

MAGISTRATES' COURT RULES
(Under section 95 of the Act)

Date of commencement: 17th September, 1942.

Arrangement of Rules

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CIVIL

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ORDER NO. I

APPLICATION AND INTERPRETATION

1. Unless the context otherwise requires —
 - (i) Orders I and II 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) Orders XV to XVIII inclusive shall be applicable only if —
 - (a) the plaintiff shall not apply for summary judgment; or
 - (b) the plaintiff having applied for summary judgment, the application has been dismissed or an order has been made giving the defendant leave to defend.

(2) 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.

(3) All process of the court for service or execution and all documents or copies to be filed of record shall be on foolscap paper.

(4) 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.

(5) 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. (1) In these rules and in the forms thereto annexed any word to which a meaning has been assigned in the body of the Act 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” means the clerk of the court;

“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 of 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(1)) 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 Swaziland or not, and all bank-notes, bank-drafts, cheques, orders, warrants, or authorities for the payment of money;

“notice” means notice in writing;

“Order” means an Order of these rules;

“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 Her Britannic Majesty and when relating to government property, includes the Government of Swaziland; (Amended L.N. 38/1967.)

“party” means any 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;

“plaintiff”, “defendant”, “applicant”, “respondent” and “party” include, for the purpose of service, notice, appearance, endorsement, signature and payment of moneys out of court or out of the hands of the messenger, 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 for the purpose;

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

“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) If 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 Swaziland shall give security to the satisfaction of the district officer 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 member of the police force to render him aid.

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:

- (a) that service has been duly effected and the date thereof; or
- (b) that he has been unable to effect service and the reason for such inability.

CIVIL

ORDER NO. III

CLERK OF THE COURT

1. (1) The clerk 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) any remarks required by these rules or by the special circumstances of the case.

(2) The clerk 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.

2. (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 the clerk 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 until so marked.

3. (1) All documents delivered to the clerk 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 to any person applying therefor and entitled thereto, or such copies may be made by such person in the presence of the clerk.

4. It shall also be the duty of the clerk to:

(a) sign and issue all such process of the court as may be sued out by any person entitled thereto, or at the request of any party by whom process was sued out to re-issue such process after its return by the messenger;

(b) notify the plaintiff forthwith by post or otherwise of the defendant's consent to judgment before entry of appearance, payment into court before entry of appearance of the amount claimed or any part thereof, or of an application for a judgment by default having been refused;

(c) 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: 50 cents,

application or security bond: 25 cents,

subpoena, warrant of execution or other process or document: 10 cents;

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 20 rand;

(d) to note on a certified copy of a judgment at the request of the party to whom such copy is issued costs payable by the judgment debtor in respect of the judgment which have been incurred after judgment;

(e) the fees mentioned in this rule shall be for the clerk's services, and in addition to the fees laid down in Table D of the Second Annexure hereto.

5. All fines imposed by the court shall be paid to the clerk.

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6. Any act required to be done by the clerk 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; or
 - (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 by virtue of the powers conferred by Rule 1(1)(a) or (2) shall be entitled to recover for so appearing any costs other than necessary disbursements.
- (4) It shall not be necessary for any person to file a power of attorney to appear:

Provided that the authority of any person appearing for a party may be challenged by the other party within forty-eight hours after he has notice that such person is so appearing or with the leave of the court for good cause shown at any time before judgment, and thereupon such person may not, without the 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) If 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. (1) Any person desiring to sue or defend as a pauper may apply to the court, on notice to the party to be sued, or to the plaintiff, as the case may be, for leave to do so.
 - (2) The applicant shall with such notice deliver an affidavit made by himself setting out fully the grounds of action or of defence on which he intends to rely and particulars of his means.
 - (3) The clerk may at the request of the applicant and on the direction of a judicial officer write out the notice and affidavit mentioned in sub-rule (2) of this rule, notwithstanding that the claim or value of the matter in dispute exceeds 20 rand and no fee shall be payable by the applicant for such assistance.
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.

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 that —

- (a) 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) an attorney shall be appointed to act for such applicant; or
- (c) 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) hereof, unless the applicant shall either produce the written consent of an attorney so to 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 thereof *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.

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) If the application to the court is for an order affecting the liberty of the respondent, or is an application in which the dissolution of a marriage or separation from bed or board or of goods of married persons is sought, 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. (Amended L.N.58/1967.)

(2) All other process shall, subject to 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 instruction to the messenger to serve by registered post, the process shall be so served:

Provided that if service has been effected in the manner prescribed by paragraph (b), (c) or (e) herein, the court or clerk, 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, treat such service as 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 where service has been effected by post, in which case the original may be inspected where it is filed of record.

4. (1) If 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) If the messenger is unable after diligent search to find at the residence of the person to be served either that person or such a person as is described in Rule 3(2)(b), 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 be effected in the manner prescribed in Rule 3(2), 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 if 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. If two or more persons are to be served with the same process, service shall be effected upon each, except —

- (a) 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 no such office or place by service on any member of such partnership in any manner hereinbefore stated;
- (b) 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 manner hereinbefore stated;

- (c) 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 no such office or place, by service on the chairman or secretary or similar officer thereof in any manner hereinbefore stated.

7. (1) Service of a subpoena requiring the attendance of a witness may be effected in any manner prescribed in Rule 3 or 4 of this Order at a reasonable time before attendance is required.

(2) Service of any notice, request, statement or other document which is not a 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.

(3) An address for service or postal address so given may be changed by the delivery (as defined in Order 1(3)) of notice of a new address, and thereafter service may be effected as aforesaid at such new address.

(4) 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 postmarked date upon the receipt for registration.

(5) Service under this rule need not be effected through the messenger.

8. If service cannot be effected in any manner hereinbefore prescribed, the court may, upon evidence of such 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.

9. (1) If the service to be effected is that of —

- (a) 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 (16 kms) distance of the place of service from the court-house not exceeding twenty-one 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) If under any rule other than Rule 7 hereof 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 requiring to be furnished with an acknowledgment by the addressee of the receipt thereof as provided in the Post Office Regulations, No. 60/1962(1).

(2) A receipt form duly completed shall be a sufficient acknowledgment of receipt for the purposes hereof.

(3) If no such acknowledgment be received the messenger shall state that fact in his return of service of the summons or process.

(4) Every such letter shall have on the envelope a printed or type-written notice in the following terms: "This letter must not be readdressed. If delivery is not effected before 19..... it must be delivered to the messenger of the District Officer's court at

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 (16 kms) distance of the place of service from the court-house but not to exceed twenty-one 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,

(ii) appearance to defend.

(2) The particulars of claim shall be signed by the plaintiff or by his attorney, and the full address where the plaintiff will accept service of process in the action (which address 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.

(2) The messenger shall endorse the amount of his charges on the summons on service thereof.

(3) The particulars of claim shall also show any abandonment of part of the claim under section 23 of the Act and any set off under section 24 of the Act.

(4) If 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.

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

(6) The clerk 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 the plaintiff, the defendant's sex and 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 or place of business 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;
- (f) where the defendant is cited under the jurisdiction conferred upon the court by section 15(d) of the Act the summons shall contain an averment that the whole cause of action arose within the district but need set out no further particulars in support of such averment:

Provided, however, that the defendant may in manner prescribed in Order XI(2) require the delivery of such particulars.

5. More claims than one may be made in a summons, either alternatively or otherwise, but claims which are not expressed to be alternative shall not be mutually inconsistent nor based on inconsistent averments of fact.

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, deliver 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) This rule shall also apply *mutatis mutandis* to an unincorporated company, syndicate or association.

(6) If action has been instituted by or against a firm or by or against a person carrying on business in a name or style other than his own name or by or against an unincorporated company, syndicate or association in the name of the firm or in such name or style or in the name of the company, syndicate or association, as the case may be, the court may on the application of the other party to the action made at any time either before or after judgment on notice to a person alleged to be a partner in such firm or the person so carrying on business, or a member of such company, syndicate or association, declare such person to be a partner, the person so carrying on business or a member, as the case may be, and on the making of such order sub-rule (3) hereof shall apply as if the name of such person had been declared in a statement delivered as provided in sub-rule (2) hereof.

7. (1) Subject to 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 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:

Provided that when neither the christian name nor the initial of the defendant is shown in the summons but the christian name or initial of the person on whom service of the summons has been effected is disclosed in the return of the messenger, the clerk may at the request of the plaintiff and without notice to such person insert such name or initial in the summons as being the name or initial of the defendant and such amendment shall for all purposes be considered as if it had been made before service of the summons.

ORDER NO. VIII

CLAIMS IN RECONVENTION

1. 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.

2. A claim in reconvention shall be made by the delivery within the time limited by Order XV(1) for the delivery of a plea 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 or 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) A defendant delivering a claim in reconvention may by notice delivered therewith or within two days thereafter apply to the court to pronounce that the claim in reconvention exceeds its jurisdiction and to stay the action under section 30 of the Act.

(3) If the court either *mero motu* or on objection taken by the plaintiff under Rule 2(2)(b) of Order XIII(2) has pronounced the claim in reconvention to exceed its jurisdiction, the defendant may forthwith or by notice delivered within two days after such pronouncement apply for stay.

(4) If no application for stay be made as provided in sub-rule (2) or (3) hereof or having been made be dismissed, the court shall on the application of the plaintiff or otherwise of its own motion dismiss a claim in reconvention pronounced to exceed its jurisdiction, unless the defendant shall forthwith abandon under section 23 of the Act sufficient of such claim to bring it within the jurisdiction.

4. If 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*.

5. A claim in reconvention may not be made by a defendant in reconvention.
6. If 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 (16 kms) distance of the place of service from the court-house, not exceeding twenty-one 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 any action against the Government appearance to defend may be entered at any time within twenty-one 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 be not more than 3 miles (5 kms) distant from the court-house) and also the postal address of the person who has so signed.
3. The clerk 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 before entry of appearance consent to judgment by —
 - (a) signing the form of consent endorsed on the original summons; or
 - (b) lodging with the clerk a consent in a similar form duly signed by him and by two witnesses whose addresses are also given;
 - (c) lodging with the clerk the copy of the summons served upon him with the form of consent endorsed thereon duly signed by him.
- (2) If a defendant so consents before instructions for service 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 twenty-four hours before the expiration of the time limited for appearance shall not be chargeable with judgment charges.
- (4) A defendant may after entry of appearance consent to judgment by delivering a consent signed by himself or by his attorney of record in form similar to that endorsed on the summons.
- (5) 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. If a defendant has failed to enter appearance to defend within the time limited in Order IX, Rule 1, or before the lodgment of the request hereinafter mentioned and has not consented to judgment, the plaintiff may lodge with the clerk a written request to have judgment entered against such defendant for any sum not exceeding the sum claimed in the summons or for other relief so claimed, for the costs of the action, and for 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, at the rate of six per centum per annum.

3. If the defendant has entered appearance but has failed to deliver a plea within the time limited by Order XV Rule 1, the plaintiff may deliver notice in writing calling upon the defendant to deliver a plea within forty-eight hours of the receipt of such notice, and on failure of the defendant so to do may lodge with the clerk a written request to have judgment entered in the same manner as if the defendant had failed to enter appearance to defend.

4. (1) If the defendant has failed to enter appearance to defend or, having entered appearance, has failed to deliver a plea within the period specified in a notice delivered to him in terms of Rule 3 hereof, and the plaintiff has in either case requested the entry of judgment, or when the defendant has consented to judgment, the clerk shall, subject to sub-rules (2), to (9) inclusive hereof, enter judgment in terms of the plaintiff's request or of the defendant's consent, as the case may be.

(2) If it appears to the clerk that the defendant intends to defend the action but that his entry of appearance is defective in respect that the memorandum thereof —

- (a) has not been properly delivered; or
- (b) has not been properly signed; or
- (c) does not set out the postal address of the person signing it or an address for service as prescribed in Rule 2 of Order IX; or
- (d) exhibits any two or more of such defects or any other defect of form;

he shall not enter judgment against the defendant unless the plaintiff has delivered written notice to the defendant that request for judgment in default of due entry of appearance is being made and the defendant has not within forty-eight hours of the receipt by him of such notice delivered a memorandum of entry of appearance in due form.

(3) Such notice shall clearly set out in what respect the defendant's entry of appearance is alleged to be defective.

(4) Judgment in default of appearance to defend shall not be entered in an action in which the summons has been served by registered post unless with the return of service by the messenger there has been filed the acknowledgment mentioned in Order VI Rule 10.

(5) The clerk shall refer to the court any request made under Rule 2 or Rule 3 or Rule 4 hereof for the entry of judgment on a claim for damages and the plaintiff shall furnish to the court evidence either oral or by affidavit of the nature and extent of the damages suffered by him.

(6) The court shall thereupon assess the amount recoverable by the plaintiff as damages and shall enter judgment therefor.

(7) If the action be on a liquid document the plaintiff shall before entry of judgment file of record the original of such document duly stamped, or an affidavit setting out reasons to the satisfaction of the court why such original cannot or should not be filed.

(8) The clerk may refer to the court any consent to or request for judgment and the court may thereupon —

- (a) if a default judgment be sought, call upon the plaintiff to produce such evidence either written or oral in support of his claim as it may deem necessary;
- (b) if a judgment by consent be sought, call upon the plaintiff to produce evidence to satisfy the court that the consent has been signed by the defendant and is a consent to the judgment sought;
- (c) enter judgment in terms of plaintiff's request or for so much of the claim as has been established to its satisfaction;
- (d) enter judgment in terms of defendant's consent;
- (e) refuse judgment; or
- (f) make such other order as may be just.

(9) The clerk shall refer to the court any request made for the entry of judgment on a claim founded on any cause of action arising out of, or based on any Hire Purchase Agreement governed by the Hire Purchase Act, No. 11 of 1969, and the court shall thereupon make such order and/or give such judgment as it may deem just. (Added L.N. 30/1969.)

(10) If one or more of several defendants in an action consent to judgment or fail to enter appearance or to deliver a plea, judgment may be entered against the defendant or defendants who have consented to judgment or are in default and the plaintiff may proceed on such judgment without prejudice to his right to continue the action against another defendant or other defendants.

(11) Judgment shall be entered by recording in the civil judgment book the particulars of the judgment and the date of its entry.

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 copies shall be delivered by the plaintiff within four days after receipt of such notice.

(2) If the plaintiff fails so to deliver 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 appearance in the case of a summons or after the delivery of any other pleading or after judgment on any exception or objection to such pleading has been given, 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. 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 hereinafter provided for the recovery of any costs not included in such payment.

2. (1) A defendant may without prejudice pay an amount into court by way of offer in settlement of the plaintiff's claim.

(2) A plaintiff may within ten days after receipt of notice of such payment into court deliver a request for the payment out to him of the amount paid in and further proceedings shall thereupon be stayed save as hereinafter provided for the recovery of costs not included in the payment.

3. A defendant paying money into court after entry of appearance in terms of Rule 1 or at any time in terms of Rule 2 hereof shall at the same time deliver a notice setting out the amount paid into court and whether it is paid in unconditionally under Rule 1 or as an offer of settlement under Rule 2 and if in the case of payment in under Rule 2 the amount paid is offered in settlement of both claim and costs, stating that fact.

4. (1) The clerk shall pay out to the plaintiff any moneys paid into court under Rules 1 and 2 hereof:

Provided that moneys paid into court under Rule 2 shall only be paid out on delivery of the request mentioned in sub-rule (2) of such rule.

(2) A plaintiff entitled to payment out under sub-rule (1) hereof shall, save when a defendant making payment in under Rule 2 states in his notice of payment that the amount paid in is inclusive of costs, be entitled to recover from the defendant the costs incurred by him up to the time of payment into court, together with his costs of obtaining payment out, in the same manner as if an order for such costs had been made by the court.

5. If money has been paid into court under Rule 2 hereof as an offer of settlement and the court finds on a trial of the action that 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 for the defendant's costs) and shall then give judgment for the defendant and shall order the plaintiff to pay the costs incurred by the defendant after payment into court and shall make such order as may be just in regard to costs previously incurred.

6. A defendant pleading tender shall on the day of filing his plea pay into court the amount alleged in the plea to have been tendered if such amount has not already been paid to the plaintiff.

7. Save as provided in Rule 4 moneys paid into court under this Order shall be paid out only 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 entry of appearance deliver particulars of any exception to the summons or objection to the proceedings:

Provided that where the delivery of documents or information has been requested in terms of Order XI, particulars of the exception or objection may be delivered within seven days after delivery of such documents or information.

(2) A defendant failing to deliver such particulars within such period may not thereafter raise any exception or objection without leave of the court granted on application after notice to the plaintiff.

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 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 in respect of the defendant or has no jurisdiction in respect of the cause of action stated in the summons;
- (c) that the copy of the summons served upon 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) mis-joinder on non-joinder;
- (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 being sued as 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.

(3) If more than one claim is made in a summons exception or objection may be taken to any one or more of such claims.

3. (1) For the purpose of Rule 2(2)(d) of this Order the expression “defendant” in this Order and in Order IX shall include a person upon whom a summons has been served who alleges that he is not the defendant cited in the summons and enters appearance to object and objects on that ground.

(2) The court may on the hearing of any such objection order costs to be paid to or by such person as if he were a party to the action.

(3) If such objection be sustained the court instead of dismissing the summons may if moved thereto by the plaintiff, allow any necessary amendment and order that it be served upon the person cited as defendant.

4. (1) A defendant raising an exception that the summons does not comply with the requirements of Order VII shall set out particulars of the non-compliance alleged.

(2) A defendant raising any objection shall in his particulars state the facts on which the objection is based.

(3) A defendant raising the objection of *non locus standi in judicio* by reason of his minority shall set out as far as he is able the date and place of his birth.

(4) A defendant raising the objection of *non locus standi in judicio* by reason of her marriage shall set out the date and place of her subsisting marriage, the date and place of registration of any antenuptial contract or other contract governing her marital relationship and the christian name, surname, address and occupation of her husband as far as these are known to her.

5. (1) A defendant may move to strike out any of two or more claims in a summons which, not being in the alternative, are mutually inconsistent or are based on inconsistent averments of fact, or to strike out any argumentative, irrelevant, superfluous or contradictory matter contained in the summons.

(2) Rule 1(1) hereof shall apply *mutatis mutandis* to the delivery of particulars of such a motion.

6. (1) Save as provided in sub-rule (3) all exceptions, objections or motions to strike out shall, if particulars thereof have been delivered before the hearing of any application by the plaintiff for summary judgment, be heard and determined at the hearing of such application.

(2) If no such application be made either party may on three days' notice set down such exception, objection or motion for hearing.

(3) Evidence may be called by either party to support or to repel an objection or an exception that the summons does not comply with the requirements of Order VII.

(4) If it appears that the evidence to be called in terms of sub-rule (2) hereof is, in the event of the dismissal of the objection, likely to be again adduced at the trial of the action the court may, instead of hearing the objection, order that it be pleaded as a defence in the plea and that the costs of objection be reserved for decision at the trial.

7. In sustaining any dilatory objection 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.

ORDER NO. XIV

SUMMARY JUDGMENT

1. (1) If a defendant has entered an appearance to defend, the plaintiff in convention may in addition to costs, apply to the court for 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).

(2) Such application shall be made on not less than three days' 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 —

- (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 delivered not later than noon of the preceding day (which affidavit may by leave of the court be supplemented by oral evidence) that he has a *bona fide* defence to the action or a *bona fide* counter-claim against the plaintiff.

(3) Such affidavit and evidence shall disclose fully the nature and grounds of the defence or counterclaim.

(4) 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 any person who gives oral evidence be cross-examined by the plaintiff, but such person may after examination by the defendant be examined by the court.

3. (1) Subject to Order XIII, 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. If leave to defend is given under Rule 3(2) hereof, 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 that a defendant is entitled to leave to defend and another defendant is not so entitled, or 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 to 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 delivery of further particulars in terms of Order XI, or if application for summary judgment be made, then within seven days after the dismissal of such application or after the making of an order giving leave to defend, or if exception or objection or motion to strike out be set down for hearing in terms of Order XIII Rule 1 then within seven days after the dismissal of such exception, objection or motion or after any amendment of the summons allowed by the court at the hearing of such exception, objection or motion, deliver a statement in writing to be called a plea:

Provided that if an appeal be noted against a decision on exception or objection or such proceedings be brought in review, the plea shall be delivered within such time as may be directed by the court of appeal or, on application, by the court.

(2) If the defendant be the Government seven days shall be added in each case to the number of days prescribed in Rule 1(1) hereof.

(3) The plea shall be signed by the defendant or his attorney and shall set forth concisely and succinctly the nature of the defence and particulars of the grounds on which it is based.

2. (1) The defendant in his plea shall either admit or deny or confess and avoid all the material facts alleged in the particulars to the summons and shall clearly and concisely state all the material facts on which he relies.

(2) 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 specifically any of the allegations in the summons.

3. (1) If 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.

(2) 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 but such amount shall only be paid out to the plaintiff on the order of the court.

(3) 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 such costs may be taxed.

4. If payment into court is alleged in the plea the particulars shall show whether the payment in has been made under Order XII, Rule 1 or 2 or by way of tender under Rule 3.

5. If the nature of the payment in be not specified it shall be deemed to be by way of tender after action brought.

6. 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.

7. If during the trial of an action it appears that 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.

8. (1) A plaintiff may within the time specified in Order XVI Rule 1 and with or before delivering a reply deliver particulars of an exception to the plea.

(2) A plaintiff may except to the plea on the ground either —

(a) that it does not disclose a defence to the plaintiff's claim; or

(b) that it is vague and embarrassing; or

(c) that it does not comply with the requirements of Rules 1 and 2 hereof.

(3) A plaintiff excepting to a plea on the ground specified in sub-rule 2(c) hereof shall in his particulars of exception set out in what respects non-compliance is alleged.

(4) Information delivered by the defendant in terms of Order XI Rule 2 shall be deemed to be included in the plea.

9. (1) A plaintiff may move to strike out any of two or more defences which, not being pleaded in the alternative, are mutually contradictory, or any argumentative, irrelevant, superfluous or contradictory matter which may be stated in a plea.

(2) The provisions of Rule 6 hereof shall apply *mutatis mutandis* to the delivery of particulars of a motion to strike out.

10. (1) An exception to or motion to strike out matter from a plea may be set down for hearing by either party on four days' notice.

(2) If such an exception or motion be sustained and no application for amendment be made, or being made be refused, the court may if the plea then discloses no defence give judgment for the plaintiff.

ORDER NO. XVI

REPLY

1. If 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 or after the delivery in terms of Order XI Rule 2 of further information in respect 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. If 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 plea.

4. Upon the delivery of a reply or, where no reply is delivered, upon the expiry of the period limited for reply, the pleadings shall be deemed to be closed.

ORDER NO. XVII

DISCOVERY OF DOCUMENTS

1. (1) After the close of pleadings either party may deliver a notice to the other party calling on him to deliver a schedule specifying the books and documents in his possession or under his control relating to the action which he intends to use in the action or which tend to prove or disprove either party's case.

(2) Such schedule verified by affidavit shall be delivered by the party thereto required within three days of the delivery of the aforesaid notice.

(3) If privilege be claimed for any of the documents scheduled, such documents shall be separately listed on the schedule and the ground on which privilege is claimed in respect of each shall be set out.

(4) 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 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 books and documents disclosed in terms of Rule 1, or specified in a notice delivered in terms of Rule 3 hereof; 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 as regards all such books or documents as are in the possession or under the control of the party to whom notice is so 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 or days 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 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.

(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) If 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 decision 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) If on the pleadings the burden of proof is on the plaintiff he shall first adduce his evidence, and if absolution from the instance is not then decreed, the defendant shall then adduce his evidence.

(2) If such burden of proof is on the defendant, the defendant shall first adduce his evidence, and the plaintiff shall thereafter adduce his evidence.

(3) If 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, and the defendant shall then call his evidence on all the issues.

(4) 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, but if he has called any such evidence, he shall have no such right.

(5) In case of dispute as to the party upon whom the burden of proof rests, the court shall direct which party shall first adduce evidence.

(6) 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.

(7) 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.

(8) Any witness may be examined by the court, as well as by the parties.

(9) 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. If 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, DISMISSAL AND SETTLEMENT

1. If 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 hereof 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 ten 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 if 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.

3. A defendant may, if the plaintiff has not within fourteen days after the pleadings have been closed given notice of trial either for a day not more than twenty-one days distant or for the first day obtainable from the clerk of the court, apply to the court to dismiss the action for want of prosecution; 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.

4. (1) Application may be made to the court by either party at any time after entry of appearance and before judgment to record the terms of any settlement of an action without entry of judgment agreed to by the parties.

(2) Save if the application is made in court during the hearing of any proceeding in the action at which the other party is represented or when written waiver by such other party (which may be included in the statement of terms of settlement) of notice of the application is produced to the court, notice of the application shall be delivered.

(3) At the hearing of the application the applicant shall lodge with the court a statement of the terms of settlement signed by all the parties to the action, and if no objection thereto be made by any other party the court shall note that the action has been settled on the terms set out in the statement, and thereupon all further proceedings in the action shall, save as hereinafter provided, be stayed.

(4) If the terms of settlement provide for the future fulfilment by one or both parties of stated conditions and that in default of fulfilment the entry of a judgment in the action in terms specified in the statement may be sought by the other party, such other party may at any time within twelve months thereafter apply for the entry of such judgment.

(5) An application under sub-rule (4) hereof shall be on notice to the party alleged to be in default setting forth particulars of the breach by the respondent of conditions of the terms of settlement.

(6) After hearing the parties the court may —

(a) dismiss the application;

(b) enter judgment for the applicant as specified in terms of settlement;

(c) set aside the settlement and give such directions for the further prosecution of the action as it may deem fit;

- (d) make such order as may be just as to the costs of the application.

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; and
 - (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 to be fixed from time to time by the Chief Justice but not to exceed a fee of 10 cents for each 100 words. (Amended L.N. 8/1969.)
- (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. (1) Except where otherwise provided, an application need not be supported by affidavit; but in the event of any dispute arising as to the facts the court may —
 - (a) receive evidence either *viva voce* or by affidavit and try the issues in dispute in a summary manner, or

- (b) order that the issues shall be tried by way of action, that the applicant shall be plaintiff and the respondent be defendant and that the notice of application shall stand as summons or that the applicant shall deliver such particulars of his claim as are prescribed in Order VII of these rules within seven days or such shorter time as the court may appoint.

(2) For the purposes of the action, appearance to defend shall be deemed, when the notice of application is ordered to stand as summons, to have been entered on the day on which such order is made, and when the applicant is ordered under this rule to file particulars, to have been entered on the day on which such particulars are delivered.

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 or 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* may apply to discharge it with costs on not less than twenty-four hours' notice.

5. In every application the person substantially interested shall be made respondent.

6. All interlocutory matters may be dealt with upon application and any application which may be made *ex parte* may at the applicant's election be made on notice.

All opposed applications shall be heard in open court.

ORDER NO. XXII

ARRESTS, INTERDICTS, ATTACHMENTS, AND MANDAMENT 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 17 of the Act may be made *ex parte*.

(2) Every such *ex parte* application shall be upon affidavit 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) Every order made *ex parte* (other than an order for the arrest of any person) 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.

(2) The return day of an order may be anticipated by the respondent upon twelve 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 the 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.

2. 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 District Officer.

3. There shall be delivered to the messenger (if the party suing out the subpoena desires it to be served through the messenger) together with such subpoena as many copies thereof as there are witnesses to be summoned, and also such sum 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.

4. The court may set aside the service of any subpoena if it appears that the witness served was not given reasonable time to enable him to appear in pursuance of the subpoena.

ORDER NO. XXIV

INTEREST

1. If the defendant has not consented to judgment twenty-four hours before the expiry 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 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:

Provided that a request in writing made from time to time by such person to defer execution of such process for a definite period not being longer than one month shall not be deemed to be a suspension.

(4) Any alteration in such process shall be initialled by the clerk 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.

(9) Unless the summons commencing the action has been served upon the defendant personally or he has entered appearance to defend or notice of attachment has been given to him personally —

- (a) the judgment creditor shall, if any property corporeal or incorporeal is attached in execution give, at least seven days before the day appointed for the sale of such property, security to the satisfaction of the messenger for the payment to the execution debtor if such attachment be set aside of any sum which the execution debtor may in law be entitled to recover from the execution creditor for damages suffered by reason of such attachment or of any proceedings consequent thereon; and if security be not given the attachment shall cease to have effect:

Provided that the execution debtor may by endorsement to that effect on the writ of execution dispense with the giving of security under this rule;

- (b) if moneys are received by the messenger under any form of execution otherwise than as the proceeds of the sale in execution of property in respect of the attachment of which security has been given in terms of paragraph (a) hereof, such moneys shall not be paid to the execution creditor until he has given security for the restitution of the full amount received by the messenger if the attachment thereof be thereafter set aside:

Provided that the execution debtor may in writing over his signature dispense with the giving of such security;

- (c) the prescribed fee for security given under this rule shall without taxation be recoverable as part of the costs of execution;
- (d) any surety bond or other document of security given in terms of this rule may be sued upon by the execution debtor without formal transfer thereof to him.

2. (1) If 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) If 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. (1) 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) Withdrawal of attachment shall be effected by note made and signed by the messenger on the writ of execution that the attachment is withdrawn stating the time and date of the making of such note.

(3) The messenger shall give notice in writing of such withdrawal and of the time and date thereof to the execution creditor and the execution debtor and to any person by whom a claim to the property attached has been lodged with him.

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.

(3) On completion of any sale in execution of property whether movable or immovable the messenger shall attach to his return a *vendu roll* showing details of the property sold, the prices realised and, where known, the names and addresses of the purchasers.

(4) A messenger shall not at a sale in execution purchase any of the property offered for sale either for himself or for another person.

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 twenty-four 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 (40 kms), or part of 25 miles (40 kms) 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 last mentioned 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 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) If the 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 it on the premises, which copy shall have sub-joined thereto a notice of the attachment.

(6) If 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 so specified; and such specie or documents shall be sealed up and conveyed to the office of the messenger.

(7) If any person whose movable property has been so attached undertakes in writing, together with some sufficient surety, that it 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, 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) The judgment creditor may by endorsement on the writ or by written notice given to the messenger dispense with the joinder of a surety in the undertaking.

(9) If an undertaking to produce the said goods be not given as provided in sub-rule (7) rule —

- (a) the messenger shall either remove them to some convenient place of security or, if they be cattle or such property as it may be inconvenient to remove, may leave them upon the premises in the charge and custody of some person for him until the day appointed for the sale thereof;
- (b) if the messenger is instructed by the judgment creditor to remove the goods attached, he shall do so within forty-eight hours after the attachment; and he shall in the meantime leave them in the charge and custody of some person for him;
- (c) such 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 custodian makes a default in his duty he shall not be entitled to recover any remuneration for his charge and custody.

(10) Any movable property sold in execution of the process of the court shall be sold publicly and for ready money by the messenger to the highest bidder, at or as near to the place where it was taken or to which it 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 seven 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 court-house 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 forty rand.

(11) The day appointed for the sale shall be not less than twenty one days after the time of seizure or attachment: (Amended L.N. 7/1977.)

Provided that, if 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.

(12) 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.

(13) Should the messenger have a balance in hand after payment of the judgment creditor's claim and costs he shall pay it to the judgment debtor if he can be found failing which he shall pay such balance into court.

6. If 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 until 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.

7. If 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.

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.

(4) If 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 6(2) of the Act 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 twenty one days after service of the notice of attachment; and he shall cause the sale to be advertised at least once in a 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:

Provided that if in his opinion the value of the goods attached exceeds R500.00 there shall be not less than two such advertisements. (Amended L.N.7/1977.)

(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 court to be settled by it 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) 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 this rule, 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.

(6) If 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.

(7) 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 no such surplus such

deposit shall, as far as may be necessary, be applied in payment of the auctioneer's fees and expenses.

(8) If two or more such notices (referred to in sub-rule 6 hereof) are given, the first shall have the preference.

(9) 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.

(10) The sale shall be held in front of the court-house of the district and in the presence of a District Officer or such person as the District Officer 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 District Officer may authorise that the sale be held before that court-house in the presence of such person as he may appoint.

(11) If such property is situate in a district other than that in which the judgment was given, the sale thereof shall be effected by the messenger of the court of the district in which it is situate in the manner provided in this rule.

(12) 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.

(13) The messenger shall not pay out the purchase money until transfer has been given to the purchaser, and if transfer has not been so given within fourteen days after the receipt by the messenger of any purchase money, he shall pay it into court.

(14) On production of evidence that transfer has been given to the purchaser, the clerk shall pay to the messenger the amount paid into court under sub-rule (13).

(15) If a transfer to the purchaser of the property has been duly effected the messenger shall, after deductions therefrom of any amount payable to him for his costs of execution, pay to the judgment creditor the purchase price or so much thereof as shall be sufficient to satisfy the judgment creditor's claim and costs, and shall, subject to the provisions of section 45 of the Act and if there were immediately prior to the transfer no bonds registered against the property, pay any balance remaining in his hands to the judgment debtor, if he can be found, and if he cannot be found, shall pay such balance into court.

(16) If there were immediately prior to the transfer bonds registered against the property, the messenger shall pay such balance into court and shall at the same time apply in manner provided in Order XXVI for the issue of interpleader summons calling upon the judgment debtor and the holder or holders of such bonds to appear and establish their claims to such balance.

(17) 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) if 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) if 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 issued and the execution creditor has not after notice admitted the claim in manner provided by Order XXV, Rule 4;
 - (c) if the execution creditor has not admitted the claim as provided in Order XXV, Rule 4, within two days after he has had notice thereof, the messenger shall forthwith prepare and sue out a summons in the form of specimen No. 33.
2. An applicant other than the messenger shall annex to the summons sued out in terms of the next succeeding rule an affidavit setting out —
 - (a) that he claims no interest in the subject matter in dispute other than for charges or costs;
 - (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.
4. If the applicant is the messenger, the clerk shall sign and issue the interpleader summons without fee, but if the judgment is delivered, the court shall direct which party shall pay the fee, and such party shall thereupon pay to the clerk the appropriate fee provided in Table D of the Second Annexure to these rules.
5. (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:

Provided that 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.
6. If 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.

7. 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, and may make such order as may be just as to the payment of costs incurred by the applicant.

8. This Order shall apply to a poundmaster or market-master, duly appointed by the proper authority in terms of any law providing for such appointment, in relation to any property or the proceeds or the value of such property held by them in the discharge of their duties under any law, in the same manner and to the same extent as they apply to a messenger of a court in relation to property attached by him in execution of any process of the court or to the proceeds or value of such property. (Amended L.N.61/1968.)

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 and shall also be signed by the party suing out the same.

2. If the judgment or order in respect of which proceedings for civil imprisonment are taken was given in any other court, the clerk shall not issue the process until a copy of the judgment or order in such other court duly certified by the clerk of such court has been lodged with him.

3. The warrant of the court for the civil imprisonment of any person shall be signed and issued by the clerk and shall be addressed to the messenger of the court and to the keeper of a specified prison or gaol.

4. The execution of such warrant may at any time before the arrest of the judgment debtor be stayed by the judgment creditor.

5. If 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.

6. An application by the judgment debtor for the suspension, variation or discharge of a decree or warrant of civil imprisonment shall be made on notice.

7. If 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.

8. A warrant for civil imprisonment may be executed at any hour on any day except Sunday, Christmas 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) Save as provided in Rule 7 of this Order, 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 and the amount of the debt or that such amount is not known to the deponent;
- (d) that the debt is, at the time of the application, due and payable; and
- (e) if the debt is in respect of salary or wages, that the judgment debtor will, after the execution of the order sought, have a sufficient balance of income to maintain himself and those dependent upon him, giving details.

(2) If in open court the judgment debtor admits sufficient of the facts set out in sub-rule (1) 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.

(3) 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 due and payable 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 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 above-named Garnishee. — If the debt due by you to the above-named judgment debtor was not owing *both* at the day and hour above-mentioned 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 above-named 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 not due and payable or 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 of irregularity in the proceedings, or 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 not due and payable or that it is due for salary or wages and that its attachment will not leave him a sufficient amount to maintain himself and those dependent on him.

(2) If, upon the return day, the judgment debtor satisfies the court that the judgment was not so operative, or that the debt is not due and payable, 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, the order shall (subject to the provisions of section 47 of the Act) 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 on the return day the debtor in open court consents thereto or his written consent thereto be produced the court may, subject to section 48(1) of the Act and whether or not the provisional order be confirmed in whole or in part, order that the garnishee do pay to the messenger out of the earnings accruing to the judgment debtor from the garnishee such sums of money at such future times as it may direct:

Provided that Rule 7(4) hereof shall apply to the enforcement of such an order against the garnishee.

4. If the garnishee pays any money to the messenger pursuant to the order of the court, the messenger shall retain it until the return day and shall thereafter deal with it in accordance with the order made by the court.

5. (1) If the garnishee does not dispute that the debt is owing from him to the debtor, or alleges 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 does not appear to show cause as is mentioned in Rule 2(1) hereof, 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; and the process for the execution of such order shall be as nearly as possible in accordance with 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 or that the debt is not due and payable to him Order XXVI, Rules 5, 6, and 7 shall apply to the subsequent proceedings in the matter as if the garnishee had taken out an interpleader summons under such 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.

7. (1) Application for the attachment of future or accruing earnings shall be made on notice to the judgment debtor and the garnishee.

(2) The notice shall set forth, *mutatis mutandis*, the particulars specified in paragraphs (a), (b), (c) and (e) of Rule 1(1) hereof and the judgment creditor shall annex thereto a copy of any consent in writing by the judgment debtor to the granting of the order sought.

(3) At the hearing of the application the court may (subject to the provisions of section 48 of the Act) order that the garnishee do pay to the messenger out of the earnings accruing to the judgment debtor such sums at such future times as it may direct.

(4) If the garnishee fail to pay to the messenger the sums of money at the times specified in such order, the judgment creditor may, on notice to the garnishee, make application for an order that execution issue against the garnishee.

(5) Rule 6(1) and (2) hereof shall apply to the hearing of such application.

(6) After hearing the parties the court may —

- (a) dismiss the application;
- (b) order that execution issue against the garnishee in respect of any sums payable and unpaid and of any costs ordered to be paid by him;
- (c) order that the costs of the application be paid by either party;
- (d) make such other order as may be just.

ORDER NO. XXIX

REVIEW OF JUDGMENTS AND ORDERS

1. (1) Any party to an action in which a default judgment is given may within one month after such judgment has come to the knowledge of the party against whom it is given apply to the court to rescind or vary such judgment.

(2) Every such application shall be on affidavit which shall set forth shortly the reasons why the applicant did not appear and the grounds of defence to the action or proceeding in which the judgment was given or of objection to the 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 four rand as security for the costs of the application:

Provided that the judgment creditor may by consent in writing lodged with the clerk waive compliance with this requirement.

(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.

2. (1) The court may on the hearing of any such application, unless it is proved that the applicant was in wilful default, and if good cause be shown, 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. (1) The rules contained in this Order shall *mutatis mutandis* govern all proceedings for the rescission or variation of any judgment by the court in the exercise of the jurisdiction conferred by section 21 of the Act.

(2) Where rescission or variation of a judgment is sought on the ground of invalidity, fraud or mistake, application may be made not later than one year after the applicant first had knowledge of such invalidity, fraud, or mistake.

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 one month after he has knowledge thereof, be so rescinded or varied by the court to the extent only to which such applicant is affected thereby.

(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 four days after judgment and before noting appeal and upon payment by such party of the prescribed fee the judicial officer shall within ten 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 thirty days after the date of the judgment appealed against or within fourteen days after the delivery to the clerk by the judicial officer of a written judgment in terms of Rule 1 hereof whichever period shall be the longer.

(2) An appeal shall be noted by the delivery of notice and by paying the prescribed fee for an appeal and unless the High Court shall otherwise direct by giving security for the respondent's costs of appeal to the amount of sixty rand:

Provided that no security shall be required from the Government.

(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 specifying the findings of fact or rulings of law appealed against.

(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 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) 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 it 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 High Court shall see fit to make an order to the contrary.

5. The clerk shall, within seven days after he receives notice that an appeal has been set down for hearing, transmit the record in the action duly certified to the registrar of the High Court.

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. If the parties agree, under section 63 of the Act, 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. If 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.

ORDER NO. XXXI

ASSESSORS

1. (1) The court may 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 19 of the Act 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.

(3) Upon receipt of such resignation the clerk shall remove the name of such assessor from the list.

(4) 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.

(5) 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.

(6) 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) Any 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.

(2) Such notice shall contain either a consent by the other party or a notice setting down the application for hearing.

(3) The party applying shall, at the time of delivering the notice of application, deposit with the clerk the sum of E6,30 for each assessor applied for and shall be liable for any further sum becoming due to the assessors for fees.

(4) The fees and expenses of the assessors shall, unless otherwise ordered by the court, be costs in the action.

(5) If the court of its own motion summons any assessor to its assistance the fees for such assessor shall be paid by Government.

3. (1) If the application be consented to or granted, the clerk 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.

4. (1) If a trial is postponed or adjourned, the party applying for assessors shall, forthwith after the order for postponement or adjournment, pay to the clerk (in addition to the deposit mentioned in Rule 2 hereof) 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) 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.

(3) 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.

(4) If 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 a fee mentioned in section 9(a) of Table A of the Second Annexure to these rules, be allowable only in so far as the work to which they have been allocated has in fact and necessarily been done.

(3) The court may on request made at or immediately after the giving judgment in any contested action or proceeding in which —

- (a) is involved any difficult question of law or of fact; or
- (b) the plaintiff makes two or more claims which are not alternative claims; or
- (c) the claim or defence is frivolous or vexatious,

award costs on any scale higher than that on which the costs of the action would otherwise be taxable.

(4) The fees to be allowed on taxation in civil cases shall unless the court shall otherwise direct include —

- (a) an allowance to the attorney of any party at the rate of six rand thirty cents a day for each day for which such attorney is necessarily absent from his usual place of business in order to attend the hearing of the case;
- (b) the actual travelling expenses reasonably incurred by such attorney in travelling to and from the court:

Provided, however, that no such allowance shall be included if the period of such necessary absence is less than twelve hours, and that for the purpose of reckoning the amount

of any such allowance any part of a day not less than twelve hours shall be reckoned as one day.

(5) If 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) The court may in its discretion order that the whole of the costs of an action (including the costs of any counterclaim) be paid by the parties in such proportions as it may direct.

(7) If costs in convention and reconvention are awarded to different parties, the clerk of the court shall on taxation, subject to any order which has been made by the court, award as costs in convention all such costs as would in his judgment have been incurred if no counterclaim had been made, and as costs in reconvention all other costs allowed.

(8) The costs of issuing any warrant of execution or arrest shall, if they are payable by the party against whom the warrant is issued, be assessed by the clerk without notice and inserted in the warrant.

(9) Witness fees and expenses shall be allowed in respect of the attendance of a party to an action or proceeding only if such party has been declared by the court to be a necessary witness.

3. (1) If 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; and he may include in such bill all such payments as have been necessarily and properly made by him.

(2) The clerk 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) If 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) If 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.

(5) Notwithstanding anything in Rule 1 hereof a bill of costs as between attorney and client may be taxed at any time after determination of the mandate.

(6) If liability for costs is determined without judgment of the court by the provisions of Rule 4(2) of Order XII or by a settlement recorded in terms of Order XIX, Rule 4(3), such costs shall be taxable by the clerk as if they had been awarded by the court.

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) 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.

(4) Upon such taxation the messenger shall vouch to the satisfaction of the clerk all expenses claimed by him.

(5) If the messenger's fees or charges are taxed and passed in full the messenger shall be allowed an additional fee of 50 cents 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 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 twenty-four 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.

Second Annexure Table D.

6. (1) The court fees prescribed by these rules shall be those set forth in Table D of the Second Schedule and such fees shall be collected by means of adhesive stamps duly approved as revenue stamps for use under the Stamp Duties Act No. 37 of 1970.

(2) Every such stamp shall be affixed to the document in respect of which the court fee is payable and shall be defaced by the public officer responsible for so affixing it.

(3) Every such stamp shall be defaced by writing or impressing in ink on or across the stamp the name or initials of the public officer affixing it to the document together with the true date of defacement in such manner as effectually and permanently to render the stamp incapable of being used for stamping any other document.

(4) In the circumstances and subject to the conditions mentioned in section 33 of such Act the Accountant-General, with the approval of the Registrar, of the High Court may make a refund of any court fee payable under this section, as if such court fee was a duty payable under such Act. (Amended L.N.7/1967; L.N.18/1971.)

ORDER NO. XXXIII

SPECIAL RULES FOR RECOVERY OF SMALL DEBTS

(Amended in *toto* by L.N.39/1972.)

Notwithstanding the provisions of Orders VII-XVIII, in any action brought against a natural person, other than an action the right to bring which has been acquired by cession in which the claim is for the recovery of any debt or debts not exceeding in the aggregate R50 (exclusive of costs), being a claim for —

- (a) the price of goods sold and delivered to, or work or services performed for, the defendant;
- (b) the amount of any loan or advance made or given to the defendant;
- (c) the amount of any cheque or promissory note drawn by the defendant, which has been dishonoured; or

(d) the amount of any rent due and payable by the defendant, the following rules shall apply —

1. (1) The process of the court commencing the action shall be by a summons (in the form set out in Form 47 calling upon the defendant to answer the claim of the plaintiff at a named court upon a specified return day not being less than ten days nor more than twenty-one days from the date upon which the summons was issued.

(2) Every such summons shall be served not less than three days prior to the return day.

(3) The plaintiff shall not be required to attend the court on the return day.

2. The summons shall, before issue, be endorsed with —

(a) particulars of the parties and their occupations and addresses; and

(b) particulars of the claim.

3. (1) The particulars of the claim shall show the nature and amount of the claim, the date and place at which the transaction took place and the rate of interest and the amount thereof claimed up to the date of the summons.

(2) If the summons contains more than one claim, the relief sought in respect of each claim shall be stated separately.

(3) If any claim does not contain the particulars required by Rule 2 hereof and this rule, the clerk may refuse to issue a summons under this Order.

4. (1) On the return day of the summons, unless it shall have been withdrawn, the court shall cause the case to be called, and the defendant shall be required to state whether he admits or denies the claim, and whether he has any counterclaim against the plaintiff.

(2) The defendant's answer to the summons, together with particulars of the counter-claim, if any, shall be recorded by the court and a copy thereof delivered to the plaintiff if he be present at the court or transmitted by the clerk to the plaintiff or his attorney of record within seven days, if the plaintiff is not present.

(3) If the defendant shall admit the claim, or part thereof, the court may if it sees fit thereupon enter final judgment for the amount admitted and costs to date, and may exercise the powers contained in Rule 10 and make such order as to payment as to the court seems just, and the clerk shall, if the plaintiff be not present in court when judgment was entered, forthwith advise the plaintiff or his attorney of record accordingly.

(4) If the defendant shall deny the claim, or part thereof, or file a counter-claim against the plaintiff, the court may postpone the hearing of the claim, or of the unadmitted part thereof, to a date to be fixed by the court, and the clerk shall thereupon advise the plaintiff or his attorney of record and the defendant of the date of trial, at the same time informing them that they will be required at the date of hearing to produce and exhibit to the court any writings or documents whereon the respective parties rely, and to produce any witnesses they may require to have examined in support of the same.

(5) If the defendant files a counter-claim, the plaintiff may file a written reply thereto in duplicate with the clerk within ten days from the date on which the defendant's counter-claim is received by him.

(6) The clerk shall deliver a copy of such reply to the defendant before the hearing of the case commences.

5. If it shall appear to the court that any person who is a material witness for either party is not present to give evidence, then the court may, at its discretion, either postpone the hearing of the case to another day or proceed with the examination of such witnesses as are present and thereafter postpone the further hearing of the case to another day.

6. The case for the plaintiff having been heard, the defendant shall in like manner produce any writings or documents relevant to his case, and any witnesses to be examined in support of his answer or denial, and the plaintiff shall be heard in reply thereto.

7. The defendant may, before the return day of the summons or at any time between the return day and the date fixed for the hearing of the summons, consent to judgment by appearing before the magistrate and signing a form of consent to judgment, and the magistrate shall thereupon enter judgment for the plaintiff and may exercise the powers contained in Rule 10 and make such order as to payment as to the court seems just.

8. If the defendant does not appear before the court on the return day of the summons the court may, if it is satisfied that the summons was duly served on the defendant, proceed to enter judgment by default in favour of the plaintiff.

9. (1) If the defendant has appeared on the return day and his reply to the summons has been recorded, but he fails to appear on the day of trial, then, upon the request of the plaintiff and upon being satisfied that the defendant had been given due notice of the day of trial, the court may, unless it appears to the court that there is a valid reason for the defendant's non-appearance, proceed to hear the plaintiff and his witnesses and give judgment thereon.

(2) If the plaintiff does not appear before the court on the day of trial then, upon the request of the defendant the court may, unless it appears to the court that there is a valid reason for his non-appearance, adjudge the claim to be dismissed with costs.

10. (1) If the court has given judgment for the plaintiff, the court may forthwith examine the defendant upon oath as to his means of payment of the judgment debt and, if satisfied that the defendant has no property against which execution may be levied, the court may make an order for payment of the debt by instalments or, an application by the judgment creditor, may make a garnishee order against the defendant's employer for such deductions from his wages or salary as to the court seems just.

(2) On application made by or on behalf of the plaintiff or defendant after notice given to the other party, the court may increase or decrease the amount of any instalment or deduction from wages or salary ordered under this rule.

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) If any provision of these rules or any request made 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) If 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 at any time whether before or after the expiry of the period limited 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 to costs and otherwise as may be just.

(2) If 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) If such adjournment or postponement is made *sine die*, either party may by delivery of notice of reinstatement set down the action, application or matter for further hearing on a day generally or specially fixed by the clerk, not earlier than seven days after delivery of such notice.

(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) If 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) If it is necessary to give in evidence in another court any such record, entry or document, a copy thereof certified by the clerk may be given in evidence without production of the original.

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) If a plaintiff—

- (a) is not resident within Swaziland;
- (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:

Provided that if the fact relied upon first came to the knowledge of the defendant after the close of pleadings, the defendant may within two days after such fact has come to his knowledge require that such security be given.

(2) If such request is not complied with within forty-eight hours, the court may on application either stay the proceedings until such request is complied with or dismiss the action.

(3) In this rule “plaintiff” shall not include a plaintiff in reconvention nor shall “action” include a counterclaim.

10. If summons in an action be not served within twelve months of the date of its issue or, having been served, the plaintiff has not within that time taken further steps in the prosecution of the action the summons shall lapse:

Provided that where the plaintiff or his attorney files an affidavit with the clerk before the expiry of such period setting out —

- (a) that at the request of the debtor an extension of time in which to pay the debt claimed or any portion thereof has been granted to him;
- (b) that in terms of the agreement judgment cannot save in case of default be sought within a period of twelve months from the issue of the summons;
- (c) the period of the said extension;

the summons shall not lapse until twelve months after the expiry of the period of extension.

11. (1) If a court imposes upon any person a fine for failure to appear or other contempt of court and the fine is not forthwith paid the clerk may issue process for the recovery of the amount of such fine and such process shall be executed by the messenger of the court in manner prescribed in Order XXV.

(2) For the purposes of issue and execution of such process the Government of Swaziland shall be deemed to be the judgment creditor. (Amended L.N.38/1967.)

CRIMINAL

ORDER No. XXXV

CLERK OF THE COURT

1. (1) The clerk shall keep a book to be styled the "Criminal Record Book" in which he shall daily enter particulars of every criminal case coming before the court on that day.

(2) The charge sheet or, when the matter comes before the court by way of preparatory examination, the inner sheet shall, when the matter first comes before the court be numbered by him with a consecutive number for the year and the case shall then be entered in the criminal record book under that number.

(3) The particulars recorded in the criminal record book shall include —

- (a) date of hearing;
- (b) number of case;
- (c) name and description of accused;
- (d) crime or offence charged;
- (e) verdict;
- (f) sentence or other disposal;
- (g) remarks (including date and effect of any order of a superior court on review or appeal).

(4) The judicial officer presiding at the hearing shall himself record in the criminal record book any sentence imposed or other order of disposal made by him including acquittal, or other discharge, postponement of sentence, adjournment, remand to another court or committal for trial.

2. (1) The court may in any criminal trial direct that the plea and statement of the accused, the evidence orally given, any exception or objection taken during the course of the proceedings, the rulings and judgment of the court and such other portion of the proceedings as the court may specially indicate, be taken down in shorthand either verbatim or in narrative form.

(2) Every person employed for the taking of shorthand notes in terms of sub-rule (1) or for the transcription of notes so taken by another person shall be deemed to be an officer of the court and shall before entering on his duties take before a judicial officer an oath in the form prescribed in the First Annexure to these rules.

(3) The shorthand notes taken in terms of sub-rule (1) shall be certified as correct by the writer and shall be filed by the clerk of the court with the record of the case.

(4) Unless the judicial officer presiding at the trial shall otherwise direct the notes shall be transcribed as soon as may be after the conclusion of the trial, and the transcription shall be certified as correct by the person making it and also filed with the record.

(5) Shorthand notes and transcripts thereof certified as provided in sub-rule (3) shall be deemed to be correct and shall form part of the record of the proceedings in the trial:

Provided, however, that the court may on application by the prosecutor or by the accused made within fourteen days after the conclusion of the trial or after the completion of the transcription of such notes order the amendment of such notes or such transcript.

(6) If by direction of the judicial officer in terms of sub-rule (4) the shorthand notes have not been transcribed, any person may at any time by notice to the clerk of the court require that a transcription be made.

(7) Any person other than the prosecutor or the accused so requiring transcription shall pay to the clerk at the time of making the request fees at such rates as the Chief Justice may from time to time prescribe.

(8) Any person may on request obtain from the clerk a copy of any transcript made in terms of sub-rule (4) or sub-rule (6) hereof upon payment, save in the case of the Government, at the time of making the request, of fees at such rates as the Chief Justice may from time to time prescribe.

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 a written statement setting out clearly and specifically the grounds on which the appeal is based, and a residential address within Swaziland at which service of the notice of the date appointed for the hearing of the appeal may be served and, if such accused person is in prison, the name of the prison, and if he is to be represented at the appeal, the name and address of his attorney. (Amended L.N.7/1970.)

(2) If the accused person is unable, owing to illiteracy or to physical defect, to write out such a statement, the clerk shall, upon request, do so.

(3) Upon an appeal being noted the judicial officer shall within seven days deliver to the clerk 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.

(5) The accused person may, within the time limited for the noting of an appeal, by notice to the clerk amend the statement of his grounds of appeal, and the judicial officer may in his discretion, within seven days thereafter deliver to the clerk a further statement of reasons for judgment.

2. (1) The clerk shall, within fourteen days after receiving the judicial officer's statement or further statement, transmit the same and, if there is more than one appellant and more than one notice of appeal, an additional copy in respect of each separate notice of appeal; together with the appellant's statement and any notice of amendment thereof, with the record of the case to the registrar of the High Court. (Amended L.N.7/1970.)

(2) The clerk shall at the same time forward four typed copies of the record and statements for the use of the court.

(3) The appeal shall thereafter be prosecuted and in the manner prescribed by the rules of the High Court.

FIRST ANNEXURE

FORMS

NO. 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	Remarks
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NO. 2. — GENERAL HEADINGS

(1) *In Actions.*

In the Magistrate's Court for the Region of..... held at
..... No. of 20.....

BETWEEN

A. B., Plaintiff,

and

C. D., Defendant.

(2) *In Applications.*

In the Magistrate's Court for the Region of..... held at
..... No. of 20.....

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 Region of..... held at
..... No. of 20.....

In the matter of—

A. B., Judgment Creditor.

C. D., Judgment Debtor.

E. F., Garnishee.

NO. 3. — GENERAL CONCLUSIONS

(1) *Process for Service.*

Dated at thisday of..... 20.....

.....
Clerk of the Court.

(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 thisday of..... 20.....

By Order of the Court.

.....
Clerk of the Court.

(Attorney for) Execution Creditor.

(3) *Notice.*

Dated at thisday of..... 20.....

Attorney for the.....

To

(4) *Security Bond.*

In witness whereof the said and have hereunto
set their hands at..... thisday of..... 20.....

As witnesses:

1. (Signature and address)
2. (Signature and address)

(5) *Agreement.*

Witness our hands this.....day of 20.....

.....Plaintiff or Plaintiff's Attorney.

.....Defendant or Defendant's Attorney.

As witnesses:

1. (Signature and address)
2. (Signature and address)

(6) *Affidavit.*

Sworn and Signed at..... thisday of..... 20.....

Before me,

(Signed)

Justice of the Peace.

(or, Commissioner of Oaths.)

No. 4. — GENERAL FORM OF NOTICE OF APPLICATION

(Heading)

TAKE NOTICE that application will be made to this Court on
the day of..... 20....., at.....m. for an Order that
(state shortly terms of order applied for).

(Conclusion)

No. 5. — SUMMONS COMMENCING ACTION

(Heading)

To

C. D., male, of No. 500, Main Street, Siteki, in the Region of Siteki,
Clerk, Defendant.

YOU ARE HEREBY SUMMONED that you do withindays after the
service of this Summons upon you ENTER or cause to be entered with me and also the
plaintiff or his attorney at the address specified herein an APPEARANCE TO ANSWER the
claim of A. B., of 214, Fiftieth Avenue, Mbabane, in the Region of Mbabane, Grocer, the
plaintiff herein for E 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 herein 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 counter-claim, you must,
within seven 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) if 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 such defence.

(Conclusion)

(SEE BACK.)

(Endorsement on Back of Summons, or on the copy)

(1) *Particulars of Claim.*

(See Form No. 6.)

(2) *Consent to Judgment.*

I admit that I am liable to the plaintiff as claimed in this Summons (or; in the amount of Rand costs to date) and I consent to judgment accordingly.

Dated this.....day of 20.....
Defendant.

NOTE. — If the consent is not given on the original Summons or on the copy served it must be witnessed by two witnesses whose addresses must be given.

(3) *Form of Appearance to Defend.*

To the Clerk of the Court.

Enter an appearance for the defendant, who intends to defend this action.

Dated this.....day of 20....., at
Defendant or Defendant's Attorney.

Address

Postal Address

NO. 6. — ENDORSEMENT ON SUMMONS

NOTE. — These forms are examples only and are not, save as to the claims for costs, either compulsory or applicable to all cases.

(1) The plaintiff's claim is for the price of goods sold and delivered.

Particulars

1916— 1st January —

Balance of account for butcher's meat to this date E40-00

1916 — 1st January to 31st March —

Butcher's meat 40-00

Total E80-00

1916 — 1st February — Paid..... 30-00

Balance..... E50-00

with costs, if the action is undefended, as follows:—

	<i>Summons</i>	<i>Judgment</i>
Attorneys' Charges	E2-50	E1-25
Court Fees	0-10	0-10
Messenger's Fees	0-50	—
Totals	E3-10	E1-35
Total.....		E4-45

(Conclusion)

(2) The plaintiff's claim is against the defendant, as maker of a promissory note for R50, 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, Manzini where the same was payable, and was dishonoured.

Particulars:—

Principal.....	E50-00
Interest at per cent.....	2-00
Amount due.....	E52-00

with costs, etc.

(3) The plaintiff's claim is for money lent to the defendant.

Particulars:—

1st January, 1916	E100-00
1st June, 1916 — Paid	50-00
Balance.....	E50-00
Interest at per cent.....	E10-00
Total.....	E60-00

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:—

	E. c.
1st January, 1916 — Rent due for the month January, 1916	E20-00
1st February, 1916 — Ditto, February, 1916	20-00
1st March, 1916 — Ditto, March, 1916	20-00
Total.....	E60-00
15th February, 1916 — Paid.....	10-00
Balance.....	E50-00

with costs, etc.

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 claims is for arrears of wages (or salary) as a
at Rper

Particulars:—

	E. c.
January, 1916 February, 1916.....	E40-00

15th February, 1916 — Paid	40-00
	80-00
15th February, 1916 — Paid	30-00
Balance	E50-00

with costs, etc.

(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 confirmation of the Order of Court, dated the day of 20..... 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 E54, to be returned on demand.
2. On the 27th August, 1914, plaintiff demanded the return of the said table 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 L1 a month.

Wherefore plaintiff claims —

- (1) Return of the said table and chairs;
- (2) Damages —

	E. c.
In addition to delivery	3-00
In lieu of delivery	45-00

with costs, etc.

(7) The plaintiff's claim is for damages for personal injuries caused by defendant's negligence:—

Particulars:—

1. On the 14th October, 1914, about 10 a.m., plaintiff was crossing Main Street, Manzini from north to south.
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:—

	E. c.
Medical attendance, etc.....	34-35

Loss of earnings	120-00
Damage to coat	3-00
Pain and suffering	1500-00
Total.....	<u>E1 657-35</u>

5. Plaintiff admits that he is indebted to defendant in the sum of E200 as damages for breach of a contract to deliver to defendant 1,000 tons of coal, entered into between the parties verbally on 12th September, 1914, and

	E. c.
sets off.....	<u>200-00</u>
Balance	<u>E1 457-35</u>

6. In order to bring the claim within the jurisdiction of the court, plaintiff abandons E475-35, and claims E1000, with costs, etc.

(8) The plaintiff's claim is as cessionary of a claim by J. K., of 444, Station Street, Croydon, attorney, for professional services rendered, ceded to the plaintiff by the said J. K., by writing, dated 11th August, 1915.

Particulars:—

1915

1st and 8th March.

Agreed fee for defence in Reg. v. C. D., E21 with costs, etc.

NO. 7. — CONCLUSION TO ENDORSEMENT OF CLAIM

Plaintiff or Plaintiff's Attorney.

Address

Postal Address

NO. 8. — 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 E..... 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..... 20....., and, if you do not do so, judgment may be given against you in your absence.

(Conclusion)

NO. 9. — NOTICE OF SERVICE OF SUMMONS

(Heading)

You are hereby informed that the defendant was on the day of.....
.....20....., at served with the Summons in this Action.
(Date.)

Messenger of the Court.

(To the Plaintiff's Attorney.)

NO. 10. — 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 for the following reasons:—

(Date.)

Messenger of the Court.

(To the Plaintiff's Attorney.)

NO. 11. — NOTICE OF CONSENT TO JUDGMENT

(Heading)

You are hereby informed that the defendant has to-day consented to judgment herein
for E.....with costs of E.....

(Date.)

Clerk of the Court.

(To the Plaintiff's Attorney.)

NO. 12. — 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
E.....for interest atper cent from the date of Summons.

Dated this day of 20.....

Plaintiff or Plaintiff's Attorney.

NO. 13. — NOTICE OF WITHDRAWAL

(Heading)

TAKE NOTICE that the above-named plaintiff hereby withdraws the above action and
consents to pay the defendant's taxed costs.

(Conclusion)

NO. 14. — NOTICE OF APPLICATION FOR SUMMARY JUDGMENT

(Heading)

TAKE NOTICE that application will be made to this Court on
the day 20 at m. for leave to enter
judgment against you in this action for E 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. 15.—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 E..... 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. 16. — CONSENT TO SALE OF ATTACHED GOODS

(Heading)

To the Clerk of the Court:—

I, A B of the above respondent,
hereby admits that the property attached in the above matter is subject to a hypothec to the
above applicant to the extent of E..... and I consent to the sale of the said
property in satisfaction of the said amount of E plus costs and messenger's
charges.

Dated at this day of 20.....

Respondent.

As witness:.....

NO. 17.—FORMS AS TO INSPECTION AND PRODUCTION OF DOCUMENTS

(1) *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 relating to the action which you intend to use in the above
action or are material to prove or disprove either party's case.

(2) *Notice to produce Documents for Inspection.*

TAKE NOTICE that the requires you to produce for his inspection at your office on..... atm., the documents specified in your Schedule of Documents (or, the accounts and documents upon which the action is founded and also the documents specified in the notice delivered to you herein on the..... day of 20..... in terms of Rule 3 of Order XVII).

(3) *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. 18. — CERTIFICATE OF RECORD

(Heading)

I,Clerk of the 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..... 20.....

Clerk of the Court
(or Shorthand Writer).

NO. 19. — 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 theday of 20..... at..... in thenoon, 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..... days.

3. That this rule operate as an *interim interdict*.

By Order of the Court.

Clerk of the Court

Applicant's Attorney.
Street.....

NO. 20. — 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 20.....
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 E..... to be instituted against him by the applicant.

2. That 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.....

NO. 21. — 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 20.....
and has made default:

And whereas this Court has imposed upon the said A. B. for his said default a fine of
..... rand 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 said Messenger of this Court to take
the body of the said A. B. and, unless he shall pay to you the said sum of.....
rand 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 rand 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. 22. — 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 theday of 20.....
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 the Court at..... m. on theday of 20.....
then and there to give his evidence and to be otherwise dealt with according to law.

(Conclusion)

NO. 23. — 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 E.....

Now therefore the said A. B. undertakes and binds himself to satisfy any lawful claim by the said C. D. against him the said A. B. for damages which the said C. D. may suffer by reason of the said arrest (or interdict) in case the said arrest (or interdict) be hereafter set aside.

And the said E. F. hereby undertakes and binds himself as surety for and co-principal debtor with the said A. B. in a sum not exceeding the said sum of E..... for the due fulfilment by the said A. B. of the obligation undertaken by him by these presents.

(Conclusion)

NO. 24. — 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 20....., 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

(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

NO. 25. — SECURITY FOR STAY OF EXECUTION

(Heading)

Whereas the said A. B. by judgment of this Court on the day of..... 20....., recovered against the said C. D., the sum of E together with the sum of E..... 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 surety 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) and further severally (here insert any further terms required).

(Conclusion)

NO. 26. — SECURITY WHEN EXECUTION IS ALLOWED PENDING APPEAL

(Heading)

Whereas the said A. B. on theday ofrecovered by judgment of this Court against the said C. D. the sum of E together with the sum of E..... 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 (*here insert any further terms required*).

(Conclusion)

NO. 27. — WARRANT OF EJECTMENT OR FOR 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..... 20..... 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 and all persons holding through or under him for which this shall be your warrant.

(Conclusion)

No. 28. — 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) and place the said plaintiff in possession thereof for which this shall be your warrant.

(Conclusion)

No. 29. — WARRANT OF EXECUTION AGAINST PROPERTY

(Heading)

To the Messenger of the Court,
AMOUNTS TO BE LEVIED
(with costs of execution).

Whereas in this action the said A. B
..... on the day of 20,
by the judgment of the Court

Judgment Debt.....	E. c.	recovered against the said C. D of.....the
Costs		several sums set out in the margin hereof
Costs of issuing Warrant.....		amounting in all to the sum of.....
Cost of Appeal.....		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
		E.....
		together with your costs of this execution;
		and pay to the said A. B. the said sum of
		E.....

Total.....

(Conclusion)

NOTE—

(1) If the judgment debtor pays the amounts specified in the margin hereof with messenger's charges of E..... within half an hour after 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*).

(4) In case of re-issue the fact and date of re-issue and any increase or reduction in the amounts to be levied shown on the face hereof shall be set out in a note endorsed hereon and signed by the judgment creditor's attorney and by the clerk of the court. No alterations save in consequence of amendment duly authorised shall after first issue be made on the face hereof.

No. 30. — 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 E.....and E 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 thisday of 20.....

Messenger of the Court.

NO. 31. — SECURITY BOND ON ATTACHMENT

(Heading)

Whereas the said A. B. on theday oflast by judgment of this Court recovered against the said C. D. the sum of E together with the sum of E..... for costs; and whereas by virtue of a certain warrant under the hand of the Clerk of the said 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 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 same 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 for and on behalf of the said C. D.

(Conclusion)

NO. 32. — INTERPLEADER SUMMONS (1)

(Heading)

Whereas of..... has interpleaded in this Court as the subject-matter following:—

(State subject-matter)

which is adversely claimed byof and of..... hereinafter called the claimants:

Summon the said claimants that they severally appear before this Court holden at..... on.....the..... day of..... 20....., at..... o'clock in thenoon, 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. 33 — INTERPLEADER SUMMONS (2)

(Heading)

To A. B. (*describing Execution Creditor*) and C. D. (*describing Claimant*), you are hereby summoned to appear before this Court on theday of.....20....., at.....o'clock in the forenoon, to have it determined and declared whether certain movable property, to wit attached on the day of.....20 by the Messenger of this Court by virtue of a warrant of execution issued by this Court on the..... day of 20....., in the action in which you, the said A. B., obtained judgment for the sum of E 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 thisday of 20.....

Clerk of the Court.

NO. 34.— SECURITY UNDER ORDER NO. XXV, RULE 1(9)

(Heading)

Whereas the said plaintiff on the day of..... 20..... recovered judgment in this Court against the said defendant for the sum of E together with the sum of E for costs;

And whereas under the said judgment execution has been issued and property has been attached;

Now, therefore, the said plaintiff doth undertake and bind himself to the said execution debtor that if the execution and attachment be hereafter set aside, he will satisfy any lawful claim against him by the said execution debtor for damages suffered by the said execution debtor by reason of the said execution and attachment.

And L. M. of doth undertake and bind himself as surety and co-principal debtor in a sum not exceeding E for the due fulfilment by the said plaintiff of the obligation undertaken by these presents.

(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 “satisfy any lawful claim against him by the said execution debtor for damages suffered by the said execution debtor by reason of the said execution and attachment”.

NO. 35. — 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. of (*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 B. F. by a judgment of the said Court bearing date the..... day of.....20

(Conclusion)

NO. 36. — 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 E (parcel of the sum of E.....) which the said E. F. recovered for his debt and costs by judgment of this Court bearing date the.....day of 20, 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 which ever of the two shall first happen or until the said C. D. shall be otherwise legally discharged.

(Conclusion)

NOTE. — No alterations shall after first issue be made on the face hereof but any suspension, variation, increase, or reduction in the sum payable by the debtor, and the fact and date of any re-issue shall be shown by endorsement hereon signed by the judgment creditor's attorney and by the clerk of the court.

NO. 37. — AFFIDAVIT IN SUPPORT OF APPLICATION FOR A GARNISHEE ORDER

(Heading)

AB....., of.....duly sworn, states:

1. That he is the above-named Judgment Creditor (*or*, that he is duly authorised by the above-named 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..... 20....., in an action numbered for the sum of E.....and costs amounting to E

3. The said judgment is still unsatisfied to the amount of E

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 E (*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 due and payable this theday of20.....

(*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. 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 dependants*)

(Conclusion)

NO. 38. — 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 payable and is not for salary or wages; or, that the debt is now due and payable 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 the said debt to an amount not exceeding E be attached to answer a judgment recovered against the Judgment Debtor by the Judgment Creditor in the Court on the day of 20 for the sum of E on which judgment the sum of E remains due and unpaid.

That the Garnishee do pay to the Messenger of this Court the said sum of E together with E the costs hereof (but not exceeding in all the sum of E) out of his said debt, to the Judgment Debtor, or, failing such payment, that the Garnishee appear before this Court on the day of , 20 at o'clock in the noon, then and there to show cause why he should not pay the same.

Dated at this day of 20 at hours minutes in the noon.

By Order of the Court,

Clerk of the Court.

Attorney for Judgment Creditor.

TO THE ABOVE-NAMED GARNISHEE. — If the debt due by you to the above-named Judgment Debtor was not owing *both* at the day and hour above-mentioned *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 ABOVE-NAMED 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 not due and payable or 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.

NO. 39. — AGREEMENT NOT TO APPEAL

(Heading)

We (the respective attorneys of) the above-named plaintiff and defendant, do hereby agree, under the provisions of section 63 of the Magistrate's Courts Act, that the decision of the above-named Court in the above-named action shall be final.

(Conclusion)

NO. 40. — APPLICATION FOR TRIAL WITH ASSESSORS

(Heading)

The plaintiff (*or* defendant) hereby applies to have the above action tried with assessors.

Either (1)

The defendant (*or* 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 the day of....., 20..... at m.

Plaintiff (*or* Defendant) *or*

Plaintiff's (*or* Defendant's) Attorney.

To the Clerk of the Court and

To the Defendant (*or* Plaintiff).

granted

Application this day of 20.....

refused

Assessors appointed:— A. B., etc.

Clerk of the Court.

NO. 41. — SUMMONS TO ASSESSOR

(Heading)

You are hereby summoned to attend and serve as an Assessor in this Court on theday of, 20, at.....m., to assist the Court in the above action in accordance with the provisions of section 20 of the Magistrate's Courts Act.

I have the honour to be,

Sir,

Your obedient servant,

Clerk of the Court.

To A. B., etc.

NO. 42. — NOTICE OF ABANDONMENT OF PART OF CLAIM, ETC.

(Heading)

TAKE NOTICE that the plaintiff (or defendant) hereby abandons the under-mentioned claim (or objection, exception, defence, as the case may be) set up by him in his summons (or plea, reply, etc., as the case may be).

Particulars: —

(Conclusion)

NO. 43. — COMMISSION DE BENE ESSE

(Heading)

To

.....of.....

GREETING.

Under and by virtue of the authority vested in me by section 36 of the Magistrate's Courts Act, I do hereby commit to you full power and authority as a Commissioner of this Court to examine G..... H..... of..... (and such other witnesses as either of the parties to this suit may desire to call) and to take the evidence on oath of the said witness(es) in the above suit now pending in this Court.

Given under my hand at.....this..... day of.....
20.....

NO. 44. — REQUEST TO INSPECT RECORD

Magistrate's Court,

District of..... 20.....

Space for Revenue Stamps.

I apply to inspect Record No..... (or, if the applicant does not know the Registered No.)

I apply to inspect Record No.

Plaintiff.

Defendant.

Search to begin with the month of 20.....

(Signed).....

If the applicant is a party to the case, or the attorney of such a party, his capacity should be stated after his signature.

NO. 45. — CRIMINAL RECORD BOOK

Date of Hearing and No. of Case	Name and Description of Accused	Crime or Offence Charged	Verdict and Sentence	Remarks

NO. 46. — OATH OF OFFICE OF SHORTHAND-WRITER

I, A, B., do swear that I will faithfully accurately and to the best of my ability take down in shorthand, as directed by the judicial officer, the proceedings in any case in which I may be employed thereto as an officer of the Court and that I will similarly when required so to do transcribe the same or any other notes taken by any officer of the court.

Sworn before me atthis..... day of 20.....

Judicial Officer.

NO. 47. — SUMMONS COMMENCING ACTION UNDER ORDER XXXIII

(Heading)

To:
of
in the District of
YOU ARE HEREBY SUMMONED to appear at 10 o'clock in the forenoon of the
day of 20..... at the MAGISTRATE'S COURT at.....
there to answer the claim to the Plaintiff.....
.....
.....
for E and costs particulars whereof are endorsed hereon.

AND TAKE NOTICE THAT:

1. If you do not appear to answer the said claim/s as hereinbefore commanded judgment may then and there be entered for the Plaintiff.
2. If you do appear to answer the said claim/s and intend to defend the action you must produce to the Court all receipts, agreements, invoices and any other documents upon which you base your defence.
3. If you admit the said claim/s you may appear before the Magistrate at any time before theday of20.....and sign a form of consent to judgment.
made at..... this day of , 20.....

SECOND ANNEXURE

TABLE "A"

(Replaced L.N.23/1966; L.N.103/1979.)

Computation of Costs

1. For the purposes of computing costs, the following provisions shall apply, namely —

(1) "Amount in dispute" shall mean —

- (a) if costs are awarded to the applicant or plaintiff, the amount or value of the judgment and if more than one claim is involved, the total of the amounts involved in the judgment;
- (b) if costs are awarded to the respondent or defendant, the amount or value of the claim and where more than one claim is involved the total amounts of all the claims:

Provided that the amount or value of the claim or judgment, as the case may be, shall be inclusive of interest, but exclusive of costs.

(2) In the event of a matter being settled at any time the cost shall be taxed on the scale agreed upon between the parties to the agreement of settlement:

Provided that in the absence of any agreement as to the scale to be applied any one of the parties to the dispute may within 14 days after the settlement of such dispute apply to a Magistrate to determine the scale of fees to be applied on taxation.

(3) All costs in undefended actions or applications shall be in accordance with the scale as set out under the heading "undefended actions".

(4) Save as otherwise provided in this Annexure all costs in defended applications or actions shall be taxed on scale A.

(5) If the amount in dispute exceeds E400.00 the costs shall be taxed on scale B.

(6) If the amount in dispute is not apparent on the face of the proceedings, the Court may on the application of any party thereto assess the amount in dispute and the costs shall then be computed on the scale applicable to such amount:

Provided that in actions for divorce or judicial separation costs shall be computed in accordance with scale B:

And provided further that claims for ejectment shall be computed at two months rent of the leased premises.

(7) Any amount specified in this Annexure in respect of any item as allowable shall be inclusive of all necessary copies, attendances, and service (other than service through a messenger) in connection therewith.

(8) If the allowable amount on any item in this Annexure is left blank the following provisions shall apply —

- (a) the drawing of documents shall be allowed at E1.00 per folio;
- (b) copies for filing and service shall be allowed at E0.50 for the first copy and E0.25 per copy for all other necessary copies;
- (c) if printed forms of documents are used, the fees for copying shall be limited to the necessary matters inserted in such printed documents;

(d) if any document appears to the Court to be unnecessarily prolix it may disallow all or part of the fees therefor;

(e) service of any document shall be allowed at E0.50 for each necessary service. A document shall be deemed to include any annexures thereto or other documents served therewith; and no additional fee for the service of such annexures or other documents shall be allowed.

(9) A folio shall be 100 written or typed words or figures; in the case of figures four figures shall be equivalent to one word.

(10) The rate at which costs are computed shall not be increased by reason of any claim for confirmation of an interdict or other interlocutory order.

2. *If judgment payable by instalments.*

(1) If a judgment debt is payable by instalments in terms of a Court Order, the fees shall be taxable immediately the judgment is given, but the collection fee in respect of any instalment shall be recoverable only on payment of such instalment.

(2) A collection fee of 10% shall be allowed in respect of the first E100 paid in instalments in reduction of the capital and costs of the action; thereafter the collection fee shall be reduced to 5% in respect of further instalments so paid.

3. *Demand*

For the purpose of this Annexure, “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 or not such demand was required by law to be made before the institution of proceedings.

4. *Totality of hours allowed.*

If any fee is calculated on an hourly basis, the total number of hours on any one day shall be added together and the fee calculated on such total.

5. *Unnecessary charges.*

The Clerk of the Court shall disallow any charges which have been unnecessarily incurred.

UNDEFENDED ACTIONS

If there is more than one defendant or respondent E1.00 shall be added for each additional defendant or respondent to Items 1 and 2 hereof.

Item 1.	Summons (inclusive of demand)	E6.00
	If the claim or claims or value of the claim or claims in the aggregate do not exceed E200	E4.00
Item 2.	Judgment	
	Half the fee allowed for the Summons under item 1	E4.00
Item 3	Notice in terms of Rule 6(1) of Order VII	E3.00
Item 4.	Affidavit	—

Item 5. Attending Court at the instance of the Magistrate when the claim referred to court for judgment . . . as allowed under item 26 of the Scale for defended actions.

DEFENDED ACTIONS

<i>Item</i>	<i>Scale A</i>	<i>Scale B</i>
1. Instructions to sue or defend or to counterclaim or defend counterclaim	15,00	20,00
2. Instructions on commission <i>de bene esse</i>	3,00	3,00
3. Summons	10,00	15,00
4. Appearance	1,50	1,50
5. Notice under Order X Rule 4(1) and (2)	1,50	1,50
6. Plea	10,00	15,00
7. Instructions after receipt of Plea	7,00	12,00
8. Claim in reconvention	10,00	15,00
9. Reply, if necessary	5,00	10,00
10. Request for further particulars	—	—
11. Further particulars	—	—
12. Consent to adjournment or extension of time	2,00	2,00
13. Attendance, applying for costs on discontinuance	4,50	4,50
14. Schedule of documents and affidavit	—	—
15. Production of documents for inspection per half hour of the time spent, subject to maximum of E20	4,00	4,50
16. Inspection of documents, per half hour of the time spent subject to maximum of E20	4,00	4,00
17. Subpoena (not more than one for each four witnesses summoned)	2,00	2,00
18. Each copy for service	,50	,50
19. Any notice not otherwise provided for	—	—
20. Affidavit (other than discovery)	—	—
21. Interrogatories	—	—
22. Taking proof of witness (each)	—	—
23. Notice of trial or re-instatement	1,50	1,50
24. Preparing for trial (if counsel not employed)	25,00	40,00
25. Attending Court when action on roll for trial but adjourned	4,50	4,50
26. Attending Court on trial or at examination on commission, for each hour or part of an hour spent in court while case is actually being heard —		
(a) where counsel not employed	12,50	20,00
(b) where counsel employed	10,00	10,00
27. Attending pre-trial conference; for each hour or part of an hour actually occupied in such conference, subject to maximum of two	7,50	10,00

hours

28. Attending Court to hear reserved judgment	5,00	7,50
29. Correspondence and attendances: For each necessary letter or telegram written or received, including copy to keep, and each necessary attendance not otherwise provided for: E 1,00: Provided that a charge for perusing shall not be allowed in addition to the fee herein provided for		
30. Agreement not to appeal	3,00	3,00
31. Inspection in loco before trial, if the court so orders	5,00	10,00
32. Necessary consultations per hour or part thereof	7,00	10,00

OTHER MATTERS

(Exceptions, applications to strike out, application for summary judgment, interlocutory applications, arrest, interdict and *ex parte* orders under Order XXII or application to review judgment or order)

1. Instructions to make application or to oppose or to show cause	4,00
2. Drawing up of all documents, affidavits, applications and notices, orders etc. .	—
3. Attending Court on hearing	
(a) If unopposed	5,00
(b) If opposed (where counsel employed), per hour actually spent in court	7,50
(c) If opposed (counsel not employed) per hour or part thereof actually spent in court	15,00

The Court may on application made at the hearing allow, in addition to the fee prescribed under paragraph 3(c), a fee for preparing argument not exceeding that provided under item 24 of the scale for defended actions.

INTERPLEADER SUMMONS

4. Instructions	
(a) where interpleader proceedings initiated by messenger	7,50
(b) otherwise	10,00
5. Summons (if not sued out by messenger)	10,00
6. Affidavit	—
7. Attending Court on return of summons (if the matter is not being heard)	5,00
8. Attending Court on trial of interpleader issue, per hour actually spent in court	15,00

The Court may on application made at the hearing allow, in addition to the fee prescribed in item 8, a fee for preparing argument not exceeding that under item 24 of the scale for defended actions.

TAXATION OF COSTS

9. Bill of Costs : 5% of the fees allowed

10. Attending taxation : 5% of the total of the Bill allowed	
11. Notice of application for review of taxation and service	—
12. Affidavit where necessary	—
13. Attending on review of taxation, per hour or part thereof in court while review is actually being heard	8,00

EXECUTION

14. (1) Issue of warrant of execution, ejectment arrest, delivery up of possession etc.	4,50
(2) For each re-issue thereof	2,00
15. Inclusive fee for work involved in releasing of attachment of immovable property	4,00
16. Inclusive fee for work done in connection with sale in execution of immovable property only (excluding work for which fees are already provided for elsewhere and the drawing up of conditions of sale)	17,00
17. (1) Drawing up of conditions of sale in terms of Order XXV, per folio	—
(2) For all other work done and papers and documents supplied to the messenger in connection with a sale in execution of movable property — inclusive fee	10,00
18. Security for restitution, where necessary	4,00

WHERE COUNSEL EMPLOYED

19. Instructions on exception or application where allowed.....	7,50
20. Instructions on trial.....	10,00
21. Drawing brief on exception or application where allowed	—
22. Drawing brief on trial	—
23. Attending each necessary consultation with counsel	5,00

FEES TO COUNSEL

24. With brief to argue exception or application, not to exceed	50,00
25. With trial brief for the first day, not to exceed	150,00
26. There may be allowed by special order of the court a travelling allowance (in addition to the fee on brief)	
27. Each necessary consultation per hour or part thereof	10,00
28. For every day exceeding one, on which evidence is taken or arguments heard, a refresher not exceeding two thirds of counsel's allowed fee on exception, application or trial as the case may be	
29. Where trial is adjourned upon payment of the costs of the day as part of such costs (only by the party requesting such adjournment)	15,00

30. Drawing pleadings, not to exceed.....	25,00
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MISCELLANEOUS

31. Obtaining certified copy of judgment.....	2,00
32. Obtaining payment out in terms of rule 2(2) Order XII.....	2,00
33. Request for security in terms of rule 9 Order XXXIV.....	—
34. Giving security in terms of Order XXXIV	—

TABLE B

TARIFF OF FEES OF MESSENGERS

(Replaced L.N. 17 of 1978; L.N.114/1982)

1. (a) Service or attempted service.....	E2,00
(b) Making out a Return of Service, or non-service in terms of Order II, Rules 4 & 5.....	E1,00
(c) Flat rate on all processes	E6,00
2. (a) In addition to travelling allowance, subsistence may be charged at	E3,00
(b) Travelling allowance for service or attempted service of any process, travelling from the Court House and returning thereto, per km or part thereof	E0,25
(c) Travelling allowance shall be payable on each separate service: Provided that if the same process is to be served on more than one person at the same address only one charge travelling shall be made.	
(d) if it is necessary for a Messenger to convey any person under arrest from any distance, the travelling allowance payable to the Messenger from the place of arrest to the place of custody shall be doubled.	
3. (a) Inventory per 100 words or part thereof.....	E1,50
(b) Each necessary copy thereof (if actually made)	E0,50
4. (a) Notice of attachment	E1,50
(b) Each necessary copy thereof (if actually made)	E0,50
5. (a) Drawing advertisement for sale of goods attached.....	E3,00
(b) Costs of advertisement shall be charged as per amount reflected on a receipt produced by the Messenger	
(c) Any notice of sale published at the Court House and any other public places.....	E2,00
6. (a) If a Writ is paid in full or part on presentation of 4% of the amount paid.	
(b) If the Writ is stayed or withdrawn by the Judgment creditor or the judgment debtor's estate is sequestrated before attachment of any movable property, 3 % of the amount of the Writ.	

- (c) If a Writ is stayed, withdrawn by the judgment creditor or the Judgment debtor's estate is sequestrated after attachment of any movable property but before the sale of the property, 4% of the amount of the Writ:

Provided that if a sale subsequently takes place in consequence of such attachment the amount so paid shall be deducted from the commission payable under paragraph 7.

- (d) If the Writ is paid by the Judgment debtor to the Messenger or the party issuing it after attachment of any movable property but before the sale of the property, 5 % of the amount of the Writ.

7. Commission on the sale of movable property attached, 5 % on the amount realised.
8. If immovable property has been attached but the Writ is stayed, withdrawn by the Judgment creditor or the Judgment debtor's estate is sequestrated before sale, 4% of the amount of the Writ plus proved expenses in connection with attempted sale.
9. Commission on immovable property which has been sold in execution, 5% of the amount realised.
10. Fee for ascertaining whether or not an immovable property is subject to a claim ranking in priority E3,00
11. Notice requiring a Judgment debtor to deliver all documents in his possession or under his control relating to his title of an attached immovable property E3,00
12. Notice to a Judgment creditor of a claim against any attached property, movable or immovable, by a third party E1,50
13. Preparing and issuing interpleader summons E7,00
14. Vendu Roll E7,00
15. Costs of transfer of immovable property, as per scale applicable to conveyancers.
16. Fees payable to a custodian (other than the debtor), or the Messenger for keeping possession of or storing property attached per day E1,50
17. For vehicle, proceeding to collect, and remove, attached goods, including standing time, if delayed, tariff as per current transport charges.
18. Driving livestock from place of attachment to place of custody or sale (herd boys at E4—00 per day).
19. Herding and preserving attached livestock as per fees charged by the Ministry of Agriculture at cattle holdings.
20. Insuring attached movable property if necessary, and (or, on instructions of the party issuing at writ.
21. Effecting arrest E10,00
22. Conveying an arrested person from the place of custody to Court, 40c per km travelled between the Court House and the place of custody.
23. Drawing a Bail Bond, Deed of Security or Indemnity..... E7,00

24. Executing a writ of attachment of movable property.....	E5,00
25. Executing a Writ of Ejectment	E10,00
26. Executing a Writ of attachment of immovable property or attachment <i>suspectus de fuga</i> , including notices incidental thereto	E5,00
27. Executing Writ of attachment of pension, salary, wages and inheritance of rights of similar character and each notice to the parties concerned.....	E5,00
28. Notice of the Registrar of Deeds withdrawing an attachment on immovable property	E5,00
29. (a) in addition to the above fees Messengers shall be entitled to postage and telephone call paid by them.	
(b) For all necessary letters and memos etc., to attorneys, per letter.....	E2,00
(c) per copy thereof.....	E1,00
(d) For time enquiring or obtaining stock removal permits	E5,00
30. For any delay caused to a Messenger engaged in serving any process (including travelling by foot, where no other means practicable, per hour or part thereof	E4,00
31. The fees and charges for all work reasonably and necessarily done in the service or execution of processes for which no provision may be made in this tariff, shall be assessed and every question arising under or relative to such tariff shall be determined by the Taxing officer.	

TABLE C

FEEES TO ASSESSORS

1. For every attendance when the case is wholly or partially heard, E2.10 for each hour or part of an hour of such attendance, but not to be less than E6.30 or more than E10.50 for every such attendance.
2. For every attendance when the case is not heard, but is postponed or settled, at the above rate, but the minimum to be E2.10.
3. Attendances 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 Court-house, shall also be entitled to a travelling allowance at the rate of 10c a mile for each journey actually and necessarily taken between the Court-house and his residence or place of business.

TABLE D
COURT FEES

<i>No.</i>	<i>Document</i>	<i>Amount</i> E. c.
1.	Summons commencing an action:	
(1) (a)	On the first E100 or part thereof of the amount of the claim or value of the matter in dispute where such value is stated in the summons ..	E1,25
	On each subsequent E100 or part thereof.....	E1,05
(b)	Otherwise	E2,00
(2)	On each claim for ejectment or for confirmation or an interdict or other interlocutory order.....	E2,00
	To be calculated on each claim in the summons, but not upon any but the largest of any alternative claims.	
2.	Statement of particulars of a claim in reconvention: fees as on a summons commencing as action.	
3.	Any other summons except an interpleader summons at the instance of the messenger	E1,25
4.	Appearance to defend.....	E0,25
5.	Notice of application (Other than an application for summary judgment.....	E0,50
6.	Any order of court other than an order made in matrimonial causes or matters	E0,50
7.	An order of court made in a matrimonial cause or matter	E1,00
8.	Subpoena, for each witness	E0,50
9.	Notice of withdrawal, discontinuance or abandonment of any claim or defence	E0,25
10.	Request for judgment in any undefended action: the same fees as were required on the summons commencing the action.	
11.	Notice of application for summary judgment: the same fees as were required on the summons commencing the action.	
12.	Notice of trial, notice of set down of exception or motion to strike out	E0,50
	(If service effected by messenger, his fees in addition.)	
13.	Notice of reinstatement of any action, application or matter postponed <i>sine die</i>	E0,10
	(If service effected by messenger, his fees in addition.)	
14.	Warrant for execution of any judgment, decree or order	E1,00
15.	For any recognisance or bond of security for restitution	E1,00
16.	For every annexure to a summons, pleading or other document	E0,10

17. For every document exhibited or admitted to be filed of record	E0,10
18. Request to inspect any record;	
(a) If the number of the record is given	E0,10
(b) If the number of the record is not given, for every month required to be searched.....	E0,10
19. Request for a copy of a record or part thereof to be made by the Clerk of the Court — for each 100 words or part thereof.....	E0,10
20. For examining and certifying any copy of a record, for each 100 words but not to be less than 10c in any case	E0,10
21. Request for a written judgment under Order XXX, Rule 1(1):	
(a) For the first four folios of 100 words each or part thereof.....	E0,50
(b) For each subsequent folio of 100 words	E0,10
22. For appeal from a judgment of a Magistrate's Court to the High Court.....	E15,00
Where an appellant requires the Magistrate's Court appealed from to supply typed copies of the record for the use of the High Court he shall be entitled to the number of copies prescribed by Rule 50(7) of the High Court Rules for delivery to the Registrar of the High Court on payment of the following fees:	
(a) For the first four folios of 100 words each, or part thereof.....	E0,50
(b) For each subsequent folio of 100 words	E0,10
If the appellant requires a copy, or copies, for his own use, for each copy supplied one quarter rate.	
If the respondent requires a copy, or copies, for his own use, for first copy full rate and for each subsequent copy one quarter rate.	
23. Bill of Costs —	
On each R2 or part of R2 allowed	E0.10
(1) There shall be issued a general receipt for all fees received, and payment in respect thereof recorded on the relevant document in the following form —	
Receipt No.....	<i>Fees paid</i>
Date	
Amount.....	
(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.	
(3) (a) 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 District Officer, who shall decide the same in a summary manner.	
(b) The District Officer's decision shall be final for the purpose of the action or matter in respect of which such document is lodged and	

shall discharge the clerk of the court under paragraph (2) hereof; but such decision shall be without prejudice to any other rights of any person interested.