



BERMUDA

MAGISTRATES' COURT RULES 1973

SR&O 6 / 1973

*[made under section 21 of the Magistrates Act 1948 and brought into operation on 1 April 1973]*

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ORDER 1

GENERAL

1/1 Commencement

- 1 *[omitted.]*

1/2 Interpretation

- 2 In these Rules, unless inconsistent with the context—  
“the Act” means the Magistrates Act 1948 [*title 8 item 15*];

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“the court” means a court of summary jurisdiction;

“judgment” includes a decree or order;

“prescribed form” means form prescribed in the Schedule;

“return day” means the return day of a summons as determined under Order 2;

“suit” includes action, and means a civil proceeding commenced by summons or by such other manner as may be prescribed in these Rules or other provision of law.

### 1/3 Fees

3 The proper officer whose duty it is to receive any document shall ensure that any fee payable in respect thereof is paid before accepting same.

### 1/4 Time

4 Section 9 of the Interpretation Act 1951 [*title 1 item 1*] shall apply to the computation of time under these Rules, with the modification that Saturday shall also be deemed an excluded day.

## ORDER 1A

### THE OVERRIDING OBJECTIVE

#### 1A/1 The Overriding Objective

1 (1) These Rules shall have the overriding objective of enabling the court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate —
  - (i) to the amount of money involved;
  - (ii) to the importance of the case;
  - (iii) to the complexity of the issues; and
  - (iv) to the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly; and
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

#### 1A/2 Application by court of Overriding Objective

2 The court must seek to give effect to the overriding objective when it—

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- (a) exercises any power given to it by the Rules; or
- (b) interprets any rule.

1A/3 Duty of parties

3 The parties are required to help the court to further the overriding objective.

1A/4 Court's duty to manage cases

4 (1) The court must further the overriding objective by actively managing cases.

(2) Active case management includes—

- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
- (b) identifying the issues at an early stage;
- (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
- (d) deciding the order in which issues are to be resolved;
- (e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;
- (f) helping the parties to settle the whole or part of the case;
- (g) fixing timetables or otherwise controlling the progress of the case;
- (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (i) dealing with as many aspects of the case as it can on the same occasion;
- (j) dealing with the case without the parties needing to attend at court;
- (k) making use of technology; and
- (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

*[Order 1A inserted by BR 102 /2013 effective 1 January 2014]*

ORDER 2

FORM AND COMMENCEMENT OF SUIT

2/1 Commencement by summons

1 Except where otherwise provided by law every suit shall be commenced by summons issued in duplicate by the Clerk.



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### 2/2 Preparation of summons

2 The summons shall be prepared by the plaintiff or his counsel and shall be signed by such person.

### 2/3 Form and content of summons

3 (1) Every summons shall be in the prescribed form and shall contain—

- (a) the full name and place of abode of the plaintiff; and
- (b) the full name and address of his counsel, if any; and
- (c) the full name and place of abode of the defendant so far as these be known to the plaintiff; and
- (d) the nature of the plaintiff's claim, particulars of which shall be set out as nearly as may be in accordance with Order 3.

(2) If either the plaintiff or the defendant be a married woman or an infant that fact shall be stated in the summons.

### 2/4 Form of Admission etc. to be attached to summons

4 There shall be attached to every summons a Form of Admission, Defence and Counterclaim in the prescribed form and such form shall for the purposes of service upon the defendant be treated in all ways as part of such summons.

### 2/5 Issue of summons

5 (1) Every summons shall be issued by the Clerk who shall sign the name and endorse thereon the date of issue.

(2) The Clerk shall, before issuing the summons, endorse thereon the place of hearing, the time of hearing and the day of hearing (hereinafter referred to as "the return day").

(3) Where the Clerk is of the opinion that a summons—

- (a) does not comply with these Rules; or
- (b) is for a claim in respect of a matter not within the jurisdiction of the court;  
or
- (c) is frivolous or vexatious,

the Clerk shall not issue the summons but shall refer the matter to a magistrate, who shall give the Clerk such direction in the matter as he may think just; and it shall be the duty of the Clerk to comply with any such direction.

### 2/6 Return day

6 (1) The return day shall be fixed by the Clerk and shall be such as to permit of service being effected on the defendant and as to permit further of the defendant having seven clear days within which to comply with these Rules in the event of his wishing to defend the suit.

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(2) The Clerk shall inform the plaintiff or his counsel of the return day:

Provided that it shall be deemed to be sufficient compliance with this requirement if the Clerk shall endorse the return day on any copy of the summons retained by the plaintiff and shall initial the same.

### 2/7 Alteration of return day

7 Where for any reason the summons has not been served and sufficient time does not remain before the return day thereof for compliance with Rule 6 the summons may be returned to the Clerk who shall refer the matter to a magistrate for such magistrate to fix another return day and the Clerk shall then endorse the same on the summons, and the Clerk shall forthwith inform the plaintiff or his counsel of such other return day.

### 2/8 Division of causes of action

8 It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more actions, but any plaintiff having a cause of action in excess of the amount for which an action might be brought under the Act may abandon the excess and, on proving his case, recover such amount; and the judgment of the court in respect of that amount shall be in full discharge of all demands in respect of such cause of action, and entry of judgment shall be made accordingly.

## ORDER 3

### PARTICULARS OF CLAIM

#### 3/1 Particulars

1 The particulars of claim to be entered on or attached to the summons shall set out the nature and extent of the relief asked for and shall be such as to give the defendant reasonably sufficient information as to the details of the claim, and the amount claimed for costs and court fees shall be shown on the summons.

#### 3/2 Abandonment or set-off

2 Where part of the claim has been abandoned in accordance with Order 2 Rule 8 or where a set-off is admitted by the plaintiff the particulars of claim shall show such abandonment or set-off as the case may be.

#### 3/3 More than one claim

3 Where more than one claim is contained in the same summons the particulars of each claim or the relief sought in respect thereof shall be shown separately.

#### 3/4 Assignees

4 Where the plaintiff sues as an assignee the particulars shall show the date of the assignment and the name and description of the assignor.

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### 3/5 Instrument required to be presented

5 Where the plaintiff sues upon an instrument which is required by law to have been presented before it can be sued upon the particulars shall state that it was in fact presented and upon what date it was so presented.

### 3/6 Further and better particulars

6 The court may, on the application of the defendant or on its motion, order further and better particulars.

### 3/7 Amount of judgment not to exceed claim

7 The plaintiff shall not, at the hearing, obtain a judgment for any sum exceeding that stated in the particulars except for subsequent interest or mesne profits and for costs.

## ORDER 4

### SERVICE

#### 4/1 Mode of service

1 The summons shall, wherever it is practicable, be served by delivering a copy thereof to the defendant personally or to some adult inmate of the usual or last known place of abode or business of the defendant; but if it is made to appear to a magistrate, on application, that the plaintiff is from any cause unable to effect such personal service, the magistrate may make such order for substituted or other service, or for the substitution for service by notice, by advertisement or otherwise, as may seem just.

#### 4/2 Proof of service

2 Except where service is effected by the bailiff, proof of service shall be oral or by affidavit, and the court, if not satisfied that service has been properly effected, may direct that it be effected by the bailiff before proceeding further with the hearing of the suit.

#### 4/3 On infants

3 When an infant is a defendant to the suit, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall unless the court otherwise orders, be deemed to be good service on the infant:

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

#### 4/4 On corporations etc

4 Where a corporation aggregate is a defendant to the suit, service made on the mayor or other head officer, or on the clerk, treasurer, or secretary of the corporation, or in such other manner as the court may sanction, shall be deemed to be good service on the corporation.

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### 4/5 On mentally disordered persons

5 Where a mentally disordered person is a defendant to the suit, service on the person with whom the mentally disordered person resides or under whose care he is shall, unless the court otherwise orders, be deemed to be good service.

### 4/6 On prisoner

6 Where the person on whom service is to be effected is a prisoner in a prison, it shall be sufficient service to deliver the summons at the prison to the gaoler or person appearing to be the head officer in charge thereof, who shall cause the same to be served upon the prisoner.

### 4/7 Service on agent where principal resides out of jurisdiction

7 Where a contract has been entered into within the jurisdiction by or through an agent residing or carrying on business within the jurisdiction on behalf of a principal out of the jurisdiction, the summons in a suit arising out of the contract may, with the leave of the court, be served on the agent.

### 4/8 Service out of jurisdiction

8 No summons shall be served out of the jurisdiction without the leave of the court, which may give such directions as to the manner in which service shall be effected as it may think fit.

### 4/9 Where violence threatened

9 Where the bailiff or person charged with the service of any summons on any person is prevented by the violence or threats of such person, or any other person in concert with him, from personally serving the summons, it shall be sufficient to inform the person to be served of the nature of the summons, and to leave the summons as near such person as is practicable,

### 4/10 Certificate of service

10 In all cases where service of any summons or other document required to be served on any person by these Rules shall have been effected by a bailiff an endorsement or a certificate of service in the prescribed form signed by such officer shall be *prima facie* evidence of service.

### 4/11 Endorsement of date and place of service on summons

11 Where a summons is served by delivering a copy thereof to any person or (where this has been authorized by a magistrate under Rule 1) by leaving it upon any premises, the person serving the summons shall prior to so serving it endorse upon such copy a note setting out the time and place of such service for the information of the defendant.

ORDER 5  
PARTIES

5/1 Suit on behalf of others

1 If any plaintiff sues, or any defendant is sued, in any representative capacity, it shall be expressed on the summons. The court may order any of the persons represented to be made parties either in lieu of or in addition to the previously existing parties.

5/2 Joint ground of suit

2 Where a person has jointly with other persons an alleged ground for instituting a suit, all those other persons ought ordinarily to be made parties to the suit.

5/3 Where joint interest, parties may be authorized to sue or defend for others

3 Where more persons than one have the same interest in one suit, one or more of such persons may be authorized by such persons to sue or defend in such suit for the benefit of or on behalf of an parties so interested.

5/4 Joint and several demand

4 Where a person has a joint and several demand against two or more persons, either as principals or sureties, it is not necessary for him to bring before the court as parties to a suit concerning that demand all the persons liable thereto, and he may proceed against any one or more of the persons severally or jointly and severally liable. Where a defendant claims contribution, indemnity or other remedy or relief over against any other person, he may apply to have such person made a party to the suit.

5/5 Non-joinder and misjoinder

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

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

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

(3) No suit shall be defeated by reason of non-joinder or misjoinder of parties.

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### 5/6 Proceedings by or against partners

6 Any persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms (if any); and any party to a suit may, in such case, apply to the court for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner and verified on oath or otherwise as the court may direct.

### 5/7 Distinct causes of action in one summons

7 In case a summons states two or more distinct causes of action by and against the same parties, and in the same rights, the court may, either before or at the hearing, if it appears inexpedient to try the different causes of action together, order that the trials be had separately, and make such order as to adjournment and costs as justice requires.

### 5/8 Misjoinder of actions

8 In case a summons states two or more distinct causes of action, but not by and against the same parties, or by and against the same parties but not in the same rights, the summons may, on the application of any defendant, be amended or dismissed, as justice may require.

### 5/9 Where change of interest, court may make order enabling suit to proceed

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

Provided that any person served with such an order may, within such time as the court in the order directs, apply to the court to discharge or vary the order.

### 5/10 Death of party not to abate suit, if cause of action survive

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

### 5/11 In suit for recovery of land, any person not named as defendant, may, by leave, appear

11 If it shall appear to the court, at or before the hearing of a suit for the recovery of land that any person who is not a party to the suit is in possession, either by himself or by his tenant, of the land or of some definite part thereof, such person may by the leave of the court be allowed to appear and defend.

## ORDER 6

### GUARDIAN FOR PURPOSES OF SUIT

### 6/1 Court may appoint guardians to infant defendants and persons of weak mind

1 Where, on default of a defendant in answering or otherwise defending the suit, after service of the summons, it appears to the court that he is an infant, or a person of weak or

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unsound mind. so that he is unable by himself to defend the suit, the court may, if it thinks fit, on the application of the plaintiff or of its own motion, appoint, by order, some fit person to be guardian of the defendant for the purposes of the suit by whom he may defend it.

6/2 Notice and service thereof

2 Before such an order is made the court shall cause such notice as it thinks reasonable to be served on or left at the dwelling-house of the person with whom or under whose care the defendant is and also, unless the court sees good reason to the contrary, in the case of an infant not residing with or under the care of his guardian to be served on or left at the dwelling-house of his guardian.

6/3 Suits by infants and persons of weak mind

3 Infants or persons of weak or unsound mind may sue as plaintiffs by their next friends on such terms as to the liability for costs and otherwise of such next friends as the court shall consider just.

ORDER 7

ADMISSION, DEFENCE OR COUNTERCLAIM

7/1 Manner in which notice of admission, defence or counterclaim shall be given

1 (1) A defendant who admits his ability for the whole or part of any claim, or who disputes his liability for the whole or part of any claim or who intends to set up a counterclaim shall either—

- (a) give notice thereof to the Clerk at least three clear days before the return day, and for this purpose he may deliver to the Clerk—
  - (i) the form appended to the summons completed according to the circumstances of his case and signed by him or by some person on his behalf; or
  - (ii) a defence or an admission or a counterclaim otherwise than on the form, signed as aforesaid and accompanied by as many copies thereof as there are plaintiffs; or
- (b) give notice thereof orally to the court upon the return day.

(2) Notice given to the Clerk under this rule shall be given by delivering the notice by hand to some responsible person in the office of the Clerk.

(3) A notice given under this rule may state an address for the service of any notice required to be given under these Rules.

7/2 Notice of defence not a waiver

2 The noting of a defence shall not operate as a waiver of—

- (a) the defendant's right to demand further and fuller particulars of the plaintiff's claim; or

- (b) any irregularity in the process; or
- (c) the defendant's right to rely on any further or other defence or counterclaims but the court may make such order as to costs or otherwise as may be necessary to prevent the plaintiff from being prejudiced.

ORDER 8

PROCEEDINGS UPON THE RETURN DAY

8/1 Application of Order

1 This Order shall apply to proceedings upon the return day of a summons, where the suit has been called.

8/2 Non-appearance of plaintiff

2 If the plaintiff does not appear the court shall, unless it sees good reason to the contrary, strike out the suit (except as to any counterclaim by the defendant), and make such order, including an order as to costs, in favour of any defendant appearing, as seems just:

Provided that, if the defendant shall admit the claim to the full amount claimed, the court may, if it thinks fit, give judgment as if the plaintiff had appeared.

8/3 Non-appearance of both parties

3 Subject to Rule 6, if neither party appears the court shall, unless it sees good reason to the contrary, strike the same out of the cause list.

8/4 Both parties appearance on return day

- 4 (1) If both parties appear then the court may—
- (a) if the defendant gives notice of a defence or counterclaim, either determine the matter summarily or postpone the hearing to some other date;
  - (b) if the defendant admits the claim and has no counterclaim, give judgment against him;
  - (c) if the defendant admits the claim in part and has no counterclaim, at the request of the plaintiff, give judgment in respect of such part, and if there is no such request, either determine the matter summarily or postpone the hearing to some other date, or otherwise make such order as the justice of the case may require.

(2) Where judgment is given under paragraph (1) (c) the plaintiff shall be deemed to have abandoned that portion of his claim in respect to which judgment was not granted.

8/5 Appearance of plaintiff

5 Subject to Rule 6, if the plaintiff appears on the return day and the defendant does not the court may, on being satisfied—



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- (a) that the summons has been served in accordance with these Rules at least seven clear days prior to the return day;
- (b) that the claim is within the jurisdiction of the court and is otherwise a proper claim;
- (c) that these Rules have been complied with, give judgment for the plaintiff—
  - (i) without proof of the claim in the case of a debt or liquidated demand; and
  - (ii) upon proof of the claim in any other case, or otherwise make such order as the justice of the case may require.

8/6 Rule to apply where a defence admission or counterclaim is lodged with Clerk

- 6
- (1) This Rule shall apply to proceedings upon the return day where—
    - (a) the plaintiff appears and the defendant does not: and
    - (b) written notice of a defence, admission or counterclaim has been delivered to the Clerk in accordance with Rule 1 of Order 7.
  - (2) Where written notice of a defence, admission or counterclaim has been given to the court otherwise than in accordance with Rule 1 of Order 7 the court may upon the return day, instead of dealing with the matter in accordance with Rule 5, direct that the provisions of the Rule shall apply but the court shall not be required to take cognizance of any such notice, nor shall it be a ground for the rescission of a judgment that such notice did not come to the attention of the court.
  - (3) On the return day where the provisions of this Rule apply the court may—
    - (a) if the defendant has a defence or counterclaim, postpone the hearing to some other date;
    - (b) if the defendant admits the claim and has no counterclaim, give judgment against him;
    - (c) if the defendant admits the claim in part and has no counterclaim, at the request of the plaintiff, give judgment in respect of such part, and if there is no such request, postpone the hearing to some other date, or otherwise make such order as the justice of the case may require.
  - (4) Where judgment is given under paragraph (3) (c) the plaintiff shall be deemed to have abandoned that portion of his claim in respect to which judgment was not granted.
  - (5) Where the court postpones any matter under this Rule it shall direct notice of such postponement be given to the defendant.

8/7 Relisting

7 Any suit struck out under this Order may, by leave of the court, be replaced on the cause list on such terms as to the court may seem fit.

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ORDER 9

SET-OFF AND COUNTERCLAIM

9/1 Judgment in certain cases where set-off or counterclaim established

1 A set-off or counterclaim shall, to the extent of the amount established in respect thereof, be applied in satisfaction of any claim established by the plaintiff; where a set-off or counterclaim exceeding the amount of the plaintiff's claim is established, the defendant shall have judgment for the excess; where the set-off or counterclaim established is less than the plaintiff's claim, the plaintiff shall have judgment for the difference.

9/2 Counterclaim exceeding jurisdiction

2 Where the defendant's counterclaim exceeds the jurisdiction of the court the defendant shall not have judgment thereon unless he abandons the excess and, in such event, Order 2 Rule 8 shall apply as to the effect of the judgment of the court in the matter.

9/3 Counterclaim against assignor

3 In an action brought by an assignee the defendant may set off amounts due to him from the assignor.

9/4 Application of Rules

4 These Rules shall apply to a counterclaim as they do to a claim, with such variations as circumstances may require.

ORDER 10

DISCONTINUANCE OF SUITS

10/1 Discontinuance of Suits

1 The Plaintiff may on giving notice to the Clerk discontinue his suit before trial, or, in the case where leave to obtain judgment has been granted before judgment is entered.

10/2 Stay of subsequent suit

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

ORDER 11

AMENDMENT

11/1 Under what circumstances

1 The court may, at any stage of the proceedings, either of its own motion or on the application of either party, order any proceedings to be amended, whether the defect or error be that of the party applying to amend or not; and all such amendments as may be

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necessary or proper for the purpose of eliminating all statements which may tend to prejudice, embarrass or delay the fair trial of the suit, and for the purpose of determining, in the existing suit, the real question or questions in controversy between the parties, shall be so made. Every such order shall be made upon such terms as to costs or otherwise as shall seem just.

### ORDER 12

#### ADMISSIONS

##### 12/1 Notice of admissions

1 Any party to a suit may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the summons, statement of claim, defence or other statement of any other party.

##### 12/2 Notice to admit

2 Any party may call upon any other party to admit, saving just exceptions, any document or fact.

##### 12/3 Costs on refusal to make reasonable admissions

3 In case of refusal or neglect to admit after notice the costs of proof of the document or fact shall be paid by the party refusing or neglecting to admit, whatever be the result of the suit, unless the court is of opinion that the refusal or neglect to admit was reasonable.

##### 12/4 Judgment by consent

4 if the plaintiff and defendant shall agree as to the terms and conditions on which judgment shall be entered, the court, unless it sees good reason to the contrary, shall enter judgment on such terms and conditions.

### ORDER 13

#### SETTLEMENT OF ISSUES

##### 13/1 At or before hearing

1 At any time before or at the hearing, the court may, if it thinks fit, on the application of any party or of its own motion, proceed to ascertain and determine what are the material questions in controversy between the parties, and may reduce such questions into writing and settle them in the form of issues, which issues, when settled, may state questions of law on admitted facts, or questions of disputed facts, or questions partly of the one kind and partly of the other.

##### 13/2 Court may direct parties to prepare issues

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

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### 13/3 When to be settled

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

### 13/4 The court may amend or frame additional issues

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

## ORDER 14 PLEADINGS

### 14/1 Written statements; in what cases

1 Suits shall ordinarily be heard and determined in a summary manner without pleadings; but, where it appears to the court that the nature and circumstances of any case render it expedient in the interests of justice to do so, the court may order the plaintiff to file a written statement of his claim, and may likewise order the defendant to file a written statement of his defence. The filing of a statement of claim shall not necessitate, unless the court so directs, that a statement of defence shall also be filed. The order may be made at any stage of a suit, either before or at the hearing.

### 14/2 Form and filing of statements

2 (1) Any statement filed under this Order shall be in such form as the court may direct.

(2) Every statement shall be filed at such time as the court directs and be served on the opposite party at such time and in such manner as it directs.

## ORDER 15 NON-ATTENDANCE OF PARTIES AT HEARING

### 15/1 Application of Order

1 This Order shall apply to the hearing of a suit upon the date to which the hearing was postponed under Order 8.

### 15/2 Non-appearance of both parties

2 Where a suit on the cause list has been called, if neither party appears the court shall, unless it sees good reason to the contrary, strike the same out of the cause list.

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### 15/3 Plaintiff

3 If the plaintiff does not appear, the court shall, unless it sees good reason to the contrary, strike out the suit (except as to any counterclaim by the defendant), and make such order as to costs, in favour of any defendant appearing, as seems just:

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

### 15/4 Defendant

4 If the plaintiff appears, and the defendant does not appear or sufficiently excuse his absence, or neglects to answer when duly called, the court may, upon proof of service of the notice of trial where such notice is required by these Rules proceed to hear the suit and give judgment on the evidence adduced by the plaintiff, or may postpone the hearing of the same and direct notice of such postponement to be given to the defendant.

### 15/5 Counterclaim where plaintiff does not appear

5 Where the defendant to a suit which has been struck out under Rule 3 has a counterclaim, the court may proceed to hear the counterclaim and give judgment on the evidence adduced by the defendant, or may postpone the hearing of the counterclaim and direct notice of such postponement to be given to the plaintiff.

### 15/6 Relisting of causes struck out

6 Any suit struck out under this Order may, by leave of the court, be replaced on the cause list, on such terms as to the court may seem fit.

## ORDER 16

### TRIAL AND ADJOURNMENT

#### 16/1 Trial

1 Subject to Order 8 every cause shall be tried and determined on the return day of the summons, if duly served, or on a day to which the hearing is adjourned by the court or fixed for the trial under that Order.

#### 16/2 Adjournment

2 The court may adjourn any hearing from time to time or day to day if necessary to complete the hearing; and it may also, for any cause it considers sufficient, adjourn a hearing for such period as it deems necessary.

#### 16/3 Evidence

3 Subject to these Rules or any provision of law to the contrary evidence at the trial shall be given under oath and the parties and witnesses shall be subject to cross-examination and reexamination.

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16/4 Where evidence may be given by affidavit

4 (1) In any suit, the court may in its discretion permit the evidence of any person out of the jurisdiction to be given by affidavit upon such terms as to the answering of written interrogatories and the production of books and papers for inspection as it considers necessary.

(2) Where in the opinion of the court expense is unnecessarily incurred by reason of any objection of either party to the reception of affidavit evidence, it may order that party to pay the costs of both parties occasioned by the objection.

5 *[blank]*

16/6 Proceedings to be taken down in writing

6 The evidence and proceedings shall be taken down in writing by the court, and any objection made by either party to any evidence or any document tendered by either party to the court shall be noted and recorded.

### ORDER 17

### JUDGMENT

17/1 Judgment

1 All judgments of the court shall be given in open court and shall be entered on the record of the proceedings.

17/2 Judgment to be obeyed without demand

2 A person directed by a judgment to pay money or do any other act is bound to obey the judgment without any demand for payment or performance, and, if no time is therein expressed, he is bound to do so immediately after the judgment has been made (except as to costs, the amount whereof may require to be ascertained by taxation), unless the court shall enlarge the time by any subsequent order.

17/3 Court may direct time for payment or performance

3 The court, at the time of making any judgment, or at any time afterwards, may direct the time within which the payment or other act is to be made or done, reckoned from the date of the judgment, or from some other point of time, as the court thinks fit.

17/4 Interest

4 Where a judgment is for a sum of money, interest at five *per centum per annum* from the date of judgment shall be payable thereon, unless the court otherwise orders.

17/5 Payment by instalments

5 Where any judgment directs the payment of money, the court may, for any sufficient reason, order that the amount shall be paid by instalments, with or without interest. Such order may be made at the time of giving judgment, or at any time afterwards,

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and may be rescinded or varied, upon sufficient cause, at any time, Such order may state that, upon failure of any instalment, the whole amount remaining unpaid shall forthwith become due.

### 17/6 Rescission

6 The court may, upon such terms as to costs or otherwise as to the court seems just, upon the application of any party to a suit, on cause shown, order the rescission of any judgment or order given by it in the absence of such party.

## ORDER 18

### DISCOVERY AND PRODUCTION OF DOCUMENTS

#### 18/1 Discovery of documents

1 The court may order any party to the suit to make discovery, upon oath, of the documents which are or have been in his possession or power relating to any matter in question in the suit.

#### 18/2 Production of documents

2 The court may, at any time during the pendency therein of any suit, order the production by any party thereto, upon oath, of any documents in his possession or power relating to any matter in question in such suit, and the court may deal with such documents, when produced, as shall appear just.

#### 18/3 Inspection of documents

3 The court may, in its discretion, on the application of any of the parties to any suit, compel any other party to allow the applicant to inspect all or any documents in the custody or under the control of such other party relative to such suit, and, if necessary, to take examined copies of the same.

#### 18/4 Notice to produce

4 Whenever any of the parties to a suit is desirous that any document or other thing which he believes to be in the possession or power of another of the parties thereto should be produced at any hearing of the suit, he shall, at the earliest opportunity serve the party in whose possession or power he believes the document or other thing to be with a notice in writing calling upon him to produce the same.

#### 18/5 Order for production

5 In case it shall appear to the court that there is reasonable ground to believe that such document or thing will not be produced pursuant to such notice, the court may make an order for the production of the same at the hearing of the suit by the party served with the notice, subject to just exceptions.

18/6 Where right to production depends on questions in dispute

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

18/7 Penalty on failure to comply with order to answer or for discovery

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

#### ORDER 19

#### COSTS

19/1 How amount of costs determined

1 All questions relating to the amount of costs shall, unless summarily determined by the court, be referred to a magistrate, and, after notice of taxation to the parties, be ascertained by him:

Provided always that, where any party fails to appear at the taxation after notice, and the taxation has been proceeded with in his absence, such party may apply to the court for a review of taxation within the time limited as aforesaid, and the court, if satisfied that the non-appearance is due to no default of such party, may set aside or review such taxation.

19/2 Costs in discretion of court

2 The costs of every suit and of each particular proceeding therein shall be in the discretion of the court; and the court shall have full power to award and apportion costs, in any manner it may deem just, and, in the absence of any express direction by the court, costs shall abide the event of the suit:

Provided that the court shall not order that successful party in a suit to pay to the unsuccessful party the costs of the whole suit; although the court may order the successful party, notwithstanding his success in the suit, to pay the costs of any particular proceeding therein.

19/3 Security for costs

3 Where a plaintiff does not, or does not ordinarily reside in Bermuda, the court may, either on its own motion or on the application of any defendant, if it sees fit, require any plaintiff in any suit, either at the commencement or at any time during the progress thereof,



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to give security for costs to the satisfaction of the court, by deposit or otherwise, or to give further or better security.

### 19/4 Stay of proceedings pending payment of security for costs

4 Where the court orders costs to be paid, or security to be given for costs, by any party the court may, if it thinks fit, order all proceedings by or on behalf of that party in the same suit, or connected therewith, to be stayed until the costs are paid or security given accordingly, but such order shall not supersede the use of any other lawful method of enforcing payment.

### 19/5 Costs out of fund in suit

5 The court may order any costs to be paid out of any fund or property to which a suit relates.

### 19/6 Discretion of the magistrate

6 Upon any taxation of costs, the magistrate may in determining the remuneration to be allowed, have regard, subject to any rule of court, to the skill, labour and responsibility involved.

### 19/7 Taxation

7 In taxation of costs between party and party nothing shall be allowed in respect of fees paid to the court beyond what was necessary having regard to the amount recovered on judgment.

### 19/8 Fixed costs

8 Nothing in this Order shall permit costs to be awarded in excess of those fixed by rates under the Court Fees and Expenses Act 1971 [*title 8 item 7*] in respect of matters so fixed.

## ORDER 20

### THIRD PARTY PROCEDURE

#### 20/1 Third party

1 Where a defendant claims to be entitled to contribution or indemnity from or any other relief over against a person not a party to the suit or against another defendant, hereinafter called a third party, he may, within the time limited for entering his dispute, enter with the Clerk his account, claim or demand in writing in detail against the third party stating the nature and grounds thereof, and shall at the same time deliver to the Clerk a copy, and, if necessary, copies of his account, claim or demand.

#### 20/2 Summons to third party

2 The Clerk shall annex the account, claim or demand and particulars, if any, to a copy of the summons to the defendant and shall deliver a copy thereof to the proper person for service upon the third party.

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### 20/3 Procedure

3 The practice and procedure as between the defendant and third party shall to the same *mutatis mutandis* as the practice and procedure as between a plaintiff and defendant, and the court may make such direction as appears proper for having the question between the defendant and third party most conveniently determined and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the suit and may make such order or give such judgment against the third party as is required.

### 20/4 Default of appearance

4 Where a third party makes default in entering an appearance and if the suit is tried and results in favour of the plaintiff, the magistrate who tries the suit may, at or after the trial, direct such judgment as the nature of the case requires to be entered for the defendant giving the notice against the third party.

### 20/5 Delay to be avoided

5 A plaintiff shall not be prejudiced or unnecessarily delayed by reason of questions between the defendant and the third party in which he is not concerned, and such directions shall be given and terms imposed as are necessary to prevent delay of the plaintiff where it can be done without injustice to the defendant and the third party.

## ORDER 21

### SUMMARY DISPOSAL OF DISPUTE AT REQUEST OF PARTIES

#### 21/1 Parties may appear voluntarily before court for adjudication

1 The parties to any dispute in which the matter at issue falls within the jurisdiction may appear voluntarily before a court and upon their joint request the court shall hear the parties and their witnesses, if any, and adjudicate upon the matter without the formality of issuing a summons or requiring a statement of claim:

Provided that the court may direct that such a statement be filed if it considers this to be in the interest of justice.

#### 21/2 Provisions of Rules to apply to such hearing

2 The provisions of these Rules (other than so much as relates to the commencement of suit by summons) shall apply to a suit commenced under this Order as they do to a suit commenced by summons.

## ORDER 22

### ENFORCEMENT OF JUDGMENTS

#### 22/1 Three days grace after judgment

1 No proceedings to enforce any judgment of the court shall be taken until three clear days after the date of judgment unless the court otherwise orders.

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### 22/2 Writ of execution

2 (1) A writ of execution issued under section 25 of the Act shall be in the prescribed form.

(2) No goods or chattels shall be sold by virtue of such a writ within six days after such goods or chattels are seized unless they are of a perishable nature or the judgment debtor consents thereto.

(3) If the party against whom execution has been issued shall, before the actual sale, pay or tender to the Clerk or to the Provost Marshal General or his agent the amount specified in the writ, or so much thereof as the person entitled thereto shall agree to accept in full discharge, together with the costs of execution, then the execution shall be superseded and the property discharged.

(4) A writ of execution if unexecuted shall remain in force for one year only from its issue, but such writ may, at any time before its expiration, by leave of the court, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ.

(5) A note of renewal shall be endorsed on the writ which shall have effect and be entitled to priority according to the time of its original issue.

### 22/3 Summons under section 26 of the Act

3 (1) Application may be made under section 26 of the Act *ex parte*, and any such application may be made orally or in writing without prior notice.

(2) A summons issued under section 26 of the Act shall be in the prescribed form.

## ORDER 23 MISCELLANEOUS

### 23/1 Directions

1 In any suit the court may at any time on the application on notice of any party or of its own motion give such directions as it thinks proper.

### 23/2 Enlargement or abridgement of time

2 (1) Subject to these Rules, any of the times fixed by these Rules 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 is not made until after the expiration of the time allowed or appointed.

### 23/3 Striking out of suit

3 The court may either of its own motion or on the application of a party strike out any suit for want of prosecution, but such striking out shall not prevent such suit being brought again.

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### 23/4 Forms

4 The forms prescribed in the Schedule shall be used for the purposes of the Act and these Rules with such variations as the circumstances of the case may require.

### 23/5 Provisions as to actions in tort between husband and wife

5 (1) This Rule applies to any action in tort brought by one of the parties to a marriage against the other during the subsistence of the marriage.

(2) On the return day of a summons in an action to which this Rule applies, the court shall consider, if necessary of its own motion, whether the power to stay the action under section 12(2) of the Law Reform (Husband and Wife) Act 1977 [*title 26 item 26*] should or should not be exercised.

(3) Notwithstanding anything in these Rules, judgment in default of appearance at any hearing or in filing any pleadings or other documents shall not be entered without special consideration of the reason's for the default.

## ORDER 24

### DEBTORS

### 24/1 Interpretation

1 In this Order—

“the Act” means the Debtors Act 1973 [*title 8 item 47*].

### 24/2 Issue of judgment summons

2 (1) Upon the expiry of fourteen days from the date of any judgment or order, the Clerk shall, on the application of any person entitled to enforce the judgment debt (in this order called “the judgment creditor”), issue a judgment summons in the prescribed form.

(2) The judgment summons shall be prepared by the plaintiff or his counsel.

(3) The Clerk shall, before issuing the judgment summons, endorse thereon the place of hearing, the time of hearing and the day of hearing (hereinafter referred to as “the return day”) and shall sign the same and endorse thereon the date of issue.

(4) The return day fixed by the Clerk shall be such as to permit of service being effected on the defendant at least seven days before the return day.

### 24/3 Service of judgment summons

3 (1) A judgment summons shall, wherever it is practicable, be served by delivering a copy thereof to the debtor personally or to some adult inmate of the usual or last known place of abode or business of the debtor; but if it is made to appear to a magistrate, on application, that the judgment creditor is from any cause unable to effect such personal service, the magistrate may make such order for substituted or other service, or for the substitution for service by notice, by advertisement or otherwise, as may seem just.

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(2) In any case where service is effected by a bailiff an endorsement or a certificate of service signed by such officer shall be *prima facie* evidence of service.

### 24/4 Witnesses

4 Witnesses may be summoned to prove the means of a debtor in the same manner as witnesses are summoned to give evidence upon the hearing of an action.

### 24/5 Form of warrant of arrest

5 A warrant of arrest under section 5(1) of the Act shall be in the prescribed form.

### 24/6 Order for committal under section 5

6 An order committing a debtor to prison under section 5(2) shall be in the prescribed form.

### 24/7 Revocation of committal order under section 7

7 (1) An application by a debtor for the revocation of an order committing him to prison, or if he is already in custody, for his discharge under section 7 of the Act shall be made to a magistrate *ex parte* on affidavit showing the reasons for the debtors failure to attend the court and containing an undertaking by the debtor to attend the court when next ordered to do so.

(2) An order under section 7 of the Act revoking an order committing a debtor to prison and, if he is already in custody, directing his discharge shall be in the prescribed form.

(3) The Provost Marshal General shall deliver a copy of an order revoking the committal order to the Commissioner of Prisons who shall forthwith discharge the debtor.

### 24/8 Judgment summons to operate as stay of writ of execution

8 Where a judgment creditor who has issued a writ of execution against a debtor applies for the issue of a judgment summons against him, proceedings on the writ of execution shall be stayed and the stay shall not be removed except by leave of the magistrate.

### 24/9 Instalment order on hearing of judgment summons

9 On the hearing of a judgment summons the magistrate may make an order in the prescribed form for payment of the amount remaining unpaid by instalments.

### 24/10 Order for committal under section 3

10 An order for committal under section 3 of the Act shall be in the prescribed form.

### 24/11 Costs

11 On the hearing of a judgment summons the court may make such order as to costs as it thinks just.

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ORDER 25

PROCEEDINGS UNDER THE LANDLORD AND TENANT ACT 1974

25/1 Interpretation

1 In this Order "the Act" means the Landlord and Tenant Act 1974 [*title 26 item 41*].

25/2 Applications under section 13 of the Act

2 (1) An application under section 13 of the Act shall be commenced by summons to the tenant in Form 16.

(2) A duplicate copy of the said summons shall be deemed to be sufficient notice for the purposes of section 16(1) and (2) of the Act.

(3) Notice to the tenant under section 16(2) of the Act shall be in Form 17, but if it appears that the landlord has given notice to the tenant otherwise than in Form 17 the court may deem such notice sufficient compliance with that subsection if it is satisfied that there is no prejudice to the tenant.

25/3 Applications under section 19 of the Act

3 An application under section 19 of the Act shall, subject to that section, be made in the same manner as an application under section 13 and the provisions of the previous order shall apply thereto and Forms 16 and 17 shall be used in connection therewith with such variations as the circumstances of the case may require.

25/4 Recovery of possession

4 An application for an order of possession under section 16 of the Act shall be in Form 18 and such application shall be supported by an affidavit in the manner provided by the Act.

25/5 Warrant to evict

5 (1) A warrant to evict under section 25 of the Act shall be in Form 19.

(2) Paragraphs (4) and (5) of rule 2 of Order 22 (which relate to the duration and renewal of warrants of execution against goods) shall apply to warrants to evict with the necessary modifications.

(3) Where in an application under section 21 of the Act for the possession of land judgment is given also for rent, compensation or costs, such judgment for rent, compensation or costs, shall be enforced in the same way as a judgment sounding in money given under the jurisdiction conferred by the Magistrates Act 1948 [*title 8 item 15*] and a warrant for the enforcement of such judgment for rent, compensation or costs shall not be combined with a warrant to evict.

25/6 Procedure: general

6 (1) Subject to this Order and the Act the procedure on an application under the Act shall be the same as procedure in a suit brought under the jurisdiction conferred by

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the Magistrates Act 1948 [*title 8 item 15*] with such variations as the circumstances of the case may require or a magistrate may direct.

(2) Subject to this Order, these Rules shall apply to an originating application under the Act as if such application were a summons under Order 2.

(3) Without derogation from section 32(2) of the Act any document required to be served under Part IV or Part V of the Act (not being a notice to terminate a tenancy) may be served in the same manner as a summons may be served under Order 4 and the provisions of that order as to proof of service shall apply accordingly.

### ORDER 26

#### ATTACHMENT OF EARNINGS

##### 26/1 Interpretation

1 In this Order, unless the context otherwise requires—

- (a) any reference to a Rule in another part of this Order includes a reference to any form prescribed for use under that Rule;
- (b) “maintenance order” means any order for the payment of sums payable under any statutory provision mentioned in paragraphs (a) to (d) of section 27 of the Act;
- (c) “judgment debt” does not include a debt due under such an order as is referred to in the previous sub-paragraph.

##### 26/2 Index of orders

2 (1) The Clerk shall keep a nominal index of the debtors in respect of whom there are in force attachment of earnings orders,

(2) The Clerk shall, on the request of any person, cause a search to be made in the index of the court and issue a certificate of the result of the search.

##### 26/3 Mode of applying

3 (1) An application for an attachment of earnings order shall be in Form 20 and shall be filed with a Clerk together with a copy for service on the debtor.

(2) Where it is sought to enforce a judgment of the Supreme Court the creditor shall, on filing his application, produce the certificate of the Registrar for the purposes of section 34 of the Act.

(3) A magistrate may allow an application for an attachment of earnings order to be served on the debtor out of the jurisdiction of the court where the person to whom the order is to be directed is within the jurisdiction and such application shall be served in such manner as the magistrate may direct.

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### 26/4 Applications by the clerk

4 (1) Where by order of the court payments under a maintenance order are to be made to the Clerk and the debtor is in arrears under such order for a period in excess of seven days the Clerk may, after satisfying himself in such manner as he shall think fit that the creditor desires that the order should be enforced, make application for an attachment of earnings order.

(2) Where the Clerk makes an application under this Rule he shall notify the creditor thereof and of the return day of the application.

(3) An application under this Rule shall be in Form 20 with such modifications as the circumstances may require.

### 26/5 Service and reply

5 (1) Subject to paragraphs (2) and (3) of this Rule and paragraph (3) of Rule 3, a copy of the application, together with a notice in Form 21 and a form of reply in Form 22, shall be served on the debtor in the manner prescribed by these Rules for the service of an ordinary summons.

(2) Rules 5, 6 and 7 of Order 2 shall apply to the issue of the notice in Form 21 and the return day thereunder as they do to an ordinary summons.

(3) The debtor shall not be obliged to reply in Form 22 but if he does so the Clerk shall, if time allows, send a copy to the applicant.

### 26/6 Notice to employer

6 Without prejudice to the powers conferred by section 31 (7) of the Act the Clerk may, at any stage in the proceedings, send to any person appearing to have the debtor in his employment, a notice requesting him to give the Clerk, within such period as may be specified in the notice, a statement of the debtor's earnings and anticipated earnings with such particulars as may be so specified.

### 26/7 Hearing of application

7 (1) On the hearing of an application for an attachment of earnings order witnesses may be summoned to prove the means of a debtor in the same manner as witnesses are summoned to give evidence upon the hearing of a suit.

(2) Evidence in support of or in opposition to an application for an attachment of earnings order may be given by affidavit.

(3) If the creditor does not appear at the hearing of the application but—

(a) the court has received from him an affidavit which is admissible under the last foregoing paragraph; or

(b) the creditor requests the court in writing to proceed in his absence, the court may, notwithstanding anything to the contrary in these Rules, proceed to hear the application and make an order thereon.



## MAGISTRATES' COURT RULES 1973

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### 26/8 Enforcement of debtor's attendance

8 Order 24 shall apply with the necessary modifications, to a warrant or order under section 31 (1) or (2) of the Act as applies to a warrant or order under section 5 of the Debtors Act 1973.

### 26/9 Form and service of order

9 (1) An attachment of earnings order shall be in Form 23.

(2) Costs incurred on an execution and not recovered thereunder shall not be included in any judgment debt or costs the payment of which is secured by an attachment of earnings order.

(3) An attachment of earnings order and any order varying or discharging such an order shall be served on the debtor and on the person to whom the order is directed. Service shall be effected in the manner prescribed in Order 4 for the service of an ordinary summons with the modification that where the order is directed to a corporation which has requested the court that any communication relating to the debtor or the class of persons to whom he belongs shall be directed to the corporation at a particular address, service may, if the Clerk thinks fit, be effected on the corporation at that address.

(4) Where an attachment of earnings order is made to enforce a judgment or order of the Supreme Court, a copy of the attachment of earnings order and of any order discharging it shall be sent by the Clerk to the Registrar of the Supreme Court.

### 26/10 Notice of cesser

10 Where an attachment of earnings order ceases to have effect under section 30 (4) of the Act the Clerk shall give notice of the cesser to the person to whom the order is directed.

### 26/11 Application to determine whether particular payments are earnings

11 (1) While an attachment of earnings order is in force the court shall, on the application of a person specified in paragraph (3), determine whether payments to the debtor of a particular class or description specified in the application are earnings for the purposes of the order.

(2) Such an application may be made to the Clerk in writing and the Clerk shall thereupon fix a date and time for the hearing of the application by the court and give notice thereof to the persons specified in paragraph (3).

(3) The persons referred to in paragraphs (1) and (2) are—

(a) the employer;

(b) the debtor;

(c) the person to whom payment under the order is required to be made (whether directly or through an officer of any court).

(4) On hearing an application under this Rule the court may such order thereon as it thinks fit.

## MAGISTRATES' COURT RULES 1973

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### 26/12 Variation and discharge by court of own motion

12 (1) Subject to paragraph (7), the powers conferred by section 31 (4) of the Act may be exercised by the court of its own motion in the circumstances mentioned in the following paragraphs.

(2) Where it appears to the court that a person served with an attachment of earnings order directed to him has not the debtor in his employment, the court may discharge the order.

(3) Where an attachment of earnings order which has become ineffective by reason of a change in the employment of the debtor is again directed to a person who appears to the court to have the debtor in his employment in accordance with section 29(5) of the Act, the court may make such consequential variations in the order as it thinks fit.

(4) Where, after making an attachment of earnings order, the court makes another such order in respect of the same debtor which is made to secure the payment of sums payable under a maintenance order, the court may discharge or vary the first-mentioned order having regard to the priority accorded to the other order by section 29(7) of the Act.

(5) On making a consolidated attachment of earnings order the court may discharge any earlier attachment of earnings order made to secure the payment of a judgment debt by the same debtor.

(6) Where an attachment of earnings order has been made to secure the payment of a judgment debt and the court grants leave to issue execution for the recovery of the debt, the court may discharge the order.

(7) Before varying or discharging an attachment of earnings order of its own motion under any of the foregoing paragraphs of this Rule, the court shall, unless it thinks it unnecessary in the circumstances to do so, give the debtor and the person on whose application the order was made an opportunity of being heard on the question whether the order should be varied or discharged, and for that purpose the Clerk may give them notice of a date, time and place at which the question will be considered.

### 26/13 Consolidated attachment order

13 (1) Subject to this Rule, the court may make a consolidated attachment order where—

- (a) two or more attachment of earnings orders are in force to secure the payment of judgment debts by the same debtor; or
- (b) on an application for an attachment of earnings order to secure the payment of a judgment debt, or for a consolidated attachment order to secure the payment of two or more judgment debts, it appears to the court that an attachment of earnings order is already in force to secure the payment of a judgment debt by the same debtor.

(2) An application for a consolidated attachment order may be made—

- (a) by the debtor in respect of whom the order is sought, or

MAGISTRATES' COURT RULES 1973

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(b) by any person who has obtained or is entitled to apply for an attachment of earnings order to secure the payment of a judgment debt by that debtor.

(3) An application by the debtor for a consolidated attachment of earnings order may be made—

(a) in the proceedings in which any attachment of earnings order is in force to secure the payment of a judgment debt by the debtor; or

(b) at the hearing of any application for such an order.

The application shall be made on notice to the creditor in the proceedings in which the application is made and any other creditor who has obtained an attachment of earnings order which is in force to secure the payment of a judgment debt by the debtor, and Rules 3 and 5 shall not apply.

(4) An application by a creditor for a consolidated attachment order shall be made on notice to the debtor and every person who, to the knowledge of the applicant, has obtained an attachment of earnings order which is in force to secure the payment of a judgment debt by the debtor alternatively such persons shall be made respondents to the originating application.

(5) A person to whom two or more attachment of earnings orders are directed to secure the payment of judgment debts by the same debtor may request the court in writing to make a consolidated attachment order to secure the payment of those debts, and on receipt of such a request the Clerk shall fix a date, time and place at which the request will be considered and give notice thereof to the debtor and the persons who obtained the attachment of earnings orders.

(6) Where an application is made for an attachment of earnings order to secure the payment of a judgment debt by a debtor in respect of whom an attachment of earnings order is already in force to secure the payment of another judgment debt and no application is made for a consolidated attachment order, the court may make such an order of its own motion after giving all persons concerned an opportunity of being heard.

(7) Where a consolidated attachment order is in force to secure the payment of two or more judgment debts, any creditor to whom another judgment debt is owed by the same judgment debtor may apply to the court by which the order was made for it to be extended so as to secure the payment of that debt as well as the first-mentioned debts and, if the application is granted, the court may either vary the order accordingly or may discharge it and make a new consolidated attachment order to secure payment of all the aforesaid judgment debts.

An application under this paragraph shall be treated for the purposes of the foregoing paragraphs of this Rule as an application for a consolidated attachment order.

(8) Instead of complying with section 32(b) of the Act, the Clerk upon receiving payments made to him in compliance with a consolidated attachment order shall, after deducting such court fees, if any, in respect of proceedings for or arising out of the order as are deductible from those payments, deal with the sums paid as he would if they had been paid by the debtor to satisfy the relevant adjudications in proportion to the amounts

## MAGISTRATES' COURT RULES 1973

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payable thereunder, and for that purpose dividends may from time to time be declared and distributed among the creditors entitled thereto.

26/14 Exercise of power to obtain statement of earnings, etc

14 An order under section 31(7) of the Act shall be endorsed with or incorporate a notice warning the person to whom it is directed of the consequences of disobedience to the order.

26/15 Application of Order 26 to maintenance payments

15 (1) This Order shall apply in relation to maintenance payments as it applies in relation to a judgment debt, subject to the following paragraphs.

(2) An application by the debtor for an attachment of earnings order to secure payments under a maintenance order may be made on the making of the maintenance order or an order varying the maintenance order, and Rules 3 and 5 shall not apply to such an application.

(3) An attachment of earnings order to secure payments under a maintenance order shall be in Form 24.

(4) Where an attachment of earnings order made by the court to secure payments under a maintenance order ceases to have effect and—

(a) the related maintenance order was made by the court; or

(b) the related maintenance order was an order of the Supreme Court and—

(i) the Clerk has received notice of the cessation from the proper officer of the Supreme Court; or

(ii) an order of commitment has been made in the court for the enforcement of the related maintenance order,

the Clerk shall give notice of the cessation to the person to whom the attachment of earnings order was directed.

(5) Rule 12 shall have effect as if for paragraph (5) there were substituted the following paragraph—

“(5) Where it appears to the court that the related maintenance order has ceased to have effect, the court may discharge or vary the attachment of earnings order.”

(6) Rule 12 shall not apply.

ORDER 27

ATTACHMENT OF MONEY OTHER THAN EARNINGS UNDER SECTION 35C OF THE ACT

27/1 Service of notice

1 Notice under section 35C(2) of the Act shall be served personally or in accordance with an order for service made by the court.

27/2 Forms

2 A notice of attachment in respect of money that is owing and payable other than earnings shall be in Form 25.

27/3 Copies to debtor

3 The Clerk shall provide the debtor with a copy of the notice of default (if any) and the notice of attachment issued under section 35C of the Act by sending copies thereof by mail to the last known address of the debtor.

27/4 Alternate business premises

4 If the person served with a notice of attachment has more than one place of business and it appears that the money bound by the notice is or may be payable through some place of business other than that at which the notice is served, the person in charge of the place of business at which the notice is served shall forthwith notify the person in charge of the place of business at which the money is or may be payable and that money is bound and the notice is conclusively deemed to be served as of the time it is actually received at the place of business through which the money is payable or within forty-eight hours after the actual service of the attachment, whichever is the shorter period.

27/5 Address for service

5 (1) A person required to pay under a notice of attachment shall provide the Clerk with an address for service and shall inform the Clerk forthwith of any change in the address.

(2) A person required to pay under a notice of attachment shall notify the Clerk of—

- (a) the termination of the employment or other relationship of the debtor with that person, forthwith after its termination; and
- (b) the re-establishment of the employment or other relationship of the debtor with that person, forthwith after its re-establishment.

27/6 Variation of order made under section 27(1) of the Act

6 If a notice of attachment has been issued in respect of an order mentioned in section 27(1) of the Act and a court—

- (a) varies the amount of money payable under the order;

MAGISTRATES' COURT RULES 1973

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- (b) makes a determination in respect of any arrears owing under the order;
- (c) suspends the notice of attachment;

the Clerk shall notify the person required to pay under the notice of attachment by mail of the change, if any, required to be made in the payments under the notice of attachment forthwith on the making of the order by the court.

27/7 Notice of attachment

7 (1) The person required to pay under a notice of attachment shall file an answer with the Clerk not more than 13 days after the person is served with the notice if he—

- (a) is not required to make a payment under the notice within 14 days after the date on which he is served; or
- (b) disputes or denies his indebtedness to the debtor.

(2) No notice of attachment shall be set aside for irregularity unless there has been substantial noncompliance with this Rule.

(3) If the debtor fails to receive a copy of the notice of attachment that failure does not render the notice ineffective.

27/8 Statement

8 (1) The person required to pay under a notice of attachment shall provide the Clerk at his request with a statement setting out—

- (a) the period with respect to which any remuneration is owing or payable by that person to the debtor;
- (b) any payments made by that person to the debtor.

(2) A person required to file an answer under Rule 7 shall provide the Clerk at his request with a statement setting out—

- (a) the particulars of his indebtedness to the debtor; or
- (b) the grounds on which he disputes or denies his indebtedness to the debtor.

27/9 Termination of notice of attachment

9 (1) The court may terminate the effect of a notice of attachment by causing the Clerk to serve notice of the termination on the person required to pay under the notice of attachment.

(2) The court shall terminate the effect of a notice of attachment if all arrears, costs and payments under the order have been paid and no further payments are payable under the order.

(3) If the debtor enters into a voluntary payment arrangement satisfactory to the court, the court shall terminate the effect of the notice of attachment.

MAGISTRATES' COURT RULES 1973

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SCHEDULE

FORM 1

Case No. [blank] of 19 [blank].

BERMUDA  
IN THE MAGISTRATES' COURT  
CIVIL JURISDICTION  
ORDINARY SUMMONS

To [blank] of [blank]

(name and address of defendant)

The Plaintiff claims:

Debt or Damages [blank]

(Particulars overleaf or attached)

Costs:

Court Fee [blank]

Counsel's Charge [blank]

Total

This summons is issued at the instance of [blank]

[blank] Plaintiff/Counsel for Plaintiff

(Signature)

YOU ARE HEREBY SUMMONED TO APPEAR at No. [blank] Court at the Magistrates' Court, corner of Reid and Parliament Streets, Hamilton on the [blank] day of [blank] 19 [blank],

at [blank] o'clock when the claim will be heard.

INSTRUCTIONS

(1) If you—

MAGISTRATES' COURT RULES 1973

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- (a) admit the claim;
- (b) dispute the claim;
- (c) have any claim against the plaintiff,

you must give notice thereof to the Clerk of the Magistrates' Court at least three clear days before the date stated above (do not post the document) and, for this purpose, you may make use of the form of admission, defence or counterclaim attached OR you must appear in court on that date. IF YOU NEITHER COMPLETE AND RETURN A FORM OF ADMISSION, DEFENCE OR COUNTERCLAIM in the manner stated NOR APPEAR IN COURT AT THE DATE AND TIME MENTIONED ON THIS SUMMONS JUDGMENT MAY BE GIVEN AGAINST YOU WITHOUT FURTHER NOTICE TO YOU.

Issued by me this [blank] day of [blank] 19 [blank]

[blank]

Clerk

TO BE INSERTED UPON THE DEFENDANT'S COPY OF THE SUMMONS BY THE PERSON EFFECTING SERVICE.

This summons was served by me on the [blank] day of [blank] 19 [blank], at [blank].

[blank]

Signature

AT HEARING

Claim admitted : Ordered to pay

Judgment for Plaintiff/Defendant in default of appearance / after hearing

Summons Dismissed

Magistrate

FORM 2

Case No. [blank] of 19 [blank].

BERMUDA

IN THE MAGISTRATES' COURT



MAGISTRATES' COURT RULES 1973

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CIVIL JURISDICTION

FORM OF ADMISSION, DEFENCE AND COUNTERCLAIM TO ACCOMPANY FORM 1

\*I ADMIT the plaintiff's claim (1) [blank]

\*I DISPUTE the plaintiff's claim (2), for the following reasons: [blank]

\*I have a COUNTERCLAIM against the plaintiff for \$[blank]

[blank]

Defendant

Address to which notices are to be sent:

[blank]

[blank]

(1) State the amount admitted.

(2) State the amount disputed

(\*Delete where applicable)

FORM 3

Case No. [blank] of 19 [blank].

BERMUDA

IN THE MAGISTRATES' COURT

CIVIL JURISDICTION

SERVICE ENDORSEMENT OF SUMMONS

THE SUMMONS a true copy of which was served by me on the [blank] day of [blank] 19 [blank], by [blank]

(a) delivering the summons to the said defendant personally at [blank]; or

(b) delivering the summons [blank] being an adult inmate of [blank] the abode / place of business of the defendant; or

(c) [blank]

Date [blank]

MAGISTRATES' COURT RULES 1973

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Bailiff [blank]

FORM 4

Case No. [blank] of 19 [blank].

BERMUDA  
IN THE MAGISTRATES' COURT  
CIVIL JURISDICTION  
WRIT OF EXECUTION

To: The Provost Marshal General

WHEREAS on the [blank] day of [blank] 19 [blank] judgment was awarded against [blank] at the suit of [blank] in the amount of \$ [blank] and \$ [blank] costs.

AND WHEREAS this judgment remains unsatisfied to the extent of \$ [blank]

YOU ARE THEREFORE CHARGED forthwith to levy this amount and any cost incurred, by distress and public auction of such goods and chattels of the said [blank] as shall be found or so much thereof as may be sufficient to satisfy this execution and from the resultant proceeds to pay and retain the amount of the aforesaid judgment and costs and the expenses of such sale, and to return the overplus (if any) to the defendant.

The goods and chattels are not to be sold within 6 days of the distress unless—

- (a) they are of a perishable nature; or
- (b) at the request of the judgment debtor.

Dated this [blank] day of [blank] 19 [blank]

JUDGMENT \$ [blank]

EXECUTION \$ [blank]

[blank]

Magistrate

FORM 5

Case No. [blank] of 19 [blank].

BERMUDA

MAGISTRATES' COURT RULES 1973

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IN THE MAGISTRATES' COURT  
CIVIL JURISDICTION  
NOTICE OF SET DOWN OF A SUIT

BETWEEN:

[*blank*] (Plaintiff)

and

[*blank*] (Defendant)

To: [*blank*] of [*blank*]

(Name and address of defendant)

TAKE NOTICE that the above referenced case has been set down for trial in Number [*blank*] Court, on the [*blank*] day of [*blank*] 19 [*blank*], at [*blank*] o'clock when the claim will be heard.

You should bring to the hearing any witnesses or documentary evidence you may have in support of your defence (or counterclaim, as the case may be). A summons to compel the attendance of a witness whether to give evidence or produce a document can be obtained from the Clerk at the Magistrates' Court.

IF YOU DO NOT APPEAR IN COURT AT THE DATE AND TIME MENTIONED IN THIS NOTICE JUDGMENT MAY BE GIVEN AGAINST YOU WITHOUT FURTHER NOTICE TO YOU.

Date [*blank*]

[*blank*]

Clerk

FORM 6

Case No. [*blank*] of 19 [*blank*].

BERMUDA  
IN THE MAGISTRATES' COURT  
CIVIL JURISDICTION  
SERVICE ENDORSEMENT ON NOTICE OF TRIAL

MAGISTRATES' COURT RULES 1973

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THE NOTICE of which this is a true copy was served by me on the [blank] day of [blank] 19 [blank], by

- (a) delivering the notice to the said defendant personally at [blank]; or
- (b) delivering the notice to [blank] being an adult inmate of [blank] the abode/place of business of the defendant; or

(c) [blank]

Date [blank]

[blank]

Bailiff

FORM 7

Case No. [blank] of 19 [blank].

BERMUDA

IN THE MAGISTRATES' COURT

CIVIL JURISDICTION

SUMMONS UNDER SECTION 26 OF THE MAGISTRATES ACT 1948

To: [blank] of [blank] (Plaintiff)

and

[blank] of [blank] (Defendant)

WHEREAS on the [blank] day of [blank] 19 [blank], a writ of execution was issued against the goods and chattels of [blank] (state debtor's name) in satisfaction of the judgment of the Court of the [blank] day of [blank] 19 [blank].

AND WHEREAS the person whose goods have been levied on, that is to say [blank] of [blank] (state name and address of applicant) has applied to the Court to order the restitution of the following goods—

YOU ARE THEREFORE summoned to attend at the Magistrates' Court, Hamilton, Court No. [blank] at [blank] o'clock of the [blank] noon of [blank], the [blank] day of [blank] 19 [blank], at which time the court will determine whether such goods and chattels are or are not liable to be levied on and disposed of under such writ.

Dated the [blank] day of [blank] 19 [blank]

MAGISTRATES' COURT RULES 1973

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[blank]

Clerk

FORM 8

Case No. [blank] of 19 [blank].

BERMUDA

IN THE MAGISTRATES' COURT

CIVIL JURISDICTION

WITNESS SUMMONS

(To give oral evidence)

[blank] PARISH, BERMUDA.

BETWEEN [blank] Plaintiff

AND

[blank] Defendant

YOU ARE HEREBY COMMANDED to attend at No. [blank] Court at the Magistrates' Court, Hamilton, at [blank] o'clock of the [blank] noon of the [blank] day of [blank] 19 [blank], and thereafter as you may be directed to give evidence on behalf of the [blank]

IN DEFAULT OF YOUR ATTENDANCE YOU ARE LIABLE TO FORFEIT THE SUM OF \$50.

Dated the [blank] day of [blank] 19 [blank]

[blank]

Clerk

(This summons was issued on the application of the Plaintiff/Defendant)

FORM 9

Case No. [blank] of 19 [blank].

BERMUDA

IN THE MAGISTRATES' COURT

MAGISTRATES' COURT RULES 1973

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CIVIL JURISDICTION  
WITNESS SUMMONS  
(To produce documents)

TO: [blank]

[blank]

[blank] PARISH, BERMUDA.

BETWEEN [blank] Plaintiff

AND

[blank] Defendant

YOU ARE HEREBY COMMANDED to attend at No. [blank] Court, the Magistrates' Court, Hamilton at [blank] o'clock in the [blank] noon of [blank] the [blank] day of [blank] 19 [blank], and also to bring with you and produce the several documents hereunder specified.

(Here insert list of documents required to be produced)

IN DEFAULT OF YOUR ATTENDANCE YOU ARE LIABLE TO FORFEIT THE SUM OF \$50.

Dated the [blank] day of [blank] 19 [blank]

[blank]

Clerk

(This summons was issued on the application of the Plaintiff/Defendant)

FORM 10

Order 24

Rule 2

Case No. [blank] of 19 [blank].

BERMUDA  
IN THE MAGISTRATES' COURT

MAGISTRATES' COURT RULES 1973

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CIVIL JURISDICTION  
JUDGMENT SUMMONS

BETWEEN

[*blank*] PLAINTIFF

(Name and Address)

AND

[*blank*] DEFENDANT

(Name and Address)

TO THE DEFENDANT:

WHEREAS the Plaintiff has obtained a Judgment or Order against the above mentioned Defendant in this Court (or in the Supreme Court) on the [*blank*] day of [*blank*] 19 [*blank*] for the payment of \$ [*blank*] for debt (or damages) and costs forthwith (or on the [*blank*] day of [*blank*] 19 [*blank*]), or by instalments of \$ [*blank*] for every week (calendar month) and subsequent costs have been incurred in pursuance thereof and allowed by the Magistrate amounting to \$ [*blank*]

AND WHEREAS default has been made in payment of the sum of \$ [*blank*] payment in pursuance of the said Judgment or Order and the Plaintiff has applied for this Judgment Summons to be issued against you.

YOU ARE THEREFORE HEREBY SUMMONED TO APPEAR PERSONALLY in Court Number 1 of the Magistrates' Court, corner of Reid and Parliament Streets, Hamilton, at [*blank*] on [*blank*] the [*blank*] day of [*blank*] 19 [*blank*], to be examined on oath touching the means you have or have had since the date of the said Judgment or Order to satisfy the sum payable thereunder and to show cause why you should not be committed to prison for such default.

AND TAKE NOTICE THAT IF YOU FAIL TO ATTEND COURT AS DIRECTED BY THIS SUMMONS YOU MAY BE ARRESTED AND BROUGHT BEFORE THE COURT AND THEREAFTER COMMITTED TO PRISON FOR A PERIOD NOT EXCEEDING FOURTEEN DAYS.

Dated the [*blank*] day of [*blank*] 19 [*blank*]

[*blank*]

Clerk

MAGISTRATES' COURT RULES 1973

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PAYMENT MAY BE MADE TO THE PLAINTIFF

FOR COURT USE ONLY

SERVICE ENDORSEMENT OF SUMMONS

THE SUMMONS of which this is a true copy was served on me on the [blank] day of [blank] 19 [blank], by:

- (a) delivering the summons to the said Defendant personally at [blank]
- (b) delivering the summons to [blank] being an adult inmate of the abode/ place of business of the Defendant; or
- (c) [blank]

Date [blank]

[blank]

Bailiff

APPLICATION FOR JUDGMENT SUMMONS

WHEREAS, default has been made in payment of the sum of \$ [blank] payable in pursuance of the Judgment or Order of this Court (or the Supreme Court) specified in the Judgment Summons on the reverse.

I/We apply for the issue of a Judgment Summons against the Defendant(s).

Date [blank]

[blank]

(Signature)

Plaintiff/Counsel of Plaintiff.

SCHEDULE

(Rule 3)

FORM 11

Order 24

Rule 5



MAGISTRATES' COURT RULES 1973

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Case No. [blank] of 19 [blank].

BERMUDA  
IN THE MAGISTRATES' COURT  
CIVIL JURISDICTION  
THE DEBTORS ACT 1973  
Under Section 5 of the Debtors Act 1973  
WARRANT OF ARREST

BETWEEN

[blank] PLAINTIFF

(Name and Address)

AND

[blank] DEFENDANT

(Name and Address)

To the Provost Marshal General:

WHEREAS the debtor [blank] of [blank] has been served with a Judgment Summons failed to attend the court on the day and at the time fixed for the hearing of such summons/ the adjourned hearing of such summons [delete whichever is not applicable].

IT IS ORDERED that the said debtor be arrested.

YOU the said Provost Marshal General are therefore to arrest the said debtor and bring him before this Court without delay.

Date [blank]

[blank]

Magistrate

FORM 12

Order 24

Rule 6

MAGISTRATES' COURT RULES 1973

---

Case No. [blank] of 19 [blank].

BERMUDA  
IN THE MAGISTRATES' COURT  
CIVIL JURISDICTION  
Under Section 5 of the Debtors Act 1973

BETWEEN

[blank] PLAINTIFF

(Name and Address)

AND

[blank] DEFENDANT

(Name and Address)

To the Provost Marshal General and the Commissioner of Prisons:

WHEREAS the debtor [blank] of [blank] has been arrested and brought before me for failing to attend this Court for the hearing/adjourned hearing of a Judgment Summons [delete whichever is not applicable] and WHEREAS I have adjourned the hearing of the said summons to the [blank] day of [blank] 19 [blank] in Court No. 1 of the Magistrates' Court IT IS ORDERED that the said debtor be committed to prison until the said adjourned hearing.

YOU the said Provost Marshal General are therefore to arrest the said debtor and deliver him to the Commissioner of Prisons at Casemates Prison and you the said Commissioner of Prisons to receive the said debtor and safely keep in prison and, further, upon the day and at the time of the said adjourned hearing bring the said debtor before me.

Date [blank]

[blank]

Magistrate

FORM 13

Order 24

Rule 7

MAGISTRATES' COURT RULES 1973

---

Case No. [blank] of 19 [blank].

BERMUDA

IN THE MAGISTRATES' COURT

CIVIL JURISDICTION

ORDER REVOKING AN ORDER FOR COMMITTAL TO PRISON

Under Section 7 of the Debtors Act 1973

BETWEEN

[blank] PLAINTIFF

(Name and Address)

AND

[blank] DEFENDANT

(Name and Address)

UPON APPLICATION made this day by the debtor [blank] who was committed to prison by order dated the [blank] day of [blank] 19 [blank], for failing to attend the adjourned hearing of a Judgment Summons and upon reading the affidavit of the said debtor showing the reasons for his failure and upon the undertaking of the said debtor to attend the Court when next ordered or required to do so.

IT IS ORDERED that the said order for committal be revoked and that the said [blank] be discharged out of the custody of the Commissioner of Prisons.

Date [blank]

[blank]

Magistrate

FORM 14

Order 24

Rule 9

Case No. [blank] of 19 [blank].

BERMUDA

MAGISTRATES' COURT RULES 1973

---

IN THE MAGISTRATES' COURT  
CIVIL JURISDICTION  
THE DEBTORS ACT 1973  
ORDER FOR PAYMENT BY INSTALMENTS

BETWEEN

[*blank*] PLAINTIFF

(Name and Address)

AND

[*blank*] DEFENDANT

(Name and Address)

WHEREAS the Defendant has made default in the payment of \$ [*blank*] payable in pursuance of the judgment or order of this Court (or the Supreme Court) made on the [*blank*] day of [*blank*] 19 [*blank*].

IT IS ORDERED upon the hearing this day of a Judgment Summons issued against the Defendant that the said Defendant do pay the amount remaining due under the said judgment or order (add, if so ordered, and the fees and costs of the issue and hearing of the said Judgment Summons) as stated at the foot of this order, by instalments of \$ [*blank*] for every [*blank*], the first payment to be made on the [*blank*] day of [*blank*] 19 [*blank*].

Amount remaining due under judgment or order [*blank*]

Fees and Costs

[*blank*]

Date [*blank*]

[*blank*]

Magistrate

FORM 15

Order 24

Rule 10

Case No. [*blank*] of 19 [*blank*].

MAGISTRATES' COURT RULES 1973

---

BERMUDA  
IN THE MAGISTRATES' COURT  
CIVIL JURISDICTION  
ORDER FOR COMMITTAL TO PRISON  
Under section 3 of the Debtors Act 1973

BETWEEN

[*blank*] PLAINTIFF

(Name and Address)

AND

[*blank*] DEFENDANT

(Name and Address)

To the Provost Marshal General and the Commissioner of Prisons:

WHEREAS the Plaintiff obtained a judgment or order against the Defendant in this Court (or in the Supreme Court on the [*blank*] day of [*blank*] 19 [*blank*], for the payment of \$ [*blank*] for debt (or damages) and costs forthwith (or on the [*blank*] day of [*blank*] 19 [*blank*], or by the instalments of \$ [*blank*] for each week (calendar month) and subsequent costs have been incurred in pursuance thereof and allowed by the Magistrate amounting to \$ [*blank*]

AND WHEREAS the Defendant has made default in payment of \$ [*blank*], payable in pursuance of the said judgment or order:

AND WHEREAS on the haring this day of a Judgment Summons issued against the said Defendant, the Court is satisfied that the said Defendant has (or has had since the date of the Judgment or Order) the means to pay the said sum and refuses or neglects (or has refused or neglected) to pay the same, and has shown no cause why he should not be committed to prison:

IT IS THEREFORE ORDERED that the said Defendant shall be committed to prison for [*blank*] days, unless he shall sooner pay the sum stated below as that on payment of which he is to be discharged.

You the said Provost Marshal General are therefore required to arrest the said Defendant and to deliver him to the Commissioner of Prisons at Casemates Prison and you the said Commissioner of Prisons to receive the said Defendant and safely keep him in

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prison for [blank] days from the arrest under this order or until he shall be sooner discharged by due course of law.

Date [blank]

[blank]

Magistrate

Sum on Payment of which the Defendant is to be discharged \$ [blank]

FORM 16

Order 25

Rule 2(1)

Case No. [blank] of 19 [blank].

BERMUDA

IN THE MAGISTRATES' COURT

JURISDICTION UNDER THE LANDLORD AND TENANT ACT 1974

Summons to hearing of application to terminate tenancy

To [blank] of [blank]

(name and address of defendant)

YOU ARE HEREBY SUMMONED TO APPEAR at No. [blank] Court at the Magistrates' Court, corner of Reid and Parliament Streets, Hamilton, on the [blank] day of [blank] 19 [blank] at [blank] o'clock when an application will be made by [blank] of [blank] (name and address of plaintiff) for an order to terminate a contract of tenancy in respect of [blank] (description of the premises)

The breach or event upon which the plaintiff intends to rely in making such application is as follows—

(state concisely nature of the breach or event)

[blank]

(Signature)

Plaintiff/Counsel for Plaintiff

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INSTRUCTIONS

If you—

- (a) do not oppose the application;
- (b) dispute the application;

you must give notice thereof to the Clerk to the Magistrates' Court at least three clear days before the date stated above (do not post the document) and, for this purpose, you may make use of the form of opposition attached OR you must appear in court on that date. IF YOU NEITHER COMPLETE AND RETURN A FORM OF OPPOSITION in the manner stated NOR APPEAR IN COURT AT THE DATE AND TIME MENTIONED ON THIS SUMMONS JUDGMENT MAY BE GIVEN AGAINST YOU WITHOUT FURTHER NOTICE TO YOU.

Issued by me this [blank] day of [blank] 19 [blank]

[blank]

Clerk

TO BE INSERTED UPON THE DEFENDANT'S COPY OF THE SUMMONS BY THE PERSON EFFECTING SERVICE.

This summons was served by me on the [blank] day of [blank] 19 [blank], at [blank]

[blank]

Signature

AT HEARING

Application allowed:

Ordered:

In default of appearance/after hearing

Summons Dismissed

Magistrate

FORM OF OPPOSITION

\*I DO NOT OPPOSE the plaintiff's application

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\*I OPPOSE the plaintiff's application, for the following reasons.

(\*Delete whichever is inapplicable)

[*blank*]

Defendant

Address to which notices are to be sent

[*blank*]

[*blank*]

FORM 17

Order 25

Rule 2(4)

Case No. [*blank*] of 19 [*blank*].

BERMUDA

IN THE MAGISTRATES' COURT

Notice under Section 16(2) of the Landlord and Tenant Act 1974

To [*blank*] of [*blank*]

(name and address of defendant)

WHEREAS I commenced proceedings against you for the termination of a tenancy by summons dated the [*blank*] day of [*blank*] 19 [*blank*] NOW TAKE NOTICE that in accordance with section 16 of the Landlord and Tenant Act 1974 I have given notice of such commencement to the following persons—

[*blank*]

(Signature)

Plaintiff/Counsel for Plaintiff

FORM 18

Order 25

Rule 4



MAGISTRATES' COURT RULES 1973

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Case No. [blank] of 19 [blank].

BERMUDA

IN THE MAGISTRATES' COURT

JURISDICTION UNDER THE LANDLORD AND TENANT ACT 1974

Notice of Application for an Order of Possession

To [blank] of [blank]

(name and address of defendant)

TAKE NOTICE that application will be made in No. [blank] Court at the Magistrates' Court, corner of Reid and Parliament Streets, Hamilton, on the [blank] day of [blank] 19 [blank] for an order for possession of [blank] (description of the premises)

The grounds of the application are set out in the affidavit annexed hereto.

[THE PLAINTIFF will further claim

RENT IN ARREAR [blank]

COMPENSATION (Mesne Profits) [blank]

COSTS:

Court Fee [blank]

Attorney's Charge [blank]

Total [blank]

Particulars of the claim are set out in the affidavit annexed hereto.]

[blank]

(Signature)

Plaintiff/Counsel for Plaintiff

INSTRUCTIONS

If you—

- (a) do not oppose the application;
- (b) dispute the application;

MAGISTRATES' COURT RULES 1973

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you must give notice thereof to the Clerk of the Magistrates' Court at least three clear days before the date stated above (do not post the document) and, for this purpose, you may make use of the form of opposition attached OR you must appear in court on that date. IF YOU NEITHER COMPLETE AND RETURN A FORM OF OPPOSITION in the manner stated NOR APPEAR IN COURT AT THE DATE AND TIME MENTIONED ON THIS SUMMONS JUDGMENT MAY BE GIVEN AGAINST YOU WITHOUT FURTHER NOTICE TO YOU.

Issued by me this [blank] day of [blank] 19 [blank]

[blank]

Clerk

TO BE INSERTED UPON THE DEFENDANT'S COPY OF THE SUMMONS BY THE PERSON EFFECTING SERVICE.

This summons was served by me on the [blank] day of [blank] 19 [blank], at [blank].

[blank]

Signature

AT HEARING

Application allowed:

Ordered:

in default of appearance/after hearing

Summons Dismissed

Magistrate.

FORM OF OPPOSITION

\*I DO NOT OPPOSE the plaintiff's application.

\*I OPPOSE the plaintiff's application, for the following reasons.

(\*Delete whichever is inapplicable)

[blank]

Defendant

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Address to which notices are to be sent

[blank]

[blank]

FORM 19

Order 25

Rule 5

Case No. [blank] of 19 [blank].

BERMUDA

IN THE MAGISTRATES' COURT

JURISDICTION UNDER THE LANDLORD AND TENANT ACT 1974

Warrant to Evict

TO: THE PROVOST MARSHAL GENERAL.

WHEREAS on the [blank] day of [blank] 19 [blank], it was adjudged that the plaintiff was entitled to possession of [blank] (describe the land as set out in the judgment)

and it was ordered that the defendant should give the plaintiff possession of the said land on the [blank] day of [blank] 19 [blank]

AND WHEREAS the defendant has not obeyed the said order:

YOU ARE THEREFORE required to give possession of the said land to the plaintiff.

Dated this [blank] day of [blank] 19 [blank]

[blank]

Magistrate

FORM 20

Order 26

Rule 3

Case No. [blank] of 19 [blank].

BERMUDA



MAGISTRATES' COURT RULES 1973

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BETWEEN

[*blank*] PLAINTIFF

(Name and Address)

AND

[*blank*] DEFENDANT

(Name and Address)

To the Defendant

TAKE NOTICE that this application will be heard at the Magistrates' Court, Hamilton on the [*blank*] day of [*blank*] 19 [*blank*], at [*blank*] o'clock in the Number [*blank*] Court.

You are requested to complete the attached form of reply and send it to me as soon as possible.

If you fail to attend court on the day and at the time mentioned above you are liable to be arrested and brought before it.

Dated this [*blank*] day of [*blank*] 19 [*blank*]

[*blank*]

Clerk

FORM 22

Order 26

Rule 5

REPLY TO APPLICATION FOR ATTACHMENT OF EARNINGS ORDER

BETWEEN

[*blank*] PLAINTIFF

(Name and Address)

AND

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[*blank*] DEFENDANT

(Name and Address)

N.B. Answer all the following questions. Do not leave *blanks*.

Section 1 (Employment)

- (a) What is your full name?
- (b) By whom are you employed? (If you have more than one employer give answers in respect of each of them)
- (c) Where are you employed?
- (d) In what capacity are you employed?
- (e) What is the address of you employer's Head Office if different from (c) above?
- (f) What is your—

Works Number?

Pay reference?

Section 2 (Pay and Income)

- (a) What is your basic pay before deductions? \$ [*blank*] Per week/month
- (b) What overtime, bonuses, fees, allowances or commission do you receive? \$ [*blank*]
- (c) What deductions are normally made from your pay? \$ [*blank*] Per week/month for
- (d) What is your usual take-home pay? \$ [*blank*] Per week/month
- (e) Do you receive a pension or any other income? Please give details.

Section 3 (Liabilities)

- (a) What persons, if any, are financially dependent on you? Please give details (including the ages of any dependent children) and mention any contribution they make to your household expenses.
- (b) What rent or mortgage instalments do you have to pay? \$ [*blank*] Per week/month
- (c) What rates, or land tax, if any, do you have to pay? \$ [*blank*] Per week/month
- (d) Do you have to pay under any other court orders? Please give details.

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(e) What other regular payments have you to make?

(f) Have you any other liabilities which you would like the court to take into account? Please give details.

Section 4 (Proposal for Payment)

What sum would you be prepared to have deducted from your earnings to satisfy the Plaintiff's judgment? \$ [blank] Per week/month

Signed [blank] Defendant

Address

FORM 23

Order 26

Rule 9

ATTACHMENT OF EARNINGS ORDER

(JUDGMENT DEBT)

BETWEEN

[blank] PLAINTIFF

(Name and Address)

AND

[blank] DEFENDANT

(Name and Address)

The Defendant [blank] of [blank] who works at [blank] as a [blank] (Works No./Pay ref. [blank]) is in arrear under a judgment of this Court (or as the case may be) and it appears that earnings are payable by you to him.

YOU ARE ORDERED to make out of those earnings periodical deductions in accordance with section 29 of the Magistrates Act 1948 until \$ [blank], the amount payable under the judgment, has been paid. For the purpose of calculating the said deductions the normal deduction rate shall be \$ [blank] a week (or as the case may be).

AND YOU ARE ORDERED to pay the sums deducted to the Clerk at this Court at monthly intervals (or as the case may be).

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Dated this [blank] day of [blank] 19 [blank]

[blank]

Magistrate

To:

Indorsement on copy sent to Defendant

This is a copy of an attachment of earnings order directed to [blank]. If you leave his employment or become employed or reemployed, you must notify the Court in writing within 7 days, giving particulars of your earnings and anticipated earnings from any new employment. Failure to do so may render you liable to a fine or imprisonment.

To: [blank]

FORM 24

Order 26

Rule 14(3)

ATTACHMENT OF EARNINGS ORDER (MAINTENANCE)

BETWEEN

[blank] PLAINTIFF

(Name and Address)

AND

[blank] DEFENDANT

(Name and Address)

The above-named [blank] of [blank], who works at [blank] as a [blank] (Works No./ Pay ref. [blank]) is required to make payments of \$ [blank] a week (or as the case may be) under a maintenance order made by this court (or as the case may be) on [blank], 19 [blank]. An application has been made for an attachment of earnings order to secure the payments and it appears that earnings are payable by you to him.

YOU ARE ORDERED to make out of those earnings periodical deductions in accordance with section 29 of the Magistrates Act 1948. For the purpose of calculating the



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deductions the normal deduction rate shall be \$ [blank] a week (or as the case may be) and the protected earnings rate shall be \$ [blank] a week (or as the case may be).

Dated this [blank] day of [blank] 19 [blank]

[blank]

Magistrate

To: [blank]

Indorsement on copy sent to Defendant

This is a copy of an attachment of earnings order directed to [blank]. If you leave his employment or become employed or re-employed, you must notify the Court in writing within 7 days, giving particulars of your earnings and anticipated earnings from any new employment. Failure to do so may render you liable to a fine or imprisonment.

To: [blank]

FORM 25

ORDER 27

RULE 2

NOTICE OF ATTACHMENT OF MONEY OTHER THAN EARNINGS

(Under section 35C of the Act)

UPON the application of the

1 You are directed to pay to the Clerk at [blank] (address) [blank],

(a) within fourteen (14) days of the date of service of this Notice, all money payable by you to [blank] (debtor) [blank] on the date of service, and

(b) all money up to a maximum of \$ [blank] that becomes payable by you to [blank] (debtor) from time to time after the date of service forthwith as it becomes payable unless you receive a notice terminating the Attachment from the Clerk on an order from the court ordering otherwise.

2 If no money is payable by you to the Clerk within fourteen (14) days of the date of service on you of this Notice, you are required to—

(a) file an answer with the court disputing your liability to [blank] (debtor) and that no liability is anticipated or,

(b) file an answer with the court stating that money will be payable at a future date or upon the happening of a specified event. Upon the specified

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future date or upon the happening or the specified future event, you upon the happening or the specified future event, you are required to pay the Clerk in accordance with paragraph 1.

3 You are further required to file with the Clerk an address for service of any notices or orders relating to this Notice of Attachment.

ISSUED at [blank], this [blank] day of [blank], 19 [blank].

[blank]  
Magistrate

*[These Rules combine the Magistrates' Court Rules (SR&O 6/1973) and the Magistrates' Court (Debtors) Rules 1973 (SR&O 65/1973)]*

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*[Amended by:*

SR&O 31 / 1974  
SR&O 87 / 1975  
SR&O 11 / 1976  
BR 30 / 1978  
BR 71 / 1988  
BR 102 / 2013]