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EXTRAORDINARY

of South West Africa.

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BUITENGEWONE

OFFISIËLE KOERANT

van Suidwes-Afrika.

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CONTENTS.

INHOUD.

No. 31. Magistrates' Courts Proclamation, 1935 . . . 9939

No. 31. Magistraatshowe Proklamasie 1935 9939

PROCLAMATION

By HIS HONOUR DAVID GIDEON CONRADIE,
ADMINISTRATOR OF SOUTH WEST AFRICA

No. 31 of 1935.]

WHEREAS it is desirable to consolidate and amend the law relating to Magistrates' Courts;

NOW THEREFORE, under and by virtue of the powers in me vested, I do hereby proclaim, declare and make known as follows:—

DIVISION OF PROCLAMATION.

1. This Proclamation is divided into Parts, Chapters and sections as follows:—

PART I — COURTS

- Chapter I. Establishment and Nature of Courts — (sections *two to six*).
Chapter II. Judicial Officers — (sections *seven to eleven*).
Chapter III. Officers of the Court — (sections *twelve to eighteen*).
Chapter IV. Practitioners — (sections *nineteen to twenty-one*).
Chapter V. Rules of Court — (sections *twenty-two to twenty-four*).

PART II — CIVIL MATTERS.

- Chapter VI. Civil Jurisdiction — (sections *twenty-five to forty-six*).
Chapter VII. Witnesses and Evidence — (sections *forty-seven to forty-nine*).
Chapter VIII. Execution — (sections *fifty to sixty-six*).
Chapter IX. Civil Imprisonment — (sections *sixty-seven to seventy-five*).
Chapter X. Costs — (sections *seventy-six to seventy-eight*).
Chapter XI. Appeal and Review — (sections *seventy-nine to eighty-five*).

PART III — CRIMINAL MATTERS.

- Chapter XII. Criminal Jurisdiction — (sections *eighty-six to ninety*).
Chapter XIII. Remitted — (sections *ninety-one to ninety-two*).
Chapter XIV. Review as of course — (sections *ninety-three to ninety-six*).
Chapter XV. Execution of sentences — (sections *ninety-seven to ninety-nine*).
Chapter XVI. Criminal Appeals — (sections *one hundred to one hundred and two*).

PART IV. — OFFENCES.

(Sections *one hundred and three to one hundred and six*.)

PART V. — GENERAL AND SUPPLEMENTARY.

(Sections *one hundred and seven to one hundred and fifteen*.)

PART I. — COURTS.**CHAPTER I.***Establishment and Nature of Courts.*

2. The Administrator may, by proclamation in the *Gazette*:—

- (a) create districts and declare the name by which any district shall be known;
(b) define, increase or decrease the local limits of any district;

PROKLAMASIE

VAN SY EDELE DAVID GIDEON CONRADIE,
ADMINISTRATEUR VAN SUIDWES-AFRIKA.

No. 31 van 1935.]

NADEMAAL dit wenslik is om die wet met betrekking tot magistratshowe te konsolideer en te wysig;

SO IS DIT dat ek, op grond van en kragtens die bevoegdhede my verleen, hiermee proklameer, verklaar en bekend maak as volg:—

INDELING VAN PROKLAMASIE.

1. Hierdie Proklamasie is verdeel in afdelinge, hoofstukke en artikels as volg:—

AFDELING I. GEREESHOWE.

- Hoofstuk I. Instelling en Aard van Howe (artikels *twee tot ses*).
Hoofstuk II. Regterlike amptenare (artikels *sewe tot elf*).
Hoofstuk III. Amptenare van die Hof (artikels *twalf tot agtien*).
Hoofstuk IV. Regspraktisyns (artikels *negentien tot een-en-twintig*).
Hoofstuk V. Reëls van die Hof (artikels *twee-en-twintig tot vier-en-twintig*).

AFDELING II. SIVIELE SAKE.

- Hoofstuk VI. Siviele Jurisdiksie (artikels *vyf-en-twintig tot ses-en-veertig*).
Hoofstuk VII. Getuies en Bewyslewing (artikels *sewe-en-veertig tot nege-en-veertig*).
Hoofstuk VIII. Uitvoering van vonnisse (artikels *vyftig tot ses-en-sestig*).
Hoofstuk IX. Siviele Gyseling (artikels *sewe-en-sestig tot vyf-en-sewentig*).
Hoofstuk X. Koste (artikels *ses-en-sewentig tot ag-en-sewentig*).
Hoofstuk XI. Appèl en Hersiening (artikels *nege-en-sewentig tot vyf-en-taggentig*).

AFDELING III. STRAFREGTERLIKE SAKE.

- Hoofstuk XII. Strafregerlike Jurisdiksie (artikels *ses-en-taggentig tot negentig*).
Hoofstuk XIII. Terugverwysing (artikels *een-en-negentig tot twee-en-negentig*).
Hoofstuk XIV. Hersiening in die gewone loop van sake (artikels *drie-en-negentig tot ses-en-negentig*).
Hoofstuk XV. Voltrekking van vonnisse (artikels *sewe-en-negentig tot nege-en-negentig*).
Hoofstuk XVI. Strafregerlike Appèlle (artikels *eenhonderd tot eenhonderd-en-twee*).

AFDELING IV. OORTREDINGE.

(Artikels *eenhonderd-en-drie tot eenhonderd-en-ses*).

AFDELING V. ALGEMENE EN AANVULLENDE BEPALINGE.

(Artikels *eenhonderd-en-sewe tot eenhonderd-en-vyftien*).

AFDELING I. — GEREESHOWE.**HOOFSTUK I.***Instelling en Aard van Howe.*

2. Die Administrateur mag deur proklamasie in die *Offisiële Koerant*:—

- (a) distrikte instel, en die naam waaronder enige distrik bekend sal wees, vasstel;
(b) die plaaslike grense van enige distrik omskrywe, uitbrei of beperk;

- (c) annex any district or any portion thereof to another district;
- (d) establish a court for any district;
- (e) appoint one or more places within each district for the holding of a court for such district; of which place, if more than one is appointed, one shall be specified as the seat of magistracy: Provided that it shall be lawful for any court to be held at any place or places within the local limits within which that court has jurisdiction that may be determined from time to time by the judicial officer by and before whom that court is held;
- (f) appoint some place or places within any district other than the seat of magistracy as the place or places for the holding of a periodical court, and prescribe the local limits within which such courts shall have jurisdiction and include within those limits any portion of an adjoining district;
- (g) detach a portion of a district or portions of two or more adjoining districts as a sub-district, to form the area of jurisdiction of a detached court, and declare the name by which such sub-district shall be known and appoint the places where such detached court is to be held;
- (h) annul or vary any proclamation under this section and abolish any district or sub-district and the court thereof.

3. (1) Save as is otherwise provided by this Proclamation, the courts and districts existing immediately before the commencement of this Proclamation shall be deemed to have been established under this Proclamation.

(2) All references in any other law to magistrates' courts or courts of resident magistrate shall be read as referring to courts established under this Proclamation.

(3) After the commencement of this Proclamation no new district or sub-district shall be created until a report upon the proposal to create such district or sub-district has been obtained from the public service commission.

4. (1) Every court shall be a court of record.

(2) Every summons, subpoena, writ, warrant or other process issued out of any court shall be of force throughout the district, and all such process when endorsed by a judicial officer of any other district (and every judicial officer is hereby required on production to him of any such process to endorse the same) shall be of force throughout the district for which such judicial officer is appointed, and may be served or executed therein through the messenger of such lastmentioned district or of the Court out of which the process is issued if so ordered by the magistrate of such court.

5. (1) Subject to the exceptions made in this Proclamation or in any other law, the proceedings in every court in all criminal cases and the trial of all defended civil actions shall be carried on in open court, and not otherwise, and either of the official languages may be used at any stage in such proceedings, and the evidence shall, if the officer recording the evidence be competent so to do, be recorded in the language in which it was given.

(2) The trial of any child who is, in the opinion of the Court, less than sixteen years of age may be held *in camera* and in some other place than an ordinary court room: Provided that in such case the parent or guardian of such child shall have the right to be present thereat.

(3) The court may in any case, in the interests of good order or public morals, direct that a trial shall be held with closed doors, or that (with such exceptions as the court may direct) females or minors or the public generally shall not be permitted to be present thereat.

(4) If any person present in court disturbs the peace or order thereof, the court may order that person to be removed and detained in custody until the rising of the court, or, if in the opinion of the court peace cannot be otherwise secured, may order the court room to be cleared and the doors thereof to be closed to the public.

(5) Except where it is otherwise provided by law, every witness in a criminal case shall deliver his evidence *viva voce* and in open court: Provided that, where any witness is unable on account of ill-health or advanced age to attend the court, his evidence may be taken in the presence of the presiding judicial officer, the prosecutor, the accused person, and the legal representative (if there be such a representative and he chooses to attend) of the accused person at such place as may seem to the court most convenient.

- (c) enige distrik of enige gedeelte daarvan by 'n ander distrik voeg;
- (d) 'n hof vir enige distrik instel;
- (e) een of meer plekke in elke distrik bepaal vir die hou van hofsittinge vir sodanige distrik. As meer as een van sodanige plekke bepaal word, moet een van hulle aangewys word as die magistratuur: Met die verstande dat dit wettig sal wees vir enige hof om gehou te word op enige plek of plekke binne die plaaslike grense waarbinne die hof jurisdiksie het, soos van tyd tot tyd deur die regterlike amptenaar deur wie en voor wie daardie hof gehou word, vasgestel mag word;
- (f) een of meer plekke in enige distrik behalwe die magistratuur bepaal as die plek of plekke vir die hou van 'n periodieke hof, en die plaaslike grense waarbinne sodanige periodieke hof jurisdiksie sal uitoefen, omskrywe, en enige gedeelte van 'n aangrensende distrik binne die grense opneem;
- (g) 'n gedeelte van 'n distrik of gedeeltes van twee of meer aangrensende distrikte tot een sub-distrik afsonder om die regsgebied van 'n afgesonderde hof te vorm, en die naam vasstel waaronder sodanige sub-distrik bekend sal wees, en die plekke aanwys waar sodanige afgesonderde hof gehou moet word;
- (h) enige proklamasie onder hierdie artikel intrek of wysig en enige distrik of sub-distrik en die geregshof daarvan afskaf.

3. (1) Behalwe waar anders bepaal in hierdie Proklamasie, word die houe en distrikte wat onmiddellik voor die inwerkingtreding van hierdie proklamasie bestaan, beskou in-gevolge hierdie Proklamasie ingestel te wees.

(2) Alle verwysinge in enige ander wet na magistraats-houe of resident-magistraatshoue moet beskou word as verwysinge na houe ingestel onder hierdie Proklamasie.

(3) Na die inwerkingtreding van hierdie Proklamasie mag geen nuwe distrik of sub-distrik ingestel word nie, totdat 'n rapport oor die voorstel om sodanige distrik of sub-distrik in te stel, verkry is van die Staatsdienskommissie.

4. (1) Elke hof moet 'n hof van rekord wees.

(2) Elke dagvaring, subpoena, lasbrief, bevelskrif of ander prosesstuk deur enige hof uitgereik, is van krag deur die hele distrik, en alle sodanige prosesstukke wat deur 'n regterlike amptenaar van enige ander distrik onderskryf is, (en elke regterlike amptenaar word hiermee beveel om op vertoon aan hom van sodanige prosesstuk, dit te onderskryf) is van krag dwarsdeur die distrik waarvoor sodanige regterlike amptenaar aangestel is, en mag daarna deur die bode van laasgenoemde distrik, of van die hof waaruit die prosesstukke uitgereik word, as die magistraat van sodanige hof sodanige bevel gee, gedien en uitgevoer word.

5. (1) Onderhewig aan die uitsonderinge in hierdie Proklamasie of enige ander wet gemaak moet die verrigtinge van elke hof in alle strafregterlike sake en die verhoor van alle verdedigde siviele sake plaasvind in die openbare hof, en nie anderste nie, en enigeen van die amptelike tale mag gebruik word by enige stadium van die verrigtinge, en as die notulerende amptenaar daartoe bekwaam is, moet die getuienis genotuleer word in die taal waarin dit gegee is.

(2) Die verhoor van 'n kind wat na die mening van die hof jonger is as sestien jaar, mag *in camera* plaasvind en op 'n ander plek as die gewone saal van die geregshof: Met die verstande dat in 'n sodanige geval die ouer of voog van die kind teenwoordig mag wees.

(3) Die hof mag in elk geval, in die belang van goeie orde en publieke sedes, beveel dat 'n verhoor met geslote deure gehou sal word, of dat (met sodanige uitsonderinge as die hof mag gelas) vroue of minderjariges of die publiek in die algemeen nie teenwoordig mag wees nie.

(4) As enige persoon wat in die hof aanwesig is, die rus en orde daarvan verstoort, mag die hof hom laat verwyder en in bewaring laat hou tot na die afloop van die sitting, of as na sy mening die rus nie anders gehandhaaf kan word nie, mag die hof die saal van die geregshof laat ontruim en die deure vir die publiek laat sluit.

(5) Behalwe waar by wetgewing anders bepaal, moet elke getuie in 'n strafregterlike saak sy getuienis mondeling in die openbare hof aflê: Met die verstande dat die getuienis van iemand wat weens slegte gesondheid of gevorderde leeftyd nie in staat is om sy verskyning by die hofsitting te maak nie, afgeneem kan word in die teenwoordigheid van die presiderende regterlike amptenaar, die vervolger, die beskuldigde en sy regsvertegenwoordiger (as daar sodanige verteenwoordiger is en hy verkies om teenwoordig te wees) op sodanige plek as vir die hof mees gerieflik skyn te wees.

6. (1) The records and proceedings of the court shall in all cases be accessible to the public under supervision of the clerk of the court at convenient times and upon payment of such fees as may be prescribed by the rules; and for this purpose and for all other purposes the records and proceedings of any court of magistrate or resident magistrate which has at any time existed within the Territory shall be preserved at the seat of magistracy of the district containing the place where such court was held, and shall be deemed to be records of the court of such district:

Provided that after a period of thirty years has expired from the date of the judgment in such proceedings, the Administrator may order the removal of such records and proceedings to a central place of custody.

(2) Every civil judgment entered shall be recorded in a book to be called "The civil judgment book", which shall be open to public inspection without charge at all convenient times.

CHAPTER II.

Judicial Officers.

7. Every court held under this Proclamation shall be held by and before a judicial officer appointed in the manner provided by this Proclamation.

8. (1) Subject to the provisions of the law governing the public service of the Territory and of section *nine*, the Administrator may appoint for any district or sub-district a magistrate and an additional magistrate or two or more additional magistrates, and an assistant magistrate or two or more assistant magistrates who shall all be officers of the said service before such appointment.

(2) Whenever by reason of absence or incapacity from any cause whatever any magistrate, additional magistrate or assistant magistrate is unable to carry out the functions of his office or whenever the office of any magistrate, additional magistrate or assistant magistrate becomes vacant the Administrator may authorise any other competent officer of the public service of the Territory to act in the place of the absent or incapacitated officer until he resumes the functions of his office, or, as the case may be, to act in the vacant office until the vacancy is filled: Provided that when any such vacancy has remained continuously unfilled for a period exceeding six months the fact shall be reported to the Public Service Commission.

(3) The Administrator may appoint temporarily any competent officer in the public service of the Territory to act, either generally or in a particular matter, as additional magistrate or assistant magistrate for any district or sub-district, in addition to the magistrate or any other additional magistrate or assistant magistrate appointed for that district or sub-district.

9. Subject to the provisions of any law relating to the public service and of the next succeeding section —

- (a) a person who has not before the commencement of this Proclamation held a substantive appointment as magistrate shall not hold such an appointment and a person who has not before the commencement of this Proclamation held a substantive appointment as assistant magistrate shall not hold such an appointment, unless in either case he has passed the civil service lower law examination or an examination declared by the Administrator to be equivalent thereto;
- (b) in recommending any person for appointment as an additional magistrate the public service commission may give preference to a person who holds a degree in law of an university in South Africa, or has passed an examination the subjects whereof are similar to those of the examination for such a degree, or has passed the civil service higher law examination or an examination declared by the Administrator to be equivalent to any such examination.

10. (1) At the commencement of this Proclamation all resident magistrates and all magistrates shall become magistrates as if they had been appointed under this Proclamation; and all additional magistrates, civil magistrates and criminal magistrates shall become additional magistrates as if they had been appointed under this Proclamation.

(2) All references in any other law to chiel magistrates, resident magistrates, magistrates, additional magistrates, civil magistrates or criminal magistrates, shall be read as referring to magistrates appointed under this Proclamation.

(3) All such references to assistant resident magistrates or to assistant magistrates shall be read as referring to assistant magistrate appointed under this Proclamation.

6. (1) Die publiek het in alle sake op gepaste tye, en teen betaling van die fooie soos deur die reëls voorgeskryf mag word, onder toesig van die klerk van die hof toegang tot die stukke en verrigtinge van die hof; en vir hierdie doel sowel as vir alle ander doeleindes moet die stukke en verrigtinge van enige hof of magistraat of resident-magistraat wat te eniger tyd in die Gebied bestaan het, bewaar word op die plek van die setel van die magistraat van die distrik waarin die sittinge van sodanige hof gehou is, en hulle word beskou as stukke van die hof van sodanige distrik:

Met die verstande dat na die afloop van 'n tydperk van dertig jaar na die datum van die vonnis in sodanige verrigtinge, die Administrateur mag beveel dat sodanige stukke en verrigtinge verplaas word na 'n sentrale bewaringsplek.

(2) Van alle siviele vonnisse word aantekening gehou in 'n boek wat genoem word die „Siviele Vonnisse Boek” waartoe die publiek kostelose toegang het op alle gepaste tye.

HOOFSTUK II.

Regterlike Amptenare.

7. Elke hofsitting onder hierdie Proklamasie gehou, moet gehou word deur 'n regterlike amptenaar aangestel soos bepaal word in hierdie Proklamasie.

8. (1) Onderhewig aan die bepalinge van die wet op die staatsdiens van die Gebied, en van artikel *nege*, mag die Administrateur vir enige distrik of sub-distrik 'n magistraat en 'n addisionele magistraat of twee of meer addisionele magistrate aanstel, asook 'n assistent-magistraat of twee of meer assistent-magistrate wat almal amptenare van die gemelde diens moet wees voor sodanige aanstelling.

(2) Wanneer ook al, as gevolg van afwesigheid of onbevoegdheid, dit om enige rede vir 'n magistraat, addisionele magistraat of assistent-magistraat onmoontlik is om sy ampspligte uit te voer, of wanneer ook al die pos van enige magistraat, addisionele magistraat of assistent-magistraat oopval, mag die Administrateur enige ander bevoegde amptenaar van die staatsdiens van die Gebied magtig om in die plek van die afwesige of onbevoegde amptenaar die pos waar te neem, totdat hy sy ampspligte weer hervat, of, soos die geval mag wees, om die vakante pos waar te neem, totdat dit weer aangevul is: Met die verstande dat wanneer so 'n vakante pos vir 'n tydperk van meer as ses maande oopbly, sodanige feit aan die Staatsdienskommissie gerapporteer moet word.

(3) Die Administrateur mag enige bevoegde amptenaar in die staatsdiens van die Gebied tydelik aanstel om die pos van addisionele magistraat of assistent-magistraat van enige distrik of sub-distrik, of in die algemeen of met betrekking tot 'n besonder geval, waar te neem, buiten die magistraat en enige ander addisionele magistraat of assistent-magistraat vir daardie distrik of sub-distrik aangestel.

9. Onderhewig aan die bepalinge van enige wetgewing op die staatsdiens en van die eersvolgende artikel —

- (a) mag niemand wat nie voor die inwerkingtreding van hierdie Proklamasie 'n selfstandige betrekking as magistraat beklee het, sodanige betrekking beklee nie, en mag niemand wat nie voor die inwerkingtreding van hierdie Proklamasie 'n selfstandige betrekking as assistent-magistraat beklee het, sodanige betrekking beklee nie, tensy in een of die ander geval hy die Staatsdiens Laer Wetseksamen afgelê het, of 'n eksamen wat deur die Administrateur as daarmee gelykstaande verklaar is;
- (b) mag die staatsdienskommissie by die aanbeveling van 'n persoon vir die betrekking van addisionele magistraat, die voorkeur gee aan iemand wat 'n graad vir regsgeleerdheid van 'n uniwersiteit van Suid-Afrika besit, of 'n eksamen afgelê het, waarvan die onderwerpe gelyksoortig is met dié van die eksamen vir sodanige graad, of wat die Staatsdiens Hoër Wetseksamen afgelê het, of 'n eksamen wat deur die Administrateur as daarmee gelykstaande verklaar is.

10. (1) By die inwerkingtreding van hierdie Proklamasie word alle resident-magistrate en alle magistrate, magistrate asof hulle onder hierdie Proklamasie aangestel is; en alle addisionele magistrate, siviele magistrate en strafregterlike magistrate word addisionele magistrate asof hulle onder hierdie Proklamasie aangestel is.

(2) Alle verwysing in enige ander wet na hoofmagistrate, resident-magistrate, magistrate, addisionele magistrate, siviele magistrate en strafregterlike magistrate moet beskou word as verwysing na magistrate onder hierdie Proklamasie aangestel.

(3) Alle sodanige verwysing na assistent-resident-magistrate of assistent-magistrate moet beskou word as verwysing na assistent-magistrate onder hierdie Proklamasie aangestel.

129 (A)

11. (1) A magistrate —

- (a) may hold a court;
- (b) shall possess the powers and perform the duties conferred or imposed upon magistrates by any law for the time being in force within the Territory wherein his district is situate.

(2) An additional magistrate or an assistant magistrate—

- (a) may hold a court;
- (b) shall possess such powers and perform such duties conferred or imposed upon magistrates as he is not expressly prohibited from exercising either by the Administrator or by the magistrate of the district.

(3) An acting magistrate, additional magistrate or assistant magistrate, respectively, shall possess the powers and jurisdiction and perform the duties of the magistrate, additional magistrate, or assistant magistrate in whose place he is appointed to act for the particular case or during the time or in the circumstances for which he is appointed to act.

(4) Every additional magistrate and every assistant magistrate shall, in each district for which he has been appointed be subject to the administrative directions of the magistrate, and the magistrate shall allocate the work among the additional magistrates and assistant magistrates.

CHAPTER III.

Officers of the Court.

12. (1) There shall be appointed for every court so many clerks of the court and assistant clerks of the court as may be necessary.

(2) A refusal by the clerk of the court to do any act which he is empowered by this Proclamation to do shall be subject to review by the court on application either *ex parte* or on notice, as the circumstances may require.

13. (1) Subject to the provisions of the law governing the public service of the Territory, the Administrator may appoint for every court a person who is an officer of the said service as messenger and so many persons who are such officers as deputy-messengers, as may be necessary: Provided that if the duties to be performed by the messenger or a deputy messenger of any court are in the opinion of the Public Service Commission insufficient to keep at least one person fully occupied throughout the year, and no officer of the said service is, in the opinion of the said Commission, able to perform the duties of messenger or deputy messenger of such court in addition to his ordinary duties or if, in the opinion of the Administrator the duties of the messenger or of a deputy messenger of any court can be performed satisfactorily and at less cost to the state by a person who is not such officer, the Administrator may, without reference to the said law appoint as messenger or deputy messenger of such court, at such remuneration and upon such conditions as the Administrator may determine any person who is not an officer of the said service.

(2) A messenger of any court who is not an officer of the public service may, with the prior approval of the magistrate of such court, appoint one or more deputy-messengers for whom he shall be responsible.

(3) All fees payable to a messenger who is an officer of the public service, shall be paid into the Territory Revenue Fund.

(4) The State shall be liable for any loss or damage resulting from any act performed by a messenger who is an officer of the public service, within the scope of his employment as messenger, or by any deputy to such a messenger or from any neglect of duty of such a messenger or deputy-messenger, if such messenger would himself have been liable for such loss or damage had he not been an officer of such service.

(5) The provisions of sub-sections (1), (2), (3) and (4) shall not affect any messenger or deputy-messenger holding office as such at the commencement of this Proclamation, whose rights and obligations shall be governed by the law applicable thereto at the commencement of this Proclamation as if this section had not been enacted; and whenever the office held by any such messenger becomes vacant, the Administrator may appoint to the vacancy an officer of the public service, in terms of sub-section (1) or he may transfer the messenger or any deputy-messenger of any other court, who held office as such at the commencement of this Proclamation, and appoint him to the vacancy at such remuneration and upon such conditions as the Administrator may determine.

11. (1) 'n Magistraat —

- (a) mag 'n hofsitting hou;
- (b) oefen die bevoegdheid en pligte uit wat aan magistraat toegeken of opgelê is deur enige wetgewing wat op hierdie tydstip in die Gebied waarin sy distrik geleë is, van krag is.

(2) 'n Addisionele magistraat of 'n assistent-magistraat

- (a) mag 'n hofsitting hou;
- (b) oefen sodanige bevoegdheid en pligte uit wat aan magistraat toegeken of opgelê is, wat hy nie, of deur die Administrateur of deur die magistraat van die distrik, uitdruklik belet is om uit te oefen nie.

(3) 'n Waarnemende magistraat, 'n addisionele magistraat, of 'n assistent-magistraat, respektieflik, besit die bevoegdheid en jurisdiksie en oefen die pligte uit van die magistraat, addisionele magistraat, of assistent-magistraat in wie se plek hy aangestel is vir die bepaalde saak of gedurende die tyd of in die omstandighede waarvoor hy aangestel is.

(4) Elke addisionele magistraat en elke assistent-magistraat is, in elke distrik waarvoor hy aangestel is, onderworpe aan die administratiewe voorskrifte van die magistraat, en die magistraat verdeel die werk onder die addisionele magistraat en die assistent-magistraat.

HOOFSTUK III.

Amptenare van die Hof.

12. (1) Vir elke hof word soveel klerke van die hof aangestel as nodig mag wees.

(2) As 'n klerk van die hof weier om 'n handeling waartoe hy volgens hierdie Proklamasie bevoegd is, te verrig, dan is sodanige weiering onderhewig aan hersiening deur die hof op applikasie, hetsy *ex parte*, hetsy na kennisgewing na gelang van omstandighede.

13. (1) Onderhewig aan die bepalinge van die wet op die staatsdiens van die Gebied, mag die Administrateur vir elke hof 'n persoon wat 'n amptenaar van die gemelde diens is, aanstel as bode, en soveel persone wat sodanige amptenare is, as plaasvervangende bodes, as wat nodig mag wees: Met die verstande dat as die pligte wat deur die bode of plaasvervangende bode van enige hof uitgeoefen moet word, na die mening van die Staatsdienskommissie onvoldoende is om ten minste een persoon deur die jaar besig te hou, en as dit vir geen amptenaar van die gemelde diens, na die mening van die gemelde diens moontlik is om die pligte van bode of plaasvervangende bode van sodanige hof by sy gewone pligte uit te oefen nie, of as na die mening van die Administrateur die pligte van die bode of plaasvervangende bode van enige hof bevredigend uitgeoefen kan word teen laer onkoste vir die staat deur 'n persoon wat nie sodanige amptenaar is nie, mag die Administrateur, sonder verwysing na gemelde wetgewing, enige persoon wat nie amptenaar van gemelde diens is nie, as bode of plaasvervangende bode van sodanige hof aanstel, teen sodanige betaling, en onder sodanige voorwaardes as die Administrateur mag vasstel.

(2) 'n Bode van die hof wat nie 'n amptenaar van die staatsdiens is nie, mag met die voorgaande goedkeuring van die magistraat van sodanige hof, een of meer plaasvervangende bodes, vir wie hy verantwoordelik moet wees, aanstel.

(3) Alle fooie betaalbaar aan 'n bode wat 'n amptenaar van die staatsdiens is, moet in die Inkomste Fonds van die Gebied inbetaal word.

(4) Die staat is aanspreeklik vir enige verlies of skade gelyk as gevolg van 'n handeling uitgevoer deur 'n bode wat 'n amptenaar van die staat is of deur 'n plaasvervanger van sodanige bode, as hy sodanige handeling binne die perke van sy diens as bode verrig, of as gevolg van nalating van pligte deur sodanige bode of plaasvervangende bode, as sodanige bode self vir sodanige verlies of skade aanspreeklik sou gewees het, as hy nie 'n amptenaar van sodanige diens was nie.

(5) Die bepalinge van sub-artikels (1), (2), (3) en (4) het geen betrekking op enige bode of plaasvervangende bode wat ten tye van die inwerkingtreding van hierdie Proklamasie sodanige pos beklee nie. Die regte en verpligtinge van sodanige bodes of plaasvervangende bodes word beheers deur die wetgewing daarop toepaslik by die inwerkingtreding van hierdie Proklamasie, asof hierdie artikel nooit verorden was nie, en wanneer ook al die betrekking deur enige sodanige bode beklee oopval, mag die Administrateur 'n amptenaar van die staatsdiens aanstel om sodanige betrekking aan te vul, in terme van sub-artikel (1), of hy mag die bode of enige plaasvervangende bode van enige ander hof wat sodanige betrekking beklee het by die inwerkingtreding van hierdie Proklamasie, verplaas en hom in die vakante betrekking aanstel teen sodanige betaling en onder sodanige voorwaardes as die Administrateur mag vasstel.

(6) No person shall be appointed a messenger or deputy messenger who is an attorney practising in the district, or is a clerk or employee of any such attorney.

(7) Whenever in any matter objection is made to the service or execution of process by the messenger or his deputy by reason of the interest of either of them in such matter or of the relation of either of them to a party to such matter or of any other good cause of challenge, or whenever, by reason of the illness or absence of the messenger, it is necessary to appoint an acting messenger, the magistrate may appoint a person so to act.

(8) A messenger receiving any process for service or execution from a practitioner by whom there is due and payable to the messenger any sum of money in respect of services performed more than three months previously in the execution of any duty of his office, and which notwithstanding request has not been paid, may refer such process to the magistrate of the court out of which the process was issued with particulars of the sum due and payable by the practitioner; and the magistrate if he is satisfied that a sum is due and payable by the practitioner to the messenger as aforesaid which notwithstanding request has not been paid, may by writing under his hand authorise the messenger to refuse to serve or execute such process until the sum due and payable to the messenger has been paid.

(9) A magistrate granting any such authority shall forthwith transmit a copy thereof to the practitioner concerned and a messenger receiving any such authority shall forthwith return to the practitioner the process to which such authority refers with an intimation of his refusal to serve or execute the same and of the grounds for such refusal.

14. (1) Whenever process of the court in a civil case is to be served and executed and no messenger or deputy messenger has been appointed at the place where the court is held or whenever process of any court in a criminal case is to be served a member of any police force shall, subject to the rules, be as qualified to serve and execute all such process and all other documents in such a case as if he had been duly appointed deputy messenger. The fees payable in respect of or in connection with any such service to a messenger shall in any such case be chargeable but shall be paid into the Territory Revenue Fund.

(2) Whenever under any law a public body has the right to prosecute privately in respect of any offence and any fine imposed on conviction thereof is to be paid into the revenue of that public body, the process of the court and all other documents in the case in which such prosecution takes place shall be served either by a person duly authorised in writing by such public body or by a member of the police force. If the service is made by a member of the police force, fees in accordance with the scale set out in Table B, or any amendment thereof of the second annexure of the Second Schedule to this Proclamation shall be paid by the public body or such compounded amount in respect of service of all such process and other documents in any year as may be agreed between such public body and the Administrator. Such fees or such amount shall be paid into the Territory Revenue Fund.

15. The messenger shall receive and cause to be detained in gaol all persons arrested by any order, writ or judgment of the court or committed to the custody of such messenger by the court.

16. The return of a messenger or of any person authorised to perform any of the functions of a messenger to any process of the court shall be *prima facie* evidence of the matters therein stated.

17. A messenger who is alleged to have been negligent or dilatory in the service or execution of process, or to have knowingly and wilfully demanded payment of more than his proper fees or expenses, or to have made a false return, or in any other manner to have misconducted himself in connection with his duties, may, pending investigation, be suspended from office and profit by the magistrate, who may appoint a person to act in his place during the period of suspension. The magistrate shall forthwith report to the Administrator any action he has taken under this section and the Administrator, may, after investigation, set aside the order of suspension or may confirm it, and may also dismiss from his office the messenger who has been so suspended.

18. Every officer of the court holding office immediately prior to the commencement of this Proclamation shall be deemed to be duly appointed under this Proclamation, and shall be invested with power, duties and authority accordingly.

(6) Geen persoon wat 'n prokureur is en in die distrik praktiseer, of 'n klerk of werknemer van sodanige prokureur mag as bode of plaasvervangende bode aangestel word nie.

(7) Wanneer ook al in enige saak beswaar gemaak word teen die diening of uitvoering van 'n bevelskrif deur die bode of sy plaasvervanger uit hoofde van hulle belang in die saak of weens hulle verwantskap met een van die partye tot die saak, of om ander gegronde redes van wraak, of wanneer ook al as gevolg van die siekte of afwesigheid van die bode dit nodig is om 'n waarnemende bode aan te stel, mag die magistraat sodanige aanstelling maak.

(8) As 'n bode prosesstukke vir diening of uitvoering van 'n regspraktisyn ontvang wat 'n som geld wat betaalbaar en opeisbaar is, aan die bode skuld vir dienste verleen op 'n tydstep van meer as drie maande tevore, in die uitoefening van enige van sy pligte en wat ondanks 'n versoek nog nie betaal is nie, mag hy sodanige stukke verwys na die magistraat van die hof waaruit sodanige stukke uitgereik is, met besonderhede betreffende die som betaalbaar deur en opeisbaar van die regspraktisyn, en as die magistraat oortuig is dat 'n betaalbare en opeisbare som wel deur die regspraktisyn geskuld is, soos hierbo gemeld, en ondanks 'n versoek nog nie betaal is nie, mag die magistraat deur 'n dokument onder sy hand die bode magtig om te weier om sodanige stukke te dien of uit te voer, totdat die som wat betaalbaar en opeisbaar was, wel betaal is.

(9) As 'n magistraat sodanige magtiging toestaan moet hy dadelik 'n kopie daarvan aan die betrokke regspraktisyn stuur en 'n bode wat sodanige magtiging ontvang, moet dadelik die betrokke prosesstukke aan die regspraktisyn terugbesorg, met 'n kennisgewing van sy weiering om sodanige prosesstukke te dien of uit te voer, en van die gronde van sy weiering.

14. (1) Wanneer ook al prosesstukke in 'n siviele saak gedien moet word en geen bode of plaasvervangende bode op die plek waar die hof sitting het aangestel is nie, of wanneer 'n prosesstuk van enige hof in 'n strafregterlike saak gedien moet word, is 'n lid van enige polisiemag, onderhewig aan die reëls, bevoeg om alle sodanige prosesstukke en alle ander stukke in so 'n saak te dien, asof hy behoorlik as plaasvervangende bode aangestel was. Die fooie betaalbaar ten aansien van, of in verband met sodanige diening, aan 'n bode moet in elke sodanige geval op rekening gebring word, maar moet in die Inkomste Fonds van die Gebied gestort word.

(2) Wanneer ook al ingevolge enige wet 'n publieke liggaam die bevoegdheid het om privaat te vervolgt ten aansien van enige oortreding, en enige boete wat by skuldigebevinding daarvan gehef word, betaal moet word in die skatkis van daardie publieke liggaam, moet die stukke van die hof en alle ander dokumente in die saak waarin sodanige vervolging plaasvind, gedien word, of deur 'n persoon wat deur die publieke liggaam behoorlik in geskryf gemagtig is, of deur 'n lid van die polisiemag. As die diening deur 'n lid van die polisiemag gemaak word, moet fooie ooreenkomstig die skaal uiteengesit in Tafel B, of enige wysiging daarvan, van die tweede byvoegsel van die Tweede Bylae van hierdie Proklamasie betaal word deur die publieke liggaam, of sodanige samegestelde bedrag ten aansien van diening van alle sodanige prosesstukke en ander stukke in enige jaar, soos tussen die publieke liggaam en die Administrateur ooreengekom mag word. Sodanige fooie of bedrag moet in die Gebied se Inkomste Fonds gestort word.

15. Die bodes moet alle persone wat kragtens 'n bevel, bevelskrif of vonnis van die hof gearresteer is, of deur die hof onder sy bewaring gestel is, ontvang en in die gevangenis laat gevangehou.

16. Die opgaaf van 'n bode of van enige persoon wat gemagtig is om enige van die dienste van 'n bode met betrekking tot die stukke van die hof, te verrig is *prima facie* bewys van wat daarin verklaar word.

17. 'n Bode wat beskuldig word dat hy nalatig of traag was in die diening of uitvoering van prosesstukke of dat hy wetende en met opset betaling van meer fooie of uitgawes gevra het as hom toekom, of dat hy 'n valse opgaaf gemaak het, of dat hy hom op een of ander manier in verband met sy pligte wangedra het, mag deur die magistraat, terwyl die ondersoek hangende is, in sy amp en winste geskors word, wat dan 'n persoon mag aanstel om sy pos gedurende die tydperk van skorsing waar te neem. Die magistraat moet dadelik aan die Administrateur van enige stappe wat hy ingevolge hierdie artikel neem, kennis gee, en die Administrateur mag na ondersoek die order van skorsing ophef of bekragtig, en mag ook die bode wat sodanig geskors is, uit sy betrekking ontslaan.

18. Elke amptenaar van die hof wat onmiddellik voor die inwerkingtreding van hierdie Proklamasie in diens is, word beskou onder hierdie Proklamasie aangestel te wees, en dienooreenkomstig word aan hom magte, pligte en bevoegdhede verleen.

CHAPTER IV.

Practitioners.

19. Every advocate of the High Court may appear and plead in any action or proceeding in any court.

20. Every attorney of the High Court may practise in any court.

21. Whenever in the opinion of a judicial officer any attorney has been guilty of misconduct or dishonourable practice he shall report the fact to the Law Society of South West Africa.

CHAPTER V.

Rules of Court.

22. The rules regulating the practice, procedure, fees, costs and charges of magistrates' courts shall, subject to the provisions of sections *twenty-three* and *twenty-four*, be the rules contained in the Second Schedule to this Proclamation, and all such rules and all rules made under the two last named sections shall have the same force and effect as if they had been contained in this Proclamation.

23. (1) Subject to the approval of the Administrator, the Judge of the High Court may make rules upon the subjects mentioned in the next succeeding section, and may alter or rescind any of the rules contained in the Second Schedule to this Proclamation.

(2) No such rule or alteration or rescission thereof shall take effect unless it has been published in two consecutive ordinary issues of the *Gazette* so that the last publication thereof shall be at least one month before the day upon which it is expressed to take effect.

24. (1) The rules may provide for any of the following matters in respect of magistrates' courts:—

- (a) The manner and form of procedure;
- (b) The manner and form of procuring evidence;
- (c) the manner of service;
- (d) the granting of summary judgment;
- (e) the records to be kept;
- (f) when and how security shall be given;
- (g) the discovery of documents;
- (h) payment into court, whether as a tender or as an offer of settlement or to abide the result of interpleader proceedings;
- (i) the manner of executing judgments;
- (j) the manner of proceeding in appeals;
- (k) the appointment of assessors and the definition of their functions;
- (l) dismissal for want of prosecution;
- (m) the duties of officers of the court;
- (n) taxation of bills of costs;
- (o) the forms to be used;
- (p) the conditions, as to payment of costs, fees and charges, and otherwise, upon which persons may be allowed to sue and defend as paupers; and
- (q) subject to the provisions of sub-section (1) of the last preceding section, generally in regard to all the matters dealt with in the Second Schedule to this Proclamation and for giving full effect to the jurisdiction conferred upon magistrates' courts by any law now or hereafter in force.

(2) Different rules may be made as to different classes of cases.

PART II. — CIVIL MATTERS.

CHAPTER VI.

Civil Jurisdiction.

25. (1) Except where it is otherwise by law provided, the area of jurisdiction appertaining to any court shall be the district or sub-district for which such court is established.

(2) Where in any district a sub-district has been created the court of the district shall have no jurisdiction in the sub-district.

HOOFSTUK IV.

Regspraktisyns.

19. Elke advokaat van die Hoër Hof mag in enige regs-geding of proses in enige hof verskyn en pleit.

20. Elke prokureur van die Hoër Hof mag in enige hof praktiseer.

21. Wanneer ook al na die mening van 'n regterlike amptenaar 'n prokureur skuldig aan wangedrag of oneerlike praktyk was, moet hy verslag daarvan by die wetsvereniging van Suidwes-Afrika doen.

HOOFSTUK V.

Reëls van die Hof.

22. Die reëls wat die praktyk, proses, fooie, koste en onkoste van magistratshowe beheer, word, onderhewig aan die bepalinge van artikels *drie-en-twintig* en *vier-en-twintig*, in die Tweede Bylae van hierdie Proklamasie bevat, en alle sodanige reëls, en alle reëls ingevolge die twee laasgenoemde artikels het dieselfde krag en uitwerking, asof hulle in hierdie Proklamasie bevat was.

23. (1) Onderhewig aan die goedkeuring van die Administrateur mag die Regter van die Hoër Hof reëls maak met betrekking tot die onderwerpe wat in die eersvolgende artikel genoem word, en mag enige van die reëls bevat in die Tweede Bylae van hierdie Proklamasie verander of herroep.

(2) Geen sodanige reël, of verandering of herroeping daarvan, sal van krag wees nie, tensy dit in twee agtereenvolgende gewone uitgawes van die *Offisiële Koerant* verskyn het, op so 'n wyse dat die laaste verskyning daarvan tenminste een maand voor die dag waarop dit bedoel is om in werking te tree, plaasvind.

24. (1) Die reëls mag voorsiening maak vir enige van die volgende onderwerpe ten aansien van magistratshowe:—

- (a) die wyse en vorm van proses;
- (b) die wyse en vorm van bewyslewering;
- (c) die wyse van diening;
- (d) die verlening van summiere vonnis;
- (e) die aktes wat gehou moet word;
- (f) wanneer en hoe sekuriteit gegee moet word;
- (g) die oplê van dokumente;
- (h) geregtelike inbetaling, hetsy as aanbod van betaling of by wyse van skikking of hangende die uitslag van 'n tussenpleit-geding;
- (i) die wyse van voltrekking van vonnisse;
- (j) die wyse van proses en appèl;
- (k) die aanstelling van assessore en die omskrywing van hulle pligte;
- (l) afwysing van 'n saak weens nie-vervolging;
- (m) die pligte van amptenare van die hof;
- (n) taksering van kosterekening;
- (o) die vorms wat gebruik moet word;
- (p) die voorwaardes betreffende die betaling van koste, fooie en onkoste en andersins, waaronder persone mag geregtelike eise instel of verweer as behoeftiges; en
- (q) in die algemeen, onderhewig aan die bepalinge van sub-artikel (1) van die onmiddellik voorgaande artikel, betreffende alle aangeleenthede in die Tweede Bylae van hierdie Proklamasie genoem, en ten einde volle uitwerking te gee aan die jurisdiksie wat aan magistratshowe deur enige wet wat nou of hierna van krag word, verleen is.

(2) Verskillende reëls mag gemaak word vir verskillende soorte van sake.

AFDELING II. — SIVIELE SAKE.

HOOFSTUK VI.

Siviele Jurisdiksie.

25. (1) Behalwe waar deur wetgewing anders bepaal is, is die regsgebied van enige hof die distrik of sub-distrik waarvoor sodanige hof ingestel is.

(2) Waar daar in enige distrik 'n sub-distrik ingestel is, het die hof van die distrik geen jurisdiksie in die sub-distrik nie.

26. The jurisdiction of a periodical court within the area for which it has been appointed shall be subject to the following provisions:—

- (a) The court of a district within which the said area or any part thereof is situate shall retain concurrent jurisdiction with the periodical court within such portions of such area as shall be situate within such districts; and
- (b) no person shall, without his own consent, be liable to appear as a party before any periodical court to answer any claim unless he resides nearer to the place where the periodical court is held than to the seat of magistracy of the district.

27. (1) Saving any other jurisdiction assigned to any courts by this Proclamation or any other law, the persons in respect of whom the court shall have jurisdiction shall be —

- (a) any person who resides, carries on business or is employed within the district;
- (b) any partnership whose business premises are situated or any member whereof resides within the district;
- (c) any person whatever, in respect of any proceedings incidental to any action or proceeding instituted in the court by such person himself;
- (d) any person, whether or not he resides, carries on business or is employed within the Territory, if the cause of action arose wholly within the district;
- (e) any party to interpleader proceedings, if —
 - (i) the execution creditor and every claimant to the subject matter of the proceedings reside, carry on business, or are employed within the district; or
 - (ii) the subject matter of the proceedings has been attached by process of the court;
- (f) any defendant (whether in convention or reconvention) who appears and takes no objection to the jurisdiction of the court.

(2) "Person" or "defendant" in this section includes the Administration of the Territory and the South African Railways and Harbours Administration.

28. (1) Subject to the provisions of this Proclamation, the jurisdiction of the court in respect of causes of action shall be —

- (a) in actions in which is claimed the delivery or transfer of any property moyable or immovable, not exceeding two hundred pounds in value;
- (b) in actions of ejection against the occupier of any house, land or premises situate within the district: Provided that, where the right of occupation of any such house, land, or premises is in dispute between the parties, such right does not exceed two hundred pounds in clear value to the occupier;
- (c) in actions other than those already in this section mentioned, where the claim or the value of the matter in dispute does not exceed two hundred pounds.

(2) In sub-section (1), "action" includes "claim in reconvention".

29. (1) Subject to the limits of jurisdiction prescribed by this Proclamation the court may grant against persons and things orders for arrest *tanquam suspectus de fuga*, attachments, interdicts and *mandamenten van spolie*.

(2) Confirmation by the court of any such attachment or interdict in the judgment in the action shall operate as an extension of the attachment or interdict until execution or further order of the court.

(3) No order of personal arrest *tanquam suspectus de fuga* shall be made unless the following conditions are complied with —i.e. unless —

- (a) the cause of action appears to amount, exclusive of costs, to at least twenty pounds; and
- (b) the applicant appears to have no security for the debt or only security falling short of the amount of the debt by at least twenty pounds; and
- (c) it appears that the respondent is about to remove from the Territory.

30. (1) When a summons is issued in which is claimed the rent of any house, land or premises, the plaintiff may include in such summons a notice prohibiting any person from

26. Ten aansien van die jurisdiksie van 'n periodieke hof binne die gebied waarvoor dit ingestel is, geld die volgende bepalinge:

- (a) Die hof van 'n distrik waarin gemelde gebied of enige deel daarvan geleë is, behou samelopende jurisdiksie met die periodieke hof binne sodanige gedeelte van sodanige gebied wat in sodanige distrikte geleë is; en
- (b) niemang mag sonder sy eie toestemming verplig wees om as verweerder voor 'n periodieke hof te verskyn om op enige vordering te antwoord nie, tensy hy nader aan die plek woon waar die periodieke hof sitting het, as aan die plek waar die magistratuur van die distrik gevestig is.

27. (1) Behoudens enige ander jurisdiksie deur hierdie Proklamasie of enige ander wetgewing aan howe toegeken, is die hof bevoeg om te oordeel oor die volgende persone —

- (a) enige persoon wat in die distrik woon, besigheid dryf of 'n diensbetrekking het;
- (b) enige vennootskap waarvan die besigheidspersoon in die distrik gevestig is of een van die lede in die distrik woon;
- (c) enige persoon hoegenaamd ten aansien van enige handeling in verband met enige geding of proses deur sodanige persoon self in die hof ingestel;
- (d) enige persoon, onverskillig of hy in die Gebied woon, besigheid dryf of 'n diensbetrekking het, of nie, as die skuldoorsaak geheel en al in die distrik ontstaan het;
- (e) enige party tot 'n tussenpleit-geding, as —
 - (i) die vonnis-skuldeiser en elke eiser van die onderwerp van die geding in die distrik woon, besigheid dryf of 'n diensbetrekking het; of
 - (ii) die onderwerp van die geding geregteelik in beslag geneem is;
- (f) enige verweerder (hetsy in konvensie of rekonvensie) wat verskyn en geen beswaar maak teen die bevoegdheid van die hof nie.

(2) Onder „persoon” en „verweerder” in hierdie artikel word inbegrepe die Administrasie van die Gebied en die Suid-Afrikaanse Spoorweë en Hawens Administrasie.

28. (1) Onderhewig aan die bepalinge van hierdie Proklamasie, het die hof ten aansien van skuldoorsaake jurisdiksie oor —

- (a) alle eise vir aflewering of oordraging van roerende of onroerende goed waarvan die waarde nie meer as twee honderd pond beloop nie;
- (b) alle eise vir ontruiming teen bewoners van huise, grond of persele binne die distrik geleë: Met die verstande dat wanneer die reg van gebruik van sodanige huis of grond of perseel die geskilpunt tussen die partye is, die suiwer waarde van die reg nie meer as twee honderd pond vir die gebruiker beloop nie;
- (c) alle ander eise nie alreeds in die artikel genoem nie, waar die vordering of die waarde van die onderwerp in die geskil nie meer as tweehonderd pond beloop nie.

(2) Die woord „eis” in sub-artikel (1) sluit in „eis in rekonvensie”.

29. (1) Onderhewig aan die grense van jurisdiksie deur hierdie Proklamasie voorgeskryf mag die hof teen persone en sake bevel van arres *tanquam suspectus de fuga*, beslaglegginge, interdikte en *mandamenten van spolie* uitvaardig.

(2) Die bekragtiging van so 'n beslaglegging of interdik deur die hof in 'n vonnis in 'n geding is terselfdertyd 'n verlenging van die krag van die beslaglegging of interdik, tot uitvoering of tot 'n verdere bevel van die hof gegee is.

(3) Geen bevel vir persoonlike arres *tanquam suspectus de fuga* word verleen, tensy die volgende voorwaardes nagekom is nie, dit wil sê, tensy —

- (a) dit lyk of die skuldoorsaak 'n bedrag van minstens twintig pond beloop met uitsluiting van koste; en
- (b) dit lyk of die applikant geen sekuriteit het vir die skuld nie, of alleen sekuriteit het vir 'n bedrag tenminste twintig pond minder as die skuldbedrag; en
- (c) dit lyk of die respondent voornemens is om die Gebied te verlaat.

30. (1) As 'n dagvaring uitgereik word waarin die huurgeld van 'n huis, stuk grond of perseel geëis word, mag die eiser in die dagvaring 'n kennisgewing insluit waarin enige persoon verbied word om die meubels of

removing any of the furniture or other effects therein or thereon which are subject to the plaintiff's hypothec for rent until an order relative thereto shall have been made by the court.

(2) Such notice shall operate to interdict any person having knowledge thereof from removing any such furniture or effects.

(3) Any person affected by such notice may apply to the court to have the same set aside.

31. (1) Upon an affidavit by or on behalf of the landlord of any house, land or premises situate within the district that an amount of rent not exceeding the jurisdiction of the court is due and in arrear in regard to the said house, land, or premises, and that the said rent has been demanded in writing for the space of seven days and upwards, or, if not so demanded, that the deponent believes that the tenant is about to remove the movable property in and upon the said premises, in order to defeat and avoid the payment of the rent so due and in arrear, and upon security being given to the satisfaction of the clerk of the court to pay and satisfy all damages, costs and charges which the tenant of such house, land or premises, or any other person, may sustain or incur by reason of the seizure and seizure or arrest hereinafter mentioned, if the said seizure and arrest are thereafter set aside, the court may, upon application, issue an order to the messenger authorising and requiring him to seize and arrest so much of the movable property in or upon the house, land or premises in question and subject to the landlord's hypothec for rent as may be sufficient to satisfy the amount of rent due and in arrear, together with the costs of such application and of any action for the said rent.

(2) Any person affected by such order may apply to have it set aside.

(3) A respondent whose property has been so attached may by notice in writing to the clerk of the court admit that such property is subject to the landlord's hypothec for an amount to be specified in such notice and may consent that such property be sold in satisfaction of such amount and costs; and such notice shall have the same effect as a consent to judgment for the amount specified.

32. The court may appoint a *curator ad litem* in any case in which such a curator is required or allowed by law for a party to any proceedings brought or to be brought before the court.

33. In any action the court may, upon the application of either party, summon to its assistance one or two persons of skill and experience in the matter to which the action relates who may be willing to sit and act as assessors in an advisory capacity.

34. (1) An action or proceeding may, with the consent of all parties thereto, or upon the application of any party thereto, and upon its being made to appear that the trial of such action or proceeding in the court wherein summons has been issued may result in undue expense or inconvenience to such party, be transferred by the court to any other court.

(2) Any interpleader summons, if issued in the court of the district in which the property was attached, may, at the discretion of the court be remitted for trial to the court in which the judgment was given.

(3) An action commenced in a periodical court may, at the discretion of the court, be transferred to the court of the district, or *vice versa*.

35. (1) The court may rescind or vary any judgment granted by it in the absence of the party against whom that judgment was granted.

(2) The court may rescind or vary any judgment granted by it which was void *ab origine* or was obtained by fraud or by mistake common to the parties.

(3) The court may correct patent errors in any judgment in respect of which no appeal is pending.

(4) The court may rescind or vary any judgment in respect of which no appeal lies.

36. (1) In actions wherein the sum claimed, being within the jurisdiction, is the balance of an account, the court may enquire into and take evidence if necessary upon the whole account, even though such account contains items and transactions exceeding the amount of the jurisdiction.

ander besittinge daarop of daarin, wat aan die eiser se huurverband onderhewig is, te verwyder, totdat 'n bevel in verband daarmee deur die hof gegee is.

(2) Sodanige kennisgewing werk as 'n interdik teen enigeen wat daarvan kennis dra, om enige sodanige meubels of besittinge te verwyder.

(3) Enige persoon wie se regte deur sodanige kennisgewing aangetas word, mag die hof versoek om sodanige kennisgewing tersy te sit.

31. (1) Op grond van 'n skriftelike beëdigde verklaring deur of in naam van die verhuurder van 'n huis, stuk grond of perseel binne die distrik geleë, dat 'n bedrag aan huurgeld, die jurisdiksie van die hof nie te bowe gaande nie, agterstallig en verskuldig is ten opsigte van die huis, stuk grond of perseel en dat 'n aanmaning gestuur is vir betaling van gemelde huurgeld vir die tydperk van sewe dae of langer, of by gebreke van sodanige aanmaning dat die deponent glo dat die huurder op die punt staan om die roerende eiendom in en op die gemelde perseel te verwyder, ten einde die betaling van huurgelde wat betaalbaar en agterstallig is, te verydél en te ontduik, en as sekuriteit ten genoë van die klerk van die hof gegee word vir alle skade, koste en onkoste wat die huurder van sodanige huis, grond of perseel of enige ander persoon mag ly tengevolge van die hierna gemelde inbeslagneming en arres, as die gemelde inbeslagneming en arres later ter sy gesit word, mag die hof op aansoek 'n bevel uitreik aan die bode wat hom magtig en van hom verlang dat hy soveel van die roerende goed in en op die betrokke huis, grond of perseel onderhewig aan die huurverband van die verhuurder in beslag neem, as genoeg sou wees om die bedrag van die huur wat betaalbaar en agterstallig is, saam met die koste van sodanige aansoek of enige geding in verband met gemelde huurgeld te dek.

(2) Enige persoon wat deur sodanige bevel aangetas word, mag aansoek doen dat dit ter sy gesit word.

(3) 'n Respondent van wie die goed op so 'n wyse in beslag geneem is, mag deur geskrewe kennisgewing aan die klerk van die hof erken dat sodanige eiendom aan die verhuurder se huurverband onderhewig is, en toestem dat sodanige eiendom verkoop word om sodanige bedrag en koste te bevredig, en sodanige kennisgewing het dieselfde uitwerking as 'n toestemming tot vonnis vir die gespesifiseerde bedrag.

32. Die hof mag 'n *curator ad litem* aanstel in enige geval waarin sodanige kurator nodig is of by wet toegelaat word vir 'n party tot enige proses wat voor die hof afgehandel word, of afgehandel sal word.

33. In enige geding mag die hof op aansoek van een van die partye, die hulp inroep van een of twee persone wat bekwaam en ervare is in die saak waaroor die geding handel, en wat bereid is om as assessore in 'n raadgevende hoedanigheid sitting te neem.

34. (1) 'n Geding of 'n proses mag met goedvinding van al die partye, of op aansoek van een van die partye, en nadat aangetoon is dat die verhoor van sodanige geding in die hof waarin die dagvaring uitgereik is, sodanige partye buitensporige koste of ongerief kan veroorsaak, deur die hof na enige ander hof oorgebring word.

(2) 'n Tussenpleit-dagvaring uitgereik in die hof van die distrik waarin die eiendom in beslag geneem is, mag, na die goëddunke van die hof, vir behandeling na die hof waarin die vonnis gegee is, terugverwys word.

(3) 'n Geding in 'n periodieke hof begin, mag, na goëddunke van die hof, na die hof van die distrik oorgebring word of omgekeerd.

35. (1) Die hof mag enige vonnis deur hom gevel in die afwesigheid van die party teen wie die vonnis gevel is, vernietig of wysig.

(2) Die hof mag enige vonnis deur hom gevel, wat van die begin af nietig was of wat deur bedrog of deur gemene dwaling van die partye verkry is, vernietig of wysig.

(3) Die hof mag in enige vonnis ten aansien waarvan 'n appèl nie hangende is nie, klaarblyklike foute herstel.

(4) Die hof mag enige vonnis wat nie aan appèl onderhewig is nie, vernietig of wysig.

36. (1) In gedinge waarin die geëiste bedrag binne die jurisdiksie val, en die saldo is van 'n rekening, mag die hof ondersoek instel in en getuienis afneem oor die hele rekening, as dit nodig is, ofskoon sodanige rekening poste en transaksies bevat wat die jurisdiksie te bowe gaan.

(2) Where the amount claimed or other relief sought is within the jurisdiction, such jurisdiction shall not be ousted merely because it is necessary for the court, in order to arrive at a decision, to give a finding upon a matter beyond the jurisdiction.

(3) In considering whether a claim is or is not within the jurisdiction, no prayer for interest on the principal sum claimed or for costs or for general or alternative relief shall be taken into account.

37. (1) In order to bring a claim within the jurisdiction a plaintiff may in his summons or at any time thereafter explicitly abandon part of such claim.

(2) If any part of a claim be so abandoned, it shall be thereby finally extinguished: Provided that, if the claim be upheld in part only, the abandonment shall be deemed first to take effect upon that part of the claim which is not upheld.

38. In order to bring a claim within the jurisdiction, a plaintiff may, in his summons or at any time after the issue thereof, deduct from his claim, whether liquidated or unliquidated, any amount admitted by him to be due by himself to the defendant.

39. A substantive claim exceeding the jurisdiction may not be split with the object of recovering the same in more than one action if the parties to all such actions would be the same and the point at issue in all such actions would also be the same.

40. (1) If two or more claims, each based upon a different cause of action, are combined in one summons, the court shall have the same jurisdiction to decide each such claim as it would have had if each claim had formed the sole subject of a separate action.

(2) If a claim for the confirmation of an interdict or arrest granted *pendente lite* be joined in the same summons with a claim for relief of any other character, the court shall have the same jurisdiction to decide each such claim as it would have had if each claim had formed the sole subject of a separate action, even though all the claims arise from the same cause of action.

41. In sections *thirty-three* to *forty* inclusive "action", "claim" and "summons" include "claim in reconvention", and "plaintiff" and "defendant" include "plaintiff in reconvention" and "defendant in reconvention" respectively.

42. Subject to the provisions of the next succeeding section the court shall have jurisdiction to determine any action or proceeding otherwise beyond the jurisdiction, if the parties consent in writing thereto.

43. (1) The court shall have no jurisdiction in matters in which the dissolution of a marriage or separation from bed and board or of goods of married persons is sought.

(2) A magistrates' court shall have no jurisdiction in matters:—

- (a) in which the validity or interpretation of a will or other testamentary document is in question;
- (b) in which the status of a person in respect of mental capacity is sought to be affected;
- (c) in which is sought the specific performance of an act without an alternative of payment of damages (except the rendering of an account in respect of which the claim does not exceed two hundred pounds and the delivery or transfer of property, movable or immovable, not exceeding two hundred pounds in value);
- (d) in which is sought a decree of perpetual silence;
- (e) in which *namptissement* is sought.

44. (1) When in answer to a claim within the jurisdiction the defendant sets up a counterclaim exceeding the jurisdiction, the claim shall not on that account be dismissed; but the court may, if satisfied that the defendant has a reasonable prospect of recovering an amount exceeding the jurisdiction, stay the action for a reasonable period in order to enable him to institute an action in a competent court. The plaintiff in the magistrate's court may (notwithstanding his action therein) counterclaim in such competent court and in that event all questions as to the costs incurred in the magistrate's court shall be decided by that competent court.

(2) Waar die bedrag geëis en die ander verligting geseek, binne die jurisdiksie van die hof is, mag sodanige jurisdiksie nie opgehef word alleen omdat dit nodig is vir die hof ten einde 'n beslissing te kan gee, om uitspraak te gee op 'n punt wat sy jurisdiksie te bowe gaan nie.

(3) By die vraag of 'n eis binne die jurisdiksie of nie, word nie rekening gehou met vorderinge tot betaling van rente op die geëiste hoofsom of van koste van algemene of alternatiewe verligting nie.

37. (1) Ten einde 'n eis binne die jurisdiksie te bring mag 'n eiser in sy dagvaring of te eniger tyd daarna, u drukklik afstand doen van 'n deel van sodanige eis.

(2) 'n Vordering van 'n gedeelte waarvan op hierdie wyse afstand gedoen word, gaan ten aansien van sodanige gedeelte finaal tot niet: Met die verstande dat as die eis slegs ten dele bekragtig is, word die afstanddoening beskwaars te geld ten aansien van die gedeelte van die eis wat nie bekragtig is nie.

38. Ten einde 'n eis binne die jurisdiksie te bring, mag 'n eiser in sy dagvaring of te eniger tyd na die uitreiking daarvan, enige bedrag wat hy erken aan die verweerder skuldig te wees, van die eis, hetsy gelikwideerd of nie, aftrek.

39. 'n Selfstandige vordering wat die jurisdiksie te bowe gaan, mag nie opgesplits word, ten einde dit in meer as een geding te verhaal nie, as die partye tot alle sodanige gedinge dieselfde is, en die geskilpunt in alle sodanige gedinge ook dieselfde is.

40. (1) As twee of meer eise, elkeen op 'n ander skuldoorsaak gebaseer, saamgeneem is in een dagvaring, het die hof dieselfde jurisdiksie om elke sodanige eis te behandel, as die hof sou gehad het, as elke eis die uitsluitende onderwerp van 'n aparte geding was.

(2) Wanneer 'n vordering vir die bekragtiging van 'n interdik of arres verleen *pendente lite* in dieselfde dagvaring verenig word met 'n vordering waarin geregtelike tussenkomst van 'n ander aard gevra word, het die hof dieselfde jurisdiksie om elke sodanige vordering te behandel, as die hof sou gehad het, as elke eis die uitsluitende onderwerp van 'n aparte geding gevorm het, selfs al het al die eise dieselfde skuldoorsaak.

41. In artikels *drie-en-dertig* tot *veertig* inklusief, is onder "geding", "vordering", "eis" en "dagvaring" inbegryp "rekonvensie", "eiser" en "verweerder" sluit in "eiser in rekonvensie" en "verweerder in rekonvensie", respektiefflik.

42. Onderhewig aan die bepalinge in die eerste volgende artikel, is die hof bevoeg, om met skriftelike toestemming van die partye 'n geding of proses te beslis, wat anders as die jurisdiksie te bowe gaan.

43. (1) Die hof het geen jurisdiksie in eise waar die ontbinding van 'n huwelik of skeiding van tafel en bed of van goedere van die eggenote gevra word nie.

(2) 'n Magistraatshof het geen jurisdiksie in sake

- (a) waarin die geldigheid of interpretasie van 'n testament of ander testamentêre dokument betwis word nie;
- (b) waarin die status van 'n persoon ten opsigte van geestelike bekwaamheid aangeraak word;
- (c) waarin daadwerklike nakoming van 'n verbintenis sonder 'n alternatiewe eis tot betaling van skadevergoeding gevorder word (met uitsondering van die instuur van 'n rekening ten aansien waarvan die vordering nie meer as tweehonderd pond bedra nie, en die lewering van transport van roerende of onroerende goed, in waarde tweehonderd pond nie te bowe gaande nie);
- (d) waarin 'n bevel van ewigdurende stilswye geëis word;
- (e) waarin handvulling (*namptissement*) geëis word.

44. (1) Wanneer die verweerder in antwoord op 'n eis binne die jurisdiksie, 'n teenreis instel wat die jurisdiksie te bowe gaan, word die eis nie vir hierdie rede van die hof afgewys nie, maar die hof mag, as hy oortuig is dat die verweerder 'n redelike vooruitsig het om 'n bedrag binne die jurisdiksie te verhaal, die saak vir 'n redelike tydperk skors om hom die geleentheid te gee om 'n hofsak in te stel in die bevoegde hof. Die eiser in die magistraatshof mag nie teenstaande sy eis daarin in sodanige bevoegde hof 'n teenreis instel, en in daardie geval moet alle vrae betreffende die koste gemaak in die magistraatshof deur die bevoegde hof te word.

132/A

(2) If the period for which such action has been so stayed has expired and the defendant has failed to issue and serve a summons in a competent court in relation to the matters the subject of such counterclaim the magistrate's court shall on application either —

- (a) stay the action for a further reasonable period; or
- (b) dismiss the counterclaim (whether the defendant does or does not reduce such counterclaim to an amount within the jurisdiction of the court).

(3) If the defendant has failed to institute action within such further period or if the action instituted by the defendant be stayed, dismissed, withdrawn, or abandoned, or if the competent court has granted absolution from the instance thereon, the magistrate's court shall, upon application, dismiss the counterclaim and shall proceed to determine the claim.

45. The court may, as the result of the trial of an action, grant —

- (a) judgment for the plaintiff in respect of his claim in so far as he has proved the same;
- (b) judgment for the defendant in respect of his defence in so far as he has proved the same;
- (c) absolution from the instance, if it appears to the court that the evidence does not justify the court in giving judgment for either party;
- (d) such judgment as to costs as may be just.

46. (1) Any action in which the amount of the claim exceeds one hundred pounds, exclusive of interest and costs, may, upon application to the court by the defendant, or if there is more than one defendant, by any defendant, be removed to the High Court, subject to the following conditions and provisions:—

- (a) Notice of intention to make such application shall be given to the plaintiff, and to other defendants (if any) before the date on which the action is set down for hearing;
- (b) the notice shall state that the applicant objects to the action being tried by the court or any magistrate's court;
- (c) the applicant shall give such security as the court may determine and approve, for payment of the amount claimed and such further amount to be determined by the court not exceeding one hundred pounds, for costs already incurred in the action and which may be incurred in the High Court.

Upon compliance by the applicant with these conditions and provisions, all proceedings in the action in the court shall be stayed, and the action and all proceedings therein shall, if the plaintiff so requires, be as to the defendant or defendants, forthwith removed from the court into the High Court. Upon the removal, the summons in the court shall, as to the defendant or defendants, stand as the summons in the High Court, the return date thereof being the date of the order of removal in an action other than one founded on a liquid document, and, in an action founded on a liquid document, being such convenient day on which the High Court sits for the hearing of provisional sentence cases, as the court may order:

Provided that the plaintiff in the action may, instead of requiring the action to be so removed, issue a fresh summons against the defendant or defendants in any competent court and the costs already incurred by the parties to the action shall be costs in the cause.

(2) If the plaintiff is successful in an action so removed to the High Court, he may be awarded costs as between attorney and client.

CHAPTER VII.

Witnesses and Evidence.

47. (1) Any party to any civil action or other proceeding where the attendance of witnesses is required may procure the attendance of any witness (whether residing or for the time being within the district or not) in the manner in the rules provided.

(2) (a) If any person, being duly subpoenaed to give evidence or to produce any books, papers or documents in his possession or under his control, which the party requiring his attendance desires to show in evidence, fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpoena or, unless duly excused, fails to remain in attendance through-

(2) As die verweerder nie binne die tydperk waarvoor die geding geskors was, 'n dagvaring in verband met die onderwerp van sodanige teeneis in 'n bevoegde hof uitgereik en gedien het nie, moet die magistratshof op aansoek, of —

- (a) die geding vir 'n verdere redelike tydperk skors; of
- (b) die teeneis van die hand wys (onverskillig of die verweerder sodanige teeneis verminder tot 'n bedrag binne die jurisdiksie van die hof al dan nie).

(3) As die verweerder binne sodanige verdere tydperk nog geen geding ingestel het nie, of as die geding deur die verweerder ingestel, geskors, afgewys, teruggetrek of daarvan afstand gedoen is, of as die bevoegde hof absolusie van die instansie daarop verleen het, moet die magistratshof, op aansoek daartoe, die teeneis van die hand wys en tot die behandeling van die eis oorgaan.

45. Die hof mag, as die gevolg van die verhoor van die saak —

- (a) vonnis ten gunste van eiser gee ten aansien van sy eis, vir sover hy sodanige eis bewys het;
- (b) vonnis ten gunste van die verweerder gee ten aansien van sy verdediging vir sover hy sodanige verdediging bewys het;
- (c) absolusie van die instansie verleen as dit blyk dat die getuienis van sodanige aard is dat dit nie gewettig sou wees om vonnis tengunste van die een of die ander party te gee nie;
- (d) sodanige vonnis betreffende die koste gee as billik mag wees.

46. (1) Enige geding waarin die bedrag van die eis, behalwe rente en koste, die som van honderd pond te bowe gaan, mag op aansoek by die hof deur die verweerder of, as daar meer as een verweerder is, deur enige verweerder, na die Hooggeregshof oorgeplaas word, onderhewig aan die volgende voorwaardes en bepalinge:—

- (a) Kennis van die voorneme om sodanige aansoek te doen moet aan die eiser gegee word, en aan ander verweerdere (indien enige) voor die datum waarop die geding op die rol geplaas is vir verhoor;
- (b) Die kennisgewing moet verklaar dat die applikant beswaar maak teen die feit dat die geding deur die hof of deur enige magistratshof verhoor word;
- (c) die applikant moet sodanige sekuriteit as die hof mag bepaal en goedkeur, gee vir die betaling van die gevorderde bedrag en sodanige verdere bedrag, honderd pond nie te bowe gaande nie, wat die hof mag bepaal vir koste reeds in die geding gemaak, en wat in die Hooggeregshof gemaak mag word.

Sodra die applikant aan sodanige voorwaardes en bepalinge voldoen het, word alle verrigtinge in die geding in die hof geskors, en die geding en alle verrigtinge daarin word, as die eiser dit verlang, wat betref die verweerder of verweerdere, dadelik uit die hof oorgebring na die Hooggeregshof. Na die verplasing moet die dagvaring in die hof wat betref die verweerder of verweerdere beskou word as 'n dagvaring in die Hooggeregshof, en die verskyningsdatum daarvan is die datum van die bevel tot verplasing in alle gedinge wat nie gegrond is op 'n likwiede dokument nie, en in 'n geding gegrond op 'n likwiede dokument, sodanige gerieflike dag waarop die Hooggeregshof sitting het vir die verhoor van provisionele vonnissake, soos die hof mag beveel:

Met die verstande dat die eiser in die geding, 'n nuwe dagvaring teen die verweerder of verweerdere in enige bevoegde hof mag uitreik, en die koste alreeds gemaak deur die partye word koste van die geding.

(2) As die eiser suksesvol is in 'n geding wat sodanig na die Hoër Hof oorverplaas is, mag die koste tussen prokureur en kliënt aan hom toegestaan word.

HOOFSTUK VII.

Getuienis en Bewyslewering.

47. (1) Enige party tot enige siviele geding of ander proses, waar die aanwesigheid van getuies vereis word, mag die aanwesigheid van 'n getuie (onverskillig of hy in die distrik woon of vir die oomblik daarin is al dan nie) verkry op die wyse soos bepaal in die reëls.

(2) (a) Wanneer iemand behoorlik gedagvaar is om getuienis af te lê of boeke, geskryfte of dokumente in sy besit of onder sy beheer voor te lê, wat die party wat sy aanwesigheid verlang as bewysstukke wil toon, sonder geldige rede versuim om te verskyn of getuienis af te lê of daardie boeke, geskryfte of dokumente ooreenkomstig die subpoena voor te lê, of sonder behoorlik verskoon te wees, nie gedurende die hele verhoor aanwesig is nie, mag die hof, wanneer hy oor-

out the trial, the court may, upon being satisfied upon oath or by the return of the messenger that such person has been duly subpoenaed and that his reasonable expenses have been paid or offered to him, impose upon the said person a fine, not exceeding twenty-five pounds, for his default and in default of payment to imprisonment for a period not exceeding one month, whether or not such person is otherwise subject to the jurisdiction of the court.

(b) If any person so subpoenaed shall fail to appear or, unless duly excused, to remain in attendance throughout the trial the court may also, upon being satisfied as aforesaid and in case no lawful excuse for such failure shall seem to the court to exist, issue a warrant for his apprehension in order that he may be brought up to give his evidence and to be otherwise dealt with according to law, whether or not such person is otherwise subject to the jurisdiction of the court.

(c) The court may, on cause shown, remit the whole or any part of any fine or imprisonment which it may have imposed under this sub-section.

(d) The court may order the costs of any postponement or adjournment occasioned by the default of a witness or any portion of such costs to be paid out of any fine imposed upon such witness.

48. (1) Whenever a witness resides or is in a district other than that wherein the case is being heard, the court may, if it appears to be consistent with the ends of justice, upon the application of either party approve of such interrogatories as either party shall desire to have put to such witness and shall transmit the same, together with any further interrogatories framed by the court, to the court of the district within which such witness resides or is.

(2) The lastmentioned court shall thereupon subpoena such witness to appear and upon his appearance shall take his evidence in manner and form as if he were a witness in a case pending before that court, and shall put to the witness the said interrogatories and such other question as may seem to it necessary to obtain full and true answers to the interrogatories and shall record the evidence of the witness and shall transmit such record to the court in which such case is pending. The said record shall (subject to all lawful objections) be received as evidence in that case.

(3) Every witness so subpoenaed to appear shall be liable to the like penalties in case of non-attendance or failure to give evidence or to produce books, papers or documents as if he had been subpoenaed to give evidence in the court of the district in which he resides or is.

49. (1) The court may in any case which is pending before it, where it may be necessary or expedient and consistent with the ends of justice so to do, appoint a person to be a commissioner to take the evidence of any witness, whether within the Territory or elsewhere, upon the request of one of the parties to such case and after due notice to the other party.

(2) The person so appointed shall put to such witness such questions as have been transmitted to him on agreement between the parties, or otherwise shall allow the parties to examine such witness, and shall be permitted himself to examine such witness as if the witness were being examined in court, and shall record the evidence or cause it to be recorded, whereupon the evidence taken down shall be read over to the witness and shall be signed by him.

(3) The said record shall (subject to all lawful objections) be received as evidence in the case.

CHAPTER VIII.

Execution.

50. Any court which has jurisdiction to try any action against any party thereto shall have jurisdiction to issue against any party thereto any form of process in execution of its judgment in such action.

51. (1) A judgment shall become superannuated by the lapse of three years from the day on which it was pronounced, and execution against property may not thereafter be issued upon it; but it may be revived for the purposes of the issue of such execution on the application and at the expense of the judgment creditor, after due notice to the judgment debtor to show cause why it should not be revived either in the court in which judgment was pronounced or in any court having jurisdiction in respect of the judgment debtor.

tuig is op grond van 'n beëdigde verklaring, of as dit uit die opgaaft van die bode blyk, dat die betrokke persoon behoorlik gedagvaar is, en sy redelike onkoste aan hom betaal of aangebied is, hom weens sy versuim beboet met 'n som van hoogstens vyf-en-twintig pond, of by wanbetaling, gevangenisstraf op 'n maand, onverskillig of sodanige persoon origins aan die jurisdiksie van die hof onderwerp is.

(b) Wanneer iemand wat sodanig gedagvaar is, versuim om te verskyn, of sonder om behoorlik verskoon te wees, versuim om gedurende die hele sitting aanwesig te bly, mag die hof ook, nadat hy soos voormeld oortuig is, en as daar geen geldige rede vir die versuim skyn te wees nie, 'n las-brief vir sy gevangening uitreik, ten einde hom voor die hof te bring om getuie af te lê en om andersins volgens wet behandel te word, onverskillig of sodanige persoon andersins onderhewig is aan die jurisdiksie van die hof al dan nie.

(c) Die hof mag, as gegronde redes aangevoer word, 'n boete of gevangenisstraf onder hierdie sub-artikel opgelê, geheel of ten dele kwytstel.

(d) Die hof mag beveel dat die koste van enige uitstel of verdaging, as gevolg van die versuim van 'n getuie, geheel of ten dele betaal word uit enige boete aan sodanige getuie opgelê.

48. (1) Wanneer 'n getuie in 'n ander distrik as dié waarin die saak verhoor word, woon of is, mag die hof, as dit lyk of dit bestaanbaar is met die loop van justisie, op versoek van een van die partye sodanige vraagpunte goedkeur, waarop die betrokke party die getuie verhoor wil hê, en hulle dan, tesame met verdere vraagpunte deur die hof gestel, oormak aan die hof van die distrik waarin sodanige getuie woon of is.

(2) Die laasgenoemde hof moet daarop sodanige getuie dagvaar om te verskyn, en op sy verskyning moet die hof sy getuie afneem in dié wyse en vorm waarop getuies in 'n saak in daardie hof hangende ondervra word. Hy word dan die gemelde vraagpunte gevra, en sodanige ander vrae as nodig mag blyk vir die hof om volledige en ware antwoorde op die vraagpunte te verkry. Die verklaringe van die getuie word deur die hof opgeteken en aan die hof waarin die saak hangende is gestuur. Die gemelde verslag word, onderhewig aan alle wettige besware, as getuie in die saak opgeneem.

(3) Elke getuie wat op hierdie wyse gedagvaar word om te verskyn, is onderhewig aan dieselfde strafbepalings in geval van afwesigheid, of versuim om getuie te lewer, of boeke, papiere of dokumente te toon, asof hy gedagvaar was om getuie te gee in die hof van die distrik waarin hy woon of is.

49. (1) Die hof mag in enige saak wat voor hom ahangig is, wanneer dit nodig of wenslik en in die regsbelang is, iemand as kommissaris aanstel om die getuie van enige getuie af te neem, hetsy binne die Gebied of elders, op aansoek van een van die partye tot sodanige geding, en na behoorlike kennisgewing aan die ander party.

(2) Die persoon aldus aangestel moet aan sodanige getuies sodanige vrae stel as wat aan hom oorgestuur is as 'n gevolg van 'n ooreenkoms tussen die partye, of aan die partye verlot gee om sodanige getuie te ondervra, en is self bevoegd om sodanige getuie te ondervra, asof die getuie in 'n hof ondervra word. Hy moet die getuie in skrif stel, of laat stel, waarop die getuie wat afgeneem is aan die getuie voorgelees moet word, en dan deur hom onderteken moet word.

(3) Die gemelde verslag word (onderhewig aan alle wettige besware) as getuie in die saak opgeneem.

HOOFSTUK VIII.

Uitvoering van Vonnis.

50. Enige hof wat jurisdiksie het om enige geding te verhoor teen enige party daartoe, het jurisdiksie om teen enige party daartoe enige vorm van proses in uitvoering van sy vonnis in sodanige geding, uit te reik.

51. (1) 'n Vonnis verjaar na verloop van drie jaar vanaf die dag waarop dit gevel is, en daarna mag geen las-brief tot beslaglegging op goed uitgereik word nie. Sodanige vonnis mag egter vir die doel van uitreiking van sodanige las-brief op aansoek en op koste van die vonnis-skuldeiser hernu word, na behoorlike kennisgewing aan die vonnis-skuldenaar, waarin hy gevra word om redes aan te voer waarom dit nie hernu mag word nie, of in die hof waarin uitspraak gegee is, of in enige hof wat jurisdiksie het ten aansien van die vonnis-skuldenaar.

132.101

(2) The period of superannuation of a decree of civil imprisonment shall run from the date of the last payment made thereunder or, if no payment has been made thereunder, from the date of the decree, but it may be revived in the same manner as a judgment.

(3) A warrant of execution once issued shall remain of force until the judgment on account of which it was issued has been satisfied.

52. The court may, on good cause shown, stay or set aside any warrant of execution or arrest issued by such court.

53. Any person who has, either by cession or by operation of law, become entitled to the benefit of a judgment debt may, after notice to the judgment creditor and the judgment debtor, be substituted on the record for the judgment creditor and may obtain execution or process in aid in the manner provided for judgment creditors.

54. (1) Whenever a court gives judgment for the payment of money the amount shall be recoverable, in case of failure to pay the same forthwith or at the time or times and in the manner ordered by the court, by execution against the movable property, and, if there be not found sufficient movable property to satisfy the judgment, then against the immovable property of the party against whom such judgment has been given.

(2) Where it is required that immovable property subject to any claim ranking in priority to that of the judgment creditor be sold in execution, such property shall be sold only through the sheriff after process in aid to that end shall have been granted by the High Court.

55. In respect of any process of execution issued out of any court the following property shall be protected from seizure and shall not be attached or sold, to wit —

- (a) The necessary beds, bedding and wearing apparel of the person against whose property execution is levied and of his family;
- (b) the necessary furniture and household utensils in so far as the same do not exceed in value the sum of fifteen pounds;
- (c) the supply of food and drink in the house sufficient for the needs of such person and of his family during one month;
- (d) tools and implements of trade, and tools necessarily used in the cultivation of land, in so far as any such tools or implements do not exceed in value the sum of twenty pounds;
- (e) professional books, documents or instruments, necessarily used by such person in his profession, in so far as the same do not exceed in value the sum of twenty pounds;
- (f) such arms and ammunition as the person in respect of whose property execution has been issued is required by law, regulation or disciplinary order to have in his possession as part of his equipment.

56. (1) The messenger executing any process of execution against movable property may, by virtue of such process, also seize and take any money or bank notes, and may seize, take and sell in execution cheques, bills of exchange, promissory notes, bonds or securities for money belonging to any person against whom any such execution shall have been issued as aforesaid.

(2) The messenger may also hold any cheques, bills of exchange, promissory notes, bonds or securities for money which shall have been seized or taken, as security for the benefit of the execution creditor for the amount directed to be levied by the execution so far as it is still unsatisfied; and the execution creditor may, when the time of payment shall have arrived, sue in the name of the execution debtor, or in the name of any person in whose name the execution debtor might have sued, for the recovery of the sum secured or made payable thereby.

(3) The messenger may also under any process of execution against movable property attach and sell in execution the interest of the execution debtor in any movable property belonging to him and pledged or sold under a suspensive condition to a third person, and may also sell the interest of the execution debtor in property movable or immovable leased to the execution debtor or sold to him under any hire purchase contract or under a suspensive condition.

(2) Die verjaringstermyn van 'n bevel tot gyseling loop van die dag waarop die laaste betaling daaronder gemaak, of indien geen betaling gemaak is nie, van die datum van die bevel, maar dit mag op dieselfde wyse as 'n vonnis hernu word.

(3) 'n Lasbrief ter uitvoering wat uitgereik is, bly van krag, totdat aan die vonnis waarvoor dit uitgereik is, voldoen is.

52. Die hof mag, wanneer gegronde redes aangevoer word, enige lasbrief ter uitvoering van 'n vonnis of vir arres deur die hof uitgereik, opskort of nietig verklaar.

53. Enige persoon wat, hetsy deur sessie, hetsy kragtens die wet, geregtig word op die voorreg van 'n vonnis-vordering, mag, na kennisgewing aan die vonnis-skuldeiser en die vonnis-skuldenaar, op die rol in die plek van die vonnis-skuldeiser gestel word, en is geregtig op 'n lasbrief ter uitvoering of tot regshulp op die wyse voorsien vir vonnis-skuldeisers.

54. (1) Wanneer 'n hof vonnis vel vir die betaling van geld, is die toegewese bedrag in geval van nie-betaling daarvan, hetsy dadelik, hetsy op die tyd of tye en op die wyse deur die hof bepaal, verhaalbaar deur inbeslaglegging op die roerende eiendom en, in geval dit nie toereikend is om aan die vonnis te voldoen nie, op die vaste eiendom van die party teen wie die vonnis gevel is.

(2) Wanneer vaste eiendom onderwerp is aan 'n vordering wat voorrang het bo dié van die vonnis-skuldeiser, en verkoop moet word, mag dit alleen deur die balju verkoop word, nadat vir daardie doel regshulp deur die Hoogeregshof verleen is.

55. Ten aansien van enige stukke vir beslaglegging deur enige hof uitgereik, is die volgende goedere vrygestel van inbeslaglegging, en daar mag geen beslag op gelê word of dit mag nie verkoop word nie, naamlik: —

- (a) die nodige bedde, beddegoed en klere van die persoon op wie se goed beslag gelê is, en van sy familie;
- (b) die nodige meubels en huisgereedskap vir sover dit nie die waarde van vyftien pond te bowe gaan nie;
- (c) die voorraad voedsel en drank in die huis voldoende vir sodanige persoon en sy familie vir een maand;
- (d) ambagswerktuie en gereedskappe asook werktuie nodig vir grondbebouing vir sover sodanige werktuie en gereedskappe die waarde van twintig pond nie te bowe gaan nie;
- (e) professionele boeke, dokumente of instrumente noodsaaklik vir die beroep van die betrokke persoon, vir sover dit nie die waarde van twintig pond te bowe gaan nie;
- (f) sodanige wapens en ammunisie as die persoon teen wie beslag geneem word volgens wet, regulasie of dissiplinêre bevel, as uitrusting in sy besit moet hê.

56. (1) Die bode wat 'n lasbrief teen 'n losgoed uitvoer, mag kragtens sodanige lasbrief ook geld en banknote, asook tjeks, wissels, promesses, verbande of sekuriteite vir geld behorende aan die persoon teen wie beslag gelê word, in beslag neem en verkoop.

(2) Die bode mag ook enige tjeks, wissels, promesses, verbande of sekuriteite vir geld wat in beslag geneem is, as sekuriteit hou vir die vonnis-skuldeiser vir die bedrag wat deur uitvoering van die vonnis verhaal moet word, vir sover dit nog onvoldaan is. Die vonnis-skuldeiser mag, wanneer die tyd van betaling kom, in naam van die vonnis-skuldenaar dagvaar of in naam van enige persoon in wie se naam die vonnis-skuldenaar sou kon gedagvaar het, vir die verhaal van die som wat daardeur verseker of betaalbaar gemaak is.

(3) Die bode mag ook onder enige uitvoering van 'n vonnis teen roerende goed die belang van die vonnis-skuldenaar in enige roerende goed wat aan hom behoort en aan 'n derde persoon verpand is of onder 'n opskortende voorwaarde verkoop is, in beslag neem en geregtelik verkoop, en mag ook die belang wat die vonnis-skuldenaar het in roerende of onroerende eiendom aan hom verhuur of verkoop onder 'n huurkoop-kontrak of onder 'n opskortende voorwaarde.

(4) Whenever, if the sale had not been in execution, it would have been necessary for the execution debtor to endorse a document or to execute a cession in order to pass the property to a purchaser, the messenger may so endorse the document or execute the cession, as to any property sold by him in execution.

(5) The messenger may also, as to immovable property sold by him in execution, do anything necessary to effect registration of transfer. Anything done by the messenger under this sub-section or sub-section (4) shall be as valid and effectual as if he were the execution debtor.

(6) Where judgment is given against a member of a partnership or syndicate in an action in which he individually was plaintiff or defendant, his interest in the partnership or syndicate may be attached and sold in execution.

57. (1) Where any person not being the judgment debtor makes any claim to or in respect of any property attached or about to be attached in execution under the process of any court, or to the proceeds of such property sold in execution, his claim shall be adjudicated upon after issue of a summons in the manner provided by the rules.

(2) Upon the issue of such summons any action which may have been brought in any court whatsoever in respect of such claim shall be stayed and the court in which such action has been brought or any judge or judicial officer thereof may, on proof of the issue of such summons, order the party bringing such action to pay the costs of all the proceedings in such action after the issue of the aforesaid summons, and such action shall abide the result of the proceedings taken upon such summons.

58. A sale in execution by the messenger shall not, in the case of movable property after delivery thereof or in the case of immovable property after registration of transfer, be liable to be impeached as against a purchaser in good faith and without notice of any defect.

59. If, after a sale in execution, there remains any surplus in the hands of the messenger, it shall be liable to attachment for any other unsatisfied judgment debt.

60. (1) The court may order the attachment of any debt, salary or wages actually due to a judgment debtor by any other person residing, carrying on business or employed within the district to the amount necessary to satisfy the judgment and the costs of the proceedings for attachment, whether such judgment has been obtained in such court or in any other magistrate's court, and may order such other person (hereinafter called the "garnishee") to pay to the messenger of the court so much of the debt, salary or wages appearing at the time of making the order to be due and payable as may be sufficient to satisfy the said judgment and costs, and may enforce the order as if it were a judgment of the court. When any debt, salary or wages falls due to the judgment debtor on a Sunday or public holiday such debt, salary or wages shall be deemed to be due on the day preceding such Sunday or public holiday, for the purposes of this section.

(2) No such order in respect of salary or wages shall be granted unless the court is satisfied upon sworn information that sufficient means will, after satisfaction of the order, be left to the judgment debtor to maintain himself and those dependent on him.

(3) If, after any such order in respect of salary or wages has been granted, it is shown to the satisfaction of the court that sufficient means to maintain himself and those dependent upon him will not, after satisfaction of such order, be left to the judgment debtor, the court shall vary or set aside such order in such manner that such order will only affect the balance of such salary or wages over and above such sufficient means.

61. (1) Nothing in this Proclamation contained shall be construed as authorising the attachment of future or accruing earnings otherwise than with the consent in writing or in open court of the judgment debtor; but upon such consent being given the court, if satisfied upon sworn information that sufficient means will, after satisfaction of the order, be left to the judgment debtor to maintain himself and those dependent on him, may grant a garnishee order in respect of such earnings as if they were actually payable.

(2) Such an order may require the garnishee to pay periodically to the messenger definite amounts out of the earnings of the judgment debtor.

(4) Wanneer, as die verkoop nie uitvoering van 'n vonnis was nie, dit vir die vonnis-skuldenaar nodig sou gewees het om 'n dokument te endosseer, of 'n sessie te gee, ten einde die eiendom aan 'n koper oor te dra, mag die bode die dokument so endosseer of sessie gee ten aansien van enige eiendom deur hom in uitvoering van 'n vonnis verkoop.

(5) Die bode mag ook ten aansien van onroerende goed deur hom verkoop in uitvoering van 'n vonnis, die nodige stappe neem om registrasie van transport te bewerkstellig. Wat deur hom kragtens hierdie sub-artikel en van sub-artikel (4) verrig word, het volgens wet dieselfde krag, asof hy vonnis-skuldenaar was.

(6) Wanneer teen 'n lid van 'n vennootskap of sindikaat vonnis gevel is in 'n geding waarin hy afsonderlik eiser of verweerder was, kan sy belang in die vennootskap of die sindikaat in beslag geneem word en in uitvoering van die vonnis verkoop word.

57. (1) Wanneer 'n persoon, wat nie die vonnis-skuldenaar is nie, op of ten aansien van enige eiendom wat kragtens 'n lasbrief van enige hof in beslag geneem is of sal word, of op die oprings van goed by uitvoering van die vonnis verkoop, enige aanspraak doen, word oor sodanige eis beslis na uitreiking van 'n dagvaring op die wyse bepaal deur die reëls.

(2) Nadat sodanige dagvaring uitgereik is, moet enige geding wat in enige hof ingestel mag word ten aansien van sodanige eis geskors word, en die hof waarin sodanige geding ingestel is, of enige regter of regterlike amptenaar daarvan mag, nadat bewys van die uitreiking van die dagvaring gelewer is, die party wat sodanige geding ingestel het, beveel om die koste van al die verrigtinge in sodanige geding na die uitreiking van die gemelde lasbrief te betaal, en sodanige geding word aangehou in afwagting van die uitslag van die verrigtinge, waartoe sodanige dagvaring geleidelik het.

58. 'n Geregte verkoop deur die bode kan in die geval van roerende goed na aflewering daarvan en in die geval van onroerende goed na die registrasie van transport nie aangeval word ten aansien van 'n koper te goeder trou en sonder kennis van enige gebrek nie.

59. Enige oorskot van die oprings wat na die verkoop in die hande van die bode mag oorbly, mag vir ander onvoldane vonnisskulde in beslag geneem word.

60. (1) Die hof mag bevel gee tot inbeslagneming van 'n skuldvordering, salaris of arbeidsloon wat aan 'n vonnis-skuldenaar werklik verskuldig is deur enige ander persoon wat in die distrik woon, besigheid dryf of 'n diensbetrekking het, tot die bedrag nodig om die vonnis en die koste van die beslagproses te dek, onverskillig of die vonnis in sodanige hof of in 'n ander magistraatshof gevel is. Die hof mag sodanige ander persoon (hierinafter derde-skuldenaar genoem) gelas om die bode van die hof soveel van die skuld, salaris of arbeidsloon wat ten tye van die bevel blyk betaalbaar en opeisbaar te wees te betaal, as genoeg mag wees om die gemelde vonnis en koste te dek, en mag die bevel afdwing, asof dit 'n vonnis van die hof was. Wanneer enige skuldvordering, salaris of arbeidsloon op 'n Sondag of publieke vakansiedag aan die vonnis-skuldenaar betaalbaar is, word sodanige skuld, salaris of arbeidsloon beskou betaalbaar te wees op die dag wat die Sondag of publieke vakansiedag voorafgaan, vir die doeleindes van hierdie artikel.

(2) Geen sodanige bevel wat betref salaris of arbeidsloon word gegee nie, tensy die hof oortuig is na 'n beëdigde verklaring dat die vonnis-skuldenaar na voldoening aan die bevel genoegsame middele sal hê om homself en sy afhanklikes te onderhou.

(3) Wanneer na verlening van sodanige bevel betreffende salaris of arbeidsloon, genoeg bewys gebring word om die hof te oortuig dat vir die vonnis-skuldenaar na voldoening van sodanige vonnis geen genoegsame middele sal oorbly om homself en sy afhanklikes te onderhou nie, mag die hof die bevel so wysig of opskort dat dit alleen betrekking het op die saldo van sodanige salaris of werkloon bo die bedrag van sodanige genoegsame middele.

61. (1) Niks in hierdie Proklamasie bevat, mag so uitgelê word nie, as sou dit die inbeslagneming van toekomstige of olopemde verdienste met skriftelike toestemming of met toestemming in die openbare hof van die vonnis-skuldenaar wettig; maar as sodanige toestemming gegee word, mag die hof, as hy op grond van 'n beëdigde verklaring oortuig is dat die vonnis-skuldenaar na voldoening van die bevel genoegsame middele sal oor hê om homself en sy afhanklikes te onderhou, 'n skuldigbeslagorder uitreik ten aansien van sodanige verdienste, asof hulle werklik betaalbaar was.

(2) Sodanige bevel mag die derde-skuldenaar beveel om aan die bode op gesette tye uit die verdienste van die vonnis-skuldenaar bepaalde somme te betaal.

(3) The provisions of sub-section (3) of the last preceding section shall apply to any order made under this section only if the judgment debtor proves to the satisfaction of the court that, after he gave such consent as aforesaid his financial position changed substantially for the worse otherwise than by his own serious and wilful default.

62. (1) If the garnishee disputes that the debt sought to be attached is owing or accruing or alleges that it is subject to a set-off or belongs to or is subject to a claim by some third person, the court may determine the rights and liabilities of all the parties and may declare the claim of that third person to be barred, provided that the claim or value of the matter in dispute is otherwise within the jurisdiction of the court.

(2) If it be proved that such third person neither resides nor carries on business nor is employed within the Territory or the Union of South Africa and that he has a *prima facie* claim to the debt, the court shall not have jurisdiction under this section.

63. Payment made by or execution levied upon the garnishee under the provisions of this Proclamation shall be a valid discharge of the debt or amount of salary or wages due from him to the judgment debtor to the extent of the amount paid or levied.

64. Nothing in this Proclamation contained shall be construed as authorising the attachment of any debt, salary or wages or any moneys or property specially declared by any law not to be liable to attachment.

65. (1) The court may, upon the application of any judgment debtor and if convinced that the debtor is unable to satisfy the judgment in full at once, but is able to pay periodical instalments towards satisfaction of the judgment, suspend execution against that debtor in respect of any household furniture of the value of twenty-five pounds or less, or where such debtor carries on *bona fide* farming operations in respect of any draught animals of the value of one hundred pounds or less, when such draught animals are required for the cultivation of land (in addition to the goods mentioned in section *fifty-five*) for so long as the debtor continues to pay the debt by such instalments and at such periods as the court may fix: Provided that when so suspending execution the court may simultaneously pronounce against that debtor a decree of civil imprisonment which shall be suspended as long as the instalments are duly paid.

(2) Nothing in this section contained shall be construed as authorising the court to suspend the execution of a judgment upon goods subject to a hypothec for the judgment debt existing irrespective of attachment in executions.

66. Where an appeal has been noted or an application to rescind, correct or vary a judgment has been made, the court may direct either that the judgment shall be carried into execution or that execution thereof shall be suspended pending the decision upon the appeal or application. The direction shall be made upon such terms, if any, as the court may determine as to security for the due performance of any judgment which may be given upon the appeal or application.

CHAPTER IX.

Civil Imprisonment.

67. (1) If a judgment has remained unsatisfied during a period of seven clear days or if the judgment debtor has admitted in court or in writing or if it appears from the return of the messenger to any process of execution that the judgment debtor has not sufficient property liable to attachment in execution to satisfy the judgment debt and costs, the judgment creditor may summon the judgment debtor to show cause why the court should not make a decree of civil imprisonment against him.

(2) Such summons may be taken out either in the court wherein the original judgment was given or in the court of any district wherein the judgment debtor is for the time being residing, carrying on business or employed.

(3) Where it appears from the return of such summons that service was effected elsewhere than within the district of the court from which such summons was issued, the proceedings shall, unless the judgment debtor appears, be stayed until the court is satisfied that the judgment debtor has been paid or tendered the sum which would have been payable to him if he had been subpoenaed as a witness.

(3) Die bepalinge van sub-artikel (3) van die onmiddellik voorafgaande artikel is alleen dan van toepassing op enige bevel wat kragtens hierdie artikel verleen is, wanneer die vonnis-skuldenaar deur bewys die hof oortuig dat nadat hy sodanige toestemming, soos hierby vermeld, gegee het, sy geldelike toestand, sonder sy eie ernstige en opsetlike medewerking, aanmerklik slegter geword het.

62. (1) As die derde-skuldenaar ontken dat die skuld-vordering wat in beslag geneem moet word, skuldig of opkomend is, of as hy beweer dat die skuld aan skuldvergelyking onderhewig is, of aan 'n derde persoon toekom, of dat 'n derde persoon reg daarop het, dan mag die hof die regte en verpligtinge van al die partye vasstel, en die reg van bedoelde derde persoon as vervalde verklaar; met die verstande dat die eis of waarde van die saak in geskil origns binne die jurisdiksie van die hof is.

(2) As dit bewys word dat sodanige derde persoon nie in die Gebied of in die Unie van Suid-Afrika woon of besigheid dryf nie, en dat hy 'n *prima facie* reg het op die skuld, het die hof geen jurisdiksie onder hierdie artikel nie.

63. Betaling gemaak deur, of beslaglegging op die derde-skuldenaar onder die bepalinge van hierdie Proklamasie, is 'n geldige betaling van die skuld of bedrag van salaris of loon deur hom aan die vonnis-skuldenaar verskuldig, ten bedrae van die som wat betaal of waarop beslag gelê is.

64. Niks in hierdie Proklamasie bevat mag uitgelê word nie, as sou dit die inbeslagneming van enige skuld, salaris of loon of enige gelde of goed wat kragtens enige wetsbepaling uitdruklik van beslagneming vrygestel is, wettig.

65. (1) Die hof mag, op aansoek van 'n vonnis-skuldenaar, en mits die hof oortuig is dat die skuldenaar nie by magte is om die vonnisskuld dadelik, ten volle te vereffen nie, maar wel in staat is om dit in paaie te betaal, beslaglegging op die huismeubels van die skuldenaar tot die waarde van vyf-en-twintig pond of minder, of, waar sodanige skuldenaar 'n *bona fide* boer is, beslaglegging op trekkere tot die waarde van honderd pond of minder, waar sodanige trekkere nodig is vir die bebouing van die grond, (behalwe die goed in artikel *vyf-en-veertig* genoem), skors vir solank as die skuldenaar met die betaling van sodanige paaie, en op sodanige tydstipie as die hof mag vasstel, voortgaan: Met die verstande dat die hof tegelykertyd met die skorsing van die beslaglegging 'n bevel van siviele gyseling mag verleen wat opgekort sal bly solank die paaie behoorlik betaal word.

(2) Die hof het geen bevoegdheid, om kragtens hierdie artikel die uitvoering van 'n vonnis te skors op goed, wat met 'n verband vir die vonnisskuld beswaar is, wat onafhanklik van geregtelike beslagnames bestaan nie.

66. Ingeval appèl aangeteken is, of aansoek gedoen is om 'n vonnis op 'n sy te sit, te verbeter of te wysig, mag die hof of bevel dat die vonnis uitgevoer word, of dat hangende die beslissing op die appèl of die aansoek, die uitvoering geskors word. Die bevel moet gegee word met sodanige voorwaardes, indien enige, as die hof mag vasstel, wat betref sekuriteit vir die behoorlike nakoming van enige vonnis wat op appèl of aansoek gevel mag word.

HOOFSTUK IX.

Siviele Gyseling.

67. (1) As 'n vonnis gedurende 'n tydperk van sewe volle dae onvoldaan gebly het, of as dit blyk uit die relaas van die bode op 'n lasbrief ter uitvoering, dat die vonnis-skuldenaar nie genoeg eiendom het wat in beslag geneem kan word, om aan die vonnis-skuld en die koste te voldoen nie, dan mag die vonnis-skuldeiser by dagvaring die vonnis-skuldenaar oproep, om redes aan te toon waarom die hof geen bevel tot gyseling teen hom sou verleen nie.

(2) Sodanige dagvaring mag of in die hof waarin die oorspronklike vonnis gegee is, of in die hof van die distrik waarin die vonnis-skuldenaar op die oomblik woon, besigheid dryf of 'n diensbetrekking het, uitgeneem word.

(3) Wanneer uit die opgaaf op sodanige dagvaring blyk dat die diening op 'n plek buite die distrik van die hof waardeur die dagvaring uitgereik is, gemaak is, word alle verdere verrigtinge gestaak, totdat die hof oortuig is dat aan die vonnis-skuldenaar die som betaal of aangebied is, wat aan hom betaalbaar sou gewees het, as hy as getuie gedagvaar was.

68. The court may, upon the return of the summons and whether the judgment debtor appears or not, make a decree of civil imprisonment against such judgment debtor and authorise the issue of a warrant for his arrest and detention in any gaol named in such warrant: Provided that —

- (1) the court may at any time suspend the execution of or altogether discharge any such decree or warrant upon such terms as may appear to the court to be fair and reasonable;
- (2) no such decree shall be pronounced and no such warrant shall be issued if the judgment debtor prove to the satisfaction of the court that he has no means of satisfying the judgment debt either wholly or in part and either out of present means or out of future earnings or income, unless it appears that the judgment debtor either —
 - (a) has wilfully made away with any property in order to defeat or delay payment of the judgment debt; or
 - (b) is able to earn sufficient to satisfy the judgment debt by instalments or otherwise to settle the same but in order to defeat or delay payment of the judgment debt wilfully refuses to do so; or
 - (c) is squandering his money or is apparently living beyond his means;
- (3) in computing the degree to which the debtor can satisfy such debt the court shall take into consideration the conditions under which he obtains his income and the amount of his necessary expenses and those of the persons dependent upon him.

69. When, on the hearing of a summons for civil imprisonment, the judgment debtor satisfies the court that he has property capable of being attached in execution by the messenger and sufficient to satisfy the judgment debt and costs, the court shall either dismiss the summons or adjourn the further hearing thereof until the said property has been sold in execution.

70. The period of civil imprisonment shall be decided by the court, but shall not in any case exceed three months, and, where the judgment debt and costs, so far as the same are unsatisfied, amount to less than five pounds, shall not exceed fourteen days.

71. (1) Unless it appears to the court upon the hearing of any proceedings for civil imprisonment that the debtor has, within forty-eight hours after having notice of the judgment upon which such proceedings are founded, made to the judgment creditor an offer to satisfy the debt by instalments which the court judges to be reasonable, or notified the creditor that he is unable to make an offer and the court finds this to be true, the court may order the debtor to pay the costs of such proceedings; but if it appears that the judgment creditor has refused such offer, the court may order the creditor to pay those costs.

(2) Upon any proceedings for the discharge or suspension of any decree, warrant or order for civil imprisonment, the court may order the judgment debtor to pay the costs of such proceedings, unless it appear that the proceedings were due to some fault or omission on the part of the judgment creditor.

(3) Nothing in this section contained shall be construed as depriving the court of its discretion to make such order as to costs as may be just.

72. The keeper of any prison or gaol thereto authorised by warrant or order shall receive into his custody and detain in such gaol the judgment debtor named in such warrant or order in accordance with the tenor of such warrant and the provisions of Chapter III of the Prisons and Reformatories Act, 1911, as applied to this Territory by Proclamations No. 6 of 1916 and No. 20 of 1922; but, notwithstanding the provisions of section *fourteen* of that Act, it shall be sufficient for him to keep the certified copy of the warrant or order of civil imprisonment, and it shall not be necessary for him to keep the warrant or order itself throughout the period during which the judgment debtor is in his custody.

73. The keeper of the gaol shall forthwith discharge the judgment debtor from imprisonment —

- (1) upon expiry of the time for which such judgment debtor was imprisoned;
- (2) when the judgment creditor gives his written consent to such discharge;

68. Die hof mag by die relaas van die dagvaring, en onverskillig of die vonnis-skuldenaar verskyn al dan nie, 'n bevel tot gyseling teen die vonnis-skuldenaar gee, asook magtiging tot uitreiking van 'n lasbrief tot arres en gevangenhouding in 'n gevangenis wat in die lasbrief genoem word: Met die verstande:—

- (1) dat die hof te eniger tyd op sodanige voorwaardes as hy billik mag vind, die uitvoering van sodanige bevel of lasbrief mag skors, of die bevel of lasbrief geheel en al te niet mag doen;
- (2) dat geen sodanige bevel of lasbrief onderskeidelik verleen of uitgereik mag word nie, as die vonnis-skuldenaar genoegsame bewys bring om die hof te oortuig dat hy geen middele besit om die vonnis-skuld te betaal nie, hetsy geheel of ten dele, en hetsy uit sy teenwoordige middele of uit sy toekomstige verdienste of inkomste, tensy blyk dat die vonnis-skuldenaar of —
 - (a) opsetlik sy goedere weggemaak het, ten einde die betaling van die vonnis-skuld te verydel of te vertraag; of
 - (b) in staat is om genoeg te verdien om die vonnis-skuld in paaiemente of andersins te betaal, maar opsetlik weier om dit te doen, ten einde die betaling van die vonnis-skuld te ontduik of te vertraag; of
 - (c) sy geld verkwis, of klaarblyklik bo sy inkomste lewe;
- (3) dat by die berekening van die graad tot welke die skuldenaar sodanige skuld kan vereffen, die hof agslaan op die omstandighede waaronder hy sy inkomste verkry, asook die bedrag van sy noodsaaklike uitgawes en dié van sy afhanklikes.

69. Wanneer die vonnis-skuldenaar by die behandeling van 'n dagvaring tot siviele gyseling, genoegsame bewys lewer om die hof te oortuig dat hy goedere besit wat deur die bode in beslag geneem kan word, en genoegsaam is om die vonnis-skuld met koste te dek, mag die hof of die dagvaring ter sy sit, of die verdere behandeling daarvan uitstel, totdat die bedoelde goedere geregtelik verkoop is.

70. Die tydperk van die siviele gyseling word deur die hof bepaal, maar mag in geen geval drie maande te bowe gaan nie, en wanneer die vonnis-skuld en koste, vir sover nog onbetaal, minder as vyf pond bedra, mag die siviele gyseling nie langer as veertien dae te bowe gaan nie.

71. (1) Tensy dit by die behandeling van 'n saak vir siviele gyseling in die hof blyk dat die skuldenaar binne ag-en-veertig uur, nadat hy kennis gekry het van die vonnis waarop die saak gegrond is, aan die skuldeiser aangebied het om die skuldvordering in paaiemente te betaal, en die hof die aanbod redelik vind, of aan die skuldeiser kennis gegee het dat hy nie in staat is om 'n aanbod te maak nie, en die hof vind dat dit die geval is, dan mag die hof gelas dat die skuldenaar die koste van sodanige verrigtinge betaal. As dit daarenteen blyk dat die vonnis-skuldeiser die aanbod geweier het, mag die hof die skuldeiser bevel om die koste te betaal.

(2) In sake betreffende die opheffing of skorsing van 'n bevel, lasbrief of bevel tot gyseling, mag die hof gelas dat die vonnis-skuldenaar die koste van sodanige verrigtinge betaal, tensy dit blyk dat die verrigtinge te wyte was aan enige fout of versuim aan die kant van die vonnis-skuldeiser.

(3) Niks in hierdie artikel bevat mag uitgelê word nie, as sou dit die hof van sy diskresie beroof om sodanige bevel aangaande koste te gee as billik mag wees.

72. Die sipier van 'n gevangenis of tronk wat daartoe gemagtig is deur 'n lasbrief of bevel, moet die vonnis-skuldenaar in die lasbrief genoem, in bewaring neem en in die gevangenis gevangengehou ooreenkomstig die inhoud van die lasbrief en die voorskrifte van Hoofstuk III van die "Wet op de Gevangenis en Verbetergestichten 1911", soos in hierdie Gebied toegepas deur Proklamasies No. 6 van 1916 en No. 20 van 1922; maar niesteenstaande die bepalinge van artikel *veertien* van genoemde wet, is dit voldoende vir hom om 'n gesertifiseerde afskrif van die lasbrief of bevel tot gyseling te hou, en dit is nie nodig vir hom om die lasbrief of bevel self gedurende die hele tydperk van gevangenhouding gedurende welke die vonnis-skuldenaar in sy bewaring is, te hou nie.

73. Die sipier van die gevangenis moet die vonnis-skuldenaar dadelik uit die gyseling ontslaan —

- (1) by afloop van die termyn van gyseling;
- (2) wanneer die vonnis-skuldeiser skriftelik sy toestemming gee tot sodanige ontslag;

- (3) when the judgment creditor or the messenger certifies in writing that the amount of the judgment debt and costs mentioned in the warrant and of any maintenance money that may have been paid by him for the unexpired portion of the period of imprisonment has been satisfied; and upon such satisfaction the judgment creditor or the messenger shall so certify to the said keeper;
- (4) when such amount is paid to the said keeper by or on behalf of the judgment debtor;
- (5) upon an order given by a judge of the High Court or by any judicial officer of the district where the decree of civil imprisonment was pronounced, against the judgment debtor or of the district wherein the gaol is; or
- (6) in the case provided for by section *nineteen* of the Prisons and Reformatories Act, 1911, applied as aforesaid.

74. No judgment debtor who has been once lawfully discharged from imprisonment (except a debtor discharged by an order of court suspending such imprisonment) shall ever again be liable to be arrested for the same debt or cause of action; but no arrest or imprisonment or discharge therefrom shall be deemed to be a satisfaction of the judgment debt, or of any part thereof, so as to prevent the judgment creditor from having further execution against the property of the said debtor.

75. The court of any district wherein a judgment debtor is arrested shall have the same jurisdiction as the court from which the warrant was issued to suspend such warrant and may cancel or vary any order or suspension made by itself; but such first mentioned court may not discharge altogether any warrant issued out of any court.

CHAPTER X.

Costs.

76. (1) The stamps, fees, costs and charges in connection with any civil proceedings in magistrates' courts shall as between party and party, be payable in accordance with the scales prescribed by the rules.

(2) As between attorney and client, the same scales shall apply; but the clerk of the court may in his discretion (subject to the review hereinafter mentioned) allow, at rates based so far as may be upon such scales, additional costs and charges for services reasonably performed by the attorney at the request of the client for which no remuneration is prescribed as between party and party.

(3) Payment of costs awarded by the court (otherwise than by a judgment in default of the defendant's appearance to defend or on the defendant's consent to judgment before the time for such appearance has expired) may not be enforced until they have been taxed by the clerk of the court.

(4) Any person who is liable to pay or who is sued for costs of any proceedings in a court otherwise than under an award by the court or under a special agreement may require that those costs shall be taxed by the clerk of the court as between attorney and client; and thereupon any action for the recovery of those costs shall be stayed pending the taxation.

77. The costs of and incident to a taxation in terms of the last preceding section shall be borne, if not more than one-sixth of such costs is disallowed on taxation, by the person requiring the taxation and, if more than one-sixth is so disallowed, by the person claiming the costs.

78. Taxation by the clerk of the court shall be subject to review free of charge by a judicial officer of the district, and the decision of such judicial officer may at any time within one month thereafter be brought in review before a judge of the court of appeal.

CHAPTER XI.

Appeal and Review.

79. No appeal shall lie from the decision of a court if, before the hearing is commenced, the parties lodge with the court an agreement in writing that the decision of the court shall be final.

80. Subject to the provisions of the last preceding section, a party to any civil suit or proceeding in a court may appeal to the High Court against:—

- (a) any judgment of the nature described in section *forty-five*;

- (3) wanneer die vonnis-skuldeiser of die bode skriftelik verklaar dat die bedrag van die vonnis-skuld met die koste genoem in die lasbrief, en enige onderhoudsgeld wat deur hom betaal mag wees vir die tydperk van die gyseling wat nog nie verstreke is nie, betaal is, en as sodanige betaling gemaak is, moet die vonnis-skuldeiser of die bode sodanige verklaring aan die sipier afgee;
- (4) wanneer sodanige bedrag aan die voormelde sipier betaal is deur of in naam van die vonnis-skuldenaar;
- (5) op 'n bevel gegee deur die regter van die Hooggeregshof of deur enige regterlike amptenaar van die distrik waarin die bevel vir siviele gyseling teen die vonnis-skuldenaar gegee is, of van die distrik waarin die gevangenis is; of
- (6) in die geval bepaal deur artikel *negentien* van die "Wet op de Gevangnissen en Verbetergestichten 1911", toeges, soos voormeld.

74. Geen vonnis-skuldenaar wat eenkeer wettig uit die gyseling ontslaan is (behalwe 'n skuldenaar wat ontslaan is op grond van 'n bevel van die hof waardeur die gyseling geskors is) mag ooit weer weens dieselfde skuld of skuld-oorsaak gearrester word nie. Geen arres of in gyselingstelling of ontslag uit die gyseling word beskou as 'n voltooiing van die vonnis-skuld, of van enige deel daarvan nie, en belet die vonnis-skuldeiser nie om verder beslag op die goedere van die vonnis-skuldenaar te lê nie.

75. Die hof van enige distrik waarin 'n vonnis-skuldenaar gearrester is, het dieselfde bevoegdheid as die hof waarin die lasbrief uitgereik is, om sodanige lasbrief te skors, en mag sy eie bevel van skorsing herroep of wysig; maar sodanige eersgenoemde hof is nie bevoeg om enige lasbrief wat deur enige ander hof uitgereik is, geheel en al ter sy te sit nie.

HOOFSTUK X.

Koste.

76. (1) Die seëls, fooie, koste en onkoste in verband met enige siviele sake in magistratshowe word tussen party en party bereken volgens die tariewe voorgeskryf in die reëls.

(2) Dieselfde tariewe geld tussen prokureur en kliënt, maar die klerk van die hof mag na sy eie goeëdunke (onderhewig aan die hersiening hierlater genoem), en so ver doenlik op die grondslag van sodanige tariewe gebaseer, tariewe, addisionele koste en onkoste toestaan vir dienste redelikerwys deur die prokureur op versoek van die kliënt verrig, waarvoor geen beloning as tussen party en party vasgestel is nie.

(3) Betaling van koste deur die hof toegewys (anders as in 'n verstekvonnis as gevolg van nie-verskyning van die verweerder om te verdedig, of deur verweerder se toestemming tot vonnis voor die termyn van verskyning verstreke is), mag nie gevorder word nie, voordat die koste deur die klerk van die hof getakseer is nie.

(4) Enige persoon wat aanspreeklik is vir die betaling van, of gedagvaar is vir die koste van enige verrigtinge in 'n hof, anders as ingevolge 'n beslissing van die hof of 'n besonder ooreenkoms, mag verlang dat die koste deur die klerk van die hof, soos tussen prokureur en kliënt, getakseer moet word; en alle proses tot verhaal van sodanige koste moet dan, hangende die taksering, geskors word.

77. Die koste van en voortvloeiende uit sodanige taksering moet, as nie meer as een-sesde van sodanige koste getakseer word nie, deur die persoon wat die taksering verlang het, gedra word, en as meer as een-sesde afgetakseer word, moet die persoon wat die koste eis, dit dra.

78. Taksering deur die klerk van die hof is onderhewig aan kostelose hersiening deur 'n regterlike amptenaar van die distrik. Die beslissing van sodanige regterlike amptenaar mag te eniger tyd binne een maand daarna in hersiening gebring word voor 'n regter van die hof van appèl.

HOOFSTUK XI.

Appèl en Hersiening.

79. Daar is geen reg van appèl op 'n beslissing van 'n hof nie, as voor die verhoor begin is, die partye by die hof 'n skriftelike ooreenkoms indien, waarin hulle verklaar dat die beslissing van die hof finaal sal wees.

80. Onderhewig aan die bepalinge van die onmiddellik voorafgaande artikel, mag 'n party tot enige siviele geding of verrigting in 'n hof, appèl aanteken na die Hooggeregshof teen:—

- (a) Enige vonnis van die aard genoem in artikel *vyf-er-veertig*;

- (b) any rule or order made in such suit or proceeding and having the effect of a final and definitive sentence, including any order as to costs;
- (c) any decision overruling an exception, when the parties concerned consent to such an appeal before proceeding further in an action or when it is appealed from in conjunction with the principal case, or when it includes an order as to costs.

81. Every party so appealing shall do so within the period and in the manner prescribed by the rules; but the court of appeal may in any case extend such period.

82. A party shall not lose the right to appeal through satisfying or offering to satisfy the judgment in respect of which he appeals or any part thereof or by accepting any benefit from such judgment, decree or order.

83. (1) The respondent to an appeal may by notice in writing abandon the whole or any part of the judgment against which appeal is noted.

(2) Where the party so abandoning was the plaintiff, or applicant, judgment in respect of the part abandoned shall be entered for the defendant or respondent with costs.

(3) Where the party so abandoning was the defendant or respondent, judgment in respect of the part abandoned shall be entered for the plaintiff or applicant in terms of the claim in the summons or application.

(4) A judgment so entered shall have the same effect in all respects as if it had been the judgment originally pronounced by the court in the action or matter.

(5) This section shall not apply to any action for affiliation, defamation or seduction.

84. The court of appeal may —

- (a) confirm, vary or reverse the judgment appealed from, as justice may require;
- (b) if the record does not furnish sufficient evidence or information for the determination of the appeal, remit the matter to the court from which the appeal is brought, with instructions in regard to the taking of further evidence or the setting out of further information;
- (c) order the parties or either of them to produce at some convenient time in the court of appeal such further proof as shall to it seem necessary or desirable; or
- (d) take any other course which may lead to the just, speedy and as much as may be inexpensive settlement of the case; and
- (e) make such order as to costs as justice may require.

85. The judgment of the court of appeal shall be recorded in the court appealed from, and may be enforced as if it had been given in such lastmentioned court.

PART III. — CRIMINAL MATTERS.

CHAPTER XII.

Criminal Jurisdiction.

86. The court shall have jurisdiction over all offences except treason, murder and rape.

87. (1) Subject to the provisions of the last preceding section, any person charged with the offence committed within any district may be tried by the court of that district.

(2) When any person is charged with any offence —

- (a) committed within the distance of two miles beyond the boundary of the district; or
- (b) committed in or upon any vessel or vehicle employed on a voyage or journey any part whereof was performed within the distance of two miles of the district; or
- (c) begun or completed within the district;

such person may, be tried by the court of the district as if such person had been charged with an offence committed within the district.

(3) Where it is uncertain in which of several jurisdictions an offence has been committed, it may be tried in any of such jurisdictions.

(b) Enige reël of bevel in sodanige geding of verrigting gegee wat die uitwerking het van 'n finale en besliste vonnis met insluiting van 'n bevel betreffende koste

(c) enige beslissing waardeur 'n eksepsie afgewys word wanneer die betrokke partye tot sodanige appèl toestem voor hulle verder met 'n geding aangaan, of wanneer teen die beslissing geappelleer word in verband met die hoofsaak, of wanneer dit 'n bevel aangaande koste insluit.

81. Elke party wat appèl aanteken moet dit doen binne die tydperk en in die wyse soos voorgeskryf in die reëls; maar die hof van appèl mag in enige geval sodanige tydperk verleng.

82. 'n Party verloor sy reg van appèl nie deur die voldoening of deur die aanbod tot voldoening van die vonnis ten aansien waarvan hy appelleer, of enige deel daarvan of deur enige voordeel uit sodanige vonnis, dekreet of bevel aan te neem, nie.

83. (1) Die respondent in 'n appèlsaak mag deur skriftelike kennisgewing van die hele of enige deel van die vonnis waarteen appèl aangeteken is, afstand doen.

(2) Wanneer die party wat aldus afstand doen, die eiser of applikant is, word ten opsigte van die gedeelte wat afgestaan is, vonnis met koste ten gunste van die verweerder of respondent gegee.

(3) Wanneer die party wat aldus afstand doen, die verweerder of respondent is, word ten opsigte van die gedeelte wat afgestaan is, ten gunste van die eiser of applikant vonnis met koste gevel, ooreenkomstig die eis in die dagwaring of aansoek.

(4) 'n Sodanige gevelde vonnis het dieselfde uitwerking in alle opsigte, asof dit die oorspronklike vonnis was, wat deur die hof in die saak of geding gevel was.

(5) Hierdie artikel het geen toepassing op enige geding vir die vasstelling van vaderskap, laster, of seduksie nie.

84. Die hof van appèl mag —

- (a) die vonnis waarop geappelleer is, bekrachtig, wysig of te niet doen, al na die billikheid dit vereis;
- (b) as die stukke nie voldoende getuienis of informasie verstrek vir die beslissing van die appèl nie, die saak terugverwys na die hof wat die vonnis, waarop geappelleer is, gevel het, met instruksies om verder getuienis te hoor of nader informasie te verstrek;
- (c) beveel dat die partye, of een van die partye, op een of ander geskikte tyd in die hof van appèl sodanige verdere bewys lewer, as die hof nodig of wenslik mag beskou; of
- (d) enige ander weg inslaan wat mag lei tot die regverdige, spoedige en so goedkoop moontlike skikking van die saak; en
- (e) sodanige bevel betreffende die koste gee, as billik mag wees.

85. Die vonnis van die hof van appèl word in die hof vanwaar geappelleer is, genotuleer en mag uitgevoer word, asof dit in laasgenoemde hof gegee was.

AFDELING III. — STRAFREGTERLIKE SAKE.

HOOFSTUK XII.

Strafregterlike Jurisdiksie.

86. Die hof het die jurisdiksie oor alle oortredinge behalwe hoogverraad, moord en verkragting.

87. (1) Onderhewig aan die voorsieninge van die onmiddellik voorafgaande artikel, kan enige persoon wat beskuldig staan van 'n oortreding wat binne enige distrik begaan is, deur die hof van daardie distrik verhoor word.

(2) Iemand wat beskuldig staan van 'n oortreding —

- (a) gepleeg binne die afstand van twee myl oor die grens van die distrik; of
- (b) gepleeg in of op 'n vaar- of voertuig gedurende 'n reis, waarvan enige gedeelte binne die afstand van twee myl van die distrik afgelê is; of
- (c) begin of voltooi binne die distrik,

kan deur die hof van die distrik verhoor word, asof sodanige persoon van 'n oortreding beskuldig was wat binne die distrik gepleeg is.

(3) Ingeval dit onseker is in welke van verskeie regsgebiede 'n oortreding gepleeg is, kan dit in enigen van sodanige regsgebiede verhoor word.

(4) A person charged with any offence may be tried by the court of any district wherein any act or omission or event which is an element of the offence took place.

(5) A person charged with theft of any property or with obtaining by any offence any property or with any offence which involves the receiving of any property by him may also be tried by the court of any district wherein he has or had any part of the property in his possession.

(6) A person charged with kidnapping, child-stealing or abduction may be tried by the court of the district in which this took place or of any district through or in which he conveyed or concealed or detained the person kidnapped, stolen or abducted.

(7) Where by any special provision of law a magistrate's court has jurisdiction in respect of any offence committed beyond the local limits of the district, such court shall not be deprived of such jurisdiction by any of the provisions of this section.

(8) Notwithstanding anything contained in this section the Attorney-General may, with the consent of the person charged with having committed any offence, cause such person to be tried for such offence in any court.

88. The jurisdiction of the periodical court in criminal matters shall be subject, *mutatis mutandis*, to the provisions contained in section *twenty-six* and in sub-section (3) of section *thirty-four*.

89. (1) Subject to the provisions of this Proclamation and of Chapters VI and VII of the Prisons and Reformatories Act, 1911, applied as aforesaid, the court may punish any person convicted of any offences in the following manner and (save as specially provided by this Proclamation or any other law), in no other or more severe manner, that is to say, by —

- (a) imprisonment for a period not exceeding six months with or without hard labour and with or without solitary confinement and spare diet;
- (b) fine not exceeding fifty pounds or in default of payment such period of imprisonment as aforesaid;
- (c) whipping, subject to the provisions hereinafter contained, not exceeding fifteen strokes.

(2) Any person convicted of any offence may be punished by both such fine and such imprisonment or by both such imprisonment and such whipping, but the offender shall not for the same offence be punished both by fine and whipping.

(3) The punishment of whipping shall only be imposed—

- (a) in the case of a first conviction for —
 - (i) assault of an aggravated or indecent nature or with intent to do grievous bodily harm or with intent to commit any other offence;
 - (ii) culpable homicide, robbery, bestiality or an act of gross indecency committed by one male person with another or any attempt to commit any such offence; or
 - (iii) any statutory offence for which whipping may be imposed as a punishment, unless it is expressly provided that whipping shall only be imposed as a punishment on a second or subsequent conviction;
- (b) in the case of a second or subsequent conviction for an offence committed within a period of three years after the former conviction;

and every punishment of whipping shall be carried out privately in a convict prison, gaol or lock-up.

(4) Where any law provides that for any offence there may be imposed any forfeiture or confiscation, the court before which such offence is prosecuted may impose such forfeiture or confiscation in addition to any other penalty.

(5) Nothing in this section contained shall be construed as authorising a court to impose for any offence a punishment greater than may by law be imposed for such offence or as preventing a court from imposing, as often as it is specially authorised by any law so to do, any other or more severe punishment than the punishments mentioned in sub-section (1) of this section.

(4) Iemand wat van 'n oortreding beskuldig is, kan deur die hof van enige distrik verhoor word waarin enige handeling of nalating of voorval wat 'n bestanddeel van die oortreding vorm, plaasgevind het.

(5) Iemand wat beskuldig staan van diefstal van enige goed, of van goed deur middel van 'n oortreding verkry, of van enige oortreding wat die ontvang van enige goed deur hom insluit, kan ook deur die hof van enige distrik verhoor word, waarin hy enige deel van die goed in sy besit het of gehad het.

(6) Iemand wat beskuldig staan van wegvoering, kinderdiefstal of ontvoering kan deur die hof van die distrik verhoor word, waarin die oortreding gepleeg is of deur die hof van enige distrik waardeur of waarin hy die weggevoerde, gesteelde of ontvoerde persoon vervoer, verberg of gevangegehou het.

(7) Waar ingevolge enige spesiale wetsbepaling 'n magistratshof jurisdiksie het ten aansien van 'n oortreding gepleeg buite die plaaslike grense van die distrik, word sodanige jurisdiksie deur engeen van die bepalings van hierdie artikel nie van sodanige hof ontnem nie.

(8) Nieteenstaande enigiets in hierdie artikel bevat kan die Prokureur-Generaal, met die toestemming van die persoon wat beskuldig staan dat hy enige oortreding gepleeg het, veroorsaak dat sodanige persoon vir sodanige oortreding deur enige hof verhoor word.

88. Die jurisdiksie van die periodieke hof in strafregterlike sake is *mutatis mutandis* onderhewig aan die bepalings van artikel *sewe-en-twintig* en onderartikel (3) van artikel *vier-en-dertig*.

89. (1) Behoudens die bepalings van hierdie Proklamasie en van Hoofstukke VI en VII van die "Wet op de Gevangenis en Verbetergestichten 1911", soos voormeld toegepas, kan die hof enige persoon wat aan enige oortreding skuldig bevind is, op die volgende wyse straf en (vir sover deur hierdie Proklamasie of enige ander wet nie uitdruklik anders bepaal is nie) op geen ander of swaarder wyse, naamlik met

- (a) gevangenisstraf van hoogstens ses maande met of sonder harde arbeid en met of sonder eensame opsluiting en skrale kos;
- (b) boete van hoogstens vyftig pond of, by wanbetaling, met sodanige gevangenisstraf soos voormeld;
- (c) lyfstraf, met inagneming van die bepalings, hierinlater bevat, van hoogstens vyftien slae.

(2) Enige persoon wat weens enige oortreding skuldig bevind is, kan met beide sodanige boete en gevangenisstraf of met beide sodanige gevangenisstraf en lyfstraf gestraf word, maar nie met beide boete en lyfstraf vir dieselfde oortreding nie.

(3) Lyfstraf kan alleenlik opgelê word —

- (a) in die geval van 'n eerste skuldigbevinding aan —
 - (i) aanranding van 'n sware of onsedelike aard of met die oogmerk om ernstige liggaamlike leed aan te doen of met die oogmerk om enige ander oortreding te pleeg;
 - (ii) strafbare manslag, roof, bestialiteit of 'n daad van growwe onsedelikheid gepleeg deur een manlike persoon met 'n ander of enige poging om sodanige oortreding te pleeg; of
 - (iii) enige statutêre oortreding waarvoor lyfstraf opgelê kan word, tensy uitdruklik bepaal is dat lyfstraf alleenlik opgelê kan word ingeval van 'n tweede of verdere skuldigbevinding.
- (b) in die geval van 'n tweede of verdere skuldigbevinding aan 'n oortreding gepleeg binne 'n tydperk van drie jare na die vorige skuldigbevinding;

en elke lyfstraf moet in 'n bandietegevangenis, tronk of hulp-tronk privaat toegedien word.

(4) Waar enige wet voorsien dat weens enige oortreding verbeurdverklaring of konfiskasie uitgespreek kan word, kan die hof wat die oortreding vervolgt, sodanige verbeurdverklaring of konfiskasie uitspreek, afgesien van enige ander straf.

(5) Niks in hierdie artikel bevat mag uitgelê word nie, as sou dit 'n hof bevoegdheid verleen om weens enige oortreding 'n swaarder straf op te lê as volgens wet vir sodanige oortreding opgelê mag word, of as sou dit 'n hof belet om, so dikwels as dit deur enige wet spesiaal daartoe gemagtig word, enige ander of swaarder straf op te lê as die strawwe in sub-artikel (1) van hierdie artikel genoem.

90. When in the course of any trial it appears that the offence under trial is from its nature or magnitude only subject to the jurisdiction or more proper for the cognizance of a superior court, or when the public prosecutor so requests, the presiding judicial officer shall stop the trial, and the proceedings shall thereupon be those of a preparatory examination.

CHAPTER XIII.

Remittal.

91. When a case in which a preparatory examination was held, has been remitted for trial or sentence, the court to which it has been remitted shall deal therewith as prescribed by the Criminal Procedure and Evidence Proclamation, 1935 (Proclamation No. 30 of 1935), and shall have power, in respect of each offence or count to which the remittal refers to impose a sentence in accordance with the provisions of section *eighty-nine* of this Proclamation if the remittal is expressed to be under the ordinary jurisdiction of such court, or a sentence in accordance with the provisions of section *ninety-two* of this Proclamation if the remittal is expressed to be under the increased jurisdiction conferred by the said section *ninety-two*.

92. When a case has been so remitted and the remittal is expressed to be under the increased jurisdiction given by this section, the jurisdiction of the court in respect of punishments as expressed in section *eighty-nine*, shall be increased in the manner following:—

- (a) the maximum amount of fine shall be one hundred pounds; the maximum period of imprisonment shall be one year;
- (b) the court may, in imposing a punishment of both fine and imprisonment, sentence the accused to a further period of imprisonment if the fine be not paid: Provided that the said maximum period of imprisonment be not exceeded.

CHAPTER XIV.

Review as of Course.

93. All sentences in criminal cases in which the punishment awarded is imprisonment (including detention in a reformatory, industrial school, inebriate reformatory, farm colony, work colony, refuge, rescue home, or other similar institution) for any period exceeding three months or a fine exceeding twenty-five pounds or any whipping (save in any case in which a male person of an age not exceeding twenty-one years has been sentenced under the Criminal Procedure and Evidence Proclamation, 1935, aforesaid), shall be subject in ordinary course to review by the court of appeal or any judge thereof; without prejudice to the right of appeal against such sentence whether before or after confirmation of the sentence by the judge or court reviewing the same.

94. Whenever a court imposes upon any person convicted of an offence any such punishment as in the last preceding section mentioned, the clerk of the court shall transmit to the registrar of the court of appeal, not later than one week next after the determination of the case, the record of the proceedings in the case together with such remarks, if any, as the presiding judicial officer may desire to append thereto, and with any written statements or arguments which the accused may within three days after the sentence supply to the clerk of the court, and such registrar shall with all convenient speed, lay the same before the judge of the court of appeal, in chambers, for his consideration.

95. (1) If, upon considering the proceedings in the last preceding section mentioned and any further information or evidence which may, by the direction of the judge, be supplied or taken by the magistrate's court, it appears to the judge that they are in accordance with justice, he shall endorse his certificate to that effect upon the record thereof; and the said record shall then, by the registrar aforesaid, be returned to the court from which the same was transmitted.

(2) If, upon considering the proceedings aforesaid, it shall appear to the judge that they are not in accordance with justice or that doubts exist whether or not they are in accordance with justice, then such judge shall lay them before the court of appeal for its consideration; and the said court at any sitting thereof may hear any evidence and for that purpose the said court may summon any person to appear and give evidence or produce any document or other article, and whether it has or has not heard any such evidence, it may affirm, alter, or quash the conviction, or affirm, reduce, alter or set aside the sentence or any order of the magistrate's court (and if the accused was convicted

90. Wanneer gedurende die verloop van enige verhoor blyk dat die oortreding onder verhoor volgens sy aard en omvang alleenlik onderhewig is aan die jurisdiksie of geskikter is vir die kennisneming van 'n Hooggeregshof, of wanneer die publieke vervolger dit verlang, moet die presiderende regterlike amptenaar die verhoor staak, en die verdere verrigtinge van die saak is dan dié van 'n voorlopige verhoor.

HOOFSTUK XIII.

Terugverwysing.

91. Wanneer 'n saak waarin 'n voorlopige verhoor plaasgevind het, vir verhoor of vonnis terugverwys is, moet die hof waarna dit verwys is daarmee handel soos voorgeskrywe deur die Kriminele Prosedure en Bewyslewering Proklamasie 1935 (Proklamasie No. 30 van 1935) en het bevoegdheid, ten aansien van die oortreding of aanklag waarna die terugverwysing verwys om 'n vonnis uit te spreek ooreenkomstig die bepalinge van artikel *nege-en-taggentig* van hierdie Proklamasie, as die terugverwysing betuig dat dit volgens die gewone jurisdiksie van sodanige hof is, of 'n vonnis ooreenkomstig die bepalinge van artikel *twee-en-negentig* van hierdie Proklamasie, as die terugverwysing betuig dat dit onder die verhoogde jurisdiksie is, deur die vermelde artikel *twee-en-taggentig* verleen.

92. Wanneer 'n saak aldus terugverwys is, en wanneer verklaar word dat die terugverwysing geskied volgens die verhoogde jurisdiksie deur hierdie artikel verleen, word die jurisdiksie van die hof ten aansien van strawwe soos in artikel *nege-entagtig* uiteengesit, op die volgende wyse verhoog:—

- (a) die maksimum bedrag van die boete word eenhonderd pond; die maksimum tydperk van die gevangenisstraf word een jaar;
- (b) die hof kan by die oplê van beide boete en gevangenisstraf, die beskuldigde tot verdere gevangenisstraf vonnis, as die boete nie betaal word nie: Met die verstande dat die vermelde maksimum tydperk van gevangenisstraf nie oorskry word nie.

HOOFSTUK XIV.

Hersiening in die gewone loop van sake.

93. Alle vonnisse in strafregterlike sake waarin die opgelêde straf gevangenhouding is (met inbegrip van opsluiting in 'n verbeteringsgestig, nywerheidskool, verbetergestig vir dronkaards, boerderykolonie, werkkolonie, toevlugsoord, reddingshuis of ander dergelike inrigtinge) van meer as drie maande of boete van meer as vyf-en-twintig pond of lyfstraf (behalwe in die geval waar 'n manlike persoon benede die ouderdom van een-en-twintig jare gevonniss is kragtens die Kriminele Prosedure en Bewyslewering Proklamasie 1935, soos voormeld, is, in die gewone loop van sake, onderhewig aan hersiening deur die hof van appèl of van een van die regters daarvan; sonder afbreuk te doen aan die reg van appèl teen sodanige vonnis, hietsy voor of na die bekragting van die vonnis deur die regter of hof wat die vonnis in hersiening neem.

94. Wanneer 'n hof op enige persoon wat aan 'n oortreding skuldigbevind is, enige sodanige straf oplê soos vermeld in die onmiddellik voorafgaande artikel, moet die klerk van die hof aan die griffier van die hof van appèl, nie later as een week na die uitwysing van die saak nie, dié stukke van die saak toestuur, tesame met sodanige opmerkinge, as enige, as die presiderende regterlike amptenaar mag wens om by te voeg, en met alle skriftelike verklaringe of bewysgronde wat die beskuldigde binne drie dae na die vonnis by die klerk van die hof mag indien. Sodanige griffier moet met alle gerieflike spoed die stukke aan die regter van die hof van appèl in kamers ter oorweging voorlê.

95. (1) Wanneer by die oorweging van die prosedure in die onmiddellik voorafgaande artikel vermeld en enige verdere inligting of bewys wat op verlange van die regter deur die magistratshof gegee of afgeneem mag word, die regter van oordeel is dat behoorlik reg gedoen is, moet hy aldus op die stukke van die saak sertifiseer; en die vermelde stukke moet dan deur die voormelde griffier aan die hof waarvan hulle afkomstig is, teruggestuur word.

(2) Wanneer by die oorweging van die vermelde prosedure die regter van oordeel is dat nie behoorlik reg gedoen is nie, of dat twyfel bestaan of behoorlik reg gedoen is al dan nie, dan lê sodanige regter hulle voor die hof van appèl vir oorweging; en die vermelde hof neem enige getuienis by enige sitting van die hof af en vir daardie doel kan die vermelde hof enige persoon dagvaar om te verskyn en getuienis af te lê of enige dokument of ander voorwerp voor te bring en, onverskillig of dit enige sodanige getuienis afgeneem het of nie, kan die hof die skuldigbevinding bekragtig, wysig of vernietig of die vonnis of enige bevel van die magistratshof bekragtig, wysig, verminder of ter sy sit (en as die beskuldigde skuldigbevind was aan een van twee of meer

on one of two or more alternative counts, it may, when quashing that conviction, convict the accused on the other alternative count or on one or other of the other alternative counts) or it may set aside or correct the proceedings of the magistrate's court, or generally give such judgment or impose such sentence or make such order as the magistrate's court ought to have given, imposed or made on any matter which was before it at the trial of the case in question, or may remit the case to the magistrate's court with instructions to deal with any such matter in such manner as the court of appeal may think fit, and may make such order touching the suspension of the execution of any sentence against the person convicted or the admitting him to bail, or, generally, touching any matter or thing connected with him or the proceedings in regard to him as to the said court seems calculated to promote the ends of justice: Provided that in the event of any conviction being quashed or proceedings being set aside on any ground mentioned in sub-section (7) of section *one hundred*, the provisions of that sub-section in respect of the institution of fresh proceedings shall *mutatis mutandis* apply.

(3) If in any case the court of appeal desires to have any question of law or fact arising in any such case argued at the bar, it may direct the same to be argued by the Attorney-General and by such other advocate as the said court may appoint.

(4) If in any criminal case in which the court has imposed a sentence which is not subject to review in the ordinary course in terms of section *ninety-three*, it is brought to the notice of the court of appeal or of the judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice, such court of appeal or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before it or him in terms of section *ninety-four*.

96. (1) Every court imposing a sentence which, under section *ninety-three*, is subject to review shall thereupon inform the person convicted that the record will be transmitted within seven days; and such person or his lawful representative may inspect, and take a copy of such record before transmission or whilst in the possession of the court of appeal and may set down the case for argument before the court of appeal in like manner as if the record had been returned or transmitted to the court of appeal in obedience to any order made by it for the purpose of bringing in review the proceedings of an inferior court.

(2) Whenever such a case is so set down, whether the offence has been prosecuted at the public instance or at the instance of a private party, a written notice shall be served, by or on behalf of the person convicted, upon the Attorney-General at his office not less than seven days before the day appointed for the argument, setting forth the name and number of the case, the court before which it was tried, the date for which the case has been set down for argument and the grounds or reasons upon which the judgment is sought to be reversed or altered.

(3) Whether such judgment be confirmed or reversed or altered, no costs shall in respect of the proceedings in review be payable by the prosecutor to the person convicted or by the person convicted to the prosecutor.

CHAPTER XV.

Execution of Sentences.

97. (1) Any person sentenced to undergo the punishment of imprisonment shall be committed to the gaol of the district for the purpose of punishment by a warrant under the hand of a judicial officer specifying any punishment to which the accused has been sentenced.

(2) Such warrant may be signed either by the judicial officer who passed the sentence or by any other judicial officer for the same district.

98. (1) The execution of any sentence of fine or of imprisonment, whether with or without hard labour, shall not be suspended by the transmission of or the obligation to transmit the record for review unless the person sentenced shall give sufficient bail to pay the fine imposed upon him or to surrender himself in order to undergo such imprisonment (as the case may be) in case the proceedings in the case shall be approved as aforesaid and in case a written notice to pay or to surrender (as the case may be), signed by the clerk of the court, shall be served upon or for such person at some place to be mentioned in the bail bond or recognizance.

alternatiewe aanklagte, mag die hof by die vernietiging van die skuldigebevinding op een aanklag, die beskuldigde skuldigebevinding op die ander alternatiewe aanklag, of op een of ander van die ander alternatiewe aanklagte) of die hof mag die procedure in die magistratshof vernietig of verbeter of in die algemeen sodanige beslissing gee of sodanige vonnis opleë, of sodanige bevel gee, as die magistratshof behoort gegee, opgelê of gegee te hê oor enige punt wat voor die hof gekom het by die verhoor van die betrokke saak, of die hof mag die saak terugverwys na die magistratshof met instruksies om met enige sodanige punt te handel op 'n wyse deur die hof van appèl as geskik beskou en mag sodanige bevel gee ten aansien van die opskorting van die voltrekking van die vonnis teen die persoon wat gevonnisd is, of ten aansien van sy toelating tot borgtog, of in die algemeen met betrekking tot enige aangeleentheid betreffende hom of die procedure aangaande hom, as die gemelde hof mag beskou in die belang van die regspraak te wees: Met die verstande dat ingeval enige skuldigebevinding vernietig word, of enige procedure ter sy gesit word op enige van die gronde genoem in sub-artikel (7) van artikel *honderd*, die bepalinge van daardie sub-artikel ten aansien van die instelling van nuwe prosedures *mutatis mutandis* van toepassing is.

(3) Wanneer in enige geval die hof van appèl dit wenslik ag dat 'n regspraak of 'n feitelike vraag wat in so 'n saak mag opkom, by die verhoor bepleit word, mag die hof bevel dat sodanige vraag deur die Prokureur-generaal bepleit word en deur sodanige ander advokaat as die gemelde hof mag aanstel.

(4) As in enige strafregterlike geding waarin die hof 'n vonnis uitgespreek het, wat nie onderhewig is aan gewone hersiening ingevolge die bepalinge van artikel *drie-en-negentig* nie, dit aan die hof van appèl of enige regter daarvan meegedeel word dat die procedure waarin die vonnis uitgespreek is, nie ooreenkomstig die reg geskied het nie, het sodanige hof van appèl of regter dieselfde bevoegdheid aangaande sodanige procedure, asof die stukke daarvan voor die hof van appèl of regter gelê is ingevolge die bepalinge van artikel *vier-en-negentig*.

96. (1) Elke hof wat 'n vonnis opleë wat onder artikel *drie-en-negentig* aan hersiening onderhewig is, moet aan die veroordeelde meedeel, dat die stukke van die saak binne sewe dae opgestuur sal word; en sodanige persoon of sy wettige verteenwoordiger mag die stukke, voor hulle opgestuur is, of terwyl hulle in die besit van die hof van appèl is, ondersoek en afskrifte daarvan maak, en mag die saak vir bepleiting voor die hof van appèl op die rol plaas op dieselfde wyse, asof die stukke aan die hof van appèl teruggestuur of opgestuur was ingevolge 'n bevel deur die hof van appèl gegee, ten einde die verrigtinge van 'n laer hof in hersiening te neem.

(2) Wanneer sodanige saak op so 'n wyse op die rol geplaas is, hetsy die oortreding deur die kroon of op versoek van 'n privaats party vervolgd is, moet 'n skriftelike kennisgewing deur of ten behoeve van die veroordeelde op die Prokureur-generaal in sy kantoor tenminste sewe dae voor die dag bepaal vir die bepleiting gedien word, waarin aangegee word die naam en nommer van die saak, die hof voor welke dit verhoor is, die datum waarop die saak bepleit moet word, soos op die rol aangegee, en die gronde of redes waarom intrekking of verandering van die vonnis gevra word.

(3) Onverskillig of sodanige vonnis bekragtigt, ingetrek, of veranderd word, is geen koste ten aansien van die hersieningsproses betaalbaar deur die vervolger aan die persoon wat skuldigebevinding is, of deur die persoon wat skuldigebevinding is, aan die vervolger nie.

HOOFTUK XV.

Voltrekking van Vonnisse.

97. (1) Elke persoon wat tot gevangenisstraf gevonnisd is, moet met die doel om gestraf te word, in die gevangenis van die distrik geplaas word kragtens 'n lasbrief onder die hand van 'n regterlike amptenaar, waarin elke straf vermeld word waartoe die beskuldigde gevonnisd is.

(2) Sodanige lasbrief mag, of deur die regterlike amptenaar wat die vonnis gegee het, of deur 'n ander regterlike amptenaar van dieselfde distrik geteken word.

98. (1) Die voltrekking van enige vonnis van boete of gevangenisstraf met of sonder harde arbeid word nie opgeskort deur die opstuur of die verpligting om die stukke vir hersiening op te stuur nie, tensy die persoon wat gevonnisd is, voldoende borgtog stel dat hy die opgelêde boete sal betaal of dat hy homself sal oorgee om die gevangenisstraf te ondergaan (soos die geval mag wees), ingeval die veringting in die saak goedgekeur word soos voormeld, en ingeval 'n skriftelike aanmaning om te betaal of homself oor te gee (soos die geval mag wees), geteken deur die klerk gedien word op of vir sodanige persoon op 'n plek in die akte van borgtog of verbintenis genoem.

(2) Every such notice requiring the payment of the fine or the surrender of such person (as the case may be) shall be served in like manner as is prescribed by the rules in regard to the service of the summons on a defendant in a civil case.

99. (1) The punishment of whipping shall in no case (except where a male person of an age not exceeding twenty-one years has been sentenced under the Criminal Procedure and Evidence Proclamation, 1935, aforesaid), be inflicted until either the proceedings in the case have been returned with such a certificate as is in section *ninety-five* of this Proclamation mentioned or the court of appeal has affirmed the sentence of the magistrate's court.

(2) If in any case a person sentenced to receive any number of lashes shall not be also condemned to be imprisoned for such a period as shall allow time for the judge's certificate to be received before inflicting the said lashes, such person, in case he shall not give sufficient bail to appear after being served at some place to be mentioned in the bail bond or recognizance with a written notice signed by the clerk of the court requiring him so to do, shall be detained in custody until either the proceedings in the case have been returned as aforesaid, or the sentence has been affirmed as aforesaid.

(3) In every case in which any person sentenced as aforesaid shall give bail as aforesaid, the judicial officer (should he so think fit) may take bail also for the cost and charge of serving such notice as aforesaid (if necessary), which cost and charge shall be the same as that of serving a summons in a civil case against the same person at the same place.

CHAPTER XVI.

Criminal Appeals.

100. (1) Any person convicted of any offence by the judgment of any magistrate's court (including a person discharged after conviction under any provision of the Criminal Procedure and Evidence Proclamation, 1935, aforesaid), may appeal against any such conviction and against any sentence or order of the court following thereupon to the High Court.

(2) Whenever a criminal summons or charge is dismissed at any stage of the proceedings on exception or on the ground that it is bad in law or that it discloses no offence, the Attorney-General may in like manner appeal against such dismissal.

(3) Any such appeal shall be noted and prosecuted within the period and in the manner prescribed by the rules; but the court of appeal may in any case extend such period.

(4) The court of appeal shall thereupon have the powers set out in sub-section (2) of section *ninety-five*, and unless the appeal is based solely upon a question of law, the court of appeal shall, in addition to those powers, have the power to increase any sentence imposed upon the appellant or impose any other form of sentence in lieu of or in addition to such sentence: Provided that, notwithstanding that such court is of opinion that any point raised might be decided in favour of the appellant, no conviction or sentence shall be reversed or altered by reason of any irregularity or defect in the record or proceedings unless it appears to the court of appeal that a failure of justice has in fact resulted therefrom.

(5) When an appeal under this section is noted, the provisions of sections *ninety-eight* and *ninety-nine* shall apply *mutatis mutandis* to the sentence appealed against.

(6) Notwithstanding anything in this section contained, whenever any person has been convicted by any magistrate's court of an offence and is undergoing imprisonment for that or any other offence, he shall not be entitled to prosecute in person any appeal which he has noted against the conviction, unless a judge of the court of appeal has certified that there are reasonable grounds for appeal.

(7) Whenever a conviction and sentence of a magistrate's court are set aside on appeal or on review on the ground that evidence was admitted which should not have been admitted or that evidence was rejected which should have been admitted or on the ground of any other irregularity or defect in the procedure, proceedings in respect of the same offence to which the conviction and sentence referred, may again be instituted either on the original summons or charge or upon any other indictment, summons or charge, as if the accused had not previously been arraigned, tried and convicted:

(2) Elke sodanige aanmaning aan voormelde persoon, om of die boete te betaal, of homself oor te gee (soos die geval mag wees), word op dieselfde wyse gedien as in die reëls voorgeskryf is ten aansien van die diening van die dagvaring op die verweerder in 'n siviele saak.

99. (1) Met uitsondering van die geval waar 'n manlike kind benede die ouderdom van een-en-twintig kragtens die Kriminele Prosedure en Bewyslewering Proklamasie 1935 veroordeel word, mag die lyfstraf in geen geval uitgevoer word nie, tensy of die stukke in die saak teruggestuur is vergesel van 'n sertifikaat genoem in artikel *vyf-en-negentig* van hierdie Proklamasie, of die hof van appèl die vonnis van die magistraatshof bekragtig het.

(2) Wanneer in enige geval 'n persoon wat tot lyfstraf veroordeel is en nie ook terselfdertyd tot gevangenisstraf wat so lank sou duur dat dit moontlik is om 'n regterlike sertifikaat voor die toediening van die lyfstraf te verkry nie, word sodanige persoon, ingeval hy nie voldoende borgtog stel nie om te verskyn, nadat op hom op 'n plek in die akte van borgtog of verbintenis genoem, 'n skriftelike aanmaning wat deur die klerk van die hof geteken is, om so te doen, gedien is nie, in bewaring gehou, totdat of die stukke in die saak soos voormeld, teruggestuur is, of die vonnis soos voormeld bekragtig is.

(3) In elke geval waar 'n gevonniste persoon soos voormeld, sodanige borgtog gestel het, mag die regterlike amptenaar, as hy dit raadsaam vind, borgtog vra vir die koste en onkoste van diening van voormelde aanmaning (as dit nodig is), en die koste en onkoste sal dieselfde wees as die van die diening van 'n dagvaring in 'n siviele saak teen dieselfde persoon op dieselfde plek.

HOOFSTUK XVI.

Strafregterlike Appèlle.

100. (1) Elkeen wat in 'n uitspraak van die magistraatshof aan 'n oortreding skuldig bevind is, (hieronder word inbegrepe 'n persoon wat na skuldigbevinding kragtens enige bepaling van die Kriminele Prosedure en Bewyslewering Proklamasie 1935 voormeld, ontslaan is) mag van sodanige skuldigbevinding en teen enige daaropvolgende vonnis of bevel van die hof appelleer na die Hooggeregshof.

(2) Wanneer ook al 'n strafregterlike dagvaring of aanklag op enige stadium van die geding op eksepsie, of op grond dat dit volgens wet ondeugdelik is, of dat dit geen misdaad aangee nie, van die hand gewys word, mag die Prokureur-generaal op dieselfde wyse teen sodanige van-die-hand-wysing, appèl aanteken.

(3) Sodanige appèl moet binne die tydperk, op die wyse voorgeskryf deur die reëls, aangeteken en gedryf word, maar die hof van appèl mag in enige geval sodanige tydperk verleng.

(4) Die hof van appèl het dan die bevoegdheede uiteengesit in sub-artikel (2) van artikel *vyf-en-negentig*, en tensy die appèl alleenlik op 'n regspraak gebaseer is, het die hof van appèl, behalwe daardie bevoegdheede, die bevoegdheid om enige vonnis te vermeerder wat op die appellans opgelê is, of enige ander aard van vonnis te plaas van of boonop sodanige vonnis: Met die verstande dat nieeenstaande sodanige hof van oordeel is dat een of ander vraagpunt wat opgekom het, ten gunste van die appellans beslis kon word, sodanige hof geen skuldigbevinding of vonnis kan vernietig of verander op grond van 'n onreëlmatigheid of gebrek in die stukke van die geding of die prosedure nie, tensy die hof van appèl van opinie is dat 'n regsskending die feitlike gevolg daarvan was.

(5) Wanneer ingevolge hierdie artikel appèl aangeteken is, is die bepaaing van artikels *agt-en-negentig* en *nege-en-negentig*, *mutatis mutandis* van toepassing op die vonnis waarop geappelleer is.

(6) Nieteenstaande enige bepalinge in hierdie artikel bevat, wanneer ook al enige persoon deur enige magistraatshof skuldig bevind is aan 'n oortreding, en gevangenisstraf ondergaan vir daardie of enige ander oortreding, is hy nie geregtig om enige appèl wat deur hom teen die vonnis aangeteken is, in persoon te vervolg nie, tensy 'n regter van die hof van appèl 'n sertifikaat uitgereik het, dat daar redelike gronde vir appèl is.

(7) Wanneer ook al 'n skuldigbevinding en vonnis van 'n magistraatshof na appèl of by hersiening vernietig is op grond dat bewys toegelaat is wat nie toegelaat moes gewees het nie, of dat bewys van die hand gewys is wat toegelaat moes gewees het, of op grond van enige ander ongereëldheid of fout in die prosedure, mag die prosedure ten aansien van dieselfde oortreding, waarna die skuldigbevinding en vonnis verwys het, weer ingestel word, of op die oorspronklike dagvaring of aanklag, (of op enige ander aanklag, dagvaring of beskuldiging, asof die beskuldigde nog nie tevore aangekla, verhoor en skuldig gevind is nie: Met die

Provided that such proceedings shall be instituted before some other judicial officer than the judicial officer who recorded the conviction and imposed the sentence set aside on appeal or review.

101. (1) When a magistrate's court has in any criminal proceedings given a decision in favour of the accused on any matter of law, the Attorney-General, or if a person or body other than the Attorney-General or his representative was the prosecutor in those proceedings, then the other prosecutor may require the magistrate to state a case for the consideration of the court of appeal, setting forth the question of law and his decision thereon, and, if evidence has been heard, his findings of fact, in so far as they are material to the question of law.

(2) When such case has been stated the Attorney-General or other prosecutor, as the case may be, may appeal from that decision to the court of appeal referred to in sub-section (1) of section *one hundred*.

(3) Sub-section (3) of section *one hundred* shall apply to an appeal under sub-section (2) of this section.

(4) If an appeal under sub-section (2) is allowed, the magistrate's court which gave the decision appealed from shall, subject to the provisions of sub-section (5), after giving sufficient notice to both parties, reopen the case in which the decision was given and deal with it in the same manner as it should have dealt therewith if it had given a decision in accordance with the law as laid down by the court of appeal.

(5) In allowing such appeal, whether wholly or in part, the court of appeal may itself impose such sentence upon the respondent or make such order as the magistrate's court ought to have imposed or made, or it may remit the case to the magistrate's court and direct that court to take such further steps as the court of appeal thinks proper.

102. (1) When in any criminal appeal, whether brought by the accused or by the Attorney-General or other prosecutor, the court of appeal has given a decision in favour of the accused on a matter of law, the Attorney-General or other prosecutor against whom that decision was given may appeal to the appellate division of the Supreme Court of the Union which shall, if it decides the matter in issue in favour of the appellant, set aside or vary the decision appealed from and —

(a) if the matter was brought before the High Court in terms of sub-section (1) of section *one hundred* reinstate the conviction, sentence or order of the magistrate's court appealed from, either in its original form or in such a modified form as the appellate division may think desirable; or

(b) if the matter was brought before the High Court in terms of sub-section (2) of section *one hundred and one*, give such decision or take such action as the High Court ought, in the opinion of the appellate division, to have given or taken (including any action under sub-section (5) of section *one hundred and one*) and thereupon the provisions of sub-section (4) of that section shall *mutatis mutandis* apply.

(2) If any appeal brought by the Attorney-General or other prosecutor under this section or under section *one hundred and one* is disallowed, the court disallowing the appeal may order that the appellant pay to the respondent the costs to which the respondent may have been put in opposing the appeal, taxed according to the scale in civil cases of that court: Provided that, if the Attorney-General was the appellant, the costs which he is so ordered to pay shall be paid by the State.

PART IV.

Offences.

103. Any person wilfully disobeying or neglecting to comply with any order of a magistrate's court or with a notice lawfully endorsed on a summons for rent prohibiting the removal of any furniture or effects shall be guilty of a contempt of court and shall, upon conviction, be liable to a fine not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months or to such imprisonment without the option of a fine.

104. Any person who —

(1) obstructs a messenger or deputy-messenger in the execution of his duty;

verstande dat sodanige prosedure voor 'n ander regterlike amptenaar as die regterlike amptenaar wat die skuldige bevinding gemaak het en die vonnis opgelê het, wat na appèl of by hersiening vernietig is, ingestel moet word.

101. (1) As 'n magistratuurshof in enige strafregterlike proses 'n beslissing gegee het ten gunste van 'n beskuldigde op enige regsak, mag die Prokureur-generaal, of as 'n ander persoon of liggaam as die Prokureur-generaal of sy verteenwoordiger die vervolger in daardie proses was, dan mag sodanige ander vervolger van die magistratuur verlang dat hy 'n saak uiteensit vir die oorweging deur die hof van appèl, waarin hy die regspraak en sy beslissing daarop en, as getuientis gehoor is, sy beslissing op die feite uiteensit, vir sover hulle belangrik is vir die regspraak.

(2) As sodanige saak uiteengesit is, mag die Prokureur-generaal of ander vervolger, soos die geval mag wees, op daardie beslissing appelleer na die hof van appèl, waarna verwys is in sub-artikel (1) van artikel *honderd*.

(3) Sub-artikel (3) van artikel *honderd* is van toepassing op 'n appèl onder sub-artikel (2) van hierdie artikel.

(4) As 'n appèl onder sub-artikel (2) toegelaat is, moet die magistratuurshof wat die beslissing gegee het waarop geappelleer is, onderhewig aan die bepalinge van sub-artikel (5) na kennisgewing aan beide partye die saak waarin die beslissing gegee is, heropen, en daarmee handel op dieselfde wyse waarop daarmee gehandel sou gewees het, as die magistratuurshof beslissing gegee het in ooreenstemming met die reg soos neergelê deur die hof van appèl.

(5) Wanneer die hof van appèl sodanige appèl toestaan, in die geheel of ten dele, mag die hof van appèl self sodanige vonnis op die respondent opleë, of sodanige bevel gee as die magistratuurshof moes opgelê of gegee het, of hy mag die saak terugverwys na die magistratuurshof en sodanige hof beveel om sodanige verdere stappe te neem as die hof van appèl mag goedvind.

102. (1) Wanneer in enige strafregterlike appèl, hetsy deur die beskuldigde of deur die Prokureur-generaal of ander vervolger gebring, die hof van appèl 'n beslissing gegee het ten gunste van die beskuldigde op 'n regsak, mag die Prokureur-generaal of ander vervolger teen wie die beslissing gegee is, appelleer na die appèl-afdeling van die Hooggeregshof van die Unie, wat, as hy die geskilpunt ten gunste van die appellant beslis, die beslissing waarop geappelleer is, moet vernietig of wysig, en —

(a) as die saak voor die Hooggeregshof ingevolge die bepalinge van sub-artikel (1) van artikel *honderd*, gebring is, die skuldigebevinding, vonnis, of bevel van die magistratuurshof waarop geappelleer is, herstel, of, in die oorspronklike vorm, of in sodanige gewysigde vorm as die appèl-afdeling mag goedvind, of

(b) as die saak voor die Hooggeregshof gebring is ingevolge die bepalinge van sub-artikel (2) van artikel *honderd-en-een* sodanige beslissing gee, of sodanig handel soos die Hooggeregshof na die mening van die appèl-afdeling moes gegee of gedoen het (insluitende enige handeling kragtens sub-artikel (5) van artikel *honderd-en-een*) en daarna is die bepalinge van sub-artikel (4) van daardie artikel *mutatis mutandis* van toepassing daarop.

(2) As enige appèl deur die Prokureur-generaal of ander vervolger kragtens hierdie artikel of artikel *honderd-en-een* gebring, nie toegestaan word nie, mag die hof wat die appèl van die hand wys, beveel dat die appellant aan die respondent die koste wat die respondent mag gehad het in verband met die opposisie teen die appèl, betaal, getakseer volgens die tarief in siviele sake van sodanige hof: Met die verstande dat, as die Prokureur-generaal die appellant is, die koste wat hy so beveel word om te betaal, deur die staat betaal moet word.

AFDELING IV.

Oortredinge.

103. Enige persoon wat opsetlik nie gehoorsaam nie of nalaat om te voldoen aan 'n bevel van 'n magistratuurshof of aan 'n kennisgewing wat wettig onderskryf is op 'n dagvaaring vir huurgeld, waardeur die verwydering van meubels en eiendom verbied is, is skuldig aan minagting van die hof en word by skuldigebevinding gestraf met 'n geldboete van hoogstens vyftig pond of by wanbetaling met gevangenisstraf met of sonder harde arbeid van hoogstens drie maande of tot sodanige gevangenisstraf sonder keuse van 'n boete.

104. Elkeen wat —

(1) 'n bode of plaasvervangende bode in die uitvoering van sy plig belemmer;

- (2) being aware that goods are under arrest, interdict or attachment by the court, makes away with or disposes of those goods in any manner not authorised by law or knowingly permits those goods, if in his possession or under his control, to be made away with or disposed of in any such manner;
- (3) being a judgment debtor and being required by a messenger or deputy messenger to point out property to satisfy any warrant issued in execution of judgment against such person, either ---
- (a) falsely declares to that messenger or deputy-messenger that he possesses no property or not sufficient property to satisfy the warrant, or
- (b) although owning such property neglects or refuses to point out the same, or
- (4) being a judgment debtor refuses or neglects to comply with any requirement of a messenger or deputy-messenger in regard to the delivery of documents in his possession or under his control relating to the title of the immovable property under execution,

shall be liable upon conviction to a fine not exceeding fifty pounds or, in default of payment, to imprisonment for a period not exceeding three months or to such imprisonment without the option of a fine.

105. (1) If any person, whether in custody or not, wilfully insults any judicial officer during his sitting or any clerk or messenger or other officer during his attendance at such sitting, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where such court is held, he shall (in addition to his liability to being removed and detained as in sub-section (4) of section *five* provided) be liable to imprisonment for any period not exceeding one month or to pay a fine not exceeding twenty pounds for every such offence or, in default of payment, to such imprisonment. In this sub-section the word "court" includes a preparatory examination held under the law relating to criminal procedure.

(2) In any case in which the court commits or fines any person under the provisions of this section, the judicial officer shall without delay transmit to the registrar of the court of appeal for the consideration and review of a judge in chambers, a statement, certified by such judicial officer to be true and correct, of the grounds and reasons of his proceedings, and shall also furnish to the party committed a copy of such statement.

106. Any person against whom a court has, in a civil case, given any judgment or made any order, who has not satisfied in full such judgment or order and all costs for which he is liable in connection therewith, shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds or to imprisonment for a period not exceeding three months, if he has vacated his place of residence and fails to give, within a period of fourteen days as from the date of every such vacation, to the clerk of the court which gave such judgment or made such order a notice in writing setting forth clearly, fully and correctly the new place of residence to which he has removed.

PART V.

General and Supplementary.

107. No magistrate's court shall be competent to pronounce upon the validity of an Ordinance of the Legislative Assembly of the Territory or of a statutory proclamation of the Governor-General or of the Administrator, and every such court shall assume that every such Ordinance or proclamation is valid; but every such court shall be competent to pronounce upon the validity of any statutory regulation, order or bye-law.

108. (1) In any civil proceedings, the court may, at any time before judgment, amend the summons or other document forming part of the record: Provided that no amendment shall be made by which any party other than the party applying for such amendment may (notwithstanding adjournment) be prejudiced in the conduct of his action or defence.

(2) In civil proceedings an amendment may be made upon such terms as to costs and otherwise as the court may judge reasonable.

(3) No misnomer in regard to the name of any person or place shall vitiate any proceedings of the court if the person or place be described so as to be commonly known.

(2) wetende dat goedere deur die hof onder arres, interdik of beslaglegging geplaas is, die goed wegmaak of van die hand sit op 'n wetlik ongeoorloofde wyse, of met opset toelaat dat die goed, ingeval hulle in sy besit of onder sy toesig is, aldus weggemaak of van die hand gesit word;

(3) 'n vonnis-skuldenaar is, en deur die bode of plaasvervangende bode versoek word om eiendom aan te wys ter voldoening aan enige lasbrief uitgereik ter uitvoering van 'n vonnis teen die persoon, hetsy ---

(a) valslik aan die bode of plaasvervangende bode verklaar dat hy geen goed besit, of nie voldoende goed besit om aan die lasbrief te voldoen nie; of

(b) niesteenstaande hy sodanige goed besit, nalaat of weier om dit aan te wys; of

(4) 'n vonnis-skuldenaar is en weier of nalaat om aan 'n versoek van 'n bode of plaasvervangende bode te voldoen, ten opsigte van die aflewering van dokumente in sy besit of onder sy beheer, betreffende die titel van die onroerende goed onder beslaglegging,

word by veroordeling bestraf met 'n boete van hoogstens vyftig pond, of by wanbetaling met gevangenisstraf van hoogstens drie maande, of met gevangenisstraf sonder die keuse van boete.

105. (1) Enige persoon, in gevangenhouding of nie, wat met opset 'n geregtelike amptenaar gedurende sy hofsitting of 'n klerk of bode of ander amptenaar wat by die sitting teenwoordig is, beledig, of wat met opset die verrigtinge van die hof steur, of hom op ander wyse misdra in die plek waar die hofsitting plaasvind, word (buite en behalwe dat hy volgens die bepalinge van sub-artikel (4) van artikel *vyf* verwyder en gevangengehou kan word) met gevangenisstraf van hoogstens een maand of met boete van hoogstens twintig pond vir elke sodanige oortreding of by wanbetaling met sodanige gevangenisstraf, gestraf.

(2) In enige geval waarin die hof iemand kragtens die bepalinge van hierdie artikel na die gevangenis verwys of beboet, moet die regterlike amptenaar onmiddellik aan die griffier van die appèlhof vir oorweging en hersiening deur 'n regter *in camera*, 'n opgaaf, deur die regterlike amptenaar as waar en juis gesertifiseer, stuur, waarin die gronde en redes van sy uitspraak vermeld is, en hy moet ook 'n afskrif van die opgaaf aan die party stuur, wat na die gevangenis verwys is.

106. Enige persoon teen wie 'n hof in 'n siviele saak enige vonnis gevel het of beveel gegee het, en wat nog nie ten volle aan sodanige vonnis of bevel voldoen het nie en alle koste in verband daarmee waarvoor hy aanspreeklik is betaal het nie, is skuldig aan 'n oortreding en by skuldigbevinding aanspreeklik vir die betaling van 'n boete van hoogstens vyf-en-twintig pond, of onderhewig aan gevangenisstraf vir 'n tydperk van hoogstens drie maande, as hy sy woonplek verlaat het, en nalaat om binne 'n tydperk van veertien dae na die datum waarop hy sy woonhuis verlaat, aan die klerk van die hof wat sodanige vonnis gevel het of sodanige bevel gegee het, 'n kennisgewing in geskrif te gee waarin sy nuwe woonplek voluit, duidelik, en juis aan-gegee is.

AFDELING V.

Algemene en Aanvullende Bepalinge.

107. Geen magistratuurshof is geregtig om 'n oordeel uit te spreek oor die regsgeldigheid van 'n Ordonnansie van die Wetgewende Vergadering van die Gebied, of van 'n statutêre proklamasie van die Goewerneur-generaal of van die Administrateur en elke sodanige hof moet aanneem dat elke sodanige ordonnansie of proklamasie geldig is; maar elke sodanige hof is bevoegd om 'n oordeel uit te spreek oor die regsgeldigheid van enige statutêre regulasie, bevel of verordening.

108. (1) In alle siviele en strafregterlike sake mag die hof te eniger tyd, voordat vonnis gevel is, 'n dagvaring of ander dokument wat deel uitmaak van die prosesstukke wysig: Met die verstande dat geen wysiging gemaak mag word nie, waardeur een party wat nie die party is wat die wysiging aanvra nie, (niesteenstaande verdaging) in sy geding, vervolging, of verdediging benadeel mag word.

(2) In siviele sake mag 'n verbetering gemaak word op sodanige voorwaardes, ten aansien van koste en andersins, as die hof redelik mag vind.

(3) Geen verkeerde benaming van 'n persoon of plek maak die verrigtinge van die hof nietig, as die persoon of plek beskryf is, soos hy of dit algemeen bekend is nie.

109. The oath or affirmation to be taken or made by any witness in any proceedings, whether civil or criminal in any court or at any preparatory examination shall be administered by the officer presiding at such proceedings or by the clerk of the court (or any person acting in his stead) in the presence of the said officer, or if the witness is to give his evidence through an interpreter, by the said officer through the interpreter or by the interpreter in the said officer's presence.

110. (1) Whenever a decision is given by a magistrate's court in a criminal case on a matter of law with which the Attorney-General is dissatisfied, he may seek the ruling thereon of the High Court and such court shall appoint the matter to be argued before any judge thereof.

(2) Whenever the right of prosecution is possessed by any person or public body under any law in respect of particular offences, the powers conferred on the Attorney-General by sub-section (1) may be exercised by such body or person and the provisions of that sub-section shall thereupon apply.

111. (1) Nothing in this Proclamation shall be construed as affecting the operation of the Criminal Procedure and Evidence Proclamation, 1935, aforesaid.

(2) Nothing in this Proclamation contained shall be construed as depriving the High Court of any power to review and correct the proceedings of any magistrate's court.

112. (1) Nothing in this Proclamation shall affect proceedings pending at the commencement of this Proclamation; and such proceedings shall be continued and concluded in every respect as if this Proclamation had not been passed.

(2) Proceedings shall, for the purposes of this section be deemed to be pending if, at the commencement of this Proclamation, summons had been issued or the accused had pleaded but judgment had not been given; and to be concluded when judgment is given.

(3) At the expiration of one year from the commencement of this Proclamation, sub-section (1) of this section shall cease to have effect; and any cases pending at the commencement of this Proclamation and not concluded within one year thereafter shall become subject to the provisions of this Proclamation.

113. In this Proclamation unless inconsistent with the context —

- “Attorney-General” means the Attorney-General for the Territory;
- “court” means a magistrate's court of the Territory;
- “court of appeal” means the High Court;
- “High Court” means the High Court of South West Africa;
- “judgment” in civil cases, includes a sentence, decree, rule or order;
- “judicial officer” includes magistrate, additional magistrate and assistant magistrate;
- “magistrate” does not include “assistant magistrate”;
- “offence” means an act or omission punishable by law or by a regulation, order, or bye-law lawfully made and in force under any statute;
- “the court” if used in relation to any district, sub-district or area, means the magistrate's court having jurisdiction within that district, sub-district or area;
- “the district” if used in relation to any court means the district, sub-district or area within which that court has jurisdiction;
- “the rules” means the orders, rules and annexures contained in the Second Schedule to this Proclamation or otherwise made under this Proclamation;
- “this Proclamation” includes the Schedules thereto and any rules made thereunder.

114. The laws specified in the First Schedule to this Proclamation are hereby repealed to the extent set out in the third column of that Schedule.

115. This Proclamation may be cited for all purposes as the Magistrates' Courts Proclamation, 1935.

GOD SAVE THE KING.

Given under my hand and seal at Windhoek, this 11th day of December, 1935.

D. G. CONRADIE,
Administrator.

109. Die eed of bevestiging wat deur enige getuie by enige verrigtinge gemaak moet word, hetsy siviel of strafregterlik in enige hof of by enige voorlopige ondersoek, moet afgeneem word deur die amptenaar wat in sodanige verrigtinge diensdoende is, of deur die klerk van die hof, (of enige plaasvervangende klerk) in die teenwoordigheid van genoemde amptenaar, of as die getuie sy getuienis deur 'n tolk moet gee, deur die genoemde amptenaar deur middel van die tolk of deur die tolk in die genoemde amptenaar se teenwoordigheid.

110. (1) Wanneer ook al 'n beslissing deur 'n magistrataas-hof in 'n strafregterlike saak gegee is oor 'n regsfeit waarmee die Prokureur-generaal ontevrede is, mag die Prokureur-generaal die beslissing van die Hooggeregshof daaromtrent inroep, en sodanige hof moet die saak voor die regter van sodanige hof bring vir bespreking.

(2) Wanneer 'n persoon of openbare liggaam ingevolge 'n wet die reg tot vervolging besit ten aansien van bepaalde oortredinge, mag die bevoegdheid aan die Prokureur-generaal verleen deur sub-artikel (1) deur sodanige liggaam of persoon uitgeoefen word, en die bepalinge van daardie sub-artikel sal dan van toepassing wees.

111. (1) Niks in hierdie Proklamasie mag uitgelê word nie, as sou dit die werking van die voormelde Kriminele Prosedure en Bewyslewering Proklamasie 1935 beïnvloed.

(2) Niks in hierdie Proklamasie bevat mag uitgelê word nie, as sou dit die Hooggeregshof beroof van enige bevoegdheid om die verrigtinge van enige magistrataas-hof te hersien en te verbeter.

112. (1) Niks in hierdie Proklamasie mag verrigtinge wat by die inwerkingtreding van hierdie Proklamasie hangende is, beïnvloed nie, en sodanige verrigtinge moet in elke opsig voortgeset en beëindig word, asof hierdie Proklamasie nie gepasseer was nie.

(2) Verrigtinge word, vir die doeleindes van hierdie artikel geag hangende te wees, as by die inwerkingtreding van hierdie Proklamasie, dagvaring uitgereik is of die beskuldigde gepleit het, maar vonnis nog nie gevel is nie; en beëindig te wees, wanneer vonnis gevel is.

(3) Na verloop van een jaar vanaf die inwerkingtreding van hierdie Proklamasie hou sub-artikel (1) van hierdie artikel op van krag te wees; en enige sake wat by die inwerkingtreding van hierdie Proklamasie hangende en nie binne een jaar daarna beëindig is nie, is onderhewig aan die bepalinge van hierdie Proklamasie.

113. In hierdie Proklamasie, tensy dit teenstrydig met die samehang is —

- beteken “Prokureur-generaal” die Prokureur-generaal vir die Gebied;
- beteken “hof” 'n magistrataas-hof van die Gebied;
- beteken “hof van appèl” die Hooggeregshof;
- beteken “Hooggeregshof” die Hooggeregshof van Suidwes-Afrika;
- sluit “beslissing” in siviele sake in 'n vonnis, besluit, reël of bevel;
- sluit “regterlike amptenaar” in magistrataas, addisionele magistrataas en assistent-magistrataas;
- sluit “magistrataas” nie 'n “assistent-magistrataas” in nie;
- beteken “oortreding” 'n handeling of versuim wat strafbaar is kragtens wet of kragtens 'n regulasie, bevel of verordening wat volgens wet uitgevaardig en kragtens enige statuut in werking is;
- beteken “die hof”, wanneer dit gebruik word met betrekking tot enige distrik, sub-distrik of landstreek, die magistrataas-hof wat jurisdiksie het binne daardie distrik, sub-distrik of landstreek;
- beteken “die distrik” wanneer dit gebruik word met betrekking tot enige hof, die distrik, subdistrik of landstreek waarin daardie hof jurisdiksie het;
- beteken “die reëls” die orders, bevels, reëls en aanhangsels wat in die Tweede Bylae van hierdie Proklamasie opgetrek is;
- sluit “hierdie Proklamasie” in die Bylaes daarvan en enige reëls wat daaronder opgetrek is.

114. Die wette in die Eerste Bylae van hierdie Proklamasie gespesifiseer word hiermee herroep in die omvang uitengesit in die derde kolom van daardie Bylae.

115. Hierdie Proklamasie kan vir alle doeleindes aangehaal word as die Magistrataas-hof Proklamasie 1935.

GOD BEHOEDE DIE KONING.

Gegee onder my hand en seël te Windhoek op hierdie 11de dag van Desember 1935.

D. G. CONRADIE,
Administrateur.

FIRST SCHEDULE.

Laws repealed.

No. and Year of Law.	Short Title of Law.	Extent of Repeal.	No. en Jaartal van Wet.	Korte Titel van die Wet.	Omvang van Herroeping.
South West Africa Proclamation No. 21 of 1919	Administration of Justice Proclamation, 1919	Section 9.	Suidwes-Afrika Proklamasie No. 21 van 1919	Rechtsbedeling Proclamatie, 1919	Artikel 9.
South West Africa Proclamation No. 1 of 1920	Rules of Court Proclamation, 1920	The whole.	Suidwes-Afrika Proklamasie No. 1 van 1920	Regels van het Hof Proclamatie, 1920	Die hele.
South West Africa Proclamation No. 52 of 1921	Better Administration of Justice Proclamation, 1921	Sections 3 and 4.	Suidwes-Afrika Proklamasie No. 52 van 1921	Betere Rechtsbedeling Proclamatie, 1921	Artikels 3 en 4.
South West Africa Proclamation No. 24 of 1926	Magistrates' Courts Amendment Proclamation, 1926	The whole.	Suidwes-Afrika Proklamasie No. 24 van 1926	Magistraatshowe Wysigings-Proklamasie, 1926	Die hele.

EERSTE BYLAE.

Wette herroep.

SECOND SCHEDULE.

RULES.

INDEX.

ORDERS.

No. I. — Application and Interpretation.

No. II. — Messenger of the Court.

TWEEDE BYLAE.

REËLS.

INHOUDSOPGAWE.

ORDERS.

No. I. — Toepassing en Uitlegging.

No. II. — Geregsbode.

No.	CIVIL.	No.	CRIMINAL.	No.	SIVIELE.	No.	STRAF-REGTERLIKE.
III.	Clerk of the Court.	XXXV.	Clerk of the Court.	III.	Klerk van die Hof.	XXXV.	Klerk van die Hof.
IV.	Representation of Parties.	XXXVI.	Appeals.	IV.	Verteenwoordiging van Partye.	XXXVI.	Appèl.
V.	<i>Pro Deo</i> Applicants.			V.	<i>Pro Deo</i> Applikante.		
VI.	Service of Process, Notices, etc.			VI.	Diening van Prosesstukke, Kennisgewinge, ens.		
VII.	Summons Commencing Action.			VII.	Aanhangigmaking van 'n saak by wyse van Dagvaring.		
VIII.	Claims in Reconvention.			VIII.	Eise in Rekonvensie.		
IX.	Appearance to Defend.			IX.	Aantekening van Verdediging.		
X.	Judgment by Consent or Default.			X.	Vonnis met toestemming of by verstek.		
XI.	Further Particulars.			XI.	Verdere Besonderhede.		
XII.	Payment into Court.			XII.	Geregtelike Inbetaling.		
XIII.	Objections, Exceptions, and Special Defences.			XIII.	Objeksies, Eksepsies en Spesiale Verdediging.		
XIV.	Summary Judgment.			XIV.	Summiere Vonnis.		
XV.	Plea.			XV.	Pleit.		
XVI.	Reply.			XVI.	Replik.		
XVII.	Discovery of Documents.			XVII.	Ooplegging van Stukke.		
XVIII.	Trial.			XVIII.	Verhoor.		
XIX.	Withdrawal and Dismissal.			XIX.	Terugtrekking en Afwysing.		
XX.	Records of Proceedings.			XX.	Notule van Verrigtinge.		
XXI.	Applications.			XXI.	Applikasies.		
XXII.	Arrests, Interdicts, Attachments and <i>Mandamer ten van Spolie</i> .			XXII.	Arreste, Interdikte, Beslaglegginge en <i>Mandamenten van Spolie</i> .		
XXIII.	Subpoenas.			XXIII.	Dagvaring van Getuies.		
XXIV.	Interest.			XXIV.	Rente.		
XXV.	Execution.			XXV.	Eksekusie.		
XXVI.	Interpleader.			XXVI.	Tussenpleit-gedinge.		
XXVII.	Civil Imprisonment.			XXVII.	Siviele Gyseling.		
XXVIII.	Garnishee Orders.			XXVIII.	Skuldbeslagorder.		
XXIX.	Review of Judgments and Orders.			XXIX.	Hersiening van Vonnisse en Bevele.		
XXX.	Appeals.			XXX.	Appèl.		
XXXI.	Assessors.			XXXI.	Assessore.		
XXXII.	Costs and Messengers Fees.			XXXII.	Koste en Geregsbodelone.		
XXXIII.	Appeals to Magistrate's Courts.			XXXIII.	Appèl na Magistraatshowe.		
XXXIV.	General.			XXXIV.	Algemeen.		

ORDER NO. I.

Application and Interpretation.

1. Unless the context shall otherwise require:—
 - (i) Orders I and II of these rules shall apply to all matters, whether civil or criminal.
 - (ii) Orders III to XXXIV inclusive shall apply only to civil matters.
 - (iii) Orders XXXV and XXXVI shall apply only to criminal matters.
2. (1) The provisions contained in Orders XV to XVIII inclusive of these rules shall be applicable only if —
 - (i) the plaintiff shall not apply for summary judgment; or
 - (ii) the plaintiff having applied for summary judgment, an order has been made giving the defendant leave to defend.

(2) (a) The forms contained in the First Annexure to these rules may, where applicable, be used with such variations as circumstances may require; but non-compliance with this rule shall not in itself be a ground of objection or exception.

 - (b) All process of the court for service or execution and all documents or copies to be filed of record shall be on foolscap paper.
 - (c) All process sued out or notices or documents delivered shall be endorsed with the name and address of the party suing out or delivering the same.
 - (d) The clerk of the court may, before issuing any process which is not substantially in the form required by these rules, refer the same to the judicial officer who may direct him either to issue or to refuse to issue such process. Provided that this shall not apply to any matter as to which the opposite party may object or except under these rules, and in particular shall not apply to endorsements of particulars of claim under Order VII, rule 3, (1), otherwise than as to costs, fees and charges.

(3) These rules shall come into operation on the commencement of the Proclamation.
3. (1) In these rules and in the form thereto annexed any word to which a meaning has been assigned in the body of this Proclamation shall bear that meaning, and the several words hereinafter mentioned shall have and include the meanings following, unless the rules otherwise direct or another meaning clearly appears from the context:—

“clerk of the court” includes any assistant clerk and any person appointed to act as such clerk or assistant;

“company” means an incorporated or registered company;

“copy” means a true and correct copy;

“default judgment” means a judgment given in the absence of the party against whom it is made;

“deliver” (except in Order VI) means to file or record with the clerk of the court and to serve a copy on the opposite party.

“delivery” means such filing and service;

“give security” means to give security to the satisfaction of the clerk of the court either by payment into court of the amount in question or by the giving of a security bond therefor either by a party with some one as his surety who is approved by the clerk of the court or by two or more persons who are so approved;

“messenger” means the messenger of the court or, (except in Order II), his lawful deputy, and includes any person specially approved of by the court to effect any particular service;

“money” includes all coined money, whether current in the Territory or not, and all bank-notes, bank-drafts, cheques, orders, warrants, or authorities for the payment of money;

“notice” means notice in writing;

“owner” and other like terms, when used with reference to property or acts, include corporations of all kinds and any other associations of persons capable of owning or holding property; they also, when relating to Crown property, include His Majesty;

“party” means a person who is a party to the proceedings;

“pending case” means a case in which summons has been issued and which has not been withdrawn, discontinued or dismissed and in which judgment has not been given;

ORDER NO. I.

Toepassing en Uitlegging.

1. Tensy deur die samehang anderste vereis word:—
 - (i) Is Orders I en II van hierdie reëls van toepassing op alle sake, hetsy siviele of strafregterlike.
 - (ii) Is Orders III tot en met XXXIV van toepassing slegs op siviele sake.
 - (iii) Is Orders XXXV en XXXVI van toepassing slegs op strafregterlike sake.
2. (1) Die bepalinge bevat in Orders XV tot en met XVIII van hierdie reëls is van toepassing slegs as —
 - (i) Die eiser nie vir summierse vonnis aansoek doen nie.
 - (ii) Nadat die eiser vir summierse vonnis aansoek gedoen het, 'n bevel gegee is waardeur aan die verweerder verlof toegestaan is om te verdedig.

(2) (a) Die vorms bevat in die Eerste Aanhangsel tot hierdie reëls kan, waar toepaslik, met sodanige wysiginge as omstandighede mag vereis, gebruik word, dog, nie-nakoming van hierdie reël sal as sulks geen grond vir 'n objeksie of eksepsie wees nie.

 - (b) Alle prosesstukke van die hof vir doeleindes van diening of eksekusie en alle stukke of afskrifte vir doeleindes van notule, moet op folio-papier gestel word.
 - (c) Alle uitgereikte prosesstukke of kennisgewinge of ingelewerde stukke moet voorsien wees van die naam en adres van die party deur wie die uitreiking aangevra is of die inlewering geskied.
 - (d) Die klerk van die hof kan, voor die uitreiking van enige prosesstuk wat nie hoofsaaklik ooreenstem met die vorm vereis deur hierdie reëls nie, sodanige stuk na die regterlike amptenaar verwys, wat hom daarop kan gelas of om sodanige stuk uit te reik of om uitreiking daarvan te weier. Met die verstande dat sulks nie van toepassing sal wees nie op enige saak, ten opsigte waarvan die teëparty kragtens hierdie reëls 'n objeksie of eksepsie kan opwerp, en sal veral nie van toepassing wees nie op onderskrywinge van besonderhede van eis ingevolge Order VII, reël 3, (1), behalwe vir sover dit koste, fooie en onkoste betref.

(3) Hierdie reëls sal in werking tree by die inwerking-treding van hierdie Proklamasie.
3. (1) In hierdie reëls en in die daaraangehegte vorms dra elke woord waaraan die bepalinge van die Proklamasie 'n betekenis toegeken het, daardie betekenis, en die verskillende hierinlater vermelde woorde sal, tensy die reëls anders bepaal of 'n ander betekenis duidelik uit die verband blyk, die volgende betekenis dra en insluit:—

“Klerk van die hof” sluit enige assistent-klerek in, asook enige persoon wat aangestel is om as klerk of assistent-klerek op te tree;

“Maatskappy” beteken 'n ingelyfde of geregistreerde maatskappy;

“Afskrif” beteken 'n ware en korrekte afskrif;

“Vonnis by Verstek” beteken 'n vonnis gegee in die afwesigheid van die persoon teen wie dit uitgespreek is;

“Inlewer” (behalwe in Order VI) beteken by die klerk van die hof ter notulering indien en diening van 'n afskrif op die teëparty;

“Inlewering” beteken sodanige indiening en diening;

“Sekuriteit stel” beteken sekuriteit stel ten genoë van die klerk van die hof, of deur inbetaling van die betrokke bedrag by die hof of deur 'n borgakte daarvoor te gee, hetsy deur die party tesame met 'n borg deur die klerk van die hof goedgekeur of deur twee of meer aldus goedgekeurde persone;

“Bode” beteken die geregsbode of, (behalwe in Order II) sy wettige adjunk, en sluit in enige persoon wat deur die hof spesiaal goedgekeur is om 'n bepaalde diening te bewerkstellig;

“Geld” sluit in alle gemunte geld, onverskillig of dit gangbaar in die Gebied is of nie, asook alle banknote, bankwissels, tjeks, orders of dokumente van magtiging tot die betaling van geld;

“Kennisgewing” beteken skriftelike kennisgewing;

“Eienaar” en ander soortgelyke terme, wanneer ten opsigte van goedere of handelinge gebruik, sluit in korporasies van enige soort en enige ander vereniginge van persone wat bevoeg is om die eiendom of besit van goedere te hê; wanneer die terme betrekking het op eiendom van die Kroon sluit hulle ook Sy Majesteit in;

“Party” beteken iedereen wat 'n party is by die regsding;

“Hangende saak” beteken 'n saak waarin die dagvaring uitgereik is en wat nie teruggetrek, gestaak of van die hand gewys is nie en waarin uitspraak nog nie gegee is nie;

"plaintiff", "defendant", "applicant", "respondent", and "party" include, for the purpose of service, notice, appearance, endorsement and signature, the attorney appearing for any such party and the Mayor, Chairman, Town Clerk, secretary or similar officer of any local authority or similar body nominated by it;

"property" includes everything animate or inanimate, corporeal or incorporeal, capable of being the subject of ownership;

"superior court" means the High Court, any Circuit Court or the Appellate Division of the Supreme Court of South Africa;

"the Proclamation" means the Magistrates' Court Proclamation, 1935;

"valuable security" includes any document which is the property of any person and which is the evidence of the ownership of any property or of the right to recover or receive any property.

(2) Where anything is required by these rules to be done within a particular number of days or hours, a Sunday or public holiday shall not be reckoned as part of such period.

(3) All distances shall be calculated over the shortest route reasonably available in the circumstances.

ORDER NO. II.

Messenger of the Court.

1. Every messenger of the court who is not an officer of the Public Service of the Territory shall give security to the satisfaction of the magistrate of the district for the due fulfilment of the duties of his office and for the due and punctual payment by him to the parties entitled thereto of all moneys which shall come into his hands by virtue of his office.

2. Except as otherwise provided in these rules, the process of the court shall be served or executed, as the case may be, through the messenger.

3. Service or execution of process of the court shall be effected without any avoidable delay, and the messenger shall, in any case where resistance to the due service or execution of the process of the court has been met with or is reasonably anticipated, have power to call upon any officer or member of the police force to render aid to himself or his deputy.

4. The messenger shall endorse on or annex to all process entrusted to him for service or execution a return showing the date and manner of service or the result of execution; and shall then forthwith return the said process to the clerk of the court.

5. The messenger shall, as to process entrusted to him for service, notify by post or otherwise in writing to the party who sued out the process and as soon as may be, either —

- (1) that service has been duly effected and the date thereof; or
- (2) that he has been unable to effect service.

CIVIL.

ORDER NO. III.

Clerk of the Court.

1. (1) The clerk of the court shall keep a book to be called the Civil Record Book and shall enter therein forthwith at each successive stage of the action:—

- (a) the number of the action;
- (b) the names of the parties and their attorneys, if any;
- (c) the date and hour of issue of summons;
- (d) the date on which defendant's time to enter appearance expires;
- (e) the date on which the defendant enters appearance;
- (f) any remarks required by these rules or by the special circumstances of the case.

(2) He shall also keep the Civil Judgment Book, and shall enter therein the number of the action in the Civil Record Book, the date of the judgment, the name and address of the judgment debtor, the name of the judgment creditor, the nature of the debt, and the amount of the judgment, and of the judgment creditor's costs when these have been taxed or fixed by the clerk.

"Eiser", "Verweerder", "Applikant", "Respondent", en "Party" sluit in, vir doeleindes van diening, kennisgewing, verskyning, endossement en ondertekening, die prokureur wat vir sodanige party verskyn en die Burge-meester, Voorsitter, Stadsklerk, Sekretaris of soortgelyke beampte van 'n plaaslike gesag of dergelyke liggaam en deur sodanige liggaam benoem;

"Goedere" sluit in alle voorwerpe vatbaar vir eiendomsregte, hetsy lewende of lewelose, hetsy stoflike of onstoflike;

"Hoër Hof" beteken die Hooggeregshof, enige Rondgaande Hof of die Appèlafdeling van die Hooggeregshof van Suid-Afrika;

"Die Proklamasie" beteken die Magistraatshowe Proklamasie, 1935;

"Sekuriteit van waarde" sluit in elke dokument, die eiendom waarvan in iemand gevestig is, en wat dien tot bewys van die eiendomsreg op enige goedere of van die reg om enige eiendom op te eis of te ontvang.

(2) Wanneer ingevolge hierdie reëls iets gedoen moet word binne 'n bepaalde aantal dae of ure, word 'n Sondag of publieke vakansiedag nie gereken as deel van sodanige tydperk nie.

(3) Alle afstande word bereken oor die kortste roete redelik beskikbaar onder die omstandighede.

ORDER NO. II.

Geregsbode.

1. Elke geregsbode wat nie 'n beampte van die Staatsdiens van die Gebied is nie, moet ten genoeg van die magistraat van die distrik sekerheid stel vir die behoorlike vervulling van sy pligte en vir die behoorlike en stiptelike betaling aan die persone daarop geregtig van alle gelde wat deur hom kragtens sy amp ontvang word.

2. Behalwe waar deur hierdie reëls anderste bepaal is, moet alle prosesstukke van die hof gedien of uitgevoer word, soos die geval mag wees, deur die bode.

3. Die diening of uitvoering van prosesstukke van die hof moet sonder enige vermydelike versuim bewerkstellig word en in enige geval waar weerstand teen die behoorlike diening of uitvoering van prosesstukke gebied is of redelikerwys verwag word, het die bode die mag om enige beampte of lid van die polisiemag op te roep om hom of sy adjunk hulp te verleen.

4. Die bode moet op of aan alle prosesstukke aan hom toevertrou vir diening of uitvoering 'n relaas stel of heg, wat die datum en wyse van diening, of die uitslag van die uitvoering, aantoon; en daarop moet hy sodanige prosesstukke onmiddellik aan die klerk van die hof terugbesorg.

5. Die bode moet, met betrekking tot prosesstukke aan hom toevertrou vir diening, sodra doenlik, aan die persoon wat uitreiking van sodanige stukke aangevra het, per pos of andersins skriftelik kennis gee, of —

- (1) dat diening behoorlik bewerkstellig is en die datum daarvan; of
- (2) dat hy nie instaat was om diening te bewerkstellig nie.

SIVIELE.

ORDER NO. III.

Klerk van die Hof.

1. (1) Die klerk van die hof moet 'n boek genoem die Siviele Sakeboek hou waarin hy by elke opeenvolgende stadium van die geding onmiddellik moet aanstip:—

- (a) die nommer van die saak;
- (b) die name van die partye en hulle prokureurs, as enige;
- (c) die datum en uur van uitreiking van die dagvaring;
- (d) die datum waarop die termyn, binne welke verweerder verdediging kan aantekens, verstryk;
- (e) die datum waarop verweerder verdediging aantekens;
- (f) enige aanmerkinge deur hierdie reëls of die besonder omstandighede van die saak vereis.

(2) Hy moet ook die Siviele Vonnisboek hou, en moet daarin aanstip die nommer van die saak in die Siviele Sakeboek, die datum van die vonnis, die naam en adres van die vonnis-skuldenaar, die naam van die vonnis-skuldeiser, die aard van die skuld, die bedrag van die vonnis en van die vonnis-skuldenaar se koste wanneer laasgenoemde getakseer of deur die klerk vasgestel is.

(3) He shall also keep a book to be called the Debt Attachment Book wherein he shall note the names of the parties to garnishee proceedings, and the dates of any process thereunder and the dates and statements of the amounts recovered.

(4) All rules applying to the Civil Judgment Book shall apply, *mutatis mutandis*, to the Debt Attachment Book; and, if the judgment upon which the garnishee proceedings are founded was a judgment of some other court, the clerk shall transmit a copy of the relative entry in the Debt Attachment Book to such other court.

2. He shall also keep a cash book and shall enter therein short particulars of all payments into and out of court, and shall take a receipt from each party to whom the money is paid out of court.

3. (1) The summons or other first document filed in a case or on an application not relating to a then pending case shall be numbered by him with a consecutive number for the year; and the action or application shall be entered by him in the Civil Record Book under that number.

(2) Every document afterwards served or delivered in such case or application, or in any subsequent case in continuation of any such application shall be marked with such number by the party delivering it, and shall not be received by the clerk of the court until so marked.

4. (1) All documents delivered to him to be filed of record and all minutes made by the court shall be filed of record under the number of the respective action or application.

(2) Copies of such records shall, upon prepayment of the prescribed fees, be made and issued by the clerk of the court to any person applying therefor and entitled thereto, or such copies may be made by such person in the presence of the clerk.

5. It shall also be the duty of the clerk of the court —

- (1) to sign and issue all such process of the court as may be sued out by any person entitled thereto;
- (2) to notify the plaintiff forthwith by post or otherwise of the defendant's consent to judgment, payment into court of the amount claimed or any part thereof or of an application for a judgment by default having been refused;
- (3) to write out, upon the request of any party and on payment of the following court fees, any process of the court which any party requests him to write out, viz:—

Summons, defence or counterclaim	5s.
Application or security bond	2s. 6d.
Subpoena, warrant of execution or other process or document	1s.

provided that such assistance shall not be rendered to the plaintiff in actions where the claim or value of the matter in dispute in convention exceeds the sum of £15;

- (4) to furnish any person applying therefor with a copy of the Proclamation and these rules on payment of a fee of one shilling.

6. All fines imposed by the court shall be paid to the clerk of the court and, subject to the provisions of these rules, he shall pay over and account therefor as the Administrator may from time to time direct.

7. Any act required to be done by the clerk of the court may be done by a judicial officer, except that a judicial officer shall in no case write out any affidavit, pleading or process for any party.

ORDER NO. IV.

Representation of Parties.

1. (1) A party may appear and conduct his case either —
 - (a) in person;
 - (b) by an attorney;
 - (c) by an advocate duly instructed by an attorney.

(2) Any local authority or similar body may in addition appear by its mayor, chairman, town clerk, secretary or similar officer nominated by it for the purpose.

(3) No person appearing in virtue of the powers conferred by Rule I (1) (a) or (2) shall be entitled to recover for so appearing any costs other than necessary disbursements.

(3) Hy moet ook 'n boek, genoem die Skuldbeslagboek, hou, waarin hy moet aanteken die name van die partye in skuldbeslaggedinge en die datums van enige prosesakte ingevolge daarvan, asook die bedrae verhaal en die datums daarvan.

(4) Alle reëls van toepassing op die Siviele Vonnisboek is, *mutatis mutandis*, toepaslik op die Skuldbeslagboek; en, as die uitspraak waarop die skuldbeslaggeding berus 'n uitspraak van 'n ander hof was, moet die klerk 'n afskrif van die betrokke aantekening in die Skuldbeslagboek aan sodanige ander hof opstuur.

2. Hy moet voorts 'n kasboek hou en moet daarin kort besonderhede aanstip van alle geregtelike in- of uitbetalinge en moet 'n kwitansie verkry van elke persoon aan wie geld aldus uitbetaal word.

3. (1) Die dagvaring of ander eerste stuk ingedien in 'n saak, of in verband met 'n applikasie wat g'n betrekking het op 'n aanhangige saak nie, moet deur hom van 'n volgnommer vir die jaar voorsien word; en die saak of applikasie moet deur hom in die Siviele Sakeboek onder daardie nommer aangeteken word.

(2) Elke stuk wat daarna in sodanige saak of applikasie, of in enige latere saak by wyse van voortsetting van enige sodanige applikasie, gedien of ingelewer word, moet deur die party wat dit inlewer met sodanige nommer gemerk word en moet nie deur die klerk van die hof in ontvangs geneem word, totdat dit so gemerk is nie.

4. (1) Alle stukke by hom ingelewer vir doeleindes van notule en alle notule deur die hof geboekstaaf moet opgeberg word onder die nommer van die betrokke saak of applikasie.

(2) Afskrifte van sodanige stukke moet, teen vooruitbetaaling van die voorgeskrywe fooie, deur die klerk van die hof gemaak en uitgereik word aan enige persoon wat daarvoor aanvrag doen en geregtig daarop is, of sodanige afskrifte kan deur sodanige persoon in die aanwesigheid van die klerk gemaak word.

5. Die klerk van die hof is ook verplig —

- (1) om alle sodanige prosesstukke, die uitreiking waarvan deur enige daartoe geregtigde persoon aangevra mag word, te teken en uit te reik;
- (2) om die eiser onmiddellik per pos of andersins kennis te gee, van die verweerder se toestemming tot vonnis, geregtelike inbetaling van die bedrag geëis of van enige gedeelte daarvan, of dat 'n applikasie vir vonnis by verstek van die hand gewys is;
- (3) om, op versoek van enige party en teen betaling van die volgende hoffooie, enige prosesstukke uit te skryf, naamlik:—

Dagvaring, verdediging of teeneis	5s.
Applikasie of borgakte	2s. 6d.
Subpoena, lasbrief vir eksekusie of ander prosesstuk of dokument	1s.

met die verstande dat sodanige hulp nie aan die eiser verleen mag word nie in regsgedinge waarin die eis of die waarde van die onderwerp in geskil in konvensie die som van £15 te bowe gaan nie;

- (4) om aan enige persoon, op aanvraag, 'n eksemplaar van die proklamasie en hierdie reëls, teen betaling van een sjieling te verstrek.

6. Alle deur die hof opgelêde boetes moet aan die klerk van die hof betaal word, en hy moet, onderhewig aan die bepalinge van hierdie reëls, dit oorbetaal en reken-skap daarvan doen, soos die Administrateur van tyd tot tyd mag bepaal.

7. Elke handeling, die verrigting waarvan aan die klerk van die hof opgedra is, kan deur 'n regterlike amptenaar verrig word, met hierdie uitsondering, dat 'n regterlike amptenaar onder geen omstandighede 'n beëdigde verklaring, pleitstuk of prosesstuk vir 'n party mag uitskryf nie.

ORDER NO. IV.

Verteenwoordiging van Partye.

1. (1) 'n Party kan verskyn en sy saak waarneem hetsy —
 - (a) persoonlik;
 - (b) deur 'n prokureur;
 - (c) deur 'n advokaat behoorlik daartoe geïnstrueer deur 'n prokureur.

(2) Enige plaaslike gesag of dergelike liggaam kan bowendien verskyn deur sy burgemeester, voorsitter, stads-klerek, sekretaris of soortgelyke beampte vir die doel benoem.

(3) Niemand wat verskyn kragtens die bevoegdheids hom verleen by Reël 1 (1) (a) of ((2), is ten opsigte van sy verskyning geregtig op enige koste anders as noodsaaklike uitgawe nie.

(4) It shall not be necessary for any person to file a power of attorney to appear; but the authority of any person appearing for a party may be challenged by the other party within 48 hours after he has notice that such person is so appearing; and thereupon such person may not without leave of the court, so appear further until he shall satisfy the court that he has authority so to appear; and the court may adjourn the hearing of the action or application to enable him to do so.

2. (1) If a party dies or becomes incompetent to continue an action the action shall thereby be stayed until such time as an executor, trustee, guardian, or other competent person has been constituted or appointed in his place or until such incompetence shall cease to exist.

(2) Where an executor, trustee, guardian or other competent person has been so constituted or appointed, the court may, on application order that he be substituted in the place of the party who has so died or become incompetent.

ORDER NO. V.

Pro Deo Applicants.

1. Any person desiring to sue or defend as a pauper may apply to the court *ex parte* and either in writing or *viva voce* for leave to do so.

2. The court may upon any such application —

- (a) examine the applicant on oath as to whether he has a *prima facie* right of action or defence, and as to his means;
- (b) require the applicant to call further evidence with reference to either question;
- (c) refer any such application to an attorney for investigation and report as to the applicant's means and whether he has a *prima facie* right of action or defence, as the case may be; and
- (d) require the applicant to give notice of the application to the opposite party.

3. If the court is thereafter satisfied that the applicant has a *prima facie* right of action or of defence and is not possessed of means or earnings sufficient to enable him to pay the court fees and messenger's charges, the court may order —

- (a) that the process of the court shall issue and be served free of charge to the applicant other than for the disbursements of the messenger; and
- (b) that an attorney shall be appointed to act for such applicant; or
- (c) that the clerk of the court shall, without charge, write out such process, affidavits, notices and other documents as may be required to comply with these rules:

Provided that an order shall not be made in terms of paragraph (b) of this rule, unless the applicant shall either produce the written consent of an attorney to so act, or shall satisfy the court that he is illiterate or is for some other good reason unable to conduct his case in person.

4. (1) If the pauper succeeds and is awarded costs against his opponent he shall, subject to taxation, be entitled to include and recover in such costs his attorney's costs and also the fees and charges so remitted; and if he shall recover either for principal, interest or costs he shall first pay and make good thereout *pro rata* all such costs, fees and charges.

(2) If the pauper shall not succeed or shall not recover upon a judgment in his favour no fees shall be taken from him by the attorney so appointed to act for him.

5. An order made under this Order —

- (a) shall not exempt the applicant from liability to be adjudged to pay adverse costs; and
- (b) may, on application at any time before judgment by any person affected thereby, be reviewed and rescinded or varied by the court for good cause shown.

ORDER NO. VI.

Service of Process, Notices, etc.

1. Any party requiring service of any process, notice or other document to be made by the messenger shall deliver to him the original of such process, notice or document, together with as many copies thereof as there are persons to be served.

(4) Geen volmag om te verskyn behoef deur enige persoon ingedien te word nie; maar die bevoegdheid van enige persoon om namens 'n party te verskyn kan deur die teëparty betwis word binne 48 uur, nadat hy kennis dra dat sodanige persoon sal verskyn; en daarop kan sodanige persoon nie sonder verlof van die hof, verder optree nie voor en aler hy tot bevrediging van die hof bewys gelewer het dat hy as sodanig bevoeg is; ten einde hom daartoe die geleentheid te gee kan die hof die verhoor van die saak of applikasie uitstel.

2. (1) Ingeval 'n party te sterwe kom of tot voortsetting van 'n saak onbevoeg word, word sodanige saak opgeskort tot tyd en wyl 'n eksekuteur, kurator, voog of ander bevoegde persoon in sy plek daargestel of aangestel is, of totdat die onbevoegdheid opgehou het om te bestaan.

(2) Wanneer 'n eksekuteur, kurator, voog of 'n ander bevoegde persoon aldus daargestel of aangestel is, kan die hof op applikasie gelas dat hy die persoon wat te sterwe gekom het of onbevoeg geword het, sal vervang.

ORDER NO. V.

Pro Deo Applikante.

1. Iedereen wat 'n saak as 'n behoeftige wens te voer, hetsy as eiser of verweerder, kan by die hof *ex parte* en of skriftelik of *viva voce* aansoek doen vir verlof daartoe.

2. Die hof kan na aanleiding van sodanige versoek —

- (a) die applikant onder eed ondervra om vas te stel of hy 'n *prima facie* reg van aksie of verdediging het, en omtrent sy middele;
- (b) vereis dat die applikant met betrekking tot beide punte verdere getuienis lewer;
- (c) die applikasies na 'n prokureur verwys vir ondersoek en rapport aangaande die applikant se middele en die vraag of hy 'n *prima facie* reg van aksie of verdediging het, soos die geval mag wees; en
- (d) vereis dat die applikant kennis van die applikasie aan die teëparty gee.

3. As die hof vervolgens oortuig is dat die applikant 'n *prima facie* reg van aksie of verdediging het, en geen voldoende middele of verdienste besit om die hof-fooie en bodeloon te betaal nie, kan hy beveel —

- (a) dat die uitreiking en diening van die prosesstukke kosteloos teenoor die applikant geskied met uitsondering van die bode se uitgawe; en
- (b) dat 'n prokureur aangestel word om namens die applikant op te tree; of
- (c) dat die klerk van die hof alle prosesstukke, beëdigde verklaringe, kennisgewinge en ander stukke wat volgens hierdie reëls vereis mag word, kosteloos uitskrif:

Met die verstande dat 'n bevel onder paragraaf (b) van hierdie reël nie verleen kan word nie, tensy die applikant of die skriftelike inwilliging van 'n prokureur om so op te tree aan die hof voorlê, of ten genoeë van die hof bewys dat hy ongeletterd is of om ander goeie redes nie in staat is om sy saak persoonlik te voer nie.

4. As die behoeftige in sy saak slaag met toekenning van koste teen sy teëparty, is hy, behoudens taksasie, geregtig om onder sodanige koste die onkoste van sy prokureur tesame met die so kwytgestelde fooie en lone in te sluit en te verhaal, en ingeval hy ten opsigte van die hoofsom, rente of koste, enigiets mag ontvang, is hy verplig om allereers sodanige onkoste, fooie en lone *pro rata* daaruit te betaal en aan te suiwer.

(2) As die behoeftige sy saak verloor of niks verhaal ten opsigte van 'n uitspraak in sy guns nie, mag die prokureur wat aangestel is om namens hom op te tree geen fooie van hom neem nie.

5. 'n Bevel ingevolge hierdie Order gegee —

- (a) vrywaar die applikant nie teen die blootstelling om veroordeel te word tot betaling van die koste van die teëparty nie;
- (b) kan, te eniger tyd, voor uitspraak, op versoek van enige daarby betrokke persoon, deur die hof hersien en ter sy gestel of gewysig word, as grondige redes daarvoor aangetoon word.

ORDER NO. VI.

Diening van Prosesstukke, Kennisgewinge, ens.

1. Enige party wat 'n prosesstuk, kennisgewing of ander stuk deur die bode wil laat dien, moet aan hom die oorspronklike van sodanige prosesstuk, kennisgewing of stuk oorhandig tesame met soveel afskrifte daarvan as die aantal persone waarop dit gedien moet word.

2. Except as hereinafter provided and in the case of service by post, process and notice may not be served on a Sunday or public holiday or between 8 p.m. and 6 a.m. and no such service shall be valid.

3. (1) Where the application to the court is for an order affecting the liberty of the respondent, the process therefor shall be served by delivery of a copy thereof to the respondent personally, unless the court shall for good cause shown give leave for such process to be served in some other specified manner.

(2) All other process shall, subject to the provisions of this Order be served upon the person affected thereby by delivery of a copy thereof in one or other of the following manners:—

- (a) to the said person personally, or to his duly authorised agent;
- (b) at his residence or place of business or employment to some person apparently not less than sixteen years of age and apparently residing at or employed there;
- (c) if the person to be served has chosen a *domicilium citandi*, at the domicile so chosen;
- (d) in the case of a corporation or company at its local office or in any other manner specially provided by law;
- (e) if the address of the person to be served is within the area of jurisdiction of the court for which the messenger has been appointed, and the plaintiff or his authorised agent has given written instructions to the messenger to serve by registered post the process shall be so served:

Provided that where service has been effected in the manner prescribed by paragraph (c) or (e) of this sub-rule, the Court or clerk of the court as the case may be, may, if there is reason to doubt whether the process served has come to the actual knowledge of the person to be served, rule that such service is invalid.

(3) The messenger shall, on demand by the person upon or against whom process is served, exhibit to him the original of the process except when service has been effected by post, in which case the original may be inspected where it is filed of record.

4. (1) Where the person to be served keeps his residence or place of business closed, and thus prevents the messenger from serving the process, it shall be sufficient service to affix a copy thereof to the outer or principal door of such residence or place of business.

(2) Where the messenger is unable after diligent search to find at the residence of the person to be served either that person or such person as is described in (2) (b) of the last preceding rule, it shall be sufficient service to affix a copy of the process to the outer or principal door of such residence.

5. (1) Service of process in an action where no relief (other than costs) is claimed save an order for ejectment from certain premises or a judgment for the rent thereof may, if it cannot otherwise be effected, be made by affixing a copy thereof to the outer or principal door or on some other conspicuous part of the premises in question.

(2) Service of an interpleader summons where claim is made to any property attached in execution under process of the court may be made upon the attorney of record (if any) of the party to be served.

6. Where two or more persons are to be served with the same process service shall be effected upon each, except—

- (1) in the case of married persons not separated *a mensa et thoro*, or in respect of their goods, when service may be effected by delivery to either in any of the manners hereinbefore stated;
- (2) in the case of a partnership, when service may be effected by delivery at the office or place of business of such partnership, or if there be none such, then by service on any member of such partnership in any of the manners hereinbefore stated;
- (3) in the case of two or more persons sued in their capacity as trustees of an insolvent estate, liquidators of a company, executors, curators, or guardians, when service may be effected by delivery to any one of them in any of the manners hereinbefore stated;

2. Behalwe vir sover hierna anderste bepaal word en in die geval van diening per pos, kan prosesstukke en kennisgewinge nie op 'n Sondag of publieke vakansiedag of tussen 8 n.m. en 6 v.m. gedien word nie en sodanige diening is ongeldig.

3. (1) Wanneer by die hof 'n applikasie betreffende die vryheid van die respondent gemaak word, moet die prosesstuk daarin op die respondent persoonlik gedien word deur 'n afskrif daarvan aan hom te oorhandig, tensy egter die hof om grondige redes toestaan dat sodanige prosesstuk op 'n ander bepaalde wyse gedien word.

(2) Alle ander prosesaktes moet, onderhewig aan die bepalinge van hierdie Order, op die betrokke persoon gedien word deur lewering van 'n afskrif daarvan op een of ander van die volgende maniere:—

- (a) aan die persoon self, of aan sy behoorlik gemagtigde agent;
- (b) by sy woning of besigheidsplek of werkplek aan 'n persoon, oënskynlik minstens sestien jaar oud en wat blykbaar daar woonagtig of werksaam is;
- (c) ingeval die persoon op wie gedien moet word, 'n *domicilium citandi* aangewys het, dan by daardie adres;
- (d) in die geval van 'n korporasie of maatskappy by die plaaslike kantoor daarvan of op 'n ander spesiaal deur die wet bepaalde wyse;
- (e) ingeval die adres van die persoon op wie gedien moet word, binne die regsgebied van die hof is, waarvoor die bode aangestel is, en die eiser of sy gemagtigde agent skriftelike opdrag aan die bode gegee het om deur middel van geregistreerde brief te dien, moet die prosesstuk so gedien word:

Met die verstande dat, waar diening uitgevoer is op die wyse voorgeskryf deur paragraaf (c) of (e) van hierdie sub-reël, die hof of die klerk van die hof, soos die geval mag wees, as daar rede bestaan om te twyfel of die gediende prosesstuk werklik tot die kennis van die persoon, op wie gedien moet word, gekom het, sodanige diening as ongeldig kan verklaar.

(3) Die bode moet, op versoek van die persoon op of teen wie 'n prosesstuk gedien word, die bode aan die persoon of teen watter persoon die prosesstuk bewerkstellig is, in watter geval die oorspronklike stuk by die plek waar dit opgeberg is, besigtig kan word.

4. (1) As die persoon op wie gedien moet word sy woning of besigheidsplek gesluit hou en die bode sodoende verhinder om die prosesstuk te dien, kan die diening geskied deur 'n afskrif daarvan aan die buite- of hoofdeur van sodanige woning of besigheidsplek te heg.

(2) Wanneer die bode nie in staat is om, nadat hy by die woning van die persoon op wie gedien moet word behoorlik gesoek het, of daardie persoon of 'n persoon soos beskrywe in (2) (b) van die voorafgaande reël, te vind nie, kan die diening geskied deur 'n afskrif van die prosesstuk aan die buite- of hoofdeur van sodanige woning te heg.

5. (1) In 'n aksie waarin (met uitsondering van koste) geen ander verligting geëis word as 'n bevel tot verdrywing uit 'n bepaalde perseel of 'n vonnis vir die huurgelde daarvan, kan die diening van die prosesstuk, as 'n ander wyse van diening nie moontlik is nie, geskied deur die aanhegting aan 'n ander in die oog vallende deel van die betrokke perseel.

(2) 'n Tussenpleit-dagvaring in die geval waar aanspraak gemaak word op goedere waarop ingevolge 'n prosesstuk van die hof eksekutoriale beslag gelê is, kan gedien word op die prokureur in die saak (as daar een is) van die persoon op wie gedien moet word.

6. Waar dieselfde prosesstuk op twee of meer persone gedien moet word, moet diening op elkeen van hulle geskied, behalwe in die volgende gevalle:—

- (1) in die geval van eggenotes wat nie van tafel en bed of ten opsigte van hulle goedere geskei is nie, kan die diening geskied deur lewering, aan een of ander van beide, op enige van die maniere hierintevore vermeld;
- (2) in die geval van 'n vennootskap, kan die diening geskied deur lewering by die kantoor of besigheidsplek van sodanige vennootskap, of by gebreke van so 'n kantoor of plek, deur diening op 'n lid van sodanige vennootskap, op enige van die maniere hierintevore vermeld;
- (3) in die geval van twee of meer persone wat gedagvaar word in hulle hoedanigheid as kurators van 'n insolvente boedel, likwidateurs van 'n maatskappy, eksekuteurs, kurators of voogde, kan die diening geskied deur lewering aan enigeen van hulle, op enige van die maniere hierintevore vermeld;

- 14218
- (4) In the case of a syndicate, unincorporated company, club, society, church, public institution, or public body, when service may be effected by delivery at the local office or place of business of such body or, if there be none such, by service on the chairman or secretary or similar officer thereof in any of the manners hereinbefore stated.
7. (1) Service of a subpoena requiring the attendance of a witness may be effected in any of the manners in rules 3 or 4 of this Order prescribed, at a reasonable time before attendance is required.
- (2) (a) Service of any notice, request, statement or other document which is not process of the court may be effected by delivery by hand at the address for service given in the summons or appearance to defend (as the case may be), or by sending by registered post to the postal address so given.
- (b) An address for service or postal address so given may be changed by the delivery (as defined in Order I, rule 3) of notice of a new address, and thereafter service may be effected as aforesaid at such new address.
- (c) Service by registered post under this sub-rule shall be deemed, until the contrary appear, to have been effected at 10 a.m. on the next day but one after the post-marked date upon the receipt for registration.
- (3) Service under this rule need not be effected through the messenger.
8. (1) Where service cannot be effected in any manner hereinbefore prescribed, the court may, upon evidence of that fact and that the action is within the jurisdiction of the court, make an order allowing service to be effected in such manner as may be stated in such order, including notice by advertisement in substitution for or in addition to service.
- (2) Unless the summons commencing the action has been served upon the defendant personally or the defendant has appeared thereto or notice of attachment has been given to the defendant personally —
- (a) the execution creditor shall, if any property, corporeal or incorporeal, is attached in execution, within four days after attachment give security for twice the gross amount which may be realised under such attachment as unliquidated damages should such judgment be reversed, unless the execution debtor shall endorse on the writ of execution that he dispenses with such security; and if such security is not given or dispensed with, the attachment shall cease to have effect. In other cases the withdrawal of the attachment shall be effected by the messenger endorsing on the writ of execution that the attachment is withdrawn, together with the time and date of making such endorsement, and he shall deliver notice to the execution creditor and execution debtor and also to any claimant if interpleader proceedings in respect of the attached property have been instituted informing them that the attachment has been withdrawn at the time and date endorsed on the writ. Such withdrawal of attachment shall be deemed to have been effected at the time and on the date so endorsed on the writ;
- (b) if moneys are received by the messenger under any form of execution, such moneys shall not be paid over to the judgment creditor until he has given security for the restitution, should such judgment be reversed, of the full amount received by the messenger, or until the judgment debtor shall endorse on the order or writ of execution that he dispenses with such security;
- (c) the prescribed fee for security given under this rule shall without taxation be allowed therefor to the attorney of the judgment creditor, and shall be recoverable as part of the costs of execution;
- (d) any order or writ of execution shall bear on its face the following statement in writing:—
 "Security for restitution to be required, unless it is dispensed with by the judgment debtor or notice of attachment is given to him personally";
- (e) any such security may, if the judgment in question is reversed or varied be sued on by the judgment debtor without any cession thereof to him.
9. (1) Where the service to be effected is that of —
- (4) in die geval van 'n sindikaat, nie-ingelyfde maatskappy, klub, vereniging, kerk, openbare inrigting, of openbare liggaam, kan die diening geskied deur lewering by die plaaslike kantoor of besigheidsplek van sodanige liggaam of, by gebreke van so 'n kantoor of plek, deur diening op die voorsitter, sekretaris of soortgelyke be-ampte daarvan, op enige van die maniere hierintevore vermeld.
7. (1) Die diening van 'n subpoena waarin die opwagting van 'n getuie verlang word, kan geskied op enige van die maniere in reëls 3 of 4 van hierdie Order bepaal, en moet 'n redelike tyd voor die vereiste opwagting bewerkstellig word.
- (2) (a) Die diening van enige kennisgewing, versoek, verklaring of ander stuk wat nie prosesstukke van die hof is nie, kan geskied deur oorhandiging by die adres van diening aangewys in die dagvaring of stuk waarop verdediging aangeteken is (soos die geval mag wees), of deur toesending per geregistreerde brief aan die posadres aldus aangewys.
- (b) 'n Adres van diening of posadres aldus aangewys, kan verander word deur die inlewering (soos bepaal in Order I, reël 3) van 'n kennisgewing waarin 'n nuwe adres aangewys word, en daarna kan diening soos voormeld by sodanige nuwe adres geskied.
- (c) Dit moet, totdat die teendeel blyk, beskou word dat diening deur die pos, ingevolge hierdie sub-reël, by wyse van geregistreerde brief om 10 v.m. op die tweede dag na die posdatum op die registrasiebewys, geskied het.
- (3) Diening ingevolge hierdie reël hoef nie deur die bode te geskied nie.
8. (1) Wanneer die diening nie op enige hierintevore voorgeskrywe maniere kan geskied nie, kan die hof, nadat bewys gelewer is hiervan en dat die saak binne die regsmaat van die hof val, 'n bevel uitvaardig wat toelaat dat diening kan geskied op 'n wyse soos aangedui mag word in sodanige bevel, insluitende kennisgewing by wyse van advertensie in plek van of benewens diening.
- (2) Tensy die dagvaring waardeur die aksie ingestel word, op die verweerder persoonlik gedien is, of tensy die verweerder ingevolge die dagvaring verskyn het, of tensy kennisgewing van beslaglegging aan die verweerder persoonlik gegee is —
- (a) moet die eksekusie-skuldeiser, as eksekutoriale beslag op enige goedere, hetsy liggaamlike of onliggaamlike, gelê is, binne vier dae na die beslaglegging sekuriteit stel vir dubbel die bruto-bedrag wat die goedere ingevolge sodanige beslaglegging mag opbring, by wyse van ongelikwiderde skadevergoeding ingeval sodanige vonnis vernietig mag word, tensy die eksekusie-skuldenaar op die eksekusie-lasbrief skriftelik verklaar dat hy van sodanige sekuriteit afsien; en as sodanige sekuriteit nie gegee word nie of daarvan nie afgesien is nie, sal die beslaglegging nie langer van krag wees nie. In ander gevalle moet die terugtrekking van die beslaglegging geskied by wyse van 'n aantekening deur die bode op die eksekusie-lasbrief dat die beslaglegging teruggetrek is, tesame met die tyd en datum wanneer sodanige aantekening gemaak is, en hy moet daarop kennis gee aan die eksekusie-skuldeiser en eksekusie-skuldenaar en, as 'n tussenpleit-geding met betrekking tot die goedere onder beslag, ingestel is, dan ook aan sodanige eisders, dat die beslaglegging teruggetrek is op die tyd en datum wat op die lasbrief aangeteken is. Sodanige terugtrekking van 'n beslaglegging moet beskou word as uitgevoer te wees ten tyde en op die datum aldus op die lasbrief aangeteken.
- (b) Wanneer gelde ingevolge enige vorm van eksekusie deur die bode ontvang word, moet sodanige gelde nie aan die eksekusie-skuldeiser oorbetaal word nie, voordat hy vir die geval dat die vonnis vernietig mag word, sekuriteit gestel het vir teruggawe van die volle bedrag deur die bode ontvang, of tensy die eksekusie-skuldenaar 'n skriftelike aantekening op die eksekusie-lasbrief gemaak het dat hy van sodanige sekuriteit afsien.
- (c) Moet die voorgeskrywe fooi, ten aansien van sekuriteit ingevolge hierdie reël gestel, sonder taksasie aan die prokureur van die vonnis-skuldeiser toegestaan word, en is verhaalbaar as deel van die eksekusiekoste.
- (d) Moet op die voorkant van alle eksekusie-bevele of lasbriewe die volgende skriftelike verklaring verskyn:—
 "Sekuriteit vir teruggawe word vereis, tensy die vonnis-skuldenaar daarvan afsien of kennis van die beslaglegging aan hom persoonlik gegee word."
- (e) Kan die vonnis-skuldenaar, as die betrokke vonnis vernietig of gewysig word, op sodanige sekuriteit gereguleer vorder sonder enige oordrag daarvan aan hom.
9. (1) Wanneer die diening wat bewerkstellig moet word die volgende is:—

- (a) summons for civil imprisonment;
- (b) an order made *ex parte* which calls upon the respondent to show cause at a time stated or limited in the order;
- (c) an interpleader summons; or
- (d) notice to a judgment debtor under Order XXVIII, rule 5 (2),

service shall be effected at least three days *plus* one additional day for each 10 miles distance of the place of service from the court house, not exceeding 21 days in all, before the time stated or limited therein for the appearance of the party served.

(2) Except where otherwise provided, notice of application to the court shall be served at least three days before the time appointed for the hearing of the application.

10. (1) Where under any rule other than rule 7 of this Order service of any summons or process may be effected by registered post the service shall be so effected by the messenger placing a copy thereof in an envelope, addressing and posting it by prepaid registered letter to the address of the party to be served and at the time of registration making application through the Post Office requiring to be furnished with an acknowledgment by the addressee of the receipt thereof.

A receipt form completed as provided in sub-paragraph (2) shall be a sufficient acknowledgment of receipt for the purposes hereof.

(2) In effecting delivery of a registered letter through a private post office box or bag rented from the Director of Posts and Telegraphs of the Territory postal officials shall place a printed receipt form bearing the registered number and the address of such registered letter in such box, or bag and the representation at the proper post office of the said receipt signed either by the addressee or the person presenting the same purporting to sign for the addressee shall be a sufficient warrant for the delivery of such registered letter to the applicant.

(3) Every such letter shall have on the envelope a printed or typewritten notice in the following terms:—

"If delivery of this letter cannot be made within days it is not to be readdressed but is to be returned to the sender."

ORDER NO. VII.

Summons Commencing Action.

1. The process of the court for commencing an action shall be by summons calling upon the defendant to enter an appearance within a stated time after service (which shall not be less than three days, plus one additional day for each 10 miles distance of the place of service from the court house, but not to exceed 21 days in all) to answer the claim of the plaintiff, and warning the defendant of the consequences of failure to do so; and shall be signed by the clerk of the court, and shall bear the date of issue by him.

2. (1) The summons shall before issue be endorsed with —

- (a) particulars of claim;
- (b) forms of —
 - (i) consent to judgment; and
 - (ii) appearance to defend.

(2) The endorsement (a) shall be signed by the plaintiff or by his attorney, and the full particulars where the plaintiff will accept service of process in the action (which address, except in places where there are fewer than three attorneys or firms of attorneys practising independently of one another, shall not be more than three miles distant from the court house) and also the postal address of the person so signing shall be given thereon.

3. (1) The particulars of claim shall show the nature and amount of the claim, the rate of interest and the amount thereof claimed up to the date of the summons and the amount which, if the action is undefended, is claimed for attorney's costs and court fees. The messenger shall endorse the amount of his charges on the summons on service thereof.

(2) The particulars shall also show any abandonment of part of the claim under section *thirty-seven* of the Proclamation and any set off under section *thirty-eight* of the Proclamation.

- (a) 'n dagvaring tot siviele gyseling;
- (b) 'n bevel *ex parte* gegee waarin die verweerder opgeroep word om op of binne 'n bepaalde tyd, in die bevel aangedui, redes aan te toon;
- (c) 'n tussenpleit-dagvaring; of
- (d) kennisgewing aan 'n vonnis-skuldenaar ingevolge Order XXVIII, reël 5 (2),

moet diening ten minste drie dae voor die tyd daarin aangedui of vasgestel vir die verskyning van die gediende party geskied, met die verstande dat een verdere dag ten opsigte van elke afstand van 10 myl waarop die plek van diening van die geregshof geleë is, bygereken moet word — 21 dae in totaal nie te bowe gaande nie.

(2) Behalwe vir sover anders bepaal is, moet kennisgewing van 'n applikasie aan die hof, ten minste drie dae voor die tyd bepaal in die verhoor daarvan, gedien word.

10. (1) Waar die diening van enige dagvaring of prosesstuk ingevolge enige reël, met uitsondering van reël 7 van hierdie Order, per geregistreerde brief kan uitgevoer word, moet diening as volg geskied: Die bode plaas 'n afskrif daarvan in 'n konvert, adresseer en pos dit per vooruitbetaalde geregistreerde brief aan die adres van die party wat gedien moet word en doen ten tye van registrasie aansoek deur die Poskantoor om verskaffing van 'n erkenning van ontvangs deur die geadresseerde.

'n Ontvangsvorm voltooi soos voorsien in sub-paragraaf (2) is genoegsame erkenning van ontvangs vir die doeleindes hiervan.

(2) Waar aflewering van 'n geregistreerde brief geskied deur 'n privaat poskantoorbus of -sak, gehuur van die Direkteur van Pos- en Telegraafwese van die Gebied, moet posbeambtes 'n gedrukte ontvangsvorm met die registrasie-nommer en die adres van sodanige brief daarop in sodanige bus of sak plaas, en die vertoning by die betrokke poskantoor van genoemde ontvangsvorm, geteken hetsy deur die geadresseerde of die persoon wat sulks aanbied en voorgee namens die geadresseerde te teken, is voldoende waarborg vir die aflewering van sodanige geregistreerde brief aan die applikant.

(3) Elke sodanige brief moet op die konvert 'n gedrukte of getikte kennisgewing hê in die volgende bevoording:—

"As hierdie brief nie binne dae afgelewer kan word nie, moet dit nie opnuut geadresseer word nie, maar aan die afsender teruggestuur word."

ORDER NO. VII.

Aanhangigmaking van 'n Saak by wyse van Dagvaring.

1. 'n Saak word aanhangig gemaak by wyse van 'n dagvaring waarin die verweerder opgeroep word om binne 'n bepaalde tyd na die diening (welke tyd nie minder as drie dae moet wees nie, plus een verdere dag ten opsigte van elke afstand van 10 myl waarop die plek van diening van die geregshof geleë is, maar 21 dae in totaal nie te bowe gaande nie) verdediging aan te teken, ten einde op eiser se vordering te antwoord, en waarin die verweerder gewaarsku word teen die gevolge van versuim, om dit te doen. Die dagvaring moet onderteken wees deur die klerk van die hof, en moet voorsien wees van die datum waarop hy dit uitreik.

2. (1) Op die dagvaring moet geëndosseer wees —

- (a) besonderhede van vordering;
- (b) vorms van —
 - (i) toestemming tot vonnis; en
 - (ii) aantekening van verdediging.

(2) Die endossement (a) moet geteken word deur die eiser of sy prokureur, en die volle besonderhede ten opsigte van die plek waar eiser diening van prosesstukke in die saak sal aanneem, (welke adres, met die uitsondering van plekke waar minder as drie prokureurs of prokureur-firmas onafhanklik van mekaar praktiseer, nie verder as drie myl van die geregshof mag wees nie) asook die posadres van die persoon wat aldus teken, moet daarin aangegee word.

3. (1) Die besonderhede van vordering moet die aard en bedrag daarvan aantoon, die rentekoers en die bedrag van die geëiste rente tot op die datum van die dagvaring, asook die bedrag wat, ingeval die saak onverdedig is, ten opsigte van prokureurskoste en hooftoos gevorderd word. Die bode moet by diening van die dagvaring die bedrag van sy loon daarop endosseer.

(2) Die besonderhede moet ook enige afstand van deel van die eis ingevolge artikel *sewe-en-dertig* van die Proklamasie en enige skuldvergelyking ingevolge artikel *ag-en-dertig* van die Proklamasie aantoon.

(3) Where the summons contains more than one claim, the particulars of each claim and the relief sought in respect of each claim shall be stated separately.

(4) Where the particulars contain more than 100 words they may be contained in annexure served with the summons, which annexure shall be taken to be part of the summons.

(5) The clerk of the court may refuse to issue a summons in which an excessive amount is claimed for attorney's costs or court fees.

4. The summons shall also show —

- (a) the surname of the defendant by which he is known to plaintiff, his residence or place of business, and, where known, his christian name or initials and his occupation; and, if defendant is sued in a representative capacity, the capacity in which he is so sued;
- (b) the christian name and the surname, occupation, and residence of the plaintiff;
- (c) where the plaintiff sues as cessionary, the name, address and description of the cedent at the date of the cession, and the date of the cession;
- (d) where the plaintiff sues in a representative capacity the capacity in which he sues;
- (e) where the plaintiff sues upon an instrument presentment whereof was necessary, the fact and date of presentment.

5. More claims than one may be made in a summons, either alternatively or otherwise, so long as the claims are not mutually inconsistent or based upon inconsistent allegations of fact; the court may, on application, strike out any inconsistent claim.

6. (1) Any two or more persons claiming or being sued as co-partners may sue or be sued in the name of the firm, of which such persons were co-partners at the time of the accruing of the cause of action; and in any such case, any party may by notice require from the party so suing or sued, a statement of the names and places of residence of the persons who were at the time of the accruing of the cause of action co-partners in any such firm.

(2) The party receiving such notice shall, within three days after receipt thereof, furnish the statement required.

(3) When the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named in the summons; but all the proceedings shall nevertheless continue in the name of the firm.

(4) Any person carrying on business in a name or style other than his own name may sue or be sued in such name or style as if it were a firm name; and so far as the nature of the case will permit all the provisions of this rule relating to proceedings against firms shall apply.

(5) The provisions of this rule shall also apply *mutatis mutandis* to an unincorporated company, syndicate or association.

7. (1) Subject to the provisions of this Order, a summons may, before service, be amended by the plaintiff as he shall think fit.

(2) Any alteration or amendment of a summons before service, and whether before or after issue, shall, before the summons is served, be initialled by the clerk of the court in the original summons, and, until so initialled, such alterations and amendments shall have no effect.

(3) A summons may, after service, be amended with the leave of the court either on application on notice or at the hearing subject to such order as to adjournment and costs as shall be just; and the court shall take into consideration whether adequate prior notice of intention to apply for such amendment has been served upon the other party affected.

ORDER NO. VIII.

Claims in Reconvention.

1. The provisions of these Orders shall *mutatis mutandis* apply to claims in reconvention except that it shall not be necessary to enter an appearance to defend, and that all times which, in the case of a claim in convention, run from the date of appearance shall, in the case of a claim in reconvention, run from the date of delivery of the claim.

(3) Wanneer die dagvaring meer as een vordering bevat, moet die besonderhede van elke vordering en die verligting ten opsigte van elke vordering aangevra, afsonderlik vermeld word.

(4) Wanneer die besonderhede meer as 100 woorde bevat, kan hulle in 'n aanhangsel met die dagvaring gedien word; die aanhangsel word as deel van die dagvaring beskou.

(5) Die klerk van die hof kan die uitreiking van 'n dagvaring weier waarin 'n buitensporige bedrag gevorderd word by wyse van prokureurskoste, hoffoote of bodeloorn.

4. Die dagvaring moet ook aantoon —

- (a) die familienaam van verweerder waaronder hy aan die eiser bekend is, sy woon- of besighedsplek, en, indien bekend, sy voornaam of voorletters en sy beroep; en, as die verweerder in 'n verteenwoordigende hoedanigheid gedagvaar word, die hoedanigheid waarin hy gedagvaar word;
- (b) die voornaam en familienaam, die beroep en die woonplek van die eiser;
- (c) wanneer die eiser as sessionaris dagvaar, die naam, adres en 'n beskrywing van die sedent ten tye van die sessie, asook die datum van die sessie;
- (d) wanneer die eiser in 'n verteenwoordigende hoedanigheid dagvaar, die hoedanigheid waarin hy dagvaar;
- (e) wanneer die eiser op 'n dokumentêre stuk, wat aangebied moes word, dagvaar, die feit en datum van aanbidding.

5. Meer as een vordering kan in een dagvaring gestel word, hetsy in die alternatief of andersins, mits die vordringe nie onderling teenstrydig is of gegrond is op onverenigbare feitlike beweringe nie; die hof kan, op aansoek, enige teenstrydige vordering skrap.

6. (1) Enige twee of meer persone wat as mede-vennote dagvaar of gedagvaar word, kan in naam van die firma waarvan hulle mede-vennote was ten tye van die ontstaan van die skuldoorsaak, dagvaar of gedagvaar word; en in sodanige geval, kan enige party van die party wat aldus dagvaar of gedagvaar word by wyse van kennisgewing 'n opgawe verlang van die name en woonplekke van die persone wat ten tye van die ontstaan van die skuldoorsaak mede-vennote van sodanige firma was.

(2) Die party aan wie sodanige kennisgewing gerig word, moet binne drie dae na die ontvangs daarvan die verlangde opgawe verskaf.

(3) Wanneer die name van die vennote aldus verstrekk is, word die saak op dieselfde wyse vervolgd en dieselfde gevolge geld in alle opsigte, asof hulle in die dagvaring genoem was; dog alle geregtelike stappe word desnieteenstaande in die naam van die firma voortgeset.

(4) Enige persoon wat besigheid dryf onder 'n naam of opskrif wat nie sy eie naam is nie, kan onder sodanige naam dagvaar of gedagvaar word, asof dit die naam van 'n firma was; en vir sover die aard van die saak dit toelaat, geld al die bepalinge van hierdie reël met betrekking tot geregtelike stappe teen firmas.

(5) Die bepalinge van hierdie reël is ook *mutatis mutandis* van toepassing op nie-ingelyfde maatskappye, sindikate of verenigings.

7. (1) Behoudens die bepalinge van hierdie Order kan 'n dagvaring, voor diening daarvan, na goedvinde deur die eiser gewysig word.

(2) Enige verandering of wysiging van 'n dagvaring, voor diening daarvan, en hetsy voor of na uitreiking, moet, aler die dagvaring gedien word, deur die klerk van die hof in die oorspronklike dagvaring geparafeer word en, sodanige veranderinge en wysigings is van nul en gener waarde, voordat hulle aldus geparafeer is nie.

(3) 'n Dagvaring kan, na diening daarvan, met verlof van die hof gewysig word of op applikasie na voorafgaande kennisgewing of by die verhoor van die saak onderhewig, in hierdie geval egter, aan sodanige bevel ten opsigte van verdaging en koste as billik mag wees; en die hof moet daarby in aanmerking neem of die betrokke teeparty op voldoende wyse tevore in kennis gestel is van die voorneme om vir sodanige wysigings aansoek te doen.

ORDER NO. VIII.

Eise in Rekonvensie.

1. Die bepalinge van hierdie reëls is *mutatis mutandis* van toepassing op eise in rekonvensie behalwe, dat dit nie nodig is om verdediging aan te teken nie, en dat alle tydperke wat, in die geval van 'n eis in konvensie, van die datum van die aantekening van verdediging loop, in die geval van 'n eis in rekonvensie van die datum van inlewering van die eis loop.

2. A claim in reconvention shall be made by the delivery within seven days after appearance of a statement in writing giving such particulars of the claim in reconvention as are required as to claims in convention.

3. (1) A defendant may set up by a claim in reconvention any right or claim of any amount which he may allege against the plaintiff, whether liquid or illiquid, whether liquidated or unliquidated, whether or not it arises out of or is connected with the subject matter of the claim in convention; and such claim (if within the jurisdiction of the court) shall have the same effect as a cross-action so as to enable the court to pronounce a final judgment in the same action both on the claim in convention and on the claim in reconvention.

(2) Where the amount of a claim in reconvention exceeds the jurisdiction defined in section *twenty-eight* of the Proclamation, and the defendant making such counter-claim desires a stay of the plaintiff's action under section *forty-four*, he shall when delivering his counterclaim, or within forty-eight hours thereafter, apply on notice for such stay, and at the time of hearing such application the court being first satisfied that the counterclaim is beyond its jurisdiction, shall proceed to decide whether to grant or refuse a stay after hearing such evidence as the parties may adduce. Where no application for stay has been made, or where such an application has been refused, the court shall ignore the counterclaim, and proceed to hear the claim in convention.

4. A claim in reconvention shall not prejudice the right of the plaintiff in convention to apply for summary judgment.

5. Where both the claim in convention and the claim in reconvention proceed to trial under Order XVIII of these rules, each action may be tried separately, but judgment shall be given on both *pari passu*.

6. A claim in reconvention may not be made by a defendant in reconvention.

7. Where an action is withdrawn, stayed, discontinued or dismissed, it shall nevertheless be competent to proceed separately with the claim in reconvention, if any.

ORDER NO. IX.

Appearance to Defend.

1. (1) A defendant intending to defend shall, within three clear days after service of the summons, *plus* one additional day for each 10 miles distance of the place of service from the court house, not exceeding 21 days in all, or within the period limited by the summons, whichever shall be the longer, enter an appearance to defend by delivery of a memorandum in writing that he intends to defend.

(2) In actions against the Administration of the Territory or the South African Railways and Harbours Administration appearance to defend may be entered at any time within 21 days after service.

2. Such memorandum shall be signed by the defendant, and shall state the full address for service (which address except in places where there are fewer than three attorneys or firms of attorneys practising independently of one another, shall not be more than three miles distant from the court house) and also the postal address of the person who has so signed.

3. The clerk of the court shall, at the request of an illiterate defendant who does not employ an attorney, enter an appearance for him.

4. The entry of an appearance shall be without prejudice to any objection or exception which the defendant may have.

ORDER NO. X.

Judgment by Consent or Default.

1. (1) A defendant may consent to judgment by —
- signing the form of consent endorsed on the original summons; or
 - lodging with the clerk of the court a consent in a similar form duly signed by him and by two witnesses whose addresses are also given;
 - lodging with the clerk of the court the copy of the summons served upon him with the form of consent endorsed thereon duly signed by him.

2. 'n Eis vir rekonsensie moet binne sewe dae na aantekening van verdediging gemaak word deur die inlewering van 'n skriftelike opgawe waarin sodanige besonderhede van die eis in rekonsensie aangetoon word as vereis word met betrekking tot eise in konsensie.

3. (1) 'n Verweerder kan in sy eis in rekonsensie enige beweerde reg of vordering teen die eiser opwerp, onverskillig wat die bedrag daarvan is en of dit likwiede of illikwiede, gelikwiede of ongelikwiede is, onverskillig of dit voortvloei uit, of in verband staan met die onderwerp van die eis in konsensie of nie, en sodanige eis (indien binne die regsmag van die hof) het, nes 'n kruisgeding, tot gevolg dat die hof in een en dieselfde geding die eis in konsensie sowel as die eis in rekonsensie by eindvonniss kan beslis.

(2) Wanneer die bedrag van die eis in rekonsensie die regsmag van die hof soos omskrywe in artikel *ag-en-twintig* van die Proklamasie oorskry, en as die verweerder wat sodanige teenis opwerp 'n opskorting van eiser se saak ingevolge artikel *vier-en-veertig* verlang, moet hy by die inlewering van sy teenis, of binne ag-en-veertig uur daarna, na voorafgaande kennisgewing aansoek doen om sodanige opskorting; en by die verhoor van sodanige aansoek moet die hof, nadat hy oortuig is dat die teenis sy regsmag oorskry; en nadat hy sodanige getuënis as die partye mag aanvoer, aangehoor het, vervolgens beslis of 'n opskorting verleen of geweier sal word. Wanneer geen applikasie vir opskorting aan die hof gerig is nie, of wanneer sodanige applikasie afgewys is, moet die hof die teenis negeer en voortgaan met die verhoor van die eis in konsensie.

4. Deur 'n eis in rekonsensie verloor die eiser in konsensie nie die reg om summierse vonnis aan te vra nie.

5. Wanneer die eis in konsensie sowel as die eis in rekonsensie verhoor word onder Order XVIII van hierdie reëls, kan elke saak afsonderlik behandel word, dog uitspraak moet op albei *pari passu* gegee word.

6. 'n Eis in rekonsensie kan nie deur 'n verweerder in rekonsensie ingestel word nie.

7. Wanneer 'n aksie teruggetrek, opgeskort, gestaak of afgewys is, kan desnieteenstaande met die eis in rekonsensie, indien enige, afsonderlik voortgegaan word.

ORDER NO. IX.

Aantekening van Verdediging.

1. (1) 'n Verweerder, wat voornemens is om die saak te verdedig, moet binne drie volle dae na diening van die dagvaring, *plus* een verdere dag ten opsigte van elke afstand van 10 myl wat die plek van diening van die geregshof geleë is, 21 dae in totaal nie te bowe gaande nie, of binne die termyn in die dagvaring bepaal, al na watter termyn die langste is, verdediging aanteken deur inlewering van 'n skriftelike memorandum waarin sy voorneme om die saak te verdedig, vermeld word.

(2) In aksies teen die Administrasie van die Gebied of die Suid-Afrikaanse Spoorweë en Hawens Administrasie kan verdediging te eniger tyd binne 21 dae na diening aangeteken word.

2. Sodanige memorandum moet geteken word deur die verweerder, en moet die volle adres vir diening aantoon (welke adres, met die uitsondering van plekke waar minder as drie prokureurs of prokureurfirmas onafhanklik van mekaar praktiseer, nie verder as drie myl van die geregshof mag wees nie) asook die posadres van die persoon wat aldus geteken het.

3. Die klerk van die hof is verplig om, op versoek van 'n ongeletterde verweerder wat sonder 'n prokureur is, verdediging namens hom aan te teken.

4. Deur verdediging aan te teken, verloor die verweerder nie die reg om 'n objeksie of eksepsie op te werp nie.

ORDER NO. X.

Vonniss met Toestemming of by Verstek.

1. (1) 'n Verweerder kan toestem tot vonnis —
- deur die vorm van toestemming tot vonnis op die oorspronklike dagvaring te onderteken; of
 - deur by die klerk van die hof 'n soortgelyke vorm van toestemming in te dien, onderteken deur hom en deur twee getuënis van wie die adresse ook opgegeë word;
 - deur by die klerk van die hof die afskrif van die dagvaring, op hom gediën, met die vorm van toestemming daarop behoorlik deur hom onderteken, in te dien.

(2) Where a defendant so consents before instructions for services have been given to the messenger, it shall not be necessary to serve the summons, and he shall not be chargeable with fees for service.

(3) A defendant so consenting at least 24 hours before the expiration of the time limited for appearance shall not be chargeable with judgment charges.

(4) If the defendant's consent is for less than the amount claimed in the summons, he may enter an appearance to defend or may continue his defence as to the balance of the claim; and, notwithstanding a judgment upon such consent, the action may proceed as to such balance, and it shall in that event be in all subsequent respects an action for such balance.

2. Where a defendant has failed to enter an appearance to defend and has not consented to judgment, the plaintiff may lodge with the clerk of the court a written request to have judgment entered with costs against such defendant for any sum not exceeding the amount claimed in the summons, together with interest from the date of the summons to the date of judgment at the rate specified in the summons or if no rate be specified, then at the rate of six per cent. per annum.

3. Where a defendant has failed to deliver a plea as provided by Order XV, the plaintiff after delivery of written notice calling upon the defendant to file his plea within forty-eight hours of the receipt of such notice, and on failure of the defendant to do so, may lodge with the clerk of the court a written request to have judgment entered with costs and interest in the same manner as if the defendant has failed to enter an appearance to defend.

4. (1) Where a defendant so consents to judgment, or where he has failed to enter an appearance to defend, or where he has failed to deliver a plea as required by Order XV, and the plaintiff has so requested judgment, the clerk of the court shall at such hour or hours of the day (if any) as the magistrate may fix, enter judgment in the terms, as the case may be, of the defendant's consent or of the plaintiff's request for judgment: Provided that if the action be on a liquid document the plaintiff shall first file of record the original of such document duly stamped: Provided further, that the clerk of the court may refer any claim to the court for judgment, which may thereupon —

- (a) call upon the plaintiff to produce such evidence, either written or oral, in support of his claim, as it may deem necessary; or
- (b) enter judgment as requested or otherwise; or
- (c) refuse judgment, or
- (d) make such other order as it may deem fit;

Provided further, that if the action be one for damages, the plaintiff shall furnish to the court proof of the nature and extent of such damage, and in such case judgment shall be entered for the amount of the damages allowed by the court:

And provided also that default judgment on a summons sent by post shall not be given unless there is filed by the messenger with his return the acknowledgment of the addressee referred to in sub-rule (1) of Rule 10 of Order VI. Where such acknowledgment is not filed, the messenger shall endorse on his return that he has not received such acknowledgment.

(2) Such judgment shall be entered by recording in the Civil Judgment Book the date and particulars of the judgment.

(3) Where there are several defendants, of whom one or more consent to judgment, or fail to appear to defend, and another or others appear to defend, the clerk of the court may enter judgment against such as have so consented or failed to appear, and the plaintiff may proceed on such judgment without prejudice to his right to continue the action against such as have so appeared to defend.

ORDER NO. XI.

Further Particulars.

1. (1) A defendant may at any time after entering appearance to defend and before delivery of the plea apply to the plaintiff by notice for copies of all or any of the accounts or documents upon which the action is founded; and such copies shall be furnished to him by the plaintiff within 4 days after receipt of such notice.

(2) Wanneer die verweerder tot vonnis toestem, voordat opdrag tot diening aan die bode gegee is, is dit onnodig om die dagvaring te dien en kan verweerder ook nie aanspreeklik gehou word vir enige onkoste ten opsigte van die diening nie.

(3) Wanneer verweerder ten minste 24 uur voor verloop van die termyn waarin verdediging aangeteken kan word, aldus toestem, kan hy nie aanspreeklik gehou word vir vonnis- onkoste nie.

(4) As verweerder toestem ten opsigte van 'n bedrag kleiner as dié in die dagvaring gevorder, kan hy met betrekking tot die balansvordering verdediging aanteken of met sy verdediging voortgaan; en nieteenstaande vonnis op sodanige toestemming gegee is, kan die saak ten opsigte van sodanige balansvordering voortgesit word, en dit sal in so 'n geval in alle verdere opsigte 'n aksie wees vir sodanige balans.

2. Wanneer 'n verweerder in gebreke gebly het om verdediging aan te teken en nie tot vonnis toegestem het nie, kan die eiser 'n skriftelike versoek by die klerk van die hof indien dat vonnis met koste teen die verweerder aangeteken word vir 'n som nie te bowe gaande die bedrag in die dagvaring gevorder nie, met byvoeging van rente vanaf die datum van dagvaring tot die datum van vonnis teen die rentekoers in die dagvaring vermeld of by gebreke van sodanige vermelding, teen ses persent per jaar.

3. Wanneer 'n verweerder in gebreke gebly het om 'n pleit soos bepaal in Order XV in te lewer, kan die eiser na inlewing van 'n skriftelike kennisgewing waarin 'n beroep op die verweerder gedoen word om sy pleit binne ag-entveertig uur na ontvangs van sodanige kennisgewing in te dien, en as die verweerder versuim om sulks te doen, 'n skriftelike versoek by die klerk van die hof indien dat vonnis met koste een rente aangeteken word op dieselfde wyse asof die verweerder in gebreke gebly het om verdediging aan te teken.

4. (1) Wanneer 'n verweerder aldus toegestem het tot vonnis, of wanneer hy in gebreke gebly het, hetsy om verdediging aan te teken, of om 'n pleit soos vereis in Order XV in te lewer, en wanneer die eiser aldus vonnis aangevra het, moet die klerk van die hof, op sodanige uur of ure van die dag (indien enige) as die magistraat mag vasstel, vonnis aanteken ooreenkomstig verweerder se toestemming of eiser se versoek om vonnis, soos die geval mag wees: Met die verstande dat as die aksie op 'n likwidatiedokument gegrond is, die eiser eers die oorspronklike van sodanige dokument, behoorlik geseël, moet indien: Met die verstande verder dat die klerk van die hof enige vordering na die hof kan verwys, wat daarop —

- (a) van die eiser kan verlang dat hy sodanige getuienis, hetsy skriftelike of mondelinge, ter staving van sy vordering aanvoer as nodig beskou mag word; of
- (b) vonnis soos aangevra, of andersins, kan aanteken; of
- (c) kan weier om vonnis aan te teken; of
- (d) na goedvinde enige ander bevel kan gee:

Met die verstande verder, dat in geval van 'n aksie vir skadevergoeding, die eiser bewys van die aard en omvang van sodanige skade aan die hof moet verskaf, en in so 'n saak word vonnis aangeteken in die bedrag van skadevergoeding deur die hof toegeken.

Met die verstande ook dat vonnis by verstek met betrekking tot 'n dagvaring, per pos gestuur, nie gevel mag word nie, tensy die erkenning van die geadresseerde, waarvan in sub-reël (1) van reël 10 van Order VI melding gemaak word, tesame met sy relas ingedien is. Ingeval sodanige erkenning nie ingedien is nie, moet die bode op sy relas aanteken dat dit nie deur hom ontvang is nie.

(2) Sodanige vonnis word gegee deur die datum en besonderhede van die vonnis in die Siviele Vonnisboek aan te teken.

(3) Wanneer daar verskeie verweerders is, van wie een of meer tot vonnis toegestem het of in gebreke gebly het om verdediging aan te teken, terwyl 'n ander of anders wel verdediging aangeteken het, kan die klerk van die hof vonnis aanteken teen dié wat aldus daarin toegestem het of in gebreke gebly het om verdediging aan te teken, en die eiser kan sodanige vonnis opvolg sonder enige benadeling van sy reg om die aksie voort te sit teen diegene wat verdediging aangeteken het.

ORDER NO. XI.

Verdere Besonderhede.

1. (1) 'n Verweerder kan te eniger tyd na aantekening van verdediging en voor inlewing van sy pleit, by wyse van kennisgewing aan die eiser, aansoek doen vir afskrifte van alle of enige rekeninge of dokumente, waarop die vordering gegrond is; en sodanige afskrifte moet deur eiser aan hom verstrekk word binne 4 dae na die ontvangs van sodanige kennisgewing.

(2) If the plaintiff fails so to furnish such copies, the action may, on application, be dismissed with costs.

(3) The plaintiff shall, on notice, forthwith allow the defendant to inspect the originals of such accounts or documents.

2. (1) Any party may, by notice delivered not more than four days after the appearance in the case of a summons or 48 hours after the delivery of any other pleading, require the party delivering such pleading to deliver such further information as is reasonably necessary as to any specified matters arising upon such pleading.

(2) The party delivering such pleading shall, within four days after receipt of such notice, deliver the information reasonably required.

(3) For the purposes of this rule, the word "pleading" shall include summons, counterclaim, plea, reply, and the schedule of documents prescribed by Order XVII.

ORDER NO. XII.

Payment into Court.

1. (1) A defendant may at any time pay into court unconditionally the amount claimed in the summons, and thereupon all further proceedings in the action shall be stayed, save as to any costs not included in such payment.

(2) If such payment is made at least 24 hours before the expiration of the time limited for appearance, the defendant may deduct from the amount of the costs claimed the amount of the judgment charges.

2. (1) A defendant may, without prejudice, pay an amount into court by way of offer in settlement of the plaintiff's claim.

(2) The plaintiff may, within three days after notice thereof, take an order for payment out to him of the amount so paid in with his costs up to date, which order shall operate as a stay of proceedings save as to costs.

(3) If the plaintiff fails to take such an order within three days after notice, he shall be liable for all costs thereafter incurred, unless on the trial of the action he obtains judgment for a greater amount (exclusive of costs) than the amount so paid.

3. Where money has been paid into court as an offer of settlement, and the court finds on trial of the action that, exclusive of costs, there is not more due to the plaintiff than the amount so paid in, the court shall first order payment out to the plaintiff of so much thereof as may be awarded to him (but subject to any order or judgment against him in the action for the defendant's costs or on a claim in reconvention) and shall then give judgment for the defendant, and shall make such order as to costs as may be just.

4. (1) Whenever any money is paid into court under this order the clerk of the court shall forthwith lodge the amount with the Magistrate, with the necessary particulars, and shall obtain a receipt for the amount in favour of the party paying it in. Whenever any amount so paid in has to be withdrawn from the deposit account, the clerk of the court shall obtain from the magistrate a warrant voucher in favour of the party entitled to the amount, provided that this rule shall not apply when the Administrator has issued instructions in terms of rule 2 of Order III.

(2) Moneys paid into court unconditionally may be paid out by him to the party entitled thereto or to his attorney of record.

(3) Moneys paid into court conditionally shall only be paid out (except under rule 2 (2) of this Order) upon a judgment declaring who is entitled thereto or upon the written consent of the parties.

ORDER NO. XIII.

Objections, Exceptions and Special Defences.

1. (1) A defendant shall, within seven days after entering appearance, deliver particulars of any exception or objection he may take to the proceedings.

(2) If a defendant fails to deliver such particulars within such period he may not thereafter raise any exception or objection, provided that, if the facts upon which an objection is founded actually only came to his knowledge after the expiration of such period, the court may allow such objection to be raised subject to such postponement and order as to costs as may seem just.

(2) As die eiser versuim om sodanige afskrifte te verstrek, kan die saak, op versoek, met koste afgewys word.

(3) Eiser is verplig om, na kennisgewing, aan verweerder insae van die oorspronklikes van sodanige rekeninge of stukke toe te staan.

2. (1) Enige party kan, by wyse van kennisgewing wat, in geval van 'n dagvaring, nie later as vier dae na aantekening van verdediging ingelewer is nie, of 48 uur na inlewering van enige ander pleitstuk, vereis dat die party wat sodanige pleitstuk inlewer, sulke nader gegewens inlewer as redelikerwys nodig is met betrekking tot enige gespesifiseerde punte voortvloeiende uit sodanige pleitstuk.

(2) Die party deur wie sodanige pleitstuk ingelewer word, moet binne 4 dae na ontvangs van sodanige kennisgewing die redelikerwys vereiste gegewens inlewer.

(3) Vir die doeleindes van hierdie reël sluit die woord "pleitstuk" die volgende in:— dagvaring, teeneis, pleit, repliek en die bylae van dokumente deur Order XVII voorgeskryf.

ORDER NO. XII.

Geregtelike Inbetaling.

1. (1) 'n Verweerder kan te eniger tyd die bedrag in die dagvaring gevorder onvoorwaardelik by die hof inbetaal. Alle verdere verrigtinge in die geding word daarna gestuit met uitsondering van dié ten opsigte van koste wat nie by sodanige betaling inbegryp is nie.

(2) As sodanige inbetaling ten minste 24 uur voor verloop van die termyn vir aantekening van verdediging geskied, kan die verweerder van die bedrag van die geëiste koste die bedrag van vonnis-onkoste aftrek.

2. (1) 'n Verweerder kan, sonder benadeling, 'n bedrag geregtelik inbetaal by wyse van aanbod tot voldoening van eiser se vordering.

(2) Die eiser kan, binne drie dae na kennisgewing daarvan, 'n bevel uitneem tot uitbetaling aan hom van die bedrag so inbetaal plus die bedrag van sy koste tot datum. Sodanige bevel stuit alle verdere verrigtinge in die geding, behalwe dié wat betrekking het op koste.

(3) Die eiser wat in gebreke bly om sodanige bevel binne drie dae uit te neem, is aanspreeklik vir alle onkoste daarna gemaak, tensy hom na die verhoor van die saak 'n groter bedrag (koste uitgesluit), as die bedrag wat so inbetaal is, deur die hof toegeken word.

3. Wanneer geld geregtelik inbetaal is by wyse van 'n aanbod tot skikking en die hof bevind by die verhoor van die saak dat, met uitsondering van koste, daar nie meer aan die eiser verskuldig is nie as die bedrag so inbetaal, moet die hof in die eerste plek uitbetaling aan die eiser gelas van soveel daarvan as aan hom toegeken mag word (maar onderhewig aan enige bevel of vonnis in die saak met betrekking tot 'n eis in rekonvensie of waarin koste teen hom uitgewys is) en moet daarna uitspraak ten gunste van die verweerder gee en moet sodanige bevel ten opsigte van koste gee as billik geag mag word.

4. (1) So dikwels as enige geld ingevolge hierdie Order geregtelik inbetaal word, moet die klerk van die hof die bedrag met die nodige besonderhede onmiddellik by die magistraat deponeer en moet 'n kwitansie vir die bedrag ten gunste van die party wat dit inbetaal, verkry. So dikwels as dit nodig is om enige bedrag aldus inbetaal uit die depositorekening te trek, moet die klerk van die hof 'n skatkis-order ten gunste van die party wat op die bedrag geregtig is, van die magistraat verkry, met die verstande dat hierdie reël nie toegepas sal word, nadat die Administrateur instruksies ingevolge reël 2 van Order III uitgereik het nie.

(2) Gelde onvoorwaardelik by die hof inbetaal, kan deur hom aan die party wat daarop geregtig is, of aan sy prokureur in die saak uitbetaal word.

(3) Gelde voorwaardelik by die hof inbetaal, kan (behoudens die bepalinge van reël 2 (2) van hierdie Order), slegs op 'n uitspraak waarin die party, wat daarop geregtig is, aangewys word, of met die skriftelike toestemming van die partye uitbetaal word.

ORDER NO. XIII.

Objeksies, Eksepsies en Spesiale Verdediginge.

1. (1) 'n Verweerder moet, binne sewe dae na aantekening van verdediging, besonderhede inlewer van enige eksepsie of objeksie wat hy teen die verrigtinge mag opwerp.

(2) As 'n verweerder sodanige besonderhede nie binne vermeldde termyn inlewer nie, kan hy daarna geen eksepsie of objeksie opwerp nie, met die verstande dat, as die feite waarop 'n objeksie gegrond is, in werklikheid eers tot sy kennis gekom het na sodanige termyn reeds verloop het, die hof verlof kan gee om sodanige objeksie op te werp onderhewig aan sodanige uitstel en koste-bevel as billik geag mag word.

2. (1) The only exceptions that may be taken by a defendant are —

- (a) that the summons does not disclose a cause of action;
- (b) that the summons is vague and embarrassing;
- (c) that the summons is contradictory;
- (d) that the summons does not comply with the requirements of Order VII of these rules.

(2) The only objections that may be taken are —

- (a) that the summons has not been properly served;
- (b) that the court sued in has no jurisdiction;
- (c) that the copy of the summons served upon the defendant differs so materially from the original as to prejudice him in his defence;
- (d) that the person upon whom the summons has been served is not the defendant;
- (e) misjoinder or nonjoinder;
- (f) *res judicata*;
- (g) prescription;
- (h) *non locus standi in judicio*, e.g. by reason of minority or marriage in community of property;
- (i) that the defendant is a surety and the principal debtor has not yet been excused;
- (j) *ultra vires*;
- (k) discharge or suspension of action by statute;
- (l) that a demand was necessary before action and was not made;
- (m) *lis pendens*;
- (n) that the parties have agreed to refer the dispute to arbitration;
- (o) that taxed costs in a previous action between the same parties for the same cause of action remain unpaid after demand;
- (p) release;
- (q) *pactum de non petendo*.

(3) The court may order the proceedings to be stayed and if thereafter the ground of stay is removed, it may, on application, discharge the stay.

3. (1) A defendant alleging any such exception or objection shall in his particulars state concisely and succinctly the facts upon which it is alleged.

(2) Where a defendant raises the objection of minority he shall also state, as far as he is able, the date and place of his birth and/or his baptism (if any).

(3) Where a female defendant raises the objection of immunity as a married woman, she shall also state the date and place of her subsisting marriage, the date and place of her antenuptial or other contract (if any) governing her marriage relationship, and the christian names, surname, address, and description of her husband, as far as known to her.

4. (1) All such exceptions or objections shall be heard and disposed of at the same time as the plaintiff's application for summary judgment is made; and if no such application is made, then either party may on three days' notice set them down for hearing.

(2) Each party may call evidence in support of or in reply to any such exception or objection.

ORDER NO. XIV.

Summary Judgment.

1. (1) Where a defendant has entered an appearance to defend, the plaintiff in convention may apply to the court for the summary judgment if the claim is only —

- (a) on a liquid document;
- (b) for a liquidated amount in money;
- (c) for the delivery of specified movable property;
- (d) for ejectment; or
- (e) for any two or more such matters as are described in (a), (b), (c), or (d)

in addition to costs.

(2) Such an application shall be made on not less than 48 hours notice delivered not more than four days after the date of the defendant's appearance to defend; and the plaintiff shall deliver with such notice —

2. (1) Slegs die volgende eksepsies kan deur 'n verweerder opgewerp word —

- (a) dat die dagvaring geen skuldoorsaak aantoon nie;
- (b) dat die dagvaring vaag en verwarrend is;
- (c) dat die dagvaring teenstrydige beweringe bevat;
- (d) dat die dagvaring nie voldoen aan die vereistes van Order VII van hierdie reëls nie.

(2) Slegs die volgende objeksies kan opgewerp word —

- (a) dat die dagvaring nie behoorlik gedien is nie;
- (b) dat die hof geen regs mag in die saak het nie;
- (c) dat die afskrif van die dagvaring, op die verweerder gedien, so wesenlik van die oorspronklike verskil dat hy daardeur in sy verdediging benadeel word;
- (d) dat die persoon op wie die dagvaring gedien is, nie die verweerder is nie;
- (e) wanvoeging of nie-voeging;
- (f) *res judicata*;
- (g) verjaring;
- (h) *non locus standi in judicio* b.v. weens minderjarigheid of huwelik in gemeenskap van goedere;
- (i) dat die verweerder 'n borg is en dat die hoofskuldenaar nog nie uitgewin is nie;
- (j) *ultra vires*;
- (k) opheffing of opskorting van 'n aksie deur wetsbepaling;
- (l) dat 'n aanmaning nodig was voor instelling van die aksie, en nie geskied het nie;
- (m) *lis pendens*;
- (n) dat die partye ooreengekom het om die geskil aan arbitrasie te onderwerp;
- (o) dat getakseerde koste van 'n vorige saak tussen dieselfde partye en gegrond op dieselfde skuldoorsaak, ten spyte van aanmaning, nog nie vereffen is nie;
- (p) uitwissing;
- (q) *pactum de non petendo*.

(3) Die hof kan opskorting van die verrigtinge gelas en as die grond van opskorting daarna verwyder word, kan hy, op aansoek, die opskorting ophef.

3. (1) 'n Verweerder wat enige sodanige eksepsie of objeksie aanvoer, moet in die verstrekte besonderhede kort en bondig die feite vermeld waarop dit gegrond is.

(2) Wanneer 'n verweerder die objeksie van minderjarigheid opwerp, moet hy ook, vir sover hy daartoe in staat is, die datum en plek van geboorte en/of doop, indien enige, vermeld.

(3) Wanneer 'n vroulike verweerder die objeksie van immuniteit as gehude vrou opwerp, moet sy ook die datum en plek van haar teenwoordige huwelik vermeld, sowel as die datum en plek van die voorhuwelikse of ander kontrak (indien enige) wat haar huweliks-betrekkinge beheers, en die voorname, familienaam, adres en besonderhede omtrent haar eggenoot, vir sover sy daarmee bekend is.

4. (1) Alle sodanige eksepsies of objeksies moet terselfdertyd, wanneer eiser se aansoek om summier vonnis gedoen word, gehoor en afgehandel word; en as daar geen sodanige aansoek gedoen word nie, kan enige van die partye na voorafgaande kennisgewing van drie dae hulle vir verhoor op die rol plaas.

(2) Enigeen van die partye kan getuienis ter staving van of ter weerlegging van enige sodanige eksepsie of opjeksie aanvoer.

ORDER NO. XIV.

Summiere Vonnis.

1. (1) Wanneer 'n verweerder verdediging aangeteken het, kan die eiser in konvensie aansoek by die hof doen vir summier vonnis, as die eis alleenlik —

- (a) uit hoofde van 'n likwiede dokument is;
- (b) vir 'n gelikwiede geldsom is;
- (c) vir lewering van bepaalde roerende goedere is;
- (d) vir ontruiming is; of
- (e) vir enige twee of meer sodanige onderwerpe opgenoem in (a), (b), (c) of (d) is,

benewens koste.

(2) Sodanige aansoek moet gedoen word na voorafgaande kennisgewing van ten minste 48 uur, ingelewer nie later as vier dae na die datum van verweerder se aantekening van verdediging nie; en die eiser moet tesame met sodanige kennisgewing inlewer —

(a) if the claim is illiquid, a copy of an affidavit, made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed, if any, and stating that in his belief there is not a *bona fide* defence to the action and that appearance has been entered solely for the purpose of delay;

(b) if the claim is liquid, a copy of the liquid document on which the claim is founded.

2. (1) Upon the hearing of an application for summary judgment, the defendant may —

(a) pay into court to abide the result of the action the sum sued for, together with such sum for costs as the court may determine;

(b) give security to satisfy any judgment which may be given against him in the action; or

(c) satisfy the court by affidavit then filed, which may be supported by *viva voce* evidence or otherwise, that he has a good *prima facie* defence to the action.

(2) No evidence may be adduced by the plaintiff otherwise than by the affidavit of which a copy was delivered with the notice or by production without evidence of the liquid document sued upon; nor may either party cross-examine any person who gives evidence either *viva voce* or by affidavit, but any person who gives *viva voce* evidence may be examined by the court and re-examined by the defendant.

3. (1) Subject to Order XIII of these rules, if the defendant does not so either pay into court or find security or satisfy the court, the court may enter summary judgment for the plaintiff.

(2) If the defendant so pays into court or finds security or so satisfies the court, the court shall give leave to defend, and the action shall proceed as if no application under this Order had been made.

4. Where leave to defend is given under rule 3 (2) of this Order the evidence given on the hearing of the application for summary judgment shall not, at any subsequent hearing, be admissible (except by consent) in favour of the party on whose behalf it was given, except in so far as the respective deponents and witnesses are produced at such subsequent hearing for cross-examination.

5. If, on the hearing of an application made under this order, it appears (a) that a defendant is entitled to leave to defend and another defendant is not so entitled, or (b) that a defendant is entitled to leave to defend as to part only of the claim, the court may —

(a) give leave to defend to a defendant so entitled thereto and enter judgment against a defendant not so entitled; or

(b) give leave to defend to the defendant as to such part of the claim and enter judgment against the defendant as the balance of the claim; or

(c) make both orders mentioned in (a) and (b).

ORDER NO. XV.

Plea.

1. (1) The defendant shall, within seven days after appearance or after the further particulars in terms of Order XI have been supplied, or if an application for summary judgment is made, within seven days after the making of the Order giving leave to defend, or if an exception or objection be raised in terms of rule 2, Order XIII, and specially set down for hearing in terms of rule 4 (1) of that order, then within seven days after the court's decision upon such exception or objection, deliver a statement in writing, to be called a plea, setting forth concisely and succinctly —

(a) the nature of his defence; and

(b) particulars of the grounds upon which such defence is pleaded: Provided that, if an appeal is noted against an order giving leave to defend, or against a decision on an exception or objection or if such proceedings are brought under review such plea shall be filed within such time as may have been directed by the court of appeal or summarily directed by the magistrate's court on application.

(2) If the defendant is the Administration of the Territory, or the South African Railways and Harbours Administration the summons has been served elsewhere than at the permanent head office of the defendant in the Territory, seven days be added in each case to the number of days prescribed in sub-rule 1 (1) of this Order.

(a) ingeval dit 'n illikwade eis is, 'n afskrif van 'n beëdigde verklaring, afgelê deur homself of deur enige ander persoon wat die feite met sekerheid kan be-sweer, waarin die skuldoorsaak en die gevorderde bedrag, indien enige, bevestig word, en waarin hy verklaar dat volgens sy oortuiging daar geen *bona fide* verdediging teen die eis bestaan nie en dat verdediging aangeteken is alleenlik vir doeleindes van vertraging;

(b) ingeval dit 'n likwade eis is, 'n afskrif van die likwade dokument waarop die eis gegrond is.

2. (1) By die verhoor van 'n aansoek vir summierse vonnis kan die verweerder —

(a) die som waarvoor hy gedagvaar is, in afwagting van die uitslag van die aksie, geregtelik inbetaal, tesame met sodanige bedrag ten opsigte van koste as die hof mag bepaal;

(b) sekuriteit stel vir die voldoening van enige uitspraak wat teen hom in die aksie gegee mag word; of

(c) deur middel van 'n dan ingediende beëdigde verklaring, wat deur mondelinge getuienis of andersins gestaaf kan word, die hof tevrede stel dat hy 'n goeie *prima facie* verdediging teen die eis het.

(2) Die eiser kan geen bewys lewer anders as deur middel van die beëdigde verklaring waarvan 'n afskrif met die kennisgewing reeds ingelewer is nie, of deur die likwade dokument waarop gedagvaar word, sonder nader bewys, voor te lê; ewemin kan die partye 'n persoon wat, hetsy *viva voce* of deur middel van beëdigde verklaring getuienis aflê, onder kruisverhoor neem; dog enige persoon wat *viva voce* getuienis aflê, kan deur die hof ondervra word en deur die verweerder weer ondervra word.

3. (1) Onderhewig aan die bepalinge van Order XIII van hierdie reëls, kan die hof summierse vonnis ten gunste van eiser aanteken, as die verweerder in gebreke bly om of aan die hof te betaal, of sekuriteit te stel, of die hof aldus tevrede te stel.

(2) As die verweerder aldus aan die hof betaal of sekuriteit verskaf of die hof sodanig tevrede stel, moet die hof verlof verleen om te verdedig en die saak word daarop voortgeset, asof geen aansoek onder hierdie Order gedoen was nie.

4. Wanneer verlof ingevolge reël 3 (2) van hierdie Order verleen is om te verdedig, is die getuienis aangevoer by verhoor van die aansoek om summierse vonnis, by enige latere verhoor van die saak nie toelaatbaar (tensy toegestem word) ten gunste van die party ten behoeve van welke dit gegee is nie, behalwe vir sover die respektiewe deklaratende en getuiens by sodanige latere verhoor vir kruisverhoor aanwesig is.

5. As dit by die behandeling van 'n applikasie, gemaak onder hierdie Order, blyk (a) dat 'n verweerder geregtig is op verlof om te verdedig, terwyl 'n ander verweerder nie daarop geregtig is nie, of (b) dat 'n verweerder geregtig is op verlof tot verdediging slegs ten opsigte van 'n gedeelte van die eis, kan die hof —

(a) verlof tot verdediging verleen aan 'n verweerder geregtig daarop en vonnis aanteken teen 'n verweerder nie daarop geregtig nie; of

(b) verlof tot verdediging ten opsigte van sodanige gedeelte van die eis verleen en vonnis aanteken teen die verweerder ten opsigte van die balansvordering; of

(c) albei bevele genoem in (a) en (b) gee.

ORDER NO. XV.

Pleit.

1. (1) Die verweerder moet, binne sewe dae na aantekening van verdediging of na verskaffing van verdere besonderhede ingevolge Order XI, of as 'n applikasie vir summierse vonnis gemaak is, dan binne sewe dae na die bevel waardeur verlof tot verdediging verleen is, of as 'n eksepsie of objeksie onder reël 2 van Order XIII opgewerp en spesiaal op die rol geplaas is vir behandeling ingevolge reël 4 (1) van daardie Order, dan binne sewe dae, nadat die hof 'n beslissing daarop gegee het, 'n skriftuur, genoem 'n pleit, inlewer, wat kort en bondig uiteenset —

(a) die aard van sy verdediging; en

(b) besonderhede omtrent die gronde waarop sodanige verdediging berus: Met die verstande dat as appèl aangeteken is teen 'n bevel waarin verlof tot verdediging verleen is, of teen 'n beslissing ten opsigte van 'n eksepsie of objeksie, of as sodanige ver-rigtinge in hersiening geneem word, moet sodanige pleit ingedien word binne sodanige termyn as die hof van appèl mag bepaal het of as deur die magistratuurshof op applikasie, sonder meer, bepaal mag word.

(2) Wanneer die Administrasie van die Gebied of die Suid-Afrikaanse Spoorweë en Hawens Administrasie verweerder in die saak is, en die dagwaring in so 'n geval elders dan by die permanente hoofkantoor van die verweerder in die Gebied gedien is, moet sewe dae in beide gevalle by die aantal dae vasgestel in sub-reël 1 (1) van hierdie Order, bygereken word.

(3) The plea shall be signed by the defendant or his attorney.

2. The plea shall also be subject to the following provisions:—

- (1) a bare denial of liability or a defence of general issue shall not be admissible; but the defendant may, either as a sole defence, or in combination with any other defence not inconsistent therewith, deny all or any of the allegations in the summons.
- (2) Defences which are mutually contradictory shall not be admissible; and the court may, on application strike out any contradictory defence.
- (3) Where the defendant pleads that a contract alleged by the plaintiff has not been properly or fully performed on the part of the plaintiff, he shall state the grounds upon which he so pleads.
- (4) Where the defence is not a denial of allegations of fact made by the plaintiff, but is that upon further facts the defendant is not liable, the plea shall state shortly and concisely the nature of such further facts.
- (5) The following defences shall, if relied upon, be specially pleaded and the grounds upon which they are alleged shall be concisely and succinctly stated:—
 - (a) That at the date of issue of the summons the right of action alleged had not yet accrued;
 - (b) payment (including compensation);
 - (c) tender;
 - (d) novation;
 - (e) settlement;
 - (f) fraud;
 - (g) illegality of contract;
 - (h) *laesio enormis*;
 - (i) agency;
 - (j) privilege;
 - (k) justification;
 - (l) contributory negligence;
 - (m) payment into court;
 - (n) *rixa*;
 - (o) any statutory defence not included in Rule 2 of Order XIII.
- (6) Where the defendant pleads compensation, the plea shall contain particulars of the amount, nature and ground of such alleged compensation.
- (7) (a) Where a tender is pleaded as to part of the amount claimed, the plea shall specify the items of the plaintiff's claim to which the tender relates.
(b) A plea of tender shall not be admissible unless the amount of the alleged tender is paid into court on the delivery of the plea if not already paid to the plaintiff. Such amount shall only be paid out to the plaintiff on the order of the court.
(c) A tender after action brought shall (unless such undertaking is expressly disavowed at the time of such tender) imply an undertaking to pay the plaintiff's costs up to the date of the tender, and shall be valid without a tender or payment into court of the amount at which costs may be taxed.

3. Every allegation of fact by the plaintiff which is inconsistent with the plea shall be presumed to be denied and every other allegation shall be taken to be admitted.

4. If during the trial of an action it appears there is *prima facie* evidence of a defence on some other ground than that pleaded, the court may, on application at the trial allow such new defence to be then pleaded *viva voce* on such terms as to adjournment and costs as shall be just.

5. (1) In considering whether a plea complies with these rules, all further particulars furnished by the defendant at the request of the plaintiff shall be deemed to be included in the plea.

- (2) (a) A plaintiff may except to a plea only on the ground that it does not disclose a ground of defence to the action and may object to a plea only on the ground that it does not comply with these rules;
- (b) the plaintiff shall deliver particulars of such an exception or objection within the period mentioned in Rule 1 of Order XVI, and with or before the reply therein referred to, if any;

(3) Die pleit moet deur die verweerder of sy prokureur geteken word.

2. Die pleit is ook onderhewig aan die volgende bepalinge:—

- (1) 'n blote ontkenning van aanspreeklikheid of 'n pleit van algemene ontkenning is nie geoorloof nie; dog die verweerder kan, hetsy as sy uitsluitende verdediging, of tesame met enige ander verdediging waarmee dit nie strydig is nie, alle of een of meer van die beweringe in die dagvaring ontken.
- (2) Verdediginge wat onderling teenstrydig is, is nie geoorloof nie; en die hof kan, op applikasie, enige sodanige teenstrydige verdediging skrap.
- (3) Die verweerder wat pleit dat 'n kontrak deur die eiser ingeroep, nie behoorlik of ten volle deur die eiser nagekom is nie, moet die gronde vermeld waarop sy pleit berus.
- (4) Wanneer die verdediging nie 'n ontkenning van feitelike beweringe deur eiser gemaak is nie, maar daartoe strek dat verweerder op grond van ander feite nie aanspreeklik is nie, moet die pleit die aard van sodanige ander feite kort en bondig vermeld.
- (5) As op die volgende verdediginge gesteun word, moet hulle uitdruklik gepleit word en moet die gronde waarop hulle aangevoer word, kort en bondig vermeld word:—
 - (a) dat op datum van uitreiking van die dagvaring die beweerde reg van aksie nog nie ontstaan het nie;
 - (b) betaling (skuldvergelyking inbegrepe);
 - (c) aanbod van betaling;
 - (d) skuldvernuwing;
 - (e) skikking;
 - (f) bedrog;
 - (g) onwettigheid van die kontrak;
 - (h) *laesio enormis*;
 - (i) agentskap;
 - (j) privilege;
 - (k) regverdiging;
 - (l) medewerkende nalatigheid;
 - (m) geregtelike inbetaling;
 - (n) *rixa*;
 - (o) enige by wet bepaalde verdediging nie ingesluit onder reël 2 van Order XIII nie.
- (6) As verweerder skuldvergelyking pleit, moet die pleit besonderhede omtrent die bedrag, aard en grond van sodanige beweerde skuldvergelyking bevat.
- (7) (a) Wanneer 'n aanbod van betaling ten opsigte van 'n deel van die bedrag, deur die eiser gevorder gepleit word, moet die pleit die poste of onderdele waarop die aanbod betrekking het, aanstip.
(b) 'n Pleit van aanbod van betaling is nie toelaatbaar nie, tensy die bedrag van die beweerde aanbod by die inlewering van die pleit geregtelik inbetaal word, as dit nie reeds aan die eiser betaal is nie. Sodanige bedrag kan alleenlik op bevel van die hof aan die eiser uitbetaal word.
(c) 'n Aanbod van betaling gemaak na instelling van die saak sluit (tensy sodanige onderneming ten tye van sodanige aanbod uitdruklik ontken word) stilswyend 'n onderneming in om die eiser se koste tot datum van die aanbod te betaal, en is geldig sonder 'n aanbod of geregtelike inbetaling van die bedrag wat by taksasie van die koste toegelaag mag word.

3. Elke feitelike bewering, deur eiser gemaak, wat strydig is met die pleit, word geag ontken te wees en elke ander bewering word geag erken te wees.

4. As dit tydens die verhoor van 'n saak blyk dat daar *prima facie* bewys is van 'n verdediging op grond van ander as dié waarop die pleit berus, kan die hof op versoek tydens die verhoor toestaan dat sodanige nuwe verdediging dan *viva voce* gepleit word, op sodanige voorwaardes ten opsigte van verdagting en koste as billik geag mag word.

5. (1) By die oorweging of 'n pleit aan hierdie reël voldoen, word alle verdere besonderhede, deur die verweerder op versoek van die eiser verskaf, geag by die pleit ingesluit te wees.

- (2) (a) 'n Eiser kan eksepsie teen 'n pleit opwerp alleenlik op grond dat dit geen grond van verdediging teen die aksie aantoon nie en kan objeksie teen 'n pleit opwerp alleenlik op grond dat dit nie aan hierdie reëls voldoen nie;
- (b) die eiser moet besonderhede omtrent sodanige eksepsie of objeksie inlewer binne die termyn in reël 1 van Order XVI genoem, en tesame met of voor die repliek (indien enige), waarna daarin verwys word;

(c) such an exception may be set down for hearing separately by either party on four days notice; and the court may thereon, if such exception or objection is upheld, either give leave to amend the plea or give judgment for the plaintiff in the action.

ORDER NO. XVI.

Reply.

1. Where the defence is other than a bare denial of one or more of the allegations of the summons, the plaintiff may, within four days after the delivery of the plea, deliver a statement in writing to be called a reply.

2. The rules applicable to the plea shall *mutatis mutandis* apply to the reply.

3. Where the plaintiff does not within the time limit deliver a reply, he shall be taken to have denied all the allegations of fact contained in the pleas.

4. Upon the delivery of a reply or, where no reply is delivered, upon the expiration of the period limited for reply, the pleadings shall be deemed to be closed.

ORDER NO. XVII.

Discovery of Documents.

1. (1) Each party shall, within three days after receiving from the other party a notice to that effect after the pleadings have been closed, deliver a schedule specifying the books and documents in his possession or under his control which he intends to use in the action.

(2) A book or document not so disclosed may not be used for any purpose on the trial of the action by the party in whose possession or under whose control it is without the leave of the court on such terms as to adjournment and costs as may be just, but the other party may call for and use such book or document in the cross-examination of a witness.

2. Each party shall, on notice, forthwith allow the other party to inspect and take copies of all such books and documents so disclosed; and shall, on prepayment therefor, forthwith furnish the other party with such copies thereof or extracts therefrom as may be requested.

3. Either party may, by notice to produce, require the other to produce, on the trial of the action, the books and documents so disclosed and also any other books and documents specified in detail; and such a notice shall have the effect of a subpoena under Order XXIII of these rules as regards all such books or documents as are in the possession or under the control of the party to whom such notice is given.

ORDER NO. XVIII.

Trial.

1. (1) The trial of an action shall be subject to the delivery by the plaintiff after the pleadings have been closed of notice of trial for a day approved by the clerk of the court: Provided that if the plaintiff does not within fourteen days after the pleadings have been closed deliver notice of trial, the defendant may do so.

(2) The delivery of such notice shall *ipso facto* operate to set down for trial at the same time any counterclaim made by the defendant.

(3) Service of such notice (including therein notice of reinstatement where the trial has been adjourned or postponed *sine die*) shall be effected at least seven days before the day so approved.

2. The trial of an action shall take place at the court house from which the summons was issued, unless the court shall otherwise order.

3. A witness who is not a party to the action may be ordered by the court:—

(a) to leave the court until his evidence is required or after his evidence has been given; or

(b) to remain in court after his evidence has been given until the trial is terminated or adjourned.

4. (1) The court may, before proceeding to hear evidence require the parties to state shortly the issues of fact or questions of law which are in dispute and may record the issues as so stated.

(c) sodanige eksepsie kan, na voorafgaande kennisgewing van vier dae, deur enigeen van die partye afsonderlik, vir verhoor op die rol geplaas word; en die hof kan, as sodanige eksepsie of objeksie gehandhaaf word, of verlot tot wysiging van die pleit verleen of uitspraak ten gunste van die eiser in die saak gee.

ORDER NO. XVI.

Replik.

1. Ingeval die verdediging ander as 'n blote ontkenning is van een of meer van die beweringe in die dagvering bevat, kan die eiser, binne vier dae na inlewering van die pleit, 'n geskrif genoem 'n repliek inlewer.

2. Die reëls van toepassing op die pleit geld *mutatis mutandis* vir die repliek.

3. Wanneer die eiser geen repliek binne die beperkte termyn inlewer nie, word dit geag dat hy alle feitlike beweringe in die pleit bevat, ontken het.

4. By die inlewering van 'n repliek of, wanneer geen repliek ingelewer word nie, dan by verstryking van die termyn vir die repliek beperk, word die pleidooie as afgesluit geag.

ORDER NO. XVII.

Ooplegging van Stukke.

1. (1) Nadat die pleidooie afgesluit is, is elkeen van die partye verplig om, binne drie dae na ontvangs van 'n kennisgewing tot dien effekte deur die ander party aan hom gerig, 'n lys in te lewer bevattende 'n noukeurige opgawe van die boeke en ander stukke in sy besit of onder sy beheer en wat hy voornemens is om in die saak te gebruik.

(2) 'n Boek of ander stuk wat nie aldus oopgelê is nie, kan by verhoor van die saak vir geen doeleinde deur die party in wie se besit of onder wie se beheer dit is, gebruik word nie sonder die verlof van die hof op sodanige voorwaardes betreffende verdagting en koste as billik geag mag word; maar die ander party kan sodanige boek of ander stuk opeis en by die kruisverhoor van 'n getuie gebruik.

2. Elke party moet, na kennisgewing, die ander party onmiddellik toelaat om insae van alle sodanige boeke en ander stukke aldus oopgelê, te doen, en afskrifte te maak; en moet op versoek van die teëparty, teen vooruitbetaling daarvoor, sodanige afskrifte of uittreksels daarvan as verlang mag word, aan daardie party verskaf.

3. Elkeen van die partye kan deur kennisgewing eis dat die teëparty die boeke en ander stukke aldus oopgelê, sowel as enige ander boeke en stukke bepaaldelik opgenoem in voormelde kennisgewing, by verhoor van die saak sal voorlê; en sodanige kennisgewing het die krag van 'n subpoena onder Order XXIII van hierdie reëls met betrekking tot alle sodanige boeke of ander stukke wat in die besit of onder die beheer van die party is wat sodanige kennisgewing ontvang het.

ORDER NO. XVIII.

Verhoor.

1. (1) Die verhoor van 'n aksie is onderhewig aan inlewering deur die eiser, nadat die pleidooie afgesluit is, van 'n kennisgewing van verhoor op 'n dag goedgekeur deur die klerk van die hof: Met die verstande dat, as die eiser nie binne veertien dae, nadat die pleidooie afgesluit is, kennisgewing van verhoor inlewer nie, die verweerder dit kan doen.

(2) Die inlewering van sodanige kennisgewing het *ipso facto* die uitwerking dat enige teenis deur die verweerder gemaak, terselfdertyd vir verhoor op die rol geplaas word.

(3) Die diening van die kennisgewing voormeld (daarby inbegrepe kennisgewing van herplasing op die rol in geval die verhoor verdaag of *sine die* uitgestel was) moet ten minste sewe dae voor die aldus goedgekeurde dag geskied.

2. Tensy die hof anders gelas, moet die verhoor van 'n aksie plaasvind in die geregshof van waar die dagvering uitgereik was.

3. 'n Getuie, wat nie 'n party in die saak is nie, kan deur die hof gelas word —

(a) om die geregsaal te verlaat tot sy getuienis benodig mag word of nadat hy getuienis afgelê het; of

(b) om, nadat hy getuienis afgelê het, in die geregsaal te bly, totdat die saak afgehandel of verdaag is.

4. (1) Die hof kan, alvorens getuienis af te neem, die partye gelas om kortliks die feite in geskil asook die betrokke regspunte voor te dra en die hof kan die aldus vasgestelde geskilpunte noteer.

(2) If the question in dispute is a question of law and the parties are agreed upon the facts, the facts may be admitted in court, either *viva voce* or by written statement by the parties and recorded by the court, and judgment may be given thereon without further evidence.

(3) When questions of law and issues of fact arise in the same case and the court is of opinion that the case may be disposed of upon the questions of law only, the court may require the parties to argue upon those questions only and may give its decisions thereon before taking evidence as to the issues of fact and may give final judgment without dealing with the issues of fact if the decision upon the questions of law warrants such judgment.

5. (1) (a) If on the pleadings the burden of proof is on the plaintiff he shall first adduce his evidence;

(b) If absolution from the instance is not then decreed, the defendant shall then adduce his evidence.

(2) Where such burden of proof is on the defendant, the defendant shall first adduce his evidence, and the plaintiff shall thereafter adduce his evidence.

(3) (a) Where the burden of proving one or more of the issues is on the plaintiff and that of proving others is on the defendant, the plaintiff shall first call his evidence on any issues proof whereof is upon him, and may then close his case, the defendant shall then call his evidence on all the issues.

(b) If the plaintiff has not called any evidence (other than that necessitated by his evidence on the issues proof whereof is on him) on any issues proof whereof is on the defendant, he shall have the right so to do after defendant has closed his case. If he has called any such evidence, he shall have no such right.

(4) Either party may, with the leave of the court, adduce further evidence at any time before judgment; but such leave shall not be granted if it appears to the Court that such evidence was intentionally withheld out of its proper order.

(5) The court may at any time before judgment, on the application of either party or of its own motion, recall any witness for further examination.

(6) Any witness may be examined by the court, as well as by the parties.

(7) After the evidence on behalf of both parties has been completed, the party who first adduced evidence may first address the court and thereafter the other party, and the party who first adduced evidence may reply.

6. Where the court has authorised the evidence of any witness to be taken on interrogatories, such interrogatories shall be filed within four days of the order, and cross-interrogatories within four days thereafter.

ORDER NO. XIX.

Withdrawal and Dismissal.

1. Where the summons has not been served or the period limited for entry of appearance to defend has expired and no such appearance has been entered, the plaintiff may withdraw the summons by notice to the clerk of the court.

2. (1) Save as provided by rule 1 of this Order a plaintiff or applicant desiring to withdraw an action or application against all or any of the parties thereto shall deliver notice of withdrawal.

(2) Any party served with notice of withdrawal may within 10 days thereafter apply to the court for an order that the party so withdrawing shall pay the applicant's costs of the action or application withdrawn together with the costs incurred in so applying:

Provided, however, that where the plaintiff in the notice of withdrawal embodies in such notice a consent to pay the costs, such consent shall then have the force of an order of court, and the clerk shall tax the costs on the request of the defendant.

(3) Any party may by delivery of notice abandon any specified claim, objection, exception or defence pleaded by him; and such notice shall be taken into consideration in taxing costs.

(2) As 'n regsput in geskil is en die partye di eens is met betrekking tot die feite, kan die feite deur die partye by die hofsitting erken word, hetsy *viva voce* of by wyse van 'n skriftelike stuk wat deur die hof genotulee kan word; en die hof kan sonder enige verdere getuieni uitspraak daarop gee.

(3) Wanneer die hof van oordeel is dat 'n saak, waari regsputte sowel as die feite in geskil is, op die regsputte alleen beslis kan word, kan die hof die partye gelas or slegs die regsputte te beredeneer en die hof kan daarna voordat hy getuieni omtrent die feite hoor, sodanige regsputte beslis, en kan ook, sonder om op die feitlike geskilpunte in te gaan, die saak finaal besleg as die beslissing van die regsputte sodanige uitspraak regverdig.

5. (1) (a) As, volgens die pleidooie, die bewyslas op die eiser rus, moet hy sy getuieni eerste aanvoer;

(b) As daarna nie absolusie van die instansie verleen word nie, moet die verweerder sy getuieni aanvoer.

(2) As die bewyslas op die verweerder rus, moet verweerder sy getuieni eerste aanvoer, en daarna moet eise sy getuieni aanvoer.

(3) (a) Wanneer die bewyslas ten opsigte van een of meer geskilpunte op eiser rus en ten opsigte van ander op verweerder, moet eiser sy getuieni met betrekking tot geskilpunte, die bewyslas waarvan op hom rus eerste aanvoer, en kan sy saak dan sluit; en daarna moet verweerder sy getuieni aanvoer met betrekking tot alle geskilpunte.

(b) As die eiser (afgesien van die getuieni aangevoe ter staving van geskilpunte, die bewyslas waarvan op hom rus) geen getuieni aangevoer het nie met betrekking tot geskilpunte waarvan die bewyslas op die verweerder rus, is hy geregtig om dit te doen na verweerder sy saak gesluit het. As hy egter reeds sodanige getuieni aangevoer het, is hy nie daartoe geregtig nie.

(4) Beide partye kan, met verlof van die hof, te enige tyd voor uitspraak verdere getuieni aanvoer; maar sodanig verlof kan nie verleen word nie as dit blyk dat sodanig getuieni opsetlik teruggehou was uit die behoorlike volgorde.

(5) Die hof kan te eniger tyd voor uitspraak, hetsy op aansoek van een of ander van die partye of uit eie beweging enige getuie vir verdere ondersoek terugroep.

(6) 'n Getuie kan deur die hof sowel as deur die partye ondervra word.

(7) Na afhandeling van die bewyslewering ten behoew van beide partye kan die party wat eerste getuieni aangevoer het, die hof eerste toespreek, en daarna die teeparty en dan kan die party wat eerste getuieni aangevoer het repliek lewer.

6. Wanneer die hof magtiging verleen het om die getuieni van 'n getuie deur middel van vraagpunte af te neem, moet sodanige vraagpunte binne vier dae vanaf die bevel ingedien word, en kruis-vraagpunte binne vier dae daarna.

ORDER NO. XIX.

Terugtrekking en Afwysing.

1. Eiser kan deur kennisgewing aan die klerk van die hof die dagvaring terugtrek, as die dagvaring nog nie gedien is nie, of as die termyn beperk vir die aantekening van verdediging verstreke is sonder dat verdediging aangeteken is.

2. (1) Behoudens die bepalinge van reël 1 van hierdie Order, moet 'n eiser of applikant wat verlang om 'n aksie of applikasie teen een of meer van die partye terug te trek, 'n kennisgewing van terugtrekking inlewer.

(2) Die party op wie 'n kennisgewing van terugtrekking gedien is, kan binne tien dae daarna by die hof applikasie maak vir 'n bevel teen die terugtrekkende party tot betaling van applikant se koste in die aksie of applikasie aldus teruggetrek, tesame met die koste aangegaan ten opsigte van sodanige applikasie:

Met die verstande egter, dat wanneer die eiser by sodanige kennisgewing van terugtrekking 'n toestemming tot betaling van die koste insluit, sodanige toestemming die krag van 'n bevel van die hof sal hê, en die klerk van die hof is daarop verplig om die koste, op versoek van die verweerder, te takseer.

(3) Enige party kan deur inlewering van 'n kennisgewing afstand doen van enige bepaalde vordering, objeksie of verdediging; en sodanige kennisgewing moet by die taksasie van koste in aanmerking geneem word.

3. A defendant may, if the plaintiff has not within days after the pleadings have been closed given notice trial either for a day not more than 21 days distant or the first day obtainable from the clerk of the court, apply to the court to dismiss the action for want of production; and the court may on such application either dismiss the action with costs or make such other order in regard thereto and as to the costs of the application as may be just.

ORDER NO. XX.

Records of Proceedings.

1. (1) Minutes of record shall be made of —
 - (a) any judgment given by the court;
 - (b) any *viva voce* evidence given in court;
 - (c) any objection made to any evidence received or tendered; or
 - (d) the proceedings of the court generally.
- (2) The court shall also duly mark each document put in evidence and note such mark on the record.
- (3) Such minutes and marks may be made by the clerk of the court; and, save where made by the clerk of the court or as hereinafter provided, they shall be made by the presiding judicial officer.

2. (1) The court may appoint a shorthand writer to take down in shorthand a note of *viva voce* evidence and proceedings, and such appointment may be made either generally for the purposes of the court or specially for the purposes of any particular matter.

(2) A party shall be entitled to a transcript of any such shorthand note on payment of a fee of 1s. for each 100 words.

(3) In the event of an appeal being noted and set down for hearing such shorthand note shall, so far as relevant to the appeal, be transcribed and certified on oath by such shorthand writer as a true record of the proceedings and such transcript shall thereafter form part of the record.

3. (1) Any party may, not later than seven days after judgment, or, where the note has been taken in shorthand, after the transcription thereof has been completed, apply to the court to correct any errors in the note; and the court may correct any such errors.

(2) If, before the hearing of the application, all parties affected file a consent to the corrections claimed, no costs of such application shall be allowed; otherwise, costs shall be in the discretion of the court.

ORDER NO. XXI.

Applications.

1. Except where otherwise provided, an application to the court for an order affecting any other party or person shall be on not less than three days' notice to such other party or person stating shortly the terms of the order applied for and the time at which the application will be made to the court.

2. Except where otherwise provided, an application need not be supported by affidavit; but in the event of any dispute arising as to the facts, evidence may be given with reference thereto either *viva voce*, or, with the leave of the court, by affidavit.

3. Unless the court shall otherwise order, minutes, other than the minutes of the record, shall not be drawn up of orders on application on notice: and notice of service of such an order to or on any person who has had notice of the application shall not be necessary.

4. (1) Except where otherwise provided, an *ex parte* application shall be made in writing stating shortly the terms of the order applied for and the grounds on which the application is made and shall be signed by the party making the application.

(2) Except where otherwise provided, an *ex parte* application shall not, unless required by the court in any case, be supported by affidavit or other evidence.

(3) Any person affected by an order made *ex parte* (including an interdict for rent under section thirty of the Proclamation) may apply to discharge it with costs on 24 hours' notice.

3. Die verweerder kan, as die eiser nie binne 14 dae na afsluiting van die pleidooie kennis van verhoor gegee het nie, hetsy vir 'n dag, nie meer as 21 dae verwyder nie, of vir die vroegste dag wat van die klerk van die hof verkrygbaar is, aansoek doen by die hof om die aksie af te wys weens versuim van vervolger; en die hof kan daarop of die saak met koste afwys of sodanige ander bevel ten opsigte daarvan asook ten opsigte van die koste van sodanige applikasie maak, as billik geag mag word.

ORDER NO. XX.

Notule van Verrigtinge.

1. (1) Aktes word opgemaak van —
 - (a) elke uitspraak deur die hof gegee;
 - (b) elke getuieverklaring *viva voce* in die hof afgelê;
 - (c) elke objeksie opgewerp teen enige ontvange of aangebode getuienis; of
 - (d) die verrigtinge van die hof in die algemeen.
- (2) Die hof moet ook elke dokument wat as bewysstuk ingehandig word, behoorlik merk en sodanige merk in die notule aanteken.

(3) Voormelde aktes en merke kan deur die klerk van die hof gemaak word; en, behalwe waar deur die klerk van die hof gemaak of soos hierinlater voorgeskryf, moet dit deur die presiderende regterlike amptenaar gedoen word.

2. (1) Die hof kan 'n snelskrywer aanstel om stenografiese aantekening te hou van *viva voce* getuienis en verrigtinge, en sodanige aanstelling kan gemaak word of in die algemeen ten dienste van die hof of spesiaal ten behoeve van 'n bepaalde aangeleentheid.

(2) 'n Party is geregtig op 'n oorskrif van die stenografiese aantekening teen betaling van 1s. per 100 woorde.

(3) Ingeval appèl aangeteken en vir verhoor op die rol geplaas word, moet sodanige stenografiese aantekening, vir sover dit die appèl betref, oorgeskrif word deur die snelskrywer en ook deur hom beëdig en gewaarmerk word as 'n korrekte verslag van die verrigtinge, en sodanige oorskrif maak daarop deel uit van die notule.

3. (1) Elkeen van die partye kan, nie later as sewe dae na uitspraak, of, waar die notule in snelskrif gehou is, dan na die oorskrif daarvan voltooi is, by die hof aansoek doen om enige foute in die notule te verbeter; en die hof kan daarop enige sodanige foute verbeter.

(2) As, voor die behandeling van die applikasie, al die betrokke partye hul toestemming tot die aangevraagde verbeteringe indien, kan geen koste van so 'n applikasie toegestaan word nie; anderste word koste aan die oordeel van die hof oorgelaat.

ORDER NO. XXI.

Applikasies.

1. Vir sover nie anders bepaal is nie, moet, wanneer 'n applikasie waarby 'n ander party of persoon betrokke is, aan die hof gerig word, minstens drie dae tevore kennis aan sodanige ander party of persoon gegee word waarin kortliks die inhoud van die bevel, aldus aangevra, en die tyd, wanneer die applikasie gemaak sal word, vermeld word.

2. Vir sover nie aanderste bepaal is nie, behoef 'n applikasie nie deur 'n beëdigde verklaring gestaaf te word nie; maar ingeval die feite betwis word, kan getuienis aangevoer word met betrekking daartoe, hetsy *viva voce*, of, met verloop van die hof, by wyse van beëdigde verklaring.

3. Tensy die hof anderste gelas, word geen notule, behalwe die notule van die verrigtinge, opgemaak van bevels verleen op applikasies na kennisgewing nie: en kennisgewing of diening van sodanige bevel aan of op enige persoon wat kennis ontvang het van die applikasie, is onnodig.

4. (1) Tensy die teendeel bepaal is, moet 'n *ex parte* applikasie skriftelik opgestel word en moet dit die inhoud van die bevel waarvoor aansoek gedoen is, kortliks vermeld, asook die gronde waarop die applikasie berus en moet deur die applikant onderteken word.

(2) Vir sover nie anderste bepaal is nie, word 'n *ex parte* applikasie nie deur beëdigde verklaringe of ander getuienis gestaaf nie, tensy die hof dit in een of ander saak verlang.

(3) Elkeen wat aangetas is deur 'n bevel *ex parte* gemaak ('n interdik vir huurgelde ingevolge artikel dertig van die Proklamasie inbegryp) kan, na voorafgaande kennisgewing van 24 uur die opheffing daarvan met koste aanvra.

5. In every application the person substantially interested shall be made responsible.

6. All interlocutory matters may be dealt with upon application.

7. All opposed applications shall be heard in open court.

ORDER NO. XXII.

Arrests, Interdicts, Attachments, and Mandamenten van Spolie.

1. (1) Except where otherwise provided in these rules, every application to the court for an order of arrest, interdict or attachment or for a *mandament van spolie* under section *twenty-nine* of the Proclamation, may be made *ex parte*.

(2) Every such *ex parte* application shall be upon application, stating shortly the facts upon which the application is made and the nature of the order applied for.

2. The court may, before granting an order upon such an application, require the applicant to give security for any damages which may be caused by such order and may require such additional evidence as it may think fit.

3. (1) A summons for rent under section *thirty* of the Proclamation shall be in the form prescribed therefor in the First Annexure to these rules.

(2) Every order made *ex parte* (other than an order for the arrest of any person or an interdict by summons for rent under section *thirty* of the Proclamation) shall call upon the respondent to show cause against it at a time stated in the order, which shall not be a less time after service than the time allowed by these rules for appearance to a summons, unless the court shall give leave for shorter service.

(3) The return day of an order may be anticipated by the respondent upon 12 hours' notice to the applicant.

4. (1) A copy of any order made *ex parte* and of the affidavit, if any, on which it was made shall be served forthwith on the respondent thereto.

(2) Where cause is shown against any such order the court may order the deponent to any such affidavit to attend for cross-examination.

(3) Any order made *ex parte* may be discharged or varied by the court on cause shown by any person affected thereby: and on such terms as to costs as may be just.

5. (1) An order made *ex parte* shall *ipso facto* be discharged upon security being given by the respondent for the amount to which the order relates together with costs.

(2) Such security may be given to abide the result of the action instituted or to be instituted; and may be assigned by the respondent to part only of the order and shall in that event operate to discharge the order as to that part only.

(3) Unless the court shall otherwise order, the messenger may release any person arrested upon such person giving security to the satisfaction of the messenger that he will appear upon the return day of arrest.

6. (1) The minutes of any order required for service or execution shall be drawn up by the party entitled thereto and shall be approved by the clerk of the court.

(2) The copies of such minutes for record and service shall be made by such party and the copy for record shall be signed by the clerk of the court.

7. An interdict and a warrant of arrest other than for civil imprisonment may be executed on any day, at any hour, and at any place.

ORDER NO. XXIII.

Subpoenas.

1. The process of the court for compelling the attendance of any person to give evidence or to produce any books, papers or documents shall be by subpoena issued by the clerk of the court and sued out by the party desiring the attendance of such person. In the case of evidence taken on commission such process shall be sued out by the party desiring the attendance of the witness and issued by the commission.

5. In elke applikasie moet die wesenlik belanghebbende persoon verantwoordelik gehou word.

6. Alle interlokutore aangeleenthede kan by wyse van applikasie behandel word.

7. Alle bestrede applikasies moet in die oop hof behandel word.

ORDER NO. XXII.

Arreste, Interdikte, Beslaglegginge en Mandamenten van Spolie.

1. (1) Tensy die teendeel in hierdie reëls bepaal word, kan applikasies vir 'n bevelskrif van arres, 'n interdik of beslaglegging of vir 'n *mandament van spolie* ingevolge artikel *nege-en-twintig* van die Proklamasie, *ex parte* gemaak word.

(2) Elke sodanige *ex parte* applikasie moet geskied op applikasie waarin die feite waarop die applikasie berus asook die aard van die bevel verlang, vermeld word.

2. Die hof kan alvorens hy 'n bevel op so 'n applikasie verleen, die applikant gelas om sekuriteit te stel vir enige skade wat sodanige bevel tot gevolg mag hê en kan sulke verdere getuienis verlang as goedgevind mag word.

3. (1) 'n Dagvaring vir huurgelde ingevolge artikel *dertig* van die Proklamasie moet opgestel wees volgens die vorm voorgeskrywe in die Eerste Aanhangel tot hierdie reëls.

(2) Bevelskrifte wat *ex parte* verleen word (uitgesonderd 'n bevelskrif van arres van 'n persoon of 'n interdik by wyse van dagvaring vir huurgelde ingevolge artikel *dertig* van die Proklamasie) moet die respondent oproep om op 'n tydstop in die bevel aangedui gronde daarteen aan te voer; sodanige tydstop moet nie op korter termyn na die diening gestel word nie as die termyn deur hierdie reëls toegelaat vir aantekening van verdediging in die geval van 'n dagvaring, tensy die hof verlof vir korter diening verleen.

(3) Die dienende dag van 'n bevelskrif kan deur die respondent vervroeg word, mits 12 uur voorafgaande kennis daarvan aan applikant gegee word.

4. (1) 'n Afskrif van die *ex parte* verleende bevelskrif en van die beëdigde verklaring, indien enige, waarop die bevel verkry is, moet onmiddellik op die respondent gedien word.

(2) Ingeval gronde teen 'n sodanige bevel aangevoer word, kan die hof die persoon wat sodanige beëdigde verklaring afgelê het, gelas om vir kruisverhoor te verskyn.

(3) Elke bevel *ex parte* verleen, kan ophef of gewysig word deur die hof na aanvoering van gronde deur 'n daarby betrokke persoon, met uiiwysing van koste soos billik geag mag word.

5. (1) 'n *Ex parte* verleende bevel word *ipso facto* opgehef, as respondent sekuriteit stel vir die bedrag waarop die bevel betrekking het, tesame met koste.

(2) Sodanige sekuriteit kan gestel word in afwagting van die uitslag van 'n aksie wat ingestel is of ingestel sal word; en sodanige sekuriteit kan deur die respondent op slegs 'n deel van die bevelskrif aangewys word, in welke geval die bevelskrif slegs ten opsigte van daardie gedeelte opgehef word.

(3) Tensy die hof anders gelas, kan die bode 'n gearresteerde persoon in vryheid stel, as sodanige persoon tot bevrediging van die bode sekuriteit stel vir sy verskyning op die dag waarop die arres dien.

6. (1) Die akte van 'n bevelskrif vir diening of eksekusie benodig word deur die party wat daarop geregtig is, opgestel en moet vir goedkeuring aan die klerk van die hof voorgelê word.

(2) Die afskrifte van sodanige akte vir doeleindes van notule en diening word deur sodanige party gemaak en die afskrif vir opberging moet deur die klerk van die hof geteken word.

7. 'n Interdik en 'n lasbrief van arres, uitgesonderd dié vir siviele gyseling, kan uitgevoer word op enige dag, enige uur en enige plek.

ORDER NO. XXIII.

Dagvaring van Getuiens.

1. Die dagvaring van 'n persoon om getuienis af te lê of boeke, geskrifte of ander stukke voor te lê geskied by wyse van subpoena uitgereik deur die klerk van die hof en uitgeneem deur die party wat die verskyning van 'n getuie verlang. In die geval waar getuienis by wyse van kommissie afgeneem word, word sodanige subpoena uitgeneem deur die persoon wat die verskyning van die getuie verlang, en uitgereik deur die kommissie.

2. (1) There shall be delivered to the messenger (if the party suing out the subpoena desires it to be served through the messenger) together with the said subpoena so many copies thereof as there are witnesses to be summoned, and also such sum or sums of money as the party for whom they are to be summoned intends that the messenger shall pay or offer to the said witnesses respectively for their conduct money.

(2) The court may set aside service of any subpoena if it shall appear that the witness served was not given reasonable time to enable him to appear in pursuance of the subpoena.

ORDER NO. XXIV.

Interest.

1. Where the defendant has not consented to judgment 24 hours before the expiration of the time allowed for appearance to defend, interest from the date of issue of the summons to the date of judgment may in the judgment be added to the amount claimed in the summons at the rate claimed in the summons or, if there be no such rate, then at the rate of six per cent per annum.

2. Every judgment for payment of money shall bear interest from the date of judgment until payment at such rate as may be adjudged or, if there be no such rate, then at the rate of six per cent per annum.

ORDER NO. XXV.

Execution.

1. (1) The process for the execution of any judgment for the payment of money, for the delivery up of goods or premises or for ejectment shall be by warrant issued and signed by the clerk of the court and addressed to the messenger.

(2) Such process may be sued out by any person in whose favour any such judgment shall have been given, if such judgment is not then satisfied, stayed or suspended.

(3) Such process may at any time, on payment of the fees incurred, be withdrawn or suspended by notice to the messenger by the party who has sued out such process.

(4) Any alterations in such process shall be initialled by the clerk of the court before such process is issued by him.

(5) Any such process shall be invalid if a wrong person is named therein as a party; but no such process shall be invalid merely by reason of the misspelling of any name therein, or of any error as to date.

(6) Where the messenger is in doubt as to the validity of any attachment or contemplated attachment, he may require that the party suing out the process shall give security to indemnify him.

(7) Except where judgment has been entered by consent or default, execution shall not be issued without special leave of the court applied for at the time of granting the judgment before the day following that on which the judgment is given.

(8) Unless otherwise ordered by the court, the costs and expenses of issuing and levying execution shall be a first charge on the proceeds of the property sold in execution and may so far as such proceeds are insufficient be recovered from the execution debtor as costs awarded by the court.

2. (1) Where a judgment debtor is a partner in a firm and the judgment is against him for a separate debt, the court may, after notice to the judgment debtor and to his firm, appoint the messenger as receiver to receive any moneys payable to the judgment debtor in respect of his interest in the partnership.

(2) Such appointment shall, until the judgment debt is satisfied, operate as an attachment of the interest of the judgment debtor in the partnership assets.

(3) Where the judgment is against a firm, the partnership property shall first be exhausted, so far as it is known to the judgment creditor, before the judgment is executed against the separate property of the partners.

3. Subject to any hypothec existing prior to attachment, all warrants of execution lodged with the messenger on or before the day immediately preceding the date of the sale in execution, shall rank *pro rata* in the distribution of the proceeds of the goods sold in execution.

2. (1) As die party wat die subpoena uitneem, verlang dat dit deur die bode gedien moet word, moet aan die bode tesame met die subpoena net soveel afskrifte oorhandig word as die aantal getuies wat bedien moet word, asook sodanige geldsom of geldsomme as die party verlang dat die bode as padgeld moet oorbetal of aanbied aan die getuie of getuies.

(2) Die hof kan diening van 'n subpoena ongeldig verklaar, as dit blyk dat aan die gedagvaarde getuie nie 'n redelike tyd gegee was om hom in staat te stel om op die subpoena te verskyn nie.

ORDER NO. XXIV.

Rente.

1. Die verweerder wat nie 24 uur voor verstryking van die termyn toegelaat vir aantekening van verdediging, toegestem het tot vonnis nie, kan bo en behalwe die bedrag, wat in die dagvaring gevorder is, veroordeel word tot betaling van rente teen die koers in die dagvaring geëis of by gebreke van so 'n rentekoers, teen ses persent per jaar, gereken vanaf die uitreiking van die dagvaring tot datum van vonnis.

2. Elke vonnis tot betaling van geld dra rente vanaf datum van vonnis tot datum van betaling teen die rentekoers deur die vonnis bepaal of by gebreke van sodanige bepaling, teen ses persent per jaar.

ORDER NO. XXV.

Eksekusie of Uitvoering.

1. (1) Die eksekusie van 'n vonnis tot betaling van geld, afgifte van goedere of persele, of tot ontruiming, geskied deur middel van 'n lasbrief uitgereik en onderteken deur die klerk van die hof en gerig aan die bode.

(2) Sodanige lasbrief kan uitgeneem word deur enige persoon ten gunste van wie vonnis gegee is, mits die vonnis nie asdan voldaan, gestuit of opgeskort is nie.

(3) Sodanige lasbrief kan te eniger tyd, teen betaling van die fooie reeds opgeloo, teruggetrek of opgeskort word deur middel van kennisgewing aan die bode deur die party wat die lasbrief uitgeneem het.

(4) Alle veranderinge in die lasbrief aangebring, moet deur die klerk van die hof gearafeer word alvorens dit deur hom uitgereik word.

(5) Die lasbrief is ongeldig, as 'n verkeerde persoon daarin genoem word as 'n party; die lasbrief is egter nie ongeldig wanneer alleenlik 'n naam wat daarin voorkom verkeerd gespelt is of slegs die datum foutief is nie.

(6) Wanneer die bode in twyfel is omtrent die geldigheid van 'n beslaglegging of voorgenome beslaglegging, kan hy eis dat die party wat die lasbrief uitneem, sekuriteit stel dat hy hom skadeloos hou.

(7) Behalwe waar vonnis aangeteken is met toestemming of by verstek, moet geen lasbrief tot eksekusie uitgereik word nie voor die dag na datum van vonnis nie, tensy uitdruklike verlof deur die hof daartoe verleen is ten tye toe vonnis uitgespreek is.

(8) Die onkoste en uitgawes van uitreiking en uitvoering van 'n lasbrief van eksekusie is, tensy die hof anderste gelas, 'n eersbevoorregte las teen die oprings van die goed wat in eksekusie verkoop is, en kan vir sover die oprings ontoereikend is, op die eksekusie-skuldenaar verhaal word, asof dit koste deur die hof toegeken was.

2. (1) Wanneer 'n vonnis-skuldenaar, teen wie vonnis vir 'n afsonderlike skuld gegee is, lid van 'n vennootskap is, kan die hof, nadat aan die vonnis-skuldenaar en aan sy firma kennis gegee is, die bode as ontvanger aanstel om enige gelde aan die vonnis-skuldenaar betaalbaar uit hoofde van sy belang in die vennootskap, te ontvang.

(2) Sodanige aanstelling het, solank aan die vonnis-skuld nie voldoen is nie, die krag van 'n beslaglegging van die belang wat die vonnis-skuldenaar ten opsigte van die vennootskap het.

(3) Wanneer 'n vonnis teen 'n firma gegee is, moet in die eerste plek die vennootskaplike goedere, vir sover bekend aan die vonnis-skuldeiser, uitgewin word, voordat die vonnis teen die afsonderlike goedere van die vennote uitgevoer kan word.

3. Onderhewig aan enige hipoteek wat voor die beslaglegging bestaan, word alle lasbriewe tot eksekusie, wat op of voor die dag onmiddellik voor die datum van die eksekutorialie verkoping by die bode ingedien is, *pro rata* gerangskik by die verdeling van die oprings van die goed verkoop in eksekusie.

4. (1) If any property taken in execution is claimed by any third party as his property, the messenger shall on receipt of the claim forthwith give notice to the execution creditor.

(2) If the execution creditor gives the messenger notice within two days thereafter that he admits the claim, he shall not be liable for any costs, fees, or expenses afterwards incurred, and the messenger may withdraw from possession of the property claimed.

Against Movable Property.

5. (1) The messenger shall upon receiving a warrant directing him to levy execution on movable property repair to the house or place of business of the execution debtor within 24 hours (to which period shall be added, if such house or place of business be situate outside the limits of the town or place where the court is holden, one additional day for each 25 miles between such limits and such house or place of business, or as soon as circumstances permit) and there demand payment of the judgment debt and costs or else require that so much movable property be pointed out as the said messenger may deem sufficient to satisfy the exigency of the warrant, and if such lastmentioned request be complied with the said messenger shall make an inventory and valuation of such movable property; but if the debtor does not point out such property the said messenger shall immediately make an inventory and valuation of so much of the movable property belonging to the debtor as he may deem sufficient to satisfy the execution.

(2) So far as may be necessary to the execution of any such warrant, the messenger may open any door of or in any premises, or of any piece of furniture in any premises if opening be refused or if there be no person there who represents the person against whom such warrant is to be executed; and the messenger may, if necessary, use force to that end.

(3) The messenger shall exhibit the original warrant of execution and shall deliver to the debtor or leave on the premises a copy thereof.

(4) When the foregoing requirements of this rule have been complied with by the messenger, the goods so inventoried by him shall become and be judicially attached.

(5) The messenger shall deliver a copy of the said inventory signed by himself to the debtor or leave the same on the premises, which copy shall have subjoined thereto a notice of the attachment.

(6) Where specie is found and attached, the number and kinds thereof shall be specified in the inventory and where any documents are attached they shall also be specified; any such specie or documents shall be sealed up and conveyed to the office of the messenger.

(7) Where any person whose movable property has been so attached undertakes in writing, together with some sufficient surety, that the same shall be produced on the day appointed for the sale thereof, if the judgment creditor shall not be sooner satisfied in respect of his judgment debt, then the messenger shall leave the said property so attached and inventoried as aforesaid, other than specie or documents, upon the premises where the same was found.

(8) If the debtor will not so undertake, together with a sufficient surety to produce the said goods —

(a) the messenger shall either remove the same to some convenient place of security or, if the same be cattle or such property as it may be inconvenient to remove, may leave the same upon the premises in the charge and custody of some person for him until the day appointed for the sale thereof;

(b) where the messenger is instructed by the judgment creditor to remove the goods attached, he shall do so within 48 hours after the attachment; and he shall in the meantime leave the same in the charge and custody of some person for him;

(c) such a custodian may not use, let or lend the attached goods, nor permit them to be used, let or lent, nor may he in any way do anything which will decrease their value, and, if the goods attached shall have produced any profit or increase, the custodian shall be responsible for any such profit or increase in like manner as he is responsible for the goods originally attached;

(d) if such a custodian makes a default in his duty he shall not be entitled to recover any remuneration for his charge and custody.

4. (1) Wanneer enige goedere waarop beslag gelê is, deur 'n derde party as sy eiendom opgevorder word, moet die bode op ontvangs van die vordering, dadelik kennis daarvan gee aan die eksekusie-skuldeiser.

(2) As die eksekusie-skuldeiser binne twee dae daarna aan die bode kennis gee dat hy die vordering erken, is hy nie aanspreeklik vir enige koste, fooie of uitgawes daarna gemaak nie, en die bode kan daarop die besit van die gevorderde goedere prysgee.

Op Roerende Goedere.

5. (1) Die bode moet, op ontvangs van 'n lasbrief tot eksekusie van roerende goedere, na die huis of besigheidsplek van die eksekusie-skuldenaar gaan binne 24 uur (as die huis of besigheidsplek buitekant die grense van die stad of plek waar die hof sitting hou, geleë is, word by die genoemde tydperk een dag ten opsigte van elke afstand van 25 myl tussen sodanige grense en die huis of besigheidsplek toegevoeg) of so spoedig moontlik onder die omstandighede, en aldaar betaling vorder van die vonnis-skulde en koste of anderste vorder dat soveel onroerende goedere aangewys word as deur die bode genoegsaam geag mag word ter voldoening van die lasbrief en, as laasgenoemde versoek uitgevoer word, moet die bode 'n inventaris en waardering van sodanige onroerende goedere maak; as die skuldenaar dit egter nie doen nie, moet die bode onmiddellik 'n inventaris en waardering van soveel van die skuldenaar se roerende goedere maak as hy ter voldoening van die lasbrief genoegsaam mag ag.

(2) Vir sover dit nodig mag wees vir die uitvoering van enige sodanige lasbrief, is die bode geregtig om, as die opening geweier word of as daar niemand aanwesig is wat die persoon teen wie die lasbrief gerig is verteenwoordig nie, enige deur van of in 'n gebou of van enige meubelstuk in so 'n gebou, oop te maak; en desnoods is hy geregtig om geweld te gebruik.

(3) Die bode moet die oorspronklike lasbrief van eksekusie vertoon en moet 'n afskrif daarvan aan die skuldenaar oorhandig of in die gebou laat.

(4) Nadat die voormelde vereistes van hierdie reël nagekom is, word en is geregtelike beslaglegging ten opsigte van die goedere in die inventaris aangeteken, 'n voldonge feit.

(5) Die bode moet 'n afskrif, deur hom onderteken, van die inventaris aan die skuldenaar oorhandig of in die gebou laat. Onderaan die afskrif moet 'n kennisgewing van die beslaglegging gestel word.

(6) Ingeval muntstukke gevind en in beslag geneem word, moet die getal en soort daarvan in die inventaris opgegee word, en ingeval dokumente in beslag geneem word, moet hulle ook so aangestip word; enige sulke muntstukke of dokumente moet verseël en na die kantoor van die bode vervoer word.

(7) Wanneer die persoon op wie se roerende goedere aldus beslag gelê is, hom skriftelik, tesame met 'n bevredigende borg, verbind om, as die vonnis-skuldeiser nie eerder ten opsigte van die vonnisskulde tevrede gestel is nie, voormelde goedere op die dag bepaal vir die verkoop daarvan tevoorskyn te bring, moet die bode die goedere met uitsondering van muntstukke of dokumente, in die gebou waar hy dit gevind het, laat.

(8) As die skuldenaar hom nie so, tesame met 'n bevredigende borg, wil verbind om die voormelde goedere te voorskyn te bring nie —

(a) dan moet die bode die goedere na 'n gerieflike plek van veiligheid verwyder, of, as dit vee is of ander goedere wat nie maklik verwyder kan word nie, kan hy dit op die plek laat onder die toesig en bewaring van iemand wat optree namens hom tot die dag bepaal vir die verkoop daarvan;

(b) wanneer die bode deur die vonnis-skuldeiser gelas is om die goedere wat in beslag geneem is, te verwyder moet hy dit binne 48 uur na die beslaglegging doen; en intussen moet hy dit onder die toesig en bewaring laat van iemand wat optree namens hom;

(c) sodanige bewaarder mag die goedere wat in beslag geneem is, nie gebruik, verhuur of uitleen nie en ook nie laat gebruik, verhuur of uitleen nie en mag origniks doen waardeur hulle waarde verminder sou word; en as die goedere voormeld enige wins voortgebring het of vermeerdering ondergaan het, is die bewaarder vir sodanige wins of vermeerdering op dieselfde wys aanspreeklik as vir die goed oorspronklik in beslag geneem;

(d) as die bewaarder nalatig is in die vervulling van sy pligte, verbeur hy sy aanspraak op beloning vir sy bewaring en toesig.

(9) Any movable property sold in execution of the process of the said court shall be sold publicly and for ready money by the messenger to the highest bidder, at or as near to the place where the same was taken or to which the same has been so removed as aforesaid as may be advantageous for the sale thereof; and the said messenger shall publish notice of the sale in some local or other newspaper circulating in the district, and shall even days at least before the day appointed for the said sale affix notice of the said sale and of the day and place thereof on the door of the courthouse or on some other public building in the place where the said court is holden, and also at or as near as may be to the place where the said sale is actually to take place: Provided that it shall not be necessary to publish notice of the sale in a newspaper if in the opinion of the messenger the value of the attached goods does not exceed the amount of twenty pounds.

(10) The day appointed for the sale shall be not less than two weeks after the time of seizure or attachment; provided that, where the goods attached are of a perishable nature or with consent of the execution debtor, the court may, upon application reduce either or both of the periods mentioned in this rule to such extent and on such conditions as it may think fit.

(11) A sale in execution shall be stopped as soon as sufficient money has been raised to satisfy the said warrant and the costs of the sale.

(12) Should the messenger have a balance in hand after payment of the judgment creditor's claim and costs he shall pay the same to the judgment debtor, if he can be found, otherwise he shall pay such balance into court.

6. (1) Where the property attached in execution is a lease or a bill of exchange, promissory note, bond, or other security for the payment of money —

- (a) attachment shall not be complete after notice to the lessor, lessee or person liable on the bill of exchange or other security as the case may be;
- (b) the attachment shall not be valid unless and until the instrument in question is taken possession of by the messenger and notice has, in the case of a registered lease, been given to the Registrar of Deeds;

(2) Where the movable property sought to be attached is the interest of the execution debtor in property pledged or sold under a suspensive condition to a third person —

- (a) attachment shall be effected by service by the messenger on the execution debtor and on such third person of notice of the attachment with a copy of the warrant of execution, which service may be effected as if such notice were a summons;
- (b) the messenger may, upon exhibiting the original of such warrant of execution to the pledgee or purchaser enter upon the premises where such property is and make an inventory and valuation of the said property.

7. The method of attachment of property attached under section *thirty-one* of the Proclamation shall *mutatis mutandis* be the same as that of attachment in execution.

Against Immovable Property.

8. A warrant of execution against immovable property shall state the situation and nature of the immovable property sought to be attached sufficiently to enable it to be identified.

9. (1) The mode of attachment of immovable property shall be by notice by the messenger served (in like manner as a summons) together with a copy of the warrant of execution upon the execution debtor as owner thereof and upon the registrar of deeds or other officer charged with the registration of such immovable property and upon all registered holders of bonds registered against the property attached and also, if the property is in the occupation of some person other than the execution debtor, upon such occupier.

(2) The messenger shall thereupon ascertain and record whether the said property is subject to any claim ranking in priority to that of the execution creditor.

(3) The messenger may by notice, served in like manner as a summons require the execution debtor to deliver up to him forthwith all documents in his possession or under his control relating in any way to his title to the said property.

(9) Die verkoping van enige roerende goedere wat ter uitvoering van 'n lasbrief tot eksekusie van voormelde hof in beslag geneem is, moet deur die bode in die openbaar teen kontant aan die hoogste bieder verkoop word op of so naby moontlik by die plek waar dit in beslag geneem is of waarheen dit soos voormeld verwyder is, as vir die verkoop daarvan voordelig mag wees; en die bode moet die verkoping in 'n plaaslike of ander nuusblad wat in omloop is in die distrik, bekendmaak en, ten minste sewe dae voor die vasgestelde dag van verkoop 'n kennisgewing van sodanige verkoping, met opgawe van die datum en plek daarvan, aanplak op die deur van die gereghof of aan 'n ander publieke gebou in die plek waar sodanige hof sitting hou, asook op of so naby moontlik aan die plek waar die verkoping werklik gehou sal word: Met die verstande dat dit nie nodig sal wees om kennisgewing van die verkoping in 'n nuusblad te publiseer nie, as volgens die mening van die bode die waarde van die betrokke goedere nie meer as twintig pond is nie.

(10) Die dag vir die verkoping vasgestel moet nie minder as twee weke na datum van die beslaglegging wees nie: Met die verstande dat, ingeval die goedere aldus in beslag geneem van bederflike aard is of, met toestemming van die eksekusie-skuldenaar, die hof op aansoek daartoe een of albei van die tydvakke in hierdie reël neergelê, tot so 'n mate en op sodanige voorwaardes kan inkort as goed geag mag word.

(11) 'n Eksekutoriale verkoping moet gestaak word sodra 'n voldoende bedrag verkry is om die lasbrief en onkoste van die verkoping te dek.

(12) Ingeval die bode, na vereffening van die vonnis-skuldeiser se vordering en die koste, 'n oorskot op hande het, moet hy dit aan die vonnis-skuldenaar oorhandig as hy gevind kan word, of anderste moet hy dit by die hof inbetaal.

6. (1) Wanneer eksekutoriale beslag gelê is op 'n huurkontrak, 'n wisselbrief, 'n promesse, 'n akte van verband of enige ander sekerheidsakte vir die betaling van geld —

- (a) is die beslaglegging nie voltooi, voordat aan die verhuurder, huurder of persoon wat kragtens die wisselbrief of ander sekerheidsakte onderskeidelik aanspreeklik is, kennis gegee is nie;
- (b) is die beslaglegging ongeldig, tensy en totdat die betrokke akte deur die bode in besit geneem is en, ingeval van 'n geregistreerde huurkontrak, aan die Registrateur van Aktes kennis gegee is.

(2) As die roerende goedere wat in beslag geneem moet word, bestaan uit die belang wat die eksekusie-skuldenaar in goedere het wat aan 'n derde party verpand of onder 'n opskortende voorwaarde verkoop is —

- (a) geskied die beslaglegging deur middel van diening, deur die bode op die eksekusie-skuldenaar en op sodanige derde party, van 'n kennisgewing van die beslaglegging tesame met 'n afskrif van die eksekusie-lasbrief. Diening kan in so 'n geval bewerkstellig word, asof die kennisgewing 'n dagvaring was;
- (b) kan die bode, op vertoon van die oorspronklike eksekusie-lasbrief aan die pandhouer of koper, die perseel waar sodanige goedere is, binnegaan en 'n inventaris en waardering daarvan maak.

7. Die beslaglegging op goedere ingevolge artikel *eenendertig* van die Proklamasie geskied *mutatis mutandis* op dieselfde wyse as 'n eksekutoriale beslaglegging.

Op Onroerende Goedere.

8. 'n Lasbrief tot eksekusie op onroerende goedere moet die ligging en aard daarvan met voldoende noukeurigheid beskryf om uitgeken te kan word.

9. (1) Die beslaglegging op onroerende goedere geskied deur middel van 'n kennisgewing tesame met 'n afskrif van die eksekusie-lasbrief, gediën (op dieselfde wyse as 'n dagvaring) deur die bode van die hof op die eksekusie-skuldenaar as eienaar daarvan en op die Registrateur van Aktes of ander amptenaar belas met die registrasie van sodanige onroerende goedere, asook op alle geregistreerde verbandhouders van verbande ingedra teen die goedere onder beslag en, as die goedere in die besit is van 'n party ander as die eksekusie-skuldenaar, ook op sodanige besitter.

(2) Die bode moet daarna vasstel en notuleer of die onroerende goedere onderworpe is aan enige vordering wat voorrang geniet teenoor dié van die eksekusie-skuldeiser.

(3) Die bode kan deur middel van 'n kennisgewing, op dieselfde wyse as 'n dagvaring gediën, vereis dat die eksekusie-skuldenaar onmiddellik alle dokumente, in sy besit of onder sy beheer, wat enigerwys betrekking het op sy reg op die voormelde goedere, aan hom sal oorhandig.

(4) Where the said property is situate in some district other than that in which the judgment was given, the messenger of the court of the latter district shall forward the writ to the messenger of the court of the district in which the said property is situate, who shall, after obtaining the endorsement of a judicial officer thereon, as provided by section four (2) of the Proclamation, proceed to attach the property in the manner provided in this rule.

10. (1) The messenger shall appoint a day and place for the sale of such property, such day being, except by special leave of the court, not less than one month after service of the notice of attachment; and he shall cause the sale to be advertised at least twice in the *Gazette* and in some local or other newspaper circulating in the district by an advertisement containing a short description of such property and its situation, the time and place for the holding of the sale and the material conditions thereof.

(2) Any person alleging a claim ranking in priority to that of the execution creditor may apply to the court to set aside the execution at any time before registration of transfer to the purchaser, and the court may make such order upon the application as it thinks just.

(3) The conditions of sale shall be prepared and delivered by the execution creditor but the execution debtor may bring them before the magistrate to be settled by him on application made not more than four days after a copy of such conditions shall have been delivered.

(4) The execution creditor may appoint the conveyancer for the purposes of sale and transfer.

(5) (a) The execution creditor or any person having an interest in the due and proper realisation of such property may, by notice given to the messenger within fourteen days after attachment, but subject to the provisions hereinafter contained, require that such property shall be sold by an auctioneer in the ordinary course of business; and may in such notice nominate the auctioneer to be employed.

(b) Where such notice is given by any person other than the execution creditor, such notice shall be accompanied by the deposit of a sum sufficient to cover the additional expense of a sale by an auctioneer in the ordinary course of business, and in default of such a deposit such notice shall be void, and such notice shall lapse if in fact the services of an auctioneer are not obtainable. If after satisfying the execution creditor there are surplus proceeds of such property, such deposit shall be returned to the depositor, but if there is not such a surplus such deposit shall, as far as may be necessary, be applied in payment of the auctioneer's fees and expenses.

(c) If two or more such notices are given, the first shall have the preference.

(6) The sale shall be by public auction without reserve and the property shall, subject to the conditions of sale be knocked down to the highest bidder.

(7) The sale shall be held in front of the court house of the district and in the presence of a magistrate or assistant magistrate or such person as the magistrate may appoint, whose certificate that such sale was duly and properly conducted and of the name of the execution debtor and of the purchaser and of the amount of the purchase price shall be conclusive evidence thereof: Provided that when the sale is in execution of a judgment of a periodical court, the magistrate may authorise that the sale be held before that court house in the presence of such person as he may appoint.

(8) Where the said property is situate in a district other than that in which judgment is given, the sale of the said property shall be effected by the messenger of the court of the district in which it is situate in the manner provided by this rule.

(9) The messenger may and shall upon such certificate give transfer to the purchaser upon payment by the purchaser of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration of transfer, and anything so done by him shall be as valid and effectual as if he were the owner of the property.

(4) Ingeval die voormelde goedere geleë is in 'n ander distrik as dié waarin die vonnis gegee is, moet die bode van die hof van laasgenoemde distrik die lasbrief aanstuur na die bode van die hof van die distrik waarin die voormelde goedere geleë is en hierdie bode moet daarop, nadat hy die ondossesment van 'n regterlike amptenaar, soos bepaal in artikel 4 (2) van die Proklamasie, op die lasbrief verkry het, voortgaan met die beslaglegging op die wyse in hierdie reël bepaal.

10. (1) Die bode bepaal daarna 'n dag en plek vir die verkoping van sodanige goedere, welke dag, behalwe waar die hof spesiale verlof verleen, ten minste een maand na die diening van die kennisgewing van beslaglegging moet wees; en hy moet die verkoping ten minste twee maal in die *Offisiële Koerant* en in 'n plaaslike of ander nuusblad wat in omloop is in die distrik, laat aankondig deur middel van 'n advertensie waarin 'n beknopte beskrywing van sodanige goedere en die ligging daarvan, die tyd en plek van die verkoping en die wesenlike voorwaardes daarvan bevat is.

(2) Enige persoon wat beweer dat hy 'n vordering het wat voorrang teenoor dié van die eksekusie-skuldeiser geniet, kan te eniger tyd voor registrasie van oordrag aan die koper, aansoek by die hof doen om die eksekusie nietig te verklaar, waarop die hof sodanige bevel kan gee as billik geag mag word.

(3) Die voorwaardes van die verkoping word deur die eksekusie-skuldeiser opgestel en ingelewer; die eksekusie-skuldenaar is egter geregtig om sodanige voorwaardes by wyse van applikasie (wat gemaak moet word nie later as vier dae nadat 'n afskrif van die voorwaardes ingelewer is nie) voor die magistraat te bring om deur hom vasgestel te word.

(4) Die eksekusie-skuldeiser kan die transportuitmaker vir doeleindes van die verkoop en die oordrag aanstel.

(5) (a) Die eksekusie-skuldeiser asook elkeen wat belang het in die behoorlike tegeldemaking van die voormelde goedere kan, by wyse van 'n kennisgewing binne veertien dae na die beslaglegging aan die bode oorhandig, maar onderhewig aan die hierinlater volgende voorsieninge, vereis, dat die goedere deur 'n vendusie-afslaer in die gewone loop van besigheid verkoop sal word. En hy kan in sodanige kennisgewing die afslaer wat aangestel moet word, nomineer.

(b) Wanneer sodanige kennisgewing opgestuur word deur 'n persoon ander as die eksekusie-skuldeiser, moet dit vergesel gaan van 'n voldoende som tot dekking van die bykomende onkoste van 'n verkoping deur 'n afslaer in die gewone loop van besigheid; by gebreke van sodanige deposito is die kennisgewing ongeldig en, as die dienste van 'n afslaer nie verkrygbaar is nie, vervel die kennisgewing eenvoudig. As daar, na betaling van die eksekusie-skuldeiser, 'n oorskot is van die opbrings van die verkoop, moet die deposito aan die inbetaler terugbetaal word; as daar egter geen oorskot is nie, word die deposito vir sover nodig aangewend tot betaling van die afslaersfoote en -onkoste.

(c) Ingeval twee of meer kennisgewinge ontvang word, geniet die eerste die voorkeur.

(6) Die verkoop geskied by publieke veiling sonder voorbehoud, en die goedere moet, onderhewig aan die verkoopvoorwaardes, toegeslaan word aan die hoogste bieder.

(7) Die verkoping word gehou voor die geregsgebou van die distrik en in die teenwoordigheid van 'n magistraat, 'n assistent-magistraat of sodanige persoon as die magistraat mag benoem, en 'n sertifikaat, deur sodanige van hulle, dat die verkoping behoorlik gehou is en waarin die naam van die eksekusie-skuldenaar en van die koper, sowel as die bedrag van die koopsom, opgegee word, lewer afdoende bewys daarvan: Met die verstande dat wanneer die verkoping die uitvoering van 'n periodieke hof se vonnis betref, die magistraat kan magtig dat die verkoping voor daardie geregsgebou en in die teenwoordigheid van 'n persoon deur hom benoem, gehou sal word.

(8) Ingeval die voormelde goedere geleë is in 'n ander distrik as dié waarin vonnis gegee is, word die verkoop daarvan uitgevoer deur die bode van die hof van die distrik waarin die goedere geleë is en op die wyse in hierdie reël voorsien.

(9) Die bode is geregtig en verplig om op grond van voormelde sertifikaat oordrag aan die koper te gee teen betaling deur die koper van die koopsom en by aankoming van die verkoopvoorwaardes, en die bode kan ten opsigte hiervan enigiets doen wat nodig mag wees vir die bewerkstelling van registrasie van oordrag en enigiets aldus deur hom gedoen, is ewe geldig en van dieselfde krag, asof hy die eienaar gewees het.

- (10) (a) The messenger shall not pay out the purchase money until transfer has been given to the purchaser. If transfer has not been so given within fourteen days after the receipt by the messenger of any purchase money, he shall pay the same into court.
- (b) On the production of evidence that transfer has been given to the purchaser, the clerk of the court shall pay to the messenger the amount paid into court under sub-paragraph (a).
- (c) Transfer having been given to the purchaser, the messenger shall pay the judgment creditor's claim including the costs and shall subject to the provisions of section *fifty-nine* of the Proclamation, hand over any balance there may be to the judgment debtor, if he can be found, otherwise he shall pay the balance into court.
- (d) The messenger shall when endorsing on or annexing to the warrant the result of the execution required by Order II, Rule 4, show also the disposal of the amount recovered by him, supported by the receipts of the judgment creditor, and of the person entitled to the balance, if any.

ORDER NO. XXVI.

Interpleader.

1. Relief by way of interpleader may be granted —

- (a) Where the person seeking relief (in this Order called the applicant) is under any liability for any debt, money or movable property, for or in respect of which he is or expects to be sued by two or more parties (in this order called "the claimants") making adverse claims thereto;
- (b) Where the applicant is the messenger of the court and claim is made to any property attached by him in execution under any process of the court or to the proceeds or value of any such property by any person other than the person against whom the process is issued and the execution creditor has not after notice admitted the claim in manner provided by Order XXV, Rule 4;
- (c) When the execution creditor has not admitted the claim as provided in Order XXV, Rule 4, within two days after he has notice thereof, the messenger shall forthwith prepare and sue out a summons in the form of specimen 38 (a).

FORM 38 (a).

To A. B. (describing the execution creditor).

and C. D. (describing the claimant).

You are hereby summoned to appear before this court on the day of 19....., at o'clock in the forenoon, to have it determined and declared whether certain movable property to wit

attached on the day of 19....., by the messenger of the court, by virtue of a warrant of execution issued by this Court on the day of 19....., in the action in which you, the said A. B., obtained judgment for the sum of £..... against E. F., (describing the execution debtor) and which said property is claimed by you, the said C. D., as being your property, is or is not your property.

Dated at this day of 19.....

Clerk of the Court.

2. An applicant other than the messenger must satisfy the court by affidavit —

- (a) that he claims no interest in the subject matter in dispute other than for charges or costs; and
- (b) that he does not collude with any of the claimants; and
- (c) that he is willing to pay or transfer the subject matter into court or dispose of it as the court may direct.

3. The applicant may take out a summons calling upon the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them. When the applicant is the messenger, the clerk of the court shall sign and issue the interpleader summons without

- (10) (a) Die bode moet die koopsom nie uitbetaal, voordat oordrag aan die koper besorg is nie. As binne veertien dae na ontvangs deur die bode, van die koopsom of van die gedeelte daarvan, oordrag nog nie aldus besorg is nie, moet hy dit by die hof inbetaal.
- (b) Die klerk van die hof moet die bedrag wat aldus onder sub-paragraaf (a) inbetaal is, op vertoning van bewys dat oordrag aan die koper besorg is, aan die bode uitbetaal.
- (c) Nadat oordrag aan die koper besorg is, moet die bode die vonnis-skuldeiser se vordering (koste ingesluit) verleen en moet, onderhewig aan die bepalinge van artikel *nege-en-vyftig* van die Proklamasie, die oorskot, indien enige, aan die vonnis-skuldenaar oorhandig of, as hy nie gevind kan word nie, moet hy sodanige oorskot by die hof inbetaal.
- (d) Die bode moet, wanneer hy die endossement omtrent die uitslag van die eksekusie, soos vereis deur Order II, reël 4, op die lasbrief maak of dit daaraan heg, ook daarin aantoon hoe die bedrag deur hom ingesamel aangewend is, en kwitansies van die vonnis-skuldeiser en van die persoon geregtig op die oorskot, indien enige, ter staving daarvan byvoeg.

ORDER NO. XXVI.

Tussenpleitgedinge.

1. Verligting by wyse van tussenpleit kan verleen word—

- (a) wanneer die persoon wat verligting aanvra (in hierdie Order die applikant genoem), onder enige verpligting is ten opsigte van enige skuld, geld of roerende goedere, waarvoor of met betrekking waartoe hy gedagvaar is of verwag om gedagvaar te word deur twee of meer partye (in hierdie Order "die reklamante" genoem), wat teenstrydige aanspraak daarop maak;
- (b) wanneer die applikant die bode van die hof is en aanspraak gemaak word op goedere waarop hy, kragtens 'n geregtelike bevelskrif, eksekutorialle beslag gelê het, of op die oprings of die waarde van sodanige goedere, deur 'n persoon ander as die teen wie die bevelskrif gerig is en die eksekusie-skuldeiser na kennisgewing daarvan die aanspraak of vordering nie erken het nie op die wyse voorgeskryf in Order XXV, reël 4;
- (c) as die eksekusie-skuldeiser die aanspraak of vordering nie binne twee dae na ontvangs van die kennisgewing erken het nie op die wyse voorgeskryf in Order XXV, reël 4, moet die bode onmiddellik 'n dagvaring in ooreenstemming met voorbeeld 38 (a) opstel en uitreiking daarvan aanvra.

VORM 38 (a).

Aan A.B. (die eksekusie-skuldeiser word beskryf),
en C.D. (die reklamant word beskryf).

U word hiermee gedagvaar om te verskyn voor hierdie hof op die dag van 19....., om uur in die voormiddag, sodat dit beslis en uitgemaak kan word of sekere roerende goedere, te wete

waarop beslag gelê is op die dag van 19....., deur die geregsbode, ingevolge 'n eksekusie-lasbrief deur hierdie hof uitgereik op die dag van 19....., in die aksie waarin u, voormelde A.B. vonnis verkry het vir die som van £..... teen E. F., (eksekusie-skuldenaar word beskryf), en welke voormelde goedere gevorder word deur u, die voormelde C.D., as synde u eiendom, u eiendom is, al dan nie. Gedagteken te op hierdie dag van 19.....

Klerk van die Hof.

2. 'n Applikant, ander as die bode, moet deur middel van 'n beëdigde verklaring tot bevrediging van die hof bewys —

- (a) dat hy geen aanspraak op enige reg op die voorwerp waarvoor die geskil handel, met uitsondering van onkoste of koste, maak nie; en
- (b) dat hy nie met een of ander van die reklamante saanspan nie; en
- (c) dat hy bereid is om die voorwerp in geskil geregtelik in te betaal of dit aan die hof te oorhandig of daarvoor te beskik, soos die hof mag gelas.

3. Die applikant kan die reklamante by wyse van 'n dagvaring oproep om te verskyn en die aard en besonderhede van hulle aansprake aan te toon, en om of daarin vol te hou of om hulle prys te gee. Wanneer applikant die bode is, is die klerk van die hof verplig om die tussenpleit-dagvaring te onderteken en kosteloos uit te reik,

fee, but where judgment is delivered, the court shall direct the party shall pay the fee, and such party shall thereupon pay to the clerk of the court the appropriate fee provided in section one (1) (a) or (b) of Table D.

4. (1) If a claimant does not appear in pursuance of the summons or having appeared neglects or refuses to comply with any order made after his appearance, the court may make an order declaring him and all persons thereafter claiming under him barred against the applicant; but the order shall not affect the rights of the claimants between themselves.

(2) If one or more claimants appear in pursuance of the summons, the court may —

- (a) order any such claimant to state orally or in writing, on oath or otherwise, as to the court may seem expedient, the nature and particulars of his claim;
- (b) order that the matters in issue shall be tried on a day to be appointed for that purpose;
- (c) order which of the claimants shall be plaintiff and which defendant for the purpose of trial; or
- (d) try the matters in dispute in a summary manner.

5. Where the matters in issue are tried, whether summarily or otherwise, the provisions of Order XVIII as to the trial of an action shall *mutatis mutandis* apply.

6. The court may, in and for the purpose of any interpleader proceedings make all such orders as to any additional expenses of execution occasioned by the claim as may be just.

ORDER NO. XXVII.

Civil Imprisonment.

1. The process of the court for summoning any person for civil imprisonment shall be signed and issued by the clerk of the court and shall also be signed by the party suing out the same. When the judgment or order in respect of which proceedings for civil imprisonment are taken was given in any other court, the clerk of the court shall not issue the process until there shall be lodged with him a copy of the judgment or order in such other court duly certified by the clerk of such court.

2. The warrant of the court for the civil imprisonment of any person shall be signed and issued by the clerk of the court and shall be addressed to the messenger of the court and to the keeper of a specified prison or gaol.

3. Where an order is made for civil imprisonment to be suspended so long as certain instalments are paid, the clerk of the court may before issuing a warrant of civil imprisonment require the party applying therefor to satisfy him that the debtor has failed in due payment of any such instalment.

4. Where there are two or more orders of civil imprisonment against the same debtor, such orders shall be cumulative with effect according to priority of issue of the respective warrants, unless otherwise directed by the court.

5. A warrant for civil imprisonment may be executed at any hour on any day except Sunday, Christmas Day, Dingaans Day and Good Friday, and at any place except within the residence of the person to be imprisoned or the precincts thereof.

ORDER NO. XXVIII.

Garnishee Orders.

1. (1) Application for a garnishee order may be made *ex parte* supported by an affidavit setting forth —

- (a) that the applicant has obtained judgment against the judgment debtor in a magistrate's court; unless the judgment was obtained in the court in which the application is made, a certified copy of such judgment shall be annexed to the affidavit;
- (b) that such judgment is still unsatisfied, naming the amount still payable thereunder;
- (c) that the garnishee resides, carries on business or is employed within the district and is indebted to the judgment debtor, setting out the cause of the said debt and whether or not it is for salary or wages due and the amount of the debt or that such amount is not known to the deponent;

maar wanneer uitspraak gegee is, moet die hof gelas welke party die fooi sal betaal en sodanige party moet daarna aan die klerk van die hof die betrokke fooi, voorsien in artikel een (1) (a) of (b) van Tabel D, betaal.

4. (1) As 'n reklamant nie op die dagvaring verskyn nie of as, nadat hy verskyn het, hy versuim of weier om aan 'n bevel gegee na sy verskynning, te voldoen, kan die hof 'n bevel gee waarby hy en alle persone wat hom daarna in regte opvolg, verstoke verklaar word van hulle aanspraak teenoor die applikant. Die bevel tas egter nie die regte van die reklamante onderling aan nie.

(2) As een of meer reklamante op die dagvaring verskyn, kan die hof —

- (a) gelas dat die reklamant, mondeling of skriftelik, onder eed of andersins, soos die hof wenslik ag, die aard en besonderhede van sy aanspraak uiteensit;
- (b) gelas dat die geskilpunte verhoor sal word op 'n daarvoor bepaalde dag;
- (c) gelas wie van die reklamante, vir doeleindes van die verhoor van die saak, eiser en wie verweerder sal wees; of
- (d) die geskilpunte op summere wyse verhoor.

5. Ingeval die geskilpunte verhoor word, hetsy op summere wyse of andersins, is die bepalinge van Order XVIII met betrekking tot die verhoor van 'n aksie *mutatis mutandis* van toepassing.

6. Die hof kan, in en ten behoeve van 'n tussenpleitgeding, alle sodanige bevele gee betreffende bykomende koste van eksekusie, deur die aanspraak veroorsaak, as billik geag mag word.

ORDER NO. XXVII.

Siviele Gyseling.

1. Die dagvaring waarby iemand vir ingyselingstelling gedaagvaar word, moet deur die klerk van die hof onderteken en uitgereik word en moet ook onderteken word deur die party op aansoek ten behoeve van wie uitreiking geskied. Wanneer die vonnis of bevel met betrekking waartoe die geding aangaande siviele gyseling ingestel word, in 'n ander hof verkry is, mag die klerk van die hof die prosesakte nie uitreik nie, alvorens daar 'n afskrif van die vonnis of bevel van sodanige ander hof, behoorlik gesertifiseer deur die klerk van sodanige hof, by hom ingedien is.

2. Die lasbrief tot siviele gyseling van enige persoon moet deur die klerk van die hof onderteken en uitgereik word, en word gerig aan die geregsbode en aan die spier van 'n gespesifiseerde tronk of gevangelis.

3. Wanneer 'n bevel verleen word waarin die ingyselingstelling opgeskort word solank as sekere paalemente betaal word, kan die klerk van die hof, alvorens hy 'n lasbrief tot siviele gyseling uitreik, vereis dat die party wat die uitreiking aanvra, tot sy bevrediging sal bewys dat die skuldenaar versuim het om 'n sodanige paalement te betaal.

4. Wanneer daar twee of meer bevele tot ingyselingstelling teen dieselfde skuldenaar is, is sodanige bevele kumulatief, en tree hulle in werking volgens die volgorde van uitreiking van die onderskeidelike lasbriewe, tensy anders deur die hof gelas word.

5. 'n Lasbrief tot siviele gyseling kan op enige uur op enige dag voltrek word, behalwe op Sondag, Kersdag, Dingaansdag en Goeie Vrydag, asook op enige plek behalwe in die woonhuis of in die gronde daartoe behorende, van die persoon teen wie die lasbrief gerig is.

ORDER NO. XXVIII.

Skuldbeslagorders.

1. (1) Applikasie vir 'n skuldbeslagorder kan *ex parte* gemaak word, gestaaf deur 'n beëdigde verklaring waarin uiteengesit word —

- (a) dat die applikant 'n vonnis teen die vonnis-skuldenaar verkry het in 'n magistratshof; tensy die vonnis verkry was in die hof waarin die applikasie gemaak word, moet 'n gesertifiseerde afskrif van sodanige vonnis aan die beëdigde verklaring geheg word;
- (b) dat aan sodanige vonnis nog nie voldoen is nie, met vermelding van die bedrag uitstaande daaronder;
- (c) dat die derde-skuldenaar binne die distrik woon, besigheid dryf of in diens is, en aan die vonnis-skuldenaar 'n skuldvordering verskuldig is met vermelding van die skuldoorsaak en of die skuldvordering ten opsigte van salaris of arbeidsloon is al dan nie, asook die bedrag van die skuld of dat sodanige bedrag aan die deponent nie bekend is nie;

(d) that the debt is, at the time of the application, owing, or in the case of a debt falling due on a Sunday or public holiday, that it will fall due on the following day; and

(e) if the debt is in respect of salary or wages, that the judgment debtor will, after the execution of the order, have a sufficient balance of income to maintain himself and those dependent upon him, giving details;

(2) If attachment of future or accruing earnings is sought the affidavit shall comply with paragraphs (a), (b) and (c) of sub-rule (1) of this rule.

(3) If in open court the judgment debtor admits sufficient of the facts set out in sub-rules (1) and (2) of this rule to warrant an attachment being granted, such admissions shall be recorded and application for a garnishee order may be made orally without an affidavit.

(4) Upon such application the court may require such further evidence as it shall see fit.

2. (1) Upon such application the court may order the garnishee to pay to the messenger so much of the debt owing and accruing from him to the debtor as may be sufficient to satisfy the said judgment together with the costs of the garnishee proceedings (including the costs of service) or failing such payment to appear before the court on a day to be named in the said order and show cause why he should not pay such debt.

(2) The clerk of the court shall note upon the face of such order the day and hour at which it was made.

(3) Such order shall be served upon the garnishee and upon the judgment debtor and shall operate as an attachment of the said debt in the hands of the garnishee.

(4) Every such order shall bear upon the face thereof the following note in bold type:—

TO THE ABOVENAMED GARNISHEE — If the debt due by you to the abovenamed judgment debtor was not owing both at the day and hour abovementioned and at the time when this order was served upon you, you should appear at the court and prove the facts. If you do not appear, you may be compelled to pay the debt twice over.

TO THE ABOVENAMED JUDGMENT DEBTOR — If the judgment against you has been satisfied, or is, for any reason, no longer operative against you, or if the debt is due to you for salary or wages and its attachment will not leave you a sufficient amount to enable you to maintain yourself and those dependent on you, you should appear at the court and prove the facts; but you cannot be heard on any other point.

3. (1) The judgment debtor may appear upon the return day and shall have a *locus standi* to oppose the confirmation of the order but only upon the ground that the judgment had been satisfied otherwise than under the garnishee order or was for some other reason not operative against him at the time when he received notice of the garnishee application or that the debt sought to be attached is for salary or wages and that its attachment will not leave him a sufficient amount to maintain himself and those dependent upon him.

(2) If, upon the return day, the judgment debtor satisfies the court that the judgment was not so operative, the order shall be set aside; and all the subsequent rules of this Order shall be read subject to this provision.

(3) If it is shown to the court that the debt is due for salary or wages, and that its attachment, in whole or in part, will not leave the judgment debtor a sufficient amount to maintain himself and those dependent upon him, he order shall (subject to the provisions of sections *sixty* and *sixty-one* of the Proclamation) be set aside as to such amount and shall only apply to the balance above such salary or wages; and all the subsequent rules of this Order shall be read subject to this provision.

4. If the garnishee shall pay any money to the messenger pursuant to the order of the court, the messenger shall retain the amount until the return day and shall thereafter deal with it in accordance with the order made by the court.

(d) dat die skuld ten tye van die applikasie betaalbaar is of, in die geval waar 'n skuld op 'n Sondag of publieke vakansiedag betaalbaar word, dat dit betaalbaar word op die volgende dag; en

(e) as die skuld ten opsigte van salaris of arbeidsloon is, dat die vonnis-skuldenaar, na uitvoering van die bevel, genoegsame inkomste sal hê om hom en diegene wat van hom afhanklik is te onderhou, met 'n opgawe van besonderhede.

(2) Wanneer die beslaglegging van toekomstige of ooplopende verdienste beoog word, moet die beëdigde verklaring voldoen aan paragrawe (a), (b) en (c) van sub-reël (1) van hierdie reël.

(3) As die vonnis-skuldenaar in die oop hof 'n genoegsame aantal van die feite uiteengesit in sub-reëls (1) en (2) van hierdie reël erken om die verlening van 'n beslaglegging te wettig, word sodanige erkenninge genotuleer en dan kan aansoek vir 'n skuldbeslagorder mondeling sonder 'n beëdigde verklaring gedoen word.

(4) Die hof kan by die behandeling van sodanige applikasie sodanige verdere getuienis vereis as voegsaam geag mag word.

2. (1) Die hof kan, na aanleiding van sodanige applikasie, die derde-skuldenaar gelas om aan die bode 'n genoegsame bedrag van die skuldvordering deur hom aan die vonnis-skuldenaar verskuldig, te betaal, om die vonnis en die koste van die skuldbeslag-verrigtinge (met inbegrip van die onkoste van diening) te vereffen, of om, by gebreke van sodanige betaling, op 'n dag in die bevel genoem te word, voor die hof te verskyn en gronde aan te voer, waarom hy die skuldvordering nie behoort te betaal nie.

(2) Die klerk van die hof moet op die voorkant van sodanige bevel die uur en datum waarop dit verleen is, aantekene.

(3) Sodanige bevel moet op die derde-skuldenaar en op die vonnis-skuldenaar gedien word en het die uitwerking van 'n beslaglegging op die genoemde skuldvordering in die hande van die derde-skuldenaar.

(4) Elke sodanige bevel moet op die voorkant daarvan voorsien wees van die volgende kennisgewing in duidelik in die oogvallende drukletters:—

AAN BOGENOEMDE DERDE-SKULDENAAR. — As die skuldvordering deur u aan bogenoemde vonnis-skuldenaar verskuldig nie betaalbaar was nie sowel op die bogenoemde dag en uur as op die tydstop toe hierdie bevel op u gedien is, behoort u voor die hof te verskyn en die feite te bewys. As u nie verskyn nie, kan u verplig word om die skuld tweemaal te betaal.

AAN BOGENOEMDE VONNIS-SKULDENAAR. — As die vonnis teen u reeds voldaan is of, om enige rede, nie meer teen u van krag is nie, of as die bedrag aan u verskuldig ten opsigte van salaris of arbeidsloon aan u toekom en, as die beslaglegging daarop u sonder voldoende middele sou laat om u en diegene wat van u afhanklik is, te onderhou, behoort u voor die hof te verskyn en die feite te bewys; maar u kan nie op enige andere punt gehoor word nie.

3. (1) Die vonnis-skuldenaar kan op die dienende dag verskyn en het 'n *locus standi* om die bekragtiging van die bevel te bestry, maar alleenlik op die grond dat die vonnis-skuld op 'n ander wyse as deur die beslagorder vereffen is of om enige ander rede nie teen hom van krag was, toe hy kennis van die skuldbeslag-applikasie ontvang het nie, of dat die skuld, waarop die applikasie betrekking het, ten opsigte van salaris of arbeidsloon is en dat die beslaglegging daarop hom sonder voldoende middele sou laat om hom en diegene van hom afhanklik te onderhou.

(2) As, op die dienende dag, die vonnis-skuldenaar die hof oortuig dat die vonnis nie aldus van krag was nie, moet die bevel ter sy gestel word; en alle onderstaande reëls van hierdie Order moet met inagneming van hierdie bepaling gelees word.

(3) Wanneer dit aan die hof aangetoon word dat die skuld ten opsigte van salaris of arbeidsloon is, en dat beslaglegging daarop, hietsy as 'n geheel of gedeeltelik, die vonnis-skuldenaar sonder 'n voldoende bedrag sou laat om hom en diegene van hom afhanklik te onderhou, moet die bevel (onderhewig aan die hepalinge van artikels *sestig* en *een-en-sestig* van die Proklamasie) ter sy gestel word ten opsigte van sodanige bedrag en is alleen van toepassing op die saldo bo sodanige salaris- of loonbedrag; en alle onderstaande reëls van hierdie Order moet met inagneming van hierdie bepaling gelees word.

4. As die derde-skuldenaar enige geld ingevolge die bevelskrif aan die bode betaal, hou die bode dit onder sy toesig tot die dienende dag toe en moet daarna daarmee handel ooreenkomstig die bevel deur die hof gegee.

5. (1) If the garnishee does not dispute that the debt is owing from him to the debtor or allege that he has a set off against the debtor or that the debt sought to be attached belongs to or is subject to a claim by some other person or if he shall not appear to show cause as is mentioned in Rule 2 (1) of this Order the court may order execution to issue against the garnishee for so much of the debt as may be sufficient to satisfy the said judgment together with the costs of the garnishee proceedings; the process for the execution of such order shall be as nearly as possible in accordance with the provisions of Order XXV; provided that, if the order has been duly served upon the garnishee but not upon the judgment debtor, the court shall order the messenger to pay into court the proceeds of such execution to abide the further order of the court.

(2) In such event the judgment creditor may thereafter apply (if within six months of the return day upon delivery of notice to the judgment debtor and thereafter *ex parte*) for the payment out of court to him of such proceeds; and upon such application the court may make such order as shall be just.

6. (1) If the garnishee disputes his liability to pay the said debt or alleges that he has any other defence, set off or counterclaim which would be available to him if he were sued for the said debt by the judgment debtor, the court may order the garnishee to state, orally or in writing on oath or otherwise, as to the court may seem expedient, the particulars of the said debt and of his defence thereto and may either hear and determine the matters in dispute in a summary way or may order —

- (a) that the matters in issue shall be tried under the ordinary procedure of the court; and
- (b) that, for the purpose of such trial, the judgment creditor shall be plaintiff and the garnishee defendant or *vice versa*.

(2) If the garnishee alleges that the said debt belongs to or is subject to a claim by some other person, the court may order such other person to appear and state the nature and particulars of his claim and either to maintain or relinquish it and may deal with the matter as if the judgment creditor and such other person were claimants in interpleader under Order XXVI.

(3) If the judgment debtor alleges that the judgment has been satisfied or is for some other reason not operative against him Rules 4, 5 and 6 of Order XXVI shall apply to the subsequent proceedings in the matter as if the garnishee had taken out an interpleader summons under that Order and as if the judgment creditor and the judgment debtor were claimants within the meaning of that Order.

(4) After hearing the parties or such of them as shall appear, the court may —

- (a) order execution to issue against the garnishee;
- (b) declare the claims of any person to the debt attached to be barred;
- (c) dismiss the application;
- (d) make such other order as may be just.

ORDER NO. XXIX.

Review of Judgments and Orders.

1. (1) Any party against whom a default judgment is given may, not later than one month after he has knowledge thereof, apply to the court to rescind or vary such judgment.

(2) Every such application shall set forth shortly the reason why the applicant did not appear and the grounds of defence or objection to the original judgment.

(3) Save where leave has been given to defend as a pauper under Order V, no such application shall be set down for hearing until the applicant has paid into court, to abide the directions of the court, the amount of the costs awarded against him under such judgment and also the sum of two pounds as security for the costs of the application.

(4) Unless the applicant proves to the contrary, it shall be presumed that he had knowledge of such judgment within two days after the date thereof.

5. (1) As die derde-skuldenaar nie betwis dat die skuld deur hom aan die skuldenaar verskuldig is nie, of beweer dat hy 'n vordering, vatbaar vir skuldvergelyking teen die vonnis-skuldenaar het, of dat die skuld, ten opsigte waarvan beslaglegging aangevra word, aan iemand anders verskuldig is of onderhewig is aan 'n reg van iemand anders, of as hy nie verskyn om redes aan te toon nie, soos aangedui in reël 2 (1) van hierdie Order, kan die hof gelas dat eksekusie teen die derde-skuldenaar in werking gestel word op 'n genoegsame bedrag van die skuld om die betrokke vonnis-skuld tesame met die koste van die skuld-beslag-verrigtinge te vereffen; die uitvoering van sodanige bevel geskied so naby moontlik ooreenkomstig die bepalinge van Order XXV; met die verstande dat as die bevelskrif behoorlik gedien is op die derde-skuldenaar, maar nie op die vonnis-skuldenaar nie, die hof die bode moet gelas om die oprings van sodanige eksekusie by die hof in te betaal in afwagting op die verdere bevel van die hof.

(2) In so 'n geval kan die vonnis-skuldeiser daarna aansoek doen (indien binne ses maande na die dienende dag, na inlewering van 'n kennisgewing aan die vonnis-skuldenaar, en daarna *ex parte*) vir uitbetaling deur die hof aan hom van sodanige oprings; en die hof kan op die applikasie sodanige bevel gee as billik mag wees.

6. (1) As die derde-skuldenaar sy verpligting tot betaling van die skuld betwis, of beweer dat hy enige ander verdediging, reg tot skuldvergelyking of teeneis het, wat hy sou kon inroep, as hy deur die vonnis-skuldenaar op die vordering gedagvaar word, kan die hof die derde-skuldenaar gelas om mondeling of skriftelik, onder eed of andersins, soos vir die hof voegsaam mag lyk, die besonderhede van die betrokke skuld en van sy verdediging daarteen uiteen te sit en kan of die geskilpunte op summere wyse verhoor of kan gelas —

- (a) dat die geskilpunte volgens die gewone prosedure van die hof verhoor sal word; en
- (b) dat, vir die doeleindes van sodanige verhoor, die vonnis-skuldeiser die eiser sal wees en die derde-skuldenaar die verwerder, of omgekeerd.

(2) As die derde-skuldenaar beweer dat die skuld iemand anders toekom of onderhewig is aan 'n reg van 'n ander, kan die hof sodanige ander persoon gelas om te verskyn en om die aard en besonderhede van sy aanspraak uiteen te sit en hetsy daarin vol te hou of dit prys te gee, en kan die saak behandel, asof die vonnis-skuldeiser en sodanige ander persoon reklamante in 'n tussenpleitgeding onder Order XXVI was.

(3) As die vonnis-skuldenaar beweer dat die vonnis-skuld vereffen is of om 'n ander rede nie van krag teen hom is nie, word reëls 4, 5 en 6 van Order XXVI toegepas op die later verrigtinge in die saak, asof die derde-skuldenaar 'n tussenpleit-dagvaring onder daardie Order uitgeneem het, en asof die vonnis-skuldeiser en die vonnis-skuldenaar reklamante in die sin van daardie Order was.

(4) Nadat die partye, of sodanige van hulle as verskyn het, gehoor is, kan die hof —

- (a) gelas dat eksekusie teen die derde-skuldenaar in werking gestel word;
- (b) die aanspraak van enige persoon op die skuld onder beslaglegging verstoek verklaar;
- (c) die applikasie afwys;
- (d) sodanige ander bevel gee as billik geag mag word.

ORDER NO. XXIX.

Hersiening van Vonnisse en Bevele.

1. (1) Enige party teen wie vonnis by verstek verleë is, kan, nie later as een maand, nadat hy daarvan kennis dra nie, by die hof aansoek doen om die vonnis ter sy te stel of te wysig.

(2) Elke sodanige applikasie moet kortliks die rede vermeld, waarom die applikant nie verskyn het nie en die gronde van verdediging of objeksie teen die oorspronklike vonnis.

(3) Met uitsondering van die geval waar verlof verleë is om as 'n behoeftige onder Order V te verdedig, kan geen sodanige applikasie vir verhoor op die rol geplaas word nie, tensy die applikant die bedrag van die koste, in sodanige vonnis teen hom uitgewys, hangende die voorskrifte van die hof, gereglik inbetaal het, asook die som van twee pond as sekuriteit vir die koste van die applikasie.

(4) Die applikant word, behoudens teenbewys, vermoed kennis te dra van sodanige vonnis binne twee dae na die datum daarvan.

2. (1) The court may on the hearing of any such application, unless it is proved that the applicant was in wilful default, review and rescind or vary the judgment in question and may give such directions and extensions of time as may be necessary in regard to the further conduct of the action or application.

(2) The court may also make such order as may be just in regard to moneys paid into court by the applicant.

(3) If such application is dismissed, the default judgment shall become a final judgment.

3. The rules contained in this order shall *mutatis mutandis* apply to any judgment which may, under section thirty-five of the Proclamation be rescinded, varied or corrected by the Court.

4. (1) Any judgment of the court may, on the application of any person affected thereby who was not a party to the action or matter, made within seven days after he has knowledge thereof, be so reviewed and rescinded or varied by the court.

(2) The provisions of Rules 1 and 2 of this Order shall *mutatis mutandis* apply to any such application.

ORDER NO. XXX.

Appeals.

1. (1) Upon a request in writing by any party within seven days after judgment and before noting appeal and upon payment by such party of a fee of one pound, the judicial officer shall within seven days deliver to the clerk of the court a written judgment showing:—

- (a) the facts he found to be proved; and
- (b) his reasons for judgment.

(2) Such written judgment shall become part of the record.

2. (1) An appeal may be noted within twenty-one days after the date of the judgment appealed against.

(2) An appeal shall be noted by the delivery of notice and by giving security for the respondent's costs of appeal to the amount of twenty pounds: Provided that no security shall be required from the Administration of South West Africa or any department of the Union Government including the South African Railways and Harbours and any Provincial Administration.

(3) A cross appeal shall be noted by the delivery of notice within eight days after the delivery of the notice of appeal.

(4) A notice of appeal or of cross-appeal shall state —

- (a) whether the whole or part only of the judgment or order is appealed against and if part only then what part; and
- (b) the grounds of appeal clearly and specifically.

(5) The noting of an appeal or cross-appeal and the date thereof shall be recorded in the "Remarks" column of the Civil Judgment Book.

3. (1) Upon the delivery of a notice of appeal the judicial officer shall within seven days deliver to the clerk of the court a statement in writing showing (so far as may be necessary having regard to any written judgment already delivered by him):—

- (a) the facts he found to be proved;
- (b) the grounds upon which he arrived at any finding of fact specified in the notice of appeal as appealed against and
- (c) his reasons for any ruling of law or for the admission or rejection of any evidence so specified as appealed against.

(2) Such statement shall become part of the record.

(3) The provisions of this rule shall also, so far as may be necessary, apply to a cross-appeal.

4. The party noting appeal or cross-appeal shall prosecute the same within such time as may be prescribed by rule of the court of appeal and, in default of such prosecution, the appeal or cross-appeal shall be deemed to have lapsed, unless the court of appeal shall see fit to make an order to the contrary.

2. (1) By die behandeling van die applikasie kan die hof, tensy bewys word dat die applikant opsetlik in versuim was, die betrokke vonnis hersien en ter sy stel of wysig en sodanige voorskrifte en uitstelle gee as nodig mag wees vir die verdere behandeling van die aksie of applikasie.

(2) Die hof kan ook sodanige bevel gee ten opsigte van gelde wat deur die applikant geregtelik inbetaal is, as billik geag mag word.

(3) Word die applikasie van die hand gewys, dan verkry die vonnis by verstek die krag van 'n eindvonnis.

3. Die reëls bevat in hierdie Order is *mutatis mutandis* van toepassing op vonnisse wat ingevolge artikel vyf-en-dertig van die Proklamasie ter sy gestel, gewysig of verbeter kan word.

4. (1) Enige vonnis van die hof kan deur die hof hersien, ter sy gestel of gewysig word op aansoek van iemand wat, hoewel hy nie 'n party in die aksie of saak was nie, daardeur geraak word; sodanige aansoek moet gedoen word binne sewe dae, nadat die persoon kennis dra van die vonnis.

(2) Die voorskrifte van reëls 1 en 2 van hierdie Order is *mutatis mutandis* van toepassing op enige sodanige applikasie.

ORDER NO. XXX.

Appèlle.

1. (1) Op skriftelike versoek van 'n party, gedoen binne sewe dae na vonnis, en voordat appèl aangeteken word, en teen betaling deur sodanige party van 'n fooi van een pond, moet die regterlike amptenaar binne sewe dae 'n skriftelike uitspraak aan die klerk van die hof oorhandig, waarin bevat is:—

- (a) die feite wat hy bewys bevind het; en
- (b) sy redes vir uitspraak of vonnis.

(2) Sodanige skriftelike uitspraak word daarop deel van die rekord.

2. (1) 'n Appèl kan binne 21 dae na datum van die vonnis waarteen die appèl gerig is, aangeteken word.

(2) 'n Appèl word aangeteken deur inlewering van 'n kennisgewing en deur sekuriteit te stel vir die respondent se koste van appèl tot die bedrag van twintig pond: Met die verstande dat geen sekuriteit vereis kan word nie van die Administrasie van Suidwes-Afrika of van enige departement van die Unie Regering met inbegrip van die Suid-Afrikaanse Spoorweë en Hawens en enige Provinsiale Administrasie.

(3) 'n Teenappèl word aangeteken deur die inlewering van 'n kennisgewing binne ag dae na inlewering van die kennisgewing van appèl.

(4) 'n Kennisgewing van appèl of van teenappèl moet vermeld —

- (a) of die appèl teen die hele vonnis of bevel, of slegs teen 'n gedeelte daarvan gerig is en, as slegs teen 'n gedeelte, welke gedeelte daarvan; en
- (b) die gronde van appèl, duidelik en bepaaldelik.

(5) Die aantekening van appèl of teenappèl en die datum daarvan moet opgeteken word in die "Opmerkinge" kolom van die Siviele Vonnisboek.

3. (1) Binne sewe dae na inlewering van 'n kennisgewing van appèl moet die regterlike amptenaar aan die klerk van die hof 'n skriftelike stuk oorhandig, bevattende (vir sover sulks nodig mag wees met die oog op enige skriftelike uitspraak reeds deur hom ingelewer):—

- (a) die feite wat hy bewys bevind het;
- (b) die gronde waarop hy tot 'n bevinding, ten opsigte van enige feite gekom het, waarteen blykens die kennisgewing van appèl, die appèl bepaaldelik gerig is; en
- (c) sy redes vir enige beslissing van 'n regspunt of vir die toelating of verwerping van enige getuienis waarteen die appèl aldus bepaaldelik gerig is.

(2) Sodanige skriftelike stuk word daarop deel van die rekord.

(3) Die bepalinge van hierdie reël is ook, vir sover nodig mag wees, van toepassing op 'n teenappèl.

4. Die party wat appèl of teenappèl aanteken, moet dit vervolg binne die termyn wat deur die reëls van die hof van appèl voorgeskryf mag wees, en by gebreke van sodanige vervolging word die appèl of teenappèl geag vervalle te wees, tensy die hof van appèl dit billik ag om 'n teendelige bevel te gee.

5. The clerk of the court shall, within seven days after he received notice that an appeal has been set down for hearing, transmit to the registrar of the court of appeal the record in the action duly certified.

6. (1) A respondent desiring to abandon the whole or any part of a judgment appealed against may do so by the delivery of a notice in writing stating whether he abandons the whole or if part only what part of such judgment.

(2) Every such notice of abandonment and the dates thereof shall be duly recorded in the "Remarks" column of the Civil Judgment Book and shall become part of the record.

7. Where the parties agree, under section *seventy-nine* of the Proclamation, that the decision of the court shall be final, either party may lodge the memorandum of such agreement with the clerk of the court, and such memorandum shall thereupon become part of the record in the action or matter and shall be recorded in the "remarks" column of the Civil Judgment Book.

8. Whenever any judgment is affirmed, reversed or varied on appeal or review, that fact and the date of the decision shall be recorded in the "Remarks" column of the Civil Judgment Book.

9. The provisions of rule 1 (1) and rule 3 of this Order shall *mutatis mutandis* apply in respect of reviews of a decision of a judicial officer upon taxation brought before a Judge of the Court of Appeal under section *seventy-eight* of the Proclamation.

ORDER NO. XXXI.

Assessors.

1. (1) The court shall from time to time frame a list of persons who, having regard to the nature of the business of the court and to their fitness from ability and reputation, appear to be qualified to act as assessors under section *thirty-three* of the Proclamation and who are willing so to act upon reasonable notice and upon payment of the fees prescribed.

(2) Every person for the time being named in such list shall be an assessor for the purposes of this order and shall continue to be an assessor until a new list has been framed or until he gives to the clerk of the court his resignation in writing. Upon receipt of such resignation the clerk of the court shall remove the name of such assessor from the list; provided that an assessor summoned to act as such in any action may not without the leave of the court resign during the trial of the action.

(3) Nothing in this order shall prevent the court from summoning, with the consent of all parties to the action, persons not on the list to act as assessors in any special action.

(4) The number and names of the assessors to sit in any case shall be decided by consent of the parties or, where they are unable to agree, by the court; provided that not more than two assessors shall sit in any case.

2. (1) A party who desires the trial to take place with assessors shall deliver notice of application for assessors, if he be the plaintiff with the notice of trial and if he be the defendant not more than three days after receiving notice of trial. Such notice shall contain either a consent by the other party or a notice setting down the application for hearing.

(2) The party applying shall, at the time of delivery of the notice of application, deposit with the clerk of the court the sum of three guineas for each assessor applied for and shall be liable for any further sum becoming due to the assessors for fees. The fees and expenses of the assessors shall, unless otherwise ordered by the court, be costs in the action.

3. (1) If the application be consented to or granted, the clerk of the court shall summon the assessors named in the consent or selected by the court by serving a summons upon each of them in any of the manners provided for the service of a summons commencing an action.

(2) If at the time and place appointed for the trial either of the assessors summoned do not attend, the court may either proceed to try the action with the assistance of the assessor, if any, who is in attendance or without assistance, if none attend, or may adjourn the trial.

5. Die klerk van die hof moet, binne sewe dae na ontvangs van 'n kennisgewing dat die appèl vir verhoor op die rol geplaas is, die notule en stukke in die saak, behoorlik gesertifiseer, aan die griffier van die hof van appèl opstuur.

6. (1) 'n Respondent wat van die hele vonnis onder appèl of van 'n gedeelte daarvan afstand wens te doen, kan dit doen deur inlewering van 'n skriftelike kennisgewing waarin verklaar word of hy van die hele vonnis afstand doen of slegs van 'n gedeelte en, indien so, van watter gedeelte.

(2) Elke sodanige kennisgewing van afstand, asook die datum daarvan, moet behoorlik opgeteken word in die "Opmerkinge" kolom van die Siviele Vonnisboek en word daarop deel van die rekord.

7. Wanneer die partye ingevolge artikel *nege-en-sewentig* van die Proklamasie ooreenkom dat die uitspraak van die hof finaal en beslissend sal wees, kan elke party die memorandum van sodanige ooreenkoms by die klerk van die hof indien en sodanige memorandum word daarop deel van die notule en stukke van die aksie of geding en moet opgeteken word in die "Opmerkinge" kolom van die Siviele Vonnisboek.

8. Wanneer 'n vonnis op appèl of hersiening bekragtig, ter sy gestel of gewysig word, moet daardie feit en die datum van die beslissing in die "Opmerkinge" kolom van die Siviele Vonnisboek opgeteken word.

9. Die bepalinge van reël 1 (1) en reël 3 van hierdie Order is *mutatis mutandis* van toepassing ten opsigte van die hersiening van 'n beslissing van 'n regterlike amptenaar op taksasie wat voor 'n regter van die Hof van Appèl gebring word ingevolge artikel *ag-en-sewentig* van die Proklamasie.

ORDER NO. XXXI.

Assessore.

1. (1) Die hof stel van tyd tot tyd 'n lys op van persone wat, met inagneming van die aard van werksaamhede van die hof en van hulle geskiktheid blykens hulle bekwaamhede en reputasie, bevoeg skyn te wees om op te tree as assessore onder artikel *drie-en-dertig* van die Proklamasie en wat bereid is om in daardie hoedanigheid op te tree na redelike kennisgewing en teen betaling van die voorgeskrywe fooie.

(2) Elkeen wat vir die oomblik in sodanige lys opgenoem is, is 'n assessor vir die doeleindes van hierdie Order en bly as sodanige aan, totdat 'n nuwe lys opgestel is, of totdat hy 'n skriftelike bedanking aan die klerk van die hof opstuur. Na ontvangs van sodanige bedanking moet die klerk van die hof die naam van die betrokke assessor van die lys skrap; met die verstande dat 'n assessor, wat opgeroep is om as sodanig in 'n saak op te tree nie sonder die verlof van die hof gedurende die verhoor van die saak kan bedank nie.

(3) Niks in hierdie Order bepaal, belet die hof om, met die toestemming van alle partye in die saak betrokke, persone wat nie op die lys voorkom nie, op te roep, om as assessore in 'n spesiale saak op te tree nie.

(4) Die getal en die name van die assessore wat in enige saak sitting neem, word deur ooreenkoms van die partye beslis, of, ingeval hulle nie kan ooreenkom nie, deur die hof; met die verstande dat nie meer as twee assessore in enige saak sitting mag neem nie.

2. (1) 'n Party wat verlang dat die verhoor met behulp van assessore sal geskied, moet 'n kennisgewing van aplikasie vir assessore inlewer, as hy die eiser is, tesame met die kennisgewing van verhoor, en as hy die verweerder is, nie later as drie dae na ontvangs van die kennisgewing van verhoor nie. Sodanige kennisgewing moet of 'n toestemming van die ander party bevat of 'n kennisgewing waardeur die aplikasie vir verhoor op die rol geplaas word.

(2) Die aanvraende party moet by inlewering van die kennisgewing van aplikasie, die som van drie ghienies ten opsigte van elke aangevraagde assessor by die klerk van die hof inbetaal en is aanspreeklik vir enige verdere bedrag waartoe die assessore geregtig mag word ten opsigte van fooie. Die fooie en uitgawes van die assessore is, tensy anderste deur die hof gelas, koste in die saak.

3. (1) As die aplikasie toegestem word of as dit toegestaan word, moet die klerk van die hof die assessore in die inwilliging genoem of deur die hof uitgekies, oproep deur middel van die diening van 'n dagvaring op elkeen van hulle op enigeen van die maniere voorgeskryf vir die diening van 'n dagvaring waardeur 'n aksie aanhangig gemaak word.

(2) As een van die opgeroepe assessore in gebreke bly om te verskyn op die tyd en plek vasgestel vir die verhoor, kan die hof of die saak verhoor met behulp van die assessor, indien enige, wat verskyn het, of, as geen van beide verskyn het nie, sonder sodanige hulp, of die verhoor van die saak verdaag.

4. (1) Where a trial is postponed or adjourned, the party applying for assessors shall, forthwith after the order for postponement or adjournment, pay to the clerk of the court (in addition to the deposit mentioned in rule 2 of this Order) the fees due up to the hour of postponement or adjournment to such assessors as have attended.

(2) Where such payment is not made the court may stay the action until it be made or may continue the trial without the assistance of assessors or may make such order as may be just.

5. Every assessor acting in a case shall be entitled to the fees set out in Table C of the Second Annexure to these rules.

ORDER NO. XXXII.

Costs and Messenger's Fees.

1. (1) The court in giving judgment or in making any order, including therein adjournment and amendment, may award costs as may be just.

(2) (a) The costs of any application or order or issue raised by the pleadings may be awarded by the court irrespective of the judgment in the action, or may be made costs in the action, or may be reserved to be dealt with on the conclusion of the action; but if no order is made, such costs shall be costs in the action.

(b) unless the court shall for good cause otherwise order, costs of interim orders shall not be taxed until the conclusion of the action, and a party may present only one bill for taxation up to and including the judgment or other conclusion of the action.

(3) Where a judgment or order for costs is made against two or more persons it shall, unless the contrary is stated have effect against such persons severally as well as jointly.

2. (1) The scale of fees to be taken by attorneys as between party and party shall be that set out in Table A of the Second Annexure to these rules, in addition to necessary expenses.

(2) Such fees shall (save as to appearance in open court without counsel) be allowable whether the work has been done by the attorney or by his clerk but shall except in the case of the fee mentioned in section 3 (6) of Table A of the Second Annexure be allowable only in so far as the work to which they have been allocated has in fact and necessarily been done.

(3) In awarding costs of an action, the court may, on request made at or immediately after the time of giving judgment, award costs on the higher scale in any defended action —

- (a) involving any new or difficult question of law or difficult question of fact; or
- (b) in which the plaintiff makes two or more claims, which are not alternative claims; or
- (c) in which the claim or defence is in the opinion of the court frivolous or vexatious.

(4) Where an action is defended and it is impossible for a party to obtain the services of a local attorney, he may employ the nearest available attorney and upon proof thereof the court may, if costs are awarded to him, order that such costs shall include the reasonable travelling expenses of such attorney and also special allowance not exceeding five pounds for each day's absence from such attorney's usual place of business.

(5) Where the court is of opinion that at the hearing the party to whom costs are awarded has occupied time unnecessarily or in relation to matters not relevant to the issue, the court may disallow a proportionate part of the hearing fee payable to his attorney.

(6) Where the costs in convention and reconvention are awarded against different parties, the court may award part of the hearing fee to one party and the remainder to the other party.

(7) Where the costs in convention and reconvention are awarded to different parties, they shall on taxation be, as far as possible, apportioned to the respective claims; and any such costs which cannot be so apportioned shall be costs in convention.

(8) The costs of issuing any warrant of execution or arrest shall, where they are payable by the party against whom the warrant is issued, be assessed by the clerk of the court without notice and inserted in the warrant.

4. (1) Wanneer die verhoor uitgestel of verdaag is, moet die party wat die assessore aangevra het, onmiddellik nadat die uitstel of verdaging gelas is, by die klerk van die hof (benewens die deposito in reël 2 van hierdie Orde vermeld) die fooie inbetaal wat tot op die uur van die uitstel of verdaging aan sodanige assessore as verskyn het, verskuldig is.

(2) Word sodanige inbetaling nie gemaak nie, kan die hof die saak staak, totdat dit gemaak word of hy kan met die verhoor sonder behulp van die assessore voortgaan of kan sodanige bevel gee as billig geag mag word.

5. Elke assessor wat optree in 'n saak, is geregtig op die fooie uiteengesit in Tabel C van die Tweede Aanhangel tot hierdie reëls.

ORDER NO. XXXII.

Koste en Fooie van Bode.

1. (1) Die hof kan, wanneer hy vonnis vel of 'n bevel gee met inbegrip van verdaging en wysiging, koste toeken, soos billig geag mag word.

(2) (a) Die koste van 'n applikasie of bevel of geskilpunt opgewerp deur die pleidooie, kan deur die hof toegeken word afgesien van die uitspraak in die saak, of kan tot koste in die saak verklaar word, of kan gelas word oor te staan vir behandeling, nadat die saak afgehandel is; as daar egter geen bevel gegee word nie, is sodanige koste koste in die saak.

(b) Tensy die hof, op grond van goeie redes, anderste gelas, mag koste van interim bevels nie getakseer word, voordat die saak afgehandel is, en 'n party kan slegs een kosterekening vir taksasie aanbied tot en met vonnis of ander beëindiging van die saak.

(3) Wanneer in 'n vonnis of bevel koste teen twee of meer persone toegeken is, is hulle, tensy die teendeel bepaal is, afsonderlik sowel as gesamentlik aanspreeklik daarvoor.

2. (1) Die tarief van fooie waartoe prokureurs tussen party en party geregtig is, bo en behalwe die noodsaaklike uitgawes, is daardie wat uiteengesit word in Tabel A van die Tweede Aanhangel tot hierdie reëls.

(2) Sodanige fooie moet (behalwe ten opsigte van verskyning in die oop hof sonder advokaat) toegestaan word, hetsy die werk verrig is deur die prokureur self of deur sy klerk, maar, met uitsondering van die geval betreffende die fooi genoem in artikel 3 (6) van Tabel A van die Tweede Aanhangel, kan hulle slegs toegestaan word vir sover die werk waarvoor sodanige fooie in rekening gebring word, werklik en noodsaaklikerwys verrig is.

(3) By die uitwysing van koste in 'n aksie kan die hof, op versoek gedoen ten tye van, of onmiddellik nadat uitspraak gegee is, koste op die hoër skaal toeken in enige verdedigde aksie —

- (a) waarin 'n nuwe of moeilike regspunt of 'n moeilike feitlike vraag betrokke is; of
- (b) waarin die eiser twee of meer vorderinge stel wat nie alternatiewe vorderinge is nie; of
- (c) waarin die vordering of die verdediging volgens die oordeel van die hof beuselagtig of ergerlik is.

(4) As in 'n verdedigde aksie een van die partye nie die dienste van 'n plaaslike prokureur kan verkry nie, kan hy die naaste beskikbare prokureur aanstel, en op bewys daarvan kan die hof, as die koste aan sodanige party toegeken word, gelas dat onder die koste inbegryp word die redelike reisonkoste van sodanige prokureur asook 'n spesiale toelae van hoogstens vyf pond ten opsigte van elke dag waarop die betrokke prokureur van sy gewone besigheidsplek afwesig is.

(5) Wanneer die hof van oordeel is dat die party aan wie die koste toegeken is, by die verhoor van die saak onnodig of wat betref dinge wat die geskilpunt nie aangaan nie, tyd in beslag geneem het, kan die hof 'n eweredige deel van die verhoorfooie aan sy prokureur betaalbaar, afkeur.

(6) Wanneer die koste in konvensie en rekonsensie teen verskillende partye uitgewys word, kan die hof 'n deel van die verhoorfooie aan die een party en die res daarvan aan die ander party toeken.

(7) Wanneer die koste in konvensie en rekonsensie aan verskillende partye toegeken is, moet sodanige koste by die taksasie, sover doenlik, tussen die onderskeie vorderinge verdeel word; en alle koste wat nie so verdeel kan word nie, is koste in konvensie.

(8) Die koste van uitreiking van 'n lasbrief tot eksekusie of arres moet, waar hulle betaalbaar is deur die party teen wie die lasbrief gerig is, deur die klerk van die hof sonder kennisgewing vasgestel en in die lasbrief aangeteken word.

3. (1) Where costs or expenses are awarded to any party by the court, otherwise than by a judgment in default of the defendant's appearance to defend or on the defendant's consent to judgment before the time for such appearance has expired, the party to whom such costs or expenses have been awarded shall deliver a bill of such costs or expenses and give at least four hours' notice of taxation for an hour to be fixed (generally or specially) by the clerk of the court; and he may include in such bill all such payments as have been necessarily and properly made by him.

(2) The clerk of the court shall thereupon tax and allow the costs and expenses so awarded: Provided that witness fees shall not be allowed in taxation unless properly vouched for.

(3) Where more than one-fourth of the bill (excluding expenses) is taxed off, the party presenting the bill shall not be allowed any costs of taxation.

(4) Where a bill of costs as between attorney and client is required to be taxed, taxation shall take place on 'at least two days' notice thereof to the attorney or client, whether an action therefor is pending or not.

4. (1) The fees and charges to be taken by the messenger of the court shall be those prescribed by Table B of the Second Annexure to these rules.

(2) Every account of fees or charges furnished by the messenger shall contain the following note:—

"You may require this account to be taxed and vouched before payment."

(3) (a) any party having an interest may by notice in writing require the fees, charges or expenses claimed by or paid to the messenger to be taxed by the clerk of the court, and may attend on such taxation.

(b) Upon such taxation the messenger shall vouch to the satisfaction of the clerk of the court all expenses claimed by him.

(c) Where the messenger's fees or charges are taxed and passed in full the messenger shall be allowed an additional fee of 5 s. for attending the taxation.

5. (1) Any party having an interest may within one week after he has knowledge thereof bring before the court for review —

(a) The costs and expenses claimed in any undefended action;

(b) the assessment by the clerk of the court of any costs and expenses;

(c) the taxation by him of any costs awarded in any action or matter;

(d) the taxation by him of any fees or charges of the messenger.

(2) Such review shall be on 24 hours' notice to the party entitled to receive or liable to pay such costs or expenses or to the messenger, as the case may be.

6. The fees to be taken by the clerk of the court shall be those prescribed by Table D of the Second Annexure to these rules.

ORDER NO. XXXIII.

Appeals to Magistrates' Courts.

1. (1) An appeal may be noted by delivery of notice within seven days after the date of the judgment appealed against.

(2) The party noting the appeal shall prosecute the same within twenty-one days after the noting of the appeal.

2. (1) The hearing of an appeal shall be subject to the delivery by the appellant of notice of set down for a day approved by the clerk of the court.

(2) Such notice shall be delivered at least seven days before the day of hearing.

3. Upon the hearing of an appeal the court may if it shall think fit proceed by way of re-hearing either in whole or in part.

3. (1) Wanneer koste of uitgawes deur die hof aan een van die partye toegeken word, anderste as deur 'n vonnis by verstek ten gevolge van verweerder se versuim om verdediging aan te teken of op grond van verweerder se toestemming tot vonnis, voordat die termyn vir aantekening van verdediging verstryk het, moet die party aan wie sodanige koste en uitgawes toegeken is, 'n rekening daarvan inlewer en ten minste vier uur tevore kennis van taksasie gee vir 'n uur deur die klerk van die hof (in die algemeen of spesiaal) vasgestel te word; en hy kan by sodanige kosterekening alle betalings insluit wat noodzaklikerwys en behoorlik deur hom gemaak is.

(2) Die klerk van die hof moet daarop die koste en uitgawes aldus toegeken, taksasie en toestaan: Met die verstande dat getuiekoste nie op taksasie toegestaan sal word, tensy hulle behoorlik bewys is nie.

(3) Ingeval meer as een-vierde van die kosterekening (met uitsluiting van uitgawes) afgetakseer word, kan aan die party wat die kosterekening aanbied, geen koste van taksasie toegestaan word nie.

(4) Wanneer 'n kosterekening tussen prokureur en kliënt getakseer moet word, moet ten minste twee dae van tevore kennis van taksasie gegee word aan die prokureur of kliënt, hetsy 'n aksie daarvoor hangende is al dan nie.

4. (1) Die fooie en onkoste waarop die geregsbode geregtig is, is voorgeskryf deur Tabel B van die Tweede Aanhangsel tot hierdie reëls.

(2) Elke rekening van fooie en onkoste deur die bode verstrek, moet die volgende mededeling bevat:—

"U kan, voordat u betaal, vereis dat hierdie rekening getakseer en bewys word."

(3) (a) Elke belanghebbende party kan by wyse van kennisgewing vereis dat die fooie, onkoste of uitgawes gevorder deur, of betaal aan die bode, deur die klerk van die hof getakseer word, en kan by sodanige taksasie teenwoordig wees.

(b) Die bode moet by sodanige taksasie ten genoeg van die klerk van die hof al die uitgawes deur hom gevorder, behoorlik bewys.

(c) As die bode se fooie of onkoste by taksasie ten volle goedgekeur word, moet 'n verdere bedrag van 5s., vir bywoning van die taksasie, aan die bode toegestaan word.

5. (1) Elke belanghebbende party kan binne 'n week, nadat hy kennis daarvan dra, vir hersiening voor die hof bring —

(a) die koste en uitgawes in 'n onverdedigde aksie gevorder;

(b) die vasstelling deur die klerk van die hof van enige koste en uitgawes;

(c) die taksasie deur hom van enige koste toegeken in enige aksie of saak;

(d) die taksasie deur hom van enige lone of onkoste van die bode.

(2) Van sodanige hersiening moet 24 uur tevore kennis gegee word aan die party wat geregtig is om sodanige koste of uitgawes te ontvang of vir die betaling daarvan aanspreeklik is, of aan die bode, soos die geval mag wees.

6. Die fooie wat deur die klerk van die hof ingesamel moet word, is voorgeskryf deur Tabel D van die Tweede Aanhangsel tot hierdie reëls.

ORDER NO. XXXIII.

Appel na Magistraatshowe.

1. (1) 'n Appel word aangeteken deur inlewering van 'n kennisgewing binne sewe dae na datum van die vonnis waarteen die appel gerig is.

(2) Die party deur wie die appel aangeteken is, moet dit binne een-en-twintig dae na die aantekening daarvan vervolgt.

2. (1) Die verhoor van 'n appel is onderhewig aan inlewering deur die appellant van 'n kennisgewing waardeur die appel op die rol geplaas word vir 'n dag goedgekeur deur die klerk van die hof.

(2) Sodanige kennisgewing moet ingelewer word ten minste sewe dae voor die verhoordag.

3. Die saak kan op appel, as die hof dit raadsaam ag, herverhoor word, hetsy as 'n geheel of gedeeltelik.

ORDER NO. XXXIV.

General.

1. (1) Except as is otherwise provided in these rules, failure to comply with these rules or with any request made in pursuance thereof shall not be ground for the entry of judgment against the party in default.

(2) Where any provision of these rules or any request in pursuance of any such provision has not been fully complied with the court may on application order compliance therewith within a stated time.

(3) Where any order so made is not fully complied with within the time so stated, the court may on application forthwith enter judgment in the action against the party so in default or may adjourn the application and grant an extension of time for compliance with the order on such terms as to costs and otherwise as shall be just.

(4) The court may on either such application order such stay of proceedings as may be necessary.

2. (1) Any time limit prescribed by these rules (except the period within which appeal must be noted) may be extended

- (a) by the written consent of the opposite party; and
- (b) if such consent is refused, then by the court on application and on such terms as the costs and otherwise as may be just.

(2) Where there has been short service without leave, the court may, instead of dismissing the application, adjourn it until (at earliest) the expiration of the period required for full service; and thereupon any objection to short service shall lapse.

3. (1) The trial of an action or the hearing of an application or matter may be adjourned or postponed by consent or by the court, either on application or of its own motion.

(2) Where such an adjournment or postponement is made *sine die*, the further hearing of the action, application or matter shall be subject to the same notice as was required for the trial of the action or for the hearing of the application or matter. The notice in such case may be given by either party to the action on application.

(3) Any adjournment or postponement shall be on such terms as to costs and otherwise as the parties may agree to or as the court may order.

4. (1) If a plaintiff or applicant does not appear at the time appointed for the trial of the action or the hearing of the application, the action or application may be dismissed with costs.

(2) If a defendant or respondent does not so appear, a judgment against him (not exceeding the relief claimed) may be given with costs.

5. The withdrawal or dismissal of an action or a decree of absolution from the instance shall not be a defence to any subsequent action; but if a subsequent action is brought for the same or substantially the same cause of action before payment of the costs awarded on such withdrawal, dismissal or decree of absolution, the court may on application, if it thinks fit and if the said costs have been taxed and payment thereof has been demanded, order a stay of such subsequent action until such costs shall be paid and that the plaintiff shall pay the costs of such application to stay proceedings.

6. (1) No process or notice shall be invalid by reason of any obvious error in spelling or in figures or of date.

(2) If any party has in fact been misled by any such error in any process or notice served upon him, the court may on application grant him such relief as may be just, and may for that purpose set aside the process or notice and rescind any default judgment given thereon.

7. (1) Where it is necessary to give in evidence in the court any record, entry or document of the same court in another action, the clerk of the court shall on reasonable notice produce and show the original thereof and the cost of copies shall not be allowed.

(2) Where it is necessary to give in evidence in another court any such record, entry or document, a copy thereof certified by the clerk of the court may be given in evidence without production of the original.

ORDER NO. XXXIV.

Algemeen.

1. (1) Vir sover in hierdie reëls nie anderste bepaal is nie, lewer die nie-nakoming van hierdie reëls of van 'n versoek ingevolge daarvan gedoen, geen grond op vir die aantekening van vonnis teen die party wat in gebreke bly.

(2) Wanneer enige voorsiening van hierdie reëls of 'n versoek ingevolge enige sodanige voorsiening gedoen, nie ten volle nagekom is nie, kan die hof op aansoek gelas dat daaraan binne 'n vasgestelde termyn voldoen word.

(3) As sodanige bevel nie binne die vasgestelde termyn nagekom word nie, kan die hof op applikasie onmiddellik vonnis aanteken teen die party wat aldus in gebreke bly, of die hof kan die applikasie verdaag en 'n verlenging van die termyn waarin die bevel nagekom moet word, verleen op sodanige voorwaardes omtrent koste en andersins as billik mag wees.

(4) Die hof kan op een of ander van die applikasies voormeld sodanige staking gelas as nodig geag mag word.

2. (1) Elke termyn deur hierdie reëls voorgeskryf (met uitsondering van die termyn binne welke appèl aangeteken moet word) kan verleng word —

- (a) deur die skriftelike toestemming van die teëparty; en
- (b) as sodanige toestemming geweier word, dan deur die hof op applikasie daarvoor, en op sodanige voorwaardes omtrent koste en andersins as billik mag wees.

(2) Ingeval daar korte diening sonder verlof van die hof geskied het, kan die hof, pleks van die applikasie af te wys, dit verdaag, totdat (vroegstens) die vereiste termyn vir volle diening verstryk het; en daarna verval elke objeksie teen kort diening.

3. (1) Die verhoor van 'n aksie of die behandeling van 'n applikasie of saak kan, met onderlinge toestemming of deur die hof, hetsy op applikasie of uit eie beweging, verdaag of uitgestel word.

(2) Wanneer sodanige verdagting of uitstel *sine die* geskied, is die verdere verhoor of behandeling van die aksie, applikasie of saak onderhewig aan dieselfde kennisgewing as vereis was vir die verhoor van die aksie of die behandeling van die applikasie of saak. Die kennisgewing kan in so 'n geval gegee word deur enigeen van die partye tot die aksie of applikasie.

(3) Die verdagting of uitstel geskied op sodanige voorwaardes omtrent koste en andersins as die partye onderling mag ooreenstem of die hof mag gelas.

4. (1) As 'n eiser of 'n applikant nie op die tyd vasgestel vir die verhoor van die aksie of die behandeling van die applikasie verskyn nie, kan die aksie of applikasie afgewys word met koste.

(2) As 'n verweerder of respondent aldus versuim om te verskyn, kan uitspraak (die aangevraede verligting nie te bowe gaande nie) met koste teen hom gegee word.

5. Die terugtrekking of afwysing van 'n aksie of 'n bevel van absolusie van die instansie is geen verdediging teen 'n later aksie nie; maar as 'n later aksie ingestel word weens dieselfde of hoofsaaklik dieselfde skuldoorsaak, voordat die koste, toegeken ingevolge sodanige terugtrekking, afwysing of bevel van absolusie, vereffen is, kan die hof op applikasie, as dit voegsaam geag word en as die genoemde koste getakseer is en tot betaling daarvan aangemaan is, gelas dat sodanige later aksie opgeskort word, totdat sodanige koste vereffen is, asook dat die eiser die koste van die applikasie vir opskorting van die aksie betaal.

6. (1) Geen prosesstuk of kennisgewing is ongeldig op grond van 'n klaarblyklike fout begaan in die spelling, die syfers of die datum nie.

(2) As 'n party deur enige sodanige fout in 'n prosesstuk of kennisgewing wat op hom gedien is, werklik mislei is, kan die hof hom op aansoek sodanige verligting verleen as billik mag wees, en kan met daardie doel die prosesstuk of kennisgewing ter sy stel en enige vonnis by verstek daarop verleen, herroep.

7. (1) Wanneer dit nodig is om in die hof die prosesstukke, 'n aantekening of ander stuk van dieselfde hof in 'n ander aksie as bewysstuk voor te lê of in te handig, is die klerk van die hof verplig om na redelike kennisgewing die oorspronklike daarvan voor te lê en te vertoon, en die koste van afskrifte sal nie toegestaan word nie.

(2) Wanneer dit nodig is om in 'n ander hof sodanige prosesstukke, aantekening of ander stuk as bewysstuk voor te lê, kan 'n afskrif daarvan, gesertifiseer deur die klerk van die hof, as bewysstuk ingedien word sonder voorlegging of vertoning van die oorspronklike.

8. (1) The court may, on application by a person desiring to intervene in an action and having an interest therein grant leave to such party to intervene on such terms as may be just.

(2) The court may, on application by any party to an action order that another person shall be added either as a plaintiff or as a defendant, on such terms as may be just.

9. (1) Where a plaintiff —

- (a) is not resident within the Territory;
- (b) is an unrehabilitated insolvent;
- (c) is a registered or incorporated company; or
- (d) has no substantial interest in the cause of action,

the defendant may (unless the plaintiff has obtained leave to sue as a pauper) after service of the summons and before close of the pleadings require him to give security for the costs of the action (not including the principal or costs of any claim in reconvention made by the defendant).

(2) If such request is not complied with within 48 hours, the court may on application either stay the proceedings until such request is complied with or dismiss the action.

10. In all undefended cases where no steps have been taken by the plaintiff to proceed with the action within twelve months after the issue of the summons, the summons shall automatically lapse.

CRIMINAL.

ORDER NO. XXXV.

Clerk of the Court.

1. (1) The clerk of the court shall keep a book to be called the "Criminal Record Book", in which he shall enter in proper columns every criminal case coming before the Court, in serial order, beginning with the first day of January each year, and showing —

- (a) name and description of the accused;
- (b) crime or offence charged;
- (c) date of trial;
- (d) verdict;
- (e) sentence;
- (f) remarks, including the date of the confirmation of the sentence on review and the result of any appeal.

(2) The judicial officers presiding in the Court shall at least once a week authenticate by their signature the entries of the cases decided by them.

2. If the sentence of the court be for any higher degree of punishment than is prescribed by the Proclamation, the clerk of the court shall also note in the last column of the Criminal Record Book the particular law authorising the said punishment and giving jurisdiction to the court.

ORDER NO. XXXVI.

Appeals.

1. (1) An accused person wishing to appeal against any conviction or sentence in a criminal case shall note his appeal within fourteen days after such conviction or sentence by lodging with the clerk of the court a written statement setting out clearly and specifically the grounds on which the appeal is based.

(2) If the accused person is unable, owing to illiteracy or to physical defect, to write out such a statement, the clerk of the court shall, upon request, do so.

(3) Upon an appeal being noted the judicial officer shall within seven days deliver to the clerk of the court a statement in writing showing —

- (a) the facts he found to be proved;
- (b) the grounds upon which he arrived at any finding of fact specified in the appellant's statement as appealed against; and
- (c) his reasons for any ruling of law or as to the admission or rejection of evidence so specified as appealed against.

(4) Such statement shall become part of the record.

8. (1) Die hof kan, op aansoek van iemand wat as belanghebbende in 'n aksie wil tussenbeie tree, verlof aan sodanige persoon verleen om tussenbeie te tree op sodanige voorwaardes as billig mag wees.

(2) Die hof kan, op aansoek deur enigeen van die partye tot 'n aksie, gelas dat 'n ander persoon as eiser of as verweerder bygevoeg word, op sodanige voorwaardes as billig mag wees.

9. (1) Wanneer 'n eiser —

- (a) nie in die Gebied woonagtig is nie;
- (b) 'n ongerehabiliteerde insolvent is;
- (c) 'n geregistreerde of ingelyfde maatskappy is; of
- (d) geen wesenlike belang in die skuldoorsaak het nie,

kan die verweerder (tensy die eiser verlof gekry het om die aksie as behoeftige te voer) na die diening van die dagvaring en voor afsluiting van die pleidooie, vereis dat hy sekuriteit stel vir die koste van die aksie (daaronder nie inbegryp die hoofsom, of die koste van 'n eis in rekonvensie deur die verweerder ingestel nie).

(2) As sodanige versoek nie binne 48 uur nagekom word nie, kan die hof, op aansoek, of die verrigtinge opskort, totdat aan die versoek voldoen is, of die aksie afwys.

10. In alle onverdedigde sake waarin geen stappe deur die eiser geneem is nie om met die aksie voort te gaan binne twaalf maande na uitreiking van die dagvaring, verval die dagvaring daarna vanself.

STRAFREGTERLIKE ORDERS.

ORDER NO. XXXV.

Klerk van die Hof.

1. (1) Die klerk van die hof hou 'n boek genoem die "Strafregterlike Sakeboek", waarin hy in behoorlike kolomme elke strafregterlike saak wat voor die hof kom in volgorde moet aanteken, beginnende by die eerste dag van Januarie in elke jaar, en met vermelding van —

- (a) die naam en beskrywing van die beskuldigde;
- (b) die misdaad of oortreding ten laste gelê;
- (c) die datum van verhoor;
- (d) die uitspraak;
- (e) die vonnis;
- (f) opmerkinge, met inbegrip van die datum waarop die vonnis op hersiening bekragtig is en die uitslag van enige appèl.

(2) Die regterlike amptenare wat by die hofsittinge presideer, moet ten minste eenmaal per week die aantekeninge met betrekking tot sake deur hulle beslis, deur hulle handtekening waarmerk.

2. As die vonnis van die hof die strafmaat, voorgeskryf deur die Proklamasie, oorskry, moet die klerk van die hof in die laaste kolom van die Strafregterlike Sakeboek ook die bepaalde wet waardeur die vonnis gemagtig is en wat regsam aan die hof verleen, aanstip.

ORDER NO. XXXVI.

Appèl.

1. (1) 'n Beskuldigde wat teen enige skuldigebevinding of vonnis in 'n strafregterlike saak wens te appeleer, moet appèl aanteken binne veertien dae na sodanige skuldigebevinding of vonnis, en wel deur indiening by die klerk van die hof van 'n skriftelike verklaring waarin die gronde van die appèl duidelik en bepaaldelik uiteengesit word.

(2) As die beskuldigde weens ongeletterdheid of 'n liggaamlike gebrek nie in staat is om sodanige verklaring uit te skrywe nie, is die klerk van die hof, op versoek daartoe, verplig om dit te doen.

(3) Wanneer appèl aangeteken is, moet die regterlike amptenaar binne sewe dae 'n skriftelike verklaring aan die klerk van die hof oorhandig, bevattende —

- (a) die feite wat hy bewys bevind het;
- (b) die gronde waarop hy tot 'n bevinding ten opsigte van enige feite gekom het, waarteen blykens die kennisgewing van appèl, die appèl bepaaldelik gerig is;
- (c) sy redes vir enige beslissing oor 'n regspunt of vir die toelating of verwerping van enige getuienis waarteen die appèl aldus bepaaldelik gerig is.

(4) Sodanige skriftelike verklaring word daarop deel van die rekord.

The clerk of the court shall, within seven days receiving the judicial officer's statement, transmit the together with the appellant's statement with the record case to the court of appeal. He shall at the time forward three typed copies of the record and prints for the use of the court.

2. Die klerk van die hof moet, binne sewe dae na ontvangs van die regterlike amptenaar se verklaring, diesulke tesame met die appellant se verklaring en die notule en stukke in die saak, aan die hof van appel opstuur. Hy moet terselfdertyd drie getikte afskrifte van die notule en alle stukke in die saak, asook van voormelde verklaringe, vir die gebruik van die hof aanstuur.

FIRST ANNEXURE.

FORMS.

1 — Civil Record Book of the
Magistrate's Court of held at
District of

No. of Action	Plaintiff	Plaintiff's Attorney	Defendant	Defendant's Attorney	Date and time of issue of Summons	Time for Appearance Expires	Date of Entry of Appearance	Remarks

No. 2 — Cash Book.

No. of Action	Parties		Payments in			Nature of conditions upon which money paid in, if payment is subject to conditions			Payments out			Receipt (Signature of person to whom money paid out).
	Plaintiff	Defendant	Date	Amount	By Whom	Date	Amount	To Whom				

No. 3 — General Headings.

- (1) *In Actions:*
In the Magistrate's Court for the District of held at
No. of 19.....
Between A. B., Plaintiff,
and
C. D., Defendant.
- (2) *In Applications:*
In the Magistrate's Court for the District of held at
No. of 19.....
In the matter of the Application of
A. B., Applicant,
against
C. D., Respondent.
- (3) *In Garnishee matters:*
In the Magistrate's Court for the District of held at
No. of 19.....
In the matter of
A. B., Judgment Creditor,
C. D., Judgment Debtor,
E. F., Garnishee.

No. 4 — General Conclusions.

- (1) *Process for service:*
Dated at this day of
19.....
Clerk of the Court.

EERSTE AANHANGSEL.

VORMS.

No. 1. — Siviele Sakeboek van die
magistraatshof te gehou te
....., distrik

No. van Saak	Eiser	Eiser se Prokureur	Verweerder	Verweerder se Prokureur	Datum en tyd van uitreiking van dagvaaring	Termyn vir aantekening van verdediging verstryk	Datum waarop verdediging aangeteken is.	Opmerkinge.

No. 2 — Kasboek.

No. van Saak	Partye		Inbetalinge			Aard van voorwaardes waarop geld inbetaal is, as betaling onderhewig aan voorwaardes is.			Uitbetalinge			Kwitansie (Handtekening van persoon aan wie geld uitbetaal is).
	Eiser	Verweerder	Datum	Bedrag	Deur wie	Datum	Bedrag	Aan wie				

No. 3 — Algemene Aanhef.

- (1) *In Aksies:—*
In die magistraatshof van die distrik gehou te
No. van 19.....
Tussen A. B., Eiser
en
C. D., Verweerder.
- (2) *In Applikasies:—*
In die magistraatshof van die distrik gehou te
No. van 19.....
In sake die Applikasie van
A. B., Applikant,
teen
C. D., Respondent.
- (3) *In skuldbeslagnings:—*
In die magistraatshof van die distrik gehou te
No. van 19.....
In die saak van
A. B., Vonnis-skuldeiser,
C. D., Vonnis-skuldenaar,
E. F., Derde-skuldenaar.

No. 4 — Algemene Afsluiting.

- (1) *Prosesstukke vir diening:*
Gedagteken te op die
dag van 19.....
Klerk van die Hof.

(2) *Process for Execution:*

And return to this Court what you have done by virtue hereof, for which this shall be your warrant.

Dated at this day of 19.....

By Order of the Court.

.....
Clerk of the Court.

(Attorney for) Execution Creditor.

(3) *Notice:*

Dated at this day of 19.....

To Attorney for the

(4) *Security Bond:*

In witness whereof the said and have hereto set their hands at this day of 19.....

As Witnesses:

1. (Signature and address)

2. (" " ")

(5) *Agreement:*

Witness our hands this day of 19.....

.....
Plaintiff or Plaintiff's Attorney.

.....
Defendant or Defendant's Attorney.

As Witnesses:

1. (Signature and address)

2. (" " ")

(6) *Affidavit:*

Sworn at this day of 19.....

Before me

(Signed)

.....
Justice of the Peace
(or, Commissioner of Oaths).

No. 5. — General Form of Notice of Application.

(Heading.)

TAKE NOTICE that application will be made to this Court on the day of 19..... at m. for an Order that (*state shortly terms of order applied for*).

(Conclusion.)

No. 6. — Summons Commencing Action.

(Heading.)

To

C. D., of No. 5000, Pretorius Street, Pretoria, in the District of Pretoria, Clerk, Defendant.

YOU ARE HEREBY summoned that you do within days after the service of this summons upon you ENTER or cause to be entered with me an APPEARANCE TO ANSWER the claim of A. B., of 214 Long Street, Cape Town, in the District of Cape, Grocer, the plaintiff herein for £..... and costs, particulars whereof are endorsed hereon.

AND TAKE NOTICE that in default of your doing so you will be held to have admitted the said claim, and the plaintiff may proceed therein and judgment may be given against you in your absence; but that, on payment of the said claim and costs to me within the said time, judgment will not be given against you herein; and that if at least 24 hours before the expiration of the said time, you so pay or lodge with me a consent to judgment, you will save judgment charges.

AND FURTHER TAKE NOTICE THAT:—

- (1) If you allege any objection, exception, special defence or counterclaim, you must, within two days after appearance deliver to me and to the said plaintiff or his attorney, a statement in writing of the nature and grounds thereof; and

(2) *Prosesakte vir Eksekusie:*

En doen relaas aan hierdie hof van wat u kragtens hiervan verrig het, waartoe dit u tot magtiging strek.

Gedagteken te op die dag van 19.....

Op bevel van die hof.

.....
Klerk van die Hof.

(Prokureur van) Eksekusie-skuldeiser.

(3) *Kennisgewing:*

Gedagteken te op die dag van 19.....

Aan Prokureur vir die

(4) *Borgakte:—*

Ten blyke waarvan genoemde en hierdie akte onderteken het te op die dag van 19.....

As getuies:

1. (Handtekening en adres)

2. (" " ")

(5) *Ooreenkoms:*

Geteken op die dag van 19.....

.....
Eiser of Eiser se Prokureur.

.....
Verweerder of Verweerder se Prokureur.

As getuies:

1. (Handtekening en adres)

2. (" " ")

(6) *Beëdigde Verklaring:*

Beëdig te op die dag van 19.....

Voor my,

(Geteken)

.....
Vrederegter
(of, Kommissaris van Ede.)

No. 5 — Algemene vorm van kennisgewing van applikasie. (Aanhef.)

NEEM KENNIS dat aansoek by hierdie Hof gedoen sal word op die dag van 19....., om m., vir 'n bevel (*vermeld kortliks die inhoud van die aangevraagde bevel*). (Afsluiting.)

No. 6. — Dagvaring waardeur 'n saak aanhangig gemaak word. (Aanhef.)

Aan C. D., van No. 5000, Pretorius Straat, Pretoria, in die distrik Pretoria, klerk, verweerder.

U WORD HIERMEE GEDAGVAAR om binne dae na die diening van hierdie dagvaring op u, VERDEDIGING AAN TE TEKEN of TE LAAT AANTEKEN, ten einde te antwoord op die eis van A. B., van No. 214, Lang Straat, Kaapstad, in die distrik Kaap, kruidenier, eiser in hierdie saak, vir £..... en die koste, waarvan die besonderhede op die agterkant vermeld word.

EN NEEM KENNIS dat, as u versuim om dit te doen, dit geag sal word dat u die eis voormeld erken het, in welke geval die eiser met die saak kan voortgaan en vonnis in u afwesigheid gegee kan word; maar dat, as u die grêeste bedrag voormeld en die koste binne die bogenoemde tyd aan my betaal, vonnis hierop nie teen u gegee sal word nie; en dat u, deur ten minste 24 uur voor verloop, van genoemde tyd aldus te betaal of u toestemming tot vonnis by my in te dien, die vonnisonkoste sal bespaar.

EN NEEM VERDER KENNIS DAT:—

- (1) As u enige objeksie, eksepsie, spesiale verdediging of teeneis wil aanvoer, u binne twee dae na aantekening van verdediging, aan my en aan die eiser of aan sy prokureur 'n skriftelike opgawe van die aard en gronde daarvan moet aflewer; en

you allege a defence on the merits, you must, within seven days after appearance, so deliver a statement in writing showing the nature and grounds of your defence.

(2) as

ing op die meriete wil aanvoer, u, binne sewe dae na aantekening van verdediging, op gelyke wyse 'n skriftelike opgawe van die aard en gronde van sodanige verdediging moet aflewer.

Wanneer die eis ten opsigte van huurgeld is en dit verlang word om die stilswyende hipoteek van die verhuurder weens huurgelde te bevestig ingevolge die bepalinge van artikel dertig van die Proklamasie, voeg daaraan toe:

If the claim is for rent and it is desired to perfect the plaintiff's hypothec for rent under the provisions of the Proclamation, add:
IT IS HEREBY ORDERED:—

EN HIERMEE WORD GELAS:—

The defendant and all other persons be and they are hereby interdicted from removing or knowingly suffering to be removed or in any way alienating or disposing of so much of the movable property subject to the plaintiff's hypothec for the rent claimed in the endorsement hereon as shall be sufficient to satisfy the amount of such rent, together with the costs of this summons, pending the decision of this action.

Dat die verweerder asook al die ander persone hiermee verbied word om, hangende die beslissing van hierdie saak, die roerende goedere waarop die eiser 'n stilswyende hipoteek weens huurgelde het, geëis in die endossement op die agterkant hiervan, te verwyder of met medewete die verwydering daarvan toe te laat of op enigerlei wyse te vervreem of van die hand te sit, vir sover die goed nodig is, om aan die bedrag van die huurgelde tesame met die koste van hierdie dagvaring te voldoen.

(Conclusion.) (SEE BACK.)
(Endorsement on Back of Summons.)

(Afsluiting.) (KYK AGTERKANT.)
(Endossement op Agterkant van Dagvaring.)

Particulars of Claim.
Form No. 7.)
Consent to Judgment.

(1) *Besonderhede van Eis.*
(Kyk vorms No. 7.)

I admit that I am liable to the plaintiff as claimed in the Summons (or, in the amount of £..... and costs) and I consent to judgment accordingly.
Dated this day of 19.....
Defendant

(2) *Toestemming tot Vonnis.*

Ek erken dat ek teenoor die eiser aanspreeklik is soos in hierdie dagvaring gevorder (of vir die bedrag van £..... en koste tot datum) en ek stem dienooreenkomstig toe tot vonnis.
Gedagteken die dag van 19.....
Verweerder

NOTE. — If the consent is not given on the original summons served it must be witnessed by two witnesses at the addresses must be given.

N.B. — As die toestemming nie uitgevoer word op die oorspronklike van die gediende dagvaring nie, moet dit deur twee getuies onderteken word, wie se adresse opgegeef moet word.

(3) *(Form of Appearance to Defend.)*
the Clerk of the Court.

(3) *(Vorm van Aantekening van Verdediging.)*
Aan die Klerk van die Hof.

Enter an appearance for the defendant, who intends to defend this action.
..... day of 19.....
Defendant of

Teken asseblief verdediging aan vir die verweerder wat voornemens is om hierdie te verdedig.
Gedagteken die
19..... omm.
Verweerder of verweerder

Address:
Postal Address:

Adres:—
Posadres:—

No. 7. — Endorsement (1) on Summons.

No. 7. — Endossement (1) op Dagvaring.

NOTE. — These forms are examples only and are not, save as to the claim for costs, either compulsory or applicable to all cases.

N.B. — Hierdie vorms is slegs voorbeelde en is behalwe wat die kostevordering betref, nóg verpligtend nóg van toepassing op alle sake.

(1) The Plaintiff's claim is for the price of goods sold and delivered.

(1) Die eiser se vordering is vir die prys van goedere verkoop en afgelewer.

Particulars:—

Besonderhede:—

1916 — 1st January — Balance for account for butcher's meat to this date	£ 20 0 0
1916 — 1st January to 31st March — Butchers meat	20 0 0
Total	£ 40 0 0
1916 — 1st February — paid	15 0 0
Total	£ 25 0 0

1916 — 1 Januarie	Saldo van rekening vir slagtersvleis tot op datum	£ 20 0 0
1916 — 1 Januarie tot 31 Maart	— Slagtersvleis	20 0 0
	Totaal	£ 40 0 0
1916 — 1 Februarie	— betaal	15 0 0
	Balans met koste, as die aksie verdedig word, as volg:	£ 25 0 0

	Summons	Judgment
Attorney's charges	£ 0 15 0	£ 0 10 0
Court Fees	0 1 0	0 1 0
Messenger's Fees	0 2 6	— — —
Totals	£ 0 18 6	£ 0 11 0
Total		£ 1 9 6

Prokureursonkoste	£ 0 15 0	Vonnis	£ 0 10 0
Hoffoioe	0 1 0		0 1 0
Foioe van bode	0 2 6		0 0 0
Totale	£ 0 18 6		£ 0 11 0
Totaal			£ 1 9 6

(Conclusion.)

(Afsluiting.)

(2) The plaintiff's claim is against the defendant, as maker of a promissory note for £25, dated 1st January, 1916, payable four months after date to A.B., of which the plaintiff is now the holder, which note was on 1st May, 1916, duly presented at the Standard Bank Commissioner Street, Johannesburg, where the same was payable, and was dishonoured.

(2) Die eiser se vordering is teen verweerder as uitgewer van 'n promesse groot £25, gedateer 1 Januarie 1916, betaalbaar vier maande na datum aan A.B., waarvan eiser tans die houer is, welke promesse op 1 Mei 1916 behoortlik by die Standard Bank, Commissionerstraat, Johannesburg, waar dit betaalbaar was, aangebied is, dog gedishonoreer is.

Particulars:—	
Principal	£ 25 0 0
Interest at per cent	1 0 0
Amount due	£ 26 0 0
with costs etc.	

(3) The plaintiff's claim is for money lent to the defendant.

Particulars:—	
1st January, 1916	£ 50 0 0
1st June, 1916 — Paid	25 0 0
Balance	£ 25 0 0
Interest at per cent	5 0 0
Total	£ 30 0 0
with costs etc.	

(4) The plaintiff's claim is (1) for arrears of rent due in respect of the defendant's monthly tenancy of No. 5, Pretorius Street.

Where the summons contains an order interdicting the removal of goods pendente lite, add:

and for confirmation of the order appearing on the face of this summons:—

Particulars:—	
1st January, 1916, — Rent due for the month January, 1916	£ 10 0 0
1st February, 1916, — Ditto, February, 1916	10 0 0
1st March, 1916, — Ditto, March, 1916	10 0 0
Total	£ 30 0 0
15th February, 1916, paid	5 0 0
Balance with costs, etc;	£ 25 0 0

and (2) for ejectment:

Particulars:—

Plaintiff, on the 28th February, 1916, gave defendant one month's notice to leave the said premises.

(5) The plaintiff's claim is for arrears of wages (or salary) as a at £..... per

Particulars:—	
January, 1916	£ 20 0 0
February, 1916	20 0 0
	£ 40 0 0
15th February, 1916, — Paid	15 0 0
Balance with costs, etc;	£ 25 0 0

(6) The Plaintiff's claim is for the delivery to him of movable property or damages in lieu of the delivery thereof and for damages for the past non-delivery thereof, and for the confirmation of the Order of Court, dated theth day of, 19....., interdicting the disposal of such movable property.

Particulars:—

1. On the 18th March, 1914, plaintiff lent to defendant a mahogany table and three bentwood chairs, value £27, to be returned on demand.

2. On the 27th August, 1914, plaintiff demanded the return of the said tables and chairs.

3. Defendant refused and still refuses to return the said table and chairs.

4. The reasonable hire of such table and chairs is 10 s. a month —

Wherefore plaintiff claims

(1) Return of the said table and chairs;	
(2) Damages —	
In addition to delivery	£ 1 10 0
in lieu of delivery	27 0 0
with costs etc.	

(7) The plaintiff's claim is for damage for personal injuries caused by defendant's negligence.

Particulars:—

1. On the 14th October, 1914, about 10 a.m. plaintiff was crossing Commissioner Street, Johannesburg, from north to south.

Besonderhede:—	
Hoofsom	£ 25 0 0
Rente teen persent	£ 1 0 0
Bedrag verskuldig	£ 26 0 0
met koste, ens.	

(3) Die eiser se vordering is vir geld aan die verweerder geleen.

Besonderhede:—	
1 Januarie, 1916	£ 50 0 0
1 Junie, 1916 — betaal	£ 25 0 0
Balans	£ 25 0 0
Rente teen persent	£ 5 0 0
Totaal	£ 30 0 0
met koste, ens.	

(4) Die eiser se vordering is (1) vir agterstallige huur-geld verskuldig ten opsigte van die maandelikse huur van No. 5, Pretoriusstraat, deur verweerder.

Wanneer die dagvaring 'n bevel bevat waarby die verwydering van goedere pendente lite verbied word, voeg die volgende by:

en vir bevestiging van die bevel wat op die voorkant van hierdie dagvaring verskyn:—

Besonderhede:—	
1 Januarie, 1916 — Huurgeld vir die maand Januarie, 1916	£ 10 0 0
1 Februarie, 1916, — Ditto, Februarie, 1916	10 0 0
1 Maart, 1916, — Ditto, Maart, 1916	10 0 0
Totaal	£ 30 0 0
15 Februarie, 1916, betaal	5 0 0
Balans met koste, ens.	£ 25 0 0

en (2) vir uitsitting:

Besonderhede:—

Eiser het op 28 Januarie 1916 aan verweerder kennisgewing van een maand gegee om die genoemde perseel te verlaat.

(5) Die eiser se vordering is vir agterstallige arbeidsloon (of salaris) as 'n teen £..... per

Besonderhede:—	
Januarie, 1916	£ 20 0 0
Februarie, 1916	£ 20 0 0
Totaal	£ 40 0 0
15 Februarie, 1916, — betaal	15 0 0
Balans met koste, ens.	£ 25 0 0

(6) Die eiser se vordering is vir die lewering aan hom van roerende goedere of skadevergoeding pleks van lewering daarvan, en vir skadevergoeding vir die versuim van die aflewering daarvan in die verlede, en vir bekragtiging van die Bevel van die Hof, gedagteken die dag van, 19....., waardeur die vervreemding van sodanige roerende goedere verbied is.

Besonderhede:—

1. Op 18 Maart 1914 het eiser aan verweerder 'n mahonie-houttafel en drie kromhoutstoele, ter waarde van £27 geleen, op voorwaarde dat dit op aanvraag terugbesorg moes word.

2. Op 27 Augustus 1914 het eiser teruggawe van genoemde tafel en stoele aangevra.

3. Verweerder het geweier en weier nog steeds om die tafel en stoele terug te gee.

4. Die redelike huurprys vir die tafel en stoele is 10 s. per maand.

Weshalwe eiser vorder

(1) Teruggawe van die tafel en stoele voormeld;	
(2) Skadevergoeding —	
Benewens lewering	£ 1 10 0
Pleks van lewering	£ 27 0 0
met koste, ens.	

(7) Die eiser se vordering is vir skadevergoeding weens persoonlike letsels veroorsaak deur verweerder se nalatigheid.

Besonderhede:—

1. Op 14 Oktober 1914 om omtrent 10 v.m. het eiser van noord na suid oor Commissionerstraat, Johannesburg, geloop.

2. At the same time defendant was driving a motor car along the said street from east to west.

3. Defendant, by negligent driving, struck plaintiff and threw him to the ground, inflicting the following injuries:
 Left arm broken,
 Three ribs broken,
 Face severely cut,
 Coat torn.

4. Plaintiff, by reason of the above injuries, was unable to pursue his occupation as a miner for seven weeks and incurred the following damages:—

Medical attendance, etc.	£ 17 3 6
Loss of earnings	60 0 0
Damage to coat	1 10 0
Pain and suffering	250 0 0
	<u>£ 328 13 6</u>

5. Plaintiff admits that he is indebted to defendant in the sum of £100 as damages for breach of a contract to deliver to defendant 1000 tons of coal, entered into between the parties verbally on the 12th September, 1914, and sets off

	100 0 0
Balance	<u>£ 228 13 6</u>

6. In order to bring the claim within the jurisdiction of the court, plaintiff abandons £28.13.6d. and claims £200 with costs.

(8) The plaintiff's claim is as cessionary of a claim by J.K. of 444, Station Street, Bloemfontein, attorney, for professional services rendered, ceded to plaintiff by the said J.K. by writing, dated 11th August, 1915.

Particulars:—

March 1st and 8th 1915.

Agreed fee for defence in Rex vs. C.D., £10.10. with costs, etc.

No. 8. — Conclusion to Endorsement of Claims.

Plaintiff or Plaintiff's Attorney.

Address

Postal Address

No. 9. — Notice under Order No. VI, Rule 8, for Service by Notice in Papers.

(Heading.)

To

C.D. of

TAKE NOTICE that a Summons has been issued against you in this Court by A.B. of for the sum of £..... for goods sold and delivered (or as the case may be) and that an Order has been made that the publication of notice of such Summons shall be deemed to be good and sufficient service of the Summons on you. You are required to enter an appearance to the Summons on or before the day of 19.....; and, if you do not do so, Judgment may be given against you in your absence.

(Conclusion of No. 5 (1).)

No. 10. — Notice of Service of Summons.

(Heading.)

You are hereby informed that the defendant was on the day of, 19..... at served with the summons in this Action.

(Date.)

Messenger of the Court.

To Plaintiff's Attorney.

No. 11. — Notice of Non-Service of Summons.

(Heading.)

You are hereby informed that it has not been found possible to serve on the defendant the Summons in this Action.

Messenger of the Court.

To Plaintiff's Attorney.

2. Terselfdertyd het verweerder 'n motorkar langs die straat voormeld van oos na wes gedryf.

3. Verweerder het, deur nalatig te drywe, eiser raakgery, sodat hy teen die grond geval het en die volgende kwetsure opgedoen het:—

Linkerarm gebreek,
 Drie ribbene gebreek,
 Gesig ernstig beseer,
 Baadjie geskeur.

4. Eiser was as gevolg van bogenoemde kwetsure gedurende sewe weke nie in staat om sy beroep as mynwerker uit te oefen nie en het die volgende skade gely:—

Geneeskundige behandeling, ens.	£ 17 3 6
Verlies van arbeidsloon	£ 60 0 0
Skade aan baadjie	£ 1 10 0
Pyn en ongemak	£ 250 0 0
	<u>£ 328 13 6</u>

5. Eiser erken dat hy aan die verweerder die som van £100 verskuldig is as skadevergoeding weens breuk van 'n kontrak vir die lewering aan verweerder van 1,000 ton steenkool, welke kontrak tussen die partye mondeling aangegaan is op 12 September 1914, en bring in vergelyking

	100 0 0
Balans	<u>£ 228 13 6</u>

6. Met die doel om die vordering binne die regsmag van die hof te bring, doen eiser afstand van £28.13.6 en eis £200, benewens koste.

(8) Die eiser eis as sessionaris van 'n vordering toekomende aan J.K. van Stationstraat No. 444, Bloemfontein, prokureur, vir professionele dienste verrig, welke vordering deur genoemde J.K., deur middel van 'n skrifstuk, gedateer 11 August 1915, gesedeer is.

Besonderhede:—

Maart 1 en 8 1915

Ooreengekome fooi vir die verdediging in sake die Kroon teen C.D., £10.10 s. met koste, ens.

No. 8. — Afsluiting by Endossement van Eise.

Eiser of Eiser se Prokureur.

Adres:—

Posadres:—

No. 9. — Kennisgewing ingevolge Order No. VI, reël 8, vir Diening deur Bekendmaking in Nuusblaai.

(Aanhef.)

Aan

C.D., van

NEEM KENNIS dat 'n dagvaring in hierdie Hof teen u uitgereik is deur A.B., van vir die som £..... vir goedere verkoop en afgelewer (of soos die geval mag wees), en dat 'n Bevel van die Hof verkry is wat gelas dat die publikasie van 'n kennisgewing van sodanige dagvaring geag sal word geldige en voldoende diening van die dagvaring op u te wees. U word nou hiermee versoek om op die dagvaring verdediging aan te teken op of voor die dag van 19.....; en by gebreke daarvan kan vonnis in u afwesigheid teen u gegee word.

(Afsluiting van No. 5 (1).)

No. 10. — Kennisgewing van Diening van Dagvaring.

(Aanhef.)

Kennis geskied hiermee aan u dat die dagvaring in hierdie saak op die dag van 19..... te op die verweerder gediën is.

(Datum.)

Geregsbode.

Aan Eiser (se prokureur).

No. 11. — Kennisgewing van Nie-diening van Dagvaring.

(Aanhef.)

Kennis geskied hiermee aan u dat dit nie moontlik gevind is om die dagvaring in hierdie saak op die verweerder te dien nie.

(Datum.)

Geregsbode.

Aan Eiser (se prokureur).

No. 12. — Notice of Consent to Judgment.
(Heading.)

You are hereby informed that the defendant has to-day consented to Judgment herein for £..... with costs of £.....
(Date.)

.....
Clerk of the Court.

To Plaintiff(s) Attorney.

No. 13. — Request for Default Judgment.
(Heading.)

The plaintiff hereby applies that —

- (1) the defendant having been duly served;
- (2) the time for appearance by the defendant having expired; and
- (3) the defendant not having entered an appearance to defend;

Judgment may be entered against the defendant, as claimed in the Summons, together with £..... for interest at per cent from the date of Summons.

Dated this day of 19.....

.....
Plaintiff or Plaintiff's Attorney.

No. 14. — Notice of Appearance.
(Heading.)

You are hereby informed that the defendant has this day entered an appearance to defend this Action by his Attorney, A. B. of Street.

.....
Clerk of the Court.

To Plaintiff(s) Attorney.

No. 15. — Notice of Withdrawal.
(Heading.)

TAKE NOTICE THAT the above-named plaintiff hereby withdraws the above action.

(Conclusion.)

No. 16. — Notice of Application for Summary Judgment.
(Heading.)

TAKE NOTICE that application will be made to this Court on the day of 19....., at m. for leave to enter Judgment against you in this Action for £..... and costs.

AND FURTHER TAKE NOTICE that the Affidavit of of which a copy is served herewith, will then be used in support of such application, and that you may reply thereto by affidavit.

(Conclusion.)

No. 17. — Affidavit in Support of Application for Summary Judgment.
(Heading.)

I,
(Address)
(Occupation)
make oath and say as follows:

1. I am the plaintiff in this Action (*or*, the facts herein stated are within my own knowledge, and I am duly authorised to make this affidavit).
2. The defendant is indebted to the plaintiff in the sum of £..... on the grounds stated in the Summons.
3. I verily believe that the defendant has not a *bona fide* defence to this Action and that appearance has been entered solely for purposes of delay.

(Conclusion.)

No. 18. — Affidavit under Section *Thirty-one* of the Proclamation.
(Heading.)

.....
(Address)
(Occupation)
make oath and say as follows:—

1. I am the landlord (*or*, the agent of the landlord, *naming him*) of premises situate and being (*describe the premises*).

No. 12. — Kennisgewing van Toestemming tot Vonnis.
(Aanhef.)

Kennis geskied hiermee aan u dat die verweerder vanda toegestem het tot vonnis in hierdie saak vir £..... benewens koste tot die bedrag van £.....

(Datum.)

.....
Klerk van die Hof.

Aan Eiser (se prokureur).

No. 13. — Versoek om Vonnis by Verstek.
(Aanhef.)

Die eiser doen hiermee aansoek dat aangesien —

- (1) die verweerder behoorlik bedien is;
- (2) die termyn vir aantekening van verdediging deur verweerder verstreke is; en
- (3) die verweerder geen verdediging aangeteken het nie

vonnis teen die verweerder aangeteken sal word, soos geë in die dagvaring, tesame met £..... rente teen persen vanaf datum van die dagvaring.

Gedagteken die dag van 19.....

.....
Eiser of Eiser se Prokureur.

No. 14. — Kennisgewing van Verdediging.
(Aanhef.)

Kennis geskied hiermee aan u dat verdediging in hierdie saak vandag aangeteken is deur verweerder se prokureur A. B. van straat.

.....
Klerk van die Hof.

Aan Eiser (se prokureur).

No. 15. — Kennisgewing van Terugtrekking.
(Aanhef.)

NEEM KENNIS DAT bogenoemde eiser hiermee die voormelde saak terugtrek.

(Afsluiting.)

No. 16. — Kennisgewing van Applikasie vir Summiere Vonnis
(Aanhef.)

NEEM KENNIS dat op die dag van 19....., om m. by hierdie Hof applikasie gemaak sal word vir verlof om in hierdie saak vonnis teen u aan te teken vir £..... met koste

EN NEEM VOORTS KENNIS dat die beëdigde verklaring van waarvan 'n afskrif hiermee gedien word, gebruik sal word tot staving van sodanige applikasie, en dat u by wyse van beëdigde verklaring daarop kan antwoord.

(Afsluiting.)

No. 17. — Beëdigde Verklaring tot Staving van Applikasie vir Summiere Vonnis.
(Aanhef.)

Ek,
(Adres)
(Beroep)
verklaar onder eed as volg:

1. Ek is die eiser in hierdie saak (*of*, die feite hierin opgegee is aan my persoonlik bekend en ek is behoorlik gemagtig om hierdie beëdigde verklaring af te lê).
2. Die verweerder is aan die eiser die som van £..... verskuldig op die gronde in die dagvaring vermeld.
3. Ek is daar stellig van oortuig dat die verweerder geen *bona fide* verdediging in hierdie saak het nie en dat verdediging slegs aangeteken is om versuim te veroorsaak.

(Afsluiting.)

No. 18. — Beëdigde Verklaring onder Artikel *Een-en-Dertig* van die Proklamasie.
(Aanhef.)

Ek,
(Adres)
(Beroep)
verklaar onder eed as volg:—

1. Ek is die verhuurder (*of*, die agent van die verhuurder met opgawe van sy naam) van 'n perseel (*beskryf die perseel*).

A..... B....., of (*describe the tenant*) is justly and truly indebted to me (*or, to my said principal*) in the sum of £..... for rent of the said premises accrued from the day of 19....., to the day of 19.....

The said sum of £..... became due and payable upon the day of 19.....

The said rent has been demanded from the said A..... B..... on the day of 19..... but has not yet been paid.

I. I am informed and verily believe that the said A..... B..... is about to remove certain movables, now upon the said premises, from such premises in order to defeat and avoid the payment of the said rent.

(Conclusion.)

19. — Security for Rent Attachment under Section *Thirty-one* of the Proclamation.
(Heading.)

Whereas X..... Y....., of (describe the landlord), has applied for the of an order to seize and arrest the movable property upon (describe the leased ses) for the sum of £..... for rent due by B..... of (des- the tenant) and £..... for costs; low therefore the said X..... Y..... and Q..... of (describe the surety) as and co-principal debtor for him the said X..... hereby undertake and bind themselves jointly everally that the said X..... Y..... and Q..... or either of them shall pay, rom else it may concern all damage, costs and charges he or they may sustain by reason of the seizure rest of the said movable property in case the said e or arrest is set aside.

(Conclusion.)

20. — Order for Rent Attachment under Section *Thirty-one* of the Proclamation.

Ordered:

That the Messenger of the Court do seize and so much of the (*describe movables*) in the (house, store e case may be) situate and being No. (*describe remises*) as shall be sufficient to satisfy the sum of rent and £..... costs.

(Conclusion.)

No. 21. — Consent to Sale of Attached Goods.
(Heading.)

The Clerk of the Court:—

A..... B....., of above respondent, hereby admit that the property attached : above matter is subject to a hypothec to the above ant to the extent of £..... and I consent to ale of the said property in satisfaction of the said it of £..... plus costs, and messenger's charges.

ated at this day 19.....

Respondent.

itness:

2. — Forms as to Inspection and Production of Docu- ments.

Schedule of Documents:

he intends to use the following ents on the trial of this Action:—

Number of Document.	Description of Document.

2. A..... B....., van (*beskryf die huurder*) is wettig en inderdaad aan my (*of aan my genoemde prinsipaal*) die som van £..... verskuldig ten opsigte van huurgelde vir genoemde perseel vanaf die dag van 19..... tot die dag van 19.....

3. Voormelde som van £..... het opvorderbaar en betaalbaar geword op die dag van 19.....

4. Voormelde A..... B..... is op die dag van 19..... aange- maan tot betaling van die betrokke huurgelde, dog betaling daarvan is nog nie gedoen nie.

Of 4. My is vertel en ek glo stellig, dat genoemde A..... B..... van plan is om sekere roerende goedere wat tans op die perseel is, te verwyder met die doel om die betaling van die huurgelde te ver- ydel en te ontduik.

(Afsluiting.)

No. 19. — Borgakte vir Huurbeslag onder Artikel *een-en-dertig* van die Proklamasie.

(Aanhef.)

Nademaal X..... Y....., van (*beskryf die verhuurder*) die uitreiking aangeva het van 'n bevel tot inbeslagneming van die roerende goedere in of op (*beskryf die verhuurde perseel*) vir die som van £..... ten opsigte van huurgelde deur A..... B..... van (*beskryf die huurder*) verskuldig, en die som van £..... as koste;

So is dit dat genoemde X..... Y..... en P..... Q..... van (*beskryf die borg*) hulle hiermee gesamentlik en afsonderlik verbind dat genoemde X..... Y..... en P..... Q..... of elkeen van hulle aan voormelde A..... B..... of aan wie dit anders mag aangaan, sal betaal en vergoed, alle skade, koste en onkoste wat hy of hulle mag ly as gevolg van die inbeslagneming van die betrokke roerende goedere, ingeval die beslaglegging ter sy gestel mag word.

(Afsluiting.)

No. 20. — Bevel vir Huurbeslag onder Artikel *een-en-dertig* van die Proklamasie.

Dit word gelas:

1. Dat die geregsbode 'n voldoende hoeveelheid van die (*beskryf die roerende goedere*) in die (huis, winkel, soos die geval mag wees) geleë en synde No. (*beskryf die perseel*) in beslag neem, om die som van £..... huurgelde en £..... koste te dek.

(Afsluiting.)

No. 21. — Toestemming tot Verkoop van Goedere wat in beslag geneem is.

(Aanhef.)

Aan die Klerk van die Hof:—

Ek, A..... B..... van bogenoemde respondent, erken hiermee dat die goedere wat in voormelde saak in beslag geneem is, kragtens applikant se stilswyende hipoteek verbind is vir 'n bedrag van £..... en ek gee my toestemming tot die ver- koop van genoemde goedere tot voldoening van voormelde bedrag van £..... benewens die koste en fooie van bode.

Gedagteken te op die dag van 19.....

As getuie: Respondent.

No. 22. — Vorms aangaande Insae en Voorlegging van Dokumente.

(1) *Lys van Dokumente:*

Die is voornemens om hom van die volgende dokumente by die verhoor van hierdie saak te bedien:—

Datum van Dokument.	Beskrywing van Dokument.

(2) *Notice to deliver Schedule of Documents:*

TAKE NOTICE that the requires you, within three days after receiving this notice, to deliver a schedule specifying the books and documents in your possession or under your control which you intend to use in the above action.

(3) *Notice to produce documents for Inspection:*

TAKE NOTICE that the requires you to produce for his inspection at your office on at m. the documents specified in your Schedule of Documents (or the accounts and documents upon which the Action is founded).

(4) *Notice to produce (General Form).*

TAKE NOTICE that you are hereby required to produce and show to the Court, on the trial of this action, all books and documents disclosed in your Schedule of Documents, and also (*specify documents*):—

NOTE. — The foregoing notices are to be headed in the action and dated and signed by the party or his attorney, and are to be addressed to the party affected or his attorney, if he has one.

No. 23. — Certificate of Record.

(Heading.)

I,, Clerk of this Court (or Shorthand Writer of this court) do hereby certify and declare that the foregoing notes are a true record of the proceedings in this action and of all evidence received by the said Court.

Dated at this day of 19.....

.....
Clerk of the Court
(or Shorthand Writer.)

No. 24. — Order Obtained *Ex Parte*.

(Heading.)

It is Ordered:

1. That a rule *nisi* be and it is hereby granted calling upon (*respondent*) of (*respondent's address*) to show cause, if any, to this Court on the day of 19....., at in the noon or so soon thereafter as he can be heard, why shall not be interdicted from (*set out the acts from which respondent or any other person is restrained*) pending the decision of an action to be brought by the Applicant against the said (*respondent*) for (*set out the nature of the claim*).

2. That the said action be commenced within forty-eight hours.

3. That this rule operate as an interim interdict.

BY ORDER OF THE COURT.

.....
Clerk of the Court.

.....
Applicant's Attorney,
..... Street.

No. 25. — Order for Arrest of Person.

(Heading.)

It is Ordered:

1. That the Messenger of the Court do take the body of (*respondent*) and safely keep him and have him before this Court at o'clock in the noon on the day of 19....., then and there to show cause why he should not be detained to abide the judgment of this Court in an action for a sum of £..... to be instituted against him by the Applicant.

2. This the said action be instituted within forty-eight hours from the date of this order.

BY ORDER OF THE COURT.

.....
Clerk of the Court.

.....
Applicant's Attorney,
..... Street.

(2) *Kennisgewing om Lys van Dokumente in te lewer:—*

NEEM KENNIS dat die u versoek om binne drie dae na ontvangs van hierdie kennisgewing, 'n lys in te lewer met noukeurige opgawe van alle boeke of ander stukke wat in u besit of onder u beheer is, en wat u voornemens is om in bogenoemde saak te gebruik.

(3) *Kennisgewing om dokument ter insae voor te lê.*

NEEM KENNIS dat die u versoek om die dokumente opgenoem in u Lys van Dokumente (of, die rekeninge en dokumente waarop die saak gegrond is) aan hom in u kantoor op om m. ter insae voor te lê.

(4) *Kennisgewing van voorlegging (Algemene Vorm).*

NEEM KENNIS dat u hiermee versoek word om by die verhoor van hierdie saak alle boeke en ander stukke oopgelê in u Lys van Dokumente aan die Hof voor te lê en te vertoon, asook (vermeld die stukke):—

N.B. — Voorgaande kennisgewinge moet aan die hoof daarvan voorsien word van die naam van die saak, gedateer en geteken word deur die party of sy prokureur en gerig word aan die betrokke party of sy prokureur, as hy een het.

No. 23. — Sertifikaat van Waarmerking van die Rekord.

(Aanhef.)

Ek,, Klerk van hierdie Hof (of Snelskrywer van hierdie hof) sertifiseer en verklaar hiermee dat voorgaande optekeninge 'n ware verslag van die verrigtinge in hierdie saak is en van alle getuienis deur genoemde Hof afgeneem.

Gedagteken te op die dag van 19.....

.....
Klerk van die Hof
(of Snelskrywer).

No. 24. — Bevel *ex parte* verkry.

(Aanhef.)

Dit word gelas:—

1. Dat 'n bevel *nisi* hiermee verleen word waarby (*respondent*) van (*respondent se adres*) opgeroep word om aan hierdie Hof op die dag van 19....., om in die middag, of so spoedig daarna as hy gehoor kan word, redes aan te toon, waarom hy nie deur interdik verbied sal word om, hangende die beslissing van 'n aksie, deur die applikant ingestel te word teen genoemde (*respondent*) weens (*vermeld die aard van die vordering*).
..... (*vermeld die handeling waarteen die interdik gerig is*).

2. Dat voormelde aksie binne ag-en-veertig uur ingestel word.

3. Dat hierdie bevel die krag van 'n interim interdik het.

OP LAS VAN DIE HOF.

.....
Klerk van die Hof.

.....
Applikant se Prokureur,
..... Straat.

No. 25. — Bevel vir die Arres van 'n Persoon.

(Aanhef.)

Dit word gelas:

1. Dat die Geregsbode die hand lê op (*respondent*), hom in veilige bewaring hou en hom voor hierdie Hof bring om in die middag op die dag van 19....., om dan en daar redes aan te toon waarom hy nie in hegtenis gehou sal word nie, hangende die uitspraak van hierdie Hof in 'n aksie vir die som van £..... deur die Applikant teen hom ingestel te word.

2. Dat genoemde aksie binne ag-en-veertig uur vanaf die datum van hierdie bevel ingestel word.

OP LAS VAN DIE HOF.

.....
Klerk van die Hof.

.....
Applikant se Prokureur,
..... Straat.

160

No. 26. — Warrant for Fine or Arrest of a Witness in Default.

(Heading.)

To the Messenger of the Court, and to the Keeper of the Gaol of the above district.

Whereas A. B. of has been duly subpoenaed to give evidence (or, to produce certain books, papers or documents, as the case may be) in the above matter before this Court at m. on the day of, 19....., and has made default:

And whereas the Court has imposed upon the said A. B. for his said default a fine of £..... and for non-payment has committed him to the gaol of the above district for a period of

This is therefore to authorise and require you the Messenger of this Court to take the body of the said A. B. and, unless he shall pay to you the said sum of £..... to deliver him to the Keeper of the Gaol of this District together with this warrant there to be safely kept until he shall have paid the said sum of £..... or until the expiration of the said period of from the day on which the said A. B. shall be received into or retained in the said prison by virtue of this warrant whichever of the two shall first happen or until the said A. B. shall be otherwise legally discharged.

And this is to command you the said Keeper of the said Gaol to receive and safely keep the said A. B. as aforesaid.

(Conclusion.)

No. 27. — Warrant for the Apprehension of a Witness in Default.

(Heading.)

To the Messenger of the Court.

Whereas A. B. of has been duly subpoenaed to give evidence (or, to produce certain books, papers or documents, as the case may be) in the above matter before this Court at m. on the day of, 19....., and has made default:

This is therefore to authorise and require you to take the body of the said A. B. and have him before this Court at m. on the day of, 19....., then and there to give his evidence and to be otherwise dealt with according to law.

(Conclusion.)

No. 28. — Security on Arrest or Interdict *Ex Parte*.

(Heading.)

Whereas A. B. of has applied for the issue of a warrant of arrest against C. D. of (or, an arrest or interdict against the goods of C. D. at) and the Court has fixed the security to be given by the said A. B. at the sum of £.....:

Now therefore, the said A. B. and E. F. of as surety and co-principal debtor for him the said A. B. hereby undertake and bind themselves jointly and severally to answer any claim for damages to a sum not exceeding the sum of £..... in case the said arrest (or interdict) shall be set aside or shall be reversed on appeal.

(Conclusion.)

No. 29. — Subpoena.

(Heading.)

To

- (1) A. B., of
- (2) C. D., of
- (3) E. F., of
- (4) G. H., of

You are hereby required in His Majesty's name to appear in person before this Court at on the day of, 19....., at the hour of in the noon and so from day to day until this action is tried, to give evidence in this action on behalf of the

No. 26. — Lasbrief vir Boete of Arres van 'n Getuie wat in Gebreke bly om te Verskyn.

(Aanhef.)

Aan die Geregsbode en aan die Sipier van die Gevangenis in voornoemde distrik.

Nademaal A. B. van behoorlik gedagvaar is om in bogenoemde saak in hierdie Hof om m. op die dag van 19..... getuie af te lê (of, om sekere boeke, geskryfte of dokumente voor te lê, soos die gevl mag wees) en in gebreke gebly het om aan die dagvaring te voldoen:

En nademaal die Hof A. B. weens sy versuim beboet het met die som van £..... en gelas het dat hy by wanbetaling in die gevangenis van bogenoemde distrik geplaas moet word vir 'n tydperk van

So is dit dat u, die Bode van hierdie Hof, derhalwe hiermee gemagtig en gelas word om genoemde A. B. te neem en hom, tensy hy voormelde som van £..... betaal, aan die Sipier van die Gevangenis van hierdie Distrik, tesame met hierdie lasbrief, af te lewer, om aldaar in hegtenis gehou te word, totdat hy voormelde som van £..... betaal, of tot verstryking van voormelde tydperk van gereken vanaf die dag waarop genoemde A. B. in genoemde gevangenis ontvang of gehou word kragtens hierdie lasbrief, al na gelang watter eerste gebeur, of totdat genoemde A. B. op 'n ander wyse wettiglik ontslaan mag word.

En u, die genoemde Sipier van die Gevangenis voormeld, word hiermee gelas om genoemde A. B. op te neem en in hegtenis te hou, soos hierbo aangedui.

(Afsluiting.)

No. 27. — Lasbrief tot Gevangening van 'n Getuie wat in Gebreke bly om te Verskyn.

(Aanhef.)

Aan die Geregsbode.

Nademaal A. B. van behoorlik gedagvaar is om in bogenoemde saak in hierdie Hof om m. op die dag van 19..... getuie af te lê (of, boeke, geskryfte of dokumente voor te lê, soos die geval mag wees) en in gebreke gebly het om aan die dagvaring te voldoen:

So is dit dat u derhalwe hiermee gemagtig en gelas word om genoemde A. B. te neem en hom op die dag van 19..... om m. voor hierdie Hof te bring om aldaar getuie af te lê en om origins volgens wet mee gehandel te word.

(Afsluiting.)

No. 28. — Sekuriteit by Arres of Interdik *ex parte* verkry.

(Aanhef.)

Nademaal A. B. van aansoek gedoen het vir die uitreiking van 'n lasbrief van arres teen C. D. van (of, 'n beslaglegging op of interdik teen die goedere van C. D. van) en die Hof die sekuriteit wat deur genoemde A. B. gestel moet word, op die som van £..... vasgestel het:—

So is dit, dat genoemde A. B. asook E. F. van as borg vir A. B., hulle hiermee gesamentlik en afsonderlik verbind om aan enige vordering tot skadevergoeding tot 'n bedrag van hoogstens £..... te voldoen, ingeval die arres (of interdik) voormeld ter sy gestel of op appèl herroep mag word.

(Afsluiting.)

No. 29. — Subpoena.

(Aanhef.)

Aan

- (1) A. B., van
- (2) C. D., van
- (3) E. F., van
- (4) G. H., van

U word hiermee in naam van Sy Majesteit versoek om persoonlik voor hierdie Hof te verskyn om op die dag van 19....., en aldus van dag tot dag, totdat hierdie saak verhoor word, om in hierdie saak getuie af te lê ten behoeve van

(Where documents are required to be produced, add:—)

(1) and to bring with you and then produce to the Court the several documents specified in the list hereunder:—

(Conclusion.)

(2) List of documents to be produced:—

Date.	Description.	Original or Copy.

(SEE BACK.)

(Print on back, Section *forty-seven*, sub-section (2) of the Proclamation.)

No. 30. — Security for Stay of Execution.

(Heading.)

Whereas the said A.B. by Judgment of this Court on the day of, 19....., recovered against the said C.D. the sum of £....., together with the sum of £..... for costs;

And whereas the said C.D. has applied to the Court for a stay of execution pending appeal (or pending the hearing of an application to review and reverse the said judgment) and the Court has directed that execution be stayed accordingly subject to the said C.D. giving security within days:

Now therefore the said C.D. and E.F. of as security and co-principal debtor for him the said C.D. hereby undertake and bind themselves jointly and severally to satisfy the said judgment and any further liability which may arise by way of damages or otherwise by reason of such suspension; so far as such judgment may not be reversed or varied on such appeal (or review).

(Conclusion.)

No. 31. — Security when Execution is Allowed Pending Appeal.

(Heading.)

Whereas the said A.B. on the day of recovered by judgment of this Court against the said C.D. the sum of £..... together with the sum of £..... for costs:

And whereas the said Court has directed the said judgment notwithstanding the said C.D. has noted an appeal against the same to be carried into execution upon security being given for restitution:

Now therefore the said A.B. and L.M. of as surety and co-principal debtor for him the said A.B. hereby undertake and bind themselves jointly and severally to refund and make restitution of the above several sums of and should the judgment of the said court be reversed and further severally to conform to and execute such judgment or order or decree as shall be given and pronounced upon or in respect of such appeal.

(Conclusion.)

No. 32. — Warrant of Ejectment or upon Decree for Delivery up of Possession of Premises.

(Heading.)

To the Messenger of the Court.

Whereas in this action the said plaintiff on the day of, 19....., obtained judgment for the ejectment of the said defendant from the premises known as

This is to authorise and require you to put the said Plaintiff into possession of the same by removing therefrom the said defendant for which this shall be your warrant.

(Conclusion.)

No. 33. — Warrant upon Decree for the Delivery up of Goods.

(Heading.)

To the Messenger of the Court.

Whereas in this action the Court did decree that the said defendant should deliver to the said plaintiff a certain (*describe the thing to be delivered*):

This is to authorise and require you to take the said (*describe the thing*) from the said defendant and place the said plaintiff in possession thereof for which this shall be your warrant.

(Conclusion.)

(As dokumente voorgelê moet word, voeg daaraan toe:—)

(1) en met u te bring en asdan aan die Hof te vertoon die dokumente opgenoem in onderstaande lys:—

(Afsluiting.)

(2) Lys van dokumente wat voorgelê moet word:—

Datum	Beskrywing.	Oorspronklike of Afskrif.

(KYK AGTERKANT.)

(Op agterkant gedruk of getik, Artikel *sewe-en-veertig*, sub-artikel (2) van die Proklamasie.)

No. 30. — Sekuriteit ten opsigte van Opskorting van Ekskusie.

(Aanhef.)

Nademaal genoemde A.B. by vonnis van hierdie Hof op die dag van 19..... die som van £..... en koste in die bedrag van £..... teen genoemde C.D. verhaal het;

En nademaal genoemde C.D. 'n opskorting van ekskusie, hangende 'n appèl, (of hangende die behandeling van 'n applikasie waarby hersiening en tersydestelling van die vonnis aangevra word) by die Hof aangevra het, en die Hof gelas het dat die eksekusie dienooreenkomstig opgeskort sal word mits genoemde C.D., binne dae sekuriteit stel:

So is dit dat genoemde C.D. en E.F. van as borge vir C.D., hiermee onderneem en hulle hiermee gesamentlik en afsonderlik verbind om aan die vonnis voormeld te voldoen asook aan enige verdere aanspreeklikheid wat, weens skade of andersins, as gevolg van sodanige opskorting mag ontstaan; vir sover die betrokke vonnis nie op appèl (of hersiening) ter sy gestel of gewysig mag word nie.

(Afsluiting.)

No. 31. — Sekuriteit wanneer Eksekusie toegestaan word, Hangende Appèl.

(Aanhef.)

Nademaal genoemde A.B. by vonnis van hierdie Hof op die dag van 19....., die som van £..... en koste ten bedrae van £..... teen genoemde C.D. verhaal het:

En nademaal die Hof voormeld gelas het dat die vonnis, niestandaande deur C.D. daarteen appèl aangeteken is, uitgevoer sal word, mits sekuriteit gestel word vir teruggawe:

So is dit dat genoemde A.B. en L.M. van as borg vir A.B., hiermee onderneem en hulle hiermee gesamentlik en afsonderlik verbind om bogenoemde somme van £..... en £..... terug te betaal en teruggawe daarvan te doen, as die vonnis van die Hof voormeld ter sy gestel mag word, en voorts om te voldoen aan enige vonnis of bevel of dekreet wat op of met betrekking tot sodanige appèl uitgespreek of verleen mag word.

(Afsluiting.)

No. 32. — Lasbrief tot Ontruiming of ingevolge Bevel tot Inbesitstelling van Perseel.

(Aanhef.)

Aan die Geregsbode.

Nademaal in hierdie saak die eiser voormeld op die dag van 19....., vonnis verkry het vir die ontruiming deur die verweerder voormeld van die perseel, bekend as

So word u hiermee gemagtig en gelas om die eiser voormeld in besit daarvan te stel deur genoemde verweerder daaruit te verwyder, waartoe dit u tot lasbrief strek.

(Afsluiting.)

No. 33. — Lasbrief ingevolge Bevel tot Aflewering van Goedere.

(Aanhef.)

Aan die Geregsbode.

Nademaal die Hof in hierdie saak gelas het dat die verweerder voormeld aan die eiser voormeld 'n seker (*beskryf die saak of ding wat afgelewer moet word*) sal aflower:

So word u hiermee gemagtig en gelas om die genoemde (*beskryf die ding*) van die verweerder voormeld te neem en om die eiser voormeld in besit daarvan te stel, waartoe dit u tot lasbrief strek.

(Afsluiting.)

No. 34. — Warrant of Execution against Property.

(Heading.)

To the Messenger of the Court.

Amounts to be levied, (with costs of Execution).

Judgment costs	Debt	£	s	d
Costs of issuing warrant				
Costs of Appeal				
Total	£			

Whereas in this action the said A. B. on the day of 19....., by the judgment of the Court recovered against the said C. D. of the several sums set out in the margin hereof amounting in all to the sum of £.....: This is therefore to authorise and require you that of the property of the said C. D. you cause to be levied and raised the said sum of £..... together with your costs of this execution; and pay to the said A. B. the said sum of £.....

(Conclusion.)

- Note — (1) If the judgment debtor pays the amounts specified in the margin hereof with Messenger's charges of £..... within half an hour of the entry of the Messenger he will not be required to pay any further costs of execution.
- (2) This execution may be paid out before sale subject to the payment of the Messenger's fees and charges of execution, which may be required to be taxed.
- (3) The only immovable property upon which this warrant may be executed is (*set out its situation and nature sufficiently to enable it to be identified*).

No. 35. — Notice of Attachment in Execution.

(Heading.)

To C. D., Judgment Debtor.

Take notice that I have this day seized and laid under judicial attachment the articles comprised in the above inventory in pursuance of a warrant to me directed under the hand of the Clerk of the Court for the District of whereby I am required to cause to be levied and raised of your property in this District the sum of £..... and £..... costs recovered against you by the judgment of the said Court in this action and also for my charges in and about the said warrant.

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

Messenger of the Court.

No. 36. — Security Bond on Attachment.

(Heading.)

Whereas the said A. B. on the day of last by judgment of this Court recovered against the said C. D. the sum of £..... together with the sum of £..... for costs, and whereas by virtue of a certain warrant under the hand of the Clerk of the Court bearing date etc. directed to E. F. Messenger of the said Court the said E. F. has seized and laid under attachment in respect of the said judgment and in respect to the execution thereof the undermentioned articles, viz:

Now therefore, the said C. D. and L. M. of as surety and co-principal debtor for him the said C. D. hereby severally undertake and bind themselves jointly and severally to the said E. F. that the said goods shall not be made away with or disposed of but the same shall remain in possession of the said C. D. under effect of the said attachment and shall be produced to the Messenger of the said Court on the day of next (*the day appointed for the sale*) or any other day when the same may be required in order to be sold in execution of the said judgment and expenses if the said shall not be sooner satisfied to the said A. B.; otherwise the said L. M. hereby undertakes and binds himself to pay and satisfy the said judgment costs and expenses and on behalf of the said C. D.

(Conclusion.)

No. 34. — Lasbrief tot Eksekusie teen Goedere.

(Aanhef.)

Aan die Geregsbode.

Bedraewatverhaal moet word (met onkoste van Eksekusie).

Koste van vonnis	£	s	d
Koste van uitreiking van lasbrief			
Koste van Appèl			
Totaal	£		

Nademaal in hierdie saak aan A. B., voormeld, op die dag van 19..... by vonnis van die Hof, gegee teen genoemde C. D. van die verskeie somme aangestip op die kant hiervan, tot die totale bedrag van £....., toegeken is: So word u hiermee gemagtig en gelas om 'n heffing te maak op die goedere van genoemde C. D. en om voormelde som van £..... asook u onkoste van eksekusie daarop te verhaal, en om aan voormelde A. B. die som van £..... te betaal.

(Afsluiting.)

- N.B.—(1) As die vonnis-skuldenaar die bedrae op die kant van hierdie lasbrief aangestip asook die onkoste van die Bode ten bedrae van £..... betaal binne 'n half uur na aankoms van die Bode, dan behoef hy geen verdere onkoste van eksekusie te betaal nie.
- (2) Hierdie eksekusie kan voor die verkoping uitbetaal word onderhewig aan die betaling van die Bode se fooie en onkoste van eksekusie, ten opsigte waarvan vereis kan word dat dit getakseer word.
- (3) Die enigste onroerende goedere waarop hierdie lasbrief uitgevoer kan word, is (*beskryf die ligging en aard daarvan met sodanige noukeurigheid dat dit uitgeken kan word*).

No. 35. — Kennisgewing van Eksekutoriale Beslaglegging.

(Aanhef.)

Aan C. D., Vonnis-skuldenaar.

Neem kennis dat ek op die goedere opgenoem in bostaande inventaris vandag geregtelike beslag gelê het kragtens 'n lasbrief onder die hand van die Klerk van die Hof vir die Distrik , waarby ek gelas word om 'n heffing te maak op u goedere in hierdie Distrik en om daarop te verhaal die som van £..... en £..... as koste, welke bedrae by vonnis van genoemde Hof in hierdie saak teen u verkry is, en ook my onkoste in verband met die uitvoering van die lasbrief voormeld.

Gedagteken te op die dag van 19.....

Geregsbode.

No. 36. — Borgakte by Beslaglegging.

(Aanhef.)

Nademaal aan genoemde A. B. op die dag van laaslede, by vonnis van hierdie Hof teen voormelde C. D. die som van £..... asook die som van £..... as koste toegeken is, en nademaal, kragtens 'n sekere lasbrief onder die hand van die Klerk van die Hof gedateer, gerig aan E. F., Bode van genoemde Hof, E. F. geregtelike beslag gelê het op die volgende goedere, n.l.:—

So is dit dat voornoemde C. D. en L. M. van as borg vir C. D., hulle hiermee gesamentlik en afsonderlik teenoor E. F. voormeld verbind dat die betrokke goedere nie sal weggemaak of vervreem word nie, maar dat dit in die besit van genoemde C. D. onder uitwerking van die beslaglegging sal bly en dat dit aan die Geregsbode voormeld vertoon sal word op die dag van eerskomende (*die dag vasgestel vir die verkoping*) of op enige ander dag waarop die goedere benodig mag wees om ter voldoening van genoemde vonnis en onkoste in eksekusie verkoop te word, as die vonnis en onkoste nie eerder aan genoemde A. B. vergoed is nie; anders onderneem voormelde L. M. en verbind homself daartoe, om die vonnis, koste en uitgawes vir en ten behoeve van genoemde C. D. te betaal en daaraan te voldoen.

(Afsluiting.)

No. 37. — Interpleader Summons.

(Heading.)

Whereas of
has interpleaded in this Court as to the subject matter
following:—

(State subject matter.)

which is adversely claimed by of
and of
hereinafter called the claimants:

Summons the said claimants that they severally appear
before this Court holden at on
the day of
19....., at o'clock in
the noon, and that they do then severally state
the nature and particulars of their several claims and whether
they will maintain or relinquish the same.

(Conclusion.)

No. 38. — Security Under Order No. VI Rule 8 (2).

(Heading.)

Whereas the said plaintiff on the day of 19....., recovered judgment in this Court against the said defendant for the sum of £..... together with the sum of £..... for costs:

And whereas under the said judgment execution has been issued and property has been attached:

Now therefore the said plaintiff and L.M. of as surety for him the said plaintiff hereby severally undertake and bind themselves jointly and severally to the said judgment debtor that if the said judgment is hereafter reversed they will pay the said judgment debtor such amount as may be ascertained to be the damage caused to him by the said judgment and execution, but not to exceed twice the gross proceeds of the sale of such goods in execution.

(Conclusion.)

NOTE: — Where the security is for the repayment of moneys attached by garnishee proceedings, a similar form should be used, the words "refund and make restitution of the gross amount paid by the garnishee" being substituted for the words "pay to the said judgment debtor such amount, etc."

No. 39. — Summons for Civil Imprisonment.

(Heading.)

To C.D. of (describe the defendant as in the former process).

You are hereby summoned to appear before this Court to be holden at on the day of next at o'clock in the noon to show why a decree of civil imprisonment should not be made against you at the suit of E.F. (describe the plaintiff as in the former process) in respect of the non-payment of the sum of £..... (insert the joint amount of debt and costs) recovered against you by the said E.F. by a judgment of the said Court bearing date the day of 19.....

(Conclusion.)

No. 40. — Warrant for Civil Imprisonment.

(Heading.)

To the Messenger of the Court and to the Keeper of the Gaol at

These are to command you the said Messenger of the Court to take C.D. of (describe as in the last preceding form) and deliver him to the Keeper of the Gaol of the District aforesaid together with this warrant there to be safely kept until he shall have paid to E.F. of (describe the plaintiff as in the summons aforesaid) the sum of £..... (parcel of the sum of £.....) which the said E.F. recovered for his debt and costs by judgment of this Court bearing date the day of 19....., or until the expiration of from the day on which the said C.D. shall be received into or retained in the said prison by virtue of this warrant whichever of the two shall first happen or until the said C.D. shall be otherwise legally discharged.

(Conclusion.)

No. 37. — Tussenpleit-Dagvaring.

(Aanhef.)

Nademaal van
in hierdie Hof tussengepleit het ten opsigte van die volgende
onderwerp:—

(Vermeld onderwerp.)

waarop teenstrydige aansprake gemaak word deur
van en
van hierinlater genoem die
reklamante:

Dagvaar voormelde reklamante om voor hierdie Hof, gehou te op die dag van 19....., om m., te verskyn en aldaar, elkeen afsonderlik, die aard en besonderhede van hulle teenstrydige aansprake uiteen te sit en te verklaar of hulle voornemens is om daaraan te voldoen of dit prys te gee.

(Afsluiting.)

No. 38. — Sekuriteit onder Order VI, Reël 8 (2).

(Aanhef.)

Nademaal aan genoemde eiser op die dag van 19..... by vonnis in hierdie Hof teen verweerder voormeld die som van £..... en die som van £..... as koste toegeken is:

En nademaal ingevolge daardie vonnis 'n lasbrief van eksekusie uitgereik en goedere in beslag geneem is:

So is dit dat genoemde eiser en L.M., as borg vir die eiser, hulle hiermee gesamentlik en afsonderlik teenoor die vonnis-skuldenaar verbind om, ingeval die vonnis voormeld ter sy gestel mag word, aan die vonnis-skuldenaar sodanige bedrag te betaal, as vasgestel mag word die skade te wees hom berokken deur die vonnis en uitvoering daarvan, maar dubbel die bruto-opbrings van die verkoop van sodanige goedere in eksekusie nie te bowe gaande nie.

(Afsluiting.)

N.B.—Wanneer sekuriteit gestel word vir die terugbetaling van gelde wat ingevolge 'n skuldbeslagorder in beslag geneem is, moet 'n soortgelyke vorm gebruik word met vervanging van die woorde "aan die vonnis-skuldenaar sodanige bedrag te betaal, ens.", deur die woorde "die bruto-bedrag deur die derde-skuldenaar betaal, terug te betaal en teruggawe daarvan te besorg, ens."

No. 39. — Dagvaring tot Siviele Gyseling.

(Aanhef.)

Aan C.D. van (beskryf die verweerder soos in die vroeër prosesstuk).

U word hiermee gedagvaar om te verskyn voor hierdie Hof gehou te op die dag van eerskomende om in die middag om redes aan te toon, waarom 'n bevel tot siviele gyseling nie teen u verleen sal word nie op aansoek van E.F. van (beskryf die eiser soos in die vroeër prosesstuk), weens nie-betaling van die som van £..... (vermeld die gesamentlike bedrag van skuld en koste teen u verhaal deur voormelde E.F. by vonnis van genoemde Hof, gedateer die dag van 19.....

(Afsluiting.)

No. 40. — Lasbrief tot Siviele Gyseling.

(Aanhef.)

Aan die Geregsbode en aan die Sipier van die Gevangenis te

U, voormelde Geregsbode, word hiermee gelas om C.D. van (beskryf verweerder soos in laasvoorgaande vorm) te neem en tesame met hierdie lasbrief af te lewer aan die Sipier van die Gevangenis van die Distrik voormeld, om aldaar in hegtenis gehou te word, totdat hy aan E.F. van (beskryf die eiser soos in die voorgaande dagvaring) betaal het die som van £..... (synde gedeelte van die som van £.....) wat aan genoemde E.F. ten opsigte van sy vordering en koste, by vonnis van hierdie Hof gedateer die dag van 19..... toegeken is, of tot die verstryking van vanaf die dag waarop genoemde C.D. kragtens hierdie lasbrief in die gevangenis voormeld opgeneem of in hegtenis gehou word, al na gelang watter van die twee eerste gebeur, of totdat genoemde C.D. op 'n ander wyse wettiglik ontslaan mag word.

(Afsluiting.)

No. 41. — Affidavit in Support of Application for a Garnishee Order.

A B of
duly sworn states:—

1. That he is the abovenamed Judgment Creditor (or, that he is duly authorised by the abovenamed judgment creditor to act for him in this matter).
2. The Judgment Creditor has obtained judgment against the Judgment Debtor in this Court (or, in the Magistrate's Court for the District of a certified copy of which judgment is hereto annexed marked "A"), on the day of 19....., in an action numbered for the sum of £..... and costs amounting to £.....
3. The said judgment is still unsatisfied to the amount of £.....
4. The garnishee resides (or, carries on business as a or, is employed as at No. Street within the District of this Court and is indebted to the Judgment Debtor in the sum of £..... (or, in an amount to the Petitioner unknown) for (set out the cause of the debt) (not) being for salary or wages.
5. The said debt is owing this the day of 19.....
(If the debt is for salary or wages.)
6. The Judgment Debtor will, after the execution of the order herein sought, have a sufficient income, i.e. £..... per month, arising from (set out the source of such income) to maintain himself and those dependent upon him i.e. (set out the numbers and relationship to the Judgment Debtor of his dependents)

(Conclusion.)

NOTE. — If attachment of future or accruing earnings is sought, the affidavit should contain paragraphs 1, 2, 3, 4 (modified to meet the circumstances.)

No. 42. — Garnishee Order.

(Heading.)

Whereas it has been made to appear to the above Court that the Garnishee is indebted to the Judgment Debtor and that the debt is now due and is not for salary or wages; or that the debt is now due and that the Judgment Debtor will, after the execution of this order, have a sufficient balance of income to maintain himself and those dependent upon him:

It is Ordered:

That all debts owing by the Garnishee to the Judgment Debtor to an amount not exceeding £..... be attached to answer a judgment recovered against the Judgment Debtor by the Judgment Creditor in the Court on the day of 19....., for the sum of £..... on which judgment the sum of £..... remains due and unpaid.

That the Garnishee to pay to the Messenger of this Court the said sum of £..... together with £..... the costs hereof (but not exceeding in all the sum of £.....) out of his said debts to the Judgment Debtor, or, failing such payment, that the Garnishee appear before this Court on the day of 19....., at o'clock in the noon then and there to show cause why he should not pay the same.

Dated at this day of 19....., at hours minutes in the noon.

By Order of the Court.

.....
Clerk of the Court.

.....
Attorney for Judgment Creditor.

TO THE ABOVENAMED GARNISHEE. — If the debt due by you to the abovenamed Judgment Debtor was not owing both at the day and hour abovementioned and at the time when this Order was served upon you, you should appear at the Court and prove the facts. If you do not appear, you may be compelled to pay the debt twice over.

No. 41. — Beëdigde Verklaring ter staving van Applikasie vir 'n Skuldbeslagorder.

A B van
behoorlik beëdig, verklaar:—

1. Dat hy bogenoemde Vonnis-skuldeiser is (of, dat hy behoorlik daartoe gemagtig is deur bogenoemde vonnis-skuldeiser om namens hom in hierdie saak op te tree).
2. Die Vonnis-skuldeiser het op die dag van 19....., in 'n saak genommer teen die Vonnis-skuldenaar vonnis verkry in hierdie Hof (of, in die Magistraatshof van die Distrik van welke vonnis 'n gesertifiseerde afskrif, gemerk "A" hieraan geheg is) vir die som van £..... en koste ten bedrae van £.....
3. Die vonnis is nog onvoldoen ten opsigte van 'n bedrag van £.....
4. Die derde-skuldenaar woon (of, dryf besigheid as 'n of, is in 'n diensbetrekking as in No. Straat binne die regsmaatsgebied van hierdie Hof en is aan die Vonnis-skuldenaar 'n som van £..... verskuldig (of 'n bedrag aan die Petisionaris onbekend weens (vermeld hier die skuldoorsaak) (nie) synde ten opsigte van salaris of arbeidsloon.
5. Die skuldvordering is op hierdie dag van 19..... verskuldig.
(Wanneer die vordering ten opsigte van salaris of arbeidsloon is.)
6. Die Vonnis-skuldenaar sal, na die uitvoering van die bevel hierin aangevra, 'n voldoende inkom, naamlik £....., per maand hê, wat bestaan uit (vermeld die bron van sodanige inkom) om hom en diegene wat van hom afhanklik is (vermeld die getal en die verwantskap van die Vonnis-skuldenaar tot sy afhanklikes) te onderhou.

(Afsluiting.)

N.B.—Wanneer die inbeslagneming van toekomstige of ooplopende verdienste aangevra word, behoort die beëdigde verklaring paragrawe 1, 2, 3 en 4 (gewysig na gelang van die omstandighede) te bevat.

No. 42. — Skuldbeslagorder.

(Aanhef.)

Nademaal tot bevrediging van bogenoemde Hof bewys is dat die derde-skuldenaar 'n skuldvordering aan die Vonnis-skuldenaar verskuldig is, en dat die skuld tans betaalbaar is en nie ten opsigte van salaris of arbeidsloon is nie; of dat die skuld tans betaalbaar is en dat die Vonnis-skuldenaar, na die uitvoering van hierdie bevel, genoegsame inkomste sal oorhou om hom en diegene wat van hom afhanklik is, te onderhou:

Word dit Gelas:—

Dat alle skuldvorderinge, deur die derde-skuldenaar aan die Vonnis-skuldenaar verskuldig, tot 'n bedrag van £....., en sulks nie te bowe gaande nie, in beslag geneem word ter voldoening van 'n vonnis deur die Vonnis-skuldeiser teen die Vonnis-skuldenaar verkry in die Hof op die dag van 19....., vir die som van £..... en waarop die som van £..... nog verskuldig bly en onbetaal is.

Dat die derde-skuldenaar aan die Bode van hierdie Hof voormelde som van £..... tesame met £....., die koste hiervan, (maar in totaal nie die som van £....., to bowe gaande nie) sal betaal uit die skuldvorderinge deur hom aan die Vonnis-skuldenaar verskuldig, of, by gebreke van sodanige betaling, dat die derde-skuldenaar voor hierdie Hof verskyn op die dag van 19....., om middag om aldaar redes aan te voer, waarom hy nie aldus sal betaal nie.

Gedagteken te op die dag van 19....., om uur minute in die middag.

Op Las van die Hof.

.....
Klerk van die Hof.

.....
Prokureur vir Vonnis-skuldeiser.

AAN BOGENOEMDE DERDE-SKULDENAAR. — As die vordering deur u aan bogenoemde vonnis-skuldenaar verskuldig nie betaalbaar was sowel op bogenoemde dag en uur as op die tydstep, toe hierdie bevel op u gedien is nie, behoort u voor die Hof te verskyn en die feite te bewys. As u nie verskyn nie, kan u verplig word om die skuld tweemaal te betaal.

TO THE ABOVENAMED JUDGMENT DEBTOR. — If a judgment against you has been satisfied or is, for any reason, no longer operative against you, or if the debt is due to you for salary or wages and its attachment will not leave you a sufficient amount to enable you to maintain yourself and those dependent on you, you should appear at the court and prove the facts; but you cannot be heard on any other point.

NOTE. — If the order is for the attachment of future or accruing earnings, the words "moneys to become due" should be substituted for "debts owing" in the ninth line; and in the seventeenth line, after "Court", there should be inserted, "on the day of each and every month (or week), hereafter the sum of £..... until"; and in the eighteenth line, after "hereof", there should be inserted "shall have been discharged".

No. 43. — Agreement not to Appeal.

(Heading.)

We (the respective attorneys of) the abovenamed plaintiff and defendant do hereby agree, under the provisions of section *seventy-nine* of the Magistrates' Courts Proclamation, 1935, that the decision of the abovenamed Court in the abovenamed action, shall be final.

(Conclusion.)

No. 44. — Application for Trial with Assessors.

(Heading.)

The Plaintiff (or Defendant) hereby applies to have the above action tried with assessors.

Either (1)

The Defendant (of Plaintiff) consents to such application and to the appointment of the following assessor:—

A. B. of etc.

.....
Plaintiff or Plaintiff's Attorney.

.....
Defendant or Defendant's Attorney.

Or (2)

The defendant (or plaintiff) consents to such application but the parties are unable to agree upon the names of assessors:—

Wherefore the parties pray the Court to appoint an assessor (or two assessors), excluding the following assessors (Set out the names of those assessors whom one or other of the parties objects to).

.....
Plaintiff or Plaintiff's Attorney.

.....
Defendant or Defendant's Attorney.

Or (3)

The defendant (or plaintiff) objects to such application wherefore the plaintiff (or defendant) has set down this application for hearing on theth day of 19....., atm.

.....
Plaintiff (or Defendant) or Plaintiff's (or Defendant's) Attorney.

To the Clerk of the Court and

To the Defendant (or Plaintiff).

Application granted / refused thisth day of

19.....

Assessors appointed:— A. B., etc.

.....
Clerk of the Court.

No. 45. — Summons to Assessor.

(Heading.)

Sir, You are hereby summoned to attend and serve as an Assessor in this Court on theth day of 19....., atm., to assist the Court in the above action in accordance with the provisions of section *thirty-three* of the Magistrate's Courts Proclamation, 1935.

I have the honour to be,

Sir,
Your obedient Servant,

.....
Clerk of the Court.

To A. B., etc.

AAN BOGENOEMDE VONNIS-SKULDENAAR. — As die vonnis teen u reeds voldaan is of, om enige rede nie meer teen u van krag is nie, of as die skuld ten opsigte van salaris of arbeidsloon aan u toekom en, as die beslaglegging daarop u sonder voldoende middele sou laat om u en diegene wat van u afhanklik is, te onderhou, behoort u voor die Hof te verskyn en die feite te bewys; maar u kan nie op enige ander punt gehoor word nie.

N.B.—Wanneer die bevel strek tot die beslaglegging van toekomstige of oplopende verdienste, word die woorde "Skuldvorderinge verskuldig" in die negende en tiende reëls van voorgaande vorm, vervang deur die woorde "gelde wat betaalbaar word", en die woorde "op die dag van iedere maand (of week) hierna, die som van £..... betaal totdat voormelde som van £..... tesame met £....., die koste hiervan, afbetaal sal wees" in die plek gestel van die woorde "voormelde som" in reël negentien tot en met die woord "betaal" in reël een-en-twintig.

No. 43. — Ooreenkoms om nie op Appèl te gaan nie.

(Aanhef.)

Ons (die onderskeidelike prokureurs van) die bogenoemde eiser en verweerder, kom hiermee, ingevolge die bepalinge van artikel *nege-en-sewentig* van die Magistraatshowe Proklamasie 1935, ooreen, dat die uitspraak van die Hof voormeld in bogenoemde saak finaal en beslissend sal wees.

(Afsluiting.)

No. 44. — Applikasie vir Verhoor met Assessore.

(Aanhef.)

Die Eiser (of Verweerder) doen hiermee aansoek dat bogenoemde saak met behulp van assessore verhoor word. of (1)

Die Verweerder (of Eiser) stem toe in die aansoek en in die aanstelling van die volgende assessor:—

A.B. van, ens.

.....
Eiser of Eiser se Prokureur.

.....
Verweerder of Verweerder se Prokureur.

of (2)

Die Verweerder (of Eiser) stem toe in die aansoek, maar die partye kan nie ooreenkom ten opsigte van die keuse van assessore nie:

Weshalwe die partye die Hof versoek om 'n assessor (of twee assessore) met uitsluiting van die volgende assessore aan te stel:— (vermeld die name van die assessore teen wie die een of ander party beswaar maak).

.....
Eiser of Eiser se Prokureur.

.....
Verweerder of Verweerder se Prokureur.

of (3)

Die Verweerder (of Eiser) verset hom teen die aansoek: Weshalwe die Eiser (of Verweerder) hierdie applikasie op die rol geplaas het vir verhoor op die dag van 19..... om middag.

.....
Eiser (of Verweerder) of Eiser (of Verweerder) se Prokureur.

Aan die Klerk van die Hof en

Aan die Verweerder (of Eiser).

Aansoek toegestaan op die dag van geweier

..... 19.....

Assessore aangestel:— A. B. ens.

.....
Klerk van die Hof.

No. 45. — Dagvaring aan Assessor.

(Aanhef.)

Meneer,

U word hiermee opgeroep om in hierdie Hof op die dag van 19..... om m. te verskyn en om as Assessor in bogenoemde saak te dien en die Hof behulpsaam te wees ooreenkomstig artikel *drie-en-dertig* van die Magistraatshowe Proklamasie 1935.

Ek het die eer te wees,
u dienswillige Dienaar,

.....
Klerk van die Hof.

Aan A. B. ens.

46. — Notice of Abandonment of Part of Claim, etc.

(Heading.)

TAKE NOTICE that the plaintiff (or, defendant) hereby does the undermentioned claim (or, objection, exception, etc., as the case may be) set up by him in his summons (or, plea, reply, etc., as the case may be).

Particulars:—

(Conclusion.)

No. 47. — Commission De Bene Esse.

(Heading.)

of

ETING.

Inder and by virtue of the authority vested in mection forty-nine of the Magistrate's Courts Proclamation, I do hereby commit to you full power and authority Commissioner of this Court to examine G....., of (and such other issues as either of the parties, to this suit may desire all) and to take the evidence on oath of the said ss(es) in the above suit now pending in this court.

Given under my hand at this day of, 19.....

(Assistant) Magistrate.

No. 48. — Request to Inspect Record.

Magistrate's Court, District of, 19.....

Space for Revenue Stamps.

I apply to inspect Record No. (or, if applicant does not know the Registered No.)

I apply to inspect the record of the case between Plaintiff, and Defendant,

to begin with the month of, 19.....

(Signed)

If the applicant is a party to the case, or the attorney for a party, his capacity should be stated after his name.

No. 49. — Criminal Record Book.

Address description used.	Charge.	Dates of Hearing.	Result of each Hearing.	Remarks.

SECOND ANNEXURE.

Table "A".

(1) Costs shall be taxed on the ordinary scale if the amount in dispute exceeds the sum of £50; or if the court has awarded costs on the higher scale, in either such event shall be taxed on the higher scale.

(2) For the purpose of computing costs, the expression "amount in dispute" shall mean, where costs are awarded to the plaintiff, the amount of value of the judgment; where costs are awarded to the defendant, the amount of the claim, in each case inclusive of interest, but exclusive of costs.

(3) Where the amount in dispute is not apparent on the face of the proceedings, costs shall be computed at the ordinary rate; but the court may, on the application of a party, assess the amount in dispute.

No. 46. — Kennisgewing van Afstand van Gedeelte van Vordering, ens.

(Aanhef.)

NEEM KENNIS dat die eiser (of verweerder) hiermee afstand doen deur van ondervermelde vordering (of, objeksie, eksepsie, verdediging, soos die geval mag wees) deur hom in sy dagwaring (of, pleit, repliek, ens., soos die geval mag wees) ingestel (of opgewerp).

Besonderhede:—

(Afsluiting.)

No. 47. — Kommissie De Bene Esse.

(Aanhef.)

Aan

van

SALUUT.

Ingevolge en kragtens die bevoegdhede my verleen onder artikel nege-en-veertig van die Magistraatshowe Proklamasie, 1935, wys ek aan u volle mag en bevoegdheid toe, om as Kommissaris van hierdie Hof om G..... H..... van (en sulke ander getuies as die een of ander party in hierdie saak mag wens te roep) te ondervra en die verklaringe van genoemde getuie(s) in voormelde saak, tans in hierdie Hof hangende, onder eed af te neem.

Aldus gedoen te op die dag van 19.....

(Assistent) Magistraat.

No. 48. — Versoek om Insae van Prosesstukke te neem.

Magistraatshof, Distrik, 19.....

Ruimte vir Inkomsteseëls.

Ek versoek hiermee insae van Akte No. (of, as die applikant die Registernommer nie ken nie).

Ek versoek hiermee insae van die prosesstukke in die saak tussen

....., Eiser, en Verweerder,

Opsoeking te begin met die maand 19..... (Oeteken)

As die applikant 'n party in die saak of die prokureur van sodanige party is, moet sy hoedanigheid na sy handtekening vermeld word.

No. 49. — Strafregeterlike Sakeboek.

Naam, Adres en Beskywing van Beskuldigde.	Aanklag.	Datums van Verhoor.	Uitslag van elke Verhoor.	Opmerkinge.

TWEEDE AANHANGSEL.

Table "A".

1. (1) Koste moet getakseer word volgens die gewone skaal, tensy:—

(a) die bedrag in geskil die som van £50 te bowe gaan; of

(b) die hof koste op die hoër skaal toegeken het,

en in albei gevalle moet koste op die hoër skaal getakseer word.

(2) Vir die doeleinde van berekening van koste, beteken die uitdrukking "bedrag in geskil", wanneer koste aan die eiser toegeken word, die bedrag of die waarde van die vonnis; wanneer koste aan die verweerder toegeken word, die bedrag of die waarde van die eis; in iedere geval met insluiting van rente, dog met uitsluiting van koste.

(3) Wanneer die bedrag in geskil nie uit die stukke blyk nie, moet koste op die laer skaal bereken word; dog die hof kan, op die applikasie van enige van die partye, die bedrag in geskil vasstel.

(4) Claims for ejectment shall be computed at two months' rent of the premises.

(5) The rate at which costs are computed shall not be increased by reason of any claim for confirmation of any interdict or other interlocutory order.

2. (1) Fees to counsel shall be allowable on taxation only in cases where costs are taxable on the higher scale.

(2) Fees to counsel may not be allowed on taxation unless payment of them is vouched for by the signature of counsel.

3. (1) Where the amount allowed for an item is specified, the amount is inclusive of all necessary copies, attendances and services (other than services through the messenger) in connection therewith.

(2) Where the amount allowed for an item is left blank —

- (a) the drawing of documents shall be allowed at 2s. for each folio;
- (b) copies for filing and service shall also be allowed;
- (c) service shall be allowed at 2s. 6d. for each necessary service;
- (d) where any document appears to the court to be unnecessarily prolix, the court may disallow all or any part of the charge therefor.

(3) A folio is 100 written or printed words or figures.

(4) The charge allowed for copying or perusing, where allowable is 6d. per folio.

(5) Where there are more defendants than one, 2s. 6d. shall be added for each additional defendant, not exceeding eight in all, to each of the items Nos. 1, 2, 5, 9, 30, 43, 45, 47, 59, 62, 64 and 65.

(6) Where the judgment is payable by instalments, 5 per cent shall be allowed as a fee for collection on each instalment.

4. "Demand" means a notice in writing to the debtor from the creditor's attorney, sent to the debtor in one or other of the manners provided for service of process (including registered post, without restriction as to locality or postal address) demanding payment of the debt within a reasonable time thereafter, whether such demand was or was not required by law before action.

No. 1. — *Undefended Actions.*

1. Summons:—

- (a) If without "demand" £0 15 0
- (b) If after "demand" 1 0 0

2. Judgment 0 10 0

NOTE. — Where the matter in issue exceeds £50 the fees under 1 and 2 shall be increased by one-fourth for every £50 or part of £50 exceeding the first £50.

No. 2. — *Defended Actions.*
Ordinary Fees.

ITEM.	AMOUNT.	
	Ordinary Scale.	Higher Scale.
3. Instructions to sue or defend	£0 5 0	£0 10 0
4. Demand	5 0	5 0
5. Summons	10 0	1 0 0
6. Appearance	5 0	5 0
7. Claim in Reconvention	10 0	15 0
8. Plea	10 0	15 0
9. Reply	5 0	7 6
10. Request for further particulars	5 0	5 0
11. Further particulars		
12. Consent to adjournment or extension of time	5 0	5 0
13. Attendance applying for costs on notice of discontinuance	10 0	10 0

(4) Eise vir ontruiming moet bereken word teen twee maande se huur van die perseel.

(5) Die skaal waarop koste bereken word, moet nie verhoog word op grond van enige eis vir bekragting van 'n interdik of ander interlokutore bevel nie.

2. (1) Honoraria aan advokate kan alleen dan by taksasie toegestaan word wanneer koste op die hoër skaal takseerbaar is.

(2) Honorariums aan advokate kan nie op taksasie toegestaan word nie, tensy die betaling daarvan bevestig is deur die handtekening van die advokaat.

3. (1) Wanneer die bedrag toegestaan vir 'n pos op gegee is, dan sluit die bedrag in alle nodige afskrifte, op wagtinge en dieninge (ander as dieninge deur die bode) in verband daarmee.

(2) Wanneer die bedrag toegestaan vir 'n pos oopge-
laat is:—

- (a) word die opstelling van stukke teen 2s. per folio toegestaan;
- (b) word afskrifte vir indiening en diening ook toegestaan;
- (c) word diening teen 2s. 6d. vir elke nodige diening toegestaan;
- (d) wanneer 'n stuk onnodig langdradig aan die hof voorkom, kan die hof alle of enige deel van die onkoste in verband daarmee afkeur.

(3) 'n Folio is 100 geskrywe of gedrukte woorde of syfers.

(4) Die koste toegestaan vir die maak van afskrifte of die deurlees van stukke, wanneer toestaanbaar, is 6d. per folio.

(5) Wanneer daar meer as een verweerder is, moet by elkeen van die poste Nos. 1, 2, 5, 9, 30, 43, 45, 47, 59, 62, 64 en 65 die som van 2s. 6d. gevoeg word ten opsigte van elke hykomende verweerder, ag in die geheel nie te bowe gaande nie.

(6) Wanneer die bedrag van die vonnis in paaiement betaalbaar is, word 5 persent toegestaan as invorderingsfooie op elke paaiement.

4. "Aanmaning" beteken 'n skriftelike kennisgewing aan die skuldenaar van die skuldeiser se prokureur, aan die skuldenaar gestuur op een of ander van die wyses voorgeskryf vir die diening van prosesstukke (met inbegrip van geregistreeerde briewe, sonder beperking ten opsigte van plek of posadres) waarin die betaling van die skuld binne 'n redelike tyd daarna gevorder word, onverskillig of sodanige aanmaning volgens wet vereis word voor instelling van aksie al dan nie.

No. 1. — *Onverdedigde Sake.*

1. Dagvaring:—

- (a) As sonder "aanmaning" £0 15 0
- (b) As na "aanmaning" 1 0 0

2. Vonnis 0 10 0

N.B.—Wanneer die saak in geskil £50 te bowe gaan, moet die fooie onder 1 en 2 met een-vierde vermeerder word ten opsigte van elke £50 of elke deel van £50 bo die eerste £50.

No. 2. — *Verdedigde Sake.*
Gewone Fooie.

POS.	BEDRAG.	
	Gewone Skaal.	Hoër Skaal.
3. Opdrag om te dagvaar of te verdedig	£0 5 0	£0 10 0
4. Aanmaning	5 0	5 0
5. Dagvaring	10 0	1 0 0
6. Aantekening van verdediging	5 0	5 0
7. Eis in rekonvensie	10 0	15 0
8. Pleit	10 0	15 0
9. Repliek	5 0	7 6
10. Versoek om verdere besonderhede	5 0	5 0
11. Verdere besonderhede		
12. Toestemming tot verdaging of tydsverlenging	5 0	5 0
13. Opwagting om vir koste te vra na kennisgewing van staking	10 0	10 0

14. Schedule of documents		
15. Production of documents for inspection	5 0	5 0
16. Inspecting documents	7 6	7 6
17. Subpoena (not more than one for each four witnesses called)	5 0	5 0
18. Each copy for service	1 0	1 0
19. Notice to produce		
20. Interrogatories		
21. Taking proofs of witnesses (each)	5 0	10 0
22. Notice of trial	5 0	5 0
23. Preparing for trial (if counsel not employed)	Nil	1 0 0
24. Attending Court when action in list for trial but adjourned	10 0	10 0
25. Attending Court on trial (for each two hours or part of two hours):		
(a) Where counsel not employed	1 1 0	1 11 6
(b) Where counsel employed	10 0	15 0
26. Attending Court to hear reserved judgment	10 0	10 0
27. Letters, etc.	10 0	1 0 0
28. Agreement not to appeal	5 0	5 0

Objections, Exceptions, etc.

29. Particulars of:—		
(a) Objections and exceptions	£0 5 0	
(b) Special defences and grounds of stay	5 0	
30. Notice of set-down	5 0	
31. Attending Court on hearing	1 0 0	

Applications for Summary Judgment.

32. Inclusive fee (covering all matters incidental to application)	1 10 0	
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Interlocutory Application.

33. Application	5 0	
34. Service (each)	2 6	
35. Attending on hearing	10 0	

No. 3. — Miscellaneous.

Arrest, Interdict, Garnishee, and Other Ex parte Orders.

36. Instructions	5 0	
37. Affidavit	5 0	
38. Attendance applying <i>ex parte</i>	5 0	
39. <i>Ex parte</i> order	2 6	
40. Copy order and affidavit for each service	2 6	
41. Instructions to show cause against	5 0	
42. Perusing documents served	5 0	
43. Notice of application to show cause and service (if necessary)	5 0	
44. Attendance on return of order:—		
(a) If contested (hearing fee as on the trial of an action)		
(b) If uncontested	10 0	

Application for Civil Imprisonment.

45. Summons	5 0	
46. Attending Court on hearing	1 0 0	
47. Warrant of arrest	10 0	

Interpleader Summons.

48. Instructions	5 0	
49. Summons (if not sued out by the messenger)	5 0	
50. Copies for service (each)	2 6	
51. Affidavits	5 0	
52. Perusing affidavits	5 0	
53. Attending Court on return of summons	10 0	
54. Attending Court on trial of interpleader issue (hearing fee as on the trial of an action)		

Application to Review Judgment or Order.

55. Instructions and searching record	10 0	
56. Application and service	10 0	
57. Instructions to oppose	5 0	
58. Attending Court on hearing:		
(a) If uncontested	10 0	
(b) If contested (hearing fee as on trial of an action)		

Taxation of Costs.

59. Bill of Costs	5 0	
60. Notice of taxation and service	3 0	
61. Attending taxation, on each £ or part of £ allowed	1 0	
62. Notice of application for review of taxation and service	3 0	
63. Attending on review of taxation	5 0	

14. Lys van dokumente		
15. Voorlegging van dokumente ter insae	5 0	5 0
16. Insae van dokumente	7 6	7 6
17. Subpoena (nie meer as een ten opsigte van elke vier getuies nie)	5 0	5 0
18. Elke afskrif vir diening	1 0	1 0
19. Kennisgewing om voor te lê		
20. Vraagpunte		
21. Afneem van verklaringe van getuies (elkeen)	5 0	10 0
22. Kennisgewing van verhoor	5 0	5 0
23. Voorbereiding vir verhoor (as 'n advokaat nie geïnstrueer is nie)	niks	1 0 0
24. Opwagting by die Hof wanneer saak op die rol is vir verhoor maar uitgestel word	10 0	10 0
25. Opwagting by die Hof by verhoor (vir elke twee ure of deel van twee ure):—		
(a) Wanneer 'n advokaat nie verskyn nie	1 1 0	1 11 6
(b) Wanneer 'n advokaat verskyn	10 0	15 0
26. Opwagting by die Hof om 'n voorbehoue uitspraak aan te hoor	10 0	10 0
27. Briewe, ens.	10 0	1 0 0
28. Ooreenkoms om nie op appèl te gaan nie	5 0	5 0

Objeksies, Eksepsies, ens.

29. Besonderhede van:—		
(a) Objeksies en Eksepsies	£0 5 0	
(b) Spesiale verdediginge en gronde van staking	5 0	
30. Kennisgewing van plasing op die rol	5 0	
31. Opwagting by die Hof by die behandeling	1 0 0	

Aansoek vir Summiere Vonnis.

32. Volle fooi (dit dek alle dienste verbonde aan die applikasie)	1 10 0	
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Interlokutore Applikasie.

33. Applikasie	5 0	
34. Diening (elkeen)	2 6	
35. Opwagting by die behandeling	10 0	

No. 3. — Gemengde Onderwerpe.

Arres, Interdik, Skuldbeslag en Ander Ex parte Bevele.

36. Opdrag	5 0	
37. Beëdigde Verklaring	5 0	
38. Opwagting by die Hof in verband met 'n applikasie <i>ex parte</i> gemaak	5 0	
39. <i>Ex parte</i> bevel	2 6	
40. Afskrif bevel en beëdigde verklaring vir elke diening	2 6	
41. Opdrag om gronde aan te voer teen	5 0	
42. Deurlees van gediende stukke	5 0	
43. Kennisgewing van applikasie om gronde aan te voer en diening (indien nodig)	5 0	
44. Opwagting op dienende dag van bevel:—		
(a) As bestrede (dieselfde fooi as by die verhoor van 'n aksie)		
(b) As onbestrede	10 0	

Aansoek vir Siviele Gyseling.

45. Dagvaring	5 0	
46. Opwagting by die Hof vir behandeling	1 0 0	
47. Lasbrief tot ingyselingstelling	10 0	

Tussenpleit-Dagvaring.

48. Opdrag	5 0	
49. Dagvaring (as nie deur die bode uitgeneem nie)	5 0	
50. Afskrifte vir diening (elkeen)	2 6	
51. Beëdigde verklaringe	5 0	
52. Deurlees van beëdigde verklaringe	5 0	
53. Opwagting by die Hof op dag waarop die dagvaring dien	10 0	
54. Opwagting by die Hof vir die verhoor van die tussenpleit geskil (dieselfde fooi as by die verhoor van 'n aksie).		

Aansoek vir Hersiening van Vonnis of Bevel.

55. Opdrag en nagaan van die rekord	10 0	
56. Applikasie en diening	10 0	
57. Opdrag om te bestry	5 0	
58. Opwagting by die Hof by die behandeling:—		
(a) As onbestrede	10 0	
(b) As bestrede (dieselfde fooi as by verhoor van 'n aksie).		

Taksasie van Koste.

59. Kosterekening	5 0	
60. Kennisgewing van taksasie en diening	3 0	
61. Opwagting by taksasie, op elke £1 of deel van £1	1 0	
62. Kennisgewing van applikasie vir hersiening van taksasie en diening	3 0	
63. Opwagting by hersiening van taksasie	5 0	

Execution.

64. Issue of warrant of execution, ejection, arrest, delivery up of possession, etc. (inclusive fee)	7 6
65. Security for restitution, where necessary	10 0
No. 4. — <i>Where Counsel is employed.</i>	
66. Instructions for brief on interlocutory application	10 0
67. Instructions for brief on trial	1 0 0
68. Drawing brief on application	10 0
69. Drawing brief on trial	2 0 0

No. 5. — *Fees to Counsel.*

70. With brief, not to exceed	7 7 0
71. In any Court held more than 25 miles from Windhoek or more than 5 miles from the nearest railway station, there may be allowed, by special order of the Court, a travelling fee (in addition to the fee on brief) not exceeding	5 5 0
72. On consultation, if the fee was marked on the brief when delivered and the consultation was necessary	1 1 0
73. For every day exceeding one on which evidence is taken or arguments heard a refresher not exceeding	5 5 0
74. Where the trial is adjourned upon payment of the costs of the day, as part of such costs (only by the party requesting such adjournment)	1 1 0
75. Drawing pleadings	1 1 0

*Table "B".**Tariff for the Messenger of the Court.*

1. (1) Service (or attempted) of summons, subpoena, notice, order, or other document not being a document mentioned in Item 3 (To include registration and return)	3 0
(2) Notification in accordance with Order II, rule 5, to a party who has sued out process	1 0
2. (1) Travelling allowance — 3s. per hour for the first hour, and 5s. for every additional hour or part thereof.	
(2) (a) Unless the railway is the least expensive mode of travelling which circumstances permit consistent with due expedition, 6 miles shall be allowed to the hour.	
(b) If the railway is the least expensive mode of travelling which circumstances permit consistent with due expedition, there shall be allowed the time occupied by the fastest train between the two stations concerned, plus one hour for every 6 miles between the place of service and the nearest station and plus, further, one hour.	
3. For the execution of any warrant, interdict or garnishee order	10 6
(a) This fee shall, in all cases, include registration and return and notice to the party issuing; and shall be payable by the execution creditor on the lodgment of the process with the Messenger, and shall not be recoverable by him from the Messenger if the process is withdrawn or stopped or proves abortive.	
(b) Where the process is one of arrest or ejection, a further fee of 10s. 6d. shall be paid after execution for each person beyond one named in the process and in fact arrested, or for each person beyond one named or referred to in the process of ejection and in fact ejected from separate premises.	
4. (1) Inventory, per 100 words or part thereof	2 6
(2) Additional copy for every judgment debtor beyond one, if actually made, at half the above rate.	
5. Security bond	10 0
6. (a) Possession, per day or part thereof to be reckoned from the hour at which the attachment actually took place to the hour at which possession was given up or removal took place.	7 6
Also, travelling allowance: to include board in every case.	

Eksekusie.

64. Uitreiking van lasbrief tot eksekusie, ontruiming, arres, inbesitstelling, ens. (volle fooi)	7 6
65. Sekuriteit vir teruggawe, wanneer nodig	10 0
No. 4. — <i>Wanneer 'n Advokaat Verskyn.</i>	
66. Instruksies aangaande opdrag in interlokutore applikasie	10 0
67. Instruksies aangaande opdrag vir verhoor	1 0 0
68. Opstelling van opdrag vir 'n applikasie	10 0
69. Opstelling van opdrag vir verhoor	2 0 0
No. 5. — <i>Honorariums aan Advokate.</i>	
70. Met opdrag, nie meer as	7 7 0
71. In enige Hof verder as 25 myl van Windhoek of verder as 5 myl van die naaste spoorwegstasie gehou, kan daar, deur spesiale bevel van die Hof, 'n reistoelae toegestaan word (bo en behalwe die honorarium op die opdrag) van hoogstens	5 5 0
72. Vir raadpleging, as die honorarium op die opdrag aangeteken was by oorhandiging daarvan, en as die raadpleging nodig was	1 1 0
73. Vir elke dag, na die eerste, waarop getuienis afgeneem of argumente gehoor word, 'n ververser van hoogstens	5 5 0
74. Wanneer die verhoor verdaag word teen betaling van die koste van die dag, as deel van sodanige koste (alleen deur die party wat sodanige verdagting aanvra)	1 1 0
75. Opstelling van pleidooie	1 1 0

*Tabel "B".**Tarief vir die Geregsbode.*

1. (1) Diening (of poging daartoe) van dagvaring, subpoena, kennisgewing, bevel skrif of 'n stuk ander as dié genoem in Pos 3. (Hierby word ingesluit registrasie en relaas)	3 0
(2) Kennisgewing ingevolge Order II, reël 5, aan 'n party wat 'n prosesstuk uitgeneem het	1 0
2. (1) Reistoelae — 3s. per uur vir die eerste uur, en 5s. vir elke verdere uur of deel daarvan.	
(2) (a) Tensy die spoorweg, met die oog op koste, die billikste vervoermiddel is wat onder die omstandighede bestaanbaar is met dienstige spoed, word 'n uur teen 6 myl bereken.	
(b) As die spoorweg, met die oog op koste, die billikste vervoermiddel is wat onder die omstandighede bestaanbaar is met dienstige spoed, dan word toegestaan die tyd geneem deur die snelste trein tussen die twee betrokke stasies, plus een uur ten opsigte van elke 6 myl tussen die plek van diening en die naaste stasie, plus een verdere uur.	
3. Vir die uitvoering van 'n lasbrief, interdiak, of skuldbeslagorder	10 6
(a) Hierdie fooi sluit, in alle gevalle, registrasie en relaas en kennisgewing aan die uitreikende party in; en is betaalbaar deur die eksekusie-skuldeiser by aflewering van die prosesstuk aan die Bode, en kan nie deur hom van die Bode teruggeëis word nie, as die prosesstuk teruggetrek of stopgesit word of 'n mislukking blyk te wees.	
(b) Wanneer die prosesstuk vir arres of ontruiming is, moet 'n verdere fooi van 10s. 6d. betaal word, na die uitvoering ten opsigte van elke verdere persoon, na die eerste wat in die prosesstuk genoem en in werklikheid gearrester is, of ten opsigte van elke persoon, na die eerste wat genoem of na wie verwys word in die prosesstuk en wat in werklikheid uit afsonderlike persele verwyder is.	
4. (1) Inventaris, per 100 woorde of deel daarvan	2 6
(2) Addisionele afskrif vir elke verdere vonnis-skuldenaar na die eerste, as werklik gemaak, teen die helfte van voormelde tarief.	
5. Borgakte	10 0
6. (a) Besithouding, per dag of deel daarvan, bereken te word vanaf die uur waarop die beslaglegging werklik plaasgevind het tot die uur waarop die besit opgegee of die goed verwyder is. Ook reistoelae: met inbegrip van losies in elke geval.	7 6

- (b) If live stock is attached, only the necessary expenses of herding and preserving the stock shall be allowed.
- (c) If the goods are removed and stored, only the costs of removal and storage shall be allowed.
7. Drawing advertisement for sale 2 0
8. Where a warrant of execution or garnishee order is paid in full or in part on presentation or moneys are attached in execution against movables, 1 per cent on the amount so paid or attached.
9. Where the warrant of execution is withdrawn, or the debtor's estate is sequestrated after attachment, but before sale, 1 per cent on the value of the goods attached.
10. Where the warrant of execution against movables is completed by sale 2½ per cent on the amount (not exceeding the amount of the judgment debts and costs) realised.
11. When immovable property has been attached in execution and is not sold, either by reason of the warrant having been withdrawn, or of the estate of the execution debtor having been sequestrated, the expenses in connection with the attempted sale and the sum of £22.0 shall be payable to the messenger or to the person in fact authorised to act as auctioneer as the case may be.
12. When an execution against immovable property is completed by sale the following auctioneer's fees shall be allowed on the proceeds of the sale:—
- (a) if the messenger acted as auctioneer, 1 per cent.
- (b) If an auctioneer is employed as provided by Order No. XXV, Rule 10 (5):
- (i) to the auctioneer 2 per cent and
- (ii) to the messenger ½ per cent.
13. In addition to the fees allowed by Items Nos. 9 to 12 there shall be allowed the sum actually and reasonably paid by the messenger or the auctioneer employed for printing, advertising and giving publicity to any sale or intended sale in execution.
14. (1) Travelling allowance shall not be payable unless it is necessary for the messenger to go more than two miles from the court house.
- (2) Where it is necessary for the messenger to go more than such distance in order to discharge any official duty, the travelling allowance prescribed shall be payable for going and returning, and shall be calculated from the court house at which defendant is summoned to appear.
- (3) Travelling allowance includes all the expenses incurred in travelling, e.g. train fare.
- (4) Travelling allowance shall be calculated on the basis that the messenger has used the least expensive mode of travelling which the circumstances permit consistent with due expedition.
- (5) Travelling allowance shall be calculated on each separate service, except that where more services than one may be done on the same journey, the distance to the first place of service may be brought into account only once, and shall be apportioned equally to the respective services, and the distance from the first place of service to the remaining places of service shall similarly be apportioned equally to the remaining services.
- (6) Travelling allowance may not be charged unless the messenger has, in fact, necessarily travelled the distance in question.
- (7) When it is necessary for a messenger to convey any person under arrest for any distance, any travelling allowance payable to the messenger in respect of that portion of his journey in which he was accompanied by such person shall be doubled.
- (8) Where an Indian or native deputy messenger is employed the travelling allowance shall be one third of that specified in the tariff.
15. (1) "Possession" means actual physical possession by a person employed and paid by the messenger, whose sole work for the time being is to remain on the premises where the goods have been attached, and who, in fact, remains in possession for the period for which possession is charged.
- (2) "Cost of removal" means the amount actually and necessarily disbursed.
- (b) As lewende hawe in beslag geneem word, word slegs die noodsaaklike uitgawes ten opsigte van die oppas en bewaring van die vee toegestaan.
- (c) As die goedere verwyder en opgeberg word, word slegs die onkoste van verwydering en opberging toegestaan.
7. Opstelling van advertensie van die verkoping 2 0
8. Wanneer 'n lasbrief tot eksekusie of skuldbeslagorder by aanbieding ten volle of gedeeltelik betaal word, of gelde in beslag geneem word by 'n eksekusie teen roerende goedere, 1 persent op die bedrag aldus betaal of in beslag geneem.
9. Wanneer die lasbrief tot eksekusie teruggetrek word, of die boedel van die skuldenaar na die beslaglegging dog voor die verkoping gesekwestreer word, 1 persent op die waarde van die goedere onder beslag.
10. Wanneer die lasbrief tot eksekusie teen roerende goedere deur verkoping voltrek word, 2½ persent op die bedrag (nie te bowe gaande die bedrag van die vonniskulde en koste) deur die verkoping opgebring nie.
11. Wanneer eksekutoriale beslag gelê is op onroerende goedere en die goedere nie verkoop word nie, hetsy omdat die lasbrief teruggetrek is of die boedel van die eksekusie-skuldenaar gesekwestreer is, dan is aan die bode of aan die persoon wat werklik gemagtig was om as venduafslaer op te tree, soos die geval mag wees, die uitgawes in verband met die gepoogde verkoping en die som van £22.0 betaalbaar.
12. Wanneer 'n eksekusie teen onroerende goedere deur verkoping voltrek word, dan moet die volgende afslersfooie toegestaan word op die oprings van die verkoping:—
- (a) as die bode as afslaer optree, 1 persent;
- (b) as 'n vendu-afslaer aangestel is, soos bepaal in Order XXV, reël 10 (5):
- (i) aan die vendu-afslaer 2 persent, en
- (ii) aan die bode ½ persent.
13. Bo en behalwe die fooie toegestaan in Poste Nos. 9 tot 12, moet die som toegestaan word wat werklik en redelik deur die bode of die aangestelde vendu-afslaer betaal is vir drukwerk, advertensies en bekendmaking van 'n verkoping of voorgenome verkoping in eksekusie.
14. (1) Reistoelae word nie betaal nie, tensy dit nodig is vir die bode om verder as twee myl van die geregsgebou te gaan.
- (2) Wanneer dit vir die bode nodig is om verder as sodanige afstand te gaan, ten einde sy amptelike pligte uit te voer, is die voorgeskrywe reistoelae vir die heen- en terugreis betaalbaar, en word bereken vanaf die geregsgebou waar die verweerder gedagvaar is om te verskyn.
- (3) Reistoelae sluit in alle uitgawes in verband met die reis gemaak bv. spoorweg-reiskaartjies.
- (4) Die reistoelae moet bereken word op die grondslag dat die bode van die billikste vervoermiddel gebruik gemaak het, wat onder die omstandighede bestaanbaar is met dienstige spoed.
- (5) Die reistoelae moet vir iedere afsonderlike diening bereken word, behalwe dat, wanneer meer as een diening op dieselfde reis uitgevoer kan word, die afstand tot by die eerste plek van diening slegs eenmaal in rekening gebring kan word, en ewerediglik verdeel moet word tussen die onderskeidelike dieninge, en die afstand van die eerste plek van diening tot na die orige plekke van diening gelykerwys ewerediglik verdeel moet word tussen die orige dieninge.
- (6) Reistoelae kan nie in rekening gebring word, tensy die bode inderdaad en noodsaaklikerwys die betrokke afstand afgelê het nie.
- (7) Wanneer die bode genoodsaak is om 'n persoon onder arres oor enige afstand te vervoer, word enige reistoelae, aan die bode betaalbaar ten opsigte van daardie deel van die reis waarop hy deur sodanige persoon vergesel was, verdubbel.
- (8) Wanneer van die dienste van 'n Indiese of natuurle adjunk-bode gebruik gemaak word, bedra die reistoelae een-derde van dié wat in die tarief voorgeskryf is.
15. (1) "Besithouding" beteken daadwerklik liggaamlike besit deur 'n persoon, in diens van en betaal deur die bode, wie se uitsluitlike werk gedurende die betrokke tyd is om op die perseel waar die goedere onder beslag is, te bly en wat, inderdaad, in besit bly gedurende die tydperk ten opsigte waarvan die besit by die onkoste in rekening gebring word.
- (2) "Koste van verwydering" beteken die bedrag werklik en noodsaaklikerwys uitgegee.

- (3) "Cost of storage" means the amount actually and necessarily paid for storage if the goods were stored with a third person, or, if the messenger provided the storage, then such an amount as would fairly be allowable in the ordinary course of business if the goods were stored with a third person.
- 16. Where the messenger is in possession under more than one warrant of execution, he may charge for only one possession and such possession shall, as far as possible, be apportioned *pro rata* to the several warrants; but each execution creditor shall be jointly and severally liable for such possession to an amount not exceeding what would have been due under his execution if it had stood alone.
- 17. Fees payable on the value of goods attached or on the proceeds of the sale of goods in execution shall not be chargeable on such value or proceeds so far as they are in excess of the amount of the warrant.
- 18. In addition to the fees prescribed, the messenger shall be entitled to charge the amount of postage paid by him.
- 19. The messenger's fees and expenses of executing a garnishee order shall be added to the amount to be recovered under the order, and shall be chargeable against the judgment debtor.

Table "C".

Fees to Assessors.

- 1. For every attendance when the case is wholly or partially heard, £1.1.0, for each hour or part of an hour of such attendance, but not to be less than £3.3.0, or more than £5.5.0 for every such attendance.
- 2. For every attendance when the case is not heard, but is postponed, or settled, at the above rate, but minimum to be £1.1.0.
- 3. Attendance to be reckoned from the hour for which the assessor is summoned to the hour at which judgment is given or reserved, or to the hour at which the assessor is expressly released by the Court from further attendance, whichever shall be the earlier.
- 4. When the case is adjourned, postponed or settled, attendances to be reckoned from the hour for which the assessor is summoned to the hour at which the case is adjourned, postponed or settled or to the hour at which the assessor is expressly released by the court from further attendance, whichever shall be the earlier.
- 5. An assessor who has neither a residence nor a place of business within three miles of the courthouse shall also be entitled to a travelling allowance at the rate of one shilling a mile for each journey actually and necessarily taken between the court house and his residence or place of business.

Table "D".

Tariff of Court Fees.

No.	Document.	Amount.
1.	Summons commencing an action:— (1) (a) On each £25 or part of £25 of the amount of the claim or the value of the matter in dispute where such value is claimed and stated in the summons (b) Otherwise (2) On each claim for ejectment or for confirmation of an interdict or other interlocutory order To be calculated on each claim in the summons but not upon any but the largest of any alternative claims	£0 1 0 2 0 2 0
2.	Statement of particulars of a claim in reconvention: fees as on a summons commencing an action.	1 0
3.	Any other summons except an interpleader summons at the instance of the messenger	1 0
4.	Notice of application (other than an application for summary judgment)	1 0
5.	Order made <i>ex parte</i>	2 6
6.	Subpoena	1 0

- (3) "Koste van opberging" beteken die bedrag werklik en noodsaaklikerwys betaal aan bergloon, as die goedere by 'n derde persoon obgeberg was, of, as die bode die bergplek verskaf, dan so 'n bedrag in die gewone loop van besigheid toegestaan sou kan word, as die goedere by 'n derde persoon obgeberg was.
- 16. Wanneer die bode besit hou kragtens meer as een lasbrief van eksekusie, kan hy die onkoste van slegs een besithouding in rekening bring en sodanige onkoste moet, sover moontlik, *pro rata* verdeel word tussen die verskillende lasbriewe; maar elke eksekusie-skuldeiser is gesamentlik en afsonderlik vir sodanige onkoste aanspreeklik tot 'n bedrag nie te bowe gaande die bedrag waarvoor hy in verband met sy afsonderlike eksekusie aanspreeklik sou gewees het nie.
- 17. Fooie wat betaalbaar is op die waarde van die goedere onder beslag of op die opbrings van die verkoping van goedere in eksekusie kan nie in rekening gebring word nie op sodanige waarde of opbrings vir sover dit die bedrag van die lasbrief oortref.
- 18. Benewens die fooie voorgeskryf, is die bode geregtig om die bedrag deur hom uitbetaal aan posgeld, in rekening te bring.
- 19. Die fooie en uitgawe van die bode ten opsigte van die uitvoering van 'n skuldbeslagorder word bygevoeg tot die bedrag wat kragtens die bevel verhaal moet word, en kan teen die vonnis-skuldenaar in rekening gebring word.

Table „C”

Fooie aan Assessore.

- 1. Vir elke bywoning wanneer die saak geheel of gedeeltelike gehoor word, £1.1.0 vir elke uur of gedeelte van 'n uur van sodanige bywoning, dog nie minder as £3.3.0 of meer as £5.5.0 vir elke sodanige bywoning nie.
- 2. Vir elke bywoning wanneer die saak nie gehoor word nie, dog uitgestel of geskik word, teen voormelde tarief, maar met 'n minimum van £1.10.
- 3. Bywoning moet bereken word vanaf die uur waarvoor die assessor opgeroep is tot die uur waarop vonnis gevel of voorbehou word, of tot die uur waarop die assessor uitdruklik deur die Hof van verdere bywoning vrygestel is, al na gelang watter tydstop die vroegste is.
- 4. Wanneer die saak verdaag, uitgestel of geskik word, moet bywoninge bereken word vanaf die uur waarvoor die assessor opgeroep is, tot die uur waarop die saak verdaag, uitgestel of geskik is, of tot die uur waarop die assessor uitdruklik deur die hof van verdere bywoning vrygestel is, al na gelang watter die vroegste is.
- 5. 'n Assessor wat nóg 'n woonhuis nóg 'n besigheidsplek binne drie myl van die geregsgebou het, is ook geregtig op 'n reistoelae teen die tarief van een sjieling per myl ten opsigte van elke rit werklik en noodsaaklikerwys tussen die geregsgebou en sy woonhuis of besigheidsplek afgelé.

Table „D”

Tarief van Hoffooie.

No.	Dokument.	Bedrag.
1.	Dagvaring waarby saak aanhangig gemaak word:— (1) (a) Op elke £25 of gedeelte van £25 van die bedrag van die vordering of die waarde van die voorwerp in geskil, wanneer sodanige waarde gevorder en in die dagvaring vermeld is (b) in ander gevalle (2) Op elke vordering vir ontruiming van 'n perseel of vir bekragtiging van 'n interdik of ander interlokutore bevel Bereken te word op elke vordering in die dagvaring dog alleenlik op die hoogste van alternatiewe vorderinge.	£0 1 0 2 0 2 0
2.	Opgawe van besonderhede van 'n eis in rekonsensie: fooie dieselfde as op 'n dagvaring waarby 'n saak aanhangig gemaak word.	1 0
3.	Enige ander dagvaring met uitsondering van 'n tussenpleit-dagvaring op aanvraag van die bode	1 0
4.	Kennisgewing van aplikasie (met uitsondering van 'n aplikasie vir summiere vonnis)	1 0
5.	Bevel <i>ex parte</i> gegee	2 6
6.	Subpoena	1 0

7.	Notice of withdrawal, discontinuance of abandonment of any claim or defence	1 0	7.	Kennisgewing van terugtrekking, staking of prysgewing van 'n eis of verdediging	1 0
8.	Request for judgment in an undefended action: The same fees as were required on the summons commencing the action		8.	Aansoek vir vonnis in 'n onverdedigde saak: dieselfde fooie as vereis was op die dagvaring waardeur die saak aanhangig gemaak is	
9.	Notice of application for summary judgment:— Double the fees which were required on the summons commencing the action.		9.	Kennisgewing van applikasie vir summiere vonnis:— Dubbel die bedrag van fooie wat vereis was vir die dagvaring waardeur die saak aanhangig gemaak is	
10.	Notice of trial of any defended action:— (1) As regards any part of the claim not in dispute, fees at the same rate as required on the summons commencing the action; (2) As regards any disputed part of the claim, fees at three times the rate required on the summons commencing the action; AND also fees similarly calculated upon the claim in reconvention (if any).		10.	Kennisgewing van verhoor van 'n verdedigde aksie:— (1) Ten opsigte van enige deel van die vordering wat nie betwis word nie, fooie teen dieselfde tarief as voorgeskryf vir die dagvaring waardeur die saak aanhangig gemaak word. (2) Ten opsigte van enige betwiste deel van die vordering, fooie teen driemaal die tarief voorgeskryf vir die dagvaring waardeur die saak aanhangig gemaak word; EN ook fooie op gelyke wyse bereken, op die eis in rekonvensie (indien enige).	
11.	Warrant for the execution of any judgment, decree or order	1 0	11.	Lasbrief vir die uitvoering van 'n vonnis, dekreet of bevel	1 0
12.	Security bond, other than security <i>de restituerende</i>	2 6	12.	Borgakte met uitsondering van sekuriteit <i>de restituerende</i>	2 6
13.	Notice of appeal	7 6	13.	Kennisgewing van appèl	7 6
14.	Request to inspect any record — (a) if the number of the record is given (b) if the number of the record is not given, for every month required to be searched	1 0	14.	Versoek om insae van enige rekord te doen:— (a) as die nommer van die rekord aangedui word (b) as die nommer nie aangedui word nie, ten opsigte van elke maand gedurende welke deurgesoek moet word	1 0
15.	Request for a copy of a record to be made by the clerk of the court:— (a) for the first 100 words (b) for each additional 100 words or part thereof	1 0	15.	Aansoek vir 'n afskrif van 'n rekord wat deur die klerk van die hof gemaak moet word:— (a) vir die eerste 100 woorde (b) vir elke bykomende 100 woorde of deel daarvan	1 0
16.	For examining and certifying any copy of a record for each 100 words but not less than 1/- in any case.	3	16.	Vir die nagaan en sertifisering van 'n afskrif van 'n rekord, vir elke 100 woorde met 'n minimum van 1/- per saak.	0 3
17.	Bill of costs:— On each £1 or part of £1 allowed	6	17.	Kosterekening:— Op elke £1 of gedeelte van £1 toegestaan	0 6
18.	For the use of the services of the official interpreter for each fifteen minutes or fraction thereof during the interpreter's attendance in court, unless the interpretation was needed in one of the official languages and was for use of the court	1 0	18.	Vir die gebruik van die dienste van die amptelike tolk vir elke vyftien minute of deel daarvan gedurende die aanwesigheid van die tolk in die hof, tensy die vertolking in een van die offisiële tale benodig was en terwille van die hof geskied het	1 0

1. (1) Notwithstanding anything to the contrary in the Stamp Duties and Fees Act, 1911, as applied to the Territory by Proclamation No. 13 of 1915, and as amended from time to time, a notice of trial shall be received although the stamps required for any claim in reconvention be not affixed thereto; but no such claim in reconvention shall be tried until the stamps due thereon have been so affixed.

(2) A clerk of the court who has omitted to take any such fees shall be liable to pay and make good the amount thereof to the Treasury.

2. (1) Where any dispute arises between the clerk of the court and any person desiring to lodge any document as to whether the document is or is not sufficiently stamped, the question shall be referred to the magistrate, who shall decide the same in a summary manner.

(2) The magistrate's decision shall be final for the purpose of the action or matter in respect to which such document is lodged and shall discharge the clerk of the court from any responsibility under clause 1 (2) hereof; but such decision shall be without prejudice to any other rights of any person interested.

3. No charge shall be made for the inspection of the record of any case on the business day next succeeding the day on which judgment was delivered in such case nor to any party to any case at any time before seven days after judgment.

1. (1) Nieteenstaande enige teenoorgestelde bepalinge in "De Zegelwet, 1911", soos toegepas op die Gebied deur Proklamasie No. 13 van 1915, en soos van tyd tot tyd gewysig, moet 'n kennisgewing van verhoor aangeneem word, hoewel die seëls vereis op enige eis in rekonvensie nie daarop geplak is nie; dog geen sodanige eis in rekonvensie sal verhoor word voor en aler die seëls daarop betaalbaar aldus opgeplak is nie.

(2) 'n Klerk van die hof wat versuim het om enige sodanige fooie in te vorder is aanspreeklik vir die betaling en vergoeding van die bedrag daarvan aan die tesourie.

2. (1) Wanneer enige geskil ontstaan tussen die klerk van die hof en enige persoon wat verlang om enige dokument in te dien, aangaande die vraag of die dokument van voldoende seëls voorsien is al dan nie, moet die geskil na die magistraat verwys word, wat dit op summiere wyse moet beslis.

(2) Die magistraat se beslissing is vir doeleindes van die aksie of saak met betrekking waartoe sodanige dokument ingedien is, afdoende, en ontslaan die klerk van die hof van enige aanspreeklikheid ingevolge paragraaf 1 (2) hiervan; dog sodanige beslissing het geen benadelende invloed op enige ander regte van enige belanghebbende persoon nie.

3. Insae van die rekord in enige saak kan op die kantoordag volgende op dié waarop vonnis in die saak gevel is, asook deur 'n party in die saak binne sewe dae na vonnis kosteloos gedoen word.