

SHERIFFS AND CIVIL PROCESS ACT

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Certificate of judgment

An Act to make provision for the appointment and duties of sheriffs, the enforcement of judgments and orders, and the service and execution of civil process of the Courts throughout Nigeria.

[40 of 1955. Order 47 of 1951. L.N. 1 of 1955. 47 of 1955. 107 of 1955.]

[1st June, 1945]

[Commencement.]

PART I

Short title

1. Short title

This Act may be cited as the Sheriffs and Civil Process Act.

PART II

Interpretation

2. Interpretation

In this Part, unless the context otherwise requires -

[L.N. 47 of 1955.]

"court" includes a High Court and a magistrate's court;

"process" has the meaning assigned to it in section 19 of this Act.

Sheriff and deputy sheriffs

3. Appointment of sheriffs

There shall be appointed for each State of the Federation and the Federal Capital Terri-

tory, Abuja, a fit and proper person to be the sheriff for the State or for the Federal Capital Territory, Abuja.

4. Appointment of deputy sheriffs

There shall be appointed for each State of the Federation and the Federal Capital Territory, Abuja, a fit and proper person to be the deputy sheriff who shall be subject to the general control and direction of the sheriff.

Bailiffs

5. Appointment of bailiffs

The sheriffs may appoint such number of persons as bailiffs as may be necessary.

6. Declaration by bailiffs

Every bailiff and every other person who has authority to intermeddle with the execution of writs issued by any court of record, shall before he does so make a declaration, which shall be exempt from stamp duty, in the form in the First Schedule to this Act, or to the like effect, before any judge or magistrate for the division or district in which he exercises such authority.

[First Schedule.]

Powers, duties and liabilities of sheriff, deputy sheriffs, bailiffs and police officers

7. Sheriff may command person to arrest felon

The sheriff may command any person to arrest any person who has committed or is suspected of having committed a felony, and any person failing to obey such command shall on conviction be liable to a fine of N200 or to imprisonment for one year or to both such fine and such imprisonment.

8. Sheriff to make return of writs

The sheriff shall receive writs and process of a court issued in accordance with this Act and shall be charged with making returns thereto.

9. Duties at assizes

At the sessions the sheriff shall direct a sufficient number of police constables to be employed to keep order in and within the precincts of the court.

10. Duties as to execution of writs

The sheriff at the request of a person delivering a writ to him for execution shall give a receipt for that writ stating the hour and the day of its delivery.

11. Other duties of sheriff

The sheriff shall perform any other duty or duties as may be imposed upon him by any enactment.

12. Duties as to execution of sentence of death

Where sentence of death has been pronounced upon any person and the President or Governor, as the case may be, has ordered that the sentence shall be carried into execution, the same shall be carried into execution by the sheriff or a deputy sheriff or by some person appointed by the sheriff or deputy sheriff:

[L.N. 1 of 1955.]

Provided that if it appears to the President in the case of the Federal Capital Territory, Abuja or to the Governor in charge of a State that the attendance of the sheriff or a deputy sheriff at the place at which the execution is to be carried out cannot be obtained without undue delay or inconvenience, the President or Governor may detail any other officer in the Territory or in the State, as the case may be, to perform the duties of the sheriff in relation to such execution.

13. Duties of deputy sheriffs

Every deputy sheriff may be charged generally with the performance of the duties of the sheriff and shall be subject to the same liabilities and protection as the sheriff,

14. Liability for wrongful imprisonment

A person unlawfully imprisoned by the sheriff, deputy sheriff or any bailiff appointed by the sheriff, shall have an action against such sheriff, deputy sheriff or bailiff, as the case may be, in like manner as against any other person that should imprison him without warrant.

15. Duty of police officers

It shall be the duty of every police officer to assist in the execution of process of the court.

Protection of sheriffs

16. Protection of sheriff selling goods under execution without notice of claim by third party

Where any goods in the possession of a judgment debtor at the time of seizure by a sheriff, or other officer charged with the enforcement of a writ, warrant, or other process of execution, are sold by such sheriff, deputy sheriff or other officer, without any claim having been made to the same-

- (a) the purchaser of the goods so sold shall acquire a good title to those goods; and
- (b) no person shall be entitled to recover against the sheriff, deputy sheriff or other officer or anyone lawfully acting under the authority of either of them, for any sale of such goods, or for paying over the proceeds thereof prior to the receipt of a claim to the said goods, unless it is proved that the person from whom recovery is sought had notice or might by making reasonable inquiry have ascertained that the goods were not the property of the judgment debtor:

Provided that nothing contained in this section shall affect the right of any claimant who may prove that at the time of sale he had a title to any goods so seized and sold to any remedy to which he may be entitled against any person other than such sheriff, deputy sheriff, or other officer as aforesaid.

17. Protection of sheriffs

Neither the sheriff nor any deputy sheriff shall be liable to be sued for any act or omission of any police officer or other person in the execution of any process, which shall have been done or may have occurred either through disobedience or neglect of the orders or instructions given by the sheriff or a deputy sheriff.

Fees

18. Fees to form part of Consolidated Revenue Fund

All fees received by the sheriff, deputy sheriff or bailiff in respect of any duty performed by him in the discharge of his official duties, shall be paid into and form part of the Consolidated Revenue Fund of the State or part of the Federation in respect of which the fee is prescribed.

[L.N. 47 of 1955.]

PART III

Enforcement of judgments and orders

Executions and committals

19. Interpretation

(1) In this Part and Parts IV, V and VI, unless the context otherwise requires -

[L.N. 47 of 1955.]

"**attached**" includes distrained upon and seized;

"**attachment**" includes distress and seizure;

"court" includes the High Court of the Federal Capital Territory Abuja or of the State;

"judge" means a judge of the High Court;

"judgment" includes **"order"**;

"judgment creditor" means any person for the time being entitled to enforce a judgment;

"judgment debtor" means a person liable under a judgment;

"magistrate's court" means a magistrate's court established under a Federal law or any law of the State or under any law having effect as if it were a law of the State;

"order" includes an injunction, an order for the payment of the costs of any party, and an order for the payment of a counterclaim by a plaintiff;

"process" means a formal written authority addressed to the sheriff for the enforcement of a judgment in manner provided by this Act or prescribed, and includes writ of execution and warrant and order of arrest, commitment or imprisonment;

"sheriff" includes deputy sheriff;

"writ of execution" includes writ of attachment and sale, writ of delivery, writ of possession and writ of sequestration.

(2) Nothing in this Part or in Part IV, V or VI of this Act shall be construed to authorise the service or execution outside the State of the process of a court.

20. Execution of judgments or orders for sum of money

(1) Any sum of money payable under a judgment of a court may be recovered, in case of default or failure of payment thereof forthwith or at the time or times and in the manner thereby directed, by execution against the goods and chattels and the immovable property of the judgment debtor in accordance with the provisions of this Act.

[First Schedule. Forms 3, 4,5 and 6.]

(2) The registrar on the application of the judgment creditor shall cause to be issued a writ of attachment and sale whereby the sheriff shall be empowered to levy or cause to be levied by distress and sale of goods and chattels, wherever they may be found within the division or district of the court, the money payable under the judgment and the costs of the execution.

(3) The precise time of the making of an application to the registrar for the issue of a writ shall be entered by him in the book prescribed for the purpose and on the writ, and when more than one such writ is issued they shall be executed in the order of the times so entered.

21. Execution of orders for payment by instalments

(1) Where a court has made an order for payment of any sum of money by instalments, no writ of execution for the enforcement of the judgment shall be issued until after the default in payment of some instalment according to the order.

(2) On any such default, execution or successive executions may issue for the whole of the said sum of money and costs then remaining unpaid, or for such part thereof as the court may order, either at the time of making the original order or at any subsequent time.

22. Execution to be superseded on payment

(1) In or upon every writ of execution against the property of any person, the registrar shall cause to be inserted or endorsed the sum of money and costs adjudged, and the fees for the execution of the writ.

(2) If the judgment debtor, before the actual sale of the property, pays or causes to be paid or tendered to the registrar of the court from which the writ issued, or to the bailiff holding the writ, the sum of money and costs inserted or endorsed as aforesaid, or such part thereof as the judgment creditor agrees to accept in full satisfaction, together with the

fees inserted or endorsed as aforesaid, the execution shall be superseded, and the property of the judgment debtor shall be discharged and set at liberty.

23. Power to suspend execution

If at any time upon an inquiry made on the application of the judgment debtor, wherein the onus of proof shall be upon him, it appears to the satisfaction of the court that the judgment debtor has made a full surrender and disclosure of his property in the prescribed manner, and that he is unable because of unavoidable misfortune to satisfy the judgment, and that he has not been guilty of any misconduct cognisable under section 66 of this Act, and that his property ought to be released from attachment, the court may, in its discretion, stay any writ of execution issued in the proceedings for such time and upon any such terms as the court thinks fit, and so from time to time until it appears that the cause of inability has ceased.

24. Execution of warrants of possession

For the purpose of executing a writ to give possession of any premises, it shall not be necessary to remove any goods or chattels from those premises.

Seizure of goods and securities and custody thereof

25. Goods which may be seized

Every sheriff or officer executing any writ of execution issued from a court against the goods or chattels of any person may by virtue thereof seize-

- (a) any of the goods and chattels of that person, except the wearing apparel and bedding of that person or his family and the tools and implements of his trade, to the value of ten naira, which shall to that extent be protected from seizure; and
- (b) any money, bank-notes, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to that person.

26. Custody of goods seized

Goods seized in execution under process of a court shall thereof--

- (a) be deposited by the bailiff in some fit place; or
- (b) remain in the custody of a fit person approved by the sheriff to be put in possession by the bailiff; or
- (c) be safeguarded in such other manner as the sheriff directs.

27. Disposal of bills of exchange, etc., seized

The sheriff shall hold any bills of exchange, promissory notes, bonds, specialties or other securities for money seized in execution under process of a court as security for the amount directed to be levied by the execution, or for so much thereof as has not been otherwise levied or raised for the benefit of the judgment creditor, and the judgment creditor may sue in the name of the judgment debtor, or in the name of any person in whose name the judgment debtor might have sued, for the recovery of the sum secured or made payable thereby, when the time of payment thereof arrives.

28. Penalty for obstructing execution

If any person rescues or attempts to rescue any goods seized in execution under process of a court or in any other way resists or obstructs the execution of any process for the enforcement of a judgment of a court, he shall be liable, either on an order made in that behalf by the court from which the writ of execution or other process issues, or on summary conviction, to a fine not exceeding ₦1 00, and any bailiff of the court may take him into custody with or without warrant, and bring him before the court.

Sale of goods seized

29. Period to elapse before sale

(1) No goods seized in execution under process of a court shall be sold for the purpose of satisfying the writ of execution until the expiration of a period of at least five days next following the day on which the goods have been so seized unless -

[L.N. 47 of 1955.]

- (a) the goods are of a perishable nature; or

(b) the person whose goods have been seized so requests in writing:

Provided that the sheriff may, if he is unable from want of time to complete the sale, adjourn the same for a period of not more than three days, and so on as often as may be necessary:

Provided further that the court may, if it thinks fit, direct that the sale shall be postponed for any time not exceeding 28 days after the attachment.

(2) In every case where the property attached is apparently over forty naira in value, it shall be set up for sale by the sheriff in the principal High Court or magistrate's court house of the division or district in which the attachment is made, and if the place where the attachment is made is not within eight kilometers of the court from which the writ of execution issued, the judge or magistrate shall give direction as he thinks fit:

Provided that the judge or magistrate may, if he thinks fit, in any particular case direct the sale to be held at any other place in the district.

(3) Every sale shall take place between the hours of seven o'clock in the morning and eight o'clock in the evening and everything set up for sale shall be knocked down to the highest bidder for ready money.

(4) Notice of the day and hour of sale of any movable property, apparently over forty naira in value, attached, shall be published four days at least before the day of such sale, by being posted upon the door of the court house of the division or district in which the attachment is made and where the sale is to take place at some other place, then at that other place also, and if the court so directs in a newspaper published in Nigeria.

30. Sales under execution to be published unless otherwise ordered

(1) Where any goods are to be sold under an execution for a sum exceeding forty naira, including legal incidental expenses, the sale shall, unless the court from which the writ of execution issued otherwise orders, be made by public auction and not by bill of sale or private contract, and shall be publicly advertised by the sheriff on, and during three days next preceding the day of sale.

(2) Where any goods are seized in execution and the registrar has notice of another execution or other executions, the court shall not consider an application for leave to sell privately until the prescribed notice has been given to the other execution creditor or creditors, who may appear before the court and be heard on the application.

31. Delivery of movable property in possession of judgment debtor

Where the property sold shall consist of goods, chattels, or other movable property in the possession of the judgment debtor, or to the immediate possession of which the judgment debtor is entitled, and of which actual seizure has been made, the pro perry shall be delivered to the purchaser.

Claims in respect of property seized

32. Priority of writs

When writs against the property of any person have been issued from more than one court, the right to the property attached shall be determined according to the order of priority of the respective times of application to the registrars for the issue of the writs.

33. Sale of property where claim made thereto

(1) Where a claim is made to or in respect of any property attached in execution under process of a court, the claimant may-

(a) deposit with the sheriff either-

- (i) the amount of the value of the property claimed; or
- (ii) the sum, if any, which the sheriff is allowed to charge as costs for keeping possession of the pro perry until the decision of the court can be obtained on the claim; or

(b) give the sheriff in the prescribed manner security for the value of the property claimed.

(2) For the purpose of this section the amount of the value of the property claimed shall in case of dispute be fixed by appraisement and where that amount is deposited as aforesaid it shall be paid by the sheriff into court to abide the decision of the Court upon the claim.

(3) In default of the claimant complying with the foregoing provisions of this section, the sheriff shall sell the property as if no such claim had been made, and shall pay into court the proceeds of the sale to abide the decision of the court.

Interpleader

34. Interpleader by sheriff

(1) If a claim is made to or in respect of any property attached in execution under

process of a court, or in respect of the proceeds or value thereof, the registrar may, upon the application of the sheriff, as well before as after any action brought against him, issue a summons calling before the court the party at whose instance the process issued and the party making the claim.

[First Schedule. Forms 7 to 10.]

(2) Upon the issue of the summons, any action brought in any court in respect of the claim or of any damage arising out of the execution of the writ shall be stayed.

(3) On the hearing of the summons, the court shall adjudicate upon the claim, and shall also adjudicate between the parties or either of them and the sheriff upon any claim to damages arising or capable of arising out of the execution of the writ by the sheriff, and shall make such order in respect of any such claim and the costs of the proceedings as it thinks fit.

Landlord's claim for rents

35. Claims for rent where goods seized in execution

(1) The landlord of every premises in which any goods are seized may claim the rent of the premises in arrears at the date of the seizure, at any time within five days next following that date, or before the removal of the goods, by delivering to the bailiff or officer making the levy a claim in writing signed by himself or his agent, stating -

- (a) the amount of the rent claimed to be in arrear; and
- (b) the period in respect of which the rent is due.

(2) Where such a claim is made, the bailiff or officer making the levy shall in addition thereto distrain for the rent so claimed and the cost of the distress, and shall not within five days next after the distress, sell any part of the goods seized, unless -

- (a) the goods are of a perishable nature; or
- (b) the person whose goods have been seized so requests in writing.

(3) The bailiff shall afterwards sell under the execution and distress such of the goods as will satisfy -

- (a) first, the costs of and incidental to the sale;
- (b) next, the claim of the landlord not exceeding -
 - (i) in a case where the tenement is let by the week, four weeks' rent;
 - (ii) in a case where the tenement is let for any other term less than a year, the rent of two terms of payment;
 - (iii) in any other case, one year's rent; and
- (c) lastly, the amount for which the writ of execution issued.

(4) If any replevin is made of the goods seized the bailiff shall nevertheless sell such portion thereof as will satisfy the costs of and incidental to the sale under the execution and the amount for which the writ of execution issued.

(5) In any event the surplus of the sale, if any, and the residue of the goods shall be returned to the judgment debtor.

(6) The fees of the court and bailiff for keeping possession and sale under any such distress shall be the same as would have been payable if the distress had been an execution of the court, and no other fees shall be demanded or taken in respect thereof.

Lien

36. Property subject to lien

Where the property sold consists of movable property to which the judgment debtor is entitled, subject to a lien or right of any person to the immediate possession thereof, the delivery to the purchaser shall, as far as practicable, be made by the sheriff giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser thereof.

Transfer of proceedings for execution

37. Execution out of jurisdiction of court

(1) Where a writ of execution has been issued from a court, hereafter in this section referred to as a "home court", against the property of any person and the property or any of it is out of the local division or district of that court, the registrar of that court may send the writ of execution to the registrar of any other court within the jurisdiction of which the property is or is believed to be, with a warrant thereon endorsed or thereto annexed requiring execution of the original writ.

[First Schedule. Form 11. Form 12.]

(2) On the receipt of the warrant, the registrar of the other court shall act in all respects as if the original writ of execution had been issued by the court of which he is registrar and shall within the prescribed time-

- (a) report to the registrar of the home court what he has done in the execution of the writ; and
- (b) pay over all moneys received in pursuance of the writ.

(3) Where a writ of execution is sent by the registrar of a home court to the registrar of another court for execution under the provisions of this section, the judge or magistrate of the court, as the case may be, shall have the same power as the judge or magistrate of

the home court of staying the execution under section 23 of this Act as respects any property within the jurisdiction of that other court.

Commitments

38. Issue and execution of orders of committal

(1) Whenever any order or warrant for the committal of any person to prison is made or issued by a court, whether in pursuance of this or any other Act or Law or of Rules of Court made under this Act, the order or warrant shall be directed to the sheriff, who shall thereby be empowered to take the body of the person against whom the order is made or warrant issued, and deliver him to the officer in charge of the prison mentioned in the order or warrant.

[Order 47 of 1951.]

(2) The officer in charge of the prison mentioned in any such order or warrant shall be bound to receive and keep the person therein mentioned until he is lawfully discharged.

39. Execution of committal orders out of jurisdiction of court

(1) Where any order or warrant for the committal of any person to prison has been made or issued, whether in pursuance of this or any other Act or Law or of Rules of Court made under this Act, by a court hereafter in this section referred to as a "home court", and that person is out of the division or district of that court, the registrar may send the order or warrant to the registrar of any other court within the division or district of which that person is or is believed to be, with a warrant thereon endorsed or thereto annexed requiring execution of the original order or warrant.

[Order 47 of 1951.]

(2) On receipt of the warrant, the registrar of the other court shall act in all respects as if the original order or warrant had been issued by the court of which he is registrar and shall within the prescribed time-

- (a) report to the registrar of the home court what he has done in the execution of the order or warrant; and
- (b) pay over all moneys received in pursuance of the order or warrant.

(3) Where a person is apprehended under the order or warrant he shall be forthwith conveyed to a prison or other place of safe custody and kept therein-

- (a) in a case where he is apprehended under a warrant of committal issued under section 72 of this Act, until further order of the home court; and
- (b) in a case where he is apprehended under any other order or warrant, until the expiration of the period mentioned in the order or warrant, unless sooner discharged by law.

(4) Where an order or warrant of commitment is sent by the registrar of a home court

to the registrar of another court for execution under the provisions of this section, the judge or magistrate of that other court shall have the same power as the judge or magistrate of the home court of ordering the discharge of the debtor under section 75 of this Act.

40. Liability of bailiff for neglect to levy an execution

(1) Where a bailiff, being employed to execute any process against the property or person of a judgment debtor, loses the opportunity of executing the process by reason of neglect, connivance, or omission, any party aggrieved thereby may complain to the court issuing the process.

(2) On any such complaint the court, if the neglect, connivance or omission is proved to its satisfaction, shall order the bailiff to pay such damages as it appears that the complainant has sustained by reason thereof, not exceeding in any case the sum for which the execution issued.

41. Irregularity in executing warrants

No sheriff or other officer in executing any process of a court, and no person at whose instance any such process is executed, shall be deemed a trespasser by reason of any irregularity or informality-

- (a) in any proceedings on the validity of which the process depends; or
- (b) in the form of the process or in the mode of executing it,

but any person aggrieved may bring an action for any special damage sustained by him by reason of the irregularity or informality against the person guilty thereof:

Provided that no costs shall be recovered in such an action unless the damages awarded exceed four naira.

42. Actions against bailiffs acting under warrants

(1) No action shall be commenced against any bailiff for anything done in obedience to any process issued by a court unless-

- (a) a demand for inspection of the process and for a copy thereof is made or left at the office of the bailiff by the party intending to bring the action or his solicitor or agent, in writing signed by the person making the demand; and
- (b) the bailiff refuses or neglects to comply with the demand within six days after it is made.

(2) If an action is commenced against a bailiff in a case where such demand has been made and not complied with, judgment shall be given for the bailiff if the process produced or proved at the trial, notwithstanding any defect of jurisdiction or other irregularity in the process, but the judge or magistrate who issued the process may be joined as a defendant in the action, and if the judge or magistrate is so joined and judgment is given against him, the costs to be recovered by the plaintiff against the judge or magistrate shall include such costs as the plaintiff is liable to pay to the bailiff.

(3) In this section, except in paragraph (a) of subsection (1) thereof, the expression "bailiff" includes any person acting by the order and in aid of a bailiff.

43. Process evidence of authority

In any action commenced against a person for anything done in pursuance of this Act, the production of the process of the court shall be deemed sufficient proof of the authority of the court previous to the issue of the process.

Execution against immovable property

44. Levy of execution upon immovable property

If sufficient movable property of the judgment debtor can be found in the Federal Capital Territory, Abuja or the State, as the case may be, to satisfy the judgment and costs and cost of execution, execution shall not issue against his immovable property, but if no movable property of the judgment debtor can with reasonable diligence be found, or if such property is insufficient to satisfy the judgement and costs and the costs of execution, and the judgment debtor is the owner of any immovable property, the judgment

creditor may apply to the court for a writ of execution against the immovable property of the judgment debtor, and execution may issue from the court against the immovable property of the judgment debtor in accordance with the provisions of this Act, and any rules made thereunder:

Provided that where the judgment has been obtained in a magistrate's court execution shall not issue out of the magistrate's court against the immovable property but shall issue out of the High Court upon the conditions and in the manner prescribed.

45. Levy of execution upon materials used in construction of a building

Where the judgment debtor is a citizen of Nigeria, and the property attached is the right, title or interest of the judgment debtor in a building owned or occupied by the judgment debtor, which building or the right to occupy the building the judgment debtor is not entitled under customary law to alienate, but the materials or some of the materials used in construction thereof the judgment debtor is entitled to remove, the right, title or interest of the judgment debtor in such building shall not be sold without the leave of the court first obtained, which leave may, at the discretion of the court, be refused or granted with or without conditions attached.

46. Mode of levying execution against buildings

(1) Every house or other building belonging to the owner of the land on which it stands shall be dealt with as immovable property and may be taken in execution accordingly, and where any house or other building is on land which is not the property of the owner of the house or other building, or on land held under the provisions of the Land Use Act, all the right, title and interest of the owner of the house or other building in the land on which the house or building is erected may be sold, together with the house or other building, and the same shall be dealt with as immovable property, subject to the provisions of the said Act.

[Cap. L5.]

(2) In any such case as last aforesaid any rent reserved by such lease, certificate of occupancy or instrument and remaining unpaid shall be recoverable as in section 35 of this Act.

47. Setting aside sale for irregularity

At any time within 21 days from the date of the sale of any immovable property, application may be made to the court to set aside the sale on the ground of any material irregularity in the conduct of the sale, but no sale shall be set aside on the ground of such

irregularity unless the applicant shall prove to the satisfaction of the court that he has sustained substantial injury by reason of such irregularity.

48. When sale becomes absolute

If no such application as is mentioned in section 47 of this Act is made, the sale shall be deemed absolute. If such application be made and the objection be disallowed the court shall make an order confirming the sale; and in like manner, if the objection be allowed, the court shall make an order setting aside the sale for irregularity.

49. Return of deposit or purchase money

Wherever a sale of immovable property is set aside the purchaser shall be entitled to receive back any money deposited or paid by him on account of such sale, with or without interest, to be paid by such parties and in such manner as it may appear proper to the court to direct in each instance.

50. Certificate of title

After a sale of immovable property shall have become absolute in manner aforesaid, the court shall grant a certificate to the person who may have been declared the purchaser at such sale, to the effect that he has purchased the right, title and interest of the judgment debtor in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right, title and interest.

51. Immovable property in possession of judgment debtor

If the property sold shall consist of a house, land or other immovable property in possession of a judgment debtor or some person on his behalf or of some person claiming under a title created by the judgment debtor subsequently to the attachment of such property, the court shall, on the application of the purchaser, order delivery thereof to be made by putting the party to whom the house, land or other immovable property may have been sold or any person whom he may appoint to receive delivery on his behalf, in possession thereof and, if need be, by removing any person who may refuse to vacate the same.

52. Obstructing purchaser in obtaining possession

If the purchaser of any immovable property sold in execution shall, notwithstanding the order of the court, be resisted or obstructed in obtaining possession of the property, the provisions contained in section 28 of this Act relating to resistance or obstruction to the execution of process shall be applicable in the case of such resistance or obstruction.

53. Certificate of title to be withheld on sale to an alien or of a right of occupancy

(1) Where the highest bidder at a sale is an alien for the purposes of the Land Use Act who, were it not for the provisions of that Act, would be held to be the purchaser, a certificate of title under section 50 of this Act, not issue unless and until the approval of the Governor is signified in accordance with the terms of that Act.

(2) Where the property sold in execution is a right of occupancy under the Land Use Act, a certificate of title under section 50 of this Act shall not issue unless and until such consent to the alienation of the right as is required by that Act shall have had and obtained.

[Cap. L5.]

54. Application of Islamic law in the Northern States where parties are Muslims

(1) In the application of sections 44 to 53 of this Act to the Northern States, the following provisions shall apply-

- (a) where all the parties to a suit are Muslims; or
- (b) where in any other suit the person applying for a writ of execution and the person against whose property the writ is to be directed are Muslims,

the court to which application is made shall be guided by the principles of Islamic law relating to the levying of execution of immovable property and any writ issued against immovable property shall in such a case as aforesaid be issued subject to Islamic law and the person applying for such writ shall prove the Islamic law on the point whether or not

such Islamic law is to his benefit.

(2) For the purpose of this section any firm, body of persons or company, other than a company limited by shares, the members of which are all Muslims, shall be deemed to be a Muslim as if such firm, body of persons or company were an individual person.

PART IV

Judgment summons

55. Application for judgment summons for examination of judgment debtor

(1) Where a judgment debtor makes default in payment of any sum recovered against him or any instalment thereof under a judgment, the judgment creditor may apply to any court for the issue of a summons, hereinafter called a judgment summons, requiring the judgment debtor to appear and be examined on oath as to his means, and the court shall, unless it sees good reason to the contrary, issue such a summons.

(2) The application may be made-

- (a) where the judgment or order is against one person only, or where the application is for the issue of a judgment summons against only one of two or more persons jointly liable under the judgment or order, in the court for the division or district in which the debtor resides or carries on business; or
- (b) where the application is for the issue of a judgment summons against two or more persons jointly liable under the judgment or order, in the court for the division or district in which anyone of the joint debtors resides or carries on business.

(3) The judgment creditor shall file a *praecipe* in the appropriate form containing the particulars required by that form, and thereupon a judgment summons shall be issued in such a form as is applicable to the case.

56. Praecipe for judgment summons ; different names

Where the name or address of any person as given in the *praecipe* differs from the name or address in the judgment or order both names and addresses shall be inserted in the judgment summons as follows -

[First Schedule. Forms 13 to 15.]

C. D. of (name and address as given in the *praecipe*) sued or suing as A. B. of (name and address in the judgment or order).

57. Judgment against firm

(1) Where a person entitled to enforce a judgment or order against a firm desires to issue a judgment summons against any person whom he alleges to be liable under the judgment or order he shall file a *praecipe* and affidavit in the required forms together with a copy of the affidavit which shall be served with the judgment summons.

[First Schedule. Form 16.]

(2) If the person alleged to be liable does not appear on the day fixed for the hearing he shall be deemed to admit his liability to pay the amount due but if he appears and denies the liability the court may determine the question of liability on the evidence then before it or may order the issue of liability to be tried in such manner as it thinks fit.

58. Order to bring judgment debtor before court

Where it appears to the court that there is probable cause to believe the judgment debtor, for the purpose of avoiding examination, is about to leave the division or district in which he normally resides or carries on business, or where he does not appear in obedience to such summons, the court may in its discretion order that the judgment debtor be brought before the court and may issue a warrant for his arrest and for his custody in the debtors' prison until the day appointed for such examination when he shall be brought before the court under the said warrant, unless sooner discharged by order of the court and if he is in custody, the court may issue an order to the officer in charge of the prison in which he is detained to bring him before the court.

59. Enlargement of time and conditional order

The court may enlarge the time for return to the order and may direct that the warrant shall only issue after a certain time and in the event of the continued refusal or neglect of the judgment debtor at the time to comply with the judgment summons.

60. Discovery of property

(1) On the appearance of the judgment debtor before the court on the summons or warrant, he may be examined on oath, by or on behalf of the judgment creditor and by the court-

- (a) respecting his ability to pay the money directed to be paid and for the discovery of property applicable to such payment, and as to what debts are owing to him, and as to the disposal which he may have made of any property; and he shall be bound to produce on oath or otherwise, all books, papers and documents in his possession or power relating to the property applicable to such payment; and
- (b) respecting the circumstances in which he contracted or incurred the debt or liability in respect of which the judgment was given and respecting the means of expectation he then had of paying or discharging the debt or liability.

(2) Whether the judgment debtor appears or not, the judgment creditor and all other witnesses whom the court thinks requisite may be examined on oath or otherwise respecting the matters aforesaid.

61. Adjournment of examination

The court may, if it thinks fit, adjourn the examination from time to time, and require from the judgment debtor such security for his appearance at the adjourned hearing as seems fit, and in default of his finding security may commit him to prison, there to remain until the adjourned hearing, or may discharge him from custody.

62. Interim order for protection of property

The court may, upon such investigation as aforesaid, make an interim order for the protection of any property applicable or available in discharge of the judgment debt, as it shall think expedient.

63. Orders on close of investigation

At the conclusion of the investigation the court may make such one or more of the orders following as the case may require-

[First Schedule. Forms 17 to 20.]

- (a) an order for the commitment of the judgment debtor to prison in accordance with the provisions of section 65 of this Act;
- (b) an order for the attachment and sale of the judgment debtor's property;
- (c) an order for the payment of money by instalments or otherwise by the judgment debtor; and
- (d) an order for the discharge of the judgment debtor from prison.

64. Power of court during hearing of a cause

A court at the hearing of a cause, or at any adjournment thereof, shall have the same power of examining the parties and other persons touching the several things mentioned in section 60 of this Act, and of making an order for the protection of property, as if the defendant had appeared in answer to a judgment summons.

Comittal to prison

65. Power to commit debtor to prison in certain cases

(1) Subject to the provisions hereinafter contained, the court at the conclusion of such investigation as aforesaid, but not otherwise, may commit to prison, for any term not exceeding six weeks, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any judgment or order of any court for the payment of any sum:

[First Schedule. Forms 21 and 22.]

Provided that such jurisdiction shall only be exercised where it is proved, to the satisfaction of the court, that the person making default either has, or has had since the

date of the judgment or order, the means to pay the sum in respect of which he has made default.

(2) Proof of the means of the person making default may be given in such manner as the court thinks just; and, for the purposes of such proof, the debtor and any witnesses may be summoned and examined upon oath.

(3) For the purposes of this section, the court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and may from time to time rescind or vary such order.

(4) Any person imprisoned under this section shall be discharged out of custody upon a certificate signed by the creditor at whose instance the debtor was imprisoned, or by any officer of the court, to the effect that such person has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs, if any, or upon default by the judgment creditor in payment of the allowance, if any, for the subsistence of the judgment debtor.

Misconduct of judgment debtor

66. Non-attendance of judgment debtor

If a party summoned as a judgment debtor shall not attend as required by the summons and shall not excuse his non-attendance to the satisfaction of the court or shall refuse to be sworn or to disclose the matters on which he shall be examined, or shall not answer to the satisfaction of the court, or if it appears to the court by an examination of a judgment debtor or other evidence-

Refusal to satisfy judgment

- (a) that the judgment debtor has then or has had since the judgment sufficient means to pay the money directed to be paid by him, or part thereof, and has made default in payment, and that such default is due to his refusal or wilful neglect to pay on demand; or

Fraudulent disposition

- (b) that with intent to defraud or delay his creditors or any of them he has made or suffered any gift, delivery or transfer of any property, or removed property from the jurisdiction of the court; or

Debt contracted by fraud

- (c) that the debt or liability in respect of which the judgment has been given, has been contracted or incurred by him by fraud or false pretence or breach of trust committed by him, or by reason of any damages which he has been adjudged to pay on account of any assault or slander committed by him; or

Forbearance obtained by fraud

- (d) that forbearance of the debt was obtained by him by fraud or false pretence; or

Debt recklessly contracted

- (e) that the debt or liability was wilfully contracted or incurred by him without his having at the same time a reasonable expectation of being able to pay or discharge it; or

Disobedience of judgment other than for money

- (f) that the judgment debtor under a judgment other than for the payment of money has then or has had since the judgment the power of complying with the judgment and has refused or neglected to do so,

then and in any such case the court may, without prejudice to any of its powers in relation to judgment summonses herein before conferred, issue a warrant for the arrest of such judgment debtor and his detention in custody, or for his detention if already in custody, until further order, or if it thinks fit may make an order calling upon such judgment debtor to show cause why he should not be punished for his misconduct.

67. Party in default to be brought before the court

If such judgment debtor is arrested or in custody he shall be brought before the court on the first convenient opportunity, and shall then, or if an order to show cause as aforesaid has been made, he shall on appearing on the return-day of the order, have opportunity of showing cause why he should not be punished.

68. Commitment of party in default

If such judgment debtor does not show cause to the satisfaction of the court why he should not be punished, or if being ordered to show cause as aforesaid he does not attend the court and does not establish sufficient reason for not attending, the court may remand the judgment debtor to prison if he has been already arrested, or issue a warrant for his arrest and commitment as for a contempt of court.

69. Penalty on misconduct of judgment debtor

A person committed on account of any misconduct enumerated in section 66 of this Act may not be committed to prison for a longer period than one year in any event, or for a longer period than six months if the judgment be for payment of money not exceeding N200, or for a longer period than three months if the judgment be for payment of money not exceeding thirty naira.

70. Labour may be ordered in certain cases

The court may in its discretion direct that any judgment debtor ordered to be imprisoned on account of any misconduct as aforesaid shall be employed in work within the prison during any period of such imprisonment.

71. Labour may be specified by regulations

The work shall be of such nature as may be specified by regulations made under the Prisons Act.

[Cap. P29.]

72. Committal for refusal to comply with order

If any person refuses or neglects to comply with an order made against him, other than for payment of money, the court, instead of dealing with him as a judgment debtor guilty of the misconduct defined in paragraph ~~if~~ of section 66 of this Act, may order that he be committed to prison and detained in custody until he has obeyed the order in all things that are to be immediately performed and given such security as the court thinks fit

to obey the other parts of the order, if any, at the future times thereby appointed, or in case of his no longer having the power to obey the order then until he has been imprisoned for such time or until he has paid such fine as the court directs.

73. Release of judgment debtor upon satisfaction

Where a judgment debtor has been imprisoned on account of any misconduct enumerated in section 66 of this Act, then upon payment of the judgment debt, together with the prescribed costs, if any, or upon the request of the judgment creditor, or upon default by the judgment creditor in payment of the allowance, if any, for the subsistence of the judgment debtor, the court may make an order for his discharge, to take effect either immediately or after he has been imprisoned for such portion of the term of imprisonment ordered as the court in its discretion may think fit to appoint, and the court may also make any order respecting the expenses of his imprisonment that may be necessary and just.

74. Application for discharge

Any person imprisoned under the provisions of section 65 or 66 of this Act may apply to the court for his discharge. The application shall be accompanied by a full statement and account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him, excepting the necessary wearing apparel of himself and his family, and the necessary implements of his trade, if any, to the value of ten naira, and of the places respectively where such property is to be found. The application shall be verified by oath or affidavit.

[First Schedule. Form 23.]

75. Procedure on application for discharge

(1) On such application being made the court shall cause the judgment creditor to be furnished with a copy of the statement and account of the judgment debtor's property and shall fix a reasonable time within which the judgment creditor may cause the whole or any part of such property to be attached and sold and thereafter shall fix a time for examining and hearing the parties.

[First Schedule.]

(2) If the court is satisfied upon such inquiry, wherein the onus of proof shall be upon the party applying for discharge, that the judgment debtor has made a full surrender and disclosure of his property, and that he is unable because of unavoidable misfortune to satisfy the judgment, and, where he has been imprisoned under section 65 of this Act, that he has not been guilty of any misconduct enumerated in section 66 of this Act, and that he ought to be discharged, the court may make an order for the liberation of the judgment debtor:

Provided that if it shall subsequently be shown to the satisfaction of the court that the debtor has not made a full disclosure the debtor shall upon the order of the court be recommitted to prison-

- (a) where he has previously been imprisoned under section 65 of this Act, for such time not exceeding six weeks as may be specified by the court; and
- (b) where he has previously been committed on account of any misconduct enumerated in section 66 of this Act, for such time as may be specified by the court not exceeding the maximum period for which he might have been committed in the first instance.

76. Imprisonment does not extinguish debt

No imprisonment under this Act shall operate as a satisfaction or extinguishment of any debt, demand or cause of action, or deprive any person of any right to take out execution against the movable or immovable property of the person imprisoned in the same manner as if such imprisonment had not taken place.

77. Subsequent imprisonment for misconduct

No imprisonment under this Act shall prevent a judgment debtor from being again imprisoned for any act of wilful disobedience or other default or misconduct rendering him liable to be imprisoned, occurring or continuing after his imprisonment or release; but except in such cases, a party who has once been released from imprisonment shall not be imprisoned again upon the same judgment.

Subsistence of debtor prisoners

78. Subsistence allowance to debtor prisoners

Where the judgment debtor is committed to prison under this Act, the court shall fix whatever monthly allowance it shall think sufficient for his subsistence, not exceeding 45 kobo per day, which shall, subject to the provisions of section 8J of this Act, be paid by the judgment creditor by equal monthly instalments in advance before the first day of each month to the registrar, the first payment to be made before the order or warrant of commitment is issued, for such portion of the current month as may remain unexpired:

Provided that if it shall be proved that any judgment debtor has sufficient means for maintaining himself, it shall be competent for the court, after hearing such judgment debtor, to order that no subsistence money be allowed.

79. Removal of prisoner in case of illness

(1) In case of the serious illness of any person imprisoned under this Act the court may, on the certificate of a medical officer, make an order for the removal of such person to a government hospital, and for his treatment there under custody; the period of such person's stay in hospital shall be counted as part of his term of imprisonment and his subsistence allowance shall be paid unless the court shall see fit in either case to order otherwise.

(2) The court may order that any hospital charges in excess of the subsistence allowance ordered to be paid shall be borne by the Government or the judgment creditor.

80. Subsistence money added to judgment

Sums disbursed by an execution creditor for the subsistence of a judgment debtor in

prison or hospital shall be added to the costs of the suit and shall be recoverable by the attachment and sale of the property of the judgment debtor but he shall not be detained in custody or arrested on account of any sums so disbursed.

81. Expenses of imprisonment

(1) In every case where a person is committed to prison on account of any misconduct enumerated in section 66 of this Act as well as in every case of a person committed for contempt of court, the court may direct that the expenses of the conveyance of such person to prison and of his maintenance during his imprisonment shall be defrayed in the first instance by the principal officer of the Treasury of the State or, in the case of the Federal Capital Territory, Abuja, the Accountant-General of the Federation and if the court considers that it is expedient in the interests of justice that the expenses shall be so defrayed, the court shall so direct.

[L.N. 47 of 1955.]

(2) The principal officer of the treasury of the State or, in the case of the Federal Capital Territory, Abuja, the Accountant-General of the Federation, shall in all such cases be entitled to recover the sums so disbursed by him by attachment and sale of the property of the person imprisoned or he may, if the court so directs, recover such sums from the judgment creditor.

(3) In case the court shall not direct the said expenses to be defrayed by the principal officer of the Treasury of the State or, in the case of the Federal Capital Territory, Abuja, the Accountant-General of the Federation, the same shall be defrayed by the judgment creditor.

(4) The judgment creditor may in all cases recover all sums disbursed by him for expenses as aforesaid from the judgment debtor by attachment and sale of the property of the judgment debtor.

Sequestration

82. Sequestration

In case the person against whom an order or warrant of arrest, commitment, or imprisonment issued is not and cannot be found, or is taken and detained in custody without obeying the judgment, the court may make an order that a writ of sequestration do issue against his property, and such writ shall be issued and executed in the prescribed manner.

PART Y

Attachment of debts by garnishee order

83. Debts may be garnisheed

(1) The court may, upon the *ex parte* application of any person who is entitled to the benefit of a judgment for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment and upon affidavit by the applicant or his legal practitioner that judgment has been recovered and that it is still unsatisfied and to what amount, and that any other person is indebted to such debtor and is within the State, order that debts owing from such third person, hereinafter called the garnishee, to such debtor shall be attached to satisfy the judgment or order, together with the costs of the garnishee proceedings and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such

debtor or so much thereof as may be sufficient to satisfy the judgment or order together with costs aforesaid.

[L.N. 47 of 1955. First Schedule. Forms 25 and 26.]

(2) At least fourteen days before the day of hearing, a copy of the order *nisi* shall be served upon the garnishee and on the judgment debtor.

84. Consent of appropriate officer or court necessary if money is held by public officer or the court

(1) Where money liable to be attached by garnishee proceedings is in the custody or under the control of a public officer in his official capacity or in *custodia legis*, the order

nisi shall not be made under the provisions of the last preceding section unless consent to such attachment is first obtained from the appropriate officer in the case of money in the custody or control of a public officer or of the court in the case of money in *custodia legis*, as the case may be.

[L.N. 47 of 1955.]

(2) In such cases the order of notice must be served on such public officer or on the registrar of the court, as the case may be.

(3) In this section, "**appropriate officer**" means -

- (a) in relation to money which is in the custody of a public officer who holds a public office in the public service of the Federation, the Attorney-General of the Federation;
- (b) in relation to money which is in the custody of a public officer who holds a public office in the public service of the State, the Attorney-General of the State.

85. Order for attachment to bind debt

Service of an order that a debt due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the court may direct, shall bind such debt in his hands.

86. Execution against garnishee

If the garnishee does not within the prescribed time pay into court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, together with the costs of the garnishee proceedings, and does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon summons, the court upon proof of service may order execution to issue, and it may issue accordingly without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

[First Schedule.]

87. Trial of liability of garnishee

If the garnishee appears and disputes his liability, the court, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or

question in any proceedings may be tried or determined, or may refer the matter to a referee.

88. Lien or claim of third person on debt

Whenever in any proceedings to obtain an attachment of a debt it is suggested by the garnishee that the debt sought to be attached belongs to some third person or that any third person has a lien or charge upon it, the court may order such third person to appear and state the nature and particulars of his claim upon such debt.

89. Order may be made if third person does not appear

If the third person as described in the last preceding section does not appear, the court on proof of service of a copy of the order may proceed to make an order as if such person had appeared.

90. Procedure upon appearance of claimants

Upon the appearance of such third person, after hearing his allegations and those of any other person who the court may order to appear, the court may order execution to issue to levy the amount due from the garnishee, or any issue or question to be tried and determined, and may bar the claim of such third person, or may make such other order, upon such terms with respect to any lien or charge or otherwise, as the court shall think just.

91. Garnishee discharged

Payment made by or execution levied upon a garnishee under any such proceedings

shall be a valid discharge to him against the debtor liable under a judgment or order, to the amount paid or levied, even although such proceeding may be set aside or the judgment or order reversed.

92. Private alienation after attachment void

After an attachment shall have been made by actual seizure or by written order as aforesaid and in case of attachment by written order, after it shall have been duly intimated and made known in manner aforesaid, any alienation without leave of the court of the property attached, whether by sale, gift or otherwise and any payment of any debt or debts or dividends or shares to the judgment debtor during the continuance of the attachment, shall be null and void.

PART VI

Forms and rules

Forms

93. Use of forms in First Schedule

(1) Subject to the express provisions, if any, of the Rules, the forms contained in the First Schedule to this Act may, in accordance with any instructions contained in the said forms and with such variations as the circumstances of the particular case may require, be

used in the cases to which they apply and, when so used, shall be good and sufficient in law.

[First Schedule.]

(2) The forms in the First Schedule may be added to, repealed, replaced or varied by rules of court in all respects as if they had originally been so made.

Rules

94. Rules of court

The Chief Judge of the Federal Capital Territory, Abuja, with the approval of the President, and the Chief Judge of a State, with the approval of the Governor, may make rules of court in respect of any or all of the following matters -

[L.N. 47 of 1955.]

- (a) the duties of bailiffs;
- (b) the procedure to be adopted by bailiffs and others on the receipt of money paid or received at a sale in execution or otherwise in respect of process of execution and the accounting therefor;
- (c) the fees and allowances, if any, to be paid to, or for the use of the services of bailiffs and other officers of the court;
- (d) the fees to be paid in respect of any application or the filing of any document or in respect of anything done or furnished under this evidence;
- (e) the conditions precedent to the issue of any process;
- (f) the issue of process to or against any person or class of persons;
- (g) anything to be done by any person in respect of the issue or execution of process;
- (h) the method of attaching any property;
- (i) the enforcement of judgments not for the payment of money;
- (j) the procedure in execution against immovable property;
- (k) the entertainment and adjudication of claims to property attached or sold in execution;
- (l) the custody or disposal of property attached;
- (m) the appointment of managers or receivers over attached or sequestrated property;

- (n) the procedure on sale in execution of writs and the persons by whom such sales may be conducted;
- (o) the method of transfer of property, movable or immovable, shares, securities and other chattels on sales in execution of writs;
- (p) the circumstances in which proceedings in process may be transferred from one court in a division or district to another court in the same division or district or to a court in another division or district;
- (q) the procedure to be followed in the High Court upon an application of a judgment creditor in a magistrate's court for a writ of execution in respect of immoveable property;
- (r) prescribing anything or any person requires by Parts III, IV, V and VI of this Act to be prescribed; and
- (s) generally for giving effect to the provisions and intentions of Parts III, IV, V and VI of this Act and prescribing and regulating procedure thereunder.

PART VII

Service of the process and enforcement of the judgments of the courts of the Federal Capital Territory, Abuja and the States throughout Nigeria

95. Interpretation

In this Part, unless the context otherwise requires -

[L.N. 47 of 1955.]

"**Capital Territory**" means the Federal Capital Territory, Abuja;

"**court**" means a court to which Parts III, IV, V, and VI apply;

"**judgment**" includes any judgment, decree or order given or made by a court in a suit whereby any sum of money is made payable or any person is required to do or not to do any act or thing other than payment of money;

"**writ of summons**" includes any writ or process by which a suit is commenced or of which the object is to require the appearance of any person against whom relief is sought in a suit or who is interested in resisting such relief.

Service of process

96. Writ of summons may be served in any part of Federation

(1) A writ of summons issued out of or requiring the defendant to appear at any court of a State or the Capital Territory may be served on the defendant in any other State or the Capital Territory.

[L.N. 47 of 1955.]

(2) Such service may, subject to any rules of court which may be made under this Act, be effected in the same manner as if the writ was served on the defendant in the State or the Capital Territory in which the writ was issued.

97. Endorsement on writ for service outside a State

Every writ of summons for service under this Part out of the State or the Capital Territory in which it was issued shall, in addition to any other endorsement or notice required by the law of such State or the Capital Territory, have endorsed thereon a notice to the following effect (that is to say)-

[L.N. 47 of 1955.]

"This summons (or as the case may be) is to be served out of the

.....State (or as the case may be), and in

the

.....State (or as the case may be)."'

98. Concurrent writs

A writ of summons for service out of the State or the Capital Territory in which it was

issued may be issued as a concurrent writ with one for service within such State or the Capital Territory and shall in that case be marked as concurrent.

[L.N. 47 of 1955.]

99. Time limited for answering to summons

The period specified in a writ of summons for service under this Part as the period within which a defendant is required to answer before the court to the writ of summons shall be not less than thirty days after service of the writ has been effected, or if a longer period is prescribed by the rules of the court within which the writ of summons is issued, not less than that longer period.

[L.N. 47 of 1955.]

100. Order for plaintiff to give security for costs

Any defendant who has been served under this Part with a writ of summons may apply to the court within which the writ was issued for an order compelling the plaintiff to give security for costs, and upon such application the court may make the order.

[L.N. 47 of 1955.]

101. Proceedings where defendant does not answer to summons

When no appearance is made by a defendant to a writ of summons served on him under this Part, if it is made to appear to the court from which the writ was issued-

[L.N. 47 of 1955.]

- (a) that the subject matter of the suit, so far as it concerns such defendant, is -
 - (i) land or other property situate or being in the State or the Capital Territory in which the writ was issued; or
 - (ii) shares or stock of a corporation or company having its principal place of business within that State or the Capital Territory; or
 - (iii) any deed, will, document or thing affecting any such land, share, stock or property; or
 - (b) that any contract in respect of which relief is sought in the suit against such defendant by way of enforcing, rescinding, dissolving, annulling or otherwise affecting such contract, or by way of recovering damages or other remedy against such defendant for a breach thereof, was made or entered into within that State or the Capital Territory; or
 - (c) that the relief sought against the defendant is in respect of a breach within that State or the Capital Territory, of a contract wherever made; or
 - (d) that any act or thing sought to be restrained or removed or for which damages are sought to be recovered, was done or is to be done or is situate within that State or the Capital Territory; or
 - (e) that at the time when the liability sought to be enforced against the defendant arose he was within that State or the Capital Territory; or
 - (f) in a matrimonial cause that the domicile of the person against whom that relief is sought is within that State or the Capital Territory,
- and if it is also made to appear to such court;
- (g) that the writ was personally served on the defendant, or in the case of a corporation served on its principal officer or manager or secretary within the State or the Capital Territory in which service is effected; or
 - (h) that reasonable efforts were made to effect personal service thereof on the defendant, and that it came to his knowledge or in the case of a corporation that it came to the knowledge of such officer as aforesaid (in which case it shall be deemed to have been served on the defendant),

such court may on the application of the plaintiff, order from time to time that the plaintiff shall be at liberty to proceed in the suit in such manner and subject to such conditions as the court may deem fit and thereupon the plaintiff may proceed in the suit against such defendant accordingly.

(2) Any such order may be rescinded or set aside or amended on the application of the defendant.

102. No increased jurisdiction conferred by this Part

This Part of this Act does not confer on any court jurisdiction to hear or determine

any suit which it would not have jurisdiction to hear or determine if the writ of summons had been served within the State or the Capital Territory in which the writ was issued.
[L.N. 47 of 1955.)

103. Process may be served in any part of Federation

(1) When any process issued by a court of a State or part of the Federation other than a warrant of arrest or commitment, is required to be served on any person, such process may be served on such person in any other State or the Capital Territory.

[L.N. 47 of 1955.)

(2) Such service may, subject to any rules of court which may be made under this Part, be effected in the same way, and shall have the same force and effect, as if the service were effected in the State or the Capital Territory in which the process was issued.

(3) Thereupon all such proceedings may be taken as if the process had been served in the State or the Capital Territory in which it was issued.

(4) A warrant of arrest or commitment issued by a court of a State or the Capital Territory in the exercise of its civil jurisdiction may be executed in another State or the Capital Territory in the manner provided in Chapter XII of the Criminal Procedure Act in the case of warrants for the apprehension of persons charged with an offence.

[Cap. C4l.)

(5) This section does not apply to a writ of summons or any process issued in accordance with Part XIII of the Evidence Act.

[Cap. E14.)

Enforcement of judgments

104. Certificate of judgment

Any person in whose favour a judgment is given or made in a court of any State or the Capital Territory may obtain from the registrar or other proper officer or such court a certificate of such judgment in the form and containing the particulars set forth in the Second Schedule or as near thereto as the circumstances will permit, which certificate such officer is hereby required to grant under his hand and the seal of such court.

[L.N. 47 of 1955. Second Schedule.]

105. Registration of judgments and proceedings thereunder

(1) Upon production of such certificate to the registrar or other proper officer of any court of like jurisdiction in any other State or the Capital Territory such officer shall forthwith register the same by entering the particulars thereof in a book to be kept by such officer and to be called "The Nigeria Register of Judgment".

[L.N. 47 of 1955.]

(2) From the date of registration the certificate shall be a record of the court in which it is registered, and shall have the same force and effect in all respects as a judgment of that court, and the like proceedings may be taken upon the certificate as if the judgment had been a judgment of that court.

(3) For the purpose of this section-

- (a) the High Courts (including any court deemed to be a High Court) of the several States and the Capital Territory are courts of like jurisdiction to one another;
- (b) the magistrates' courts exercising jurisdiction in the several States and the Capital Territory are of like jurisdiction to one another.

106. Costs of proceedings

(1) The court in which any such certificates of a judgment has been registered may, upon being satisfied that the registration of the judgment was reasonably justified under the circumstances, order that the judgment creditor's costs of registration and other proceedings under this Part, to an amount to be assessed by the court, but not exceeding the amount prescribed be paid by the judgment debtor to the judgment creditor.

[L.N. 47 of 1955.]

(2) Any such order shall be deemed to be incorporated with the certificate, and the amount payable thereunder to be payable under the certificate.

107. Execution not to issue unless affidavit filed

No process shall be issued upon such certificate unless an affidavit is first filed in the court out of which it is intended to issue such process made by the judgment creditor or by some other person cognisant of the facts of the case, stating-

[L.N. 47 of 1955.]

- (a) that the amount for which process is proposed to be issued is actually due and unpaid; or
- (b) that an act ordered to be done remains undone; or
- (c) that the person ordered to forebear from doing an act has disobeyed the order,

and no process shall be issued for a larger amount than that shown to.

108. Proceedings subject to control of court

The court in which any such certificate of a judgment has been registered shall, in respect of the issue of process upon the certificate and the enforcement of the judgment, have the same control and jurisdiction over the judgment as if the judgment were a judgment of such court.

[L.N. 47 of 1955.]

109. Stay of proceedings

(1) The court in which any such certificate of a judgment has been registered may, on the application of the judgment debtor order a stay of proceedings on such certificate. [L.N. 47 of 1955.]

(2) Such order may be made on such terms as to giving security, or as to making application to the court by which the judgment was given or made to set aside the same or otherwise as to the court may seem fit.

110. Notification of proceedings and of satisfaction of judgment

When-

- (a) a certificate of judgment is registered in any court; or
[L.N. 47 of 1955.]
- (b) any process is issued in any court upon such certificate; or
- (c) satisfaction of the judgment either in whole or in part is entered in any court upon any such certificate,

the registrar or other proper officer of that court shall forthwith notify the same in writing under the seal of the court to the registrar or other proper officer of the court in which the judgment was given or made.

(2) When any judgment whereof a certificate has been registered in any court has been satisfied in whole or in part, the registrar or other proper officer of the court in which the judgment was given or made shall forthwith, upon such satisfaction being made or notified, as the case may be, enter such satisfaction upon the judgment and notify such satisfaction in writing under the seal of the court to the registrar or other proper officer of every other court in which a certificate of the judgment has been registered and such satisfaction shall thereupon be entered upon every such certificate.

111. Power to make rules

The Chief Justice of Nigeria may make rules with respect to this Part of this Act including the making of rules of court for prescribing-

[L.N. 47 of 1955.]

- (a) the practice and procedure in connection with the execution and enforcement by the courts of a State or the Capital Territory of the process and judgments of the courts of other States and the Capital Territory;
- (b) the practice and procedure in connection with the service of the process of the courts of a State or the Capital Territory under this Part;
- (c) the fees to be paid in connection with the service of the process of the courts of a State or the Capital Territory under this Part;
- (d) the fees to be paid in connection with the execution and enforcement under this Part by courts of a State or the Capital Territory of the process and judgments of the courts of other States and the Capital Territory;
- (e) the costs to be allowed to a person upon the execution or enforcement under this Part by the courts of a State or the Capital Territory of a judgment or other process of another State or the Capital Territory; and
- (f) the manner of recovery of such fees or costs.

112. Transitional provisions

(1) A judgment of the former Supreme Court which was given or made before the commencement of this Part shall be deemed for the purposes of this Act to be a judgment of the High Court of that State or the Capital Territory in which the judicial division in which it was given or made (as delimited on the date of the judgment) is included and the like proceedings may be taken under any of the provisions of this Act upon such judgment as if the judgment had been a judgment of the High Court of that State or the Capital Territory.

[L.N. 47 of 1955.]

(2) A judgment of a magistrate's court which was given or made before the com-

mencement of this Part shall be deemed to be a judgment of a magistrate's court of that State or the Capital Territory in which the magisterial district in which it was given or made (as delimited at the date of the judgment) is included and the like proceedings may be taken under any of the provisions of this Act upon such judgment as if the judgment had been a judgment of a magistrate's court of that State or the Capital Territory.

(3) Where a judicial division or magisterial district in which judgment to which subsection (1) or (2) of this section applies was given or made is included in more than one State or in both a State and the Capital Territory, the judgment of the High Court or magistrate's court, as the case may be, of the State or the Capital Territory in which the place shown on the record of the proceedings as the place of the holding of the court is situate and the provisions of subsection (1) or (2) of this section shall apply accordingly.

(4) Where, in respect of a judgment deemed by this section to be a judgment of a court of a State or the Capital Territory -

- (a) a writ of execution has been transferred before the commencement of this Part under the provisions of section 37 of this Act to a division of the High Court or a district of a magistrate's court which is in another State or the Capital Territory; or
- (b) a judgment summons has been issued out of a division of the Supreme Court or a district of a magistrate's court which is in another State or the Capital Territory,

the registrar or proper officer of the corresponding division or district of the High Court or magistrate's court, as the case may be, in that other State or the Capital Territory shall, upon the application of the judgment creditor, enter the judgment in the Nigerian Register of Judgments, and thereafter the like proceedings may be taken under this Act as if a certificate had been obtained and the judgment registered in that court in accordance with the provisions of this Part.

SCHEDULES

FIRST SCHEDULE

Forms

General form of title of proceedings

FORM 1

[Sections 6, 20, 34, 37, 56, 57, 63, 69, 74, 75, 83, 86 and 93.]

(For use in the High Court)

[Action]

In the High Court of theJudicial Division.

Suit No

BetweenComplainant

and

.....Defendant

[Matters]

In the High Court of theJudicial Division.

No

In the matter of *[here state the title of any Act by which the Court is given power to entertain the proceedings].*

And in the matter of *[here refer to the particular matter in respect of which the proceedings are brought].*

BetweenApplicant

[or Petitioner or Appellant]

and

.....Respondent.
[or as the case may be.]

FORM 1-continued

(For use in Magistrates' Court)

[Action]

In the Magistrate's Court of theMagisterial District.

No. of Plaintiff

BetweenPlaintiff
and

.....Defendant

[Matters]

In the Magistrate's Court of theMagisterial District.

No

In the matter of [here state the title of any Act by which the Court is given power to entertain the proceedings].

And in the matter of [here refer to the matter in respect of which the proceedings are brought].

BetweenAppellant
[or Petitioner]

and

.....Respondent

[or as the case may be.]

FORM 2

Declaration by Bailiff

I, A.B., do hereby solemnly and sincerely declare that I will not use or exercise the office of bailiff corruptly during the time that I shall remain therein, neither shall nor will I accept, receive, or take by any colour, means or device whatsoever or consent to the taking of any manner of fee or reward of any person or persons or between party and party above such fees as are allowed for the same by law, but will according to my power truly perform my duty during the time that I shall remain in the said office.

.....
Bailiff

TAKEN before me thisday of20

.....
Judge [or Magistrate]

FORM 3

Praecept for writ of execution

Plaintiffs names in full.

Plaintiffs residence and occupation.

Full names and addresses [*or other sufficient identification*] of all defendants, with their occupations, if known.

I apply for the issue of a writ of execution against the above-named [*if there are more defendants than one and plaintiff desires to proceed against some or one only, name them or him*] in respect of a judgment [*or an order*] of this Court.

.....

*Judgment Creditor or Solicitor to Creditor,
Solicitor's address*

.....

.....

[*To be filled up by registrar where payment into court has been ordered.*]

(*Strike out what is not applicable*)

Folio in ledger

Date of judgment [*or order*]

Order

Date and time of application for writ. The day of

20 at h m.

N K

Sum in payment of which defendant has made fault

Amount for which writ to issue by leave of the Court

Fees on issue of writ _____

FORM 4

Writ of attachment and sale against goods of defendant

[*General Title-Form 1*]

WHEREAS on the day of 20, the plaintiff obtained judgment [*or an order*] in this Court against the defendant, [*if there are more defendants than one, name those against whom the judgment was obtained*] for the sum of N .. for debt [*or damages*] and costs and it was ordered that the defendant should pay the same [to the registrar] forthwith [*or on the day of 20*] [*or*

FORM 4-continued

by instalments offor every];

AND WHEREAS default has been made in payment according to the said judgment [or order]:

These are therefore to require and order you forthwith to make and levy the amount due to the plaintiff under the said judgment [or order] together with the costs of this writ and the costs of executing the same, by distress and sale of the goods and chattels of the defendant [if there are more defendants than one, name the defendant against whose goods execution is issued] wheresoever

they may be found within theJudicial Division/Magisterial District (except the wearing apparel and bedding of him or his family and the tools and implements of his trade, to the value of ten naira) and also by seizing and taking any money, bank-notes, cheques, bills of exchange, promissory notes, bonds or securities for money belonging to the defendant which may there be found or such part or so much thereof as may be sufficient to satisfy this execution and to bring what you have so levied into Court and to make return of what you have done under this writ immediately upon the execution thereof.

DATED thisday of20

.....

Judge [or Magistrate]

To the Sheriff and Bailiffs of the Court.

N K

Amount remaining due

Fees on issue of this writ

Total amount to be levied exclusive of further costs, if any, of
executionN

Application was made to the registrar for this writ at
minutes past the hour ofin thenoon of the
day last mentioned above.

NOTICE.- The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized unless they are of a perishable nature or at the request of the defendant.

.....

Registrar

FORMS

Writ of attachment and sale against goods of defendant for part of amount due

[General Title-Form 1]

WHEREAS on theday of20, the plaintiff obtained a judgment [or an order] in this Court against the defendant [if there are more defendants than one, name those against whom the judgment was obtained] for the sum of N..... .

FORM 5-continued

for debt [*or* damages] and costs and it was ordered that the defendant should pay the same to the registrar by instalments of ₦ for every

AND WHEREAS default has been made in payment according to the said judgment [*or* order] and, upon the application of the plaintiff it was on the day of 20 , ordered that execution should issue for the sum of ₦ being part of the sum of ₦ remaining unpaid:

These are therefore to require and order you forthwith to make and levy the sum for which the Court has given leave to issue this writ together with the costs of this writ and the costs of executing the same, by distress and sale of the goods and chattels of the defendant [*if there are more defendants than one, name the defendant against whose goods execution is issued*] wheresoever they

may be found within the Judicial Division/Magisterial District (except the wearing apparel and bedding of him and his family and the tools and implements of his trade, to the value of ten naira), and also by seizing and taking any money, bank-notes, cheques, bills of exchange, promissory notes, bonds or securities for money belonging to the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and to bring what you shall have so levied into Court, and to make return of what you have done under this writ immediately upon the execution thereof

DATED this day of 20

.....
Judge [or Magistrate]

To the Sheriff and Bailiffs of the Court.

₦ K

Amount remaining due

Amount for which this writ is issued by leave of the Court..

Fees on issue of this writ

Total amount to be levied exclusive of further costs, if any, of execution ₦

Application was made to the registrar for this writ at minutes past the hour of in the noon of the day last mentioned above.

NOTICE.- The goods and chattels are not to be sold until the end of five days next following the day on which they were seized, unless they are of a perishable nature or at the request of the defendant.

.....
Registrar

FORM 6

Writ of attachment and sale against the goods of plaintiff

[General Title-Form I]

WHEREAS on theday of20, judgment was entered for the defendant [or a non-suit was entered] and it was ordered that the plaintiff should pay [to the registrar] on or before theday of20, the sum of N for the defendant's costs:

WHEREAS default has been made in payment according to the said order:

These are therefore to require and order you forthwith to make and levy the amount due to the defendant under the said order, together with the costs of this writ and the costs of executing the same, by distress and sale of the goods and chattels of the plaintiffs, wheresoever they may be found within theJudicial Division/Magisterial District (except the wearing apparel and bedding of him or his family and the tools and implements of his trade, to the value of ten naira), and also by seizing and taking any money, bank notes, cheques, bills of exchange, promissory notes, bonds or securities for money belonging to the plaintiff which may there be found or such part or so much thereof as may be sufficient to satisfy this execution and to bring what you shall have so levied into Court and to make return of what you have done under this writ immediately upon the execution thereof.

DATED thisday of20

.....
Judge [or Magistrate]

To the Sheriff and Bailiffs of the Court.

.....
N K

Cost remaining due

Fees on issue of this writ

Total amount to be levied exclusive of further costs, if any, of executionN

Application was made to the registrar for this writ at minutes past the hour of in thenoon of the day last mentioned above.

NOTICE.-The goods and chattels are not to be sold until the end of five days next following the day on which they were seized, unless they are of a perishable nature or at the request of the plaintiff.

.....
Registrar

FORM 7

Interpleader summons to judgment creditor

In the High/Magisterial Court of the Judicial Division/Magisterial District of

No. of Plaintiff

Suit No

No. of interpleader

Execution

Between [name, address and occupation] Judgment Creditor

and

[name, address and occupation] Judgment Debtor

and

[name, address and occupation] Claimant

WHEREAS the claimant has made a claim to [certain goods (*or* the proceeds of sale *or* value) of certain goods) taken in execution and under process issuing out of this Court at your instance] [*or* certain rent alleged to be due to him in respect of and issuing out of the premises upon which certain goods were taken in execution under process issuing out of this Court at your instance]:

You are hereby summoned to appear at a court to be holden at on the day of, 20 at the hour of in the noon when the said claim will be adjudicated upon and such order made thereon as the Court thinks fit.

DATED this day of 20

.....
Judge [or Magistrate]

To the Execution Creditor

NOTE.- The claimant is called upon to file two copies of the particulars of his claim and if the particulars are so filed a copy will be sent to you.

.....
Judge [or Magistrate]

FORM 8

Interpleader summons to claimant claiming goods or rent under an execution

[Title as in Form 7]

You are hereby summoned to appear at a court to be holden at on the day of, 20 at the hour of in the noon to support a claim made by you to

FORM 8-continued

[certain goods (*or* to the proceeds of *sale* [*or* value] of certain goods)] [*or* to certain rent alleged by you to be due to you issuing out of premises upon which certain goods were taken] in execution under process issuing out of this Court at the instance of the judgment creditor and in default of your then establishing such claim the said goods will then be sold and the proceeds thereof paid over [*or* the said proceeds of sale (*or* value) will be paid over] according to the exigency of the said process:

AND take notice that you are hereby required within eight days after the service of this summons on you, inclusive of the day of service, or if the summons has been served less than fourteen clear days before the return day, then within such reasonable time before the return day as the time of service permits, to file in the Court registry two copies of the particulars of [the goods which (*or* the proceeds [*or* value] whereof) are claimed by you] *for* the amount of the rent claimed by you and of the period for which and the premises out of which you claim that such rent issues], and of the grounds of your claim, and in such particulars you must state fully your name, address, and occupation:

AND take notice, that in the event of your not giving such particulars as aforesaid, your claim may not be heard by the Court.

DATED thisday of20
To the Claimant

.....
Judge [or Magistrate]

FORM 9

*Interpleader summons to execution creditor and sheriff where claimant claims
goods and damages*

In the High/Magisterial Court of theJudicial Division/Magisterial District of

No. of Plaintiff

Suit No

No. of interpleader

Execution

Between Judgment Creditor,
and

..... Judgment Debtor,
and between

..... Claimant.
and

..... (*the Judgment Creditor*)
and
the *Sheriff* Respondents.

FORM 9-continued

WHEREAS [insert name, address and occupation of claimant] has made a claim to certain goods [or to the proceeds of sale (or value) of certain goods] taken in execution under process issuing out of this court at your instance, and has also claimed from you [and from the Sheriff] the

sum of N for damages arising out of the said execution:

You are therefore hereby summoned to appear at a court to be holden at on the day of, 20 at the hour of in the noon, when the said claim both as to the said goods [or the proceeds of sale (or value) of the said goods] and as to the said damages, will be adjudicated upon and such order made as the Court thinks fit.

DATED this day of 20

.....
Judge [or Magistrate]

To the Execution Creditor [and the Sheriff]

NOTE.- The claimant is called upon to tile two copies of the particulars of his claim and if the particulars are so filed a copy will be sent to you.

FORM 10

*Interpleader summons to claimant claiming goods and damages under an execution
[Title as in Form 9]*

You are hereby summoned to appear at a court to be holden at on the day of, 20 at the hour of in the noon to support a claim made by you to certain goods [or to the proceeds of sale (or value) of certain goods] taken in execution under process issuing out of this Court at the instance of the judgment creditor and also for damages arising out of such execution: And in default of your then establishing such claim, the said goods will be sold and the proceeds thereof paid over [or the said proceeds of sale (or value) will be paid over] according to the exigency of the said process.

AND take notice, that you are hereby required within eight days after the service of this summons on you, inclusive of the day of service, or if the summons has been served less than fourteen clear days before the return day, then within such reasonable time before the return day as the time of service permits, to tile in the Court registry two copies of the particulars of the goods which [or the proceeds (or value) whereof] are claimed by you, and of the grounds of your claim, and you must also state in such particulars the amount of the damages you claim, and the party from whom you claim the same, and the grounds of your claim; and in such particulars you must state fully your name, address and occupation:

AND take notice, that in the event of your not giving such particulars as aforesaid, your claim may not be heard by the Court.

To the Claimant

.....
Judge [or Magistrate]

FORM 11

Warrant with writ of execution or order of commitment to registrar offoreign court

[General Title-Form 1f]

WHEREAS this writ or execution has been issued out of this Court against the goods and chattels of the defendant.

[If the writ is issued against only one of several defendants, name him.]

AND WHEREAS the goods and chattels of the said defendant are out of the jurisdiction of this Court and are believed to be within the jurisdiction of the High/Magistrate's Court of which you are the registrar.

[or WHEREAS this order of commitment has been made against the defendant.

(If the order is issued against one only of several defendants, name him.)

AND WHEREAS the said defendant is out of the jurisdiction of this Court and is believed to be within the jurisdiction of the Court of which you are the registrar.]

These are therefore to require you to cause the said writ [or order of commitment] to be executed within the jurisdiction of the last-mentioned court.

DATED this day of 20

.....

Registrar

To the Registrar of the last-mentioned Court.

FORM 12

Return and remittance from foreign court

[General Title-Form 1]

Take notice that the sum of ₦ has been recovered under the above writ of execution [or order of commitment] and Treasury deposit receipt No of , 20 for this amount is enclosed herewith.

[Here set out any further or other return where the full amount has not been recovered.]

DATED this day of 20

.....

Registrar

To the Registrar of the (Home) Court.

.....

FORM 13

Praeclipe for judgment summons

No. of Plaintiff

No. of Suit

No. of Judgment Summons

Plaintiff's names in full

Plaintiff's residence and occupation

Full names and addresses [or other sufficient identification] of all defendants, with their occupations if known [add, if any defendant is a female. The judgment (or order) is enforceable against the defendant personally and not only against her property.]

Date of judgment [or order] the day of 20

[Order.]

I apply for the issue of a judgment summons against the above-named defendant [name the defendant, or if there are more defendants than one, and plaintiff desires to proceed against some or one only, name them or him], in respect of a judgment [or an order] of this Court [or as the case may be].

I am aware that, if I do not prove to the satisfaction of the Court at the hearing that the defendant has, or has had since the date of the judgment [or order], the means to pay the sum in respect of which he has made default I may have to pay the cost of this summons.

.....
Plaintiff or his Solicitors,

Solicitor's Address
.....
.....

[To be filled up by Registrar where payment into Court has been ordered.]

(Strike out what is not applicable)

Folio Ledger

..... N k

Sum in payment of which defendant has made default

Fees on issue of this summons

Travelling expenses to be paid or tendered to defendant

Total amount for which summons to be issued N

Unsatisfied costs of execution not included above and not payable out of money paid into Court, except under an execution against the goods of the defendant N

FORM 14

Judgment summons on a judgment

In the High/Magisterial Court of the Judicial Division/Magisterial District of

No. of Plaintiff

No. of Suit

No. of Judgment Summons

Between

.....
.....
.....

Plaintiff

and

.....
.....

Defendant.

WHEREAS the plaintiff obtained a judgment [or order] against the above-named defendant in this Court [*or as the case may be*] on the day of , 20 for the payment ₦ : for debt [*or damages*] and costs, forthwith [*or on the* day of , 20] [*or* by instalment of ₦ for every and subsequent costs have been incurred and allowed by the Court, amounting to ₦

AND WHEREAS default has been made in payment of the sum of N payable in pursuance of the said judgment [*or order*] and the plaintiff has required this judgment summons to be issued against you the defendant [*if the summons is issued against some or only one of several defendants name them or him*].

You are therefore hereby summoned to appear personally in this COUll, at on the day of , 20 at the hour of in the noon, to be examined on oath touching the means you have or have had since the date of the said judgment [*or order*] to satisfy the sum payable in pursuance of the said judgment [*or order*]; and also to show cause why you should not be committed to prison for such default.

DATED this day of 20

.....
Judge [or Magistrate]

To the defendant [*if the summons is issued against some or one only of several defendants name them or him*].

FORM 14-continued

N k

Sum in payment of which defendant has made default
Fees on issue of this summons
Travelling expenses to be paid or tendered to defendants
Sum on payment of which this summons will be satisfied
.....

Unsatisfied costs of execution not included above and not payable out of money paid into Court,
except under an execution against the goods of the defendant N

Registrar

FORM 15

*Judgment summons on judgment or order against a firm, or a person carrying on
business in a name other than his own*

[Title as in Form 14]

To [state the name, address, and occupation of a person alleged to be a partner in, or the person
alleged to be carrying on business in the name of the firm against whom the judgment (or order)
was obtained].

WHEREAS the plaintiff obtained judgment [or an order] against the defendant by and in the firm
name of [state the name, address, and description, as in the original summons, with any amend-
ment made by the court] in this court [or as the case may be] on theday
of , 20, for the sum of N for
debt [or damages] and costs forthwith or on theday
of , 20[or by instalments of N for
every] and there is now due and payable under the said judgment [or order] the sum of
N

AND WHEREAS the plaintiff has filed an affidavit in this Court, a copy whereof is hereunto an-
nexed, wherein it is alleged that you the above-named are liable
[as a partner in the said firm] [or as the person carrying on business in the said firm name] to pay
the sum payable under the said judgment [or order]:

You are therefore hereby summoned to appear personally in this Court, at
ontheday of , 20at the hour
ofin thenoon, to be examined on oath touching the
means you have or have had since the date of the said judgment [or order] to pay the said sum of

FORM 15-continued

₦ now due and payable under the said judgment [or order] and also to show cause why you should not be committed to prison for default in payment of the said sum.

AND take notice that if you deny that you are liable [as a partner in the said firm] /or as the person carrying on business in the said firm name] to pay the sum payable under the said judgment [or order] you must appear at this Court on the day and at the hour above-mentioned, and that in default of your so appealing you will be deemed to admit your liability to pay the amount due and payable under the said judgment [or order].

DATED this day of 20

.....
Judge [or Magistrate]

₦ k

Amount in arrear under judgment [or order]

Fee on issue of this summons

Travelling expenses to be paid or tendered

Sum on payment of which this summons will be satisfied ₦

N.B.-This summons is available against one person only.

.....
Registrar

FORM 16

Affidavit for leave to issue judgment summons on judgment or order against a firm, or a person carrying on business in a name other than his own

[General Title Form-1]

I, of the above-named plaintiff [or] make oath and say as follows-

1. On the day of 20, I [or the plaintiff] obtained judgment [or an order] in this action in this Court [or as the case may be] against the defendants [*state firm name in which defendants were sued*] for the sum of ₦ for debt [or damages] and costs and there is now due and payable under the said judgment [or order] the sum of ₦

2. I allege that [*state name, residence and occupation*] is liable as a partner in the said firm [or as the person carrying on business in the said firm name] to pay the sum payable under the said judgment [or order], and I make this allegation on the following grounds:

- (a) That the said has admitted before the Court in the proceedings in which the said judgment [or order] was obtained that he was a partner in the said firm [or the person carrying on business in the said firm name] at the time when the cause of action arose or has been adjudged in the proceedings in which the said judgment [or order] was obtained to be liable as a partner in the said firm [or as the person carrying on business in the said firm name]: or

FORM 16-continued

- (b) That the said was individually served as a partner in the said firm [or as the person carrying on business in the said firm name] with the summons in the action in which the said judgment [or order] was obtained and failed to appear at the trial: or
- (c) [State any other grounds on which the person named is alleged to be liable, with the deponent's sources of information and grounds of belief]

3. [Add where the plaintiff does not make the affidavit. That I am duly authorised by the plaintiff to make this affidavit on his behalf.]

FORM 17

Order of commitment on a judgment or order

[General Title Form-J]

To the Sheriff and Bailiffs of the Court and to the Officer in Charge of the prison at

WHEREAS the plaintiff obtained a judgment [or an order] against the defendant [where judgment has been given against more than one defendant, adapt accordingly] in this Court [or as the case may be] on theday of, 20 for the payment of ₦ for debt [or damages] and costs on theday of, 20[or by instalments of ₦ for every ,] and subsequent costs have been incurred in pursuance hereof amounting to ₦

AND WHEREAS the defendant [if there are more defendants than one, name the defendant against whom this order was made] has made default in payment of ₦: payable in pursuance of the said judgment [or order].

AND WHEREAS on the hearing this day of a judgment summons issued against the said defendant it has been proved to the satisfaction of the Court that the said defendant has [or has had since the date of the judgment [or order]] the means to pay the said sum and has shown no cause why he should not be committed to prison.

IT IS ORDERED that for such default as aforesaid the said defendant shall be committed to prison fordays, unless he shall sooner pay the sum stated below as that upon payment of which he is to be discharged.

These are therefore to require you the said sheriff and bailiffs, to take the said defendant and to deliver him to the officer in charge of the prison at, and you the said officer to receive the said defendant, and safely keep him in the said prison for days from the arrest under this order, or until he shall be sooner discharged by due course of law.

FORM 17-continued

DATED this [insert date upon which order was made in Court] day
of 20

.....

Judge [or Magistrate]

[Order issued the day of 20

₦ k

Sum in payment of which defendant has made default at the time of the
issue of judgment summons

Fees and costs on issue and hearing of judgment summons

Deduct amount paid since issue of judgment summons ₦

Fees for issue of this order.

₦ k

Sum on payment of which the debtor is to be discharged ₦

[For use when part payment made after issue of order]

Deduct amount paid since issue of order.....

Balance on payment of which the debtor is to be discharged ₦

.....

Registrar

[NOTE-A separate order must be issued against every defendant required to be arrested.]

FORM 18

*Order of commitment on a judgment summons on a judgment or order against a firm or
a person carrying on business in a name other than his own*

In the High/Magisterial Court of the Judicial Division/Magisterial District of

No. of Plaintiff

No. of Judgment Summons

In the High/Magistrate's Court of the Judicial Division/Magisterial District of

Between Plaintiff and [State
name, address, and occupation, as in the original summons, with any amendment made by the
Court]

..... Defendant.

To the Sheriff and Bailiffs of the Court and to the Officer in Charge of the prison at

FORM 18-continued

WHEREAS the plaintiff obtained a judgment [*or* an order] against the defendants by and in the firm name of in this Court [*or* as the case may be] on the day of 20, for the sum of ₦ for debt [*or* damages] and costs and there is now due and payable under the said judgment [*or* order] from the defendants to the plaintiff the sum of ₦

AND WHEREAS the plaintiff has alleged in an affidavit filed in this Court, that *[state the name, address, and occupation of a person alleged to be a partner in the said firm, or of the person alleged to be carrying on business in the said firm name]*, (hereinafter called the defendant) was liable as a partner in the said firm [*or* as the person carrying on business in the said firm name] to pay the sum payable under the said judgment [*or* order].

AND WHEREAS on the hearing this day of a judgment summons issued out of this Court against the defendant he did not appear [*or* he appeared but it was proved that he was liable to pay the said sum], and it was proved to the satisfaction of the Court that the defendant has [*or* has had since the date of the said judgment (*or* order)] the means to pay the sum due and payable under the said judgment [*or* order], and has shown no cause why he should not be committed to prison:

IT IS ORDERED that for such default as aforesaid the defendant shall be committed to prison for days, unless he shall sooner pay the sum stated below as that upon payment of which he is to be discharged.

These are therefore to require you the said sheriff and bailiffs, to take the defendant and to deliver him to the officer in charge of the prison at and you the said officer to receive the defendant and safely keep him in the said prison for days from the arrest under this order, or until he shall be sooner discharged by due course of law.

DATED this [*insert date upon which order was made in Court*] day of 20

.....
Judge [or Magistrates]

[Order issued the day of 20

₦ k

Amount remaining due under judgment [*or* order] at time of issue of
judgment summons

Fees and costs on issue and hearing of judgment summons

Deduct amount paid since issue of judgment summons ₦

Fees and costs on issue of this order

Balance on payment of which the debtor is to be discharged ₦

.....
Registrar

FORM 19

New order on judgment summons

[General Title-Form 1]

WHEREAS the defendant [*where judgment has been given against more than one defendant adapt accordingly*] has made default in payment of ₦ payable in pursuance of the judgment [or order] in this action given [or made] in this Court [or as the case may be] on the day of ,20

IT IS ORDERED upon the hearing this day of a judgment summons issued against the said defendant that the said defendant do pay the amount remaining due under the said judgment [or order] [*add, if so ordered*] and the fees and costs of the issue and hearing of the said judgment summons) as stated at the foot of this order, to the registrar of this Court, by instalments of ₦ for every first payment to be made on the day of , 20

.....

Judge [or Magistrate)

₦ k

Amount remaining due under judgment [or order]

Fees and costs of judgment summons and hearing

Total ₦

Unsatisfied costs of execution not included above and not payable out of moneys paid into Court except under an execution against the goods of the defendant ₦

NOTE.-In case default be made in payment of any instalment according to this order, execution or successive executions may issue for the whole of the said sum and costs then remaining unpaid, or for such portion thereof as the Court shall order.

.....

Registrar

FORM 20

New order on judgment summons on a judgment or order against a firm, or a person carrying on business in a name other than his own

No. of Plaintiff

No. of Suit

No. of Judgment Summons

In the High/Magistrate's Court of the Judicial Division/Magisterial District of Between Plaintiff,
and Defendants.

[State name, address and occupation, as in the original summons, with any amendment made by the Court.]

FORM 20-continued

WHEREAS the plaintiff obtained a judgment [*or an order*] against the defendants by and in the firm name of , above-described, in this Court [*or as the case may be*] on the day of , 20, for the sum of ₦ and costs, and there is now due and payable under the said judgment [*or order*] from the defendant to the plaintiff the sum of ₦

AND WHEREAS the plaintiff has alleged in an affidavit filed in this Court that [*state the name, address and occupation of a person alleged to be a partner in the said firm /ame*] (hereinafter called the defendant) was liable as a partner in the said firm [*or as the person carrying on business in the said firm name*] to pay the sum payable under the said judgment [*or order*].

AND WHEREAS on the hearing this day of a judgment summons issued out of this Court against the defendant he did not appear [*or*, he appeared but it was proved that he was liable to pay the said sum].

IT IS ORDERED that the defendant do pay the amount remaining due on the said judgment [*or order*] [*add if so ordered*, and the fees and costs of the issue and hearing of the said judgment summons], as stated at the foot of this order, to the registrar of this Court, by instalments of ₦

for every , the first payment to be made on the day of , 20

.....

Judge [or Magistrate]

₦ k

Amount remaining due under judgment [*or order*]

Fees and costs of judgment summons and hearing _____
Total ₦ _____

Unsatisfied costs of execution not included above and not payable out of moneys paid into Court except under an execution against the goods of the defendant N

NOTE.-In case default be made in payment of any instalment according to this order, execution or successive executions may issue for the whole of the said sum and costs then remaining unpaid, or for such portion thereof as the Court shall order.

.....
Registrar

FORM 21

Certificate by officer of court or by creditor for discharge of judgment debtor on payment of debt

[General Title-Form 1]

I hereby certify that the defendant, who was committed to your custody by virtue of an order of commitment made by the High/Magistrate's Court of the judicial

FORM 21 -continued

Division/Magisterial District, bearing date theday of, 20, has paid and satisfied the sum of money for the non-payment whereof he was so committed, together with all costs due and payable by him in respect thereof; and that the defendant may in respect of such order, be forthwith discharged out of your custody,

DATED thisday of 20.....
to the Officer in charge of theprison at

.....
Creditor or Officer of the Court

FORM 22

*Certificate by officer of court for discharge of judgment debtor upon failure of creditor
to pay subsistence allowance*

[General Title-Form I]

I hereby certify that the creditor has failed to pay the allowance for the subsistence of the defendant, who was committed to your custody by virtue of an order of commitment made by this Court bearing date the day of 20..... and that the defendant, may in respect of such order, be forthwith discharged out of your custody.

DATED thisday of 20,
to the Officer in charge of the prison at

.....
Officer of the Court

FORM 23

Application for discharge by judgment debtor under section 74

[General Title-Form I]

I, having been committed to prison at , by virtue of an order/a warrant of commitment made by the Court bearing date theday of 20 hereby apply for my discharged from the said prison.

I annex hereto a full statement of all property belonging to me and of the places respectively where such property is to be found.

.....Judgement Debtor,

To the Judge/Magistrate of the Judicial Division/Magisterial District.

FORM 24

Order for liberation of judgment debtor under section 75

[General Title-Form I]

WHEREAS on theday of, 20, the plaintiff obtained a judgment [or an order] in this Court against the defendant for the sum of ₦ for debt [or damages] and costs, and it was ordered that the defendant should pay the same [to the registrar] forthwith [or on theday of, 20] [or by instalments offor every].

AND WHEREAS the defendant made default in payment ₦ payable in pursuance of the said judgment [or order] and was committed to your custody by virtue of an order of commitment made by this Court, bearing date the day of, 20

AND WHEREAS the defendant has made application for his discharge and has satisfied the Court that he has made a full surrender and disclosure of his property and cannot satisfy the judgment.

It is ordered that the defendant be forthwith discharged out of your custody in respect of such order of commitment.

DATED thisday of 20
to the Officer in charge of theprison at

.....
Judge [or Magistrates]

FORM 25

Affidavit in support of garnishee order

In the High/Magistrate's Court of theJudicial/Magisterial Division/District of
No

No. of Plaintiff
No. of Suit

Between [name, address and occupation] Judgment Creditor
and

[name, address and occupation] Judgment Debtor
and

[name, address and occupation] Garnishee

I, of [or I, of]
Solicitor for] the above-named judgment creditor make oath and say-

1. That I [or] on the day of, 20 recovered
judgment [or obtained an order] in the High/Magistrate's Court of the

FORM 25-continued

Judicial Division/Magisterial District in this action against the above-mentioned judgment debtor for payment of the sum of ₦ for debt [or damages] and costs.

2. That the said judgment [or order] is still wholly unsatisfied [or is still unsatisfied as to the amount of ₦].

3. That the gamishee,of, is indebted to the judgment debtor in the sum of ₦ [add if so] for payment of which sum the judgment debtor recovered judgment [or obtained an order] in the Court against the said gamishee on the ..day, of20, and by the said judgment [or order] it was ordered that the said gamishee should pay the said sum of ₦ to the registrar of the said Court on the day of , 20 [or by instalments of for every] and the sum of ₦ remains due and unpaid under the said judgment [or order].

[Add, if the gamishee does not reside within the Division/District of the Court.]

4. That proceedings could be brought by the judgment debtor against the garnishee in this Court for the recovery of the said debt (or, if the Court is a Magistrate's Court, and the amount of the debt exceeds the Magistrate's jurisdiction, for the recovery of ₦ 400 [or as the case may be] part of the said debt) (add, If the debt is nor yet payable, if the debt were immediately payable) on the ground that the cause of action arose wholly or in part (or, the subject matter of such proceedings is) within the Division/District of this Court because (state the facts relied on as giving the Court jurisdiction to entertain the proceedings).

FORM 26

Garnishee order

[Title as in Form 25]

WHEREAS on theday of20....., recovered judgment [or obtained an order] in the High/Magistrate's Court of the Judicial Division/Magisterial District against the judgment debtor for payment of the sum of ₦ for debt [or damages] and Nfor costs which judgment [or order] remains unsatisfied as to the sum of ₦

AND WHEREAS the judgment creditor has filed an affidavit stating that you are indebted to the said judgment debtor in the sum of ₦

You are hereby ordered to appear at a Court to be holden at on the day of , 20, at the hour of in thenoon, to show cause why an order should not be made upon you for the payment to the judgment creditor of the amount of the debts due and owing or accruing for you to the said judgment debtor or so much thereof as will satisfy the debt due under the said judgment [or order] and the costs entered on this summons.

FORM 26-*continued*

And take notice, that from and after the service of this summons upon you so much of the debts owing or accruing from you to the judgment debtor as will satisfy the debt due under the said judgment [*or order*] and the costs entered on this summons are attached to answer the said judgment [*or order*]:

And further take notice, that if you pay to the registrar of this Court the amount of such debts, or so much thereof as will satisfy the debt due under the said judgment [*or order*] and the costs entered on this summons within eight days of the service of this summons on you, inclusive of the day of service, you will incur no further costs.

DATED thisday of 20

.....
Judge [or Magistrate]

ℳ k

Amount remaining due under judgment [*or order*]

Fees on issue of this summons

Total amount for which summons issuedℳ

This summons is issued at the instance ofthe judgment creditor [*or* Solicitor for the judgment creditor whose address for service is].

.....
Registrar

FORM 27

Execution against garnishee

[*Title as in Form 25*]

WHEREAS on theday of20, the judgment creditor obtained a judgment in this court against the garnishee whereby it was adjudged that the judgment creditor should recover against the garnishee the sum of ℳ being the amount of the debts found due from the garnishee to the judgment debtor and it was ordered that the garnishee should pay the said sum of ℳ : [*or* the said sums of ℳ amounted together to the sum of ℳ], to the registrar on theday of20, [or by instalments offor every]]

AND WHEREAS default has been made in payment according to the said order:
These are therefore [*proceed as in Form 4*].

.....
Judge [or Magistrate]

SECOND SCHEDULE
[Section 104.]

Certificate of judgment

<i>Title of suit and date of commencement</i>	<i>Form or nature of suit</i>	<i>Name and addition of party to whom payment is to be made or in whose favour judgment is given or made</i>	<i>Name and addition of party ordered to pay money, or to do or not to do any act</i>	<i>Date of judgment</i>	<i>Abstract of judgment stating amount (if any) ordered to be paid, the rate of interest (if any) payable thereon, and the date from which it is payable, and particulars of any act ordered to be done or not to be done</i>	<i>Date of trial and amount of verdict if any</i>
---	-------------------------------	--	---	-------------------------	---	---

I certify that this certificate correctly and fully sets forth the particulars of a judgment given in this Court, on the day of in a suit wherein A.B. was plaintiff and C.D. was defendant (*or as the case may be*).

DATED this day of 20

.....
(Registrar, or other proper officer)

SHERIFFS AND CIVIL PROCESS ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Judgments (Enforcement) Rules of Court.
2. Enforcement of judgments and service of process rules.

JUDGMENTS (ENFORCEMENT) RULES OF COURT

ARRANGEMENT OF ORDERS

PART I—PRELIMINARY

PART II—RULES

ORDER

- I. Duties of the sheriff and bailiffs.

- II. General.
 - III. Stay of judgments and process.
 - IV. Issue of process.
 - V. Attachment.
 - VI. Interpleader summons.
 - VII. Sale.
 - VIII. Garnishee proceedings.
 - IX. Judgment summons.
 - X. Arrest and imprisonment.
 - XI. Other process.
 - XII. Forms and fees.
-

JUDGMENTS (ENFORCEMENT) RULES

Rules of Court
under section 94

PART I

Preliminary

1. Short title

These Rules may be cited as the Judgments (Enforcement) Rules.

2. Interpretation

In these Rules, unless the context otherwise requires -

"the Act" means the Sheriffs and Civil Process Act;

"bailiff", except in relation to salary and other emoluments, includes a police officer acting under section 15 of the Act;

"execute", "executed", "execution", respectively include "serve", "served", "service";

"foreign court" means court to which process has been sent from another court for execution;

"form" means a form in the First Schedule to the Act or added thereto by these Rules;

"High Court" includes court of a judicial division of the High Court;

"home court" means court from which process has been sent to another court for execution;

"immovable property" includes any right, title, or interest in immovable property;

"judgment" includes order on a judgment summons;

"land" includes buildings;

"officer" includes registrar and sheriff, but does not include bailiff;

"proceeding" includes civil proceeding, and criminal proceeding in which a judgment has been given for the payment of a sum of money recoverable by distress;

"process" includes writ of interim attachment, warrant to arrest an absconding defendant, warrant to arrest a ship, and judgment summons;

"registrar" includes registrar of the High Court and registrar of a magistrate's court.

PART II

Rules

ORDER I

Duties of the sheriff and bailiffs

1. Appraisers and appraisement

(1) The sheriff may from time to time as he thinks fit appoint such number of persons for keeping possession, and such number of sworn appraisers for the purpose of valuing any property attached under process of a court, as appears to him to be necessary.

(2) The sheriff may direct security to be taken from any appraiser or other person so appointed for such sum and in such manner as he thinks for the faithful performance of his duties without injury or oppression.

(3) The sheriff may dismiss any appraiser or other person so appointed.

2. Sales

Unless application is made to the court for the services of a licensed auctioneer, sales of property by auction shall be conducted by a bailiff under the supervision of a deputy sheriff.

3. Appointment of bailiff

In the exercise of his powers under section 5 of the Act, the sheriff may appoint any person to be a paid bailiff or an unpaid bailiff.

4. Emoluments of bailiffs

(1) A paid bailiff shall receive such salary as may be approved by the President in respect of the Federal Capital Territory, Abuja and by the Governor in respect of each State of the Federation.

(2) For the service of any document, for personal arrest, for the execution of a writ against property, and for the man in possession an unpaid bailiff shall be entitled to be paid the fees prescribed for such services and also any fee paid for mileage in respect of the service rendered by him.

(3) The fees payable to a bailiff as certified by a registrar on Form 28 shall be paid to the bailiff on a voucher classified against the appropriate expenditure item and not otherwise.

[Form 28.]

(4) Except as aforesaid, a bailiff shall not receive or demand any fee, reward, mileage

money, subsistence or other allowance for any service rendered by him as a bailiff.

(S) Where any service mentioned in paragraph (2) of this rule is rendered by a paid bailiff, the fee in respect of such service shall be paid into the Consolidated Revenue Fund.

5. Receipts to be given by bailiff

(1) Every bailiff shall be furnished with two receipt books, one to be used in each alternate month. Every such receipt book shall be in the form of Treasury Receipt Book No.6A.

(2) Whenever any bailiff shall receive any money by virtue of his office, he shall prepare a receipt in triplicate in such receipt book entering there on-

- (a) the name and the date of the process;
- (b) the title of the proceedings in respect of which the money is received; and
- (c) the amount for which the receipt is given.

(3) The original of such receipt shall be delivered to the person making the payment, the duplicate shall be attached to the voucher supporting payment into the Treasury and the triplicate shall remain in the receipt book.

6. Payment of money received to sheriff

Every bailiff shall pay to the deputy sheriff as soon as possible and not less frequently than twice in each week and on the last working day of each calendar month all monies for the time being remaining in his hands:

Provided that whenever the amount in hand in respect of such moneys shall exceed the sum of ₦ SO, such amount shall be paid to the deputy sheriff at the close of the day.

7. Monthly returns of writs and money

At the close of every month each bailiff shall make-

- (a) a full return to the deputy sheriff in Form 30 of all writs, orders, and warrants which remained in his hands not fully executed at the end of the preceding

month, and of all such writs, orders, and warrants as have been entrusted to him for execution during the past month, and shall set against each such process a statement of what has been done thereunder; and

[Form 30.]

- (b) a return in Form 31 of all moneys received by him during the month.

[Form 31.]

8. Examination of returns and receipt books

(1) The deputy sheriff shall thereupon examine the said returns and see that the return (Form 30) includes all process as aforesaid, and that all sums of money appearing in the return (Form 31) have been duly paid to him.

(2) He shall also examine the counterfoils of the receipt book used by the bailiff during the past month and see that there is an entry on a counterfoil to denote that a receipt from the said book has been given for each sum acknowledged to have been received and that all sums for which receipts appear from the counterfoils to have been given have been duly entered and accounted for in the second return as aforesaid.

(3) At the end of the examination of each return the deputy sheriff shall certify that he has examined such return in accordance with the law, and shall forward it to the sheriff.

9. To whom process is to be sent for execution

All writs, orders, and warrants are to be delivered or sent by the proper officer of court to a deputy sheriff, and not to a bailiff in the first instance:

Provided that writs of execution issued at the instance of the Commissioner of Income Tax may be delivered or sent to the Commissioner of Income Tax, and that writs of execution issued at the instance of the secretary of a local government council, may be delivered or sent to such secretary, and the writs of execution issued at the instance of the Director of Federal Public Works may be delivered or sent to the Director of Federal

Public Works.

10. Sheriffs receipt for writ

The receipt to be given by the sheriff under section 10 of the Act shall be in Form 32.

[Form 32.]

11. Sheriffs register and cash book

Every deputy sheriff shall keep a sheriffs register of process in Form 33 and also a cash book in which he shall record all receipts and payments of monies in connection with the execution of process.

12. Unexecuted process

If any process sent to the sheriff for execution or service has not been executed or served, as the case may be, within one month from the date of receipt, the sheriff shall at the end of the first and every subsequent month during which the process remains unexecuted notify the judgment creditor and the registrar of the court from which the process

was received, and also, if the process was issued from another court, the registrar of that court.

13. Return of process

The deputy sheriff, shall as soon as possible, return the process with an account showing the amount realised, the amount due for sheriffs, bailiffs and appraiser's fees and expenses, and the balance; and shall pay the balance into court. In case of a sale of property he shall also deliver a duly certified sale account.

14. Payment

The balance shall be payable to the judgment creditor or other person entitled thereto, who shall give a receipt therefor.

15. Prohibition of payment to judgment creditor

No money realised by any process is ever to be paid by the sheriff or a bailiff to the judgment creditor or to his lawyer or agent.

16. Offences by bailiffs

Any bailiff who fails to comply with any of the provisions of these regulations shall be guilty of an offence and liable to a fine of NI 00 or to imprisonment for three months or to both such fine and imprisonment.

17. Neglect to levy execution

Where a complaint is made against a bailiff under section 40 of the Act, the registrar shall issue a summons in Form 34 which shall be served on the bailiff in accordance with the rules for service of ordinary summonses not less than ten clear days before the return day.

[Form 34.]

ORDER II

General

1. Court and chamber practice

Subject to any provision to the contrary, where anything is required by these Rules to be done before or by a court, the same shall be done before a judge or magistrate as the case may require sitting as a court; and where anything is required to be done before or by a judge or magistrate, the same may be done before or by a judge or magistrate, as the case may require, either sitting as a court or in chambers.

2. Provisions as to time

Subject to the provisions of any Act or Law as the case may be, fixing the times and places for sittings of the court, and to the provisions of any Act fixing the time for doing any act, a judge or magistrate, in his discretion-

- (a) where the time for doing any act is prescribed by these Rules or fixed by any judgment, may, as often as he thinks fit, and either before or after the expiration of that time, enlarge or abridge that time; and
- (b) where the time for doing any act is not prescribed by these Rules, may fix that time, and the time so fixed shall be deemed to be the time prescribed by these Rules, and may be enlarged or abridged accordingly.

3. Parties may not alter times

The parties may not by consent enlarge or abridge any of the times prescribed by these Rules for doing any act.

4. No execution on public holiday

Execution shall not be effected on a Sunday or public holiday, nor before 6 a.m. nor after 6 p.m., unless the judge or magistrate directs otherwise by order endorsed on the process to be executed.

5. Money in court to be paid out when due

Where any money paid into a court under an Act or rule is or becomes payable to any party, officer, or person, the registrar shall inform such party, officer or person and pay the money out of court to him, subject to the approval of the judge or magistrate:

Provided that money payable to a party or to any person not in an official capacity shall not be paid out before demand made by such party or person.

6. Unexpected fees and expenses

Where-

- (a) a judgment creditor pays any sum of money for the subsistence of a judgment debtor or for the expenses of his conveyance to prison, and the judgment debtor is liberated after having been imprisoned for a shorter period than that in respect of which the subsistence money was paid, or before being imprisoned, or the order or warrant is superseded or stayed before imprisonment; or
- (b) a judgment creditor pays any sum of money in respect of fees for keeping possession of attached property, and the execution is superseded or finally stayed, or the property is sold, before such sum, or some part of it, has become due and payable to the sheriff,

then such sum or the balance thereof shall be payable to the judgment creditor by or through the court into which the sum was first paid by him.

7. Method of making payments by officer or bailiff

(1) An officer or bailiff who is required by the Act or these Rules to pay money to any person shall either-

- (a) hand, or cause to be handed, to the person to whom the money is required to be paid, or to his agent, the amount of the money in cash; or
- (b) pay the money into the Treasury and send the Treasury deposit receipt to the person to whom the money is to be paid.

By private individual

(2) A person other than an officer or bailiff who is required by the Act or these Rules to pay money to any officer or bailiff may pay the money into the Treasury and send the Treasury deposit receipt to the officer or bailiff to whom the money is to be paid.

8. Notices, etc.: how given

Subject to any provision to the contrary-

- (a) where any certificate or notice is required to be given, sent, or delivered under the Act or these Rules, it shall be in writing and subject to paragraph (e) of this rule, in the prescribed form, if any;

- (b) where any notification is required under these Rules it shall be in writing;
- (c) where any information is required to be given under these Rules, it may be given in writing or by word of mouth;
- (d) where any written information or other document is required to be given, sent, or delivered, it may, subject to paragraph (e) of this rule, be sent by hand or by post, whichever is the more expeditious; and if posted by an officer it shall be registered;
- (e) where circumstances so require, a brief note of the issue or dispatch, and the contents and effect of any certificate, notice, notification, or written information may be sent by telegram, and such telegram, and the dispatch thereof, shall, until receipt of such certificate, notice, notification, or written information, have the same validity and effect as the original certificate, notice, notification, or written information and the posting thereof;
- (f) any such telegram sent by an officer shall be franked by him, but the judge or magistrate may, if he sees fit, direct the expenses of sending it to be paid to the court by any party, and any expenses so paid or ordered to be paid shall be costs in the proceedings.

9. Filing

(1) The original or a true copy of every process and every other document shall be filed in the appropriate suit file.

(2) No document shall be filed unless it has entered or endorsed on it the name and number of the proceeding, the date of filing, and whether filed by the judgment creditor or the judgment debtor, or as the case may be; and on being filed such entry or endorsement shall be initialled by the registrar.

10. Applications and motions

Subject to any provision to the contrary, any application by a party for an order or direction of a court in relation to any judgment, execution, or process shall be made in the same manner as an application for an interlocutory order in that court.

11. Security

Where by or under the Act or these Rules any person is required or authorised to give security, the security shall be given in the same manner and subject to the same

conditions as security in relation to other proceedings in the court before which the security is taken.

12. Method of enforcing interlocutory orders

Without prejudice to any other means of enforcement authorised by the Act or these Rules, an interlocutory order may be enforced according to the following provisions -

- (a) if a plaintiff in a suit makes default or fails in fulfilling any interlocutory order, the court may, if it thinks fit, stay further proceedings in the suit until the order is fulfilled, or may give a judgment or non-suit against such plaintiff, with or without liberty of bringing any other suit on the same grounds of action, or may make such other order on such terms as to the court shall seem just;
- (b) if a defendant in any suit makes such default or failure the court may give judgment by default against such defendant, or make such other order as to the court may seem just; but any such judgment by default may be set aside by the court upon such terms as to the costs or otherwise as the court may think fit.

13. Cross judgment

If there be cross judgments between the same parties for the payment of money, execution shall be taken out by that party only who shall have obtained a judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the judgment for the larger sum as well as satisfaction on the judgment for the smaller sum, and if both sums shall be equal satisfaction shall be entered upon both judgments.

14. Court may stay execution in certain cases of previous judgment

Whenever any proceeding shall be pending in the court against the holder of a previous judgment of the court by the persons against whom the judgment was given, the court may, if it appear just and reasonable to do so, stay execution of the judgment either absolutely or on such terms as it may think just until a judgment shall be given in the pending proceeding.

15. Where judgment conditions

Where the judgment is to the effect that any party is entitled to any relief, subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the court for leave to issue execution; and the court may, if satisfied that the right to relief has arisen according to the terms of the judgment, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried as in a suit.

16. Orders in favour of or against persons not parties

Where a person not being a party in a proceeding obtains an order or has an order made in his favour, he shall be entitled to enforce obedience to such order by the same process as if he were a party in the proceeding; and any person not being a party in a proceeding against whom obedience to any judgment may be enforced, shall be liable to the

same process for enforcing obedience to such judgment as if he were a party to the proceeding.

17. Death of judgement debtor before execution

If any person against whom a judgment has been given shall die before execution has been fully had thereon, application for execution thereof may be made against the legal representative or the estate of the person so dying as aforesaid; and if the court shall think proper to grant such application, the judgment may be executed accordingly.

18. Mode of execution under preceding rule

If the judgment is ordered to be executed against the legal representative, it shall be executed in the manner provided by the next succeeding rule of this Order for the execution of a judgment for money to be paid out of the property of a deceased person.

19. Judgments against representatives and estate of deceased person

If the judgment be against a party as the representative of a deceased person, and such judgment be for money to be paid out of the property of the deceased person, it may be executed by the attachment and sale of any such property; or, if no such property can be found, and the judgment debtor fail to satisfy the court that he has duly applied such property of the deceased as shall be proved to have come into his possession, the judgment may be executed against the judgment debtor to the extent of the property not duly applied by him, in the same manner as if the judgment had been against the judgment debtor personally.

20. Against sureties

Whenever a person has become liable as security for the performance of a judgment or of any part thereof, the judgment may be executed against such person to the extent to which he has rendered himself liable, in the same manner as a judgment may be enforced against a judgment debtor.

21. Execution against a firm

(1) Where a judgment is against a firm, execution may issue as follows -

- (a) against any property of the partnership;
- (b) against any person who has admitted in the proceeding that he was a partner when the cause of action arose, or who has been adjudged to be liable as a partner;
- (c) against any person who was individually served with the summons as a partner or a person sought to be made liable
 - (i) if there was a trial and the person so served failed to appear at the trial;

or

- (ii) if the proceeding was an action on the undefended list in the Supreme Court or in the High Court or a default action in a magistrate's court, and judgment was entered in default of defence.

(2) If the judgment creditor claims to be entitled to issue execution against any other person as a partner, he may apply to the court on notice to the alleged partner for leave so to do and the following provisions shall apply-

- (a) the notice shall be served on the alleged partner personally;
- (b) on the hearing of the application the court may, if liability is not disputed,

give leave to issue execution and, if liability is disputed, may order the issue of liability to be tried in such manner as the court thinks fit and may give all necessary directions for that purpose.

(3) Except as against property of the partnership, a judgment against the firm shall not render liable, release, or otherwise affect any partner who was out of Nigeria when the summons was issued, unless he has been individually served with the summons.

22. Execution: claim by person not a party in regard to property attached

Every process may lawfully be carried into effect in any place within Nigeria where the defendant or judgment debtor or his movable or immovable property may be found or met with:

Provided that should any person not a party to the proceeding claim an interest in any attached property, real or personal, the sale thereof shall not proceed until the claim has been decided by a court being in the area where such property is situated and having jurisdiction to adjudicate upon such claim.

23. Where political or other trouble likely to result from execution of writ

A court may, if it appears likely that process cannot be carried into effect without causing political or other trouble, address the same to the Governor of the State, or the chairman of the local government council, where it is to be executed with a request that it shall be carried into effect, and such Governor or chairman shall thereupon cause the same to be carried into effect.

24. Where process to be issued

Except for the purposes of sections 44 and 55 of the Act and rule 13 of Order IV, process, other than a warrant issued from the High Court to arrest an absconding defendant, and a writ of interim attachment, shall issue from the court before which the proceeding is pending or which gave the judgment sought to be enforced, as the case may be, and from no other court.

[L.N. 47 of 1955.]

25. No transfer to High Court

Except for the purposes of section 44 of the Act and rule 13 of Order IV, no proceeding in a magistrate's court shall be transferred, for the purpose of enforcing any judgment therein, to the High Court.

26. Where process to be executed

(1) Process, other than a warrant issued from a magistrate's court to arrest an absconding defendant, and a judgment summons, shall be executed by or through the court for the division or district where the person or property sought to be affected is or is situated and by no other court.

(2) Where a process other than a judgment summons or a warrant issued in a magistrate's court to arrest an absconding defendant is required to be executed outside the division or district of the court from which it is issued, sections 37 and 39 of the Act and rule 28 of this Order shall apply:

[L.N. 47 of 1955.]

Provided that no such process issued from a magistrate's court for the enforcement of a judgment given in that court shall be sent for execution to the High Court.

27. Transfer for issue of judgment summons, or for execution against land

(1) Where, subject to the provisions of rule 25 of this Order, a judgment creditor desires to issue a judgment summons in a court other than that in which the judgment was given, or the judgment was given in a magistrate's court and the judgment creditor desires to issue in the High Court any process affecting the immovable property of the judgment debtor which may not lawfully issue out of a magistrate's court, the judgment creditor may apply to the court in which the judgment was given for the transfer of the proceedings subsequent to judgment to a court having jurisdiction to issue the judgment summons or process against immovable property.

(2) The application may be made in like manner and form as an application by a party to a cause or matter for a transfer thereof before judgment.

(3) Upon such application, all or any of the proceedings subsequent to judgment may be transferred to the court to which transfer is requested, in the manner, and upon the same conditions upon which, and with the same effect with which, the cause or matter in which the judgment was given might have been transferred to that court before judgment.

(4) When the proceedings have been transferred to the other court, payments under the judgment shall be made into that court, and, subject to sections 44 and 55 of the Act, any judgment summons or other process for enforcing the judgment shall be issued by that court.

(5) If the judgment creditor subsequently desires to issue a judgment summons, or any process affecting the immovable property of the judgment debtor, in another court, he may make an application to the court to which the proceedings have been transferred and the provisions of paragraphs (1) to (5) of this rule shall apply with the necessary modifications.

(6) Process and documents in transferred proceedings shall be commenced according to Form 35.

[Form 35.]

28. Process sent to a foreign court

(1) Every process sent to a foreign court for execution shall be accompanied by a warrant in Form I I in accordance with sections 37 or 39 of the Act.

[Form 11. Cap. S7. Schedule.]

(2) The registrar of the home court shall pay to the registrar of the foreign court any subsistence money paid in respect of a warrant or order of commitment or warrant of arrest and detention sent to a foreign court, and subsequent payments of subsistence money shall be paid by the judgment creditor to the registrar of the foreign court.

(3) Where, under any process sent to a foreign court, money is received by the registrar of that court, he shall, unless interpleader proceedings are pending, pay the money to the home court accompanied by a return in Form 12.

[Form 12. Cap. S6. Schedule.]

(4) Where interpleader proceedings are pending, the registrar shall postpone making the return under paragraph (3) of this rule until the interpleader proceedings are determined, and shall then make the return showing how the money is to be disposed of and pay to the home court money (if any) payable to the judgment creditor.

(5) All applications in relation to the process or execution shall be made to and adjudicated upon by the foreign court.

29. Duties and liabilities of party prosecuting decree by execution

(1) In every case of execution all steps therein shall be taken on the demand of the party prosecuting the judgment who shall be required to provide means of identification of the party against whom process is issued; and the party prosecuting the judgment is responsible for providing all service, execution, and mileage fees which may be due and execution shall not be proceeded with until such fees are made available.

(2) The party prosecuting the judgment shall be liable for any damage arising from any illegal or irregular proceeding taken at his instance, but this provision shall not exempt any officer or bailiff from any liability to which he would otherwise be liable.

Payment of fees where execution withdrawn

(3) In every case where an execution is withdrawn, satisfied, or stopped, any fee that may have been properly incurred by an officer or bailiff during execution shall be paid by the person at whose instance the process was issued or the execution is withdrawn, satisfied, or stopped, as the case may be.

30. Disposal of satisfied process

When any process other than an order or warrant for imprisonment which has been delivered to the officer in charge of a prison has been executed, satisfied, superseded, withdrawn, recalled, stayed, or suspended, the registrar shall file and retain it.

31. Costs of process

Except as otherwise prescribed by the Act or these Rules, the costs, fees and expenses of and incidental to the issue and the execution, if any, of process, whether executed or unexecuted or unproductive, shall be allowed against the judgment debtor, unless the judge or magistrate otherwise directs.

32. Costs of execution and interest

The judgment creditor may levy the costs of execution over and above the sum in the judgment unless the court shall otherwise order in cases where costs shall have been needlessly incurred, and may also levy any interest on the judgment which the court may have ordered.

33. Appraisement: by whom made

Where no sworn appraiser is available, any appraisement may be made by some person nominated in that behalf by the judge or magistrate, and if such person is a public officer, the appraisement fee shall be paid into the Consolidated Revenue Fund.

ORDER III

Stay of judgments and process

1. Application for stay of judgment

An application under section 23 of the Act, if not made at the trial, shall be made by motion on notice to the judgment creditor.

2. Stay of judgment or process

(1) An order to suspend or stay any judgment or process, or an order for the discharge or liberation of a debtor, shall be in Form 36.

[Form 36.]

(2) Where an order suspending or staying a judgment or any process has been made and process has issued, the process shall be recalled, but the court or magistrate may order the debtor to pay the costs of the process and any fees or expenses incurred before the recall of the process, and may authorise the sheriff to sell a portion of the property attached (if any) sufficient to realise such costs, fees, and expenses and the expenses of the sale, and any such process may be reissued by leave of the court or magistrate.

3. Notice of stay may be given at expense of judgment debtor

Where any execution is superseded under section 22 of the Act, or stayed under section 23 of the Act or otherwise, then, if the judgment creditor shall desire it, and shall deposit in court a sum sufficient to cover the expense, notice of supersession or stay shall be given in the same manner as in Order Y prescribed respecting the notice of attachment and the delivery of office copies of the order of attachment; and such steps shall be taken as may be necessary for staying further proceedings in execution of the decree.

ORDER IV

Issue of process

1. Period to elapse after judgment

(1) No writ of possession shall be issued until after the expiration of the day on which the defendant is ordered to give possession of the land, or, if no day has been fixed by the

court for giving possession, until after the expiration of fourteen days from the day on which judgment is given.

(2) No other process shall, except by express leave of the court, be issued until after the expiration of three days from the day on which judgment is given.

2. Execution on behalf of persons not parties to the suit

Execution may issue on behalf of any person not a party to the suit, by leave of the court, upon proof of his title to the benefit of the judgment, and upon substitution of the name of the new judgment creditor, together with a statement of his derivative title, for that of the former judgment creditor.

3. Application for process: to whom made

An application for the issue of any process which may issue without application to the court or a judge or magistrate shall be made to the registrar in the first instance, and an application for the issue of any other process shall be made to the registrar after the order for its issue shall have been obtained.

4. Manner of application to registrar for issue of process

An application to the registrar for the issue of any process in respect of which no *praeceipe* is required or prescribed shall be made by filing a written request for the issue of the process specifying the number and title of the suit, the date of the judgment, the nature of the process, and the name of the party against whom, and the amount, if any, for which it is to be executed.

5. Registrar to issue proper writ of execution

Upon the application of the judgment creditor, the registrar shall, subject to the provisions of these Rules, issue the proper process for the execution of the judgment.

6. Registrar may apply to court for direction

The registrar may, at any time, take the direction of the court as to any application for the issue of process and in the meanwhile refuse to issue the process.

7. Registrar to record time of application

The precise time of the making of an application to the registrar for the issue of any writ of execution shall be entered by him in a book in Form 37 and on the writ, and when more than one writ is issued they shall be executed in the order of the times so entered. [Form 37.]

8. Execution after two and six years

(1) As between the original parties, process, otherwise than against the person, may issue at any time within six years, and against the person at any time within two years, from the date of the judgment which is immediately sought to be enforced.

(2) After such periods respectively process shall not issue without leave of the court, but no notice to the judgment debtor before applying for such leave shall be necessary.

(3) Where leave is given, a note thereof shall be made on the process.

9. Execution by leave in special cases

(1) In the following cases, namely-

- (a) where any change has taken place by death or otherwise in the parties entitled or liable to execution;
- (b) where a husband is entitled or liable to execution upon a judgment for or against his wife;
- (c) where a party is entitled to execution upon a judgment of assets *in futuro*;
- (d) where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company or against a public officer or person representing such company,

the party alleging himself to be entitled to execution may apply to the court for leave to issue process accordingly. The court may, if satisfied that the party so applying is entitled to execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any

16. Application for execution against immovable property

(1) When a judgment creditor desires a writ of attachment and sale to be issued against the immovable property of the judgment debtor he shall apply to the High Court.

(2) The application shall be supported by evidence showing -

- (a) what steps, if any, have already been taken to enforce the judgment, and with what effect; and
- (b) what sum now remains due under the judgment; and
- (c) that no movable property of the judgment debtor, or none sufficient to satisfy the judgment debt, can with reasonable diligence be found.

(3) If upon the hearing of the application it appears to the court that the writ of attachment and sale may lawfully issue against the immovable property, the court shall make an order accordingly.

(4) A writ of the attachment and sale against immovable property shall be in Form 38. [Form 38.]

question in any action may be tried. And in either case the court may impose such terms as to costs and otherwise as shall be just.

(2) Where leave is given, a note thereof shall be made on the process.

10. Process in force for one year

Any process, if unexecuted, shall remain in force for one year only from its issue.

11. Concurrent executions

Process may be issued concurrently for execution in one or more divisions or districts, but the costs of more than one process and execution shall not be allowed against the judgment debtor except by order of the court.

12. Pending judgment summons

Where a judgment summons is pending or an order or warrant of commitment is outstanding in respect of money payable under a judgment, no writ of execution shall issue in respect of the money so payable except by leave of the court.

13. Magistrate not to issue sequestration or interim attachment of immovables

A writ of sequestration, and a writ of interim attachment directed against any immovable property of a defendant or judgment debtor, shall not issue out of a magistrate's court, but such writs may issue out of the High Court upon the transfer thereto of the proceedings.

[L.N. 47 of 1955.]

14. Interim attachment

No *praecipe* shall be required upon the issue of a writ of interim attachment.

15. Application for execution against movable property

When a judgment creditor desires a writ of attachment and sale against the movable property of the judgment debtor to be issued, he shall file a *praecipe* in Form 3.

[Form 3. Cap. S7. Schedule.]

in Form 39 to the registrar of the foreign court, who shall notify the bailiff holding the writ of the payment;

[Form 39.]

- (c) where the money is paid or paid over to the foreign court, the registrar of that court shall follow the procedure prescribed in paragraphs (3) and (4) of rule 28 of Order II;
- (d) where payment is made or notified to the bailiff holding the writ, he shall deduct the amount of the payment from the total amount to be levied, and execute the writ for the balance only, if any.

ORDER V

Attachment

1. Sheriff's authority to attach and sell goods under lien, shares and land

The sheriff or any bailiff executing any writ for the attachment and sale of any property of a judgment debtor-

- (a) where the writ is for the distress or attachment and sale of goods, may by vir-

17. Change of name or address

When the name or address of any person, as given in any *praecipe* or other application for the issue of any process, differs from the name or address in the plaint note, summons, or judgment, and the applicant satisfies the registrar or the court or the judge or magistrate, according as the application is made to the registrar or the court or the judge or magistrate, that the amended name or address is applicable to the person against whom the judgment was obtained, both names and addresses shall be inserted on the process as follows-

C.D. of: (*name and address as given in the praecipe or application*) sued (*or suing*) as A.D.
of..... *name and address in the plaint note, summons or judgment*).

18. Money paid after issue of writ

(1) After the issue of a writ of execution but before sale thereunder the judgment debtor, or anyone on his behalf, may pay to the bailiff holding the writ, or to the court which issued the writ, or to the foreign court, if any, the amount to be levied under the writ and the costs, if any, subsequent to the issue of the writ, or part of such amount and costs.

(2) Where any such payment or part payment is made, the following provisions shall apply-

- (a) where the money is paid to the court of the division or district in which the writ is to be executed, the registrar shall notify the bailiff holding the writ of the payment;
- (b) where the money is paid to the home court after the writ has been sent to a foreign court, the registrar of the home court shall send a notice of the payment due thereof attach and sell-
 - (i) any movable property to which the judgment debtor is entitled, but which is not in his possession or is subject to a lien or right of some other person to the immediate possession thereof; and
 - (ii) any shares in any public company or corporation to which the judgment debtor is entitled; and
- (b) where the writ is for the attachment and sale of immovable property may by virtue thereof attach and sell any of the immovable property of the judgment debtor.

2. Attachment of goods subject to lien, and shares

The attachment of any movable property mentioned in paragraph (a) of the preceding rule shall be effected under an order of court prohibiting-

- (a) the person in possession of, or entitled to a lien or right of immediate possession over, the property from giving over the property to the judgment debtor;

or

- (b) the person in whose name the shares may be standing from making any transfer, or receiving payment of any dividends thereof, and the manager, secretary, or other proper officer of the corporation from permitting any such payment, until further order of the court,

by delivering an office copy of the order to any person bound by it.

3. Attachment of land

The attachment of immovable property shall be effected by the delivery of the notice of attachment in Form 41 mentioned in the next succeeding rule, and, unless the court shall otherwise order, by posting in a conspicuous place on the land a notice in Form 40 prohibiting all persons from receiving the same by purchase, gift, or otherwise; and the

sheriff may also take and retain actual possession of the land, by putting into possession thereof some fit person approved by the sheriff.

[Form 41. Form 40.]

4. Notice of attachment

The person proceeding to attach any property shall deliver to the judgment debtor or leave at the place where the attachment is effected a notice of attachment in Form 41.

[Form 41.]

5. Property in the custody of a public officer or *in custodia legis*

Property in the custody or under the control of any public officer in his official capacity shall be liable to attachment in execution of a judgment with the consent of the Attorney-General, and property *in custodia legis* shall be liable also to attachment by leave of the court. In such cases the order or notice of attachment must be delivered to such public officer, or to the registrar, as the case may be.

6. Inventory and notice of sale

(1) When property is attached, the sheriff shall notify the judgment debtor of the time when and the place where the property will be sold, at least 24 hours before the time of the sale.

(2) When movable property attached is removed, the sheriff shall give to the judgment debtor a sufficient inventory thereof, immediately after the removal.

(3) The notification and inventory shall be given to the judgment debtor personally, or sent to him by post to his place of residence, or if his place of residence is not known may be left at or sent by post addressed to him at the place where the property was attached.

7. Attachment binds the property attached

After an attachment shall have been made by actual seizure, or by order or notice as aforesaid, and, in the case of an attachment by order or notice, after it shall have been duly intimated and made known in manner aforesaid, any alienation without leave of the court of the property attached, whether by sale, gift or otherwise, and any payment of the dividends or shares to the judgment debtor during the continuance of the attachment, shall be null and void, and the person making such alienation or payment shall be deemed to have committed a contempt of court.

8. Where judgment

(1) Where upon the attachment of any property under a writ of execution the judgment debtor disputes the amount alleged to be remaining due under the judgment, he may, without prejudice to any other remedy he may have, apply to the court for a stay of execution and an inquiry as to what amount, if any, remains due under the judgment.

(2) The court upon such application may make an order for staying the execution upon such terms, including terms as to security to be given by the judgment debtor, as it thinks fit; and may order an inquiry, on notice to the judgment creditor, as to what amount, if any, remains due under the judgment, and shall conduct the inquiry in like

manner and with the same powers as if it were an inquiry under rule 10 of Order IX upon the hearing of a judgment summons.

9. Appointment of manager and mortgage in lieu of sale on application of judgment debtor

When the property attached shall consist of immovable property, it shall be competent to the court to appoint a manager or managers of the said property, and to execute such deeds or instruments in writing as may be necessary for the purpose, and to pay and apply such rents, profits, or receipts towards the payment of the amount to be levied and subsequent costs; or, when the property attached shall consist of land, if the judgment debtor can satisfy the court that there are reasonable grounds to believe that the amount of the judgment may be raised by the mortgage of his interest therein, or by letting on lease, or by disposing by private sale of a portion of such interest, or of any other property belonging to the judgment debtor, it shall be competent to the court, on the application of the judgment debtor, to postpone the sale for such period as it may think proper, to enable the judgment debtor to raise the amount. In any case in which a manager shall be appointed under this order, such manager shall be bound to render due, and proper accounts of his receipts and disbursements, from time to time, as the court may direct.

10. In absence of judgment debtor court may order mortgage in lieu of sale

(1) If the judgment debtor shall be absent from the jurisdiction, and it shall appear to the satisfaction of the court that the public sale of any of his immovable property which has been attached is objectionable, and that satisfaction of the judgment may be made within a reasonable period by a temporary alienation of such property, the court may of its own motion, instead of proceeding to a public sale of such property, order that provision be made for the satisfaction of the judgment by mortgage thereof, and may authorise the registrar, if necessary, to execute the mortgage deed in lieu of the judgment debtor or any other necessary parties and may make such orders in relation to such mortgage as may be requisite to carry out this provision; and the execution of such mortgage deed by the registrar in the form prescribed in rule 13 of Order VII shall have the same effect as the execution thereof by the judgment debtor or other necessary parties.

(2) That the court may be able to act under this rule the sheriff shall forthwith on the attachment of any immovable property of a judgment debtor absent from the jurisdiction give notice of the same to the court.

ORDER VI

Interpleader summons

1. Notice of claim

Any claim or in respect of attached property shall be made to the bailiff holding the writ or to the sheriff.

2. Notice to creditor and claimant

(1) The sheriff shall give information of the claim to the registrar of the court for the division or district in which the property is situate.

(2) On receipt of the information the registrar shall send notice of the claim to the judgment creditor or plaintiff in Form 42 and a notice to the claimant in Form 43.

[Forms 42 and 43.]

3. Admission of claim

If the judgment creditor or plaintiff admits the claim or requests the sheriff to withdraw from possession, the sheriff shall withdraw from possession.

4. Commencement of proceedings

(1) If the judgment creditor or plaintiff does not admit the claim, the sheriff shall, unless the claimant has withdrawn his claim, apply for the issue of a summons in accordance with the provisions of section 34 of the Act.

(2) Upon such application, the registrar shall enter interpleader proceedings in the books of the court, and fix a day for the hearing and prepare and issue interpleader summonses to the judgment creditor or plaintiff and the claimant in such of the Forms in the First Schedule to the Act as are applicable to the case, and make all necessary copies thereof.

5. Service

(1) The summonses shall be served in accordance with the rules for service of an ordinary summons issued from the court from which the summonses are issued.

(2) The interval between service and the hearing shall be such number of clear days, not less than fourteen, as the registrar may direct, having regard to the distance from the court of the place where any person to be served resides.

(3) Where the summons is sent for service to a foreign court, the registrar of the foreign court shall, according as the summons is or is not served, send the copy of the summons, or a notification that it has not been served, to the registrar of the home court so that it is received not less than two clear days before the return day.

6. Claimant to file particulars

(1) The claimant shall, within such reasonable time before the return day as the time of service permits, file in the court registry three copies of the particulars of the property he claims and the grounds of his claim, or, in the case of a claim for rent, particulars stating the amount thereof, and the period and the premises in respect of which the rent is claimed to be due.

(2) The claimant shall include in his particulars a statement of his full name, address, and occupation.

(3) The registrar shall send copies of the particulars to the sheriff and the judgment creditor:

Provided that the court may, if it thinks fit, hear the proceedings although particulars have not been filed.

7. If claimant does not give security or deposit

Where before the return day-

- (a) the claimant informs the registrar that he withdraws his claim; or
- (b) the judgment creditor or plaintiff informs the registrar that he admits the claimant's title,

the registrar shall notify the judgment creditor or plaintiff of the withdrawal, or the claimant of the admission, as the case may be, and the property attached or the proceeds of sale or the money paid into court shall be dealt with as if the claim had not been made or as if the attachment had been withdrawn, and the judge or magistrate may make such order as to costs as may be just.

8. Security for costs

The judge or magistrate may require the claimant to give security for costs as if such claimant were the plaintiff to a suit.

9. Procedure where matters subject to jurisdiction of customary or area court

Where the summons relate to any immovable property and the parties thereto other than the sheriff are all parties ordinarily subject to the jurisdiction of a customary or area court the court shall on the return day of the summons adjourn the hearing and stay execution for one month to enable the claimant to institute proceedings in the competent customary or area court to establish as against the judgment creditor or plaintiff and judgment debtor or defendant the right, title or interest on which his claim to have the property released from attachment is based.

10. Failure of claimant to institute proceedings

If the claimant fails to institute the required proceedings in the competent customary or area court within the said period of one month the court may forthwith dismiss the claim or may on special cause shown extend the period within which the claimant may institute the said proceedings and grant a further adjournment and stay of execution. If within the said period of one month or within any extension thereof which may have been

allowed the claimant has instituted the required proceedings, the court shall adjourn the hearing of the summons until such time as final judgment is given in the customary or area court or in any appeal which may be actually pending in regard to the proceedings instituted by the claimant in the competent customary or area court. At such adjourned hearing the court shall give judgment on the summons in accordance with such final judgment.

11. Claim for damages by claimant

Where in the interpleader proceedings the claimant claims damages from the judgment creditor or plaintiff or from the sheriff in respect of the attachment, he shall, in the particulars of his claim to the property, state the amount he claims for damages, and the grounds on which he claims damages.

12. Claim for execution creditor

Where in the interpleader proceedings the judgment creditor or plaintiff claims damages from the sheriff arising out of the attachment, he shall, within such reasonable time before the return day as the time for service permits, file particulars of his claim, stating the grounds and amount thereof, and give a copy of the particulars to the registrar who shall deliver it to the sheriff.

13. Payment into court, where damages claimed

Where in the interpleader proceedings a claim for damages is made, the person from whom damages are claimed may pay money into the court in satisfaction of that claim, and the payment shall be made in the same manner and have the same effect as if the proceedings were an action in that court and the person claiming damages were plaintiff and the person from whom damages are claimed were defendant.

14. Sale of property claimed as security for debt

Where property has been attached and any claimant alleges that he is entitled to it under a mortgage or bill of sale or otherwise by way of security for a debt, the court may order the property or any part thereof to be sold, and may direct the proceeds of sale to be applied in such manner as may be just.

15. Order

(1) The order made upon the hearing of interpleader proceedings shall contain directions by whom any court fees shall be paid and how any money in court shall be applied.

(2) The court may, notwithstanding any appraisement, assess the value of the property for the purpose of any calculation of court fees or costs which depends on such value.

ORDER VII

Sale

1. Where judgment debtor is in custody

Where the judgment debtor shall have been arrested and is detained in custody, no sale of any portion of his property attached in execution shall be made until one month shall have elapsed after his being so arrested, and at least fifteen days' notice shall have been given to the judgment debtor, specifying the property so taken and intended to be sold:

Provided that the sale may take place at any time in the case of perishable articles or where the judgment debtor has given his consent thereto in writing.

2. General of powers of court over sales

Subject to the provisions of any Act or rule, the sale of any property under a writ of execution shall be conducted according to such orders as the court may make on the application of any person concerned.

3. Application for private sale

(1) Before filing any application for leave to effect the sale under a writ of execution of any property otherwise than by public auction, the registrar shall deliver to the applicant on demand a list containing the name and address of every person at whose instance any writ of execution against the debtor has been issued, of which the registrar has notice.

(2) Notice of the application in Form 44 shall be served on every person named on the list and on the sheriff.

[Form 44.]

(3) On the hearing of the application the applicant shall produce the list to the court.

(4) A copy of any order made on the application shall be sent to the sheriff.

4. Advertisement of sale

Where any advertisement of sale of any property is required to be made, it may, subject to the directions, if any, of the court, be made in a newspaper published in Nigeria, or by means of posters or placards, or otherwise as the sheriff shall think fit, having regard to the value of the property and the other circumstances of the case.

5. Disposal of proceeds of sale

Where property is sold under a writ of execution the proceeds shall be disposed of as follows-

- (a) where the property is sold by the sheriff, he shall follow the procedure prescribed in rule 13 of Order I;
- (b) where the property is sold by an auctioneer, he shall pay the gross proceeds into court;
- (c) the money so paid into court shall be payable as follows -
 - (i) any amount then due and unpaid for sheriff's, bailiff's, and appraiser's fees and expenses: to the sheriff, and next;
 - (ii) the prescribed fees and expenses of sale: to the auctioneer, if any, and next;
 - (iii) the amount to be levied, together with costs paid by the judgment creditor subsequent to the issue of the writ, if any: to the judgment creditor, directly or through the registrar of the home court, if any, and next;
 - (iv) the balance: to the judgment debtor.

6. Immovable property: day of sale

(1) No immovable property attached shall be sold for the purpose of satisfying the writ of execution until the expiration of at least fifteen days next following the day on which the property has been attached, unless the person whose property has been attached so requests in writing:

Provided that the sheriff may, if he is unable from want of time to complete the sale, adjourn the same for a period of not more than three days, and so on as often as may be necessary: And provided further that the court may, if it thinks fit, direct that the sale shall be postponed for any time not exceeding 28 days after the attachment.

Place of sale

(2) The sale shall be made in the principal court house of the division in which the property is situated, or on the land attached, or at such other place as may be appointed by the sheriff or, in case of dispute, by the judge on the application of any person concerned.

Notice of sale

(3) Notice of the day and hour of sale of any immovable property attached shall be published fourteen days at least before the day of such sale by being posted-

- (a) upon the door of the principal court house of the division in which the property is situated; and
- (b) also in a conspicuous place upon the land attached; and
- (c) if the sale is to take place elsewhere than at such courthouse or on the land attached, then at such other place also; and
- (d) if the court so directs, in a newspaper published in Nigeria.

Advertisement of sale

(4) Where any immovable property is to be sold under a writ of execution for a sum exceeding forty naira, including legal incidental expenses, the sale shall be publicly advertised by the sheriff on and during three days next preceding the day of sale.

Time of sale

(5) Every sale shall take place between the hours of seven o'clock in the morning and eight o'clock in the evening.

7. By public auction or private contract

(1) The sale under a writ of execution of any immovable property shall be made by public auction, at which the property shall be knocked down to the highest bidder for ready money, and not by private contract, unless the court otherwise orders.

(2) Where any immovable property is attached and the registrar has notice of another attachment or other attachments, the court shall not consider an application for leave to sell privately until notice in Form 44 has been given to the other judgment creditor or creditors, who may appear before the court and be heard on the application.

[Form 44.)

8. Notice under section 36

The notice required to be given under section 36 of the Act shall be in Form 45.

[Form 45.)

9. Certificate of title

The certificate under section 50 of the Act shall be in Form 46.

[Form 46.)

10. Immovable property in lawful occupancy of third parties

Where the property sold shall consist of immovable property in the occupancy of persons entitled to occupy the same, the court shall, on the application of the purchaser, order delivery thereof to be made by affixing a copy of the certificate of title in some conspicuous place on the land, or in the principal court building of the division.

11. Debts and shares in public companies

Where the property sold shall consist of shares in any public company or corporation, the court shall, on the application of the purchaser, make an order prohibiting the person in whose name the shares may be standing from making any transfer of the shares to any person except the purchaser, or receiving payment of any dividends thereon, and the manager, secretary, or other proper officer of the company or corporation from permitting any such transfer or making any such payment to any person except the purchaser.

12. Negotiable securities

Where the property sold shall consist of negotiable securities, of which actual seizure has been made, the same shall be delivered to the purchaser thereof.

13. Transfer of securities as shares

If the endorsement, transfer, or conveyance of the party in whose name any negotiable security, or any share in a public company or corporation, is standing, or in whom any mortgage or equity of redemption shall be vested, shall be required to transfer the same, the registrar may endorse the security or the certificate of the share, or may execute such other document as may be necessary for transferring the same. The endorsement or execution shall be in the following form, or to the like effect:

"A.B. by C.D., registrar of the High/Magistrate's Court of the
Judicial Division/Magisterial District; in a suit by E.F. versus A.B."

Until the transfer of such security or share, the court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign receipts for the same; and any endorsement made, or document executed, or receipt signed as aforesaid, shall be as

valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

ORDER VIII

Garnishee proceedings

1. Amount of debt

Subject to the next succeeding rule, garnishee proceedings may be taken in a magistrate's court notwithstanding that the debt owing or accruing from the judgment debtor is for an amount exceeding the jurisdiction of that court.

2. Venue

Garnishee proceedings may be taken-

- (a) in any court in which the judgment debtor could, under the High Court (Civil Procedure) Rules or under the appropriate section or rule governing civil procedure in magistrates' courts, as the case may be, sue the gamishee in respect of the debt; or
 - [5 of 1945.]
- (b) where the debt is not yet payable, or is for an amount exceeding the jurisdiction of such court, in any court in which the judgment debtor could have sued the gamishee as aforesaid if the debt had been immediately payable or had not exceeded the jurisdiction.

3. Commencement

(1) A judgment creditor who desires to take gamishee proceedings shall file in the court registry-

[Form 25. Cap. S7. Schedule.]

- (a) an affidavit in Form 25; and
- (b) if the gamishee proceedings are taken in a court other than the court in which the judgment was given or made, a certified copy of the judgment.

(2) The registrar shall thereupon enter the proceedings in the books of the court and fix a day for the hearing and issue an order *nisi* in Form 26 and make all necessary copies thereof.

4. Service

(1) The order *nisi* shall be served in accordance with the rules for the service of an ordinary summons issued from the court from which the order is issued.

(2) Subject to subsection (2) of section 83 of the Act, the interval between service and the hearing shall be fixed by the registrar, having regard to the distance from the court of the place where any person to be served resides.

(3) Where an order *nisi* is sent for service to a foreign court, the registrar of the foreign court shall, according as the order is or is not served, send the copy of the order *nisi*, or a notification that it has not been served, to the registrar of the home court so that it is received not less than two clear days before the return day.

5. Payment into court by garnishee

(1) The gamishee may within eight days of the service of the summons on him, inclusive of the day of service, pay into court-

- (a) the amount alleged to be due from him to the judgment debtor; or
- (b) if that amount is more than sufficient to satisfy the amount due under the judgment and the costs entered on the gamishee order, a sum sufficient to satisfy the last-mentioned amount and costs.

(2) Upon payment into court as aforesaid, the proceedings against the garnishee shall be stayed.

6. Payment out of money paid in by garnishee

Where money is paid into court by the gamishee the registrar may by consent of the

judgment debtor order the money to be paid out before the return day, or in the absence of the consent of the judgment debtor the court may on the return day after hearing the judgment creditor and the judgment debtor, if he appears, make such order in the proceedings (including an order as to costs) as may be just.

7. Writ of execution

(1) Execution against the garnishee under section 86 of the Act shall be by a writ of execution in Form 27.

[Form 27. Cap. S7. Schedule.]

(2) Application for the issue of the writ shall be made by filing a *praecipe* in Form 3.

[Form 3. Cap. S7. Schedule.]

8. Where garnishee disputes liability

(1) If no amount is paid into court, the court, instead of making an order that execution shall issue, may, after hearing the judgment creditor, the garnishee, and the judgment debtor or such of them as appear, determine the question of the liability of the garnishee, and may make such order as to the payment to the judgment creditor of any sum found to be due from the garnishee to the judgment debtor and as to costs as may be just, or may make an order under section 87 of the Act.

(2) If an order is made under section 87 of the Act for the trial or determination of any issue or question, it shall direct which of the persons interested, including such third person as is referred to in section 88 of the Act, shall be plaintiff and which shall be defendant.

9. Proceedings in another court

Where garnishee proceedings are taken in a court other than the court in which the judgment was given, the registrar of the first-mentioned court shall send to the registrar of the last-mentioned court a copy of the judgement given in the garnishee proceedings and also from time to time notice of any amount levied or paid into court in the proceedings.

10. Costs

Any costs allowed to the judgment creditor which are not ordered to be paid by the garnishee personally, shall, unless it is otherwise ordered, be retained by the judgment creditor out of the money recovered by him in the garnishee proceedings, in priority to the amount due under the judgment.

11. Court may refuse order

A judge or magistrate may, in his discretion, refuse to make or issue a garnishee order, where from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious.

12. Debts of a firm

Part IV of the Act and this Order shall apply to debts owing or accruing from a firm carrying on business within Nigeria, although one or more members of the firm may be resident abroad.

ORDER IX

Judgment summons

1. Judgment summons may issue where no default in instalments

(1) Where a court has made an order for payment of any sum of money by instalments, a judgment summons may be issued as well before as after default in payment of any instalment according to the order.

But judgment creditor may be liable for costs

(2) Where an order is made in the judgment summons proceedings before default in payment of any instalment, other than an order for the attachment and sale of the judgment debtor's property or a new order for the payment of money more beneficial to the judgment creditor than the order for payment by instalments, no costs shall be allowed to

the judgment creditor, and the court may order him to pay any costs reasonably incurred by the judgment debtor, unless the judgment debtor is proved to have been guilty of any misconduct enumerated in paragraphs (a) to (e) of section 66 of the Act.

2. Stay of execution

(1) Where a judgment creditor who has issued a writ of attachment and sale against a judgment debtor applies for the issue of a judgment summons against him, proceedings on the writ shall be stayed and the stay shall not be removed except by leave of the court.

(2) The judgment summons shall not be issued until the judgment creditor has paid any fees or expenses incurred in the execution of the writ.

3. Travelling expenses of debtor not in district

(1) The registrar may refuse to issue a judgment summons against a judgment debtor who does not reside or carry on business within the division or district of the court to which the application for the summons is made, unless at the time of filing the *praecipe* the judgment creditor deposits in the court registry a sum reasonably sufficient to cover the expenses of the judgment debtor in travelling to and from the court, the amount to be fixed by the registrar.

(2) The registrar shall pay the money so deposited to the registrar of the court of the division or district where the judgment debtor resides.

(3) The last-mentioned registrar may either-

- (a) encash the Treasury deposit receipt, and shall then cause the money to be-
 - (i) paid or tendered to the judgment debtor; or
 - (ii) expended in the purchase of a transport warrant or travel ticket for the judgment debtor or otherwise applied directly to the payment of the travelling expenses; or

- (b) pay the money to the sheriff, who shall deal with it in any of the ways in which the registrar himself might have dealt with it.

(4) If the money or any part of it remains unexpended, it shall be repayable to the judgment creditor by or through the court from which the summons was issued.

4. Travelling expenses to be costs: set off

The judgment debtor's travelling expenses, whether paid in the first instance by the judgment creditor or not, shall be costs in the proceedings on the judgment summons, and shall be payable and recoverable accordingly:

Provided that such travelling expenses, and any other proper costs of the judgment debtor and compensation for the loss of his time, if allowed to the judgment debtor, may be set off against the judgment debt.

5. Service

(1) A judgment summons shall be served personally in accordance with the rules for personal service of an ordinary summons issued from the court from which the judgment summons is issued.

(2) The interval between service and the hearing shall be such number of clear days, not less than five, as the registrar may direct, having regard to the distance from the court of the place where the judgment debtor resides.

(3) Where a judgment summons is sent for service to a foreign court, the registrar of the foreign court shall, according as the summons is or is not served, send the copy of the summons, or a notification that it has not been served, to the registrar of the home court so that it is received not less than two clear days before the return day.

6. Interim attachment

An order under section 62 of the Act for the interim protection of property shall be enforceable by a writ of interim attachment in Form 47.

[Form 47.]

7. Attachment under judgment summons to be superseded by payment

(1) In or upon every writ of interim attachment against the property of a judgment debtor, the registrar shall cause to be inserted or endorsed the sum of money upon payment of which the judgment summons will be satisfied.

(2) If the judgment debtor, before the actual sale of the property under any writ of attachment and sale, pays or causes to be paid or tendered to the bailiff holding the writ or to the court which issued the writ, or to the foreign court, if any, the sum of money inserted or endorsed as aforesaid, or such part thereof as the judgment creditor agrees to accept in full satisfaction, the interim attachment shall be superseded and the property of the judgment debtor shall be discharged and set at liberty.

(3) The provisions of sub-paragraphs (a) to (c) of paragraph (2) of rule 18 of Order IV shall apply where payment is made under this rule.

(4) The court at the hearing of the judgment summons may in its discretion make an order suspending an interim attachment.

8. Judgment summons may be superseded on payment

(1) In or upon every judgment summons the registrar shall cause to be inserted or endorsed the sum of money on payment of which the judgment summons will be satisfied.

(2) If the judgment debtor at any time before the making of a final order upon the judgment summons pays or causes to be paid or tendered to the registrar of the court from which the judgment summons issued, or to the bailiff holding the judgment summons, the sum of money inserted or endorsed as aforesaid, or such part thereof as the judgment creditor agrees to accept in full satisfaction, the judgment summons may, if the judge or magistrate thinks fit, be struck out.

9. No committal where payment impossible

(1) Upon the issue of a judgment summons, and at any time thereafter before an order or warrant of committal (except a warrant of committal under section 61 of the Act) has been issued, the judgment debtor may file in duplicate a full statement and account of all property of whatever nature belonging to him, whether in expectancy or possession, and whether held exclusively by him or jointly with others, or by others in trust for him, excepting the necessary wearing apparel of himself and his family and the necessary implements of his trade, if any, to the value of ten naira, and of the places respectively where such property is to be found.

(2) The registrar shall give or send the duplicate statement to the judgment creditor.

(3) If at the hearing of the judgment summons the judgment debtor, upon whom the onus of proof in this regard shall lie, shall satisfy the court that he has made a full surrender and discharge of his property, and that he is unable because of unavoidable misfortune to satisfy the judgment, and that he has not been guilty of any misconduct mentioned in section 66 of the Act, and that he ought not to be imprisoned, the court shall make no order for the commitment of the judgment debtor under section 63 (a) of the Act and shall, if the judgment debtor is in prison, make an order for his discharge under section 63 (d) of the Act:

Provided that, if it shall subsequently be shown to the satisfaction of the court that the judgment debtor has not made a full disclosure, the preceding provisions of this rule shall no longer be applicable.

10. Where judgment debtor disputes amount in default

Where, upon the hearing of a judgment summons, the judgment debtor disputes the amount in payment of which he is alleged to have made default, he may give evidence, and the judgment creditor and all other witnesses whom the court thinks requisite may be examined by or on behalf of the judgment debtor and by the court as to what amount, if any, remains due under the judgment and as to any money or other valuable consideration which may have been paid or given to the judgment creditor by or on behalf of the judgment debtor in respect of the judgment debt or of any release, compromise, or accord and satisfaction of the judgment debt, or under any process for the enforcement of the judgment.

11. New order after imprisonment

(1) Where a new order for payment of a judgment debt is made there shall be included in the amount payable under that order for the purpose of any proceedings, otherwise than by judgment summons, any amount in respect of which an order of commitment under section 63 or 68 of the Act has been made and the debtor imprisoned, but so that the debtor shall not be liable to be imprisoned a second time for non-payment of either last-mentioned amount.

(2) No judgment summons under the new order shall include any amount in respect of which the debtor was imprisoned before the new order was made, and any amount paid subsequently to the new order shall be appropriated in the first instance to the amount due under the new order.

(3) Detention under section 58 or 66, or committal under section 61, of the Act, shall not be deemed to be imprisonment for the purposes of this rule.

12. When costs not allowed to judgment creditor

(1) On the hearing of a judgment summons, no costs shall be allowed to the judgment creditor unless the court is satisfied that the judgment debtor has had, since the date of the original judgment or order, the means to pay the sum in payment of which he has made default, and a note thereof is entered in the minutes of the proceedings.

(2) When on the hearing of a judgment summons, the court makes a new order for payment of the amount remaining unpaid, the order shall be in Form 19 or Form 20, whichever is applicable.

[Form 19 and 20. Cap. P20. Schedule.]

13. Application for committal warrant under section 72

(1) When an order enforceable by committal under section 72 of the Act has been made, the registrar shall, if the order was made in the absence of the judgment debtor and is for the delivery of goods without the option of paying their value or is in the nature of an injunction, at the time when the order is drawn up, and in any other case, on the application of the judgment creditor, issue a copy of the order endorsed with a notice in Form 48, and the copy so endorsed shall be served on the judgment debtor in like manner as a judgment summons.

[Form 48.]

(2) If the judgment debtor fails to obey the order the registrar shall issue a notice in Form 49 not less than two clear days after service of the endorsed copy of the order, and the notice shall be served on the judgment debtor in like manner as a judgment summons.

[Form 49.]

(3) On the day named in the notice the court, on being satisfied that the judgment debtor has failed to obey the order and, if the judgment debtor does not appear-

- (a) that the notice has been served on him; and
- (b) if the order was made in his absence, that the endorsed copy thereof has also been served on him,

may order that he be committed to prison and that a warrant of commitment may issue.

ORDER X

Arrest and imprisonment

1. Conditional order

Where any order for the enforcement of a judgment is made whereunder process affecting the person of a judgment debtor may be or is to be issued or reissued the judge or magistrate may by the same or a subsequent order direct that the process shall only issue after a certain time, and in the event of the continued refusal or neglect of the judgement debtor at that time to comply with the judgment.

2. Renewal of conditional order

Where an order has been made under the preceding rule and the judgment debtor subsequently desires to apply for a further extension of time to comply with the order, he shall apply to the registrar, stating the reasons for his inability to comply with the order, and the registrar shall fix a day for the hearing of the application by the court and notify

the judgment creditor and the judgment debtor thereof in time for them to attend.

3. Recording of order of commitment

Where an order of commitment or of arrest and detention is made, the judge or magistrate shall record, as part of the minutes of the proceedings or the note of his determination of the proceedings, a note showing under what section of the Act it is made.

4. Where labour ordered

Where the court gives a direction under section 70 of the Act for the employment of a judgment debtor during imprisonment, the registrar shall enter or endorse on the warrant a certificate in Form 50.

[Form 50.]

5. Process

The appropriate process for the enforcement of an order-

- (a) of commitment made under section 63 of the Act, shall be entitled an order of commitment, and shall be in Form 17 or Form 18;
[Forms 17 and 18. Cap. P20. Schedule.]
- (b) of commitment made under section 61 or section 68 or 72 of the Act, shall be entitled a warrant of commitment, and shall be in Form 51 or Form 52 or Form 53, as the case may be;
[Forms 51,52 and 53.]
- (c) of arrest and detention under section 58 or 66 of the Act, shall be entitled a warrant of arrest and detention and shall be in Form 54;
[Form 54.]
- (d) to bring before the court a judgment debtor in custody, shall be entitled a production warrant, and shall be in Form 55.
[Form 55.]

6. Committal of two or more debtors

Where two or more judgment debtors are ordered to be committed or detained in respect of the same judgment, a separate order or warrant shall be issued in respect of each debtor.

7. Issue of order or warrant of commitment, etc.; subsistence money

(1) Where an order is made for the issue of a warrant to arrest an absconding defendant, the warrant shall issue forthwith and no *praecipe* shall be required.

(2) At the time of making any order of commitment or re-commitment or of arrest and detention the court may order that the order or warrant be issued or reissued forthwith, and shall thereupon give all necessary directions respecting subsistence money, and in such case no *praecipe* shall be required.

(3) The costs of an application for an order under the proviso to section 78 of the Act that no subsistence money be allowed in respect of a commitment shall be paid by the judgment creditor unless the application is made at the hearing of the judgment summons or of any application under rule 13 of Order IX or for the discharge of the judgment debtor, as the case may be, and if such order is made, the order or warrant shall be issued or reissued without payment of subsistence money.

(4) Where an order for a warrant to arrest an absconding defendant or an order of arrest and detention is made, the judge or magistrate-

- (a) if the warrant is to issue forthwith, shall at the same time; and
- (b) in any other case, may at any time,

either of his own motion or on the application of the judgment debtor, direct either that no subsistence money be allowed or that subsistence money be allowed at such rate not exceeding 26 kobo per day as he thinks sufficient, and in the latter case shall fix such amount thereof as he thinks fit as the amount to be paid by the judgment creditor before the issue of the warrant; and if the judge or magistrate directs that no subsistence money be allowed, or gives no direction, the warrant shall be issued without payment of subsistence money.

(5) Where a judgment creditor desires an order or warrant for the commitment of a judgment debtor to be issued or reissued or a warrant for the arrest and detention of a judgment debtor to be issued, he shall, unless an order for the issue or reissue of the order or warrant forthwith has been made, file a *praecipe* in Form 56.

[Form 56.]

(6) The registrar shall enter on the *praecipe* particulars of any order or direction of the court respecting subsistence money, and if any such order or direction is lacking, shall first submit the *praecipe* to the judge or magistrate for the purpose of obtaining the same.

(7) Upon payment of the expenses of conveying the judgment debtor to prison, if required, and the amount of subsistence money, if any, due to the end of the current month, or due to the end of the term of imprisonment if the term is a month or less, or directed to be paid before issue, as the case may require, the order or warrant shall be issued or re-issued.

(8) The registrar shall enter or endorse on the order or warrant a note in Form 57.

[Form 57.]

8. Expenses of moving judgment debtor in custody

Subject to the provisions of section 81 of the Act, the court in its discretion may order that any expenses of conveying a judgment debtor or absconding defendant in custody to prison or to court shall be defrayed by any party, and may make the payment of such expenses a condition precedent to any relief dependent on such conveyance; and such expenses, if paid by a judgment creditor, shall, unless the court orders them to be borne by the judgment creditor, be recoverable by the judgment creditor in like manner as subsistence money under section 80 of the Act.

9. Disposal of subsistence money

The registrar shall retain each amount received by him in respect of subsistence allowance until the expiry of the relevant period of the term of imprisonment, or the liberation of the judgment debtor, whichever shall be the sooner, and shall upon such expiry or liberation pay to the officer in charge of the prison all subsistence money then accrued due and payable to him.

10. Warrant of arrest may be sent to foreign court

A warrant for the arrest and detention of a judgment debtor may be sent for execution to a foreign court in accordance with the provisions of section 39 of the Act and these Rules as if it were an order or warrant for the committal of a judgment debtor to prison.

11. Order of commitment sent to foreign court

Where an order or warrant of commitment, other than a warrant of commitment under section 61 of the Act, is sent to a foreign court under the provisions of the Act, the registrar of the foreign court shall endorse on it a notice in Form 58 addressed to the officer in charge of the nearest prison.

12. Place of imprisonment

(1) Where a judgment debtor is arrested under an order or warrant of commitment, other than a warrant of commitment under section 61 of the Act, he shall be imprisoned in the prison mentioned in the order or warrant, or, if the warrant is executed in the division or district of a foreign court, in the prison mentioned in the notice in Form 58 endorsed on the warrant.

[Form 58.]

(2) Where a judgment debtor is arrested under a warrant of commitment under section 61 of the Act, or a warrant of arrest and detention, he shall be forthwith conveyed to the prison mentioned in the warrant and there imprisoned or detained.

13. Unconditional discharge upon payment of debtor imprisoned under sections 66 or 68

(1) When issuing a warrant of arrest and detention under section 66 of the Act, or a warrant of commitment under section 68 of the Act, or making an order for the issue of any such warrant, the judge or magistrate, in his discretion, may direct that the order or warrant be superseded and the judgment debtor discharged upon payment of the amount in default at the time of issue of the warrant together with the fees for issue of the warrant.

which the debtor is to be discharged, and the order of commitment or
(2) Such direction shall be expressed in the order or warrant by entering therein the total of the said amount and fees as the sum on payment of which the judgment debtor is to be discharged, and on payment of such sum he shall be discharged.

(3) If no such direction is given, the aforesaid total sum shall be entered on the order or warrant as the sum on payment of which the judgment debtor may be discharged by order of the court, and on payment thereof he shall be detained in custody to await the order of the court.

14. Payment and part payment before imprisonment: unconditional discharge

(1) Upon the issue or reissue of--

- (a) a warrant of arrest and detention under section 58 of the Act, or a warrant of commitment under section 61 of the Act, or an order of commitment under section 63 of the Act; or
- (b) any warrant mentioned in paragraph (l) of rule 13 of this Order whereon is expressed such direction as is mentioned in that rule for the discharge of the judgment debtor upon payment,

then before the judgment debtor is imprisoned thereunder he, or anyone on his behalf, may pay to the judgment creditor, or to the bailiff holding the order or warrant, or to the court which made the order, or to the foreign court, if any, the amount entered on the order as that on payment of which the judgment debtor is to be discharged, or part of such amount.

(2) Where any such payment or part payment is made, the following provisions shall apply-

- (a) where the money is paid to the judgment creditor, he shall inform the registrar of the court which made the order of commitment or arrest and detention;
- (b) where the money is paid, or the judgment creditor's information is given, to the court of the division or district in which the order or warrant is to be executed, the registrar shall notify the bailiff holding the order or warrant of the payment;
- (c) where the money is paid, or the judgment creditor's information is given, to the home court after the order or any order or warrant issued thereunder has been sent to a foreign court for execution, the registrar of the home court shall send notice of the payment in Form 39 to the registrar of the foreign court, who shall notify the bailiff holding the order or warrant of the payment;
[Form 39.]
- (d) where the money is paid or paid over to the foreign court, the registrar of that court shall follow the procedure prescribed in paragraphs (3) and (4) of rule 28 of Order II;
- (e) where payment or part payment is made or notified to the bailiff holding the order or warrant, then-
 - (i) if the payment is of the whole amount, he shall liberate the judgment debtor; and
 - (ii) if the payment is of part of the amount, he shall deduct the sum paid from the amount entered on the order or warrant as that on payment of

- arrest and detention and the order or warrant issued thereunder shall thenceforth operate for non-payment of the balance only; and if the part payment was made on the judgment debtor's behalf, he shall inform the judgment debtor thereof;
- (iii) if he himself receives the payment or part payment, he shall notify the registrar of the court from which the order or warrant was last sent to him.

15. Payment and part payment before imprisonment: conditional discharge

(1) Upon the issue or reissue of any warrant mentioned in paragraph (1) of rule 13 of this Order containing no direction such as is mentioned in that rule for the discharge of the judgment debtor upon payment, then before the judgment debtor is imprisoned thereunder he, or anyone on his behalf, may make payment or part payment of the amount entered on the warrant as that on payment of which the judgment debtor may be discharged by order of the court, to any of the persons mentioned in paragraph (1) of rule 14 of this Order.

(2) Where any such payment or part payment is made or notified, or information thereof is given, other than to the bailiff holding the warrant, the provisions of subparagraphs (r2) to (d) of paragraph (2) of rule 14 of this Order shall apply and where payment or part payment is made or notified to the bailiff holding the warrant-

- (a) he shall deduct the sum paid from the amount entered on the warrant as that on payment of which the judgment debtor may be discharged, by order of the court and the order for commitment or detention, and the warrant issued thereunder, shall thenceforth operate only for non-payment of the balance, if any, and for the misconduct; and
- (b) he shall inform the judgment debtor of any payment made on the judgment debtor's behalf; and
- (c) he shall deliver the judgment debtor to the officer in charge of the prison mentioned in the warrant; and
- (d) if he himself receives the payment or part payment, he shall notify the registrar of the court from which the warrant was last sent to him.

16. After imprisonment: unconditional discharge

(1) Where a judgment debtor is imprisoned under any order or warrant mentioned in paragraph (1) of rule 14 of this Order, he, or anyone on his behalf, may pay to the judgment creditor, or to the officer in charge of the prison, or to the court which made the order, or to the foreign court, if any, the amount entered on the order as that on payment of which the judgment creditor is to be discharged, or part of the amount.

Full payment or default in subsistence allowance

(2) Where payment is made of the whole amount, or the judgment creditor makes default in payment of subsistence allowance, the following provisions shall apply-

- (c) where the money is paid to the judgment creditor, he shall sign a certificate of payment in Form 21 and send it to the officer in charge of the prison;
[Form 21 *]
- (b) where the money is paid to, or default is made in payment of subsistence allowance payable to, the registrar of the court of the division or district in which the order or warrant was executed, the registrar shall sign a certificate of payment in Form 21 or default in Form 22, as the case may be, and send it to the officer in charge of the prison;
[Form 21 *. Form 22*.]
- (c) where the money is paid to the registrar of the home court after the order or any order or warrant issued thereunder has been sent to a foreign court for execution, the registrar of the home court shall notify the payment to the registrar of the foreign court, who shall sign the appropriate certificate and send it to the officer in charge of the prison;
- (d) where the money is paid or paid over to the foreign court, the registrar of that court shall follow the procedure prescribed in paragraphs (3) and (4) of rule 28 of Order II;
- (e) where the money is paid to the officer in charge of the prison, or he receives either of the certificates mentioned above, he shall liberate the judgment debtor, unless he is also imprisoned in respect of another order, and such officer shall also, if he himself receives the payment, pay the money over to the registrar of the court from which the order or warrant was last sent to him and send with it a certificate in Form 59.

[Form 59.]

Part payment

(3) Where payment is made of part of the amount, the provisions of sub-paragraphs (a) to (d) of the last preceding paragraph of this rule shall apply except in so far as they relate to default in payment of subsistence allowance, and except that no certificate shall be required but in lieu thereof a notice of the part-payment in Form 60 shall be sent to the officer in charge of the prison; and where the money is paid to the officer in charge of the prison, or he receives such notice, he shall deduct the sum paid from the amount entered on the order or warrant as that on payment of which the debtor is to be discharged, and the order of commitment or arrest and detention, and the order or warrant issued thereunder shall thenceforth operate for non-payment of the balance only, and if the part-payment was made on the judgment debtor's behalf, such officer shall inform the judgment debtor thereof; and such officer shall also, if he himself receives the part-payment, pay the money over to the registrar of the court from which the order or warrant was last sent to him, and send with it a notice of part-payment in Form 60.

[Form 60.]

17. After imprisonment: conditional discharge

(1) Where a judgment debtor is imprisoned under any warrant mentioned in paragraph (1) of rule 15 of this Order, he, or anyone on his behalf, may make payment or part-payment of the amount entered on the warrant as that on payment of which the judgment debtor may be discharged by order of the court, to any of the persons mentioned in paragraph (1) of rule 16 of this Order.

Full or part payment, or default in subsistence allowance

(2) Where any such payment or part-payment is made, or the judgment creditor makes default in payment of subsistence allowance, the provisions contained in sub-paragraphs (a) to (d) of paragraph (2), and in paragraph (3), of rule 16 of this Order shall apply, except that where payment or part-payment is made or certified to the officer in charge of the prison, or he receives a certificate in Form 21 or Form 22-

- (a) he shall deduct the sum paid from the amount entered on the warrant as that on payment of which the judgment debtor may be discharged by order of the court; and the order for commitment or detention, and the warrant issued thereunder, shall thenceforth operate only for non-payment of the balance, if any, and for the misconduct; and
- (b) he shall inform the judgment debtor of any payment made on the judgment debtor's behalf; and
- (c) he shall retain the judgment debtor in custody until the further order of the court; and
- (d) if he himself receives the payment or part-payment, he shall pay the money over to the registrar of the court from which the warrant was last sent to him, and send with it a certificate in Form 59 or a notice in Form 60, as the case may require.

[Form 59. Form 60.]

Default in payment of subsistence allowance for prisoner under section 72

(3) The provisions of this rule relating to default in payment of subsistence allowance shall apply in the case of a judgment debtor imprisoned under section 72 of the Act.

18. Discharge of debtor prisoner by court under section 73

(1) Where a judgment debtor is imprisoned under any warrant mentioned in paragraph (1) of rule 15 of this Order or under section 72 of the Act and the registrar of the court from which the warrant was issued receives payment or information or notification or a certificate of payment of the sum on payment of which the judgment debtor may be discharged by order of the court, or where default is made in payment of subsistence allowance, or where the judgment creditor makes a request for the discharge of the judgment debtor, the registrar shall inform the judge or magistrate, who may thereupon, if he thinks fit, make an order for the discharge of the judgment debtor forthwith.

(2) If the judge or magistrate does not make an order for the discharge of the judgment debtor forthwith, the registrar shall issue a production warrant in Form 55 for bringing the judgment debtor before the court at the time stated therein, which shall be the earliest convenient time.

[Form 55.]

(3) Upon hearing the judgment debtor, the court may make an order in accordance with the provisions of section 73 of the Act.

19. Production of debtor prisoner applying for discharge under section 74

Where a judgment debtor prisoner makes an application for his discharge under section 74 of the Act, the court shall order the judgment debtor to be brought before it at the

time fixed for the examination under section 75 (1) of the Act, and shall notify the judgment creditor of that time.

20. Discharge of debtor imprisoned under section 72 or 66 (f)

(1) A judgment debtor imprisoned under the provisions of section 72 or 66 (f) of the Act may apply to the court for his discharge or liberation. The application shall be accompanied by a statement of the grounds upon which it is made, and shall be verified by oath or affidavit.

(2) On such application being made the registrar shall cause the judgment creditor to be furnished with a copy of the statement and shall fix a time for examining and hearing the parties, and shall notify the judgment creditor of that time.

(3) The court shall order the judgment debtor to be brought before it at the time appointed for the examination.

(4) If the court is satisfied upon such inquiry, wherein the onus of proof shall be upon the judgment debtor-

- (a) that the judgment debtor has obeyed the order for non-compliance with which he was committed, or is not and will never be able to obey it, the court shall make an order for the discharge of the judgment debtor, to take effect either forthwith, or at the expiry of such term of imprisonment not exceeding one year as the court thinks fit, or upon payment, in lieu of such imprisonment, of a fine not exceeding the civil jurisdiction in damages of the court;
- (b) that the judgment debtor is desirous of obeying the order, and is or will be able to obey it, and is willing and able to give security to obey it, the court shall make an order for the liberation of the judgment debtor, to take effect either forthwith and unconditionally, or forthwith and upon such terms, including liability to recommitment if the terms are not complied with, as the court thinks fit, or at the expiry of the period of imprisonment, or upon payment of the fine, mentioned in the last preceding sub-paragraph of this rule.

21. Procedure on order for discharge

(1) Where an order for the discharge or liberation of a judgment debtor has been made or refused, the following provisions shall apply-

- (a) the registrar shall send to the officer in charge of the prison-
 - (i) where the judgment debtor has been brought to court, the original order or warrant of commitment, accompanied by or endorsed with an order in Form 36 or endorsed in Form 61 ;
[Form 36. Form 61.]
 - (ii) where the judgment debtor has remained in prison, an order in Form 36 or a notice in Form 61,

and the original order or warrant of commitment shall operate subject to and in accordance with such order, endorsement, or notice;

- (b) if the judgment debtor is present when the order is made or refused, then-
 - (i) if an order is made for his discharge or liberation forthwith, or upon terms which he then obeys or has not disobeyed, he shall be liberated forthwith;
 - (ii) if an order is made for his discharge or liberation at a future date, or upon terms with which he refuses to comply, or if no order is made, he shall be sent back to the prison;

- (c) where the judgment debtor has remained in or is sent back to the prison, the officer in charge of the prison, upon receipt of the order or endorsement in Form 36 or endorsement or notice in Form 61, shall liberate the judgment debtor, or detain him and subsequently liberate him in accordance with the original order or warrant of commitment and the first-mentioned order, endorsement, or notice;
- (d) where, after the failure of the judgment creditor to pay subsistence money, an order for the discharge of the judgment debtor is refused or is made to take effect at a future date, the court may make an order in accordance with the provisions of section 81 of the Act.

22. Recommitment

(1) Where a judgment creditor desires to obtain an order for the recommitment of a judgment debtor-

- (a) liberated under rule 20 of this Order on terms which include liability to recommitment if the terms are not complied with; or
- (b) liberated under section 75 of the Act,

then in either such case the judgment creditor may apply to the court on notice to the judgment debtor.

(2) If the court is satisfied upon the hearing of the application-

- (a) that the judgment debtor liberated under rule 20 of this Order has failed to comply with a term non-compliance with which renders him liable to recommitment, the court may order him to be recommitted;
- (b) that the judgment debtor liberated under section 75 of the Act has not made a full disclosure of his property, the court shall make an order in accordance with the proviso to subsection (2) of that section.

(3) Where an order for the recommitment of the judgment debtor is made, the original order or warrant of commitment shall be recalled and endorsed in Form 62, and may then be reissued at the instance of the judgment creditor, and shall operate in accordance with the endorsement.

[Form 62.]

ORDER XI

Other process

1. Arrest of ship

An order to stop the clearance of, or for the arrest and detention of, any ship, shall be enforceable by a warrant in Form 63.

[Form 63.]

2. Interim attachment

An order of interim attachment in an action shall be enforceable by a writ of interim attachment in Form 64.

[Form 64.]

3. Absconding defendant

An order to arrest an absconding defendant shall be enforceable by a warrant in Form 65 or Form 66 according as the order is made in the High Court or a magistrate's court.

[L.N. 47 of 1955. Form 65. Form 66.]

4. Delivery of goods

(1) A judgment for the delivery of goods shall be enforceable by writ of delivery in Form 67 or Form 68.

(2) Where a writ of delivery is issued, the plaintiff shall either by the same or a separate writ of execution be entitled to execution against the judgment debtor's property for any sum of money and costs awarded.

(3) Nothing in this rule shall prejudice the power of the court to enforce the judgment by commitment.

5.Writ of possession

A judgment or order for the recovery of land, or for the delivery of possession of land, in an action other than an action between landlord and tenant, shall be enforceable by a writ of possession, which shall be in like form as a warrant of possession under the Recovery of Premises Law of a State, and shall be addressed to the sheriff.

6.Process for rent, mesne profits, etc.

Where, in an action for recovery of land, judgment is given for the recovery thereof (with or without rent or mesne profits) and costs, there may be either one writ or warrant or separate writs or warrants for possession of the land and for rent and mesne profits and for costs, and after the execution of the writ the sheriff shall file a certificate as provided under the Recovery of Premises Law of a State.

7.Application for delivery or possession

An application for a writ of delivery or a writ or warrant of possession shall be made by filing a *praecipe* in Form 3, except where by the same writ or warrant execution is to

be levied upon immovable property, when the application shall be made under rule 16 of Order IV.

[Form 3. Schedule to Cap. S7.]

8. Application for sequestration

An application for a writ of sequestration shall be made to a judge; and the writ shall be in Form 69.

[Form 69.]

9. Powers of commissioners

A writ of sequestration shall be directed to two or more commissioners to be appointed by the court for the purpose, who shall be commanded and empowered to enter upon all the immovable property of the person against whom the writ shall issue, and to collect, take and get into their hands, not only the rents and profits of his immovable property, but also all his goods and movable property, and detain and keep the same under sequestration in their hands, until he shall clear his contempt or the court shall make other order to the contrary, and the court may order the payment out of the proceeds of such sequestration of all charges attending the execution thereof, including such reasonable remuneration to the commissioners as the court shall think fit to allow, and all the provisions of the rules respecting attachment of property under a decree for money shall, so far as applicable, apply in the case of a writ of sequestration.

10. When judgment directs a deed to be prepared

Where a judgment directs any deed to be prepared or executed, it shall state by which party the deed shall be prepared, and to whom it shall be submitted for approval, and, if the parties cannot agree upon the form of the deed, the court may, upon the application of any party on notice, settle the deed itself, or name a legal practitioner by whom it shall be settled, subject to the final approval of the court.

11. Where party refuses to execute deed

Where a judgment directs any deed to be executed or any negotiable instrument to be endorsed, and the party ordered to execute or endorse such deed or negotiable instrument shall neglect or refuse so to do, any party interested in having the same executed or endorsed, may prepare a deed or endorsement of the instrument in accordance with the terms of the judgment and tender the same to the court for execution, upon the proper stamp (if any is required by law), and the execution thereof by the registrar in the form prepared by rule 13 of Order VII shall have the same effect as the execution or endorsement thereof by the party ordered to execute.

ORDER XII

Forms and fees

1. Forms

The forms in the First Schedule hereto shall be added to the forms in the Schedule to the Act.

[First Schedule.]

2. Manner of preparing forms

(1) The Chief Registrar may from time to time cause to be printed with such variations in format, and distributed to the several registrars of the High Court and the magistrates' courts in such numbers, as he shall think fit, any of the forms contained in the Schedule to the Act, and wherever any forms so printed are available, they shall be used to the exclusion of forms prepared in any other way.

(2) Where any form required to be used in a particular case is not available printed as aforesaid, the registrar shall cause the form to be drawn up in the court registry, or may, where the form is not a form of process, accept the form after it has been drawn up by or on behalf of the party at whose instance it is to be used, and any form which the registrar draws up or accepts, may, if it is the same in all necessary respects as the appropriate form contained in the Schedule to the Act, be used as if it were printed as aforesaid.

(3) Where any form is drawn up in the registry of a magistrate's court as prescribed in the last preceding paragraph, it may, by and under the direction of the magistrate, and subject to section 23 of the Interpretation Act, be abbreviated by the omission of any recital or part of any recital, and in such case all consequential variations shall be made in the remainder of the form and a form so abbreviated may be used as if it were a form printed as aforesaid, and shall be good and sufficient in law.

[Cap. 123.]

3. Particulars in forms

Where any form is used, it shall contain the particulars required by it.

4. Fees

(1) The fees specified in the Second Schedule hereto shall be paid, received, recovered, receipted, accounted for and disposed of in accordance with the rules and regulations relating to fees for the time being applying in the court in which the proceeding is taken or the process is issued.

[L.N. 47 of 1955. Second Schedule.]

(2) Where, in any court, in relation to any proceeding under the Act or these Rules, anything is required to be done in respect of which no fee is specified in the Second Schedule hereto, but in respect of which a fee would be payable if the thing were required to be done in relation to other proceedings in that court, then the fee so payable shall be paid, received, recovered, receipted, accounted for, and disposed of as if the thing were required to be done in relation to such other proceedings.

5. No fees on *praecipe*

No fee shall be payable in respect of the filing of a *praecipe* or other application made to the registrar for the issue of process, or in respect of the drawing up or issue of an order for the discharge or liberation of a judgment debtor prisoner.

SCHEDULES

FIRST SCHEDULE

Forms

FORM 28*

In the High Court of the
Judicial Division/Magisterial District.

REGISTRAR'S RETURN OF FEES PAYABLE TO BAILIFFS

FOR THE MONTH OF, 20

<i>Nature of Duty</i>	<i>Number</i>	<i>Date</i>	<i>Total</i>

.....
Registrar

* For Forms 1 to 27 see the Schedule to the Act.

FORM 30
[Order I, rule 7.]

Return of process in possession of Bailiff

Return of all Writs, Orders and Warrants in possession of Bailiff
..... during the month ending 20

No. of Suit or Plaintiff	Name of Plaintiff	Name of Defendant	When process received	Nature of process	From what Court received	Amount of process	Statement as to what has been done under process

..... *Bailiff*

I HEREBY CERTIFY that I have examined this return in accordance with the law.

Sheriff or Deputy Sheriff

Date

FORM 31
[Order I, rule 7.]

Return of cash received by Bailiff

DURING THE MONTH OF 20

Sheriffs and Civil Process Act

FORM 31- *continued*

.....
Signature of Bailiff

I HEREBY CERTIFY that I have examined this return in accordance with the law.

.....
Sheriff or Deputy Sheriff

Date

FORM 32
[Order 1, rule 10.]

Sheriff's receipt for writ

Received from on the day of
20 , at clock in the noon, a
writ bearing date the day of 20 . ,
issued in the High/Magistrate s Court of the judicial Division/Magisterial
Area in suit [or plaint] No
..... V
by against

.....
Sheriff

FORM 33

[Order I, rule 1]

Sheriff's register of process rule 11

Order I, rule 17.]

Summons for neglect to levy execution

In the High/Magistrate's Court of the
Judicial Division/Magisterial District.

Toofbailiff.

You are hereby summoned to appear at a court to be held at
on theday of20at
the hour ofin the noon, to answer a complaint
made against you byofthat you,
being employed to execute a writ of
against the (*specify the property*)
ofdid, by neglect or connivance or
omission lose the opportunity of executing such writ, and to show cause why an order should not
be made against you under section 40 of the Sheriffs and Civil Process Act, for payment of such
damages as it shall appear that the saidhas sustained by your neglect
or connivance or omission.

DATED thisday of20

.....
Judge [or Magistrate]

FORM 35
[Order 11, rule 27.]

General form or commencement of process in transferred proceedings

[General Title-Form 1]

No. of suit [or plaint]

No. of judgment summons

Upon transfer from the High/Magistrate's Court of the

Judicial Division/Magisterial District

[add for each previous transfer. And upon transfer, etc., as above.]

FORM 36
[Order III, rule 2.]

Order suspending or staying judgment or process or for discharge of debtor

[General Title-Form 1]

On the application of and the court being satisfied that the defendant is unable to pay and discharge the sum recovered against him in this [or the instalments due under the judgment (or order) in this] action [or the defendant having furnished security (or shown cause why he should not furnish security)] [or the plaintiff having been non-suited] [or the above action having been struck out] [or the court being satisfied that the interim attachment herein should be lifted] (or the defendant having satisfied the sum upon payment of which he may be discharged by order of the court (or having obeyed [or being unable to obey] [or being desirous of obeying and having given security to obey] the order in this action):

It is ordered that the judgment [or order] in this action be suspended against the said defendant (or that the (interim) execution issued in this action (or on the judgment summons in this action) be suspended) [or that the order (and warrant) of commitment made (and issued) in this action be suspended] for [state time] upon the terms following, namely - [state terms] [or that the defendant be discharged (or liberated) from custody under the order (or warrant) of commitment issued in this action (after he has been imprisoned thereunder for from the date of this order unless he shall sooner pay a fine of N) (upon the terms following, namely- [state terms, including, if so ordered, liability to re-arrest if the terms are not complied with.]

Judge [or Magistrate]

FORM 37
[Order IV, rule 7.]
Registrar's process b

FORM 38
[Order IV, rule 16.]

Writ of attachment and sale against immovable property

[General Title-Form I]

[Recitals-Form 4, 5, 6]

AND WHEREAS no movable property of the defendant [*or* plaintiff] can with reasonable diligence be found sufficient to satisfy the said judgment [*or* order]:

AND WHEREAS upon the application of the plaintiff [*or* defendant) it was on the

day of20
ordered that a writ of attachment and sale should issue against the immovable property of the defendant [*or* plaintiff] for the sum of N
[being part of the sum of N(judgment debt, or part thereof ordered to be levied, or plaintiff's costs, or as the case may be) remaining unpaid):

These are therefore to require and order you forthwith to make and levy the said sum of N .. together with the costs of this writ and the costs of executing the same, by entering upon and attaching the immovable property of the defendant [*or* plaintiff] wheresoever it may be found within the
Judicial Division and by selling the same, and to bring what you shall have so levied into court and to make return of what you have done under this writ immediately upon the execution thereof:

[Continue as Form 4,5, or 6 to the words "the day last mentioned above".)

NOTICE. - The immovable property is not to be sold until after the end of fourteen days next following the day on which the attachment shall have been made.

If the defendant [*or* plaintiff] is a native, and the property attached is his right title or interest in a building owned or occupied by him, and he is not entitled under native law or custom to alienate the building or his right of occupation therein but is entitled to remove the materials used in construction thereof or some of them, then his right title or interest in such building shall not be sold without the leave of the court

.....
Registrar

FORM 39
[Order IV, rule 18.]

Notice to registrar of foreign court of payment under warrant or order of commitment sent to him

Take notice that the defendant has this day paid to the plaintiff [*or* into court) N for which sum credit should be given on the warrant [*or* of arrest and detention) which has been sent to you for execution.

FORM 40
[Order V, rule 3.]

Public notice of attachment of land

[General Title-Form 1]

NOTICE.-This land [*or this house, or as the case may be*] is hereby attached to secure the enforcement against the defendant of the judgment of the court in the above action, and all persons are from the date hereof prohibited from receiving the land [*or house*] by purchase, gift, or otherwise.

DATED this day of 20

.....
Sheriff

FORM 41
[Order V, rule 4.]

Notice of attachment

[General Title-Form 1]

To the Defendant,

Take notice that a writ has been issued for the attachment and sale of your goods [*or land, or house, or as the case may be*] in execution of the judgment [*or order*] obtained against you in this action [*or matter*] and the amount for which it has been issued is stated below.

And take notice that your land [*or house, or as the case may be*] is hereby attached and you are prohibited from selling the same or any right, title, or interest therein.

If you pay to the Bailiff the total amount to be levied, as stated below, within one hour after the service of this notice, you will incur no further fees or expenses.

Thereafter, you may be liable to pay the Sheriff a fee of twenty kobo daily for keeping possession of the property, and also the reasonable expenses, if any, of feeding animals, until the amount to be levied, together with the amount of such fees and expenses, is paid, or the property is sold.

If at any time before the sale of the property you pay to the Registrar or Bailiff (*a*) the amount to be levied, and (*b*) the fees and expenses, if any, incurred after attachment, this execution will be suspended and your property will be released.

If you do not pay the amount to be levied and any fees and expenses subsequently incurred, the property will be sold and any amount that remains unpaid, together with costs of sale, will be deducted from the proceeds, and the balance, if any, will be paid to you.

Your goods [*or land, or house, or as the case may be*] will not be sold until after the end of five [*or fourteen*] days next following the day on which they were [*or it was*] attached unless [they are of a perishable nature, *or*] you request it.

FORM 41-*continued*

ℳ k

Amount for which the writ has been issued

Fees on issue of writ

Total amount to be levied, exclusive of fees and expenses incurred after attachment

DATED thisday of 20

.....
Registrar

FORM 42

[Order VI, rule 2.]

Notice of claim to attached property

[General Title-Form 1]

Take notice thatofhas claimed the goods [or house] [or land] [or certain goods (or land) (*specify the same*)] [or, rent distrainable upon the goods] attached by the Sheriff under the writ of execution issued in this action.

If withindays after receiving this notice you give notice to me that you admit the title of the saidto the said goods [or house] [or land], or request the Sheriff to remove the attachment, you will not be liable for any costs incurred after the receipt by me or the Sheriff of your notice.

DATED thisday of 20

.....
Registrar

To the Plaintiff

Take notice that I admit the title ofto the goods attached by the Sheriff [or I request you to remove the attachment] under the execution issued in this action.

DATED thisday of 20

.....
Judge [or Magistrate]

To the Registrar

[or to the Sheriff]

FORM 43
[Order VI, rule 2.]

*Notice to claimant to attached property to make deposit or give security
[General Title-Form I]*

Whereas you have claimed the goods [or house] [or land] for certain goods (or land) (specify (he same)] attached in execution by the Sheriff under the writ of execution issued in this action.

Take notice that you are hereby required, in accordance with section 33 of the Sheriffs and Civil Process Act, either-

- (i) to deposit with the Sheriff the amount of the value of the goods [or house] [or land] so claimed by you, such value to be fixed by appraisement in case of dispute, to be paid into court to abide the decision of the court upon your claim; or
- (ii) to deposit with the Sheriff the costs of keeping possession of such goods [or house] [or land] until such decision can be obtained; or
- (iii) to give to the Sheriff security by bond for the value of the goods [or house] [or land] so claimed by you.

And further take notice that in default of your making deposit or giving security the goods [or house] [or land] will be sold as if no such claim had been made by you, and the proceeds paid into court to abide the decision of the court.

DATED this day of 20

.....
Registrar

To the Claimant

FORM 44
[Order VII, rule 3.]

*Notice of application for private sale
[General Title-Form If]*

Take notice that this honourable court will be moved on the day of , 20 at o'clock in the forenoon, or so soon thereafter as [counsel for the above-named plaintiff can be heard, for an order for [leave to effect] the sale by private contract of the movable [or immovable] property of the defendant attached under a writ issued in this action

[or matter] on the day of 20 at whereunder the total amount to be levied is N

DATED this day of 20

.....
Plaintiff [or Solicitor]

To

FORM 45
[Order VII, rule 8.]

Notice to person in possession of sale of attached property

[General Title-Form 1]

Take notice that the goods [*or as the case may be*] specified on the back hereof, lately the property of the above-named
and now in your possession, have been sold under a writ of execution in the above action to
....., and you are hereby prohibited from delivering possession of the said goods [*or as the case may be*] to any person except the said
..... the purchaser

DATED this day of 20

.....
Sheriff

FORM 46

Certificate of purchase of land
[Order VIH, rule 9.]

[General Title-Form 1]

I hereby certify that of has been declared the purchaser of the right, title, and interest of the above-named in the land, messuages, and tenements hereinafter mentioned; that is to say -

All that [*here describe the land, etc.*] which said land, messuages, and tenements were sold in execution of a judgment [*or order*] in the above action by order of this court dated the day of 20
DATED this day of 20

.....
Registrar

FORM 47
[Order IX, rule 6.]

Writ of interim attachment in judgment debtor proceedings

[General Title-Form J]

WHEREAS upon the adjournment to the day of 20,

FORM 47-continued

of the hearing of a judgment summons issued in the above action against the defendant
an order was made for the interim protection of the property hereinafter specified, and that the said
property should be attached forthwith.

These are therefore to require and order you forthwith to seize, take into your hands, enter upon,
and attach the defendant's property specified on the back of this writ wheresoever it may be found.

[Continue to the end of Form 64 and add]

¶ k

Sum (including the above fees) on payment of which the judgment sum-
mons will be satisfied and this writ superseded

.....

Registrar

FORM 48

[Order **IX**, rule 13.]

Notice of consequences of disobedience to order of court

To of

Take notice that unless you obey the directions contained in this order you will be guilty of con-
tempt of court and will be liable to be committed to prison.

DATED this day of 20

.....

Registrar

FORM 49

[Order **IX**, rule 13.]

Notice to show cause why order of attachment should not be made

[General Title-Form II]

Take notice that the plaintiff [or defendant] will on the
..... day of, 20,
at the hour of in the noon, apply to this court for an
order for your committal to prison [for having disobeyed the order of this court made on the ...
..... day of, 20, enjoining and restraining
you from (*here set out the terms of injunction*) [or for having neglected to obey the order made on
the day of 20 requiring you to
(*here set out the mandatory part of the order*)].

And further take notice that you are hereby required to attend the court on the first-mentioned
day to show cause why an order for your committal should not be made.

FORM 50
[Order IX, rule 5.]

Certificate that labour has been ordered for debtor prisoner

I hereby certify that the court has directed that the herein-namedbe employed in work within the prison during
[state period] of the term of his imprisonment

DATED thisday of 20

.....
Registrar

FORM 51
[Order X, rule 5.]

Warrant of committal of judgment debtor in default of security

[General Title-Form 1]

To the Sheriff, and to the Officer in Charge ofPrison.

WHEREAS upon the adjournment to theday of 20, of the hearing of a judgment summons issued in the above action against the defendant it is today ordered that the said defendant should give security for his appearance on that day, himself inN andsurety in N [each], and in default of finding such security should be committed to prison until that day, unless he should sooner give such security, or pay the sum stated below as that on payment whereof he is to be discharged.

These are there tare to require you the said Sheriff to take the said defendant and deliver him to the Officer in Charge of the prison at and you the said Officer to receive the said defendant and keep him safely in the said prison until the day above-mentioned, when you shall bring him [or deliver him to the Sheriff to be brought] before this court at the hour of in thenoon, unless he shall be sooner discharged by due course of law.

[Conclude as in Form 54]

FORM 52
[Order X, rule 5.]

Warrant of commitment or remand of judgment debtor for misconduct

[General Title-Form /]

To the Sheriff, and to the Officer in Charge ofPrison.

[First Recital-Form /7]

FORM 52-continued

AND WHEREAS on the day of 20, at the hearing of [or being the return day of] a judgment summons issued in this action against the said defendant [and duly served upon him] the said defendant refused to be sworn [or to disclose the matters on which he was examined] [or did not answer to the satisfaction of the court] [or it appeared to the court that the said defendant refused or wilfully neglected to pay on demand the

sum of £ payable in pursuance of the said judgment (or order) and had (or had had since the date of the judgment or order) sufficient means to pay the said sum] [or that the said defendant, etc., *reciting any other misconduct of the kind enumerated in section 66 of the Act*] [or the said defendant did not attend and did not excuse his non-attendance to the satisfaction of the court]:

AND WHEREAS On the said hearing [or return] day the court made an order calling upon the said defendant to show cause why he should not be punished for such misconduct [or non-attendance] [or issued a warrant for the arrest of the said defendant]:

AND WHEREAS on the day of 20, [the return day of the said order to show cause] the said defendant was brought before the court in custody [or attended] as directed by the said warrant [or order] and did not show cause why he should not be punished [or the said defendant failed to attend as directed by the said order, and has not established sufficient reason for not attending], and it was ordered that a warrant should issue for the remand [or arrest and commitment] of the said defendant as for a contempt of court for

..... [unless he shall sooner pay the sum stated below as that upon payment of which he is to be discharged]:

These are therefore to require you the said Sheriff forthwith to [arrest the said defendant and] safely convey and deliver him [or the said defendant] to the Officer in Charge of the Prison at , and you the said Officer to receive the said defendant and keep him safely in the said Prison for from the arrest under [or date of] this warrant, or until he shall be sooner discharged by due course of law.

DATED this [*insert date of issue of warrant*] day of 20

Judge [or Magistrate]

£ k

Sum in payment of which defendant has made default at the time of the issue of the judgment summons

Fees and costs on issue of the judgment summons

Deduct amount paid since issue of judgment summons

Fees for issue of this warrant

Sum on payment of which the debtor may [or is to] be discharged by order of the court

[*for use when part payment made after issue of warrant*]

Deduct amount paid since issue of warrant

Balance (if any) on payment of which the debtor may be [or is to] be discharged by order of the court

FORM 52-continued

.....
Registrar

[NOTE.-A separate warrant must be issued in respect of every defendant required to be remanded or arrested.]

FORM 53
[Order X, rule 5.]

Warrant of committal under section 72

[General Title-Form I]

To the Sheriff, and to the Officer in Charge of Prison.
WHEREAS by an order of this court dated the day
of , 20, *[here recite the order]*:

AND WHEREAS on the day of 20,
the court, being of the opinion that the said
then appearing *[or having been duly served with the said order]*, was guilty of a contempt of this
court by a breach of *[or by neglecting to obey]* the said order, that is to say by *[here set out the
particular matter of contempt]*, ordered that he be committed for his contempt.

These are therefore to require you the said Sheriff forthwith to arrest the said
and safely convey and deliver him to the Officer in Charge of the Prison at
and you the said Officer to receive the said
and keep him safely in the said prison until further order of the court.

DATED this day of 20

.....
Judge [or Magistrate]

[If required, add-]

NOTE.- The costs of the issue and execution of this warrant, and of the application for the order
grounding the same, were upon the hearing of the application ordered to be paid by the said

.....
Registrar

FORM 54
[Order X, rule 5.]

Warrant of arrest and detention of judgment debtor

[General Title-Form 1]

To the Sheriff, and to the Officer in Charge of Prison.

WHEREAS on the day of 20,
a judgment summons was issued from this court against the defendant
in the above action [returnable on the day of , 20

AND WHEREAS it is necessary to secure or enforce the attendance of the said defendant to answer the said summons *for* (it appears to the court that) the said defendant has been guilty of misconduct at the hearing of the said summons (or in relation to the judgment debt) and he is required to show cause why he should not be punished for such misconduct) [unless he shall sooner pay the sum stated below as that on payment of which he shall be discharged]:

These are therefore to require you the said Sheriff to arrest the said defendant and bring him before this court forthwith *or* on the day of , 20]
[*or* on the first convenient opportunity] [*or* upon the further order of the court] [and in the meantime to deliver him to the Officer in Charge of the Prison at
and you the said Officer to receive the said defendant and keep him safely in the said prison until
the day of 20,
(*or* until the first convenient opportunity when he may be brought before the court *or* until the further order of the court) when you shall bring him (*or* deliver him to the Sheriff to be brought) before this court at the hour of in the noon]
unless he shall be sooner discharged by due course of law.

DATED this day of , 20

.....
Judge [or Magistrates

N k

Sum on payment of which the debtor is to be discharged
[For use when part payment made after issue of warrant]

Deduct amount paid after issue of warrant
Balance on payment of which the debtor is to be discharged
.....

Registrar

[NOTE-A separate warrant must be issued in respect of every defendant required to be arrested.]
.....

FORM 55
[Order X, rule 5.]

Production Warrant

[General Title-Form I]

To [the Sheriff and] the Officer in Charge ofPrison.
These are to require you the Officer in Charge of the Prison at
to bring the defendantnow in your custody [or to deliver
the defendantnow in your custody to the Sheriff,
and you the said Sheriff to bring the said defendant] before this court on the,
day of ,20,
at the hour of in thenoon, unless he shall be
sooner discharged by due course of law, and to have there then the order [*or warrant*] under which
the said defendant was imprisoned.

DATED thisday of 20

.....
Judge [or Magistrate]

FORM 56
[Order X, rule 7.]

Praecipe for issue of order of warrant of commitment

[General Title-Form I]

Plaintiff's name in full.....	No. of plaint
His residence and occupation or description	No. of suit
.....	No. of judgment summons
Names of all defendants	No. of order of commitment
.....	Subsistence allowance
Name of defendant against whom order of	<i>Per diem</i>to be
commitment was made paid before issue of warrant

[NOTE.-A separate order or warrant must be issued against every defendant required to be arrested.]

His address and occupation or description

.....

I hereby request you to issue [a warrant for the enforcement of] the order of commitment [*or arrest*
and detention] made under section 65 [*or 68*] [*or 72*] [*or 58 (or 61) (or 66)*] of the Act against the

FORM 56-continued

above-named defendant on the day of, 20.....
DATED this day of 20

Judgment Creditor or Solicitor

[To be filled up by the Registrar if payment has been ordered through the Court]

₦ k

Date of judgment [or order]	Sum in payment of which defendant has made default at the time of the issue of the judgment summons
Order	
Committed on	
....., 20	
for days.	_____
Order suspended for	Fees and costs on issue and hearing of judgment summons ...
on payment of	Deduct amount paid since issue of judgment summons
.....	Fees for issue of order or warrant ... _____

FORM 57
[Order X, rule 7.]

Notice of payment of subsistence money

NOTE.--Subsistence money has been fixed at *per diem*,
of which the sum of ₦ has been paid to me by the judgment creditor.

.....

Registrar

FORM 58
[Order X, rule I I.]

Endorsement on an order of commitment sent to a foreign court

To the Officer in Charge of Prison

FORM 58-continued

Take notice that, in accordance with the provisions of section 39 of the Sheriffs and Civil Process Act, this order [*or warrant*] of commitment has been sent to me and that the debtor, if arrested within the division [*or district*] of this court, is to be conveyed to the above-named prison, and is to be there kept for the time mentioned in this order [*or warrant*] unless sooner discharged by law.

DATED thisday of 20

.....
Registrar, Court

FORM 59
[Order X, rule 16.]

Certificate by officer in charge of prison of payment of judgment debt

[General Title - Form 1]

I hereby certify that the defendant, who was committed to my custody by virtue of an order of commitment made by the High/Magistrate's Court of theJudicial Division/Magisterial District, bearing date the
day of 20 has paid and satisfied the sum of money for the non-payment whereof he was so committed, together with all costs due and payable in respect thereof, [and that I have today discharged him out of my custody].

DATED thisday of 20

.....
Officer in Charge of Prison

To the Registrar of the High/Magistrate's Court of the Division/District.

FORM 60
[Order X, rule 16.]

Notice of part payment

[General Title-Form 1]

Take notice that the defendant who was committed to your [*or my*] custody by virtue of an order [*or warrant*] issued from the High/Magistrate's Court of the Division/District bearing date the day of 20 has paid the sum of N towards satisfaction of the sum on payment whereof he is to [*or may*] be discharged [by order of the court], and you are to deduct [*or, I have deducted*] the sum paid from the last-mentioned sum as entered on the said order [*or warrant*] [which shall thenceforth operate as an order (*or warrant*) of commitment for non-payment of the balance].

FORM 60-continued

DATED this day of 20

.....

Registrar, [or Officer in Charge of Prison]

To the Officer in Charge of the Prison
[or to the Registrar of the (High/magistrate's Court of the
Division/District).]

FORM 61

[Order X, rule 21.]

Endorsement of refusal of discharge order

[General Title-Form 1]

To the Officer in Charge Prison.
Take notice that, upon hearing the application of the within-named defendant for his discharge, the court on theday of 20, has seen fit to make no order, and this warrant remains in full force and effect and you are to keep the defendant in your custody accordingly.

DATED this day of 20

.....

Judge [or Magistrate]

FORM 62

[Order X, rule 22.]

Endorsement of recommitment

The within-named defendant, having failed to comply with the terms upon which he was liberated [or to make a full disclosure of his property], was today ordered to be recommitted to prison for (*state period*) and this order [or warrant] now operates accordingly.

DATED this day of 20

.....

Judge [or Magistrate]

FORM 63
[Order XI, rule 1.]

Warrant for arrest of ship
[General Title-Form I]

To the Sheriff.

WHEREAS it appears that the shipis about to leave Nigeria:

AND WHEREAS it has been shown on the application this day of the plaintiff
who claims fromthe sum of ₦
for [or an order for
.....

that it is necessary to stop the clearance and order the arrest and detention of the said ship on the ground that (*here recite proved circumstances showing extreme urgency, or as the case may be*):

AND WHEREAS the court this day ordered that the said ship be arrested and detained:

These are therefore to require and order you forthwith to detain the said ship until such time as (*here recite any condition as to giving of security or otherwise which may have been imposed*) or until the said ship shall be otherwise released by due course of the law.

DATED thisday of 20

.....
Judge [or Magistrate]

FORM 64
[Order XI, rule 2.]

Writ of interim attachment
[General Title-Form I]

WHEREAS It has been shown to the satisfaction of the court that the defendant,
with intent to obstruct or delay the execution of any judgment that may be given against him in this suit, is about to dispose of [or, remove from Nigeria] /or, that the defendant is absent from Nigeria (or that there is probable cause to believe that the defendant is concealing himself to evade service) and that the plaintiff is beneficially entitled to the debts [or the property] hereinafter specified:

AND WHEREAS on theday of 20,
it was ORDERED that the said defendant should within days
thereafter [appear and show cause why he should not] furnish security in the sum of ₦

to produce and place at the disposal of the court [(the value at) the said property] /or such portion of the said property as may be of the value of ₦:]

AND WHEREAS [it was further ordered that the said property should be attached forthwith, pending the defendant's (appearance:) (or furnishing such security:)] /or the defendant having appeared has failed to show cause as aforesaid and has not furnished such security:] /or the said period of days has expired, and the defendant

FORM 64-continued

(has failed to appear and) has not furnished such security:]

These are therefore to require and order you forthwith to seize, take into your hands, [enter upon.] and attach [such portion of] the defendant's property specified on the back of this writ as may be of the value of ₦ wheresoever it may be found within the

Judicial Division/Magisterial District (except the wearing apparel and bedding of him and his family and the tools and implements of his trade. to the value of ten naira) and to hold the same until the further order of the court and to make return of what you have done under this writ immediately on the execution thereof.

DATED this day of 20

.....
Judge [or Magistrate]

To the Sheriff and Bailiffs of the Court.

₦ k

Fees on issue of this writ

.....

Application was made to the Registrar for this writ at minutes past the hour of in the noon of the day last mentioned above.

.....
Registrar

FORM 64

Writ of interim attachment

(See back)

I Endorsement]

SPECIFICATION OF PROPERTY TO BE ATTACHED

<i>Number</i>	<i>Description</i>	<i>Estimated value</i>	<i>Where to be found</i>	<i>Name of person indebted /0 defendant, or in whose custody or control defendant 's property is</i>

FORM 65
[Order XI, rule 3.]

Warrant to arrest absconding defendant

(*For use in the High Court*)

[General Title-Form 1]

WHEREAS there is probable cause for believing that the defendant
is about to leave /or has (or is about to) dispose of or remove (some part of) his property from] the jurisdiction of the court, by reason whereof the execution of any judgment which may be given against him in this suit is likely to be obstructed or delayed:

You are therefore hereby commanded to bring the said defendant before this court forthwith, in order that he may show cause why he should not [give bail for his appearance at any time when called upon while this suit is pending and until execution or satisfaction of the judgment, if any] [or give bail for the satisfaction of the judgment, if any].

DATED thisday of 20

.....

Registrar

To the Sheriff and Bailiffs of the Court.

₦ k

Fee on issue of this warrant

NOTICE.-If the defendant gives bail before a Magistrate or Justice of the Peace in the sum of

₦ with sufficient
surety, [for his appearance as aforesaid] /or for the satisfaction of the judgment,] or if he deposits with you for transmission to the court the sum of ₦ : or other property of the same or greater value, he shall thereupon, in respect of this warrant, be discharged out of your custody.

FORM 66
[Order XI, rule 3.]

Warrant to arrest absconding defendant

(*For use in a Magistrate's Court*)

[General Title-Form 1]

WHEREAS the above-named plaintiff has a good cause of action against the defendant

..... to the amount of ₦

AND WHEREAS there is probable cause for believing that the said defendant is about to quit Nigeria and that his absence from Nigeria will prejudice the plaintiff in the recovery of the said sum of

₦

You are therefore hereby commanded forthwith to bring the said defendant if found in the.....

FORM 66-continued

..... Magisterial District, then before the Magistrate's Court of the said District,
and if found in any other Magisterial District, then before the nearest Magistrate.

DATED this day of 20

.....

Magistrate

To the Sheriff and Bailiffs of the Court.

N k

Fee on issue of this warrant

FORM 67
[Order **XI**, rule 4.]

Writ of delivery

[General Title-Form I]

WHEREAS on the day of 20,
the plaintiff obtained judgment against the defendant for
the recovery of [*specify the goods which the court has ordered to be recovered of the defendant*]
..... of the value of N
[and for the payment of N for damages for the detention of the said goods and of
N for costs] and it was ordered that the said defendant should return the
said goods to the plaintiff [or pay the said sum of N their value] on or before the
..... day of 20

AND WHEREAS the said defendant did not on or before the said
day of 20, return the said goods to the plaintiff
and default has been made in payment according to the said order of the said sum(s) of N
or damages [and N for costs] [and N the value of the said goods]:

These are therefore to require and order you forthwith to seize the said goods, wheresoever they
may be found within the Judicial
Division/Magisterial District, and to deliver the same to the plaintiff.

And if the same cannot be found by you within such Division/District, you are required and OJ'-
dered to make and levy the said sum of N [*the assessed value of the goods*]
by distress and sale of the goods and chattels of the said defendant wheresoever they may be found
within the Judicial Division/Magisterial District

FORM 67-continued

(except the wearing apparel and bedding of him or his Family and the tools and implements of his trade, to the value of ten naira), and also by seizing and taking any money, bank-notes, bills of exchange, promissory notes, bonds, special ties, or securities for money belonging to the said defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution in respect of the said sum of ₦

And you are further required and ordered to make and levy [(the said sum of ₦
ulomages for detention] and) the said sum of ₦ costs, together with] the costs of this writ and the costs of executing the same, by distress and sale of the goods and chattels of the said defendant, wheresoever they may be found, within the
Judicial Division/Magisterial District (except the wearing apparel and bedding of him or his family and the tools and implements of his trade, to the value of ten naira), and also by seizing and taking any money, bank-notes, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to the said defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution.

And you are further required to bring into court what you shall have levied, and to make return of what you have done under this writ immediately upon the execution thereof.

DATED this day of 20

.....
Judge [or Magistrate]

₦ k

To the Sheriff and Bailiff of the Court

Assessed value of the specified goods

Damages for detention of goods

Costs

Fees on issue of this writ

Total amount to be levied exclusive of further costs, if any, of execution

Application was made to the Registrar for this writ at
minutes past the hour of in the noon of the day
last mentioned above.

NOTE.- The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized unless they are of a perishable nature or the defendant requests it.

.....
Registrar

FORM 68
[Order XI, rule 4.]

Writ of delivery with execution against immovable property

[General Title-Form I]

[Recitals] and 2-Form 67]

AND WHEREAS no movable property of the defendant can with reasonable diligence be found [sufficient to satisfy the said sums) of ₦..... (*damages*) and ₦:(*costs*) and ₦
(*value of goods*)]:

AND WHEREAS upon the application of the plaintiff it was, on the
day of20 ordered that execution might be levied upon the immovable property of the defendant for [the sum of ₦ being part of] the said sums) of ₦ : [and ₦] [and ₦] remaining unpaid.

These are therefore to require and order you forthwith to seize the said goods, wheresoever they may be found within the Judicial Division/Magisterial District, and to deliver the same to the plaintiff:

And if the same cannot be found by you within such Division/District, you are required and ordered to make and levy the said sum of N^o [*the assessed value of the goods*], by entering upon and attaching the immovable property of the defendant wheresoever it may be found within the Judicial Division and by selling the same, or such part or so much thereof as may be sufficient to satisfy this execution in respect of the said sum of N^o

And you are further required and ordered to make and levy [the said sum of ₦ (*damages for detention*) and] the said sum of ₦ [costs] together with the costs of this writ and the costs of executing the same, by entering upon and attaching the immovable property of the defendant wheresoever it may be found within the Judicial Division and by selling the same or such part or so much thereof as may be sufficient to satisfy this execution.

And you are further required to bring into court [*continue as in Form 67, to the words "the day last mentioned above" omitting the words "or Magistrale".*]

NOTE.-[as in Form 38].

Registrar

FORM 69
[Order XI, rule 8.]

Writ of Sequestration

[General Title-Form 1]

[Recitals 1 and 2-Form 67]

To:

WHEREAS on the day of the plaintiff obtained judgment [or an order] in this court against the defendant for the sum of ₦..... for debt [or damages] and costs [or that (recite the effect of the order)]:

AND WHEREAS upon the failure of the said defendant to pay the said sum [or comply with (or obey) the said order] there was issued from this Court on the day of 20 an order for the commitment [or a warrant for the commitment (or arrest and detention)] of the said defendant:

AND WHEREAS the said defendant is not and cannot be found [or is taken and detained in custody without obeying the said judgment (or order)]:

Know ye therefore, that by these presents full power and authority is given to you to enter upon all the immovable property whatsoever of the said and to collect, receive and sequester into your hands not only all the rents and profits of the said immovable property, but also all his movable property whatsoever, and therefore you are commanded in the President's name, that you do at certain proper and convenient days and hours go to and enter upon all the immovable property of the said and that you do collect, take and get into your hands not only the rents and profits of his said immovable property, but also all his movable property, and detain and keep the same under sequestration in your hands until the said shall clear his contempt or this court shall make other order to the contrary.

DATED this day of 20

Judge

Application was made to the Registrar for this writ at minutes past the hour of : in the noon of the day last mentioned above.

.....
Registrar

SECOND SCHEDULE

(As substituted by Rules of Court 3 of 1948 and amended by L.N. 47 of 1955)

	FEES	N	k
1. On the issue of every writ of interim attachment—			
(a) where the amount in dispute does not exceed ₦100		96	
(b) where the amount in dispute exceeds ₦100.....	1	26	
2. On the issue of every writ of execution, where the amount of the judgment debt, or the value of the property to be recovered, or the sum of such amount and value—			
(a) does not exceed ₦10		50	
(b) exceeds ₦10 but not ₦20		63	
(c) exceeds ₦20 but not ₦50		76	
(d) exceeds ₦50 but does not exceed ₦100	1	26	
(e) exceeds ₦100	2	50	
3. For execution of every writ—			
(a) for not more than ₦10		50	
(b) for more than ₦10		76	
4. For the man in possession, <i>per diem</i>		26	
5. Sheriff's expenses for sale, where the property sold produces—			
(a) ₦600 or less		5%	
(b) more than ₦600 but not more than ₦800		4½%	
(c) more than ₦800 but not more than ₦1,000		4%	
(d) more than ₦1,000		3½%	
6. Auctioneer's commission and expenses (including printing of notices, placarding, and bellman) of sale of any property under order of court (unless the court makes an order otherwise determining such commission and expenses); where the gross proceeds amount to—			

	Commission not exceeding	Expenses not exceeding	
	Per cent	N	k
(a) ₦100 or less	5	2	50
(b) More than ₦100, but not more than ₦200	5	3	00
(c) More than ₦200, but not more than ₦600	5	4	20
(d) More than ₦600, but not more than ₦800	4½	5	26
(e) More than ₦800, but not more than ₦1,000	4	6	00
(f) More than ₦1,000	3½	6	00

SECOND SCHEDULE—*continued*

FEES—*continued*

	N	k
Provided that the commission chargeable under any of the classes (b) to (f) above shall not be less than that chargeable under the preceding class.		
7. For every notice under section 36, and every certificate of title, for each ₦50 and part of ₦50 of the purchase money (payable by purchaser).....	50	
8. For affixing copy order under Order VII, r. 10 (payable by purchaser) (plus mileage fees)	16	
9. On the hearing of interpleader proceedings, payable by the claimant: the amount payable on the issue of a summons for recovery of the goods claimed, at their appraised value.		
10. For every appraisalment, for every ₦10 of the amount to be levied, but not exceeding ₦20	26	
11. On the issue of a judgment summons or a garnishee order, and on the filing of an application under Order II, r. 27, or Order V, r. 8: where the amount of the judgement debt or debt to be garnisheed, whichever is the less—		
(a) does not exceed ₦20	33	
(b) exceeds 120 but does not exceed ₦10	63	
(c) exceeds ₦100	1	26
12. On the issue of every order or warrant of commitment, or for arrest and detention of a judgment debtor	1	26
13. For every personal arrest		63
14. For every arrest of a ship	1	26
15. In the case of difficulty in any arrest or execution, or where the property is of large amount, the court may authorise a larger fee not exceeding	2	50
16. For every warrant sent with any process to a foreign court		16
17. For a warrant for possession of premises—		
(a) where the annual rent or value does not exceed ₦50	1	26
(b) where it exceeds ₦50	2	50
18. For the settling of any instrument by the court: such fee, not exceeding the fee chargeable by a legal practitioner for the like service, as the court may direct.		
19. For the execution of any instrument by the registrar	1	26
20. For the issue of the notice required by Order IX, r. 13 (2)		63
21. On making any application under the Act or these rules, not specifically charged: the fee chargeable in respect of an interlocutory application in the particular court, under the rules for the time being in force.		

SECOND SCHEDULE-continued

FEES

₦ k

22.	For the drawing up and issue of an order in a form prescribed by the Act or these Rules-	
(a)	in the Magistrates' Courts	63
(b)	in the High Court	1 26
23.	For the service of a document, mileage and any other proceeding or service chargeable in civil cases under the rules for the time being in force: the fees payable in the Magistrates' COURTS or the High Court, as the case may be, where no specific provision is made in this Schedule.	

**ENFORCEMENT OF JUDGMENTS AND SERVICE OF
PROCESS RULES**

[under sections 94 and 11]

[1st June, 1956]

[Commencement.]

1. These Rules may be cited as the Enforcement of Judgments and Service of Process Rules.

2. (1) The fees set out in the First Schedule hereto shall be payable in respect of the registration of a certificate of judgment in the Nigerian Register of Judgments kept in accordance with the provisions of section 105 of the Sheriffs and Civil Process Act (hereinafter in these Rules referred to "the Act").

[First Schedule. Cap. S7.]

(2) Subsequent to the registration of a certificate of judgment, the fees payable in respect of the enforcement and execution of the judgment, the issue of process upon the certificate, the filing of affidavits, the making of applications and the like, shall be the same as would be payable if the judgment were the judgment of the court of registration and the fees so payable may be dealt with by an order under section 106 of the Act.

3. (1) An order made under section 106 of the Act shall be made by a judge if the court of registration is the High Court, and by a magistrate if the court of registration is a magistrate's court.

(2) Such an order may be made or refused without the hearing of any party.

(3) No such order shall be made unless the judgment creditor or his solicitor has lodged in the court of registration a written request for such an order, stating the reasons for the registration of the certificate.

(4) When such an order is made the registrar of the court of registration shall cause to be endorsed upon any writ of execution which issues upon the certificate the sum which

is, by virtue of the order, payable by the judgment debtor to the judgment creditor, and the sum so endorsed shall be added to the judgment debt (if any) and shall be recoverable as such.

4. A writ of summons or other originating process, issued by the High Court of the Federal Capital Territory, Abuja for service in Nigeria (outside Abuja) shall be endorsed by the registrar of the court with the following notice-

"This summons (or as the case may be) is to be served out of the Federal Capital Territory, Abujaand in the State."

5. The provision of the last preceding rule shall apply, *mutatis mutandis*, to a summons or other originating process issued by a magistrate's court in the Federal Capital Territory, Abuja.

6. Where a writ of summons or other originating process is issued by the High Court of the Federal Capital Territory, Abuja for service in Nigeria (outside the Federal Capital Territory, Abuja), two copies thereof duly certified by the registrar of the High Court shall be sent by him together with the copy of the order (if any) for any special form of service with a request for service to the registrar of the High Court exercising jurisdiction in the particular area of the State where service is to be effected. The letter of request shall specify how service is to be effected and shall further request that one of the certified copies be returned in due course to the registrar of the High Court of the Federal Capital Territory, Abuja endorsed with a certificate setting out the date, place and mode of service (or stating why service cannot be effected), and bearing the signature of the process server and the authentication of such signature by a judge of the court of service.

7. (1) Where a summons or other originating process is issued by a magistrate's court in the Federal Capital Territory, Abuja and such summons or other process is to be served on a defendant in Nigeria (outside the Federal Capital Territory of Abuja), such summons or process together with a copy thereof and a copy of the plaint certified by the registrar of the said court shall be sent by him to the registrar of the magistrate's court exercising jurisdiction in the particular area of the State where service is to be effected, together with a copy of the order (if any) made for any special kind of service.

(2) The letter of request shall specify how service is to be effected and shall further request that the copy of the summons be returned in due course to the registrar of the court of issue endorsed with a certificate setting out the time, place and mode of service (or stating why service cannot be effected) and bearing the signature of the process server and the authentication of such signature by the magistrate of the court of service.

8. (1) The registrar of the High Court of Abuja or of a magistrate's court in Abuja, shall, on receipt of a letter of request for service of a writ of summons or other originating process from a court in a State submit such request to a judge or a magistrate, as the case may be, who will (subject to all just exceptions) endorse the writ of summons for service as requested.

(2) After service has been effected, the process server shall endorse and sign on the proper document a certificate setting out the date, place and mode of service (or stating why service cannot be effected) and his signature shall be authenticated by a judge or magistrate, as the case may be.

(3) No service shall be effected unless a sum sufficient to cover the fees and expenses of service has been received.

9. Where a copy of a writ of summons or summons sent for service to a court of a State is returned endorsed and authenticated in the manner prescribed above, the endorsement shall be accepted as *prima facie* proof of service.

10. The Nigerian Register of Judgments shall be in the form set out in the Second Schedule hereto.

[Second Schedule.]

11. The forms set out in the Third Schedule hereto shall be used for the purposes mentioned in section 110 of the Act.

[Third Schedule.]

FIRST SCHEDULE

	₦	k
Registration of a certificate of a judgment of a High Court	4	00
Registration of a certificate of a judgment of any other court.....	2	00

SECOND SCHEDULE

Nigerian register of judgments

..... (Enter name of Court)

<i>Index No. of Registration</i>	<i>Date of Registration</i>	<i>Full title and No. of Suite</i>	<i>Full title of Court issuing Certificate*</i>	<i>Name and address of party to whom payment is to be made or in whose favour judgment is given</i>	<i>Name and address of party ordered to pay money or to do or not to do any act</i>	<i>Date of Judgment</i>	<i>Abstract of Judgment</i>	<i>Remarks (Enter here order made under section 106 of the Act and particulars of amount recovered)</i>	<i>Signature of Registering Officer</i>
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* e.g., Senior Magistrate's Court, Ibadan, Oyo State.

THIRD SCHEDULE

FORM I

IN THE HIGH COURT OF ABUJA*

OR

IN THE MAGISTRATE'S COURT (.....) ABUJA

To the Registrar.

High Court/Magistrate's Court* of

SUIT No.

.....

TAKE NOTICE that the certificate of judgment, issued out of your Court on the
day of 20 in respect of the above-named suit, has
this day been registered in the *Nigerian Register of Judgments* kept in this Court.

GIVEN under my hand this day of 20

.....
*Registrar, High Court/Magistrate's Court**

* Delete words not required

FORM 2

IN THE HIGH COURT OF ABUJA*

OR

IN THE MAGISTRATE'S COURT (.....) ABUJA*

To the Registrar.

High Court/Magistrate's Court* of

SUIT No.

.....

TAKE NOTICE that on the day of , 20,
a (here state nature of process, etc.) for (here
state the amount in respect of which process was issued) was issued out of this Court upon the cer-
tificate of judgment in the above-mentioned suit.

GIVEN under my hand this day of 20

.....
*Registrar, High Court/Magistrate's Court**

* Delete words not required

FORM 3
IN THE HIGH COURT OF ABUJA
OR

IN THE MAGISTRATE'S COURT (.....) ABUJA

To the Registrar.

High Court/Magistrate's Court* at

SUIT NO.

..... vs.

TAKE NOTICE that on the day of , 20,
the sum of was paid into this Court in full (or *part*, as the
case may be) satisfaction of the judgment certified in the certificate of judgment issued out of your
court on the day of 20,
in the above-mentioned suit.

.....
*Registrar, High Court/Magistrate's Court**

* Delete words not required

FORM 4
IN THE HIGH COURT OF ABUJA
OR

IN THE MAGISTRATE'S COURT (.....) ABUJA*

To the Registrar.

High Court/Magistrate's Court* at

SUIT NO.

..... vs.

TAKE NOTICE that in respect of the certificate of judgment issued out of this Court on the
day of , 20, in the above-mentioned suit and
registered in your Court on the day of , 20,
the sum of was on the day of , 20,
paid into this Court in full (or *part* as the case may be) satisfaction of the said judgment.

GIVEN under my hand this day of 20

.....
*Registrar, High Court/Magistrate's Court**

* Delete words not required