

BECHUANALAND PROTECTORATE.

HIGH COMMISSIONER'S NOTICE  
No. 185 of 1940.

It is hereby notified for general information that His Excellency the High Commissioner has been pleased to approve of the following Rules of Court which have been made by the High Court of the Bechuanaland Protectorate under the provisions of sub-section (1) of section *fourteen* of the Bechuanaland Protectorate High Court Proclamation, 1938 (No. 59 of 1938).

By Command of His Excellency  
the High Commissioner.

H. E. PRIESTMAN,  
Administrative Secretary.

High Commissioner's Office,  
Pretoria, 8th October, 1940.

RULES OF HIGH COURT.

1. These Rules may be cited as the Rules of the High Court of the Bechuanaland Protectorate, 1940, and shall have force and take effect from the date of publication in the *Gazette*.

2. High Commissioner's Notice No. 127 of 1929 is hereby repealed and the following Rules are substituted therefor:

Provided that any proceedings already commenced under the repealed rules may be continued thereunder save in so far as the Rules hereby made may be applicable thereto without injustice or increased cost to any of the parties.

*Interpretation of Rules.*

3. " Court " shall be deemed to include the Assistant Resident Commissioner exercising jurisdiction under section *eleven* of the Bechuanaland Protectorate High Court Proclamation, 1938, to the extent of the jurisdiction thereby conferred upon him;
- " Judge " shall mean the Judge of the High Court sitting in Chambers whether within or out of the Territory and shall also include the Assistant Resident Commissioner sitting in Chambers for the purpose of exercising jurisdiction under section *eleven* of the Bechuanaland Protectorate High Court Proclamation, 1938, to the extent of the jurisdiction thereby conferred upon him;

- “ Master ” shall mean the Master of the High Court of the Bechuanaland Protectorate appointed under section 2 of Proclamation No. 33 of 1933;
- “ Sheriff ” shall mean the Registrar of the High Court and shall be deemed to include such Deputy Sheriff or Deputy Sheriffs as he may from time to time appoint;
- “ Taxing Master ” shall mean the Registrar exercising his duties as a Taxing Officer.

*Registrar's Office.*

4. Except on Sundays and public holidays the Office of the Court shall be open to the public every day between the hours of 9 a.m. and 12.30 p.m. and between 2 p.m. and 4 p.m., provided that on Saturdays the hours shall be between 9 a.m. and 12.30 p.m.

*Documents.*

5. All documents filed with the Registrar if written or printed in any language but English shall be accompanied by a translation in the English language duly certified as correct by a person approved of by the Registrar.

*Provisions applicable to all Applications.*

6. (1) All applications to Court shall be brought by way of petition or notice of motion which shall be supported by affidavits of the facts or circumstances upon which the same are made:

Provided that the Court may, on the application of any party, order the attendance for cross-examination of any person making any such affidavit.

(2) Copies of any such affidavits shall be served together with the notice of motion and in default the affidavits in respect of which there is such default shall not be capable of being used on such motion unless the Court otherwise orders.

(3) 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 Judge be of opinion that on account of the urgency of the matter a shorter period of notice may be allowed as sufficient. The notice shall be in writing signed by the party, or his attorney, issuing the same and shall specify the object of the application or motion.

(4) In any notice of motion the applicant shall appoint an address within two miles of the office of the Registrar at which he will accept notice and service of all process in such proceedings, and shall set forth, in addition to the date of hearing, a day, prior to the date of hearing, on or before which the

respondent is required to notify the applicant's attorney in writing that he intends to oppose the application, and a day on or before which the respondent, if he should give notice of intended opposition, is required to file his affidavits. In the event of the respondent intending to oppose, he shall, in the notice to the applicant of his intention so to do, appoint an address within two miles of the office of the Registrar at which he will accept notice and service of all process in such proceedings:

Provided that the provisions of this sub-rule and sub-rules (5), (6), (7) and (8) shall not apply to any matter which is of a nature so urgent as not to admit of delay and that the procedure prescribed by the said provisions shall be optional where the parties respectively have appeared in Court by their attorneys.

(5) The Form of notice of motion, marked No. 1 in the Schedule hereto, may, where applicable, be used with such variations as circumstances may require, but non-compliance with this Form shall not in itself be a ground for objection.

(6) Where the respondent files affidavits, the applicant shall file his answering affidavits, if any, not less than 24 hours before the time fixed for the hearing of the application.

(7) Where the respondent desires an extension of any of the times fixed by the applicant in his notice of motion, or the applicant desires an extension of the time fixed for the filing of his answering affidavits, and the opposite party refuses to agree thereto, the party so desiring may apply in person, by his Counsel or by his attorney, to the Judge for such extension.

(8) Where owing to any unreasonably short time having been allowed in any notice of motion, or owing to the failure of the respondent duly to give notice of intended opposition, or owing to the failure of either party to file his affidavits, extra costs have been incurred by the opposite party, the Court or Judge may make such order in respect of these costs as to it or him may seem fit.

(9) Every notice of motion, petition and affidavit shall be legibly written on foolscap paper on one side only, and the statements contained in such notice, petition and affidavit shall be divided into paragraphs numbered consecutively, each paragraph containing as nearly as can be a separate allegation. Dates, sums and numbers shall be expressed in figures and not in words.

(10) All applications shall be set down with the Registrar so as to allow one full office day to intervene between the day of set down and the day fixed for the hearing.

(11) When in any proceedings on motion there is a conflict of evidence and the matter cannot be decided without the hearing of oral evidence, the Court in its discretion may order such oral evidence as the parties may desire to produce to be heard forthwith or at such later date as the Court may fix, and may give directions as to dispensing with all pleadings or any particular pleading or as to dispensing with the oral evidence of any person who has given or may give evidence upon affidavit, and may give such other directions as to it may seem conducive to the speedy and inexpensive determination of the matters at issue.

(12) Any person against whom an interdict is granted may anticipate the day of appearance and apply to the Court for the discharge of such interdict upon giving 24 hours' notice thereof to the attorney of the applicant, or, where there is no such attorney, to the applicant.

*Applications under the Derelict Lands Act.*

7. (1) Any person who applies for an Order of Court by virtue of the provisions of Act No. 28 of 1881, shall lodge with his application—

- (a) a certificate from a conveyancer entitled to practise in the Deeds Registry for the area within the limits of which the land affected is situate to the effect that such land is registered in the name of the person alleged by the applicant to be the registered owner thereof and stating whether the land is or is not hypothecated, and if it is hypothecated, giving particulars regarding the name of the registered legal holder of the bond and the amount and date thereof;
- (b) a report on the application by the Registrar of Deeds concerned and also one from the Surveyor-General if, in the opinion of the Registrar of Deeds, the circumstances of the case are of such a nature as to render the production of such a report desirable;
- (c) the original or a certified copy of the title-deed made in favour of the last registered owner.

(2) Where it is alleged by the applicant that the right to the ownership of the land was acquired by a contract or other transaction which was reduced to writing the document containing such writing shall be lodged or an explanation of its non-production supplied upon affidavit.

(3) Where the contract or other transaction was not reduced to writing, or where, though so reduced, the document cannot be produced, proof of the conclusion of such contract or transaction upon which the applicant relies shall be furnished, and by disinterested persons where possible.

(4) Where the applicant bases his claim upon prescription, proof of the undisturbed possession of the land by the applicant and by any person or persons through whom his rights are derived shall be furnished, and by disinterested persons where possible.

(5) In all cases proof of payment by the applicant or by any person or persons through whom his rights may have been derived of any rates, taxes and quitrent payable in respect of the land shall be furnished or an explanation of non-payment.

(6) Where the land in respect of which the application is made has been granted subject to a condition giving the Government the right to resume the land on failure of the owner to comply with the terms of the grant the applicant must satisfy the Court that notice of the application has been served upon the Government Secretary.

*In Forma Pauperis.*

8. (1) Any poor person, before commencing or defending any civil proceeding in the Court in his own right, or becoming poor during the progress thereof, may apply on petition to the Court for leave to take or defend any proceedings as a pauper.

(2) The petition shall state the nature of the proceedings and shall set forth that, excepting household goods, wearing apparel, tools of trade and, if he is plaintiff, the matter or thing claimed by him in the suit, the petitioner is not possessed of property to the amount of £25, or in matrimonial causes £15, in value, and will not be able within a reasonable time to provide such sum from his earnings.

(3) The petition shall set forth fully the petitioner's financial position and, where the petitioner is the plaintiff, shall state the address of the other party or give information as to his whereabouts.

(4) the facts set forth in the petition shall be verified by an affidavit made by the petitioner. The statements as to the petitioner's financial position shall be supported, as far as may be possible, by an affidavit made by some person well acquainted with his means, who shall state therein the extent of his knowledge of the petitioner's means.

(5) After considering the petition and affidavits the Court may require that further information be supplied, or that the petitioner attend in Court to be examined as to his means. When the Court is satisfied as to the petitioner's lack of means as aforesaid, it may refer the petition to an advocate or attorney of the Court to consider the case.

(6) Upon such advocate or attorney certifying that he has considered the case of the applicant and believes him to have good cause for taking or defending proceedings, as the case may be, the Court may appoint an advocate or an attorney to act for the petitioner and may direct a Rule to issue calling upon the opposite party to show cause why the petitioner shall not be allowed to take or defend proceedings, as the case may be, as a pauper.

(7) If sufficient cause to the contrary is not shown, the Rule shall be made absolute. If upon cause shown the Rule is discharged, the appointment of advocate or attorney shall terminate.

(8) If the person who serves the Rule upon the opposite party is not a deputy-sheriff or an attorney, information shall be placed before the Court to satisfy it that he is a person capable of effecting service and of explaining the nature and exigency of the Rule.

(9) No fee shall be taken by an advocate or attorney or officer of the Court from any person admitted to take or defend proceedings as a pauper for anything done in the conduct of the cause, but if he succeeds, and the costs are awarded to be paid by his opponent, then the advocate or the attorney of the said party shall be entitled to such fees as the Taxing Master shall allow to them on taxation.

(10) No poor person nor any attorney conducting the proceedings for him shall discontinue, settle or compromise such proceedings without the leave of the Court. If by any settlement or compromise no adequate provision is made for the costs of the advocate or attorney of the poor person, the Court may direct that out of any money or the proceeds of any property recovered by the poor person such costs shall be paid to his advocate or attorney as the Court may deem meet.

(11) No poor person shall discharge any advocate or attorney acting for him without the leave of the Court upon motion made by him to that intent.

(12) No advocate or attorney acting for a poor person shall be at liberty to discontinue his assistance, unless he satisfies the Court that he has reasonable grounds for so discontinuing.

(13) Any person who has been admitted to take or defend proceedings as a pauper but who in the opinion of the Court ceases to be a pauper within the meaning of these Rules during the progress of the cause, or who misbehaves himself in the cause by any vexatious or improper conduct or proceedings or by wilfully delaying the cause, shall on the same being proved by affidavit or otherwise to the satisfaction of the Court be deprived of all the privileges of such his admission.

*Applications affecting Estates of Persons Deceased or under Disability and for Appointment of Curators and Trustees.*

9. (1) A copy of every application to the Court in connection with the estate of any person deceased or alleged to be a prodigal or under any disability, mental or otherwise, shall, before such application is set down for hearing, be submitted to the Master for his consideration and for report by him; and in any case where any person is to be suggested to the Court as curator to the property, such suggestion shall at the same time be submitted to the Master for his approval.

(2) The procedure prescribed by sub-rule (1) shall be followed in applications for the appointment or substitution of trustees under ante-nuptial contracts or other contracts relating to trust funds.

(3) In cases of the appointment of such curators or trustees the Court shall order that security be furnished and accounts be rendered to the satisfaction of the Master.

*Interpleader.*

10. (1) Relief as hereinafter set forth may be granted where the person seeking relief (hereinafter called the applicant) is under any liability for a debt, money, or movable property for or in respect of which he is, or expects to be, sued by two or more parties (hereinafter called the claimants) making adverse claims thereto.

(2) The applicant must satisfy the Court by affidavit or otherwise—

(a) that he claims no interest in the subject-matter in dispute other than for charges and costs; and

(b) that he does not collude with any of the claimants; and

(c) that he is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court may direct.

(3) The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another.

(4) The applicant may by way of notice of motion call on the claimants to appear and state the nature and particulars of their claims and either to maintain or relinquish them.

(5) If summons has already been issued against the applicant by one or more of the claimants, the Court upon the return day of the notice of motion may stay all further proceedings against the applicant.

(6) If a claimant, having been duly served with a notice of motion calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the notice, 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 claiming under him for ever barred against the applicant, but the order shall not affect the rights of the claimants as between themselves.

(7) If the claimants appear in pursuance of the notice of motion, the Court may order that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated by way of pleadings and tried, and in the latter case may direct which of the claimants is to be plaintiff and which defendant. The provisions of the Rules relating to an action shall apply to an issue so directed to be stated and tried, unless the Court directs otherwise.

(8) The Court may, with the consent of the claimants who may appear, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary matter, and on such terms as may be just.

(9) Where the question is a question of law, and the facts are not in dispute, the Court may either decide the question without directing the trial of an issue or order that a special case be stated for the opinion of the Court. In such last-mentioned event, the Rules relating to a special case shall, so far as applicable, apply.

(10) The Court may, in or for the purposes of any relief as hereinbefore set forth, make all such orders as to costs and all other matters as may be just and reasonable.

#### *Powers of Attorney.*

11. (1) No summons and no process under Rule 12 shall be issued by the Registrar at the instance of any attorney on behalf of a plaintiff unless there has been filed with the Registrar a power of attorney to sue signed by the plaintiff; nor shall the Registrar at the instance of any attorney cause appearance to be entered on behalf of a defendant unless there has been filed with him a power of attorney to defend signed by the defendant.

(2) The Registrar shall not set down any civil appeal at the instance of an attorney on behalf of an appellant unless such attorney files with the Registrar a power of attorney, signed by the appellant, giving such attorney authority to appear in the matter.

(3) Every attorney instructing counsel to appear on behalf of the respondent at the hearing of a civil appeal shall before the hearing thereof file with the Registrar a power of attorney, signed by the respondent, giving such attorney authority to appear in the matter.

*Arrest.*

12. (1) No civil process whereby any person may be arrested or held to bail in order to compel his appearance to answer any claim or demand and to abide by the judgment of the Court thereon shall be sued out against any person where the cause of action is not of the value of £25, or upwards, exclusive of any costs which may be incurred in the recovery thereof.

(2) In all cases where any person may be arrested or held to bail the process shall be by writ of arrest addressed to the Sheriff or his deputy and signed and endorsed in the same manner as near as may be as is required in the ordinary process of the Court, and shall, as near as may be, be in the form set forth in Form No. 2 in the Schedule hereto.

(3) The writ of arrest shall be delivered to the Registrar for signature accompanied by a direct and positive affidavit sworn by the plaintiff or his agent.

(4) The affidavit shall contain a true description of the person 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 and where contracted, or in the 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 a trustee of an insolvent estate, or as an assignee of an assigned estate, or as a *curator bonis* or in some fiduciary capacity, it shall be sufficient in any such affidavit to aver that the said defendant is indebted as stated, as appears by the books or documents in the possession of the deponent and as the deponent verily believes. The affidavits shall further contain an allegation that the plaintiff has no mortgage, pledge or security for his demand or none adequate thereto, and in this last case specifying the nature and extent of the mortgage, pledge or security, and that the sum or value of £25 or upwards remains wholly unsecured; and in case the said claim or demand shall arise from any personal cause or wrong sustained by the plaintiff, that the said plaintiff has sustained damage to the amount of £25 or upwards.

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

(6) The writ of arrest and affidavit shall be filed by the Registrar and office copies of the same shall be granted on application to the defendant or his attorney, who shall be at liberty at all reasonable times and without charge to search for and peruse the same.

(7) In all cases where any sum of money or definite thing is claimed, the same shall be set forth in the writ of arrest. The costs and charges of issuing any such writ 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 a true copy of the same, together with a copy of the document upon which the claim is founded, both of which shall be supplied by the plaintiff.

(8) If on any arrest the defendant or anyone on his behalf gives to the Sheriff or his deputy reasonable security by bond or obligation of the said defendant and of another person residing and having sufficient means within the Territory that the defendant shall appear according to the exigency of the said writ, and shall stand to abide and perform the judgment of the Court thereon, or shall surrender himself to prison in execution of the same, or if the said defendant pays or delivers to the Sheriff or his deputy the sum of money or thing mentioned in the said writ, together with the costs and charges endorsed thereon, and the further sum of £1 sterling 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 writ of arrest. The bond or obligation to be given to the Sheriff or his deputy under this Rule shall be as near as may be in the form of Form No. 3 in the Schedule hereto:

Provided that the personal bond of the defendant without a surety shall be sufficient for the purposes of this Rule if accompanied by a deposit of the amount claimed and costs as aforesaid, such deposit being referred to in the bond as one of the conditions thereof.

(9) If the defendant at any time after his arrest satisfies the claim contained in the writ, including the costs and charges thereon and the costs of the arrest, or if he gives a bond or obligation in terms of sub-rule (8), he shall be entitled to immediate discharge from such arrest.

(10) If a bond or obligation has been given by the defendant, or by any one on his behalf in terms of sub-rule (8), the plaintiff shall proceed with his action precisely as if there had been no arrest, and the writ of arrest shall in that case stand as the summons in the action.

(11) Any person arrested shall be entitled to anticipate the day of appearance and to apply to the Court for the discharge of the said arrest upon giving 24 hours' notice to the attorney for the plaintiff, or to the plaintiff if he is not represented by an attorney.

(12) If the Sheriff or his deputy takes from the party arrested any money or thing for the plaintiff or any bond or obligation by virtue of any writ or attachment, then the Sheriff or his deputy shall, as soon as practicable and being thereunto required by the plaintiff or his attorney, deliver over to the plaintiff or his attorney any such money or thing or assign to the plaintiff such bond or obligation, by an endorsement thereon to be made by the Sheriff or his deputy, under his hand, which endorsement shall, as near as may be, be in the form of Form No. 4 in the Schedule hereto

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

(14) If the defendant has not satisfied or admitted the claim contained in the writ, and has not given security as aforesaid, the plaintiff shall on the return day or on the day of the anticipation of the same as aforesaid, apply for confirmation of the arrest, when the Court, unless sufficient cause to the contrary is shown, shall confirm such arrest and order the return of the defendant to prison, but shall make such further order as to it seems meet so as to provide for the speedy termination of the proceedings between the parties, the writ standing as the summons in the case.

(15) If in any such proceedings judgment is given against the defendant, he shall be entitled to his discharge from such arrest, provided that such discharge shall not free him from his liability under the judgment or from subsequent proceedings thereunder.

(16) Where the plaintiff or his attorney resides or is in any district in the Territory and requires the process of the Court to arrest or hold to bail any person under and by virtue of the provisions of this Rule, such plaintiff or his attorney may lodge with the District Commissioner of such district a power of attorney to some attorney in Mafeking to sue the defendant and the affidavit required under this Rule. The said District Commissioner shall thereupon telegraph to the Registrar the whole of such affidavit stating at the same time that the plaintiff's power has been filed and naming the attorney appointed therein. By the next post the District Commissioner shall transmit to the Registrar the original power to sue and the affidavit to be by him filed of record. Upon receipt

of such telegram and upon the application of the attorney named therein, the Registrar shall act as if the original power and affidavit had been produced to him and filed with him. The stamps upon all documents filed under this sub-rule shall be affixed before they are lodged with the District Commissioner and the plaintiff or his attorney shall, before transmission, pay to such District Commissioner the amounts required for the despatch of the telegrams and the postage of the letter aforesaid.

(17) The costs of all proceedings under sub-rule (16) shall be in the discretion of the Court.

(18) Sub-rules (1), (9) and (11) of Rule 6 shall *mutatis mutandis* apply to all proceedings under this Rule.

*Provisional Sentence.*

13. (1) In all cases where by law any person may be summoned to hear claim made for obtaining provisional sentence, a copy of the 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; and the said summons shall be as near as is material in either Form No. 5 or Form No. 6 in the Schedule hereto.

(2) The time fixed in a provisional sentence summons for the appearance of a defendant shall be the time allowed under these Rules for entering appearance to a summons in any other civil proceedings.

(3) When provisional sentence is claimed for a sum of money, which has become due by reason of notice given, an affidavit must be filed that the notice was actually given.

(4) The defendant may appear personally or by Counsel in the Court and there acknowledge or deny the claim set forth in the summons. If he then acknowledges the claim or if he has previously filed with the Registrar an acknowledgment of the claim signed by himself and witnessed by an attorney acting for him and not acting for the opposite party, or, if not so witnessed, then if his signature is verified by affidavit, the Court may give final judgment against him.

(5) Any defendant against whom a provisional sentence has been granted may within one month next after the levy made under a writ of execution issued by virtue of such provisional sentence, or if he has satisfied the judgment without the levy, then within one month after having done so, enter appearance with the Registrar to answer the action.

(6) If the defendant or some one authorised on his behalf does not enter such appearance within one month after such levy or satisfaction, the provisional sentence shall become a final judgment and the security given by the plaintiff shall become *ipso facto* null and void.

(7) Sub-rules (1), (9), (10) and (11) of Rule 6 and sub-rule (1) of Rule 15 shall apply *mutatis mutandis* to all proceedings for provisional sentence.

#### *Edictal Citation.*

14. (1) In every case where, under the practice heretofore existing, the process of Edictal Citation would be necessary for the purpose of citing or otherwise compelling the appearance of any person to answer any complaint or demand, it shall be competent for the plaintiff before suing out process to apply to the Court, by petition, 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, and thereupon the Court shall, by its order, give such directions in the premises as it deems proper and necessary, having due regard to the distance from the Court of the place where the defendant is or is believed to be residing and to the other circumstances of the case; and such summons, as well as all subsequent notices, pleadings, writs, rules, or other process in such case, shall be served in such manner, and subject to such conditions as the Court, in each particular case, directs:

Provided that in any case in which the service of such summons has not been made on the defendant personally, and the defendant has not entered appearance, such summons shall not be deemed to have been duly served unless the same has been published once at least in the *Official Gazette*, not less than one calendar month before the day fixed for the appearance of the defendant, and unless the Court is satisfied, by affidavit, that reasonable and proper efforts have been made to serve such summons on the defendant personally.

(2) In all cases in which publication of summons, citation, intendment or notice of trial is directed by the Court, it shall not be necessary to publish the same *in extenso*, but the publication of a short form thereof, to be approved of and signed by the Registrar, shall be deemed to be a sufficient compliance with the directions of the Court.

#### *Summons.*

15. (1) All civil process of the Court may be sued out by any person having any demand or matter of complaint against any other person whatsoever (excepting only against the Government of the Territory for

the time being and the Judge of the High Court, in which cases such process shall not be sued out without leave of the Court upon motion first had and obtained) and the said process shall be dated on the day on which it is issued and shall bear the signature of the plaintiff or his attorney and the address of the latter, and shall be made returnable by the Sheriff to the Court through the Registrar and the said process shall be signed by the Registrar and issued by him. There shall be endorsed on the summons a notice duly signed and completed by the plaintiff or his attorney in Form No. 7 in the Schedule hereto.

(2) The common process of the Court or the Judge to compel the appearance of any person to answer any complaint or demand in all simple and original actions where by law there has been no arrest of the defendant in terms of Rule 12 shall be by summons directed to the Sheriff (except where the said Sheriff is a party and then to some fit and proper person nominated by the Judge) requiring the said Sheriff (or such other person) to command the defendant that he cause an appearance to be entered for him to answer the plaintiff's action, which summons shall be as nearly as may be in Form No. 8 in the Schedule hereto with such variations as circumstances may require.

(3) With every original summons the plaintiff shall hand to the Sheriff one copy for each defendant to be served. The Sheriff or his deputy shall effect service thereof as soon as practicable.

(4) The Registrar may extend the return day of an unserved summons at any time.

#### *Service of Process.*

16. (1) No service of any process, order, notice or proceeding, or any act done in any civil proceedings, except in the case of arrest, shall be valid or effectual if performed on a Sunday, but all process returnable on a Sunday or upon a public holiday shall be returnable on the next succeeding day which is not a Sunday or a public holiday, and any act required to be done by any party in Court at a time which would otherwise fall on a Sunday or a public holiday, shall be valid and effectual if done on the next succeeding day which is not a Sunday or a public holiday.

(2) A copy of every summons shall be served either by delivering such copy to the defendant personally or by leaving it at his usual or last-known dwelling-house or place of business and such service shall be made so as to admit of the lapse of not less than the following entire periods between it and the time of the defendant's appearance, namely, when the dwelling-house or place of business is within 36 miles of the railway station at Mafeking, two days; when

the dwelling-house or place of business is more than 36 miles therefrom then in addition to the two days already mentioned one day for every additional day's or part of a day's journey therefrom, a day's journey being reckoned at 36 miles :

Provided that if the defendant's dwelling-house or place of business is more than 36 miles from the said station the distance between the nearest railway station on any line of railway in unbroken communication with the said station shall be reckoned as 200 miles a day and the distance between the said railway station and the defendant's dwelling-house or place of business at 36 miles a day. If there are more defendants than one, the summons shall, subject to the provisions of the next succeeding sub-rule, be served upon each defendant.

(3) 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.

(4) 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.

(5) 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 the Judge may direct.

(6) 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.

(7) The Sheriff shall upon the return of all civil process deliver into the office of the Registrar the said process together with a return endorsed thereon or annexed thereto of what he has done by virtue thereof; and the plaintiff or defendant, or their respective attorneys, may at any time have an office copy of the said process and the return thereto at the cost of the party applying for the same.

(8) Excepting when personal service upon either party is by any proceeding or practice of the Court especially required and provided, service of process on any party between the hours of 9 a.m. and 5 p.m. at the address appointed by such party in terms of these Rules shall be good and effectual.

#### *Entry of Appearance.*

17. (1) In all simple original actions the party upon whom service of any process has been made, or who has been arrested and has given bail for his appearance to answer any complaint or demand, shall, within the time allowed by the summons for entering appearance, either personally or by an attorney of the Court duly thereto authorised enter his appearance in the book kept by the Registrar for that purpose.

(2) When a defendant enters appearance either personally or by attorney he shall appoint an address in terms of the notice endorsed on the summons and the said address shall be taken down by the Registrar.

(3) Upon the defendant entering appearance he shall within 24 hours thereafter give notice thereof and of the address appointed by him for service in terms of sub-rule (2) in writing to the plaintiff or his attorney.

#### *Judgment on Default of Appearance.*

18. Where any defendant, having been duly served with any summons, not being a summons to hear claim made for provisional sentence, fails to enter appearance within four days next after the day prescribed in the summons for entering appearance, the plaintiff may, if his claim apart from costs is for a debt or liquidated demand only, set down the case without notice for judgment, and the Court may thereupon give judgment against the defendant in respect of such summons:

Provided that if the defendant applies to Court on notice of motion within six weeks after he has knowledge of such judgment it may be set aside by the Court and leave given to the defendant to defend upon sufficient cause shown and upon such terms as to costs or otherwise as to the Court may seem meet.

*Judgment on Confession.*

19. (1) Save and except in actions for divorce or judicial separation, the defendant may at any time after service of summons by himself or his attorney confess the demand in writing to be filed in the office of the Registrar.

(2) Every 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.

(3) Upon the filing of such confession, the plaintiff may without notice set down the case for judgment and thereupon judgment may be given or order made according to such confession:

Provided that if the defendant applies to Court on notice of motion within six weeks after he has knowledge of such judgment it may be set aside by the Court and leave given to the defendant to defend upon sufficient cause shown and upon such terms as to costs or otherwise as to the Court may seem meet.

*Declaration.*

20. (1) In all simple original actions the plaintiff may, at the time of issue of summons, file his declaration with the Registrar and cause a copy thereof to be served on the defendant, together with the summons, and the plaintiff may at the same time cause a notice, signed by his attorney, and containing his address, to be served on the defendant requiring him to plead or except to the declaration or make claim-in-reconvention within fourteen days next after the last day prescribed in the summons for entering appearance and informing him that, if he fails to enter an appearance, then without further notice he will be barred from pleading and the case will be set down for trial on a day stated in such notice:

Provided that unless the Court orders otherwise, no costs of any declaration or notice so served shall be allowed—

- (a) if the defendant within the time allowed for entering appearance tenders (save and except in actions for divorce and judicial separation) to satisfy the plaintiff's claim in full;
- (b) if the defendant before four days next after the time prescribed in the summons for entering appearance confesses the demand in terms of Rule 19; or
- (c) if the plaintiff's claim apart from costs is for a debt or liquidated demand only and the defendant fails within four days next after the time so prescribed to enter appearance.

(2) When a declaration has not been served in terms of sub-rule (1), and when the defendant has not entered appearance within the prescribed time and it is not competent for plaintiff to set down the case for judgment under Rule 18 or 19, the declaration shall be filed by plaintiff or his attorney with the Registrar, having endorsed thereon: "Filed for default of appearance. G. H. Plaintiff or Plaintiff's Attorney (as the case may be)", and a copy of the declaration shall be served upon the defendant in the manner prescribed by sub-rule (2) of Rule 16 together with a notice in writing sub-joined thereto and signed by the plaintiff or his attorney (as the case may be) and containing the address endorsed on the summons, informing the defendant that the declaration has been filed by the plaintiff on his default and also containing a notice that the defendant must plead or except or make claim-in-reconvention within fourteen days next after service of the notice, and that in default thereof then without further notice he will be barred from pleading thereto and that the case will be set down for trial on a day stated in the notice.

(3) When a declaration has not been served in terms of sub-rule (1) but the defendant has entered appearance within the prescribed time, a copy of the declaration shall be filed with the Registrar and a copy thereof served upon the attorney of the defendant (or, where the defendant appears in person, on the defendant) at any time within one month after such appearance, in default whereof the plaintiff may be barred from declaring.

(4) The declaration shall state truly and concisely the name and description of the plaintiff therein and the right in which he sues, and of the defendant and the right in which he is sued, the nature and the ground of the cause of action, complaint or demand and such conclusions as according to the form of the particular action the plaintiff shall be entitled to deduce therefrom.

(5) Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint, founded upon separate and distinct facts, they shall be stated as far as may be separately and distinctly.

*Judgment when Plaintiff barred from Declaring.*

21. Whenever a plaintiff has been barred from declaring the defendant shall be at liberty to move the Court on notice of motion to sign judgment against him for not proceeding in the said cause, and the said judgment shall be entered into a book kept by the Registrar for that purpose; and thereupon the defendant shall proceed to tax the costs of the said cause against the plaintiff.

*Plea, Exception or Claim in Reconvention.*

22. (1) In all cases where the defendant has entered appearance, he shall plead, except or make claim-in-reconvention within fourteen days next after service of a copy of the declaration on the defendant (if he appears in person) or his attorney, unless such copy together with the summons, has been served on the defendant, in which case he shall plead, except or make claim-in-reconvention within fourteen days next after the last day allowed for entering appearance, and in default thereof the defendant may be barred from pleading.

(2) Defendant in his plea shall admit, deny, or confess and avoid all material facts alleged in the declaration and shall clearly and concisely state the material facts on which the defendant relies.

(3) It shall not be sufficient for defendant in his plea-in-convention or for plaintiff in his plea-in-reconvention to deny generally the facts alleged by the declaration or claim-in-reconvention, as the case may be, but each party must deal specifically with each allegation of fact of which he does not admit the truth; and every allegation of fact contained in the declaration or claim-in-reconvention and not specifically denied in the plea-in-convention or plea-in-reconvention shall be taken to be admitted.

(4) When the defendant relies on several distinct grounds of defence, set off, or claim-in-reconvention, the provisions of sub-rule (5) of Rule 20 shall *mutatis mutandis* apply.

*Payment into Court.*

23. (1) Whenever an action has been instituted to recover a debt or damages, any defendant may before or at the time of filing his plea, or by leave of the Court at any later time, pay into Court a sum of money by way of satisfaction or amends.

(2) In granting leave as aforesaid, the Court may give such directions, as to it may seem fit, relating to the amendment of the plea, the service of notice of payment upon the plaintiff, the time within which the plaintiff must elect whether or not he will accept the payment, or any other matter concerning such payment.

(3) Money paid into Court shall be paid to the Registrar, who shall give a receipt therefor.

(4) If payment is made before filing of plea, the defendant shall forthwith serve upon the plaintiff a notice stating that he has paid into Court such sum of money and specifying the claim in satisfaction of which the payment is made.

(5) Payment into Court, if made before or at the time of filing plea, shall be pleaded, and the claim in respect of which such payment is made shall be specified in the plea.

(6) The plaintiff may accept the money paid into Court in full satisfaction of the claim in respect of which the payment was made—

(a) if payment is made before or at the time of filing plea, within fourteen days after receipt of notice of payment;

(b) if payment is made after plea, within such time as the Court may have fixed.

(7) Where payment is so accepted, the plaintiff shall give notice to that effect to the defendant and to the Registrar, and the Registrar shall then pay the said money to the plaintiff subject to sub-rule (9) or to his attorney on the written authority of the plaintiff.

(8) No affidavit shall be necessary to verify the plaintiff's signature to such written authority unless specially required by the Registrar.

(9) Where the plaintiff has requested the Registrar to pay the money so accepted to the plaintiff himself, the Registrar shall give written notice of such request to the plaintiff's attorney, and shall not, save with the attorney's consent, pay over such money to the plaintiff until after the expiration of six days from the despatch of such notice.

(10) If the money paid into Court is paid in full satisfaction of the entire action and is so accepted by the plaintiff, he shall be entitled to have his costs of such action taxed, and, if such costs are not paid within 48 hours after taxation, to sign judgment therefor.

(11) Except as herein provided, or unless the Court otherwise orders, no money paid into Court shall be paid out.

(12) If a plaintiff does not accept a sum of money paid into Court in respect of any claim made by him, and the Court awards to him a sum not greater than the sum so paid in in respect of that claim, the Court may order the plaintiff to pay defendant the costs occasioned by that claim subsequently to the payment into Court.

(13) " Action " in this Rule includes a claim-in-reconvention.

#### *Dismissal of Action.*

24. (1) In any action after the defendant has filed his plea, the defendant, on affidavit made by himself, or by any other person who can swear positively to the facts, stating that in his belief the action is frivolous or vexatious and the grounds for his belief, may apply to the Court to dismiss the action.

(2) Notice of such application shall be served on the plaintiff not more than four days after filing of plea, and shall be returnable not less than four days and not more than ten days after service. With the notice shall be served a copy of the affidavit referred to in sub-rule (1).

(3) Such notice of application shall not be subject to the provisions of sub-rules (4), (5), (6), (7), (8) and (11) of Rule 6.

(4) Upon the hearing of an application to dismiss an action under this Rule the plaintiff may answer the affidavit filed by the defendant by affidavit or oral evidence of himself, or any other person who can swear positively to the facts.

(5) No evidence may be adduced by the defendant otherwise than by the affidavit of which a copy was delivered with the notice of application, nor may either party cross-examine any person who gives evidence *viva voce* or by affidavit.

(6) Unless the Court is satisfied, whether the plaintiff has given evidence or not, that the action is frivolous or vexatious, it shall dismiss the application, and the action shall proceed as if no application had been made.

(7) If the Court is satisfied that the action is frivolous or vexatious, it may dismiss the action and enter judgment of absolution from the instance with costs.

(8) Where the Court is of opinion that the defendant had no good grounds for alleging that the action was frivolous or vexatious it may order that the defendant pay forthwith the plaintiff's costs as between attorney and client.

(9) Where on the hearing of an application made under this Rule in a case where there is more than one defendant, it appears that as against one defendant the action is frivolous or vexatious but it does not so appear as against another defendant, the Court may order that as against one defendant the action be dismissed and judgment of absolution from the instance with costs be entered, but that against another defendant the plaintiff be at liberty to proceed with the action.

#### *Judgment on Default of Plea.*

25. (1) Whenever the defendant has been barred from pleading or excepting to the plaintiff's declaration, the plaintiff may, if his claim apart from costs is for a debt or liquidated demand only, set down the case without notice for judgment, and the Court may thereupon, without hearing any evidence, give judgment against the defendant in respect of the claim made in the plaintiff's declaration.

Provided that if the defendant applies to Court on notice of motion within six weeks after he has knowledge of such judgment it may be set aside by the Court, and leave given to the defendant to defend, upon sufficient cause shown and upon such terms as to costs or otherwise as to the Court may seem meet.

(2) If the plaintiff's claim is not for a debt or liquidated demand, he may set down the case for trial and the Court may, after hearing such evidence as may be adduced, give judgment against the defendant in respect of the claim made in the plaintiff's declaration or such other judgment as to the Court may seem meet.

(3) Whenever a case is set down for trial in terms of sub-rule (2) no notice of the date of trial need be served on the defendant unless the plaintiff claims a decree of divorce or an order for restitution of conjugal rights or a decree of judicial separation.

*Replication and Further Pleadings.*

26. (1) The plaintiff shall be at liberty after the filing of the plea of the defendant forthwith to reply thereto or make answer to any claim which the defendant may have made in reconvention, and shall be obliged to reply thereto within fourteen days after the filing and notice thereof, and in default thereof the plaintiff may be barred from replying thereto.

(2) If the reply of the plaintiff contain any new matter, or if therewith he also plead to the claim of the defendant in reconvention, the defendant shall be allowed to rejoin to the replication or to reply in reconvention, but not otherwise, unless with leave of the Court or the Judge for that purpose given; and such rejoinder or replication of defendant shall be filed and notice thereof given within fourteen days after the replication or plea-in-reconvention of the plaintiff, and in default thereof the defendant may be barred from rejoinder or replying thereto.

(3) In like manner and within the same time, and subject to the same consequence as is by sub-rule (2) specified with respect to the rejoinder of the defendant to the replication-in-convention, the plaintiff shall also be permitted to rejoin-in-reconvention; and no other terms shall be allowed in pleading in any case except by leave of the Court or the Judge.

(4) The plaintiff by his replication may join issue upon the plea, and each party in his pleading, if any, subsequent to the replication, may join issue upon the previous pleading.

(5) Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

*General Provisions Applicable to all Pleadings.*

27. (1) All pleadings other than a summons shall be signed by an advocate or an attorney on the roll, or, if a persons sues or defends personally, then by such person.

(2) Any party to a cause may at all times examine the pleadings and take copies of the same.

(3) Whenever a party to an action has not filed his pleading within the time prescribed by these Rules, his opponent may, after the expiration of twenty-four hours after demand of the pleading has been made, bar him from pleading by filing with the Registrar a notice of bar:

Provided that the procedure prescribed by this sub-rule shall not apply when a notice is served with a declaration in terms of sub-rules (1) and (2) of Rule 20.

(4) Whenever a party to any action has been barred from pleading, the Court or the Judge may at any time before judgment has been given in the said action remove the bar upon an affidavit of merits or other sufficient grounds upon such terms as to costs or otherwise as to it or him may seem meet:

Provided that the bar may without any order of the Court or Judge be removed by consent of all the parties to the action.

(5) Any party may, upon application to the Court, obtain time to declare, plead, reply, rejoin or except or an order to amend the pleadings or schedule thereto annexed, respectively, upon sufficient cause shown to the satisfaction of the said Court and upon such terms as to costs as it shall impose.

(6) The Court or the Judge may at any stage of the proceedings before trial, and the Court may at any stage before judgment, allow any party to amend his pleadings. All such amendments shall be made as may be necessary for the purpose of determining the real question or questions in controversy between the parties.

(7) If a party who has obtained an order for leave to amend a pleading filed by him does not amend the same within the time limited for that purpose by the order, or, if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days (as the case may be), become *ipso facto* void unless the time is extended by the Court or the Judge.

(8) Whenever a pleading is amended, such amended pleading shall be marked with the date of the order under which it has been so amended, and a copy of such pleading shall be delivered to the opposite party within the time allowed for amending the same.

(9) When a party to a pleading relies upon a contract, he shall state in the pleading whether the contract is oral or written.

(10) When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively but answer the point of substance. Thus, if it is alleged that he

received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And so when a matter is alleged with diverse circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given.

(11) Whenever an exception is taken to any pleading, the reasons on which the exception is grounded shall be stated clearly and concisely.

(12) Whenever a party to an action demands particulars of any matter alleged in the pleading of his opponent and particulars are furnished, such particulars shall be forthwith filed with the Registrar and shall be deemed to form portion of such pleadings.

(13) If any argumentative or irrelevant matter is stated in any pleading, the same being shown to the Court, it shall be struck out of such pleading with or without payment of costs as the Court may direct.

(14) A copy of every pleading served by every party on the opposite party shall show on the face of it the date on which such pleading has been filed, and no further notice of the filing of such pleading shall be required.

(15) Every pleading in any illiquid case which contains more than six folios of not less than 150 words each, each figure being counted as a word, shall be printed or typewritten. In every case when pleadings are typewritten the originals must be in black record ink on foolscap paper of good quality and on one side only of such paper. The Registrar may require that five copies of any printed pleadings in addition to the original be filed, and he is further empowered to reject any typewritten pleading which does not meet the requirements of this sub-rule. The costs in connection with the printing of any pleading shall form part of the costs of the cause, provided that the charge for printing shall not exceed the sum of 20s. per page for plain matter and 35s. per page for tabulated matter, a half or less than half page to be charged as a half page, or such lesser sum as the Taxing Master may allow, and 3d. per folio for correcting proofs in addition to the attorney's charges for attendance (not exceeding four) on the printers. Except by a special order of the Court, no other costs shall be allowed on either side for making copies of any printed pleadings for the use of the Court or of Counsel or for any other purposes.

(16) Sub-rule (9) of Rule 6 shall *mutatis mutandis* apply to every pleading.

*Close of Pleadings.*

28. (1) The pleadings shall be considered closed—

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

(2) Either party, in case he conceives the record to be complete and that the pleadings thereon ought to be closed, may apply to the Court on motion for a rule calling upon his opponent to show cause why the same should not be adjudged by the Court, whereupon the Court may make such order as the justice of the case may require.

*Special Cases and Points of Law.*

29. (1) The parties to any civil action may, after the summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court. Every such special case shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby.

(2) Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

(3) No special case in an action to which a married woman, a minor, or person of unsound mind is a party, shall be set down for argument without leave of the Court or the Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, minor or person of unsound mind, are true.

(4) Sub-rule (9) of Rule 6 and sub-rule (15) of Rule 27 shall *mutatis mutandis* apply to special cases.

(5) If it appears to the Court or the Judge, on motion, whether before or after the pleadings have been closed, that there is in any action a question of law which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case, or in such other manner as the Court or Judge may deem expedient, and all such further proceedings as the decision of such questions of law may render unnecessary may thereupon be stayed.

*Discovery.*

30. (1) It shall be lawful for the Court or the Judge at any time during the pendency of any action or proceeding to order the production by any party thereto, upon oath, of such of the documents in his possession or power relating to any matter in question in such action or proceeding as the Court or Judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

(2) Any party may without filing an affidavit apply to the Court or the Judge for an order directing any other party to the action to make discovery on oath of the documents which are or have been in his possession or power relating to any matters in question in the action.

(3) The affidavit to be made by a party against whom such order as is mentioned in sub-rule (2) has been made, shall be forthwith filed with the Registrar and shall specify which, if any, of the documents therein mentioned he objects to produce, and it may be in Form No. 9 in the Schedule hereto with such variations as circumstances may require.

(4) Every party to an action or other proceeding shall be entitled at any time before or at the hearing thereof, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any documents, to produce such documents for the inspection of the party giving such notice, or of his attorney, and to permit him or them to take copies thereof. Any party not complying with such notice shall not afterwards be at liberty to use any such document in such action or proceeding, unless he satisfies the Court that he had some sufficient cause for not complying with such notice.

(5) Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 10 in the Schedule hereto.

(6) The party to whom such notice is given shall, within three days from the receipt of such notice, deliver to the party giving the same a notice stating a time within four days from the delivery thereof at which the documents or such of them as he does not object to produce may be inspected at the offices of his attorney, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice may be in Form No. 11 in the Schedule hereto, with such variations as circumstances may require.

(7) If any party served with notice under sub-rule (5) omits to give such notice of a time for inspection or objects to give inspection, the party desiring it may apply to the Judge or the Court for an order for inspection.

(8) If any party fails to comply with any order for discovery or inspection of documents, he shall be liable to attachment.

*Notice of Avail.*

31. In cases not carried on by default any party may, after the closing of the pleadings at any time before the date of trial, give notice to the opposite party of any documents in his possession or power proposed by him to be made use of against such opposite party, and asking to have their execution admitted for that action only by such opposite party within a reasonable time in such notice to be specified, and offering inspection of such documents for such purpose at a suitable time; and in default of such notice, or of such admission, the party so in default shall bear the costs of proving such execution, unless the Court or the Judge, at or after the trial, otherwise orders.

*Irregular Proceedings.*

32. Where any proceeding in an action has been irregular or improper, it shall be competent to the opponent of the party causing the irregularity, before taking any further step therein, to apply to the Court on notice of motion to set aside such proceeding; and the Court may make such order thereon as to it seems fit.

*Setting down of Defended Cases and Exceptions.*

33. (1) In cases not carried on by default, whenever the pleadings in any action are closed, or whenever exceptions are filed to any pleadings, or whenever the parties have stated a special case for the opinion of the Court on a question of law, or where an order has been granted under sub-rule (5) of Rule 29 that a question of law be raised for the opinion of the Court, the plaintiff may attend before the Registrar for the purpose of setting down the case for trial or argument, as the case may be.

(2) The plaintiff shall give the defendant at least 48 hours' notice of the date and hour at which he will so attend, and the defendant shall be entitled likewise to attend before the Registrar at such time, and to state any objections he may have to the day proposed by the plaintiff for set down.

(3) It shall be competent for the parties, whether a case is set down or not, to agree in writing that they will be prepared to have the case heard at short notice, and to specify in such agreement what notice they will require. Upon such agreement being notified to the Registrar by the parties he may thereafter set the case down for hearing for any day, subject to his giving the parties the notice agreed upon.

(4) If the plaintiff fails to apply for a set down within 30 days after the date on which the pleadings are closed, exceptions filed or a special case stated or after an order has been granted under sub-rule (5) of Rule 29, the defendant may so apply and thereupon the provision of sub-rules (1) and (2) shall apply *mutatis mutandis*.

(5) Nothing in the above sub-rule contained shall be construed as dispensing with the requirements of sub-rule (3) of Rule 29 in regard to a special case when the interests of married women, minors, or persons of unsound mind may be affected.

(6) Where a case which has been set down has by consent of parties been postponed or withdrawn or settled, the attorney of the party who set down the case shall immediately thereupon give notice thereof to the Registrar.

#### *Withdrawal of Case.*

34. (1) The plaintiff shall on withdrawing a case, whether before or after it has been set down for hearing or trial, forthwith give notice thereof to the defendant's attorney.

(2) Every party, or his attorney, who shall withdraw a case after it has been set down shall forthwith give notice of such withdrawal to the Registrar.

#### *Procuring Evidence for Trial Action.*

35. (1) Either party, desiring the attendance of any person to give evidence on the trial of a cause, may of right, without any prior proceeding whatsoever, take out from the office of the Registrar one or more subpoenas for that purpose, each of which subpoenas may contain the names of four persons, and service thereof upon any person therein named shall be made by delivering to him a copy of the said subpoena, and at the same time showing him the original, and informing him of the exigency thereof; and any person being so subpoenaed a reasonable time before the trial, and his reasonable expenses having been paid, or tendered to him, and not having any lawful impediment, will, on his default, be liable to be attached, fined and imprisoned for his contempt of the process of the Court, without prejudice to any other claim or remedy the party aggrieved by his default may by law have against him on that account; and the process for subpoenaing such witnesses shall be, as near as may be, in Form No. 12 in the Schedule hereto.

And if any witness has in his possession or control any deed, instrument, or writing which the party requiring his attendance is desirous to show in evidence, then the subpoena shall be in Form No. 13 in the Schedule hereto.

(2) It shall not be competent for any party to compel the attendance of any witness for the purpose of giving evidence of his opinion only on any question of foreign law, usage, or custom without the consent in writing of the Judge having been first had and obtained.

(3) It shall be competent for the Judge, on being applied to for his consent as in sub-rule (2) mentioned, either to withhold such consent or to grant the same on such terms as to the payment or tender of allowances to the witness and as to the amount of such allowances, as to the Judge seems fit and reasonable.

(4) The witnesses at the trial of any action shall, as heretofore, be examined *viva voce* and in open Court, but the Court or the Judge 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 witnesses may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable:

Provided that where it appears to the Court or 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 authorising the evidence of such witness to be given by affidavit.

(5) The Court may, in any matter or cause where it appears convenient or necessary for the purposes of justice, make an order for taking the evidence of a witness before trial or during the trial before the Judge or a Commissioner of the Court or may make an order for the examination of a witness upon oath by interrogatories or otherwise before any Commissioner of the Court; and the Court may order any deposition so taken to be filed in the Court, and may empower any party to any such matter or cause to give such deposition in evidence therein on such terms, if any, as the Court may direct.

(6) The appointment of Commissioners of the Court to take evidence shall be by a commission issued under the seal of the Court.

#### *Trial and Hearing.*

36. (1) When, on the calling on of any case, the defendant appears in Court personally, or by his Counsel, and the plaintiff makes default, the defendant shall be absolved from the said suit or action, unless where sufficient cause to postpone the same, or to make other order therein, shall appear to the Court.

(2) When a defendant has by his default been debarred from pleading, and the case has been set down for trial as undefended, and the defaults and

requisite notices duly proved, the defendant shall not be permitted either personally or by Counsel to appear or in any way to interfere in the trial of the said cause or proceedings thereon.

(3) On the trial of any issue of fact in civil cases before the Court, one Counsel, and no more, for the plaintiff, shall, without comment or argument, briefly 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, one Counsel, and no more, shall briefly state the facts which the defendant intends to prove, and then proceed to the proof thereof.

(4) When in any case the plaintiff is entitled to lead evidence in reply, or the defendant in rejoinder, one Counsel, and no more, for each party, as the case may be, shall in like manner open and lead such evidence so in reply or rejoinder.

(5) Upon the evidence on both sides being closed, one Counsel, and no more, for the plaintiff, and afterwards, in like manner one Counsel, and no more, for the defendant, shall have the right to observe generally upon the whole case of the parties respectively; after whom one Counsel only for the plaintiff, and no more, shall have the right of general reply.

(6) When the issue of facts lies with the defendant, in the first instance, Counsel for the parties respectively shall proceed in the same manner, under this Rule, as if the defendant, in such case, had been the plaintiff, and the plaintiff had been the defendant.

(7) In leading the evidence in any case before the Court, each witness shall be examined, cross-examined, and re-examined by one and the same Counsel only for either party.

(8) Upon all arguments before the Court upon issues or questions of law, arising on pleadings, or on motion, or incidentally, or otherwise, on the trial of any issue of fact, all the Counsel for either party shall have the right to be heard *seriatim*, according to their seniority; after whom one Counsel only shall have the right of general reply.

(9) The Court may in its absolute discretion permit a departure from the provisions of sub-rules (2) to (8) inclusive.

#### *Restitution of Conjugal Rights.*

37. (1) In any action for the restitution of conjugal rights the plaintiff may also claim a decree of divorce.

(2) Upon the hearing of the cause the Court may order restitution of conjugal rights, and may further direct the defendant to show cause on a day to be named in such order, not being less than seven days after the day fixed for compliance with the order of restitution, why a decree of divorce shall not be granted.

(3) If upon such return day it is proved by affidavit or otherwise that the defendant has failed to comply with the 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.*

38. (1) The party in whose favour any judgment, decree, or sentence of the Court in any civil proceedings has been pronounced or given may, at his own risk, and without any leave for that purpose, sue out of the office of the Registrar one or more writs or processes for the execution thereof, and without any summons or re-summons thereon:

Provided that no such process shall issue against the immovable property of any person, to raise any sum of money, debt, or damages by the sale thereof, except where by sentence of the Court such immovable property may have been declared to be specially executable, until any process, which may have been issued against his movable property, shall be first returned, and the Registrar perceives thereby that the said person has not sufficient to satisfy the exigency thereof, or, if no such process has been issued, then, until, upon motion to the Judge for that purpose made, it appears to his satisfaction that the person against whose immovable property such process is desired has no movable property which can be taken in execution of the sentence of the Court, or insufficient to satisfy the same.

(2) No process of execution shall issue for the levying and raising of any costs awarded by the Court to any party, until the same have been taxed by the Taxing Master.

(3) Where any movable property has been attached by the Sheriff, or his deputy, in execution of the process of the Court, and the person whose movable property has been so attached has undertaken in writing, together with some sufficient householder as his surety, that the same shall be produced on the day appointed for the sale thereof, unless the said attachment shall sooner be legally removed, then the said Sheriff, or his deputy, shall leave the said property attached and inventoried upon the premises, where the same was found; and the said security shall be, as near as may be, according to Form No. 14 in the Schedule hereto.

(4) If the judgment debtor does not undertake, together with a surety, to produce the said goods, in manner provided for that purpose, then the said Sheriff, or his deputy, shall either remove the same to some convenient place of security, or shall keep possession thereof upon the premises where the same was seized; and the expenses of such securing and keeping possession shall be borne by the said debtor, and defrayed out of the said levy.

(5) The mode of attachment of immovable property shall be by notice in writing served upon the owner thereof and upon the Registrar of Deeds. If the property is in the occupation of some person other than the owner thereof, a similar notice shall be served upon the occupier. Any such notice as aforesaid shall be served either personally or by means of a registered letter, duly prepaid and posted, addressed to the person intended to be served.

(6) When the Sheriff has attached any immovable property in execution of a judgment of the Court, he shall forthwith file in his office the particulars of the said property, ascertain the extent and particulars of all bonds, hypothecations and mortgages on and affecting the same, fix the conditions upon which the property is to be sold by public auction, and file a copy of such conditions in his office for the inspection of all persons interested in the property.

(7) The Sheriff may, if he deems it expedient, appoint some fit and proper person, not being interested in the said property, to value the same and to report on oath to him for his guidance such estimated value, and any party interested may, at his own expense, in like manner furnish the Sheriff with an independent valuation of the property.

(8) The Sheriff shall appoint a day for the sale of the property and shall, before the sale, advertise the time and place of holding the same in such manner as under the circumstances seems to him to be proper and expedient, and the said advertisement shall contain a description of the situation, extent and particulars of the property and of the material conditions of the sale.

(9) It shall be competent for any person at any time before the day fixed for the sale of the property to apply to the Judge after due notice to the Sheriff, for an alteration in the conditions of sale.

(10) The sale of immovable property attached by process of the Court shall take place before the Sheriff, or before some one appointed in writing under his hand.

(11) If at the close of the biddings of the sale of property in terms of sub-rule (10) the Sheriff or person appointed, as the case may be, is satisfied that the highest price offered is fair and reasonable, having regard to the circumstances of time and place and to the state of the property market he shall declare the highest bidder to be the purchaser.

(12) Nothing in these Rules shall be construed to prevent the Sheriff from selling property in execution other than by public auction, if all persons interested in the said property consent thereto and he is satisfied that the price offered is fair and reasonable.

(13) The expense of conducting any sale by the Sheriff shall be borne in the first instance by the party requiring the same, and shall be reimbursed to him out of the first proceeds of the said sale.

(14) The Sheriff shall immediately after the sale of any immovable property as aforesaid, report the same to the Judge, together with the conditions of the said sale, for the purpose of the sale being confirmed by the Judge and that the said property may be transferred to the purchaser agreeably thereto.

(15) Immediately after the sale, the Sheriff shall proceed to ascertain the several claims to the purchase money and shall duly state the same in the order of their preference in a plan of distribution thereof:

Provided that where the purchase money is payable in instalments the Sheriff may frame such interim plans of distribution as to him may seem advisable to enable him to effect without delay the distribution of any such instalment or instalments.

(16) Every plan of distribution framed by the Sheriff shall lie in his office for inspection of the parties interested (unless they signify in writing their agreement to the said plan) a sufficient time, not being less than fourteen days, according to the distance at which any such party may reside from Mafeking so as to be enabled to object to the same.

(17) Any party objecting to a plan of distribution shall give the Sheriff a note, in writing, of his objection, and shall also give notice to all other parties interested of his intention to appeal from the said plan; and thereupon the said party may appeal from the said plan to the Court.

(18) If no appeal be made from a plan of distribution within the time provided for that purpose, the said plan shall, on the report of the Sheriff, be confirmed by the Judge.

(19) After any plan of distribution has been confirmed by the Judge, or if the whole of the parties interested signify their concurrence therewith in writing, the Sheriff shall proceed forthwith to distribute the said purchase-money or instalment or instalments thereof in accordance with such plan, and shall pay over the surplus, if any, to the judgment debtor, taking proper receipts for all money so paid by him.

(20) After any sale in execution of immovable property the Sheriff may pay such real taxes as shall be due and claimable in respect of such property in their legal order of preference.

(21) All moneys or securities for moneys received by the Sheriff as the proceeds of any sale shall be forthwith deposited by him in such bank as may from

time to time be prescribed for the deposit of public moneys, until the same shall be required for distribution.

*Superannuation.*

39. After the expiration of six years from the day whereon a judgment has been pronounced, no writ of execution may be issued unless the debtor consents to the issue of the writ or unless the judgment is revived by the Court on notice of motion to the debtor issued for the purpose, but in such case no new proofs of the debt shall be required.

*Notice of hearing Appeal.*

40. 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.

*Special Provisions Applicable to Civil Appeals from a Subordinate Court.*

41. (1) In every civil appeal from a Subordinate Court, the appellant or his attorney shall, subject to the provisions of sub-rule (3), seven days at least before the date assigned for the hearing of such appeal, file with the registrar an affidavit of service on respondent of notice of set down, the costs of which shall be costs in the cause, and deliver to the Registrar three typed copies of the record (other than the original) for the use of the Judge. In case an appeal has lapsed but a cross-appeal has been noted and the cross-appellant has applied for a date for hearing, the cross-appellant or his attorney shall comply with the foregoing provisions in the same manner as if the cross-appellant were the appellant.

(2) The aforesaid copies of the record shall, subject to the provisions of sub-rule (3), cover the whole record and contain a complete index of papers indicating at what page each document and the evidence of each witness will be found, and the exhibits shall be given the same lettering in the index as they bear in the original record.

(3) The aforesaid copies of the record shall not include copies of the following documents in so far as they do not affect the merits of the appeal:—

- (a) Subpoenas.
- (b) Notices of trial.
- (c) Consents to adjournments.
- (d) Schedules of documents and notices to produce.
- (e) Notices to inspect.
- (f) Any other documents of a formal nature.

(4) By consent of parties exhibits having no bearing on the point at issue in the appeal and the immaterial portions of lengthy documents may be omitted. Such consent, setting out what documents or parts of documents have been omitted, shall be signed by the parties or their attorneys, and filed with the Registrar at the time of the filing of the aforesaid copies.

(5) The aforesaid copies of the record shall be prepared double-spaced on foolscap paper of good quality in black record ink and on one side of the paper only. The Registrar is empowered to reject any copy which does not fulfil the requirements of this Rule.

(6) The necessary costs of the making of copies of the record by each party to the appeal for the use of his Counsel and attorneys, including the costs of the aforesaid copies to be furnished for the use of the Judge, shall form part of the costs of the appeal, or cross-appeal, as the case may be, provided that—

(a) exclusive of the copies of the record necessarily made for the use of the Judge and Counsel, not more than one copy for the use of the attorney of the party appellant (or cross-appellant as the case may be) and not more than one copy for the use of the attorney of the party respondent shall be allowed;

(b) the costs to be allowed by the Taxing Master on taxation for the making of the said copies shall be at the rate of two shillings per page of 350 words for each of the said copies, a half page or less than half a page to be charged as half a page;

(c) no costs shall be allowed for the copying of any documents of the nature referred to in sub-rule (3);

(d) except by special order of Court, no other costs shall be allowed on either side for making copies of the record on appeal or cross-appeal for the use of the Court or of Counsel or for any other purpose.

(7) The provisions of Rule 40 shall *mutatis mutandis* apply to civil appeals from Subordinate Courts.

#### *Reviews from Subordinate Courts.*

42. (1) Either party in any proceedings, civil or criminal, in any Subordinate Court of the Territory, who desires to bring the said proceedings under review, may obtain the process of the Court, commanding the District Commissioner or other person in whose custody the record and proceedings of such Subordinate Court are, to return and certify to the Court a copy of such record and proceedings on such day as shall be therein specified for the purpose, the said day being fixed by the Registrar.

(2) The party suing out such process of the Court shall also obtain and cause to be duly executed the process of the Court for summoning the opposite party in the said proceedings to show cause, on the day therein specified for that purpose, why the proceedings of the inferior Court therein shall not be set aside or corrected.

(3) The said summons shall state shortly and distinctly the grounds upon which the said party seeks to have the said proceedings set aside or corrected.

*Expenses of Witnesses.*

43. (1) Witnesses shall be paid for their attendance over and above their travelling expenses in accordance with tariffs framed from time to time, under section one of Proclamation No. 7 of 1914.

(2) The charges for witnesses as fixed by tariff shall be considered as payable to the witness by the party who subpoenaed or produced him, and in the event of such party being awarded his costs against any other party, the said charges, shall be allowed against such other party in the taxation of costs.

(3) In the taxation of costs between party and party no amount shall be allowed for any witness whether for attendance or travelling expenses unless there has been produced to the Taxing Master proof that such an amount has already been paid or tendered to or claimed by such witness.

(4) In the taxation of costs between party and party nothing shall be allowed for any witness not examined unless upon proof that his evidence might reasonably have been believed to be material and necessary.

(5) If a number of witnesses manifestly greater than was reasonably necessary have been summoned by any party, there shall only be allowed against the other party the charges for such witnesses as were reasonably necessary.

(6) In the taxation of costs between party and party no amount shall be allowed for any witness in respect of personal attendance or travelling expenses if the fact which such witness is subpoenaed to prove has before the issue of such subpoena been admitted to the party taking out the subpoena by the opposite party, provided that such admission shall be in writing signed by the party making it, or his attorney, as the case may be.

(7) When the same person is a witness in more cases than one on the same day he shall be entitled to no more than one fee for personal attendance and one allowance for travelling expenses, which shall be equally divided between such cases.

*Sheriff's Fees.*

44. The table of fees and charges to be allowed by the Sheriff in respect of executing the process of the Court shall be as set forth in the High Commissioner's Notice No. 26 of 1933.

*Taxation of Costs.*

45. (1) Notice of the taxation of costs shall not be necessary in any case where the party against whom costs have been awarded has not appeared in person or by his attorney.

(2) In all cases where a notice of taxation is necessary, two days' notice, together with a copy of the bill of costs, shall be given by the attorney of the party whose costs are to be taxed to the other party or his attorney:

Provided that when the dwelling-house or place of business of the party against whom costs are to be taxed is more than 36 miles from the office of the Registrar, the time for the service of such notice shall be regulated by the periods laid down by sub-rule (2) of Rule 16.

(3) In the taxation of costs, when the circumstances warrant the same, the notice of taxation may be transmitted to the party appearing in person by registered letter.

(4) The Taxing Master shall in his taxation pursue such instructions as may from time to time be given to him by the Court for that purpose.

(5) Subject to the provisions of sub-rule (6) of Rule 41 and Rule 43 in the taxation of costs incurred in connection with proceedings in the Court, the Taxing Master shall be guided, as far as the circumstances of each particular case 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 of action exceeds fifty pounds as appearing under High Commissioner's Notice No. 151 of 1925.

(6) With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his claim or defence and to ensure that such costs shall be borne by the party against whom such order has been awarded, the Taxing Master shall on every taxation allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Master to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to Counsel, or special charges and expenses to witnesses or other persons or by other unusual expenses.

(7) The costs of obtaining a transcribed copy or copies of the shorthand notes of evidence shall be costs in the cause if such costs have been allowed by the Court.

(8) It shall be competent for the Taxing Master to tax all bills of costs for work actually done by any attorney of the Court in his capacity as such attorney, whether such work is connected with suits pending in Court or not, and the Taxing Master shall be guided as far as possible by the scales of fees fixed by these Rules for work done in connection with judicial proceedings, but he shall not proceed to the taxation of any bill of costs unless he is satisfied that the party liable to pay the same has received due notice as to the time and place of such taxation and notice that he is entitled to be present thereat.

*Review of Taxation.*

46. (1) Any party, who may be dissatisfied with the certificate or allocatur of the Taxing Master as to any item or part of an item which may have been objected to before the Taxing Master, may within 14 days of the certificate or allocatur require the Taxing Master to state a case for the decision of the Judge, which case shall embody any relevant findings of fact by the Taxing Master:

Provided that, save with the consent of the Taxing Master, no case shall be stated where the amount or the total of the amounts, which the Taxing Master has disallowed or allowed, as the case may be, and which the party dissatisfied seeks to have allowed or disallowed respectively, is less than £5.

(2) The Taxing Master shall lay the case, together with any contentions in writing, which either party may desire to submit, and his own report before the Judge who may then decide the matter upon the case and contentions so submitted, together with any further information which he may require from the Taxing Master, or may decide it after hearing the parties or their Counsel or attorneys in Chambers or in Court as he may direct.

(3) The Judge so deciding may make such order as to the costs of the case as he may deem fit, including an order that the unsuccessful party shall pay to the opposing party a sum fixed by the Judge as and for costs.

*Commissions Rogatoire and Letters of Request.*

47. (1) Where under the Foreign Tribunals Evidence Act, 1856, or the Extradition Act, 1870, section *twenty-four*, any civil or commercial matter or any criminal matter is pending before a Court or Tribunal of a foreign country, and it is made to appear to the Court or the Judge, by Commission Rogatoire or Letters of Request, that such Court or Tribunal is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction, the Court or Judge may, on the *ex parte* application of any person shown to be duly authorised

to make the application on behalf of such foreign Court or Tribunal, and on production of the Commission Rogatoire, or Letters of Request, or of a certificate signed in the manner and certifying to the effect mentioned in section *two* of the Foreign Tribunals Evidence Act, 1856, or such other evidence as the Court or Judge may require, make such order or orders as may be necessary to give effect to the intention of the Acts above mentioned in conformity with section *one* of the said Foreign Tribunals Evidence Act, 1856.

(2) An order made under the last preceding sub-rule shall as far as practicable be in Form No. 15 of the Schedule hereto.

(3) The examination may be ordered to be taken before one of the Commissioners of the Court, or such other qualified person as to the Court or Judge may seem fit.

(4) The Commissioner appointed under the order of Court shall take down the evidence in writing, or according to the Rules and practice of the Court pertaining to the examination and cross-examination of witnesses (or as may be otherwise directed), and shall cause each and every witness to sign his depositions in his, the said Commissioner's, presence, and shall sign the depositions taken in pursuance of the order of Court, and when so completed, the Commissioner shall, unless otherwise provided in the said order, transmit the same, together with the said order, to the Registrar who shall forward the same to the Resident Commissioner, together with a certificate in Form No. 16 in the Schedule hereto, for transmission to the Foreign Court or Tribunal requiring the same.

#### *Granting of Bail.*

48. Whenever bail is granted by the Judge or the Court such bail shall be given to the satisfaction of the Registrar, unless otherwise ordered.

#### *Destruction of Documents.*

49. In any matter which has not been adjudicated upon by the Court or the Judge, the Registrar may, after the lapse of six years from the date of the filing of the last document therein, authorise the destruction of the documents filed in his office relating to such matter.

#### *Authentication of Documents.*

50. 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 District 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; or
  - (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 authorised under the law of such foreign place to authenticate such document.

For the purposes of this Rule and Rule 52 South Africa shall include the Union of South Africa, Southern and Northern Rhodesia and any British Possession or Protectorate in Africa south of the Equator.

51. 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.

52. 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 High 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.

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SCHEDULE.

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FORM No. 1.

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NOTICE OF MOTION.

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Take notice that.....  
(hereinafter styled the Applicant) intends to make application to this Honourable Court for.....  
(here set forth orders prayed) and that the accompanying affidavits will be used in support thereof.

Take notice further that the Applicant has appointed ..... (here set forth an address which must be within two miles of the office of the Registrar) at which the Applicant will accept notice and service of all process in these proceedings.

Take notice further that if you intend to oppose this application you are required to notify Applicant's attorney in writing on or before the.....; and further that you are required to appoint in such notice an address within two miles of the office of the Registrar at which you will accept notice and service of all process in these proceedings; and further that you are required to file your affidavit with the Registrar of the Court on or before.....

The application will be made—

- (a) if no such notice of intention to oppose be given, on the.....at 10.30 a.m.;
- (b) if such notice be given on the.....at 10.30 a.m.

Should you fail to give due notice of intention to oppose, or should you fail duly to file your affidavits, you may render yourself liable for extra costs incurred by the Applicant by reason of such failure.

(Signed) A. B.,  
Applicant's Attorney.

To:  
C. D.,  
Respondent.

FORM No. 2.

WRIT OF ARREST.

In the High Court of the Bechuanaland Protectorate.

GEORGE THE SIXTH, by the Grace of God, of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

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

GREETING!

We command you that you take C. D., of..... (hereafter styled the Defendant) if he be found in this Territory and safely keep him, so that you have him before our Judge of the High Court of the Bechuanaland Protectorate at Lobatsi, on the..... day of.....19...., at 10.30 o'clock in the forenoon, then and there to answer A.B., of..... (hereinafter styled the Plaintiff), wherefore he hath not paid him the sum of £....., of lawful money which he owes to and unjustly detains from the Plaintiff, being..... (or hath not delivered to him a certain boat, together with its oars, furniture, etc., or other movable thing which the said defendant unlawfully detains from the said Plaintiff; or hath not satisfied the said Plaintiff his damages, which he hath sustained in respect of, etc., stating any wrong or injury committed by the Defendant, as the case may be).

Witness: The Honourable..... Judge of the High Court of the Bechuanaland Protectorate at Mafeking, this..... day of..... 19..... in the..... year of Our reign.

.....  
Registrar.

G.H.,  
Plaintiff's Attorney,  
.....

The costs of this writ have been taxed and allowed at the sum of ..... pounds ..... shillings and ..... pence, exclusive of the Sheriff's caption fee of £1.

.....  
Registrar.

FORM No. 3.

ARREST.—SURETY BOND.

Know all men by these presents that we C.D., of .....and L.M., of.....are held and firmly bound to P. V., Esquire, Sheriff of the Bechuanaland Protectorate (or F. W. H., Deputy-Sheriff for the District of.....), in the sum of.....(the sum or value of the thing mentioned in the writ) of lawful money to be paid to the said Sheriff (or Deputy-Sheriff) or his certain attorneys, administrators, or assigns; for which payment we bind ourselves, and each of us for himself, in the whole, our and every of our heirs, executors, and administrators, firmly by these presents.

Now the condition of this obligation is such that if the above bounded C. D. do appear by his attorney before the Judge of the High Court of the Bechuanaland Protectorate at Lobatsi, on the.....day of.....19....., at 10.30 o'clock in the forenoon to answer A. B., of....., wherefore (following the statement in the writ of attachment), and also shall stand to, abide, and perform the judgment of the said Court thereon, or render himself to the prison of the said Court, in execution thereof, then this obligation to be void; otherwise to remain in full force.

Signed with our hands, this.....day of.....19.....

C. D.  
L. M.

Signed and delivered, being first duly stamped in the presence of

M. N.  
O. P.

FORM No. 4.

ARREST.—ASSIGNMENT OF BAIL BOND.

I, P. V., the within-named Sheriff (or Deputy-Sheriff), at the request of A. B., the Plaintiff within-named, hereby assign to him, the said A. B., the within bail bond, and all the benefit and advantage arising therefrom.

In witness whereof, I have hereunto set my hand this.....day of.....19.....

P. V.,  
Sheriff (or Deputy-Sheriff).

FORM No. 5.

SUMMONS.—PROVISIONAL CLAIM ON  
PROMISSORY NOTE.

GEORGE THE SIXTH, by the Grace of God, of  
Great Britain, Ireland, and the British  
Dominions beyond the Seas, King, Defender of  
the Faith, Emperor of India.

Command C.D., of.....(hereinafter  
called the Defendant), that justly and without delay,  
he render and pay to A.B., of.....  
(hereinafter called the Plaintiff), the sum of.....  
.....of lawful money, which he owes to the  
Plaintiff, upon and by virtue of a certain Promissory  
Note (or other instrument, describing it) bearing date  
the.....day of.....19.....,  
made and signed by the Defendant to and in favour  
of E.F. or order, and by him endorsed in blank,  
and whereof the Plaintiff is the legal holder, together  
with the interest thereon from the.....day of  
.....19....., as it is said; and unless  
he shall do so, then summon the Defendant that he  
appear before our Judge of the High Court of the  
Bechuanaland Protectorate at Lobatsi, on the.....  
.....day of.....19....., at 10.30  
o'clock in the forenoon, to show wherefore he has not  
done it; and also to acknowledge or deny his signature  
affixed to the said Promissory Note (or other  
instrument as the case may be), or the validity of the  
said debt.

And also summon the Defendant then and there to  
plead to the Provisional Claim of the Plaintiff for  
payment thereof, under Security—with Costs; and  
to join issue thereon. And serve on the Defendant a  
copy of this summons, and of the said Promissory Note  
(or other instrument as the case may be) whereon the  
said Provisional Claim is founded; and return you  
then and there this summons, with whatsoever you  
have done thereupon.

Witness: The Honourable..... Judge  
of the High Court of the Bechuanaland Protectorate  
at Mafeking, this.....day of.....  
19....., in the..... year of Our reign.

.....  
Registrar.

NOTE.—Other allegations may require to be made  
in the above form in order to comply with the  
provisions of the Bills of Exchange Act, 1893.

FORM No. 6.

SUMMONS.—PROVISIONAL CLAIM ON  
MORTGAGE BOND.

GEORGE THE SIXTH, by the Grace of God, of  
Great Britain, Ireland, and the British  
Dominions beyond the Seas, King, Defender of  
the Faith, Emperor of India.

Command C. D., of.....  
(hereinafter called the Defendant), that justly and  
without delay he render and pay to A. B., of.....  
.....(hereinafter called the  
Plaintiff) the sum of.....which  
he owes to and unjustly detains from the Plaintiff—  
upon and by virtue of a certain Mortgage Bond  
bearing date the.....  
day of.....19....., passed by  
.....as the duly authorised agent of  
the Defendant—to and in favour of the Plaintiff  
(or E. F. and by him ceded for value to the Plaintiff)  
together with the interest thereon reckoned at the  
rate of.....per centum per annum, from the  
.....day of.....19.....,  
which said bond has become due and payable in con-  
sequence of.....as it is said:  
and unless he shall do so, then summon the Defendant  
that he appear before our Judge of the High Court of  
the Bechuanaland Protectorate at Lobatsi, on the  
.....day of.....19.....,  
at 10.30 o'clock in the forenoon, to show wherefore  
he has not done it; and also to acknowledge or deny  
the signature of.....  
affixed to the said bond, or his qualification or the  
validity of the said bond.

And also summon the Defendant then and there to  
plead to the provisional claim of the Plaintiff for  
payment thereof under security, with costs; and at  
the same time to show cause, if any, why the property  
specially mortgaged by the said bond shall not be  
declared executable for the sum above demanded (and  
why the rents of the said property, which is let, shall  
not be attached)\* and to join issue thereon. And  
serve on the Defendant a copy of this summons, and  
of the said bond (and cession) whereon the provisional  
claim is founded; and return you then and there this  
summons, with whatsoever you have done thereupon.

\*This should be omitted in cases where this relief is not  
sought.

FORM No. 7.

ENDORSEMENT ON SUMMONS—ADDRESS  
FOR SERVICE.

Take notice that the Plaintiff has appointed.....  
.....(here set forth an address  
which must be within two miles of the office of the  
Registrar), at which the Plaintiff will accept notice  
and service of all process in these proceedings and  
that you are hereby required, if you wish to defend  
these proceedings, to appoint an address within two  
miles of the office of the Registrar at which you will  
accept notice and service of all process in these  
proceedings.

.....  
(Signature of Plaintiff or his  
Attorney.)

FORM No. 8.

SUMMONS—ILLIQUID CLAIM.

GEORGE THE SIXTH, by the Grace of God, of  
Great Britain, Ireland, and the British  
Dominions beyond the Seas, King, Defender of  
the Faith, Emperor of India.

Command C. D., of..... in  
..... (hereinafter called the Defen-  
dant), that within.....days after the service  
of this Summons, he cause an appearance to be  
entered in the High Court of the Bechuanaland  
Protectorate at Lobatsi, to answer A. B., of.....  
.....(hereinafter called the  
Plaintiff), in an action wherein the Plaintiff claims:

- (a) Restitution of conjugal rights.
- (b) Divorce by reason of adultery with N. O. and others.
- (c) That a bond passed by I. D., an insolvent, in favour of the Defendant be set aside as an undue preference.
- (d) That the last will of O.P., deceased, be declared void for want of due execution.

- (e) That the Defendant be ordered to pass transfer to the Plaintiff of the farm Greatvalley in the District of....., on payment at the same time by the Plaintiff of the balance of the purchase money.
- (f) That the Defendant be restrained by perpetual interdict from obstructing a right-of-way.
- (g) That the respective rights of the Plaintiff and the 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 arrears of rent.
- (k) The sum of £....., for board and lodging.
- (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) the Plaintiff's trade mark.

*or as the case may be, stating in concise terms generally the Plaintiff's cause of action.*

As it is said: and serve on the said Defendant a copy of the Summons; and return you then and there this Summons, immediately after the service thereof, with whatsoever you have done thereupon.

Witness: The Honourable..... Judge of the High Court of the Bechuanaland Protectorate at Mafeking, this.....day of..... 19..... in the..... year of Our reign.

.....  
Registrar.

FORM No. 9.

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FORM OF AFFIDAVIT IN DISCOVERY.

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IN THE HIGH COURT OF THE BECHUANALAND  
PROTECTORATE.

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Date.....

Between A. B., Plaintiff, and C. D., Defendant.

I, the above-named 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 matters 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. The (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 matters in question in this suit or any of them, other than and except the documents set forth in the First and Second Schedules hereto.

Form No. 10.

FORM OF NOTICE TO PRODUCE  
DOCUMENTS.

IN THE HIGH COURT OF THE  
BECHUANALAND PROTECTORATE.

A. B., vs. 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  
.....19.....

Describe documents required.

X. Y.,

Attorney for the.....

To S. T.,

Attorney for the.....

Form No. 11.

FORM OF NOTICE TO INSPECT  
DOCUMENTS.

IN THE HIGH COURT OF THE  
BECHUANALAND PROTECTORATE.

A. B., vs. C. D.

Take notice that you can inspect the documents  
mentioned in your notice of the.....  
day of.....19....., 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.....  
19..... on the ground that (state the ground).

S. T.,

Attorney for the.....

To X. Y.,

Attorney for the.....

FORM No. 12.

SUBPOENA FOR WITNESS.

GEORGE THE SIXTH, by the Grace of God, of  
Great Britain, Ireland, and the British  
Dominions beyond the Seas, King, Defender of  
the Faith, Emperor of India.

To G. H., I. K., L. M., and N. O.

GREETING!

We command you that, laying aside all and singular  
business and excuses, you, and every one of you, be  
and appear personally before our Judge of the High  
Court of the Bechuanaland Protectorate at Lobatsi,  
on the.....day of.....19.....,  
at.....o'clock in the forenoon of the same day,  
and thereafter until you are discharged; then and  
there to testify and show all and singular those things  
which you, or any of you, know concerning a certain  
cause now pending in the High Court, between A. B.,  
Plaintiff, and C. D., Defendant, wherein the said  
A. B. complains, etc. (or claims, etc.—stating shortly  
the nature of the action), you being called on the  
part of the Plaintiff (or Defendant), and this you or  
any of you, shall by no means omit, under penalty,  
upon each of you, of one hundred pounds sterling.

Witness: The Honourable..... Judge  
of the High Court of the Bechuanaland Protectorate  
at Mafeking, this.....day of.....  
19..... in the.....year of Our reign.

.....  
Registrar.

FORM No. 13.

SUBPENA FOR WITNESS—SUBPENA  
(*BUCES TECUM*).

GEORGE THE SIXTH, by the Grace of God, of  
Great Britain, Ireland, and the British  
Dominions beyond the Seas, King, Defender of  
the Faith, Emperor of India.

To G. H., I. K., L. M., and N. O.

GREETING!

We command you that, laying aside all and singular  
business and excuses, you, and every one of you, be  
and appear personally before our Judge of the High  
Court of the Bechuanaland Protectorate, at Lobatsi,  
on the.....day of.....19.....,  
at.....o'clock in the forenoon of the same day,  
and thereafter until you are discharged [and also  
that you, the said.....  
bring with you and produce, at the time and place  
aforesaid (describing the document or thing to be pro-  
duced)]; then and there to testify and show all and  
singular those things which you, or any of you, know  
concerning a certain cause now pending in the High  
Court, at Lobatsi, between A. B., Plaintiff, and  
C. D., Defendant, wherein the said A. B. complains,  
etc. (or claims, etc.—stating shortly the nature of  
the action), you being called on the part of the  
Plaintiff (or Defendant), and this you, or any of you,  
shall by no means omit, under the penalty, upon each  
of you, of one hundred pounds sterling.

Witness: The Honourable..... Judge  
of the High Court of the Bechuanaland Protectorate  
at Mafeking, this.....day, of.....  
19..... in the..... year of Our reign.

.....  
Registrar.

FORM No. 14.

EXECUTION.—SURETY BOND.

.....day of.....19...

A. B., of....., Plaintiff, against  
C. D., of....., Defendant.

Whereas by virtue of a certain writ or process of the said Court, dated on or about the.....day of.....19..., and directed to the Sheriff, or his lawful Deputy, and issued at the suit of A. B. of.....against C. D., of.....E. F., the lawful Deputy of the said Sheriff, has seized and laid under attachment the undermentioned articles, viz.:—

Twenty horses; twenty cows; one box containing jewellery, sealed; one box containing linen, sealed; etc.

Now therefore, the said C. D., and L. M., of....., farmers, as surety for him, hereby severally bind themselves to the said Sheriff (or to his Deputy), 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 said Sheriff, or his Deputy, or other persons authorised by him, on the.....day of.....19... (the day appointed for the sale, or any other day, when the same may be required in order to be sold); unless the said attachment shall sooner be legally removed: otherwise the said L. M., under renunciation of the benefit of excussion,\* hereby binds himself, his person, goods, and effects, to pay and satisfy the sum of..... (the estimated amount of the effects seized) to the said Sheriff, or his lawful Deputy, for and on account of the said A. B.

In witness whereof, the said C. D. and L. M. have hereunto set their hands, on this.....day of....., 19—

(Signed) C. D.

(Signed) L. M.

E. F., Deputy-Sheriff.

\* Note.—If the surety is a woman insert the renunciation of the appropriate benefits.

FORM No. 15.

ORDER UNDER FOREIGN TRIBUNALS  
EVIDENCE ACT, 1856.

IN THE HIGH COURT OF THE BECHUANALAND  
PROTECTORATE.

- (a) Name of Registrar. (a) .....  
Registrar of the High Court.  
In the matter of Foreign Tri-  
bunals Evidence Act, 1856  
(19 and 20 Vic.), c. 113.  
And in the matter of a (Civil  
or Commercial or Criminal)  
proceeding now pending before
- (b) Description of Foreign Tribunal. (b) .....  
instituted as follows:—  
Between ..... Plaintiff,  
and ..... Defendant.  
Upon reading the affidavit (if  
any) of .....  
filed the ..... day of  
..... 19....., and  
the certificate of (c) that pro-  
ceedings are pending in the  
(b) .....  
in (d) and that such Court is  
desirous of obtaining the testi-  
mony of (e) .....
- (c) Name and description of the ambassador, minister, diplomatic agent or consul of the foreign country. (c) .....
- (d) Name of foreign country. (d) .....
- (e) Names of witnesses. (e) .....
- (f) Names and address of Commissioner. (f) .....  
It is ordered that the said  
witness do attend before (f)  
....., who  
is hereby appointed Commis-  
sioner herein at (g).....
- (g) Place appointed for examination. (g) .....  
on  
the ..... day of .....  
19....., at ..... o'clock or such  
other day and time as the said  
Commissioner may appoint, and  
do there submit to be examined  
upon oath, or affirmation,  
touching the testimony so  
required as aforesaid, and do  
then and there produce (h).....
- (h) Description of documents, if any, required to be produced. (h) .....

Form No. 16.

CERTIFICATE UNDER THE FOREIGN TRIBUNALS EVIDENCE ACT, 1856.

I, ....., Registrar of the High Court of the Bechuanaland Protectorate, hereby certify that the documents annexed hereto are:—

- (1) the original order of the Judge of the High Court dated..... the .....day of..... 19....., made in the matter of..... pending in the ..... at ..... in the ..... of ..... directing the examination of certain witnesses to be taken before ..... and
- (2) the examination and depositions taken by the said ..... pursuant to the said order, and duly signed and completed by him on the ..... day of ..... 19.....

Dated this..... day of..... 19.....