

HIGH COMMISSIONER'S NOTICE No. 127 of 1929.

It is hereby notified for general information that under and by virtue of the powers in him vested by section *four* of the Bechuanaland Protectorate Special Court Proclamation, 1912, His Excellency the High Commissioner has been pleased to make the following rules for use by that Court.

By Command of His Excellency the  
High Commissioner.

B. E. H. CLIFFORD,  
Imperial Secretary.

High Commissioner's Office,  
Capetown, 27th November, 1929.

RULES OF THE SPECIAL COURT OF THE  
BECHUANALAND PROTECTORATE.

Rule 1.—*Definition.*

1. *Sheriff.*—References in these Rules to the Sheriff or Deputy-Sheriff shall, until a Sheriff is appointed for the Bechuanaland Protectorate or other provision is made, be deemed to include the Messengers of the several Courts of Resident Magistrates of the Protectorate who until such time shall be Messengers of the Special Court.

*Judge in Chambers.*—References in these Rules to a Judge in Chambers shall be deemed until further provision is made, to be references to the Courts exercising jurisdiction under section *three* of Proclamation No. 40 of 1912.

Rule 2.—*Service of Process.*

2. (a) The service of any summons, subpoena, and process of the Court, as also the execution of writs and warrants, shall be effected by the Sheriff or his Deputy.

(b) All summonses, subpoenas, process demands, and other legal documents shall be served as near as possible between the hours of nine o'clock in the morning and four o'clock in the afternoon.

(c) No service of any summons, order, or notice and no proceeding or act required in any civil action, except in the case of arrest shall be valid or effectual if performed on a Sunday.

But all process made returnable on a Sunday or holiday shall be returnable on the day following, and any act required to be done by any party in Court or in Chambers at a time which would fall on a Sunday or holiday, or on a day on which the Court or Judge in Chambers does not sit, may be done on the day following, or at the next ensuing sitting of the Court or the Judge in Chambers.

(d) Any summons, writ, warrant, notice, or other process, which by any law, rule of Court or agreement of parties, is required to be served on any person, or left at the house, or place of abode, or business of any person, in order that such person may be affected thereby, may be transmitted by telegraph by the Sheriff or his deputy, and a telegraphic copy duly served on such person or left at his place of abode, or business, shall be as lawful and of the same force as if the original had been shown to him, or a copy thereof served upon such person, or left as aforesaid as the case may be: Provided, always, however, that the original with a copy thereof shall be transmitted by the first post in order to be served or left at the same place where the telegraphic copy has been served or left.

Rule 3.—*Documents.*

3. All documents of process and minutes of the Court shall be written or printed in the English language, and all documents filed with the Registrar, if written or printed in another language, shall be accompanied by a translation in the English language, duly certified as correct by a sworn translator admitted and enrolled by the Court.

NOTICES, SUMMONSES, POWERS OF ATTORNEY, JURISDICTION.

Rule 4.—*Petitions and Motions.*

4. (a) All petitions and applications to the Court or a Judge in Chambers, shall be brought by way of motion, and all such petitions or applications, shall be filed with the Registrar before noon of the previous day. The Registrar shall set them down and call them in the order in which they stand.

All motions or applications to the Court or a Judge in Chambers, shall be supported by affidavits of the facts and circumstances upon which the same are made.

The affidavits shall be sworn before a Judge or Commissioner of the Court.

It shall be lawful for the Court, or a Judge in Chambers, to order any person to appear personally to be examined and cross-examined.

(b) When notice to the opposite party of any application or motion is required there must be at least forty-eight hours between the service of the notice and the day named in the notice for hearing the motion, unless at the hearing the Court or a Judge be of opinion that on account of the urgency of the matter a shorter period of notice may be allowed as sufficient or that having regard to the circumstances of the case a longer period shall be allowed. The notice shall be in writing signed by the attorney issuing the same, and shall be accompanied by copies of the petition and of the affidavits which are intended to be used in support of the said application, and no affidavits, copies of which have not been served, shall be capable of being used unless the Court shall expressly otherwise order.

Rule 5.—*Powers of Attorney.*

5. In every action which shall be commenced in the Court the attorney of the plaintiff shall, before any process is sued out to compel any person to appear to answer any claim or demand, file with the Registrar his power of attorney or warrant to sue, signed by the plaintiff.

Should a power to sue be given by the agent of the plaintiff, or person authorized to act for him, the attorney shall file with the Registrar, together with such power granted to him, a duly certified copy of the power of attorney granted to the agent, in terms of which the power to sue has been given.

Rule 6.—*Proceedings; how taken.*

6. Any summons, subpoena, or process of the Court may be sued out by any person who has any demand or matter of complaint against any other person over whom the Court, or a Judge in Chambers, has jurisdiction. But no proceedings shall be taken against the High Commissioner, the Resident Commissioner, or the President of the Special Court, unless the leave of the Court has been first had and obtained.

Every summons, subpoena or process shall be signed by the party who sues out the same or his attorney, and shall bear his address, and shall thereafter be signed and issued by the Registrar of the Court for which the warrant to sue shall be his authority, and shall be dated on the day of issue, and shall be made returnable by the Sheriff to the Court through the Registrar.

## PROVISIONAL SENTENCE.

### Rule 7.—*Provisional Summons.*

*See Schedule A.*

7. In all cases, where by law a person may be summoned to hear claim made for obtaining provisional sentence, or condemnation for payment under security *de restituendo*, copies of all instruments or documents upon which the claim for provisional sentence is grounded shall be served on the person summoned, together with a copy of the said summons. The summons shall be as nearly as possible in the form set out in Schedule A.

### Rule 8.—*Provisional Judgment becoming Final.*

8. Any person against whom provisional sentence has been granted, may, within one month after the levy made under the writ of execution granted by virtue of such provisional sentence, or, if he shall have satisfied the judgment without a levy, then within one month after having done so, cause appearance to be entered with the Registrar to answer the action. If the defendant or someone authorized on his behalf, does not enter appearance within one month after such levy or satisfaction aforesaid, the provisional sentence shall become a final judgment, and the security given by the plaintiff shall become, *ipso facto*, null and void.

## ARREST.

### Rule 9.—*Civil Arrest. Amount of Claim.*

9. (a) No process in civil cases whereby any person may be arrested, or held to bail in order to compel his appearance to answer any claim or complaint, and to abide by the judgment of the Court thereon, shall be sued out against any person where the claim shall not be of the value of twenty pounds or upwards, exclusive of any costs which may have been incurred in the recovery thereof.

#### *Writ of Arrest.*

(b) A writ for personal arrest shall be delivered to the Registrar for signature accompanied by a direct and positive affidavit sworn by the plaintiff, or his agent, and filed with the Registrar.

#### *Affidavit for Arrest.*

(c) The affidavit shall contain a true description of the party making the same, setting forth his place of abode and a statement of the true sum due to the plaintiff, and the cause of the debt, or in case of the unlawful detention of any movable property, the value and description thereof; provided that if the plaintiff sues as executor or administrator of any deceased person, or as trustee of an insolvent estate, it shall be sufficient in any such declaration to state that the said defendant is indebted as stated, as appears by the books of such deceased person or insolvent, and as the deponent verily believes. The affidavit shall further contain an allegation that the plaintiff holds no mortgage, pledge or security for his claim or demand, or none adequate thereto, and, in this last case, specifying the nature and extent of the mortgage, pledge, or security, and that an amount or value of twenty pounds or upwards remains wholly unsecured; and in case the claim or demand shall be in respect of any personal injury or wrong sustained by the plaintiff, that the said plaintiff has sustained damage to the amount of twenty pounds or upwards.

In all cases the affidavit shall contain an allegation that the deponent believes that the defendant is about to remove or is making preparations to remove, from the Territory, and stating the reasons and grounds for such belief.

*Inspection of Documents.*

(d) The warrant and affidavit shall be kept by the Registrar and office copies of the same shall at any time be granted to the said defendant or his attorney, who shall be at liberty, without payment, at all times to search for and see the same.

*Form of Writ.*

*See Schedule B.*

(e) In all cases where the defendant may be arrested or held to bail, the process shall be by a writ of arrest addressed to the Sheriff or his Deputy, and signed and endorsed in the same way as an ordinary process of the Court, and shall be as nearly as possible in the form set forth in Schedule B.

*Contents of Writ.*

(f) In all cases where any sum of money, or a definite thing is claimed, the same shall be set forth in the writ. The costs and charges of issuing any writ of arrest shall be endorsed thereon by the Registrar; and the Sheriff or his Deputy shall, upon any arrest to be made by virtue thereof, give to the defendant at his request and at his charge a true copy of the same.

*Telegraphic Warrant.*

(g) A telegram from the Sheriff, or his Deputy, to any of his Deputies, stating that a warrant has been issued for the arrest of any person to appear in or to answer to any civil action or other process, shall be sufficient authority for the Sheriff or Deputy Sheriff or other competent officer, to execute such warrant for the arrest and detention of such person in custody, until a sufficient time, not exceeding seven days, has elapsed, to allow of the transmission of the original warrant by post to the place where such person has been arrested or detained, unless the discharge of such person has been previously ordered by the Court or Judge in Chambers: provided that the Court or Judge may, upon cause shown, order the detention of the person arrested for a further period not exceeding seven days. But in each case the warrant shall be transmitted by the first post to the place aforesaid. And after the arrival of the warrant at the place where such person has been arrested or detained, the case shall be proceeded with as hereinafter prescribed in cases of ordinary arrest.

*Rule 10.—Release from Arrest.*

10. If on any arrest the defendant, or anyone on his behalf, shall give to the Sheriff or his Deputy, reasonable security, by bond or obligation of the said defendant himself, and or another person possessing sufficient means within the Territory, that the defendant shall appear according to the exigencies of the said writ, and shall stand to and abide by the judgment of the Court thereon, or shall surrender himself to the prison of the Court in execution of the same; or if the said defendant shall deliver or pay to the Sheriff or his Deputy the sum of money or the thing mentioned in the said writ together with the charges and costs indorsed on the writ, and a further amount of one guinea as costs for the execution of the writ, the Sheriff or his Deputy, shall permit the defendant to go at large and free of the said arrest as to the said action.

*See Schedule C.*

The bond or obligation to be given to the Sheriff under this Rule shall be as nearly as possible in the form set forth in Schedule C.

*Rule 11.—Discharge from Arrest.*

11. (a) If the defendant, at any time after arrest shall satisfy the claim contained in the writ, with and including the costs of the case, and the costs of the arrest, he shall be immediately entitled to discharge from such arrest.

*Warrant as Summons.*

(b) If security has been given by the defendant, or by any one else in his behalf in terms of Rule 10, the plaintiff shall proceed with his action precisely as if there had been no arrest, and the warrant shall in that case stand as summons in the case.

*Anticipation of Return Day.*

(c) Any person arrested or provisionally interdicted shall be entitled to anticipate the return day, and apply to the Court or a Judge in Chambers for dissolution of the said arrest or interdict upon giving four-and-twenty hours previous notice to the attorney of the party suing out the same, and if there is no attorney, to the party at whose request it has been issued.

*Admission of Claim.*

(d) If the defendant on the return day, or on the day of the anticipation of the same as aforesaid, shall admit the claim contained in the process, judgment shall be given against him, and he shall be discharged from such arrest.

*Confirmation of Arrest.*

(e) If the defendant has not satisfied or admitted the claim contained in the order, and has not given any security as aforesaid, the plaintiff shall on the return day apply for confirmation of the arrest, when the Court or Judge, unless sufficient cause to the contrary be shown, shall confirm such arrest and return the defendant to prison, but shall order the plaintiff to file his declaration within a certain time with the Registrar, or to set the case down for trial within a certain time, the writ standing as summons in the case.

*Effect of Discharge.*

(f) If at the trial judgment is given against the defendant, he shall be entitled to his discharge from such arrest. Such discharge shall not free him, however, from his liability under the judgment or from subsequent arrest in execution.

SIMPLE ORIGINAL ACTIONS.

SUMMONS.

Rule 12.—*Summons in Illiquid Case.*

12. The ordinary manner of procedure to compel the appearance of any person to answer a demand or matter of complaint in simple original actions (except provisional cases), where by law the person of the defendant cannot be arrested, shall be by means of a summons addressed to the Sheriff or his Deputy (except where the Sheriff is a party to the case, in which case the summons shall be addressed to a fit person appointed by the Court or a Judge in Chambers, ordering the Sheriff or his Deputy to command the defendant to enter appearance to answer the plaintiff's claim.

*See Schedule D.*

Such summons shall be as nearly as possible in the form set forth in Schedule D.

Rule 13.—*Service of Summons.*

13. In all cases, where by law there can be no arrest of the defendant, a copy of the summons shall be served either by delivering such copy to the defendant personally, or by leaving the same at his place of abode or business, or failing the above, at his last-known dwelling-house or place of business at least seven days before the day therein appointed for his appearance, if such service is made in Lobatsi or within a circuit of fifty miles therefrom; for every thirty miles or part thereof beyond such circuit a further period of four days shall be allowed. If there are more defendants than one, the summons shall, subject to the provisions of the next succeeding rule, be served upon each defendant.

#### Rule 14.

14. (a) Except as may be otherwise provided by any law, where any corporation, church, society, or public institution, is defendant in an action, service may be effected by delivering a copy of the summons to the chairman or secretary of the board or council controlling the affairs of such corporation, church, society, or institution at the office or place where the affairs or business of such corporation, church, society, or institution is ordinarily carried on or transacted; or if service cannot for any reason be thus effected the summons may be served upon such chairman or secretary in the same way as though he were the defendant or sole defendant named in the summons.

#### *Service on Partnership.*

(b) Where any partnership firm is defendant, service may be effected by delivering a copy of the summons to any member of the firm at the office or place where the business of the firm is ordinarily carried on; or if service cannot for any reason be thus effected, the summons may be served upon any member of the firm in the same way as though he were the defendant or sole defendant named in the summons.

Where the business of any partnership firm is being wound up by any trustees or liquidators, service of the summons may be effected upon any one of such trustees or liquidators in the same way as though he were the defendant or sole defendant named in the summons.

#### *Service on Syndicate.*

(c) Where any syndicate is defendant, service may be effected by delivering a copy of the summons to the manager, chairman, secretary, or any person having the control of the business or affairs of the syndicate at the office or place where such business or affairs are ordinarily carried on; or if service cannot for any reason be thus effected, then the summons shall be served upon such one or more members of the syndicate either personally or by publication in such manner as the Court or Judge may direct.

#### *Service on Trustee.*

(d) Where the trustees of an insolvent estate or executors or curators, or guardians of a minor are defendants, service may be effected upon any one of them in the same way as though he were a defendant in his personal capacity.

#### Rule 15.—*Return of Service.*

15. The Sheriff or his Deputy shall, before the return day of any summons, subpoena, or other process, file with the Registrar such summons, subpoena or process, with a return of what he has done therewith endorsed thereon or attached thereto, and the plaintiff or defendant or their attorneys may at any time take a copy of such summons or process and the return thereon.

It shall be the duty of the Sheriff or his Deputy, where possible, to explain the contents of such summons, subpoena or process to the person on whom the service has been effected and to state in his return that he has done so.

#### Rule 16.—*Edictal Citation.*

16. In all cases where process of edictal citation is necessary for the purpose of citing or otherwise compelling the appearance of any person to answer any complaint or demand, the plaintiff shall, before an order of edictal citation can be issued, apply to the Court or a Judge in Chambers for directions as to the mode of serving the summons in such case, and as to the time for the appearance of the defendant to such summons. The Court, or the Judge in Chambers, shall in his order give such instructions as shall be necessary, taking into consideration the distance of the place of residence, or the supposed place of residence of the defendant, and the circumstances of the case.

All further notices, pleadings, warrants, and other process in such case shall be served in such way as the Court or Judge in Chambers shall determine.

Service may also be effected by such publication as the Court or Judge in Chambers may determine.

*Rule 17.—Entering Appearance to Summons.*

17. In all simple original actions the party on whom the summons or process has been served, or who has been arrested, and has given bail for his appearance to answer any complaint or claim, shall either personally or by an attorney enter appearance within the time allowed by the summons.

*Rule 18.—Confession of Claim.*

18. After service of the summons the defendant may at any time, except in actions for divorce, either personally or through his attorney confess the claim or demand in writing to be filed with the Registrar. Such confession when signed by the defendant shall be witnessed by an attorney acting for him and not acting for the opposite party, or if not so witnessed the defendant's signature shall be verified by affidavit. After the filing of such confession the plaintiff may, without notice, set down the cause for judgment, and thereon judgment may be given by the Court in accordance with such confession.

*Rule 19.—Defendant Barred.*

19. Where any defendant, having been duly served with any summons (not being a summons for provisional sentence) has not made appearance within the time fixed by such summons, he shall be barred of his right to appear.

*Rule 20.—Service on Attorney.*

20. After the defendant has by attorney entered appearance, service of all summonses, demands, notices, and other proceedings in the same action made on such attorney, and in like manner on the attorney of the plaintiff, or left at his office, shall be valid and effectual, excepting where by any order or practice of the Court personal service on parties has been specially prescribed.

A defendant, having entered appearance personally, shall give the Registrar an address in Lobatsi where the service of all documents and papers in the case may be effected.

**PLEADINGS.**

*Rule 21.—Declaration.*

21. In all simple original actions not falling under Rule 18 and not falling under Rule 19, in case the claim is for a debt or liquidated demand only, the plaintiff shall file a declaration or claim with the Registrar, and if the defendant has entered appearance, a copy of such declaration shall be served on the attorney of the defendant (or if the defendant has appeared personally, on the defendant) at any time within two months after such appearance, in default whereof the plaintiff shall be barred from declaring or making claim.

The copy of the declaration may be served on the defendant together with the summons, but in that case no costs shall be allowed for such declaration, if the defendant shall tender to satisfy the plaintiff's claim in full within the time allowed for entering appearance.

The declaration or claim shall state truly and concisely the name and description of the party suing, and the right in which he sues, the name of the defendant, and the right in which he is sued, the nature, extent and grounds of the cause of action, complainant or demand, and such conclusions as from the form of the particular action the plaintiff shall by law be entitled to deduce. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded on separate and distinct facts, they shall be

stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon various distinct grounds of defence, set-off, or claim in reconvention.

*Rule 22.—Plea.*

22. In all cases where the defendant has appeared he shall either except, answer, plead or make claim in reconvention, and shall file with the Registrar such exception, answer, plea or claim, and have a copy of the same served on the attorney of the plaintiff, within fourteen days after the declaration of the plaintiff has been served on him or on his attorney. After expiry of the said fourteen days the plaintiff may make demand in writing of the defendant to except, answer or plead, and if no such exception, answer or plea shall be filed with the Registrar within forty-eight hours after service of such demand the defendant shall be barred from excepting, answering or pleading.

The defendant shall in his answer or plea either admit or deny, or confess and avoid all the material facts alleged in the declaration or claim and shall clearly and concisely state all the material facts on which he relies.

It shall not be sufficient for a defendant in his plea, or for the plaintiff in his plea in reconvention, to deny generally the facts alleged by the declaration, or claim in reconvention, as the case may be.

Parties must deal specifically with each allegation of fact of which they do not admit the truth, and every allegation of fact contained in the declaration or claim in reconvention, which is not specially denied in the plea or plea in reconvention, shall be taken to be admitted.

*Rule 23.—Replication.*

23. After service of the answer or plea of the defendant the plaintiff shall reply thereto or answer the claim in reconvention put in by the defendant, and shall file such replication or answer with the Registrar, and cause a copy of the same to be served on the attorney of the defendant within eight days, in default whereof the plaintiff shall be barred from his right of replication or answer in reconvention.

The plaintiff may in his replication join issue with the defendant upon the plea.

*Rule 24.—Rejoinder.*

24. If the replication contains new allegations or the plaintiff has pleaded to the claim in reconvention the defendant shall be allowed to rejoin or reply to the answer or plea in reconvention, and shall file such rejoinder or replication at the Office of the Registrar, and cause a copy of the same to be served on the attorney of the plaintiff within four days after the service of the plaintiff's replication or his plea in reconvention. In default thereof the defendant shall be barred from his right of rejoinder or replication in reconvention.

*Rule 25.—Further Pleadings.*

25. The plaintiff shall have the right, in like manner and subject to the provisions of the preceding rule with regard to rejoinder in reconvention, to rejoin in reconvention, and no other terms shall be allowed in pleading in any case but by leave of the Court or of a Judge in Chambers.

*Rule 26.—Removal of Bar.*

26. Where Rules 21, 22, 23 or 24 require that a party shall put in, file or serve any pleading within a certain time, the Court or Judge in Chambers may, on application, and on sufficient cause being shown, grant an extension of time, and if any person has been under the said Rules barred from pleading, it shall be lawful in like manner for the Court or Judge in Chambers to remove the bar upon such terms

as the Court or Judge may impose. Bar may also be removed with the consent in writing of the opposite party signed by his attorney and filed with the Registrar.

Rule 27.—*Signing and Filing Pleadings.*

27.—All pleadings shall be signed by an advocate and attorney on the roll or in the absence of an advocate by the attorney of record or by the party concerned if he sues or defends personally. The word "pleadings" does not include the summons.

All pleadings shall be filed with the Registrar within the office hours of the day on which any rule or practice of the Court requires the same to be filed.

Any party to a case may at all times examine the pleadings and take copies of the same.

Rule 28.—*Striking-out Pleadings.*

28. Every pleading, petition or affidavit shall be clearly printed, typed or written on folio paper, and the allegations contained in such pleadings, petition or affidavit shall be divided into paragraphs, numbered consecutively, each paragraph, as near as possible, containing a distinct allegation.

When a party in any pleading denies an allegation of fact in the preceding pleading of the opposite party, he shall not do so evasively, but answer to the point of substance. If any argumentative or irrelevant or superfluous matter be stated in any pleading, such matter shall, if shown to the Court or a Judge in Chambers by way of motion, be struck out of such pleading with or without payment of costs as the Court or Judge shall direct.

Rule 29.—*Amendment of Pleadings.*

29. It shall be lawful for a Judge in Chambers at any stage of the proceedings before trial of a case, and for the Court at any stage before judgment, to allow the summons to be amended or to allow any party to amend his declaration, answer, replication or other pleading, and all such amendments or alterations shall be made as shall be necessary for the purpose of determining the real question or questions actually in controversy between the parties.

If a party who has obtained leave to amend the summons or pleading does not amend the same within the time fixed by order of the Court or Judge, or where no time has been fixed within eight days from the date of the order, such order shall on the expiration of such fixed time, or of such eight days, become, *ipso facto*, null and void, unless the time has been extended by the Court or a Judge in Chambers.

When a summons or pleading has been amended, such amended summons or pleading shall bear the date of the order under which the same has been so amended, and a copy of such summons or pleading shall be served on the opposite party within the time allowed for amending the same.

PAYMENT INTO COURT.

Rule 30.—*Payment into Court.*

30. (a) Where any action is brought to recover a debt or damages, the defendant may at any time after service of the summons, and before, or at the time of serving a copy of his plea or answer, or by leave of the Court or a Judge, at any later time, pay into Court a sum of money by way of satisfaction or amends. Payment into Court shall be pleaded in the plea or answer and the claim or cause of action, in respect of which such payment shall be made, shall be specified therein. Such sum of money shall be paid to the Registrar, who shall give a receipt for the same. If such payment be made before serving his plea or answer, the defendant shall thereupon cause a notice to be served on the plaintiff that he has paid in such money, and in satisfaction of what claim.

(b) Money paid into Court as aforesaid may, unless otherwise ordered by the Court, be paid out to the plaintiff or his attorney on the written authority of the plaintiff. No affidavit shall be necessary to verify the plaintiff's signature unless specially required by the Registrar. If payment into Court is made before service of plea or answer, the plaintiff may, within four days of receipt of notice of such payment, or if such payment is first stated in the plea or answer, then before replication, accept the same in satisfaction of the causes of action in respect of which the money has been paid in, in which case he shall give the defendant notice to that effect and he shall be at liberty, if the sum paid in is accepted in satisfaction of the entire cause of action, to have his costs taxed, and in case of non-payment of the same within forty-eight hours, to sign judgment with the Registrar for such taxed costs.

If, in any action, any unconditional tender of money has been made or is pleaded, the plaintiff may, if he refuses to accept the tender, claim that the money be paid over to the Registrar subject to the provisions aforesaid.

#### CLOSE OF PLEADINGS AND PROCEDURE THEREAFTER.

##### Rule 31.—*Close of Pleadings.*

31. The pleadings shall be considered closed—

- (a) if one of the parties is barred from the right to answer, to reply, or rejoin;
- (b) if either of the parties has joined issue upon any pleading of the opposite party without adding any further pleading thereto; or
- (c) if a written agreement, signed by the attorneys of both parties that the pleadings shall be considered as closed, has been filed with the Registrar.

If the parties cannot agree as to the closing of the pleadings, either party may, after notice to the opposite party, apply to have the pleadings declared closed, and the Court or Judge in Chambers shall make such order as the justice of the case may require.

##### Rule 32.—*Application for Absolution.*

32. If the plaintiff shall be barred under Rule 21 from the right to declare, the defendant may, after having given notice to him, apply to the Court or Judge in Chambers, for absolution from the instance with costs, and the Court or Judge may make such order thereon as the circumstances may demand.

##### Rule 33.—*Default Judgment.*

33. If the defendant shall be barred under Rules 19 or 22 from the right to appear or except, answer or plead, the plaintiff may forthwith, without further notice, if the case falls under Rule 19, and after due notice if the case falls under Rule 22, set down the action on motion for judgment before the Court or a Judge in Chambers, and the Court or a Judge in Chambers shall thereupon make such order or give such judgment as upon the summons or declaration the plaintiff shall be entitled to.

If in such a case the claim be for a debt or liquidated demand, it shall be lawful for the Court or Judge in Chambers, without hearing any evidence, to give judgment against the defendant.

The words "liquidated demand" shall be here understood to mean a claim for a fixed or definite thing, as, for instance, a claim for transfer or ejectment, for the delivery of goods, for rendering an account by a partner, for the cancellation of a contract or the like.

*Rule 34.—Setting Aside Judgment.*

34. Any judgment obtained under Rules 18 or 33 may, on sufficient cause being shown, be set aside by the Court, and permission be given to the defendant to defend the action on such terms with regard to costs and otherwise as the Court shall deem fair.

**TRIAL.**

*Rule 35.—Notice of Trial to Registrar.*

35.—After the pleadings have been closed, the plaintiff may forthwith set down the case for trial at the next sitting of the Court, and for that purpose he shall give notice in writing to the Registrar at least four days before the day appointed for trial, and if the plaintiff shall neglect to do so for three months after the pleadings have been closed, the defendant shall be allowed to set the case down in like manner for trial.

*Rule 36.—Notice of Trial to Opponent.*

36. Notice of trial shall be given by the party who sets down the case for trial to the opposite party eight days previous to the day of trial, if the party on whom notice of trial is served lives within fifty miles of Lobatsi. For every thirty miles or part thereof beyond that radius four days more shall be given, unless a longer time has been granted by the Court or a Judge in Chambers.

*Rule 37.—Removal of Case from Roll.*

37. The party who gives notice of trial of any case may, at any time before the case is called, remove the same from the roll on payment of the taxed costs of the day.

*Rule 38.—Trials Proof.*

38. (a) At the trial of any issue of fact the plaintiff or one Counsel and not more if Counsel are engaged or in the absence of Counsel the plaintiff's attorney engaged in the case shall without comment or argument state the facts which the plaintiff intends to prove, and shall then proceed to the proof thereof, and in like manner when the defendant intends to lead evidence he or one of his Counsel and no more if Counsel are engaged or in the absence of Counsel the defendant's attorney engaged in the case shall briefly state the facts which the defendant intends to prove and then proceed to the proof thereof.

When the plaintiff is entitled to lead evidence in reply or the defendant in rejoinder the plaintiff or defendant or one Counsel or in the absence of Counsel their attorneys engaged in the case shall on either side respectively in like manner open and lead such evidence.

(b) Upon the evidence of both sides being closed, the plaintiff or one of his Counsel, if Counsel are engaged or his attorney in the absence of Counsel and afterwards in like manner the defendant or one of his Counsel or in the absence of Counsel the defendant's attorney shall have the right to observe generally upon the whole case of the parties respectively after which the plaintiff or one Counsel only if Counsel are engaged or the attorney engaged in the case if no Counsel are engaged shall have the right of general reply.

When the burden of proving the facts lies with the defendant in the first instance the parties their Counsel or attorneys shall proceed in accordance with these provisions in like manner as if the defendant had been the plaintiff and the plaintiff had been the defendant.

In leading evidence each witness shall be examined, cross-examined, and re-examined by the parties or one Counsel or attorney for either party.

(c) Upon issues or questions of law arising on pleadings, or on motions, or incidentally or otherwise on the trial of any issue of fact all Counsel, if any, for either party shall have the right to be heard separately, after which one of the Counsel for the party first heard thereon shall have the right of general reply.

#### PRODUCTION, DISCLOSURE AND INSPECTION.

##### Rule 39.—*Production.*

39. It shall be lawful for the Court, or a Judge in Chambers, at any time during the course of an action or other proceeding, to order the production, by any party thereto under oath, of such documents in his possession or power relating to any matter in question in such action or other proceeding as the Court or Judge shall think right; and the Court or Judge may deal with such documents, when produced, in such manner as may be deemed fit.

##### Rule 40.—*Discovery.*

###### *See Schedule E.*

40. It shall be lawful for any party, without filing an affidavit with the Registrar, to apply to a Judge in Chambers for an order directing any other party to the action to make discovery under oath of the documents relating to any matters in question in the action, which are or have been in his possession or power.

Except under very special circumstances such application may only be made after the pleadings have been closed.

The affidavit of disclosure or production to be made by the party against whom such order in the preceding paragraph aforesaid has been granted shall specify which, if any, of the documents therein mentioned he objects to produce, and such affidavit shall, as nearly as possible, be in the form set forth in Schedule E.

##### Rule 41.—*Notice to Produce for Inspection.*

41. Every party to an action or other proceeding shall be entitled at any time before the hearing of the same, by notice in writing, to give notice to any other party in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his attorney, and to permit him to take a copy thereof. Any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless the Court or Judge in Chambers shall otherwise order.

###### *See Schedule F.*

The notice mentioned in this Rule shall, as nearly as possible, be in the form set forth in Schedule F.

##### Rule 42.—*Mode of Inspection.*

###### *See Schedule G.*

42. The party to whom such notice is given shall, within four days from receipt of the same, give notice to the party making the demand, stating a time within four days from delivery of the same as the time when the documents, or such of them as he does not object to produce, may be examined or inspected at the office of his attorney, and also stating which, if any, he objects to produce, and on what ground. Such notice shall be as nearly as possible in the form set forth in Schedule G.

If the party served with notice under Rule 41 omits to give notice to the opposite party of a time for inspection, or objects to give such inspection, the party desiring it may apply to a Judge in Chambers for an order for inspection.

**Rule 43.—Failure to Produce or Discover.**

43. If any party neglects to comply with an order for disclosure, production or inspection of documents, he shall be liable to attachment; he shall also, if a plaintiff, be liable to have his action dismissed, and, if a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended.

**EVIDENCE.**

**Rule 44.—Subpœnas.**

44. (a) Either party desiring the attendance of any person to give evidence at the trial of any cause may of right take out of the office of the Registrar one or more subpœnas for that purpose; every subpœna may contain the names of four persons: the service thereof on any of the persons named therein shall be effected by delivering to him a copy of the subpœna.

*When Leave to Subpœna Necessary.*

(b) If it is necessary to summon the High Commissioner, the Resident Commissioner or the President of the Special Court to give evidence, permission shall first be asked and obtained from the Court or a Judge in Chambers.

*Non-Attendance of Witness.*

(c) Any person so summoned a reasonable time before the trial, his reasonable expenses having been paid or tendered to him, and not having any lawful excuse will, on default, be liable to be attached, fined, and imprisoned for contempt of Court, without prejudice to his liability on any claim or remedy that the party aggrieved may have against him for his neglect.

*See Schedule H.*

The subpœna shall be as nearly as possible in the form set out in Schedule H.

*Subpœna duces tecum.*

(d) If any witness have in his possession or control any deed, instrument, or writing which either party is desirous to put in evidence at the trial of the case, the witness shall be expressly summoned to produce the same, and the said form of subpœna shall be altered in that sense.

**Rule 45.—Fine for Contempt.**

*See Schedule I.*

45. If the Court or a Judge in Chambers shall impose a fine on any person for contempt of Court for non-appearance or any other reason, the Registrar shall provide the Sheriff or his Deputy with the necessary instructions, and deliver to him an order as nearly as possible in the form set out in Schedule I.

**Rule 46.—Proof by Affidavit.**

46. The witnesses at the trial of any action shall, as a general rule, be examined *viva voce* and in open Court, but the Court or a Judge in Chambers may, at any time for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the trial of the case, on such conditions as the Court or the Judge may think reasonable; provided that, where it appears to the Court or the Judge that the other party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

**Rule 47.—Evidence on Commission.**

47. Where it appears convenient or necessary for the purposes of justice in any matter or cause, the Court or a Judge in Chambers may order the examination at any place, under oath, of a witness or witnesses by means of interrogatories or

otherwise before a Commissioner of the Court, and may order any deposition so taken to be filed in the Court, and may empower any party to any such matter or cause to use such deposition in evidence on such terms as the Court or Judge may direct.

**Rule 48.—*Shorthand Record.***

48. At the trial of any action the Court may, if it thinks fit, order the oral evidence to be taken down by a shorthand writer approved by the Court, his fees being costs in the cause, and such shorthand writer's report of the evidence, when approved of by the presiding Judge, shall be entered upon the proceedings of the Court and shall be of record.

**RESTITUTION AND DIVORCE.**

**Rule 49.—*Restitution Orders.***

49. In any action for the restitution of conjugal rights the plaintiff may also claim a decree of divorce. Upon the hearing of the cause the Court may order the restitution of conjugal rights, and may further direct the defendant on a day to be appointed in the order, not being less than eight days after the day appointed for compliance with the order of restitution, to show cause why a decree of divorce shall not be granted.

If on such return day it shall be proved by affidavit or otherwise that the defendant has failed to comply with the said order for restitution of conjugal rights, the Court may grant a decree of divorce, or make such other order as to it may seem meet.

**EXECUTION OF JUDGMENTS.**

**Rule 50.—*Revival of Judgment.***

50. After the expiration of six years from the day whereon a judgment has been pronounced, no writ of execution may be granted, unless the judgment be revived on a citation to the debtor issued for the purpose, but in such case no new proofs of the debt shall be required.

Writs of execution of a judgment once issued remain in force and may at any time be executed without being renewed until judgment has been satisfied in full.

**Rule 51.—*Taxation of Costs.***

51. (a) No writ of execution shall be issued for the levying of costs in any action or proceeding until the same have been taxed by the taxing officer of the Court.

***Review of Taxation.***

(b) The attorney of either party, who desires that his costs shall be taxed, shall give due notice to the opposite party in order that he may be present at such taxation. The taxing officer shall in taxing proceed according to tariff, and shall pursue such instructions as shall, from time to time, be given to him by the Court. Either party who feels aggrieved by the decision of the taxing officer, may apply to the Court or a Judge in Chambers for revision of such taxation, specifying the items objected to.

**ACTIONS INSTITUTED BY OR AGAINST PAUPERS.**

**Rule 52.—*Actions in forma pauperis.***

52. Any person in needy circumstances who wishes to appear before the Court, in any action or suit, either as plaintiff or defendant, or who becomes impoverished during the progress thereof, may apply to the Court or Judge in Chambers for leave to proceed as a pauper, and such application shall be free of charge unless the Court otherwise orders.

The application shall be supported by an affidavit of the applicant and of two householders living in his neighbourhood, stating his trade and income and that he has no property or assets to the amount of fifty pounds excepting household goods, wearing apparel, tools of trade, and the matter or thing claimed by him in the suit, and setting out the nature of the claim or defence.

Thereupon the application shall be referred to an advocate or attorney for report, and upon the party so applying producing a certificate signed by such advocate or attorney that he has considered the case of the said party, and believes him to have a good cause of action or defence, the Court may grant a rule to the party applying. Such rule shall be in the first instance conditional, but shall become absolute after due notice thereof to the opposite party unless he shall show sufficient cause to the contrary.

*Rule 53.—Appointment of Counsel and Attorney.*

53. If the party applying for leave to proceed as a pauper shall also pray that any advocate or attorney consenting thereto may be appointed to appear for him, the Court shall so order, or else shall appoint an advocate and attorney or an attorney to act for the said party.

*Rule 54.—Costs in pro deo Case.*

54. No fee shall be taken by any advocate, attorney, or officer of the Court from any person admitted to proceed as a pauper for anything done by him in the conduct of the cause: but if he succeeds, and the costs be awarded to be paid by his opponent then the advocate and attorney of such party shall be entitled to all such fees as the taxing officer may allow.

*Rule 55.—Depauperisation.*

55. If any person who has been so permitted to proceed as a pauper obtains sufficient means during the progress of the cause, or misbehaves himself therein by any vexatious or improper conduct or proceeding, or wilfully delays the cause, he shall on proof thereof to the Court be deprived of all the privileges of such permission.

**REVIEW AND APPEAL.**

*Rule 56.—Review.*

56. Either party to any suit, action or proceeding, civil or criminal, in any inferior Court of Justice of the Territory who shall desire to bring the proceedings in such suit, action or proceeding under review may obtain the process of the Court commanding the Magistrate or other judicial officer presiding in such Court, or person in whose custody the records and proceedings of such inferior Court shall be, to return such record and proceedings or a certified copy thereof to the Court before a certain day specified therein. And the party suing out such process shall also cause to be duly executed the process of the Court on the opposite party for summoning the latter to show cause on the day specified why the proceedings of the inferior Court should not be set aside or corrected. Such summons shall set forth shortly and distinctly the grounds upon which the said party seeks to have the proceedings set aside or corrected.

*Rule 57.—Appeal from Chamber Court.*

57. Any person who desires to appeal to the Court from any judgment, decree or order of a Judge in Chambers shall, within fourteen days next after such judgment, decree or order shall have been pronounced, give notice in writing to the respondent, and to the Registrar of the Court, of his intention to appeal.

*Rule 58.—Execution of Chamber Judgment pending Appeal.*

58. It shall be lawful for the Judge in Chambers to direct that execution of the judgment, decree or order appealed against shall be stayed pending the appeal. If such execution be not stayed, the party respondent shall, before the execution of such judgment, decree or order, enter into good and sufficient security, to be approved by the Registrar, for the due performance of such judgment or order as the Court

shall think fit to make thereon. If the execution of such judgment, decree or order be stayed pending the said appeal, the party appellant shall immediately enter into good and sufficient security, to be approved of by the Registrar as aforesaid, for the due performance of such judgment, decree or order as the Court shall see fit to make: Provided that it shall be lawful for the Court or Judge to exempt the appellant or respondent from the necessity of giving such security.

Until the appellant has entered into such security, or the Court has released him from the necessity thereof, the respondent, notwithstanding the notice of appeal, shall be allowed to take out or to cause to be taken out, a writ of execution of the judgment against the appellant.

*Rule 59.—Appeal from Magistrate.*

59. Any appeal to the Court shall be duly prosecuted within six weeks after the original granting of such judgment, decree or order in case there shall be a sitting of the Court within that period, or if there shall not be such sitting, then at the next sitting of the Court: in default whereof the appeal shall be considered as lapsed, unless the Court grant relief on good cause shown.

*Rule 60.—Cross-appeal.*

60. If the respondent feels himself aggrieved by such judgment, decree or order, he may, at the hearing of the appeal, institute a cross-appeal, provided he duly gives notice in writing of his intention to do so to the Registrar and the opposite party at least one week before the hearing of the appeal.

*Rule 61.—Notice of Hearing Appeal.*

61. When notice of appeal has been duly given each of the parties shall have the right to set the case down for hearing, and for that purpose shall give notice to the Registrar at least seven days before the day fixed for the next sitting of the Court.

Notice in writing of the day fixed for hearing an appeal shall be given to the opposite party (unless parties otherwise agree in writing with reference thereto) at least seven days before the day of hearing.

**MISCELLANEOUS.**

*Rule 62.—Commissioners.*

*See Schedule L.*

62. (a) The appointment as Commissioner of the Special Court to take bail or examine witnesses shall be by a Commission to be issued under the seal of the Court in the form set forth in Schedule L.

The Magistrates of the various districts of the Territory shall be Commissioners of the Court for the purpose of taking bail, giving security and hearing evidence.

The Registrar of the Court, all Justices of the Peace, and such other persons as have been specially appointed by the Court therefor, shall be Commissioners of the Court for the purpose of taking affidavits.

The Registrar shall in addition be a Commissioner of the Court for the purpose of taking bail and security.

(b) All the powers and duties which the Registrar is authorized under any rule of the Court to exercise and perform may under his direction be exercised and performed by any Assistant Registrar.

*Rule 63.—Foreign Commission.*

*See Schedule M.*

63. The appointment of Commissioner of the Court to take affidavits or examine witnesses in any place out of the Territory shall be by a Commission to be issued under the seal of the Court in the form set forth in Schedule M.

Rule 64.—*Notice of Criminal Trial.*

64. The Crown Prosecutor, or his deputy, or in the case of a private prosecution the prosecutor or his attorney, shall indorse on, or annex to, every indictment and every copy of an indictment delivered to the Sheriff for service thereof, a notice of trial; which notice shall specify the Court before which, and the particular session and time, when he will bring the accused to trial on the said indictment; and which shall be as near as may be in the form following, that is to say:—

“ C D,

“ Take notice, that you will be tried on this indictment (or on the indictment whereof this is a copy) at the session of the Special Court to be held at Lobatsi on the .....day of.....next.

Dated the ..... day of ..... 19..

.....  
“ Crown Prosecutor (or ..... Attorney for  
the Private Prosecutor).”

Rule 65.—*Copy of Indictment.*

65. The prosecutor shall deliver, or cause to be delivered to the Sheriff, together with the process of the Court for summoning the accused, the copy of the indictment with notice of trial indorsed on the same, or annexed thereto; and if there are more accused than one, then as many copies and notices as there are accused; and, if the prosecution be at the instance of any private party, the said prosecutor shall also, at the same time, pay to the said sheriff his lawful costs and charges for serving the same.

Rule 66.—*Subpœna in Criminal Case.*

66. The summons, or process for procuring the attendance of any person before the said Special Court to give evidence in any criminal case, shall be sued out of the Registrar's Office by the Crown Prosecutor or any person prosecuting on behalf of the Crown, or, where the prosecution is at the instance of a private party, by his attorney, or by the accused, or his attorney; and the same shall be delivered to the sheriff for execution thereof, together with so many copies of the summons as there are persons to be summoned.

Rule 67.—*Change of Venue—Criminal.*

67. An application to change the place of trial in criminal proceedings may be made to the Court without notice either by the Crown Prosecutor or by the accused. Every such application shall be supported by an affidavit setting out all the grounds upon which the change of venue is desired; and the Court may thereupon make such order either on the merits or as to notice as it shall deem fit.

AUTHENTICATION OF DOCUMENTS.

Rule 68.

68. Any document executed outside the Territory shall be deemed to be sufficiently authenticated for the purpose of use therein if—

- (a) in the case of a document executed in Great Britain and Northern Ireland it be duly authenticated by a notary public under his signature and seal of office, or by a permanent Under Secretary of State, or by the High Commissioner for the Union of South Africa in London (or the Secretary or the Assistant Secretary to the High Commissioner) or by the Mayor or Provost of any town, permanent head of a Government department, Registrar of a Court of Justice or the High Sheriff of a County, under their respective signatures and seals of office;

- (b) in the case of a document executed in any part of His Majesty's Dominions outside South Africa and Great Britain and Northern Ireland it be duly authenticated by the signature and seal of office of the mayor of any town or of a notary public or of the permanent head of any Government department in any such part of His Majesty's Dominions;
- (c) in the case of a document executed in South Africa it be duly authenticated by the signature and seal of office of any notary, resident magistrate, permanent head of a Government department, Resident Commissioner or Assistant Commissioner in South Africa;
- (d) in the case of a document executed in any place outside His Majesty's Dominions (in this section described as a foreign place) it be duly authenticated by the signature and seal of office,
  - (i) of a British Consul or Vice-Consul in such foreign place;
  - (ii) of any Secretary of State, Under-Secretary of State, Governor or Colonial Secretary or of any other person in such foreign place who shall be shown by the certificate of a Consul or Vice-Consul in the Territory of such foreign place to be duly authorized under the law of such foreign place to authenticate such document.

For the purposes of this Rule and Rule 70 South Africa shall include the Union of South Africa, the Colonies of Southern and Northern Rhodesia and any British Possession or Protectorate in Africa South of the Equator.

#### Rule 69.

69. Notwithstanding anything in the last preceding Rule contained it shall be sufficient authentication of a document executed in any part of His Majesty's Dominions for use in the Territory which affects or relates to property not exceeding in amount or value two hundred pounds if there be appended to or endorsed on such document a statement signed by a Magistrate or a Justice of the Peace of the part of His Majesty's Dominions in which such document is executed—

- (a) that the person executing such document is a person known to him, or,
- (b) that two other persons (known to him) have severally testified before him that the person executing such document is a person known to each of them.

#### Rule 70.

70. No power of attorney executed in South Africa and intended as an authority to any person to take, defend or intervene in legal proceedings in the Special Court shall require authentication provided any such power of attorney shall appear to have been duly signed and the signature thereto duly attested by two competent witnesses.

#### Rule 71.—*Taxation of Costs.*

71. In the taxation of costs in civil cases in the Special Court, the taxing officer shall be guided as far as the circumstances of the particular case will permit by the scale of fees and charges to be taken and made by attorneys of the Courts of the Bechuanaland Protectorate in civil cases when the cause or action exceeds fifty pounds appearing under High Commissioner's Notice No. 151 of 1925.

SCHEDULES TO THE RULES.  
AUTHORIZED FORMS.

SCHEDULE "A."

FORM OF SUMMONS IN PROVISIONAL CASES UNDER RULE 7.

*In the Special Court of the Bechuanaland Protectorate.*

Between..... Plaintiff,  
and  
..... Defendant.

George V. by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Emperor of India, Defender of the Faith.

To the Sheriff of the Bechuanaland Protectorate or his lawful Deputy:

Greeting:

Command C D, of....., shopkeeper, that justly and without delay he render to A B the sum of £.....sterling which he owes and unlawfully withholds from the said A B, arising from..... and, unless he shall do so, then summon the said C D that he appear before the Special Court sitting at Lobatsi on the.....day of the month.....19.....at ten o'clock in the forenoon, to show wherefore he hath not done it, and also to acknowledge or deny his signature on said.....or the validity of the said debt, and also summon the said C D then and there to plead to the provisional claim of the said A B for payment thereof under security *de restituendo* with costs, and to join issue thereon and serve on the said C D a copy of the said.....whereon the said provisional claim is founded.

And return then and there this summons with what you have done thereupon.

Witness:.....President of the Special Court of the Bechuanaland Protectorate.

Mafeking, the.....day of.....A.D. 19.....

.....  
Registrar of the Court.

.....  
Plaintiff's Attorney.

SCHEDULE "B."

FORM OF WARRANT OF ARREST UNDER RULE 9.

*In the Special Court of the Bechuanaland Protectorate.*

George V. by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Emperor of India, Defender of the Faith.

To the Sheriff of the Bechuanaland Protectorate or his lawful Deputy:

Greeting:

We command you that you take A B of.....Street, in.....merchant, if he be found in the Bechuanaland Protectorate, and safely keep him so that you have him before the Special Court of the Bechuanaland

Protectorate in Lobatsi on the.....day of.....  
next, at ten o'clock in the forenoon, in order, then and there  
to answer the claim of C D wherefore he hath not paid the  
sum of.....sterling, lawful money, which he owes  
to the said C D and unjustly detains from him (or hath not  
delivered to the said C D a certain horse, with saddle, bridle,  
etc.) or other movable property, which the said A B unjustly  
detains from the said C D, or hath not satisfied the said  
C D his damages, which the said C D has sustained in respect  
of. etc. (stating any wrong or injury committed by the  
defendant, as the case may be), as it is said, and have you  
then and there this writ with whatsoever you have done there-  
upon.

Witness :.....President of the  
Special Court of the Bechuanaland Protectorate.

Mafeking, the.....day of.....A.D. 19.....

.....  
Registrar of the Court.

No..... Street.....

.....  
Attorney of Plaintiff.

SCHEDULE "C."

DEED OF SECURITY UNDER RULE 10.

Know all men by these presents :

That we, A B..... and E F.....  
are held and firmly bound to the Sheriff of the Bechuanaland  
Protectorate, in the sum of (the sum or value of the thing  
mentioned in the writ) sterling, of lawful money, to be paid  
to the said Sheriff or his lawful representatives, executors,  
administrators, or attorneys, for which payment to be made  
we both of us bind ourselves, and each of us for himself in the  
whole, and every of our heirs, executors and administrators  
firmly by these presents.

Given under our signature on this.....day  
of..... A.D. 19.....

The condition of this obligation is such, that if the above  
bounden A B do appear before the Special Court of the  
Bechuanaland Protectorate on the.....day of  
.....at..... to answer C D wherefore,  
etc. (here following the statement in the writ) and also shall  
stand to abide and perform the judgment of the Court  
thereon, or render himself to the prison of the said Court in  
execution thereof; then this obligation shall be null and void,  
but otherwise shall remain in full force.

A B  
E F

Signed and delivered  
in the presence of

N O  
P Q

SCHEDULE "D."

FORM OF SUMMONS IN ORDINARY ORIGINAL ACTIONS UNDER RULE 12.

In the Special Court of the Bechuanaland Protectorate. George V. by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Emperor of India, Defender of the Faith.

To the Sheriff of the Bechuanaland Protectorate or his lawful Deputy:

Greeting:

Command A B of... (calling) (hereinafter named the defendant), that within... days after the service of this summons he cause an appearance to be entered at the Office of the Registrar of the Special Court of the Bechuanaland Protectorate at Mafeking to answer C D of... merchant (hereinafter named the plaintiff), in an action wherein the plaintiff claims:—

- (a) Restitution of conjugal rights.
(b) Divorce by reason of adultery with E F and others.
(c) That a bond passed by E F an insolvent, in favour of the defendant, be set aside as an undue preference.
(d) That the last will of E F, deceased, be declared void, for want of due execution.
(e) That the defendant be ordered to pass transfer to the plaintiff of the farm... in the district of... on payment at the same time by the plaintiff of the balance of the purchase price.
(f) That the defendant be restrained by perpetual interdict from obstructing a certain right of way.
(g) That the respective rights of the plaintiff and defendant to the use of a certain stream of water be declared.
(h) The sum of £... for goods sold and delivered.
(i) The sum of £... for money lent.
(j) The sum of £... for board and lodging.
(k) The sum of £... for arrears of rent.
(l) The sum of £... for damages for defamation.
(m) The sum of £... for damages for assault and false imprisonment.
(n) The sum of £... for damages for breach of promise of marriage.
(o) The sum of £... for damages for wrongfully using (or imitating) plaintiff's trade mark. (or as the case may be, stating in concise terms plaintiff's cause of action).

And return you this summons with whatsoever you have done thereupon.

Witness:..... President of the Special Court of the Bechuanaland Protectorate.

At..... on the..... day of..... A.D. 19.....

Registrar of the Court.

.....Street, Plaintiff's Attorney.

SCHEDULE " E. "

FORM OF AFFIDAVIT UNDER RULE 40.

In the Special Court of the Bechuanaland Protectorate.

Between

A B Plaintiff,

and

C D Defendant.

I, the above-mentioned Defendant, C D, make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit, set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said schedule hereto.

3. That (here state upon what grounds the objection is made, and verify the facts as far as may be).

4. I have had, but have not now, in my possession or power the documents relating to the matter in question in this suit, set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power (state when).

6. That (here state what has become of the last-mentioned documents, and in whose possession they are now).

7. According to the best of my knowledge, information and belief, I have not now, and never had, in my possession, custody or power or in the possession, custody or power of my Attorney or Agent, or any other person on my behalf, any document, or copy of or extract from any document, relating to the matter in question in this suit, other than and except the documents set forth in the first and second schedules hereto.

SCHEDULE " F. "

FORM OF NOTICE UNDER RULE 41.

In the Special Court of the Bechuanaland Protectorate.

A B versus C D

Take notice that the Plaintiff (or Defendant) requires you to produce for his inspection the following documents referred to in your (declaration or plea, or affidavit).

Dated the.....day of.....A.D. 19.....  
(Describe the documents required.)

SCHEDULE " G. "

FORM OF NOTICE TO INSPECT DOCUMENTS UNDER RULE 42.

In the Special Court of the Bechuanaland Protectorate.

A B versus C D

Take notice that you can inspect the documents mentioned in your notice of the.....day of.....(except the documents numbered.....in that notice), at my office on Thursday next, the.....instant, between the hours of.....or,

That the Plaintiff (or Defendant) objects to giving you inspection of the documents mentioned in your notice of the.....day of.....on the ground that (state the ground).

SCHEDULE " H. "

FORM OF SUBPENA FOR WITNESSES UNDER RULE 44.

In the Special Court of the Bechuanaland Protectorate.
Between

..... Plaintiff,
and
..... Defendant.

To the Sheriff or his lawful Deputies:
Command:

- 1.
2.
3.
4.

that laying aside all and singular business and excuses (if the travelling expenses to and from the Court have been tendered or paid them) they and every one of them shall be and appear personally before this Court to be held at Lobatsi on the.....day of.....19..... at 10 o'clock in the forenoon to testify all and singular those things they know in a certain cause pending before the Court \* between

....., Plaintiff
and ..... Defendant

and wherein the Plaintiff claims.....on behalf of the.....being thereto required.

And this they, or any of them, shall by no means omit, under the penalty, upon each of one hundred pounds sterling, Witness:.....President of the Special Court of the Bechuanaland Protectorate.

Mafeking the.....day of.....A.D. 19.....

..... Registrar of the Court.

..... Attorney of

\* If any witness have in his possession or control any deed, instrument or writing which the party requiring his attendance is desirous to show in evidence, then the following words shall be inserted in the above summons, after the words " 10 o'clock in the forenoon " " and also that you bring with you and produce at the time and place aforesaid, a certain deed, or instrument, or writing, bearing date, etc." (describing the instrument or thing to be produced).

SCHEDULE " I. "

FORM OF WRIT UNDER RULE 45.

In the Special Court of the Bechuanaland Protectorate.

To the Sheriff of the Bechuanaland Protectorate or his lawful Deputy:

Whereas at the sitting of the Special Court of the Bechuanaland Protectorate at Lobatsi on the.....day of..... A.D. 19..... A B of.....one of the persons (or a witness) having been duly summoned to be present at the sitting for the purpose of serving as a juror (or to give evidence in the case pending between E F and G H) did not appear at the sitting of the Court in obedience to the said summons, but made default therein;

It was adjudged that the said A B be fined in the sum of £..... sterling, to be by him paid and deposited in the Treasury:

These are therefore to command you that you cause the said fine to be levied out of the goods and chattels of the said A B and to deposit the amount so levied by you in the Treasury, for which this shall be your Warrant.

Given, etc.

.....  
Registrar of the Court.

-----  
**SCHEDULE "L."**  
-----

**FORM OF APPOINTMENT OF COMMISSIONER OF THE COURT  
UNDER RULE 62.**

To A B Esquire,

Resident Magistrate of.....or.....

Greeting:

The President of the Special Court of the Bechuanaland Protectorate, confiding in your knowledge and ability, has committed and hereby commits to you full power and authority as a Commissioner of this Court in the case pending in this Court between

and           C D   Plaintiff  
                  E F   Defendant

to take bail and security and to take the evidence of the following persons, etc., etc.

After the close whereof you shall send this Commission back to the Registrar of the Court, with an exact report of what you have done in the execution of the same.

Given under the Seal of the Special Court of the Bechuanaland Protectorate on this.....day of.....  
A.D. 19.....at Mafeking.

By Order of the Court.

.....  
Registrar.

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**SCHEDULE "M."**  
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**FORM OF COMMISSION TO TAKE EVIDENCE UNDER RULE 63.**

To A B Esquire (occupation and address).

Greeting:

We confiding in your knowledge and ability, have committed and hereby commit to you full power and authority as a Commissioner of this Court to examine witnesses in all cases in which by any rule or order of this Court such examination shall be committed to you, and to take affidavits in all suits depending in this Court.

To have, enjoy and exercise the said office of our Commissioner as aforesaid, until this our Commission be revoked.