some third person or that any third person has or claims to have lien or charge upon it, the Judge may order the third person to appear and state the nature and particulars of his claim to the debt.

(2) After hearing the third person, if he appears, the Judge may bar the claim of the third person or may order an issue to be tried between the third person and the judgment creditor, or make such other order, including an order as to costs, as may be just.

151. Discharge of sub-debtor as against judgment debtor - Payment made by or execution levied upon the sub-debtor under garnishee proceedings otherwise than in respect of any costs ordered to be paid by the sub-debtor personally, shall be a valid discharge to him as against the judgment debtor to the amount so paid or levied, notwithstanding that the proceedings may thereafter be set aside or the judgment order reversed.

152. Judge may refuse order - (1) The Judge may hear evidence as to the circumstances of the judgment debtor, and, if it appears that the whole or any part of the moneys sought to be attached are reasonably required by the judgment debtor for the maintenance and support of himself and his family, the Court may refuse to make a garnishee order and may make such order as to the disposal of any moneys paid into Court as it thinks fit.

(2) The Judge may refuse to make a garnishee order if in his opinion an order should not be made owing to the smallness of the amount to be recovered, or of the debt sought to be attached.

153. Where money due by sub-debtor under the judgment or order - Where the amount due from the sub-debtor to the judgment debtor is due under a judgment or order obtained by the judgment debtor against the sub-debtor, the following provisions shall apply:-

(a) Unless the Judge otherwise orders, the sub-debtor shall not be liable to pay to the judgment creditor the amount due from the sub-debtor to the judgment debtor by any larger instalments than those by which he is liable to pay the amount under the judgment or order obtained by the judgment debtor against him;

(b) The Registrar shall enter in the books of the Court relating to the judgment or order obtained by the judgment debtor against the sub-debtor a note of -

(i) The amounts paid or ordered to be paid by the sub-debtor in the garnishee proceedings, otherwise than in respect of costs ordered to be paid by him personally;

(ii) Any costs which the sub-debtor is, by order of the Court, allowed to deduct from the amount due from him to the judgment debtor.

154. Money in Court - (1) Where money is standing to the credit of the judgment debtor in any Court the judgment creditor shall not be entitled to take garnishee proceedings in respect thereof, but may apply to the Judge on notice for an order that the money or so much thereof as may be necessary to satisfy the judgment debt and costs may be paid to the judgment creditor.

(2) On receipt of notice of the application the Registrar shall retain the money in Court until the application has been heard.

(3) On the hearing of the application the Judge may make such orders as the money in Court as may be just, and shall have regard to the matters mentioned in Rule 152 hereof.

(4) A note of the order shall be made in the books of the Court relating to the money so standing to the credit of the judgment debtor.

155. Debts owing by firm - This Part shall apply to debts owing by or accruing from a firm carrying on business within Western Samoa although one or more members of the firm may be resident abroad.

156. Costs - (1) The Court may award costs to any sub-debtor attending under this Part, or attending to give evidence under Rule 56 hereof.

(2) If within a reasonable time the judgment creditor fails to give notice under Rule 146 (2) hereof, the Court may award the sub-debtor the costs incurred by him at the hearing.

(3) The Court may, if the proceedings are abandoned by the judgment creditor or for any other reason that the Court thinks sufficient, also award costs, including expenses as aforesaid, to a judgment debtor attending to give evidence in garnishee proceedings.

(4) No fee shall be payable in respect of any order of the Court for the payment out of Court of any moneys paid into Court in any garnishee proceedings.

(5) Any costs allowed to the judgment creditor which are not ordered to be paid by the sub-debtor personally shall, unless it is otherwise ordered, be retained by the judgment creditor out of money recovered by him in the garnishee proceedings, in priority to the amount due under the judgment or order.

157. Garnishee proceedings against the Government - In the case of garnishee proceedings against the Government as sub-debtor, the provisions of this Part shall have effect subject to the following modifications: -

(a) This Part shall not apply to any debt that is excepted by the proviso to section 19 of the Government Proceedings Act, 1974;

(b) The affidavit to be filed pursuant to Rule 144 hereof shall give, in addition to the particulars prescribed by Form 31 particulars of the circumstances in which it is alleged that the liability of the Government has arisen, and of the Department or officer of the Government concerned;

(c) The garnishee summons to be served on the sub-debtor pursuant to Rule 145 hereof shall be served on the Government not less than 35 clear days before the day of hearing;

(d) The time within which, under Rule 149 (1) hereof, there may be filed a notice in the form 34, that the sub-debtor disputes the debt claimed shall be twenty-eight days.

PART XV  
Interpleader

158. Procedure - Where a person is under a liability for any debt or other cause of action, money, or chattels for or in respect of which he is or expects to be sued by two or more persons making adverse claims thereto he may apply to the Court in the manner prescribed for relief by way of interpleader.

159. Application for relief - (1) An application under the last preceding rule shall be made by motion to the Court in which the applicant is sued, or if he has not been sued, to any Court in which he might be sued.

(2) The applicant shall file an affidavit showing -

(a) That the applicant claims no interest in the subject-matter in dispute other than for charges or costs;

(b) That the applicant is sued or expects to be sued by the claimants in respect of the subject-matter;

(c) That the applicant does not collude with any of the claimants;

(d) That the applicant has brought the subject-matter into Court or is willing so to do or to dispose of it as the Court may direct.

(3) Where the applicant is a defendant the affidavit shall be filed within five days after the service of the summons on him, inclusive of the day of service.

160. Claimants having adverse titles - The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of each other.

161. Issue of summons - (1) Where the applicant is a defendant the following provisions shall apply on the filing of the affidavit: -

- (a) The Registrar shall issue for service on the claimant an interpleader summons, in the form 35 to which shall be attached a copy of the summons and statement of claim in the action and a copy of the affidavit;
- (b) The Registrar shall send to the plaintiff a notice in the form 36, together with a copy of the affidavit;
- (c) The action shall stand adjourned without further order to the day fixed for the hearing of the interpleader proceedings.

(2) Where the applicant is not a defendant the Registrar shall on the filing of the affidavit enter the proceedings in the plaint-book, and issue for service on the claimants a summons in the form 37.

162. Service - (1) An interpleader summons shall be served, not less than ten clear days before the day fixed for the hearing, in accordance with the rules for the service of summonses in actions.

(2) The proceedings shall be served on such other persons as a Judge may direct.

163. Payment into Court of subject-matter etc. - If the applicant has not brought the subject-matter into Court, a Judge may at any time direct the applicant to do so or to dispose of it in such manner as the Judge thinks fit, to abide the order of the Court.

164. Disclaimer or particulars - A claimant shall within 10 days after the service of the summons on him file in the Court office and serve on the other parties either: -

- (a) A notice stating that he makes no claim; or
- (b) Particulars stating the grounds of his claim to the subject-matter.

Provided that the Judge may, if he thinks fit, hear the proceedings although particulars have not been filed and served.

165. Hearing - (1) Where the applicant is a defendant the following provision shall apply with respect to the hearing of the proceedings:

- (a) If the plaintiff does not appear, the action shall be struck out, and if any claimant appears to the Judge

shall make an order finally determining the claim as between the defendant and the claimant, and may make an order barring the claim of the absent plaintiff;

(b) If the claimant does not appear, the Judge shall hear and determine the action as between the plaintiff and the defendant, and may make an order barring the claim of the claimant;

(c) If both the plaintiff and the claimant appear, the Judge shall, whether the defendant appears or not hear the proceedings and give judgment finally determining the rights and claims of all parties;

(2) Where the applicant is not a defendant the following provisions shall apply with respect to the hearing:-

(a) If any claimant does not appear, the Judge shall make an order finally determining the claim as between the applicant and any claimant who appears and may make an order barring the claim of the absent claimant;

(b) If all the claimants appear, the Judge shall whether the applicant appears or not, hear the proceedings and make an order finally determining the rights and claims of all parties.

(3) An order barring the claim of a claimant shall declare that the claimant and all persons claiming under him be for ever barred as against the defendant or applicant and all persons claiming under him, and also (where the claimant has filed notice that he makes no claim) as against the plaintiff or the other claimant and all persons claiming under him.

(4) An order barring the claim of a plaintiff shall declare that the plaintiff and all persons claiming under him be for ever barred as against the defendant or claimant and all persons claiming under him.

(5) Where the claimant has not filed notice that he makes no claim, an order barring the claim shall not affect the rights of that claimant and the plaintiff or another claimant as between themselves.



166. Delivery to claimant of chattels seized under writ of sale - Where any chattels seized under a writ of sale are claimed by any person, not being the party against whom the Writ of sale has been issued, the officer executing the Writ shall deliver possession of the chattels so seized to the person claiming the same upon such person paying into the Court the amount of the sum to be levied under the writ and the fees and expenses of execution, or giving security therefor to the writ and the fees and expenses of execution, or giving security therefor to the satisfaction of the officer executing the writ; and the amount so paid or secured shall be subject to the decision of the Court on the claim of such person.

Provided that if the value of the chattels seized is less than the amount of the sum to be levied under the writ, and the fees and expenses of execution, the person claiming such chattels may obtain the delivery thereof on paying into Court or securing as aforesaid the value of such chattels, such value in case of dispute to be settled by the appraisement of some indifferent person to be appointed by a Judge; or the person so claiming any chattels as aforesaid may pay to the officer the amount of the fees he is entitled to charge for keeping possession of the chattels seized until a decision of the Court as to the claim of such person can be obtained, and such officer shall thereupon keep possession of such chattels until decision is obtained.

167. Officer executing writ of sale may issue interpleader summons - Where any chattels seized under a writ of sale are claimed by some third person, the officer executing the writ of sale may, before or after the return of the writ and whether an action has been commenced against him for such seizure or not, issue a summons to the party issuing such writ of sale, the party against whom it is issued, and the party making such claim, and on the hearing of the proceedings the Judge may, for the adjustment of such claim and the relief of such officer, exercise all or any of the powers conferred by Rule 168 and may make such orders as to any moneys paid into Court, or secured, or any chattels retained by an officer of the Court, under the last preceding rule and otherwise, as appears just according to the circumstances of the case. Where an action has been commenced against the officer executing the writ such action shall upon the issue of such summons stand adjourned without further notice to the day fixed for the hearing of such interpleader proceedings.

168. Order for sale of chattels subject to bill of sale - Where chattels have been seized under a writ of sale, and some third person claim under a bill of sale

or otherwise to be entitled to such chattels by way of security for debt, the Court or a Judge may order a sale of the whole or part of such chattels on such terms as to payment of the whole or part of such secured debt or otherwise as the Court or a Judge thinks fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as the Court or Judge thinks just.

PART XVI  
Enforcement of Judgments and  
Orders

169. Examination of any party - Where any difficulty arises, in or about the execution of enforcement of any judgment or order for some relief other than the payment of money, the Judge or Registrar may on the application of any party interested make such order for the attendance and examination of any party or otherwise as may be just.

170. Change of Parties after judgment - (1) Where any change has taken place after judgment, by death, assignment, or otherwise, in the parties entitled to enforce a judgment or order or in the parties liable under a judgment or order, the party claiming to be entitled to enforce the judgment or order may apply by motion ex parte to the Judge for leave to issue the necessary process, and the Judge may -

- (a) If satisfied that the party so applying is entitled to issue the process, make an order to that effect;
- (b) If not so satisfied, order that any issue or question necessary to determine the rights of the parties be tried in an action.

(2) Any order made under subclause (1) of this rule shall be in the form 44 and shall be served on the persons affected, and no process shall issue until the expiration of seven days after the day of service, except with the leave of the Judge.

171. Execution of Processes - (1) The Registrar shall hand every warrant, writ, or other process issued for execution to the bailiff of his Court or to a constable for execution or service.

(2) This Part is subject to the provisions of section 17 of the Government Proceedings Act 1974.

172. Writ of sale - (1) Where by any judgment of the Supreme Court in its civil jurisdiction any person is ordered to pay any sum of money, the party to whom the money is payable may cause a writ of sale to be issued.

(2) Application for a writ of sale may be made in form 45, and a writ of sale may be in form 46.

173. Writ of possession - (1) When by any judgment of the Supreme Court any person is ordered to deliver possession of land or chattels, the party to whom the land or chattels are ordered to be delivered may cause a writ of possession to be issued.

(2) Application for a writ of possession may be made in form 45 and a writ of possession may be in form 47.

174. Issue of writ of sale or possession - Every writ of sale or writ of possession shall be issued by a Registrar of the Supreme Court under the seal of that Court, and shall be addressed to an officer of the Court or to a constable.

175. Execution of writ of sale - (1) A writ of sale shall authorise the officer to whom it is directed to seize all the chattels (including money, cheques, bills of exchange and other securities for money) of the person against whom it is issued, except wearing apparel, bedding, tools, and implements of trade, not exceeding in the aggregate \$1000 in value.

(2) All chattels so seized may, unless the judgment is sooner satisfied together with the costs of the execution, be sold or otherwise converted into money by the Registrar of the Supreme Court, and the proceeds of the sale or conversion shall, after payment thereof of the costs of the execution, be applied wholly or pro tanto in satisfaction of the judgment and any surplus be held for the person against whom the writ is issued.

(3) A writ of sale shall also authorise the officer to whom it is directed to sell all the estate, right, title, or interest in any land (not being Samoun customary land), whether in possession, remainder, reversion, or expectancy, of the person against whom the writ has been issued.

(4) Notice of intention to sell land under the powers conferred by subclause (3) of this rule shall be advertised in some newspaper circulating in Western Samoa, in such form and giving such particulars as the Registrar prescribes, at least fourteen clear days before the date of any intended sale.

(5) A copy of the advertised notice shall be served on the person against whom the writ has been issued in the same manner as is heretofore provided for service of summonses.

(6) The proceeds of any such sale of land shall, after payment thereof of the costs of the execution, be applied wholly or pro tanto in satisfaction of the judgment, and any surplus shall be held for the person against whom the writ was issued.

176. Execution of writ of possession - A writ of possession shall authorize the officer to whom it is addressed to deliver to any party named in the writ possession of any land or of any chattels specified in the writ, and for that purpose to eject any other person from the land, or to seize and take possession of any such chattels.

177. Charging order - Any judgment of the Supreme Court in its civil, jurisdiction for the payment of any sum of money may be enforced by a charging order made by the Court against any real or personal property of the person by whom the money is payable (including debts and other money due or accruing due to that person, but not including the interest of a Samoan in any Samoan customary land). Any such charging order shall be made and shall have effect in manner provided in rules 178 to 180 of these rules.

178. Application for charging order - A charging order under rule 177 hereof may be made by the Court ex parte on the motion of the judgment creditor, and shall specify the property to which it relates.

179. Effect of charging order - So long as any charging order remains in force, the amount of the judgment debt shall constitute an equitable charge upon the property specified in the order.

180. Enforcement of charging order - For the purpose of enforcing any such charge, the Court may from time to time, and either on the making of the charging order at any time thereafter, on the ex parte motion of the judgment creditor, make such order or orders as it thinks fit against all persons concerned -

(a) For the appointment of a receiver of the rents, profits, or revenues of any property so charged; or

(b) For the payment into Court in satisfaction of the judgment of any such rents, profits, or revenues, or of any money subject to the charge; or

(c) For the sale of any such property by an officer of the Court.

181. Disobedience of charging order - Disobedience to any order made under rule 180 of these rules shall constitute a contempt of the Supreme Court.

182. Cancellation or variation of charging order or order for enforcement of charge - Any charging order, or any order made under rule 180 of these rules in pursuance of a charging order, may be at any time cancelled or varied on the motion either of the judgment debtor or the judgment creditor or of any other person concerned.

183. Stay of execution - The Supreme Court may in any civil proceedings stay the execution of any judgment for such term as the Court thinks fit.

PART XVII  
Absconding Debtors

184. Arrest of absconding debtors - (1) Where in any action in the Supreme Court for the recovery of any debt, damages, or other sum of money the plaintiff proves to the satisfaction of the Court at any time before final judgment that -

(a) He has a good cause of action against the defendant;

and

(b) There is probable cause for believing that the defendant is about to leave Western Samoa and evade the payment of the said sum; and

(c) The absence of the defendant from Western Samoa will materially prejudice the plaintiff in the prosecution of his action -

the Court may order the defendant to be arrested and imprisoned for a period not exceeding three months unless and until he sooner gives security to the satisfaction of the Court that he will not leave Western Samoa without the leave of the Court.

(2) Application for a writ of arrest under this rule may be made in form 48 and writ of arrest may be in form 49.

(3) The person arresting the defendant pursuant to a writ of arrest under this rule shall at the time of the arrest deliver to the defendant a notice in form 50.

185. Security to be given - The security to be so given shall, as the Court directs, be either the payment into Court of a sum not exceeding the amount claimed in the action or a bond in form 51 executed by the defendant with one or two sureties in the like amount approved by the Registrar.

186. Actions by Government - Where the action is for a penalty at the suit of the Government, it shall not be necessary to prove that the absence of the defendant as aforesaid will materially prejudice the Government in the prosecution of the action, and the security to be given shall be security that any sum recovered against the

- 24 -  
defendant in the action will be paid or that the defendant will be rendered to prison.

187. Application of security - If, after such security has been given in any action by the Government, any sum recovered in the action remains unpaid and the defendant is not rendered to prison as aforesaid, all money so paid into Court or recovered in pursuance of the bond shall become available as the Court directs for the satisfaction of the sum recovered in the action.

#### PART XVIII

##### Motions

188. Proceedings by motion - Every civil proceeding not required to be commenced by way of action may be commenced by way of motion supported by affidavit:

Provided however that this rule shall not apply to any proceedings taken under the Divorce and Matrimonial Proceedings Act 1961.

189. Filing motions - (1) Every originating motion shall be made by filing it with the Registrar and it shall set forth briefly the nature and grounds of the relief sought by the applicant.

190. Notices of motion - (1) Except where otherwise provided, or where the Court is satisfied that the nature of the motion is such that it may properly be made and determined ex parte, every motion shall be heard and determined only after due notice has been given to such persons as the Court may consider entitled thereto.

(2) All persons to whom notice has been given by the direction of the Court, or who appear on the hearing of the motion, shall be deemed to be parties to the proceeding.

191. Forms - (1) Motions may be made in form 52 or form 53 as the case may require, or in forms to the like effect.

(2) Every order made on a motion may be in form 54.

#### PART XIX

##### Extraordinary Remedies

192. Mandamus - Where the assistance of the Court is sought to compel any officer, person, corporation sole or tribunal to perform any duty incumbent upon him or it, other than the payment of a sum of money for the non payment of which a writ of sale may be issued, or the performance of any act for the non performance of which a liability to attachment arises, the Court may issue a writ of mandamus to such person, officer, corporation sole or tribunal ordering him or it to perform such duty.

193. Injunction - Where the assistance of the Court is sought to restrain any officer person, corporation sole or tribunal from breach of any duty incumbent upon him which he has threatened or has already commenced to commit, the Court may issue a writ of injunction to restrain such threatened breach or the continuance of any breach which is of a continuous nature.

194. Prohibition of Jurisdiction - Where the assistance of the Court is sought to prohibit any inferior Court tribunal, Magistrate or Faamasino Fesoasoani from exercising any jurisdiction which it or he is not by law empowered to exercise the Court may issue a writ of prohibition prohibiting the exercise of such jurisdiction.

195. Certiorari - Where the assistance of the Court is sought to remove any action from an inferior Court or from any statutory tribunal into the Supreme Court, the Court shall have power to issue a writ of certiorari directing that such action be removed unless such removal is expressly prohibited by statute.

196. Motion for Extraordinary remedy - (1) Any request for the assistance of the Court by way of extraordinary remedy shall be made by motion accompanied by a statement of claim and a supporting affidavit.

(2) A motion under paragraph (1) hereof shall be upon notice provided however that the Court at any time after the filing of a notice of motion may ex parte make an order thereon if the Court is satisfied that the delay that would be caused by proceeding on notice would or might entail irreparable injury.

(3) Notwithstanding the provisions of sub-rule (1) of this rule, any party to an action commenced in the ordinary way may, in addition to any other relief, claim the issue of a writ of mandamus or a writ of injunction; and where such claim is made, the party making such claim may, at any time after the commencement of the action, move for an order for such writ as he has claimed.

(4) Any order made ex parte under this rule may be subject to such terms and conditions as the Court deems just.

197. Defence to be filed - (1) If the motion is made on notice or if any person against whom an order ex parte has been made moves to rescind the order served upon him, the person upon whom notice has been served or who moves to rescind shall file a statement of defence to the statement of claim.

(2) Affidavits may be filed in support of the allegations contained in any such statement of defence and in answer to any affidavits filed in support of the motion.

198. Disobedience to Order - Any person or member of any corporation sole or tribunal disobeying any order under Rules 192, 193, 194, 195 or 196 (3) shall be liable to attachment.

199. Effect of compliance with Order - No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to an order under Rules 192, 193, 194, 195, or 196 (3).

PART XX  
Miscellaneous

200. Forms may be varied - Such variations in the forms prescribed in the Schedule to these rules may be made as the circumstances of any particular case may require.

201. Language of documents - Save as otherwise specially provided, all documents filed in or issued from the Court may be either in the English language or in the Samoan language.

202. Non-compliance with rules - Non-compliance with any of these rules shall not render the proceedings void, but the proceedings may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with in such manner and on such terms as the Court may deem just.

203. Jurisdiction of Court may be exercised by any Judge of the Court - The jurisdiction of the Court in any proceeding may be exercised from time to time by any of the Judges of the Court and at any time or place, notwithstanding that the proceedings may not have been duly continued by adjournment from time to time or from place to place.

204. Power of Registrar to adjourn proceedings - (1) If at any time and place of trial stated in any summons or notice to a defendant or other party in any civil or criminal proceeding, or in any summons to a witness, or at the time and place to which the trial or hearing of any action, prosecution, or other proceeding has been adjourned, a Judge of the Supreme Court is not present, a Registrar, if present, may adjourn the Court to another time and to the same or any other place.

(2) If within one hour after the time so stated in any such summons or notice, or appointed by any adjournment, a Judge is not present and no adjournment by the Registrar, has taken place, the Court shall be deemed to be adjourned to the same place on the next succeeding day at the hour stated in the summons or notice, or at any other hour so appointed by adjournment, and so on from time to time.



(3) On every such adjournment the summons or notice shall have the same effect as if the time and place to which the Court is adjourned had been set forth in the summons or notice.

205. Constables to carry out orders of Judge - Every constable shall obey and execute all the lawful summonses, warrants, executions, orders, and commands of a Judge of the Supreme Court issued through the Registrar of the Court.

206. Procedure in matters not provided for - If any case arises for which no form of procedure has been provided by the Judicature Ordinance 1961 or these rules, the Court shall dispose of the case in such manner as the Court deems best calculated to promote the ends of justice.

207. Payment of Moneys in Court to Solicitor or Agent - (1) No person other than the solicitor on the record in respect of the proceedings shall be entitled to withdraw on behalf of any party any moneys paid into Court to the credit of that party unless there is lodged with the Registrar a written authority, signed by the party entitled to the moneys. No fee shall be payable on the filing of the authority.

(2) Every solicitor who withdraws any moneys on behalf of any party shall lodge his Trust Account receipt therefor with the Registrar.

208. Computation of time - (1) Where anything is required by these rules to be done within a specified period of or after the happening of a particular event, the period shall be computed from the end of the day on which the event happens unless the period is expressed to be inclusive of that day.

(2) Where anything is required by these rules to be done within a period not exceeding forty-eight hours, or where a period not exceeding forty-eight hours is required by these rules to elapse between the doing of an act and the happening of a particular event, no Saturday or Sunday and no day on which the Court office is not open, shall be included in the computation of that period.

(3) Where the time prescribed for doing any act or taking any proceeding expires on a Saturday or Sunday or any other day on which the Court office is not open, and by reason thereof the act or proceeding cannot be done or taken on that day, the act or proceeding shall be deemed to be in time if done or taken on the next day on which the Court office is open.

209. Right of Address - Where both parties appear at the hearing of any action or matter the Judge shall decide which party shall have the right to begin or to

...ly, and as to the order and number of addresses by counsel; but, unless the Judge otherwise directs at the hearing, the following shall be the order of proceeding:

The Plaintiff (or his counsel) shall state his case, and adduce evidence; the Defendant (or his counsel) shall state his case and adduce evidence, and also sum up the evidence; and then the plaintiff may reply on the whole case. If the defendant at the close of the plaintiff's case states his intention not to adduce evidence, the plaintiff shall sum up his evidence, and the defendant shall reply generally. Where a case not merely answering the case of the plaintiff is set up by the defendant and evidence is adduced in support thereof, the plaintiff may adduce rebutting evidence, and shall postpone his general reply until he has called such rebutting evidence and the defendant has replied on his new evidence.

SUMMONS

THE SUPREME COURT OF WESTERN SAMOA  
HELD AT APIA

TWEEN

, Plaintiff

ND

, Defendan

YOU ARE HEREBY summoned to attend at the Supreme Court to be held at Apia on the.....day.  
.....19....at the hour of 9.30 in the forenoon, to answer the plaintiff's  
claim, the particulars of which are set out in the statement of claim annexed hereto.

SERVED at...../ this.....day of.....19.....

.....  
DEPUTY REGISTRAR

THE DEFENDANT.

NOTICES TO DEFENDANT

(These notices should be read carefully)

If you admit the whole claim, you may, within 10 days  
of service of this summons on you, inclusive of the  
day of service, either -

Claim	...	.....
Costs of summons	...	.....
Solicitor's fee for preparing statement of claim		.....
		=====
		=====

- File in the office of the Court a confession for the amount and the costs noted on this summons; or
- Pay into Court the full amount of the claim and the costs noted on this summons; or
- Deliver possession of the land or chattels to the plaintiff and pay into Court the amount of his money claimed (if any) and the costs noted on this summons --

No further costs will be incurred. Note particularly that the Court cannot accept cheques

If you dispute the whole of the claim, you should, within 10 days of service of this summons on you, inclusive of the day of service, file in the office of the Court a statement of defence.

If you dispute part of the claim, you may, within 10 days of service of this summons on you, inclusive of the day of service, either -

- (a) File in the office of the Court a confession for the part you admit; or
- (b) Pay the part you admit into Court.

You should also, within the same period, file in the office of the Court a statement of defence in respect of the part of the claim you dispute.

If you have a counterclaim, you should, within 10 days of service of this summons on you, inclusive of the day of service, file in the office of the Court a statement of that counterclaim.

If you do not file a statement of defence or a counterclaim, judgment may be given against you for the amount of the plaintiff's claim and his costs.

Forms of confession may be obtained at any office of the Court. No fee is payable on the filing of these documents.

The filing of a statement of defence or a counterclaim does not relieve you from attending at the Court on the day named in the summons.

If you do nothing, the plaintiff may have judgment entered against you, and may proceed to enforce that judgment.

Failure to observe the time limits mentioned in these notices may add to the costs.

This summons was sued out by.....of....., solicitor for the plaintiff.

If you are in doubt, consult a solicitor or the Registrar immediately.

The office of the Court is open to the public from 8.30a.m. to 12.0 and 1.00p.m. to 3.00p.m. Monday to Friday inclusive.

Rule 15.

Form 2

STATEMENT OF CLAIM

(For services rendered or goods sold and delivered)

THE plaintiff claims \$.....(or the balance of \$.....) for services [Here describe services generally - e.g. painting, & c.] rendered (or for goods [Here describe goods - e.g. groceries, &c.] sold and delivered) by the plaintiff to the defendant on the .....(or between.....and.....), the particulars of which have already been delivered.

[Where the claim is for the balance of an account, show full amount and give credit for any amounts paid]

This statement of claim is filed by....., whose address for service is at .....

Rule 29.

Form 3

AFFIDAVIT OF SERVICE

I,.....(Full name).....(Occupation).....do swear that I duly served the within named.....(Address).....with a summons, a true copy of which is within written, together with the annexed statement of claim by delivering the same to him personally at.....on the.....day of.....19...

.....  
(Signature of Deponent)

Sworn at Apia this.....day of.....19....., Before me:

.....  
DEPUTY REGISTRAR OF THE SUPREME COURT  
OF WESTERN SAMOA  
SOLICITOR OF THE SUPREME COURT OF  
WESTERN SAMOA  
(or other person authorised to take  
affidavits)

Bu 43 (4)

Form 4

THIRD PARTY NOTICE

In the Supreme Court  
Held at.....

Plaint No...

Between

.....Plaintiff.

and

....., Defendant.

and

....., Third Part

Take notice that this action has been brought by the plaintiff against the defendant. In 1 the plaintiff claims against the defendant \$.....for....., as appears by the statement of claim, a copy of which is annexed to the summons, which is delivered herewith.

The defendant claims against you:-

- (a) That he entitled to contribution from you to the extent of.....; or
- (b) That he is entitled to be indemnified by you against liability in respect of.....
- (c) That he is entitled to the following relief or remedy relating to or connected with the original subject-matter of the action, namely:.....; or
- (d) That the following question or issue should properly be determined as between the plaintiff and the defendant and the third party, namely:.....

The grounds of the defendant's claim against you are:.....

And take notice that if you dispute the plaintiff's claim against the defendant or the defendant's claim against you, you must, within 10 days of service of this notice on you, inclusive of the day of service, file in the office of the Court at....., and serve on the plaintiff and the defendant at their respective addresses for service a notice of intention to defend, for which a form may be obtained from any office of the Court. In default of your so doing, you will be deemed to admit:-

- (1) The plaintiff's claim against the defendant; and
- (2) The defendant's claim against you; and

(3) Your liability to contribute to the extent claimed (or indemnify the defendant):

OR

(4) The defendant's right to the relief or remedy claimed in paragraph (c) above; and  
(5) The validity of any judgment in the action

And you are hereby summoned to attend at the Supreme Court at....., on....., day, the.....day of....., 19....., at the hour of.....in the forenoon when the plaintiff's claim against the defendant, and the defendant's claim against you, will be heard and determined. In default of your appearing the action may be heard and determined in your absence, and you will be bound by the judgment in the action, which may be enforced against you.

Dated at....., this.....day of....., 19.....

.....  
REGISTRAR

To the above-named Third Party.

This notice is filed by.....(solicitor for the defendant), whose address for service is at..... the plaintiff's address for service is shown on the statement of claim which is delivered herewith.

Rule 52 (2)

Form 5

SUMMONS TO WITNESS

YOU are hereby summoned to appear before the Supreme Court at the Courthouse, on..... the.....day of....., 19....., at 9.30 o'clock in the forenoon, there to give evidence as to the matters in question in this action; and you are further required to bring with you and produce to the Court the following documents, namely:

In fault of your attendance you will be liable to a fine of \$100.

Dated at..... this.....day of....., 19.....

.....  
REGISTRAR

Rule 56

Form 6

NOTICE OF DESIRE TO TAKE EVIDENCE OF WITNESS RESIDENT AT A DISTANCE FROM, OR UNABLE TO ATTEND AT, COURT OF HEARING

TAKE notice that I, the above-named defendant (plaintiff) desire to use at the hearing of this action the evidence of (myself and)....., of....., whose place of

residence is more than 30 miles from the Court where the hearing of the action is appointed to be held, (or who is about to go and remain until after the hearing of the action at a distance more than 30 miles from the Court of hearing), (or who is (likely to be) unable to attend the hearing because of State cause), and I desire you to appoint a time and place for the examination of that witness (those witnesses).

dated at....., this.....day of.....19.....

.....  
(SOLICITOR) OR DEFENDANT (PLAINTIFF)

To the Registrar of the Supreme Court at....., being the Court for examination.  
I hereby appoint.....day, the.....day of.....19....., at the hour.....in the.....noon, and the Supreme Court at.....as the time and place for taking the above examination.

dated at.....this.....day of.....19.....

.....  
EXAMINING REGISTRAR

le 56.

Form 7

NOTICE OF TIME AND PLACE FOR EXAMINATION

Notice that the defendant (plaintiff) has given notice that he desires to have the examination of (himself and).....of....., and.....of....., taken at the.....Court at.....  
and take notice that.....day, the.....day of.....19.....at the hour of.....in the....., has been appointed as the time, and the Supreme Court at.....as the place for taking that examination and that you may appear at the time and place aforesaid, by yourself or your solicitor and cross-examine the persons there examined.

dated at.....this.....day of.....19.....

.....  
REGISTRAR OF THE COURT OF HEARING

the above-named.....

EVIDENCE OF WITNESSES EXAMINED AT ANOTHER COURT

EVIDENCE of witnesses taken at the Supreme Court at.....(being the Court for examination), on.....day, the.....day of.....19....., before the undersigned.

..... EXAMINING REGISTRAR

Mr..... appears for the plaintiff
Mr..... appears for the defendant.

(NOTE - The depositions should be typewritten on separate sheets, which should be attached securely to this form. Commence the evidence of each witness with the words: "This deponent,....., on his oath says:....." Each page must be signed by the witness and the Examining Registrar)

The foregoing deposition of..... written on..... sheets of paper numbered consecutively from one to..... and now fixed together and signed by me were taken and sworn before me in accordance with the Supreme Court (Civil Procedure) Rules 1979 at..... on this..... day of..... 19.....

..... EXAMINING REGISTRAR

CERTIFICATE OF COSTS

IT is hereby certified that the following are the costs allowed to the..... on the examination of witnesses at....., this..... day of..... 19.....

Table with columns for Plaintiff's costs, Defendant's costs, and Total. Rows include Court fees, Solicitor's fee, and Witness fees.

..... EXAMINING REGISTRAR



NOTICE TO ADMIT FACTS

-----

TAKE notice that the plaintiff (defendant) in this action requires the defendant (plaintiff) to admit, for the purposes of this action only, the several facts respectively hereunder specified:.....

And the defendant (plaintiff) is hereby required, within three days after receiving this notice, to admit the said several facts, saving all just exceptions to their admissibility, as evidence in this action.

DATED at.....this.....day of.....19.....

.....  
(Solicitor for) Plaintiff (Defendant)

the Defendant. (Plaintiff)

-----

Rule 63.(2)

ADMISSION OF FACTS PURSUANT TO NOTICE

THE defendant (or plaintiff) in this action, for the purposes of this action only, hereby admits the several facts hereunder specified, subject to the qualifications or limitations if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in these proceedings.

Facts admitted.	Qualifications or Limitations, if any subject to which they are admitted.
1.....	1.....
2.....	2.....
3.....	3.....

DATED at ....., this.....day of.....19.....

.....  
(Solicitor for) Defendant (Plaintiff)

-----

NOTICE TO INSPECT AND ADMIT DOCUMENTS

-----

TAKE notice that the plaintiff (defendant) in this action proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (plaintiff) or his solicitor, at.....on.....day, the..... day of.....19....., between the hours of.....and.....; and the defendant (plaintiff) is hereby required, within three days after receipt of this notice, to admit, saving all just exceptions to the admissibility of all such documents, as evidence in this action, that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been, that such as are specified as copies are true copies, and that such documents as are stated to have been served, sent, or delivered were so served, sent, or delivered, respectively.

Originals

Description of Document	Date

Copies of Documents

Description of Document	Date	When, how, and by whom Original or Duplicate served, sent, or delivered

DATED at....., this.....day of....., 19.....

.....  
(Solicitor for) Plaintiff (Defendant)

to the Defendant (Plaintiff)

Rule 65.(1)(b)

Form 13

MOTION TO THE COURT OR A JUDGE Ex Parte

MR. .... of counsel for the abovenamed applicant  Or as the case may be  to move this Honourable Court (or the Judge in Chambers) for an order  as in form 37

DATED at.....this.....day of.....19.....

To the Registrar of the Supreme Court

Certified pursuant to the rules of Court to be correct.

This application is made in reliance on section.....of the.....Act 19... and rule.....of the Supreme Court (Civil Procedure) Rules 1979. The attention of the Court is respectfully drawn to the case of.....

.....  
COUNSEL MOVING

Rule 65 (1)(c)

Form 14

NOTICE OF MOTION TO THE COURT OR A JUDGE IN CHAMBERS Inter Partes

TAKE NOTICE that on the .....day of.....19.....,at.....  
in the forenoon or so soon thereafter as counsel (or the parties) can be heard, counsel for the above-named plaintiff  or as the case may be  will move this Honourable Court at.....(or at.....before a Judge in Chambers) for an order that  Here set out clearly the order that is sought  and directing that the costs of the plaintiff  or as the case may be  of and incidental to this application and the order hereon be fixed and be costs in the cause (or be fixed and be costs of the plaintiff in any event or be reserved  or as the case may be  and for such further or other order as in the circumstances may appear just UPON THE GROUNDS  Here set out precisely the grounds on which it is intended to move  AND UPON THE GROUNDS appearing by the affidavit of.....filed herein.

DATED at.....this.....day of.....19.....

.....  
(Counsel for the abovenamed Plaintiff  Or as the case may be )

To the Registrar of the Supreme Court

and  
To the abovenamed defendant  Or as the case may be

Rule 78.

Form 15

INTERROGATORIES

-----

Interrogatories on behalf of the abovenamed plaintiff (or defendant) C.D. for the examination of the abovenamed defendants E.F. (or plaintiff) and G.H.

- 1. Did not etc?
- 2. Has not etc?

The defendant E.F. is required to answer to the interrogatories numbered.....

The defendant G.H. is required to answer to the interrogatories numbered.....

-----

Rule 81.

Form 16

ANSWER TO INTERROGATORIES

-----

The answer of the abovenamed defendant E.F. to the interrogatories for his examination by the abovenamed plaintiff.

In answer to the said interrogatories, I, the abovenamed E.F. make oath and say as follows:-

-----

Rule 86.

Form 17

ORDER FOR DISCOVERY OF DOCUMENTS

It is ordered that the plaintiff (defendant, or as the case may be) do within seven days from the service of this order upon him answer on affidavit stating what documents are or have been in.....possession or power relating to the matters in question in these proceedings, and return such affidavit for filing, and deliver a copy thereof to the defendant (or as the case may be) and that the costs of and incidental to this order be reserved.

DATED at ....., this.....day of.....19.....

.....  
REGISTRAR

=====

CONFESSION OF CLAIM

-----

In the Supreme Court of Western Samoa  
Held at

BETWEEN \_\_\_\_\_, Plaintiff  
AND \_\_\_\_\_, Defendant

I, the abovenamed defendant, hereby confess that the sum of \$....., the amount claimed (or the sum of \$....., being part of the amount claimed), together with costs \$..... (as set out in the statement appended hereto) is due to the plaintiff from me.

DATED at.....this.....day of.....19.....

Witnessed in the presence of:

.....  
For Registrar, Solicitor (Solicitor for) Defendant.

Amount of claim confessed	.....	\$	.....
Court fees	.....	s	.....
Solicitor's fee	.....		.....
			-----
		\$	-----
			-----

by the Registrar of the Supreme Court at.....

the abovenamed plaintiff, accept this confession in satisfaction of my claim, and I request that judgment be entered accordingly.

.....  
(Solicitor for) Plaintiff

-----

CONFESSION OF CLAIM FOR RECOVERY OF LAND OR CHATTELS

the abovenamed defendant, hereby confess and admit the plaintiff's right to immediate possession of the land (or chattels) mentioned in the statement of claim in this action, and I will give up possession of the same on or before the.....day of.....

I further confess that the sum of \$....., the amount claimed (or the sum of

\$....., being part of the amount claimed), together with costs \$.....(as set out in the statement appended hereto,) is due to the plaintiff from me ( and I have paid into Court \$.....in satisfaction of the plaintiff's claim and costs).

DATED at.....this.....day of.....19.....

Signed in the presence of:

.....  
Registrar  
Solicitor

.....  
(Solicitor for) Defendant

	\$	s
Amount of claim confessed	.....	.....
Court fees	.....	.....
Solicitor's fee	.....	.....
	-----	
	.....	
	=====	

the abovenamed plaintiff, accept this confession in satisfaction of my claim, and I request that judgment be entered accordingly.

.....  
(Solicitor for) Plaintiff

Rule 100.

Form 20

REQUEST FOR SETTING DOWN

I, (WE) hereby request you to set this proceeding down for hearing. I, (WE) certify.....  
.....that all pleadings and interlocutory matters herein have been resolved and the case is ready for hearing. I, (WE) estimate the hearing time will be.....

Signed.....  
Solicitor for Plaintiff

Signed.....  
Solicitor for Defendant

Rule 100.

Form 21

NOTICE TO PARTIES TO AN ACTION OF DAY FIXED FOR HEARING

TAKE notice that this action will be heard at the Supreme Court at.....on the  
.....day of.....19....., at the hour of 9.30 in the forenoon,  
and that if you do not attend at the time and place mentioned judgment may be given in your absence.

DATED at.....this.....day of.....19.....

To the plaintiff; and  
To the defendant.

-----  
REGISTRAR

NOTICE OF PAYMENT INTO COURT

TAKE notice that I, the abovenamed defendant (or I.....,one of the abovenamed defendants), have paid in to Court the sum of \$.....in satisfaction of the claim in this action (or in satisfaction of the cause of action.....).

[Add, if so, with a denial of liability or with a defence of tender before action]

Or

TAKE notice that I, the abovenamed defendant (or I.....one of the abovenamed defendants) have paid into Court the sum of \$....., on account of the amount claimed by the plaintiff.

..... (Solicitor for) Defendant

To the Registrar of the Supreme Court.

Rule 109.

MEMORANDUM OF DISCONTINUANCE

TAKE notice that I shall not proceed further in this action (or matter) and that I hereby withdraw from the same (add, if so, as against the defendant.....)/:

Or

TAKE notice that I hereby withdraw so much of my claim in this action (or matter) as relates to [Specify the claim which is withdrawn, and in an action for recovery of land the definite part of the land mentioned in the statement of claim in respect of which the claim is withdrawn] (and add, if so, as against the defendant.....).

..... (Solicitor for) Plaintiff

To The Registrar of the Supreme Court at.....

and

To the defendant.

Add, if applicable:

I hereby consent to this action being discontinued by the plaintiff.

DATED at.....tis.....day of.....19.....

..... (Solicitor for) Defendant

Rule 112.

Form 24

ORDER OF REFERENCE FOR INQUIRY AND REPORT

IT is ordered that these proceedings and all questions arising therein (or the following question arising in these proceedings [State the question]) be referred to the Registrar of this Court (or to Mr.....of.....), for inquiry and report, pursuant to Rule 111 of the Supreme Court (Civil Procedure) Rules 1979.

Add directions, if any, as to how reference is to be conducted. And it is ordered that the Registrar (or referee) is to complete his inquiries and file his report and give notice to the parties by the.....day of.....,19....., unless the time is further enlarged by the Court.

And it is further ordered that these proceedings stand adjourned for the consideration of the report until the.....day of.....19....., at the hour of.....in the forenoon, or, if the time for filing the report is enlarged, to such later day as may hereafter be fixed.

DATED at.....this.....day of.....,19.....

REGISTRAR

Rule 113.

Form 25

NOTICE FOR APPOINTMENT FOR HOLDING INQUIRY

TAKE notice that all parties concerned are required to attend me at the Supreme Court at.....(or at.....) on.....day, the.....day of.....19....., at the hour of.....in the.....noon, to proceed with the inquiry directed to be held herein by order dated the.....day of.....19.....

REGISTRAR (Referee)

To all parties



Rule 134.

Form 26

NOTICE OF MOTION FOR NEW ORDER FOR PAYMENT

TAKE notice that on.....day, the.....day of.....,19.....,at .....o'clock in the .....noon counsel for the plaintiff (or as the case may be) will move this Honourable Court for an order that the amount due and unpaid upon the judgment (or order) in this action be paid by instalments of \$.....for every .....(or that the amount due and unpaid under the judgment or order in this action be paid in one sum forthwith (or as the case may be)).

Date of Judgment (or Order)	How Payment ordered	Amount of Debt and Costs	Amount remaining Due

DATED at.....,this.....day of.....,19.....

.....  
(Solicitor for) Plaintiff (Defendant)

To the Registrar of the Supreme Court at.....  
and  
To the Defendant (Plaintiff)

Ev' 135.

Form 27

ORDER SUSPENDING JUDGMENT, ORDER, EXECUTION

ON the application of....., and the Court being satisfied that the defendant is unable to pay and discharge the sum recovered against him in this action (or the instalments due under the judgment (or order) in this action), it is ordered that the judgment (or order) be suspended (or that the execution issued in this action be suspended) for State time, upon the following terms, namely: State terms

DATED at.....this.....day of.....,19.....

.....  
REGISTRAR

Rule 139.

Form 28

NOTICE OF REINSTATEMENT

TAKE notice that this action was, on the.....day of....., 19....., struck out on account of the non-appearance of the plaintiff, but the Court has ordered the action to be reinstated, and to be heard at the Supreme Court at.....on..... day, the.....day of....., 19....., at the hour of.....in the forenoon.

DATED at....., this.....day of....., 19.....

.....  
REGISTRAR

To, Defendant

Rule 140 (3)

Form 29  
NOTICE OF NEW HEARING

TAKE notice that on the.....day of....., 19....., judgment herein was given for the plaintiff, that on cause shown the Court has set aside the judgment, and that a new hearing of the action will be had at the Supreme Court at.....on.....day, the.....day of....., 19....., at the hour of.....in the forenoon.

DATED at....., this.....day of....., 19.....

.....  
REGISTRAR

To the Plaintiff

Rule 141 (6)

Form 30  
ORDER FOR REHEARING

IT is ordered that the judgment (or order) in this action and all subsequent proceedings thereon be set aside subject to the following terms and conditions:.....; and that a rehearing be had between the parties at the Supreme Court at.....on..... day, the.....day of....., 19....., at the hour of.....in the forenoon.

DATED at....., this.....day of....., 19.....

.....  
REGISTRAR

Rule 144

Form 31

AFFIDAVIT IN SUPPORT OF GARNISHEE SUMMONS

In the Supreme Court  
Held at.....

Plaint No:.....

Between  
....., Judgment Creditor  
and  
....., Judgment Debtor  
and  
....., Sub-debtor

I, ....., of ....., [Occupation], make oath and say:

- (1) That on the.....day of....., 19....., in the Supreme Court held at ....., I, the abovenamed judgment creditor, obtained a judgment in this action against the abovenamed judgment debtor for the sum of \$....., including costs:
- (2) That the said judgment (or the sum of \$....., part of the said judgment) is still unsatisfied:
- (3) That I verily believe that the abovenamed sub-debtor is (or sub-debtors are) indebted to the said judgment debtor in the sum of \$.....or thereabouts:
- (4) That the debt mentioned in paragraph (3) hereof is (or is not) in respect of wages.

Signature of Deponent.....

worn at....., this.....day of....., 19....., before me:

REGISTRAR  
SOLICITOR

Rule 144.

Form 32

GARNISHEE SUMMONS TO SUB-DEBTOR

WHEREAS the judgment creditor on the.....day of....., 19....., obtained judgment (or an order) in the Supreme Court at.....against the judgment debtor for payment of the sum of \$....., including costs, which judgment (or order) remains unsatisfied as to the sum of \$.....

And whereas the judgment creditor has filed an affidavit stating that you are indebted to the said judgment debtor in the sum of \$.....  
YOU are hereby summoned to attend at the Supreme Court to be held at..... on.....day, the.....day of....., 19....., at the hour of.....in the forenoon, to show cause why an order should not be made against you for the payment to the judgment creditor of the amount of the debts due and owing or accruing from you to the said judgment debtor or so much thereof as will satisfy the debt due under the

Rule 144. Form 32 (cont'd)

said judgment (or order), and the costs entered on this summons:

And take notice that from and after the service of this summons upon you so much of the debts owing or accruing from you to the judgment debtor as will satisfy the debt due under the said judgment (or order) and the costs entered on this summons is attached to answer the said judgment (or order):

And further take notice that if at any time before the date of hearing of this summons you pay to the Registrar of this Court the amount of such debts, or so much thereof as will satisfy the debt due under the said judgment (or order) and the costs entered on this summons, you will incur no further costs:

And further take notice that if you dispute the debt alleged to be due from you to the judgment debtor, you should, within 10 days after service of this summons on you, inclusive of the day of service, file in the Court office and serve on the judgment creditor and the judgment debtor a notice that you dispute the debt claimed. Forms will be provided at any office of the Court. The filing of the notice does not relieve you from attending on the day named in the summons.

DATED at....., this.....day of....., 19.....

REGISTRAR

To the above-named sub-debtor.

Amount remaining due under judgment (order)

	\$	s
Subsequent costs	.....	
Fee for filing affidavit	.....	
Solicitor's costs	.....	

Total amount for which summons issued

Cheques are not accepted for payment into Court

NOTICES TO SUB-DEBTOR

1. Failure to act in accordance with the directions contained in this summons may add to the costs.
2. If this summons was issued for hearing in a Court other than the Court in which the judgment debtor might have commenced an action against you to recover the debt due by you to him, you are entitled to apply to the Court where this summons was issued either for the proceedings to be transferred to the Court in which the judgment debtor might have taken proceedings against you, or for the proceedings to be referred to the Registrar of that Court for inquiry and report.

This summons is issued at the instance of the judgment creditor, whose address for service is at.....

[A printed form of affidavit of service (see form ) is to be endorsed hereon] The following information is printed in the left-hand margin of the form:-

The office of the Court is open to the public from 9.30 to 12 noon on Mondays to Fridays inclusive.

If you are in doubt, consult a solicitor or the Registrar immediately.

Rule 144.

Form 35

NOTICE TO JUDGMENT DEBTOR OF ISSUE OF GARNISHEE SUMMONS

TAKE notice that a garnishee summons, a copy of which is hereto annexed, has been issued out of this Court, and that if you have any cause to show why the Court should not order the sub-debtor to pay the judgment creditor the debt alleged to be due from the sub-debtor to you, or so much thereof as may be sufficient to satisfy the sum due to the judgment creditor from you, with the costs entered on the garnishee summons, you must attend at this Court at the time and place fixed for the hearing of the garnishee summons and show such cause accordingly.

DATED at.....,this.....day of.....,19....

.....

REGISTRAR

To the abovenamed Judgment Debtor

NOTE:

1. YOU are entitled to appear at the hearing of the garnishee summons to give evidence as to your circumstances. If it appears to the Court that the whole or part of the moneys sought to be attached are reasonably required by you for the maintenance and support of yourself and your family, the Court may refuse to make an order attaching the debt, and may make such order as to the disposal of any moneys paid into Court as it thinks fit.

This summons is issued at the instance of the judgment creditor, whose address for service is at.....

[A printed form of affidavit of service is to be endorsed hereon] The following information is printed in the left-hand margin of the form.

If you are in doubt, consult a solicitor or the Registrar immediately.

-----

Rule 149.

Form 34

NOTICE BY SUB-DEBTOR THAT HE DISPUTES DEBT CLAIMED

TAKE notice that I, the above-named sub-debtor, dispute the debt claimed to be due from me to the above-named judgment debtor.

DATED at.....this.....day of.....,19....

.....

(Solicitor for) Sub-debtor

To the Registrar of the Supreme Court at.....

and

To the above-named Judgment Creditor and Judgment Debtor.

Rule 161.

Form 35

INTERPLEADER SUMMONS TO EXECUTION CREDITOR

WHEREAS the claimant has made a claim to certain goods (or the proceeds of sale (or value of certain goods) taken in execution under process issuing out of this Court at your instance (or certain rent alleged to be due to him in respect of and issuing out of this Court at your instance):

YOU are hereby summoned to attend at the Supreme Court at.....on..... day, the.....day of....., 19....., at the hour of.....in the forenoon when the said claim will be adjudicated upon and such order made thereon as the Court thinks fit.

DATED at....., this.....day of....., 19.....

..... REGISTRAR

To the Execution Creditor

The address for service of the claimant is at.....

NOTE - The claimant has been called upon to file in the Court and to serve upon you particulars of his claim.

The office of the Court is open to the public from 9:30 a.m. to 12 noon on Mondays to Fridays inclusive.

If you are in doubt, consult a solicitor or the Registrar immediately.

Rule 161.

Form 36

NOTICE TO PLAINTIFF WHERE INTERPLEADER SUMMONS ISSUED  
PERSON MAKING ADVERSE CLAIM TO DEBT OR OTHER THING IN  
ACTION, MONEY OR GOODS

WHEREAS the defendant in this action has filed an affidavit (a copy whereof is hereto annexed) stating that he has received notice from....., of....., claiming the subject-matter in this action):

Take notice that a summons has been issued to the said.....to attend at the Supreme Court at....., on.....day, the.....day of....., 19..... at the hour of.....in the.....noon (and that the hearing of this action has been adjourned to the same place, day, and hour), when judgment will be given determining the rights and claims of yourself, the defendant, and the said.....

DATED at....., this.....day of....., 19.....

..... REGISTRAR

To the Plaintiff,

NOTICE - The claimant is required within 10 days after service of the said summons upon him, to file in the Court office and to serve upon you and upon the defendant, with a notice that he makes no claim, or particulars stating the grounds of his claim to the subject-matter in the action.

The address for service of the defendant is at.....; and the address for service of the claimant is at.....

The office of the Court is open to the public from 9.30a.m. to 12noon to 4p.m. on Mondays to Fridays inclusive.

If you are in doubt, consult the Registrar immediately.

Rule 161.

Form 37

WHEREAS ..... of..... has filed an affidavit (a copy whereof is hereto annexed) stating that he has received adverse claims from..... of..... and..... or..... to [Here state the debt, thing in action, money, or goods to which the adverse claims are made]:

You are therefore summoned to attend at the Supreme Court at..... on..... day of..... 19....., at the hour of..... in the noon, when judgment will be given determining the rights and claims of the said..... and.....

DATED at....., this..... day of..... 19.....

REGISTRAR

To the Claimants.

NOTICE - You are each required within 10 days after the service of the summons on you, to file in the Court office and serve on the other parties named in this summons either a notice that you make no claim, or particulars stating the grounds of your claim.

Form 170.

Form 44

ORDER TO PROCEED WHERE CHANGE OF PARTIES AFTER JUDGMENT

IT is ordered that..... of..... [Occupation], the substituted as plaintiff (defendant) in this action be the said..... for the original plaintiff (defendant) and that the said..... be at liberty to issue execution against the said..... or to take any such action as the said..... would have been entitled to take against the said..... for the amount of the unsatisfied judgment and costs in this action.

(or that the question whether..... of..... the original plaintiff in this action, is entitled to recover the amount of the judgment obtained against..... the defendant in this action, and costs, shall be tried in an action wherein the said..... shall be plaintiff and the said..... shall be defendant).

(or that the question whether..... the plaintiff in this action, is entitled to recover the amount of the judgment obtained against..... the original defendant in this action, and costs, from..... of..... [Occupation]..... the..... of the said..... shall be tried in an action wherein the said..... shall be plaintiff and the said..... shall be defendant.)

DATED at....., this..... day of..... 19.....

REGISTRAR

Rule 172.

Form 45

APPLICATION FOR EXECUTION

REQUEST that the judgment (or order) of the Supreme Court at.....dated the .....day of.....19....., be enforced by the issue of a warrant of (for) /State type of warrant or writ applied for/.....against .....Of....., the abovenamed judgment debtor, for the sum of \$....., being the unpaid portion (as per subjoined statement) of the sum viz., \$....., including costs), which the said judgment debtor was adjudged (ordered) to pay to me.

Or

for the return of the following specific goods, viz:.....ordered to be returned to me)

Or

recovery of /Describe land/, possession of which was ordered to be given to me forthwith (or on the.....day of.....19....) (together with the sum of \$.....for rent or mesne profits, or rent and mesne profits, or damages, and .....for costs as per the subjoined statement.) (or as the case may be).

	\$	s	\$	s
Amount of judgment (order) including costs	.....			
Subsequent costs	.....			
	-----			
Amount paid in part satisfaction of above judgment (order)			.....	
Balance still unpaid, for which execution is requested			.....	
			=====	

D at.....this.....day of.....19.....

Witness to signature.....

to the Registrar of the Supreme Court at.....

	Date	Time	Initials
Application filed	.....	.....	.....
Warrant issued	.....	.....	.....



Rule 172.

Form 46

WRIT OF SALE

To a Bailiff of the Supreme Court at.....  
(or To a Constable at.....)

YOU are hereby directed to make of the real and personal estate of.....the abovenamed defendant, the sum of \$.....which the above-named plaintiff has recovered against him in this Court by virtue of a judgment given on the.....day of.....19.....(together with the costs of execution amounting to \$.....; and interest upon the said sum at the rate of \$6 for every \$100 by the year from the said.....day of.....19.....), and cause that money (with such interest as aforesaid) immediately after the execution hereof to be rendered to the Registrar of this Court.

DATED at.....this.....day of.....19.....

.....  
REGISTRAR

Rule 173.

Form 47

WRIT OF POSSESSION

To a Bailiff of the Supreme Court at.....  
(or To a Constable at.....)

YOU are hereby directed to deliver to.....the above-named plaintiff, possession of all that parcel of land being /Here describe land so as to identify it/ in pursuance of a judgment obtained in this Court by the said plaintiff against the said defendant on the .....day of.....19.....

DATED at.....this.....day of.....19.....

.....  
REGISTRAR

Rule 184.

Form 48

APPLICATION FOR WRIT OF ARREST

I, .....of...../Occupation/, the above-named plaintiff (or duly authorised agent of the abovenamed plaintiff), hereby apply to the Supreme Court at.....for the issue of a writ of arrest against.....of...../Occupation/ the abovenamed defendant, upon the grounds set out in the affidavit appended hereto.

DATED at.....this.....day of.....19.....

.....  
(Agent for) Plaintiff

....., of....., Occupation, make oath and say as

That I am the plaintiff in this action (or I am the agent of the plaintiff in this action duly authorised by him to sue for and recover from the defendant the claim hereinafter mentioned by a power of attorney or as the case may be under the hand of the plaintiff dated the.....).

That the abovenamed defendant is justly and truly indebted to me (or to the plaintiff) and I have (the plaintiff has) a good cause of action against him for, the sum of ..... for....., the particulars whereof are set out in the statement of ..... filed herein.

That the debt was contracted on State date.....  
That Specify grounds for belief that defendant is about to leave Western Samoa and to evade payment.....

That for the reason aforesaid, I verily believe that the defendant is about to leave Western Samoa immediately, and that he intends thereby to evade payment of the above sum (or to the plaintiff).

.....  
Signature of deponent

.....  
.....19....., Before me:

.....  
REGISTRAR  
A Solicitor of the Supreme Court of New Zealand  
(Or other person authorised under rule 45 to take affidavits.)

.....  
..... a Bailiff of the Supreme Court at Apia  
(or To a Constable at Apia)

WHEREAS it has been made to appear to the satisfaction of me, the undersigned Chief Justice (Judge) by the affidavit of....., the plaintiff (or the duly authorised agent of the plaintiff) in the above action, that he (the abovenamed plaintiff) has a good cause of action against the abovenamed defendant for the sum of \$..... for which summons has been issued out of this Court and that there is probable cause for believing that he, the said defendant, is about to leave Western Samoa and to evade payment of the said sum of \$.....:

Now, therefore, I hereby command you, by virtue of the powers given to me by rule 184 of the Supreme Court (Civil Procedure Rules) 1979 that, unless the said defendant deposits with you, or with the Registrar of the Supreme Court, the said sum of \$....., together with costs \$..... or security therefor to the satisfaction of the Registrar to be paid applied, and disposed of according to the judgment of the Court in the action, you do immediately bring him, the said defendant, before me, the said Chief Justice (Judge) at the Supreme Court at..... to be further dealt with according to law.

And I further command you to certify to me without delay what you shall do under this warrant.

DATED at..... this..... day of..... 19.....

.....  
CHIEF JUSTICE

WARRANT TO DEFENDANT ARRESTED UNDER WRIT

TAKE NOTICE that if you deposit with the officer executing the writ of arrest issued this day out of the Supreme Court at....., or with the Registrar of the Court at....., the sum of \$....., being the amount claimed and \$..... for costs, you will be discharged from custody, and the said sum will be paid, applied, and disposed of according to the final judgment of the Court.

DATED at.....this.....day of.....19.....

.....  
REGISTRAR

To the defendant

: This form will require to be suitably modified in cases where a bond is lodged instead of security being given in cash.

BAIL BOND TO BE GIVEN BY DEFENDANT ARRESTED UNDER WRIT OF ARREST

NOW all men by these presents that we,....., of....., and..... of..... and..... are jointly and severally held and firmly bound to the Registrar for the time being of the Supreme Court at..... in the sum of \$....., to be paid to the said Registrar, for which payment to be made we bind ourselves and each and everyone of us, jointly and severally firmly by these presents:

Whereas on the.....day of.....19..... the abovenamed..... has made a statement of claim against the above-bounden..... in the Supreme Court..... to recover the sum of \$..... and \$..... for costs.

and whereas it has been made to appear to..... Chief Justice (Judge) by the affidavit of....., that there is probable cause for believing that the above-bounden..... was about to leave Western Samoa and to evade payment of that sum:

and whereas a writ of arrest was issued, and the above-bounden..... has been arrested, but desires to be released on bail:

Now, the condition of this obligation is that, if the above-bounden..... shall appear at the Supreme Court at..... on..... day, the..... day of..... 19..... at the hour of..... in the..... noon, to answer the demand of the said..... and shall not depart until the judgment of the Court has been given, then this obligation shall be void, but otherwise shall remain in full force.

SIGNED by the above-bounden..... at )  
.....this.....day of.....19..... )  
in my presence - )  
..... )  
..... )  
..... )

.....  
Registrar  
approve of this bond  
.....

Form 52

NOTICE OF MOTION TO THE COURT OR A JUDGE IN CHAMBERS Inter Partes

TAKE NOTICE that on the.....day of.....19.....,at.....o'clock  
in the forenoon counsel for the abovenamed plaintiff /or as the case may be/ will move  
this Honourable Court at.....(or at.....before a Judge in Chambers)  
for an order that /Here set out clearly the order that is sought/ and directing that the  
costs of the plaintiff /or as the case may be/ of and incidental to this application and  
the order thereon be fixed and be costs in the cause (or be fixed and be costs of the  
plaintiff in any event or be reserved /or as the case may be/) and for such further or  
other order as in the circumstances may appear just UPON THE GROUNDS /Here set out  
precisely the grounds on which it is intended to move/ AND UPON THE GROUNDS appearing  
by the affidavit of.....filed herein.

DATED at.....this.....day of.....19.....

.....  
Counsel for the abovenamed Plaintiff  
/Or as the case may be/

to the Registrar of the High Court  
and  
to the abovenamed defendant /Or as the case may be/

De 191.

Form 53

NOTICE OF MOTION TO THE COURT OR A JUDGE Ex Parte

.....of counsel for the abovenamed applicant /Or as the case may be/ to move  
this Honourable Court (or the Judge in Chambers) for an order /etc., as in form 34/.

DATED at.....this.....day of.....19.....

to the Registrar of the Supreme Court

certified pursuant to the rules of the Court to be correct

This application is made in reliance on section.....of the.....Act 19....., and  
rule.....of the Supreme Court (Civil Procedure Rules) 1979. The attention of  
the Court is respectfully drawn to the case of.....

.....  
COUNSEL MOVING