3. These Rules may be cited as the Rules of the Court of Passage of the City of Liverpool (No. 1), 1950, and shall come into operation on the first day of February, 1950.

Approved,

H. I. Nelson,
Presiding Judge.

These Rules are made with the concurrence of the authority for the time being empowered to make Rules of the Supreme Court.

A. E. A. Napier,
Secretary of the Supreme Court Rule Committee.

The Rules of the Court of Passage of the City of Liverpool (Crown Proceedings) 1950

1950 No. 271 (L. 3)

Made - - - - 21*st December*, 1949
Coming into Operation 1*st February*, 1950

The rules of the Liverpool Court of Passage(**a**) are hereby amended as follows :—

1. After Order 1 there shall be inserted the following order:—

"ORDER 1A

Civil Proceedings by or against the Crown

1. Save as provided by the Crown Proceedings Act, 1947(**b**), or by these rules :—

(*a*) the Rules of the Court shall, so far as may be, apply to all civil proceedings by or against the Crown instituted in the Court on or after the first day of February, 1950.

(*b*) such civil proceedings as aforesaid shall, so far as may be, take the same form as civil proceedings between subjects, and shall, if no special form is applicable, take the form of an action commenced by writ of summons ;

2. In Order III (which relates to the indorsement of claim on the writ of summons) there shall be inserted after Rule 3 the following Rule:—

"3A. Notwithstanding anything in Rule 2 or Rule 3 of this Order, the indorsement of claim in proceedings against the Crown shall contain information as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the Government departments and officers of the Crown concerned. In such proceedings if the defendant considers that the indorsement of claim does not contain sufficient information as aforesaid, the defendant may, at any time before the time limited by the writ of summons for appearance has expired, by notice in writing to the plaintiff request further information as specified in the notice. Where such a notice has been given the time for appearance shall expire four days after the defendant has notified the plaintiff in writing that the defendant is satisfied or four days after the Presiding Judge or Registrar has, on the application of the plaintiff by summons served on the defendant not less than seven days before the return day, decided that no further information as to the matters aforesaid is reasonably required."

(**a**) S.R. & O. 1934 (No. 411), I, p. 947. (**b**) 10 & 11 Geo. 6. **c. 44.**

3. In Order V (which relates to the issue of a writ of summons) there shall be inserted after Rule 1 the following Rule:—

" 1A. In Admiralty causes the Crown shall be deemed to reside within the jurisdiction of the Court and in other proceedings against the Crown the defendant shall be deemed neither to reside nor to carry on business within the jurisdiction."

4. In Order IX (which relates to the service of a writ of summons) there shall be inserted after Rule 5 the following Rule:—

" 5A. The provisions of this Order shall have effect subject to the provisions of Section 18 of the Crown Proceedings Act, 1947, which provide for the service of documents on the Crown for the purposes of or in connection with any civil proceedings by or against the Crown."

5. In Order XII, at the end of Rule 16, there shall be added the following sentence:—

" Where the Crown appears after the time limited by the writ for appearance but within the time allowed under these Rules for appearance by the Crown, this Rule shall apply as if the Crown had appeared within the time limited by the writ."

6. In Order XIII (which relates to default of appearance) there shall be added after Rule 16B the following Rule:—

" 17. In civil proceedings against the Crown no judgment shall be entered in default of appearance without the leave of the Presiding Judge or Registrar, and any application for such leave shall be made by notice of motion or summons served not less than seven days before the return day."

7. In Order XIV at the end of Rule 1 there shall be inserted the following paragraphs:—

" (*d*) Where an application is made by the Crown under this Rule, the cause of action shall be deemed to be sufficiently verified if an affidavit is made by :—

(i) an officer duly authorised by the department concerned ; or

(ii) the solicitor acting for the Crown ; or

(iii) an officer duly authorised by the solicitor acting for the Crown ;

stating that to the best of his knowledge and belief the plaintiff is entitled to the relief claimed and there is no defence to the action except as to the amount of the damages claimed, if any.

(*e*) No application shall be made under this Rule in any proceedings against the Crown."

8. In Order XVI (which relates to parties) there shall be added after Rule 18 the following Rules:—

" Crown Proceedings

19. In respect of civil proceedings by or against the Crown, the provisions of this Order shall have effect subject to the provisions of Section 17 of the Crown Proceedings Act, 1947, which relate to the parties to such proceedings.

20. An application under subsection (4) of Section 17 of the Crown Proceedings Act 1947:—

(*a*) on behalf of the Attorney General to have such of the authorised Government departments as may be specified in the application substituted for him as defendant to the proceedings ;

(*b*) on behalf of an authorised Government department to have the Attorney General or any other authorised Government department substituted for the applicant as defendant to the proceedings;

shall be made by summons.

21. No proceedings by any person under subsection (3) of Section 9 of the Crown Proceedings Act 1947, in the name of the Sender of addressee of a postal packet or his personal representatives shall be taken in the Court."

9. In Order XVIA (which relates to third party procedure) there shall be inserted after Rule 1 the following Rule:—

" 1A. Notwithstanding anything in Rule 1 of this Order, leave to issue a third party notice for service on the Crown shall not be granted except upon an application to the Presiding Judge or Registrar by summons served upon the Plaintiff and the Crown. Such leave shall not be granted unless the Presiding Judge or Registrar is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned."

10. In Order XVIA, Rule 5 (which relates to default by a third party) shall be amended by adding thereto the following proviso:—

" Provided that in the case of third party proceedings against the Crown the foregoing provisions of this Rule shall not apply unless the Presiding Judge or Registrar so orders; and any application for such an order shall be made by summons served not less than seven days before the return day."

11. In Order XVIA, Rule 6 (which relates to procedure on default before trial) shall be amended by adding thereto the following:—

" A defendant shall not in any event be entitled to enter judgment against the Crown under this Rule without the leave of the Presiding Judge or Registrar. Any application for leave to enter judgment against the Crown under this Rule shall be made by summons served not less than seven days before the return day."

12. In Order XIX, Rule 3 (which relates to set-off and counter-claim) shall be amended by inserting after the words " Subject to the provisions of Rule 14 of Order XXI " the words " and subject also to Rule 3A of this Order ".

13. In Order XIX, after Rule 3 there shall be inserted the following Rule:—

" 3A.—(1) A person shall not be entitled to avail himself of any set-off or counterclaim in any proceedings by the Crown for the recovery of taxes, duties or penalties, or to avail himself in proceedings by the Crown of any other nature of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

(2) A person shall not be entitled without the leave of the Presiding Judge or Registrar to avail himself of any set-off or counterclaim in any proceedings by the Crown, if either the subject matter of the set-off or counterclaim does not relate to the Government department in the name of which the proceedings are brought or the proceedings are brought in the name of the Attorney-General.

(3) The Crown, when sued in the name of a Government Department, shall not be entitled without the leave of the Presiding Judge or Registrar to avail itself of any set-off or counterclaim if the subject matter thereof does not relate to that department.

(4) The Crown, when sued in the name of the Attorney-General, shall not be entitled without the leave of the Presiding Judge or Registrar to avail itself of any set-off or counterclaim.

(5) Any application for leave pursuant to paragraphs (2) (3) or (4) of this Rule shall be made by summons."

14. In Order XXV (which relates to proceedings in lieu of demurrer) there shall be added after Rule 5 the following Rule:—

" 6. Any application such as is referred to in subsection (2) of Section 29 of the Crown Proceedings Act 1947 (which relates to proceedings in rem instituted against property belonging to the Crown) may be made to the Presiding Judge or Registrar at any time before trial by motion or summons, it may be made at the trial of the proceedings."

15. In Order XXVII (which relates to default of pleading) in Rule 10, after the words " those in the preceding Rules of this Order mentioned " there shall be inserted the following words " and those to which Rule 18 of this Order applies."

16. In Order XXVII (which relates to default of pleading) there shall be added after Rule 17 the following Rule:—

" 18. In proceedings against the Crown no judgment for the plaintiff shall be entered in default of pleading without the leave of the Presiding Judge or Registrar, and any application for such leave shall be made by notice of motion or summons served not less than seven days before the return day."

17. In Order XXX (which relates to the summons for directions) there shall be added after Rule 8 the following Rule:—

" 9.—(1) Where an Order is made by the High Court pursuant to Section 20 of the Crown Proceedings Act 1947 for the transfer of any proceedings from this Court to the High Court, the Registrar shall;

(*a*) send notice of the transfer to all parties and persons entitled to be served; and

(*b*) make and certify copies of all entries in the books of the Court relating to the proceedings and send them to the proper officer of the High Court, together with all documents filed in the proceedings.

(2) The costs of the certified copy of the entries in the books of the Court and of transmission shall be paid in the first instance by the Crown and ultimately by the party ordered to pay such costs by the Court by whom the proceedings are tried."

18. In Order XXXI (which relates to interrogatories and discovery and inspection of documents) there shall be inserted after Rule 5 the following Rule:—

" 5A. In proceedings to which the Crown is a party, if an order is made for interrogatories to be answered by the Crown, the order shall direct by what officer of the Crown the interrogatories are to be answered."

19. In Order XXXI after Rule 28 there shall be inserted the following Rule:—

" 28A. In proceedings to which the Crown is a party any affidavit to be made in answer to an order for discovery against the Crown shall be made by such officer of the Crown as the Presiding Judge or Registrar shall direct."

20. In Order XXXI after Rule 29 there shall be added the following Rule:—

"30. In any proceedings in the Court to which the Crown is a party, any order of the court made under the powers conferred by subsection (1) of Section 28 of the Crown Proceedings Act, 1947, shall be construed as not requiring disclosure of the existence of any document, the existence of which it would in the opinion of a Minister of the Crown be injurious to the public interest to disclose."

21. In Order XXXVII (which relates to evidence generally) there shall be inserted at the end the following Rule:—

"35. For the avoidance of doubt it is hereby declared that any powers exercisable by the Presiding Judge or Registrar in regard to the taking of evidence are exercisable in proceedings by or against the Crown as they are exercisable in proceedings between subjects."

22. After Order XLI there shall be inserted the following order:—

"ORDER XLIA

Orders, etc., against the Crown

1. In this Order the following expressions have the following meanings:—

"Order against the Crown" means any order (including an order for costs) made in any civil proceedings by or against the Crown, or in any proceedings on the Crown side of the King's Bench Division, or in connection with any arbitration to which the Crown is a party, in favour of any person against the Crown or against a Government department or against an officer of the Crown as such.

"Order" includes a judgment, decree, rule, award or declaration.

2. Nothing in any of the following Orders—

XLII (execution and discovery in aid of execution)
XLIII (writs of fieri-facias and sales under executions)
XLIV (attachment)
XLV (attachment of debts)
XLVII (writ of possession)
XLVIII (writ of delivery)

shall apply in respect of any order against the Crown.

3. Any application for a certificate under Section 25 of the Crown Proceedings Act, 1947 (which relates to satisfaction of orders against the Crown) shall be made to the Registrar. Any application under that section for a direction that a separate certificate be issued with respect to costs ordered to be paid to the applicant shall be made to the Presiding Judge or Registrar, and may be made ex parte without summons. Any such certificate shall be in one of the Forms Nos. 15 and 16 in Appendix F with such variations as circumstances may require.

Attachment of moneys payable by the Crown

4.—(1) No order for the attachment of debts under Order XLV or for the appointment of a receiver under Order L shall be made or have effect in respect of any money due or accruing or alleged to be due or accruing from the Crown.

(2) In a case where it is alleged that such an order could have been obtained and would have had effect in respect of such money if it had been due or accruing from a subject the Presiding Judge or Registrar may on the application by summons of the judgment creditor make an order

restraining the judgment debtor from receiving such money and directing payment by the Crown to the judgment creditor or receiver; and the Presiding Judge or Registrar may appoint a receiver for that purpose.

(3) No such order shall be made in respect of:—

(*a*) wages or salary payable to any officer of the Crown as such;

(*b*) money which is subject to the provisions of any enactment prohibiting or restricting assigning or charging or taking in execution; or

(*c*) money payable by the Crown to any person on account of a deposit in the Post Office Savings Bank.

(4) Any such summons shall be served at least four days before the return day on the Crown, and, unless otherwise ordered, on the judgment debtor or his solicitor. Service on the judgment debtor or his solicitor shall be effected in the manner provided for such service by Order XLV, Rule 1. Service on the Crown shall be effected by service on the appropriate authorised Government department or on the Attorney General in accordance with Sections 17 and 18 of the Crown Proceedings Act, 1947.

(5) If the Crown disputes liability, the Presiding Judge or Registrar may order that any issue or question necessary for determining the Crown's liability be tried or determined in any manner in which any issue or question in an action may be tried or determined, or may refer the matter to the Registrar. Where it is suggested by the Crown that the debt with reference to which the proceedings are taken belongs to some third person, or that any third person has a claim upon, it, the Presiding Judge or Registrar may order such third person to appear and state the nature and particulars of his claim upon such debt. After hearing any such third person as aforesaid, and any other person whom by the same or any subsequent order the Presiding Judge or Registrar may require to appear, the Presiding Judge or Registrar may bar the claim of the third person, or make such other order with respect to his claim as the Presiding Judge or Registrar thinks fit, upon such terms, in all cases, with respect to the third person's claim (if any), and to costs, as the Presiding Judge or Registrar thinks just and reasonable. If the third person does not appear when ordered, the Presiding Judge or Registrar may exercise any powers which the Presiding Judge or Registrar might have exercised if he had appeared.

(6) In this Rule the expression "judgment debtor" means the person against whom the order for the attachment of debts or for the appointment of a receiver could have been obtained as aforesaid, and the expression "judgment creditor" means the person in whose favour it could have been obtained.

23. In Order L, after Rule 11 (which relates to receivers) there shall be inserted the following Rule:—

"11A. Rule 11 of this Order shall have effect subject to Rule 4 of Order XLIA."

24. In Order LVII (which relates to interpleader) in Rule 10 (which relates to failure to appear and failure to comply with orders made by the Court) there shall be added at the end the following proviso:—

"Provided that no order shall be made against the Crown under the foregoing provisions of this Rule except upon an application by summons served not less than seven days before the return day."

25. In Order LXVII (which relates to the service of orders etc.) after Rule 1 there shall be inserted the following Rule:—

"1A—(1) The provisions of these Rules relating to the service of documents shall have effect subject to the provisions of Section 18 of the Crown Proceedings Act, 1947, which provide for the service of documents on the Crown for the purpose of or in connection with civil proceedings by or against the Crown.

(2) Service of a document in accordance with the said Section 18 shall be effected (*a*) by leaving the document within the prescribed hours at the office of the person to be served, or of any agent whom he has nominated for the purpose, but in either case with a person belonging to the office where the document is left, or (*b*) by posting it in a prepaid registered envelope addressed to the person to be served or any such agent as aforesaid; and where service under this Rule is made by post the time at which the document so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof.

(3) All documents to be served on the Crown for the purpose of or in connection with any proceedings in the Court shall be treated for the purposes of these Rules as documents in respect of which personal service is not requisite.

(4) In this Rule the expression "document" includes writs, notices, pleadings, orders, summonses, warrants and other documents, proceedings and written communications".

26. In Order LXVII at the end of Rule 2 the following sentence shall be added:—

"This Rule does not apply in the case of documents required to be served in accordance with Section 18 of the Crown Proceedings Act, 1947."

27. To Order LXVII Rule 4 (which relates to service of documents where no appearance has been entered) there shall be added the following proviso:—

"Provided that the preceding provisions of this Rule shall not have effect in the case of proceedings against the Crown where no appearance has been entered on behalf of the Crown; and in any such case service shall be effected in the manner provided by Section 18 of the Crown Proceedings Act and the preceding Rules of this Order."

28. In Order LXXI (which relates to interpretation of terms) there shall be added at the end of Rule 1 after the words "Sergeant-at-Mace" the following words:—

"" Civil proceedings by the Crown" and "civil proceedings against the Crown" and "civil proceedings by or against the Crown" have the same respective meanings as in Part II of the Crown Proceedings Act, 1947, and do not include any of the proceedings specified in sub-section (3) of Section 23 of that Act. "Civil proceedings to which the Crown is a party" has the same meaning as it has for the purposes of Part IV of the Crown Proceedings Act, 1947, by virtue of subsection (4) of Section 38 of that Act.

Except where the context otherwise requires, references in these Rules to actions for the recovery of land or for the recovery of possession of land shall be construed as including proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the

land or to the possession thereof, and references in these Rules to actions for the recovery or delivery or specific delivery of property other than land or the possession of such property shall be construed as including proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the property or to the possession thereof ".

29. The following Forms shall be added to Appendix F and shall stand as Forms Nos. 15 and 16 respectively:—

"No. 15

CERTIFICATE OF ORDER AGAINST THE CROWN (O. 41A. R. 3)

(Heading as in Form 1)

By a judgment (decree) (order) of this Honourable Court dated the day of , 19 , it was adjudged (decreed) (ordered):—

(Give particulars of the judgment, decree or order)

I hereby certify that the amount payable to by in pursuance of the said judgment (decree) (order) is . (*Together with interest thereon from the day of until the date of payment, and together with costs which have been taxed and certified by the Registrar at . Interest is payable on the said costs from the day of until the date of payment.)

(†This certificate does not include the amount payable under the said judgment (decree) (order) in respect of costs.)

* Omit so far as not required.

† To be included where a separate certificate has been directed to be issued as to costs.

No. 16

CERTIFICATE OF ORDER FOR COSTS AGAINST THE CROWN (O. 41A. R. 3)

(Heading as in Form 1)

By a judgment (decree) (order) of this Honourable Court dated the day of , 19 , it was adjudged (decreed) (ordered):—

(Give particulars of the judgment, decree or order)

I hereby certify that the costs payable to by in pursuance of the said judgment (decree) (order) have been taxed and certified by the Registrar at . (*Interest is payable on the said costs from the day of until the date of payment.)

* Omit where not required.

30. These Rules may be cited as the Rules of the Court of Passage of the City of Liverpool (Crown Proceedings) 1950, and shall come into operation on the first day of February, 1950.

Dated the 21st day of December 1949.

H. I. Nelson,
Presiding Judge.

These Rules are made with the concurrence of the authority for the time being empowered to make Rules of the Supreme Court.

A. E. A. Napier,
Secretary of the Supreme Court Rule Committee.