

THE CIVIL PROCEDURE CODE

PRELIMINARY

Art. 1. – Scope of application

(1) The provisions of this Code shall apply from the day of its coming into force to all suits pending on such day and instituted thereafter.

(2) Any suit pending on the coming into force of this Code shall be completed by the court having jurisdiction under the law repealed by this Code, notwithstanding that such court is not mentioned in this Code.

Art. 2. – Periods of time

(1) Where periods of time have expired prior to the coming into force of this Code, nothing in this Code shall revive them.

(2) Where periods of time have been introduced by this Code, they shall run from the day of the coming into force of this Code.

(3) Where periods of time have been extended by this Code, the periods provided for by this Code shall apply but the time having run prior to the coming into force of this Code shall be deducted.

(4) Where periods of time have been shortened by this Code, the periods provided for by the law repealed by this Code shall continue to run on the coming into force of this Code.

Art. 3. – Interpretation

In this Code, unless the context otherwise requires, the following terms and expressions shall have the following meaning:

"affidavit" shall mean a statement of facts in writing lawfully sworn or affirmed;

"court" shall mean a court established by law;

"decree" shall mean the formal expression of any preliminary or final adjudication which, so far as concerns the court expressing it, conclusively determines the rights of the parties concerning all or any of the matters in dispute in the suit;

"decree-holder" shall mean any person in whose favour a decree has been passed or an order capable of execution has been made and shall include the transferee of a decree;

"execution officer" shall mean any judge, officer of any court or any other person appointed by the Minister of Justice to execute decrees;

"foreign court" shall mean a court situate outside Ethiopia;

"foreign judgment" shall mean the judgment of a foreign court;

"government pleader" shall include:

a) any officer appointed by the government to perform all or any of the functions imposed by this Code on the government pleader; and

b) any pleader acting under the directions of the government pleader;
"judgment" shall mean the statement given by a court of the grounds of a decree or order;
"judgment-debtor" shall mean any person against whom a decree has been passed or an order capable of execution has been made;
"law" shall include proclamations, decrees, orders and any subsidiary legislation made thereunder;
"legal representative" shall mean any person who in law represents a person under disability or the estate of a deceased person;
"mesne profits" of property shall mean those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by such person;
"order" shall mean the formal expression of any decision of a court which is not a decree;
"person under disability" shall mean any person who is not capable under the law;
"pleader" shall mean an advocate and shall include any person entitled to appear and plead for another;
"prescribed" shall mean prescribed by regulations under this Code;
"registrar" shall mean the registrar or assistant registrar of a court and shall include any clerk of court assigned by the registrar to carry out all or part of the duties of a registrar;
"share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds.

BOOK I. JURISDICTION OF COURTS

CHAPTER 1. GENERAL PROVISIONS

Art. 4. - Courts to try suits unless barred

Without prejudice to the provisions of the following Articles, the courts shall have jurisdiction to try all civil suits other than those of which their cognizance is expressly or impliedly barred.

Art. 5. - Resjudicata

(1) No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, and has been heard and finally decided.

(2) Any matter which might and ought to have been made a ground of defence or attack in the former suit shall be deemed to have been directly and substantially in issue in such suit.

(3) Any relief claimed in the former suit which has not been expressly granted by the decree passed in such suit shall, for the purposes of this Article, be

deemed to have been refused.

(4) Where persons litigate in good faith in respect of public or private rights claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this Article, be deemed to claim under the persons so litigating.

Art. 6. - Review judgments

(1) Notwithstanding the provisions of Art. 5, any party considering himself aggrieved by a decree or order from which an appeal lies, but from which no appeal has been preferred, or by a decree or order from which no appeal lies, may, on payment of the prescribed court fee, apply for a review of judgment to the court

which gave it where:

(a) subsequently to the judgment, he discovers new and important matter, such as forgery, perjury or bribery, which after the exercise of due diligence, was not within his knowledge at the time of the giving of the judgment; and

(b) had such matter been known at the time of the giving of the judgment, it would have materially affected the substance of the decree or order the review of which is sought.

(2) An application for review shall contain the same particulars as a memorandum of appeal and shall be supported by an affidavit containing strict proof of the fulfilment of the conditions laid down in sub-art. (1)

(a). The application shall be filed within one month of the ground of application having been discovered by the applicant

(3) On granting the application, after giving notice to the opposite party to enable him to appear and be heard in support of the decree or order the review of which is sought, the court shall make such order in regard to the re-hearing of the case as it thinks fit

(4) No appeal shall lie from any decision of the court granting or rejecting an application for review.

Art. 7. - Priority

(1) One and the same civil suit may not be instituted in more than one civil court.

(2) Where a suit may be instituted in any one of several courts, the court in which the statement of claim was first filed shall have jurisdiction and the suit shall be pending in such court.

Art. 8. - Pendency

(1) No court shall try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted civil suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such civil suit is pending in the same or any other court in Ethiopia having jurisdiction to grant the relief claimed.

(2) The pendency of a suit in a foreign court shall not preclude the courts in Ethiopia from trying a suit founded on the same cause of action.

(3) Where the matter in issue is also in issue in a suit pending in another

court or is so closely connected with a suit pending in another court that it cannot properly be tried separately the provisions of Arts. 11 or 244 and 245, as the case may be, shall apply.

Art. 9.- Want of material jurisdiction

(1) A statement of claim filed in a court not having material jurisdiction shall be rejected in accordance with Art. 231.

(2) When and as soon as a court is aware that it has not material jurisdiction to try a suit, it shall proceed in accordance with Art. 245 notwithstanding that no objection is taken under Art. 244 to its material jurisdiction.

Art. 10.- Want of local jurisdiction

(1) A statement of claim filed in a court not having local jurisdiction shall be rejected in accordance with Art. 231:

Provided that a court which has jurisdiction under Arts. 19-30 may not reject a statement of claim on the ground that another court also has local jurisdiction.

(2) Any objection taken under Art. 244 to the local jurisdiction of a court shall be finally decided by the said court and no order made, judgment given or decree passed by the said court may be invalidated unless such an objection was taken and the decision thereon has caused a failure of justice.

Art. 11.- Consolidation of suits

(1) Where two or more suits or appeals are pending between the same parties in the same court, in which the same or similar questions of law or fact are involved, the court may, of its own motion or on the application of either party, order a consolidation of such suits or appeals on such terms as it thinks fit.

(2) Where two or more suits are pending between the same parties in different courts, in which the same or similar questions of law or fact are involved, or where two or more suits pending between the same parties in different courts are so closely connected that they cannot properly be tried separately, either party may, at any time before evidence is taken in any of such courts, apply for an order that such suits be consolidated.

(3) An application under sub-art. (2) shall be made to the High Court, where the suits are pending in courts which are all subordinate thereto, or to the Supreme Court, where one or more of the courts in which the suits are pending is a division of the High Court on circuit.

(4) The court to which the application is made shall, on granting the same, direct by which of the subordinate courts the suits shall be tried.

(5) The provisions of sub-arts. (2)-(4) shall also apply where two or more appeals, in which the same or similar questions of law or fact are involved, are pending between the same parties in different courts of the same grade.

CHAPTER 2. MATERIAL JURISDICTION

Art. 12.- Principle

(1) Every suit shall be tried by the court competent to try it under the provisions of this Chapter and shall, unless otherwise provided, be instituted in the court of the lowest grade competent to try it.

(2) Every appeal shall be tried by the court competent to try it under the provisions of Art. 321.

Art. 13.- Jurisdiction of Woreda Guezat Courts

Without prejudice to the provisions of Art 15 (2) and (3) and Art .18, Woreda Guezat Courts shall have jurisdiction to try:

(a) all suits not regarding immovable property where the amount involved does not exceed E \$ 500; and

(b) all suits regarding immovable property where the amount involved does not exceed E \$1000.

Art. 14.- Jurisdiction of Awradja Guezat Courts

Without prejudice to the provisions of Art. 15 (2) and (3) and Art. 18 Awradja Guezat Courts shall have jurisdiction to try;

(a) all suits not regarding immovable property where the amount involved does not exceed E \$ 5.000, and

(b) all suits regarding immovable property where the amount involved does not exceed E \$10,000.

Art. 15.- Jurisdiction of High Court

(1) The High Court shall have jurisdiction to try:

(a) all suits not regarding immovable property where the amount involved exceeds E\$ 5,000; and

(b) all suits regarding immovable property where the amount involved exceeds E \$10,000.

(2) It shall have exclusive Jurisdiction to try suits regarding:

(a) the formation, dissolution and liquidation of bodies corporate;

(b) negotiable instruments, bankruptcy and maritime law;

(c) insurance policies;

(d) trademarks, patents and copyright;

(e) expropriation and collective exploitation of property;

(f) the liability of public servants for acts done in the discharge of official duties, without prejudice to the provisions of Art, 75 of the Constitution;

(g) nationality;

(h) filiation;

(i) habeas corpus.

(3) It shall decide applications for the enforcement of foreign judgments and arbitral awards.

Art. 16.- Pecuniary jurisdiction

(1) A court shall have pecuniary jurisdiction when the amount or value of the subject-matter of the suit as on the day of the institution of the suit does not exceed the limits laid down in this Chapter for the court concerned.

(2) In deciding under Art. 231 whether it has pecuniary jurisdiction, the court shall have regard to the amount stated in the statement of claim in

accordance with Arts. 226-228.

(3) Where part of the claim is admitted at any time before evidence is produced and the amount or value of the subject-matter of the suit is accordingly reduced, the court may try the suit or of its own motion order the transfer of the suit to such subordinate court as has pecuniary jurisdiction with regard to the amount or value thus reduced.

(3) Where a suit has been instituted in a court competent under the provisions of this Chapter, such court shall remain competent notwithstanding that the amount or value of the subject-matter of the suit increases or is reduced in consequence or changes in economic circumstances.

Art.-17.-Plurality of claims

(1) Where one or more plaintiffs have united in the same suit several claims against the same defendant or the same defendants jointly, the jurisdiction of the court shall, except in cases where suits have been consolidated, depend on the amount or value of the aggregate claims.

(2) Where several claims, are made in the same suit, some of which are principal and some accessory, or where alternative claims are made, the jurisdiction of the court shall depend on the amount or value of the higher principal claim.

(3) Where a counter-claim is made, the jurisdiction of the court shall depend on the amount or value of the higher claim, whichever it may be.

Art. 18.- Claim which cannot be expressed in money

Without prejudice to the provisions of Art. 15 (2) and (3), where the subject matter of a suit cannot be expressed in money, such suit shall be tried by the Awradja Guezat Court having local jurisdiction.

CHAPTER 3. LOCAL JURISDICTION

Art. 19.- Principle

(1) Without prejudice to the provisions of the following Articles and to such special places of jurisdiction as may be provided for by any law, every suit shall be instituted in the court of the place where the defendant actually resides or carries on business or personally works for gain.

(2) A suit against joint defendants may be instituted in the court of any of the places where any of the defendants resides or carries on business or personally works for gain.

Art. 20.- Defendant residing abroad

(1) Where the defendant resides, carries on business, or personally works for gain abroad, the suit shall be instituted in such court in Ethiopia as the plaintiff may choose, unless it relates to immovable property which the defendant owns in Ethiopia, in which case the suit be instituted in the court of the place where such property is situate.

(2) Where the defendant is a foreigner not residing, carrying on business or personally working for gain in Ethiopia but he owns movable or immovable

property in Ethiopia the suit may be instituted in the court of the place where such property is situate.

Art. 21.- Suits against the State

Suits against the State or a Government department or agency may in the discretion of the plaintiff be instituted in the court of the place where:

- (a) the plaintiff resides, carries on business or personally works for gain;
- (b) the contract to which the suit relates was made or was to be executed; or
- (c) the act giving rise to liability occurred.

Art. 22.- Suit against body corporate

(1) Suits against a business organization shall be instituted in the court of the place where the head office or branch against which the suit is made is situate.

(2) Suit against an association committee, trust or endowment shall be instituted in the court of the place where such association committee, trust or endowment was formed or, where such association committee, trust or endowment requires by law to be registered, at such place of registration.

(3) Suits regarding the liability of an officer of a body corporate may be instituted in accordance with the provisions of this Article or those of Art. 27 (1).

Art. 23.- Suits regarding successions

Suits regarding a succession which is being liquidated shall be instituted in the court of the place where the succession was opened.

Art. 24.- Suits regarding contracts

(1) Suits regarding contracts may in the discretion of the plaintiff be instituted in the court of the place where the contract was made or was to be executed, unless some other place is mentioned in the contract.

(2) Suits regarding a contract of carriage shall be instituted in accordance with the provisions of Art. 208 Maritime Code or Art. 647 Commercial Code, as the case may be.

(3) Suits regarding a contract of insurance may be instituted in the court of the place where the head office of the insurance company concerned is situate or registered in Ethiopia or where the object insured is situate.

(4) Suits regarding pledge, deposit or bailment may be instituted in the court of the place where the property which is the subject matter of the suit is situate.

Art. 25.- Suits regarding immovable property

(1) Notwithstanding any provision to the contrary, other than Art 31 suits for:

- (a) the recovery of immovable property with or without rent or mesne profits;
- (b) the partition of immovable property;
- (c) the determination of any other right to, or interest in, immovable property; or

(d) compensation for wrong to immovable property.

shall be instituted in the court of the place where such property is situate.

(2) Where in a suit to obtain relief regarding, or compensation for, wrong to

immovable property held by or on behalf of the defendant, the relief sought can be entirely obtained through his personal obedience, such suit may be instituted either in the court of the place where such property is situate or in accordance with the provisions of Art. 19.

Art. 26.- Immovable situate within jurisdiction of different courts

(1) A suit regarding immovable property situate within the jurisdiction of different courts may be instituted in any court within the local limits of whose jurisdiction any portion of such property is situate.

(2) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of several courts any immovable property is situate, any of those courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon try any suit regarding such property and its decree shall have the same effect as if the property were situate within the local limits of its jurisdiction.

(3) The provisions of this Article shall not apply unless, in respect of the subject-matter of the suit, the entire claim falls within the material jurisdiction of such court.

Art. 27.- Suits regarding wrong to persons or movables

(1) Suits for compensation for wrong done to persons or to movable property may be instituted in the court of the place where such wrong was done or in accordance with the provisions of Art. 19.

(2) Suits regarding collisions at sea shall be instituted in accordance with the provisions of Art. 237 Maritime Code.

Art. 28.- Suits regarding bankruptcy

Suits regarding bankruptcy shall be instituted in the division of the High Court on circuit in the Teklay Guezat in which the principal place of business of the bankrupt is situate.

Art. 29.- Several causes of action

Where a suit is based upon several causes of action arising in different places, the suit may be instituted in any of the courts having jurisdiction by reason of one of such causes of action.

Art. 30.- Accessory claim and counter-claim

(1) An accessory claim or a counter-claim shall be filed in the court having jurisdiction to try the principal claim where such court has material jurisdiction to try such accessory claim or counterclaim.

(2) Such court shall remain competent to try a counter-claim notwithstanding that the principal claim is withdrawn, struck out or dismissed.

Art. 31.- Conge of venue

(1) Whenever it is made to appear to the High Court, at any time before judgment, by application of either party that:

(a) a fair and impartial trial cannot be held in any court subordinate thereto;

(b) that some question of law of unusual difficulty is likely to arise; or
(c) that an order under this Article will tend to the general convenience of the parties or witnesses or is expedient for the purposes of justice, the High Court may make an order from which no appeal shall lie to the effect that any suit:

- (i) be tried by any court not empowered under the provisions of this Chapter to try it but having material jurisdiction to try the same; or
- (ii) be transferred for trial by itself.

(2) Whenever it is made to appear to the Supreme Court at any time before judgment by application of either party that there are good reasons why a suit pending in any division of the High Court on circuit should be tried by another division of the High Court, the Supreme Court may order that such suit be tried by such division of the High Court as it shall direct.

Civil Procedure Code: Book 2

BOOK II. PARTIES TO SUITS

Art. 32.- Scope of application

(1) The provisions of this Book shall apply in any proceedings under this Code.

(2) In applying the provisions of this Book to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

CHAPTER 1. GENERAL PROVISIONS

Art. 33.- Qualifications

(1) Any person capable under the law may be a party to a suit.

(2) No person may be a plaintiff unless he has a vested interest in the subject matter of the suit.

(3) No person may be a defendant unless the plaintiff alleges some claim against him.

Art. 34.- Representation

(1) A person under disability may sue or be sued through his legal representative.

(2) Where a person under disability is not represented by his legal representative, the proceedings shall be stayed until a legal representative is appointed in accordance with the relevant provisions of the Civil Code.

(3) Without prejudice to the provisions of the following Articles, bodies corporate may be represented in accordance with the relevant provisions of the Civil or Commercial Code, as the case may be.

(4) Representation in maritime matters shall be as provided for by the Maritime Code.

(5) In all suits concerning property administered by a trustee, executor or administrator, where the contention is between the persons beneficially

interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not be necessary to make

them parties to the suit unless the court otherwise directs.

Art. 35.- Joinder of plaintiffs

All persons in whom any right to relief in respect of or arising from the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, may be joined in one action as plaintiffs where, if such persons brought separate actions any common question of law or fact would arise.

Art. 36.- Joinder of defendants

(1) All persons against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, may be joined as defendants where, if separate suits were brought against such persons, any common question of law or fact would arise.

(2) The plaintiff may join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on the same contract including parties to negotiable instruments. .

(3) Where a suit concerns property administered by several trustees, executors or administrators, all such persons shall be made parties to a suit against one or more of them, provided that trustees, executors or administrators outside Ethiopia need not be made parties unless otherwise ordered by the court on an application being made under Art 43.

(4) Where the plaintiff sues for the recovery of immovable property free of occupants, such occupants, whatever their title, shall all be made parties to the suit.

(5) Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants so that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all the parties.

(6) It shall not be necessary that every defendant be interested as to all the relief claimed in any suit against him.

Art. 37.- Judgment for or against one or more parties Judgment may be given :

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

Art. 38.- Representative party

(1) Where several persons have the same interest in a suit, one or more of such persons may sue or be sued or may be authorized by the court to defend on behalf or for the benefit of all persons so interested on satisfying the court that all persons so interested agree to be so represented.

(2) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-art. (1) may apply to the court to be made a party to such-

suit.

Art. 39.- Misjoinder and nonjoinder

(1) No suit shall be defeated by reason only of the misjoinder or nonjoinder of parties and the court may in every suit deal with the matter in dispute so far as regards the rights and interest of the parties actually before it.

(2) Any objection on the ground of misjoinder or nonjoinder of parties shall be raised at the earliest possible opportunity and any objection not so raised shall be deemed to have been waived.

Art. 40.-Substitution or addition of parties

(1) Where a suit has been instituted in the name of a wrong person as plaintiff or it is doubtful whether it has been instituted in the name of the right plaintiff, the court, on being satisfied that the suit has been instituted through a bona fide mistake and that it is necessary for the determination of the real matter in dispute so to do, may at any time order that any other person be substituted or added as plaintiff on such terms as it shall fix.

(2) The court may at any time, of its own motion or on the application of either party and on such terms as it shall fix, order that the name of any party improperly joined as plaintiff or defendant be struck out and that there be added the name of any person who ought to have been joined as plaintiff or defendant or whose

presence is necessary for the determination of all the questions involved in the suit:

Provided that no person shall be added as plaintiff without his consent.

(3) Where a defendant is added, the statement of claim shall, unless the court otherwise directs, be amended accordingly and a copy thereof shall thereupon be served on the new defendant and, if the court thinks fit, on the original defendant.

(4) Nothing in this Article shall prevent a third party at any time before judgment from substituting himself for either party with the consent of such party on showing that he is qualified under the provisions of Art. 33.

(5) Where it appears to the court at the hearing of an appeal that any person who was a party to the suit in the court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the court may adjourn the hearing and direct that such person be made a respondent.

Art. 41.- Intervention of third party

(1) Any person interested in a suit between other parties may intervene therein at any time before judgment.

(2) The intervention shall be made by the filing of a separate statement containing all the grounds which justify such person in intervening.

(3) Where the intervention is allowed, the proceedings shall be stayed until the parties have been served with a copy of the statement of the intervening

party.

(4) Where service is not effected for a reason attributable to the intervening party, he shall be deemed to have withdrawn his statement.

(5) Nothing in this Article shall affect the provisions of Arts. 293–299.

Art. 42.– Intervention of public prosecutor

The public prosecutor shall intervene whenever his intervention is required by law, in particular in cases relating to:

- (a) civil status (Arts. 116, 122 and 156 Civil Code);
- (b) incapacity (Arts. 234, 354 and 377 Civil Code);
- (c) marriage (Arts. 592, 608, 609 and 612 Civil Code);
- (d) bankruptcy (Arts. 975, 978, 980, 998, 1004 and 1017 Commercial Code).

Art. 43.– Joinder of third party

(1) Where a defendant claims to be entitled to contribution or indemnity from any person not a party to the suit, he may in his statement of defence show cause why the third party is liable to make contribution or indemnity and the extent of such liability and apply to the court for an order that such person be made a

party to the suit.

(2) Where the application is allowed, the third party shall be served with a copy of the statement of claim and defence and, upon being summoned to appear on such day as the court shall fix, shall be deemed to be in the same position as a defendant.

(3) The claim as between the defendant and the third party shall be tried in such manner as the court shall direct.

(4) The provisions of this Article shall apply by analogy where a defendant claims to be entitled to contribution or indemnity from any other defendant in the suit:

Provided that nothing in this sub-article shall prejudice the plaintiff against any defendant in the suit.

Art. 44.– Suing partners in name affirm

Two or more persons claiming or being liable as partners and carrying on business in Ethiopia may sue or be sued in the name of the firm, if any, of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were at the said time partners in such firm, to be furnished and verified in such manner as the court may direct.

Art. 45.– Disclosure of partners names

(1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-art. (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the court may direct.

(3) Where the names of the partners are declared in accordance with sub-art. (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the statement of claim:

Provided that all the proceedings shall nevertheless continue in the name of the firm.

Art. 46.- Suing person carrying on business in name other than his own. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name and any provision in this Code which applies to suits by or against firms and persons carrying on business in a name other than their own shall apply so far as the nature of the case will permit.

Art. 47.- Suits between co-partners Any provision in this Code which applies to suits by or against firms and persons carrying on business in a name other than their own shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common

Civil Procedure Code: Book2

CHAPTER 2. DEATH AND INSOLVENCY OF PARTIES

Art. 48.- Party's death if right to sue survives

(1) The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

(2) Where one of several plaintiffs or defendants dies and the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff

or plaintiffs, or against the surviving defendant or defendants.

Art. 49.- Death of several plaintiffs or of sole plaintiff

(1) Where one of several plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the court, on an application made in that behalf, shall

cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within one year from the death of the plaintiff no application is made under sub-art. (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit, to be recovered from the deceased plaintiff's estate.

(3) Nothing in this Article shall apply to proceedings in execution of a decree or order.

Art. 50.- Death of one of several defendants or of sole defendant

(1) Where one of several defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within one year from the death of the defendant no application is made under sub-art. (1), the suit shall abate as against the deceased.

(4) Nothing in this Article shall apply to proceedings in execution of a decree or order.

Art. 51.- Right of suit on death of partner

(1) Where two or more persons may sue or be sued in the name of a firm and any of such persons dies, whether before the institution or the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit

(2) Nothing in sub-art. (1) shall limit or otherwise affect any right which the legal representative of the deceased may have:

- (a) to apply to be made a party to the suit; or
- (b) to enforce any claim against the survivor or survivors.

Art. 52.- Question as to legal representative

Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the court, or the court may, if it deems it more convenient to do so and notwithstanding anything contained in the preceding Articles, appoint an administrator ad litem to represent the estate.

Art. 53.- Death after hearing

Notwithstanding anything contained in the preceding Articles, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall

have the same force and effect as if it had been pronounced before the death took place.

Art. 54. Plaintiffs insolvency

(1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or, unless for any special reason the court otherwise directs, to give security for the costs thereof within such time as the court may direct.

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the court may make an order dismissing the suit and awarding to the defendant

the costs

which he has incurred in defending the suit, to be recovered from the plaintiffs estate.

(3) Nothing in this Article shall apply to proceedings in execution of a decree or order.

Art. 55.- Effect of abatement or dismissal

(1) Where a suit abates or is dismissed under the provisions of this Chapter no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal within six months from the date of the abatement or dismissal.

(3) Where it is proved that the applicant was prevented by any sufficient cause from continuing the suit, the court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

Art. 56.- Assignment before final order in suit

In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.

Civil Procedure Code: Book2

CHAPTER 3. AGENTS AND PLEADERS

Art. 57.- Principle

Without prejudice to the provisions of Art. 65, any appearance, application or act in or to any court, required or authorized to be made or done by a party in such court, may be made or done by the party in person or his legal representative, by his agent or by a pleader able to answer all material questions relating to the suit or accompanied by a person able so to answer.

Art. 58.- Agents in general

Without prejudice to the provisions of the following Articles, the agents of parties by whom appearances, applications and acts may be made or done are;

(a) the spouse, brother, son, father or grand-father of such parties appearing without reward on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such

trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

Art. 59.- Persons authorized to act for Government

Persons being ex-officio or otherwise authorized to act for the Government with respect to any judicial proceeding shall be deemed to be the agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

Art. 60.- Procedure in suits against public servant

(1) Where the Government undertakes the defence of a suit against a public servant, the government pleader, upon being furnished with authority to appear and answer the statement of claim shall apply to the court, and upon such application the court shall cause a note of his authority to be entered in the record.

(2) Where no application under sub-art. (1) is made by the government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties.

Art. 61.- Agent of member of Armed Forces

(1) A member of the Armed Forces who is a party to a suit and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person may authorize any person to sue or defend in his stead.

(2) The authority shall be in writing and shall be signed by the party giving it in the presence of:

(a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer; or

(b) where the party is serving in military staff employment, the head or other superior officer of the office in which he is employed.

(3) The authority shall be countersigned by such commanding or other officer and filed in court and, when so filed, the counter signature shall be sufficient proof that the authority was duly executed, and that the party giving it could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

(4) Any person authorized under sub-art. (1) may prosecute or defend the suit in person or appoint a pleader to prosecute or defend the suit.

Art 62.- Agent of prisoner

(1) A prisoner who is a party to a suit and cannot obtain leave to prosecute or defend the suit in person may authorize any person to sue or defend in his stead.

(2) The authority shall be in writing and shall be signed by the prisoner giving it in the presence of the superintendent who shall countersign the authority which shall be filed in court.

(3) The provisions of Art. 61 (3) and (4) shall apply by analogy.

Art. 63.- Appointment of pleader

(1) No pleader shall act for any person in any court, unless he has been appointed for the purpose by such person by a power of attorney signed by such person or by his recognized agent or by some other person duly authorized by or under a power of attorney to make such appointment.

(2) Every such power of attorney or a copy thereof shall be filed together with the pleadings in the matter for which the pleader is authorized to act and shall be deemed to be, in force until determined with the leave of the court by a writing signed by the client or the pleader, as the case may be, and filed in court, or until the client or the pleader dies, or until all proceedings in the suit are ended so far as regards the client.

(3) For the purposes of sub-art, (2) any application under Art. 6, 208 or 349, any appeal from any decree or order in the suit and any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of monies paid into the court or execution office in connection with the suit shall be deemed to be proceedings in the suit.

Art. 64.- Agent to accept service

(1) Besides the agents described in the preceding Articles any person residing within the jurisdiction of the court may be appointed an agent to accept service of process.

(2) Such appointment shall be made by an instrument in writing signed by the principal and filed in the registry.

Civil Procedure Code:Book2

CHAPTER 4. APPEARANCE OF PARTIES AND FAILURE TO APPEAR

Art. 65.- Appearance need not be in person

(1) Any appearance, application or act in or to any court need not be made or done by the party in person but may be made or done in accordance with the provisions of the preceding Chapter:

Provided that any such appearance, application or act shall, if the court so directs, be made by the party in person, and provided further that the court shall not so direct unless it is essential for the proper determination of the suit that the party should apply or act in person.

(2) The absence of any party in the course of the performance of duties assigned by the court to any person, such as a commissioner, local investigator, expert or any officer executing an order of court shall not preclude such person from performing his duties and shall not constitute good cause for objecting to the findings of such person.

Art. 66.- Appearance of one of Several plaintiffs or defendants

(1) Any one of two or more plaintiffs or defendants may be authorized by any other of them to appear or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in the case.

Art. 67.-Appearance of partners

(1) Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall continue in the name of the firm.

(2) Where a summons is served in the manner provided by Art. 98 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

(3) Any person so served may appear under protest, denying that he is a partner, but such an appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining decree against the firm in default of appearance where no partner has appeared.

Art. 68.- Power to require appearance of certain persons

(1) The court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of a body corporate who may be able to answer material questions relating to the suit.

(2) The court may also, in any case in which the government pleader is not accompanied by any person on the part of the Government. Who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Art. 69.-Parties to appear at hearing

(1) On the day fixed for the hearing of the suit, the parties shall be in attendance in the court in person or by their respective agents or pleaders and the suit shall then be heard.

(2) Where neither party appears when the suit is called on for hearing, the court shall make an order that the suit be struck out, or, in cases of appeal, that the appeal be dismissed.

(3) The provisions of sub-art. (2) shall not apply where a party who has not been required to appear in person fails to appear but his agent or pleader appears.

Art. 70.- Defendant failing to appear

Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing:

(a) if it is proved that the summons was duly served, the suit shall be heard ex-parte;

(b) if it is not proved that the summons was duly served, the court shall direct a second summons to be served on the defendant

(c) if it is proved that the summons was served on the defendant but not in sufficient time to enable him to appear on the day fixed therein, the court may adjourn the hearing;

(d) if it is proved that the summons was not served on the defendant or any one of several defendants through the plaintiffs negligence or default, the court may adjourn the hearing or order that the suit be struck out as against any defendant not

served or, in cases of appeal, that the appeal be dismissed as against any respondent not served:

Provided that no order for the striking out of the suit or the dismissal of the appeal under sub-art. (d) shall be made where, although the summons has not been served on the defendant or respondent, the defendant or respondent appears in person or by agent or pleader when the suit or appeal is called on for hearing.

Art. 71.- Effect of striking out

(1) Where a suit is struck out under Art. 69 (2) or 70 (d), the plaintiff may bring a fresh suit on payment of full court fees.

(2) Where he satisfies the court that there was sufficient cause for his non-appearance, the court may make an order dispensing from payment of court fees

and shall appoint a day for proceeding with the suit.

Art. 72.- Subsequent appearance

Where the court has adjourned the hearing of the suit ex-parte, and the defendant at or before such hearing, appears and shows good cause for his previous non-appearance, he may, upon such terms as to costs or otherwise as the court may direct, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

Art. 73.- Plaintiff failing to appear

Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the court shall make an order that the suit be dismissed, unless the defendant admits the claim or part thereof, in which case the court shall pass a decree against the defendant upon such admission and, where part only of the claim has been admitted, shall dismiss the suit as it relates to the remainder.

Art. 74.- Effect of dismissal

(1) Where a suit is wholly or partly dismissed under Art. 73, or an appeal is dismissed under Art. 69 (2), 70 (d) or 73 the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action.

(2) Nothing in sub-art. (1) shall prevent the plaintiff from applying for an order to set the dismissal aside within one month of such dismissal, and if he satisfies the court that there was sufficient cause for his non-appearance, the court shall make an order setting aside the dismissal upon such terms as to costs or otherwise

as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) No order shall be made under sub-art. (2) unless notice of the application has been served on the opposite party.

Art. 75.- Several parties failing to appear

(1) Where one or more of several plaintiffs fail to appear, the court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

(2) Where one or more of several defendants, although duly served, fail to appear, the suit shall proceed, and the court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Art. 76.- Third party failing to appear

(1) Where a third party duly summoned to appear under Art. 43 (2) fails without good cause to appear for the purpose of disputing the plaintiff's claim as against the defendant on whose behalf the summons was issued, or his own liability to the defendant, he shall be deemed to admit the validity of the decree passed agai-

nst such defendant and his own liability to contribute or indemnify, as the case may be, to the extent claimed by the defendant.

(2) Where judgment is given against the defendant, the defendant shall be

entitled, after satisfying such judgment or, on the granting of an application to this effect, before satisfying such judgment, to judgment against the third party to the extent of the contribution or indemnity claimed by the defendant.

Art. 77.- Party failing to appear in person

A plaintiff or defendant who has been ordered to appear in person and fails without good cause so to appear shall be subject to all the provisions of the preceding Articles applicable to plaintiffs and defendants, respectively, who do not appear.

Art. 78.- Setting aside decree ex-parte against defendant

(1) Any defendant against whom a decree is passed or order made ex-parte or in default of pleading may, within one month of the day when he became aware of such decree or order, apply to the court by which the decree was passed or order made for an order to set it aside.

(2) If the defendant satisfies the court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing or from filing his defence or reply, the court shall, after notice of the application has been served on the opposite party, make an order setting

aside the decree or order as against him upon such terms as to costs, payment into court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit or re-hearing the appeal, as the case may be:

Provided that where the decree or order is such that it cannot be set aside as against such defendant only, it may be set aside as against all or any of the other defendants also.

(3) No decree or order shall be set aside under this Article on the sole ground that the applicant was absent at the time when the decree was passed or order made.

Civil Procedure Code: Book 3

BOOK III. GENERAL PROVISIONS REGARDING CIVIL SUITS

Art. 79.- Scope of application

(1) The provisions of this Book shall, so far as may be, apply in any proceedings under this Code.

(2) In applying the provisions of this Book to appeals, so far as may be, the word " plaintiff " shall be held to include an appellant, the word "defendant" a respondent and the word "suit" an appeal.

CHAPTER 1. PLEADINGS

Art. 80.-- Contents of pleading

(1) Pleading shall mean a statement of claim, statement of defence, counter-claim, memorandum of appeal, application or petition and any other document originating proceedings or filed in reply thereto.

(2) Every pleading shall be written in ink, printed or typewritten on the

prescribed paper and shall contain and contain only a statement in a concise form of the material facts on which the party relies for his claim or defence and shall be in a form as near as may be to the appropriate Form in the First Schedule to this Code.

(3) Whenever particulars may be necessary beyond those mentioned in the said appropriate Form, such particulars shall be stated in the pleading, with dates and items it necessary.

(4) Sums and numbers shall be expressed in words and figures and where a sum is expressed in foreign currency, its equivalent in Ethiopian currency shall be indicated.

(5) Dates shown in the Gregorian or other calendar shall also be indicated in the Ethiopian calendar.

Art. 81.- Condition precedent

Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

Art. 82.- New fact

The plaintiff or defendant, as the case may be, shall raise by his pleading all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise or would raise issues of fact not arising out of the preceding pleadings.

Art. 83.- Denial to be specific

It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim or for a plaintiff in his reply to a counter-claim to deny generally the grounds alleged by the defendant and each party shall deal specifically with each allegation of fact of which he does not admit the truth except damages.

Art. 84.- Denial of contract

Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of such contract or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

Art. 85.- Effect of document to be stated

Whenever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

Art. 86.- Condition of mind

Whenever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same

may be inferred.

Art. 87.- Notice

Whenever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice may be inferred, are material.

Art. 88.- Implied contract or relation

(1). Whenever any contract or relation between any persons may be implied from circumstances, it shall be sufficient to allege such contract or relation as a fact and to refer generally to such circumstances without setting them out in detail.

(2). Where a person pleading as provided in sub-art. (1) wishes to reply in the alternative on more contracts or relations than one as to be implied from such circumstances as are referred to, he may state the same in the alternative.

Art. 89.- Legal presumptions

Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other party, unless the same has first been specifically denied.

Art. 90.- Departure

No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Art. 91.- Amendment of pleading

(1). The court may at any time before judgment allow either party to alter or amend his pleading in such manner and on such terms as to costs or otherwise as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in dispute.

(2) Where a party who has obtained leave to amend fails to amend within the time fixed by the court, he shall not be permitted to amend thereafter, unless the time is extended by the court.

(3) A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading may in all cases be ordered by the court of its own motion or on the application of either party upon such terms, as to costs or otherwise, as may be just.

(4) The court may at any time order to be struck out or amended in any pleading any matter which is unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

(5) Where pleadings are so amended as to have the effect of bringing the claim within the jurisdiction of a higher court, the court in which the suit was instituted shall transfer the claim to such higher court for trial.

Art. 92.- Verification of pleading

(1) Unless otherwise expressly provided by law, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some

other person other than the pleader, directly acquainted with the facts of the case.

(2). In suits by or against a corporation, any pleading may be signed and certified on behalf of the corporation by the secretary or by any director or other officer of the corporation who is able to depose to the facts of the case.

(3). In suits by or against the Government, any pleading shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

(4) Where persons sue or are sued as partners in the name of their firm under Art. 44, it shall suffice that any pleading be signed or verified by any one of such persons.

Art. 93.- Pleading to be signed

Every pleading shall be signed by the party or his pleader, if any, or where a party is for good cause unable to sign, by any other person duly authorized by him to sign the same or to sue or defend on his behalf.

Civil Procedure Code: Book 3

CHAPTER 2. SUMMONSES

PARAGRAPH 1. ISSUE AND SERVICE OF SUMMONS TO DEFENDANT

Art. 94.- Issue of summons

(1) When a suit has been duly instituted, a summons shall, unless otherwise provided, be issued to the defendant to appear and answer the claim on a day to be specified therein in accordance with Art. 233 or 338:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the statement of claim and admitted the plaintiff's claim.

(2). The summons shall order the defendant to produce all the documents mentioned in the list annexed to the statement of defence under Art. 223.

(3). Every summons shall be in the form prescribed by the Second Schedule to this Code and shall be signed by a judge or the registrar and sealed with the seal of the court.

Art. 95.- Mode of service

(1) The summons may be served on the defendant by any person, hereinafter referred to as the serving officer, authorized in that behalf by the court.

(2) Unless otherwise provided, where there are more defendants than one, the summons shall be served on each defendant.

(3). Without prejudice to the provisions of the following Articles, the summons shall as far as possible be served on the defendant in person.

Art. 96.- Service on agent or pleader

(1). Where the defendant has an agent empowered to accept service, service shall, unless the court otherwise directs, be made on the agent and shall be as effectual as service on the defendant in person. Provided that, where no

agent has been appointed in the cases provided for by Arts. 61 and 62, the summons shall be sent

for service on the defendant to the commanding officer or superintendent of the prison, as the case may be.

(2) A summons may be served on the pleader of the defendant or left at the office of such pleader and shall in such a case be deemed to be duly communicated and made known to the defendant as though it has been served on him in person.

(3). In suits against the Government, the summons shall be served on the government pleader or, where no such pleader has been appointed, in such other manner as the court shall direct.

Art 97.- Service on body corporate

In suits against a body corporate, the summons may be served:

(a) on the secretary, or on any director or other principal officer of the body corporate; or

(b) by leaving it or sending it by post addressed to the body corporate at its registered office or, if there is no registered office, at the place where the body corporate carries on its activities.

Art. 98.- Service on partners

(1) Where persons are sued as partners in the name of their firm, the summons shall be served either :

(a) upon any one or more of the partners; or

(b) at the principal place at which the partnership business is carried on within Ethiopia upon any person having, at the time of service, the control or management of the partnership business there,

as the court may direct, and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without Ethiopia.

(2) In the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within Ethiopia whom it is sought to make liable.

(3) Where a summons is issued to a firm and is served in the manner provided by this Article, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

Art.99.- Service on agent by whom defendant carries on business

(1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the court by which the summons is issued, service on any manager or agent, who at the time of service, personally carries on such business or work for such person within such limits, shall be deemed

(2) For the purpose of this Article, the master of a ship shall be deemed to be the agent of the owner or charterer.

Art.100.- Service on agent in charge in suits for immovable property
Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept service, it may be made on any agent of the defendant in charge of the property.

Art. 101.- Service on member of defendant's family

Where in any suit the defendant cannot be found and has no agent empowered to accept service, service may be made on any adult member of the family of the defendant who is residing with him.

Art. 102.- Person served to sign acknowledgement

(1) Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the person to whom the copy is so delivered or tendered to sign an acknowledgement of service on the original summons.

(2) Where such person refuses to sign the acknowledgment, the provisions of Art. 103 shall apply but the court may, if it thinks fit, rule that such person has been duly served and dispense with the requirements of Art. 105

(2).

Art. 103.- Defendant who cannot be found

Where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service, nor any other person on whom service can be made, the serving officer shall return the summons to the court from which it was issued, together with an affidavit as to

the facts which prevented him from serving the summons and the provisions of Art. 105 (2) shall apply.

Art. 104.- Endorsement of time and manner of service

When a summons has been served under Art. 102, the serving officer shall endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and manner in which the summons was served, and the name and address of the person, if any, identifying the person served and

witnessing the delivery or tender of the summons.

Art. 105.- Substituted service

(1) Where the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service or that for any other reason the summons cannot be served in the ordinary way, it shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court house, and also upon some conspicuous part of the house, if any,

in which, the defendant is known to have last resided or carried on business or personally worked for gain, or in the manner provided for by Arts. 106 and 107, or in such other manner, including publications in newspapers, as it thinks fit.

(2) Where a summons is returned under Art. 103, the court may, on the application of the plaintiff, issue a fresh summons or order substituted service under sub-art. (1):

Provided that, where no such application is made within three months from such return, the plaintiff shall be deemed to have been negligent within the meaning of Art. 70.

(3) Service substituted by order of the court shall be as effect as if it had been made on the defendant personally.

(4) Where service is substituted by order of the court, the court shall fix such time for the appearance of the defendant as the case may require.

Art. 106.- Service of summons by post

(1) The court may, either in lieu of, or in addition to, the manner provided for service of summons in the preceding Articles, direct the summons to be served by registered post addressed to the defendant or his agent empowered to accept service at the place where the defendant or his. agent ordinarily resides or carries on business or personally works for gain.

(2) An acknowledgement purporting to be signed by the defendant or the agent or an endorsement by a postal employee that the defendant or the agent refused to take delivery may be deemed by the court issuing the summons to be prima facie proof of service.

Art. 107.- Service where defendant resides within jurisdiction of other court

(1) A summons may be sent by the court by which it is issued either by one of its officers or by post to any court having jurisdiction in the place where the defendant resides or is known to have last resided, carried on business or personally worked for gain.

(2) The court to which a summons is sent under sub-art. (1) shall, upon receipt thereof, proceed as if it had been issued by such court and shall then return the summons to the court of issue, together with the record, if any, of its proceedings with regard thereto.

Art. 108.- Service where defendant resides out of Ethiopia

Where the defendant resides out of Ethiopia and has no agent in Ethiopia empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post or, if his residence is not known, notice of the summons shall be given by publication in such newspaper circulating in Ethiopia as the court may direct.

Art 109.- Service on public servant or employee

Where the defendant is a public servant or is in the service of an organization, institution or company, the court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

Art. 110.- Duty of person to whom summons is delivered or sent for service

(1) Where a summons is delivered or sent to any person for service under Art. 96 (1) or 109, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgement of the

defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

PARAGRAPH 2. SUMMONING AND ATTENDANCE OF WITNESSES

Art. 111.- Issue of summons

The court may, on the conditions laid down in Arts. 249, 257 and 345, issue summonses to persons whose attendance is required either to give evidence or to produce documents:

Provided that either party may, without applying for a summons, bring any person, whose name appears in the list annexed to the statement of claim or defence, to give evidence or to produce documents.

Art. 112.- Expenses of witness

(1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into court such a sum of money as appears to the court to be sufficient to defray the travelling and other expenses of the witness in attending at the court in which he is required to attend, and for one day's attendance.

(2) In determining the amount payable under sub-art. (1), the court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

3) The sum so paid into court shall be tendered to the witness at such time and in such manner as the court shall direct.

Art. 113.-Additional payment

(1) Where it appears to the court that the sum paid into court is not sufficient to cover such expenses or reasonable remuneration, the court may direct such further sum to be paid to the witness as appears to be necessary on that account.

(2) Where a witness must be detained for more than one day, the court may order the party at whose instance he was summoned to pay into court such sum as is sufficient to defray the expenses of his detention for such further period.

(3) In case of default in payment under this Article, the court may either order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons or discharge the person summoned without requiring him to give evidence or may order both such levy and discharge.

Art. 114.- Particulars to be specified in summons

(1) Every summons shall specify the time and place at which the witness is required to attend, and whether his attendance is required for the purpose of giving evidence or producing a document, or both.

(2) Any particular document to be produced by the witness shall be described

in the summons with reasonable accuracy.

Art. 115.- Summons to produce document

Any person may be summoned to produce a document, without being summoned to give evidence and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

Art. 116.- Summons how served

Without prejudice to the provisions of Art. 118, every summons served under this Paragraph shall be served as nearly as may be in the same manner as a summons to a defendant and the provision of the preceding Paragraph of this Chapter as to proof of service, exclusive of Arts. 103-105, shall apply in the case of all summonses

served under this Paragraph.

Art. 117.- Time for serving summons

Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the witness, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Art. 118.- fitness failing in comply with summons

(1) Where a witness fails to attend or to produce the document in compliance with the summons, the court shall verify whether the summons has been duly served.

(2) Where the court sees reason to believe that the evidence to be given or document to be produced by such witness is material:

(a) if the court is satisfied that the summons has not been duly served, it may order the issue of a fresh summons on such terms as to costs or otherwise as it thinks fit;

(b) if the court is satisfied that the witness has without good cause failed to comply with such summons or has intentionally avoided service, the court may make such order, including the issue of a warrant with or without! bail for the arrest of such person, as it considers necessary for the attendance of such person.

(3) Nothing in this Article shall affect the provisions of Art. 442 of the Penal Code.

Art. 119.- Duty to give evidence or produce document

Whosoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons, and whosoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

Art. 120.- When witness may depart

(1) Witnesses shall, unless the court otherwise directs, attend at each hearing until the suit has been disposed of,

(2) On the application of either party and the payment through the court of all necessary expenses, if any the court may require any witness in attendance

to execute a bond, with or without sureties, that he will attend at the next or any other hearing or until the suit is disposed of and, on his refusing to execute such bond, may order him to be detained in the civil prison.

(3) The provisions of Art. 118 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of sub-art. (1).

Art. 121.- Witness unable to give evidence or produce document

Where any witness arrested under a warrant is brought before the court and cannot, owing to the absence of the parties or any of them, give the evidence, or produce the document, which he has been summoned to give or produce, the court may release him on his executing a bond, with or without sureties, that he will

attend at such time and place as it thinks fit, and on his refusing to execute such bond, may order him to be detained in the civil prison.

Civil Procedure Code: Book 3

CHAPTER 3. COMMISSIONS

PARAGRAPH 1. GENERAL PROVISIONS

Art. 122.- Principle

Where for any of the reasons stated in this Chapter a court cannot exercise its powers to take evidence or such other action in relation to evidence as is mentioned in Paragraph 3 of this Chapter, it may by a commission or, where such powers are to be exercised outside Ethiopia, by a letter of request, delegate its powers to such court or person, hereinafter called the commissioner, as shall be specified in the commission.

Art. 123.- Expenses of commission to be paid into court

(1) Before issuing any commission under Paragraph 2 of this Chapter, the court may order such sum, if any, as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into court by the party at whose instance or for whose benefit the commission is issued.

(2) Where a commissioner is appointed under Paragraph 3 of this Chapter on the application of any party, the provisions of Art 112 shall apply.

Art. 124.- Powers of Commissioners

Unless otherwise directed by the order of appointment, any commissioner may:

- (a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the commissioner thinks proper to call upon to give evidence in the matter referred to him;
- (b) call for and examine documents and other things relevant to the subject of inquiry;
- (c) at any reasonable time enter upon or into a land or building mentioned in the order.

Art. 125.- Attendance and examination of witnesses before commissioner

(1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be

imposed upon, witnesses, shall apply to persons required by the commissioner to give evidence or to produce documents and for the purposes of this Article the commissioner shall be deemed to be a civil court.

(2) A commissioner may apply to any court within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such court may, in its discretion, issue such process as it considers reasonable and proper.

Art. 126.- Parties to appear before commissioner

On appointing a commissioner the court shall direct that the parties shall appear before the commissioner in person or by their agents or pleaders.

PARAGRAPH 2. COMMISSION TO EXAMINE WITNESSES

Art. 127.- When commission may be issued

(1) The court may in any suit issue a commission for the examination of any person:

(a) resident within the local limits of its jurisdiction who is from sickness or infirmity unable to attend it;

(b) resident beyond such limits;

(c) about to leave such limits before the date on which he is required to be examined in court and whose evidence cannot conveniently be taken under

Art. 265.

(2) A commission may be issued under sub-art. (1) by the court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

(3) A commission issued under sub-art. (1) (a) may be issued to any person whom the court thinks fit to execute it.

(4) A commission issued under sub-art. (1) (b) or (c) may be issued to any court within the local limits of whose jurisdiction the witness to be examined resides or will be present, or to any other person whom the court issuing the commission may appoint.

Art. 128.- Return of commission

(1) Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

(2) The commission and the return thereto and the evidence taken under it shall form part of the record of the suit.

Art. 129.- High Court may issue commission at instance of foreign court

(1) Where the High Court is satisfied that a foreign court wishes to obtain the evidence of a witness in any civil proceeding before it, it may, subject to the provisions of Art. 130, examine such witness itself or issue a commission for his examination.

(2) Evidence of the matters specified in sub-art. (1) may be given:

(a) by a certificate signed by the diplomatic representative of the foreign country in Ethiopia and transmitted to the High Court through the Ministry of Justice;

(b) by a letter of request issued by the foreign court and transmitted to the High Court through the Ministry of Justice: or

(c) by a letter of request issued by the foreign court and produced before the High Court—by a party to the preceding.

Art. 130.— Action by High Court

The High Court may proceed under Art. 129 upon an application:

(a) by a party to the proceeding before the foreign court; or

(b) by the Advocate General acting under instructions from the Ministry of Justice.

Art. 131.— Preceding Articles applicable

The provisions of Arts 123–126 and 127 (4) shall apply by analogy to the issue and execution of commissions under Art. 129, and when any such commission has been duly executed it shall be returned, together with the evidence "taken under it, to the High Court, which shall forward it to the Ministry of Justice, along with the letter of request for transmission to the foreign court.

PARAGRAPH 3. COMMISSIONS TO TAKE OTHER ACTION IN RELATION TO EVIDENCE

Art. 132.— Commissions to make local investigations

In any suit in which the court deems a local investigation to be necessary for the purpose of elucidating any matter in dispute, or, of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the court may appoint a commissioner and direct him to make such investigation and to report thereon to the court.

Art. 133;— Procedure of commissioner

(1) The commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the court.

(2) The report of the commissioner and the evidence taken by him shall be evidence in the suit and shall form part of the record.

(3) The court or, with the permission of the court, any of the parties to the suit may examine the commissioner on oath in open court touching any of the matters referred to him or mentioned in his report or as to his report, or as to the manner in which he has made the investigation.

Art. 134.— Commission to investigate accounts

(1) In any suit in which an examination or adjustment of accounts is necessary, the court may appoint a commissioner and direct him to make such examination—or adjustment.

(2) Any question as to the admissibility or inadmissibility of the documents or other evidence to which the investigation of accounts relates or any objection relating thereto shall be decided by the court before the commission is issued.

(3) The court shall furnish the commissioner with such documents as have been ruled admissible under sub-art. (2) and with such part of the proceedings and such instructions as appear necessary, and the instructions shall specify

whether the commissioner is merely to transmit the proceedings which he may hold on the investigation, or also to report his own opinion on the point referred

for his examination.

(4) The court may give the commissioner special directions with regard to the mode in which the accounts are to be taken or vouched and in particular may direct that the books in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised. .

(5) The provisions of Art. 133 (2) and (3) shall apply to commissions issued under this Article.

Art. 135.- further investigation

Where the court is for any reason dissatisfied with the proceedings of a commissioner appointed under Art. 132 or 134, it may direct such further investigation to be made as it shall think fit.

Art. 136.- Appointment of experts

(1) Whenever the court considers it necessary or expedient that the facts in dispute between the parties should be verified, it may of its own motion or on application issue a commission to one or more experts or other persons skilled in the matter, directing them to verify such facts and to report thereon to the court within such time as it shall fix.

(2) The commission shall specify clearly and distinctly the facts to be verified and the provisions of Arts. 133 and 134 (2) and (3) shall apply in appropriate cases.

Civil Procedure Code: Book 3

CHAPTER 4. PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS

Art. 137.- Documentary evidence when to be produced

(1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which

(2) The commission shall specify clearly and distinctly the facts to be has not already been filed in court, and all documents which the court may order to be produced.

(2) The court shall receive the documents so produced which shall be accompanied by an accurate list thereof.

(3) Without prejudice to the provisions of Art. 256, no document which should be but is not annexed to or filed with the pleading or produced at the first hearing shall be received at a later stage in the suit on behalf of the party who should have so annexed, filed or produced it.

(4) Nothing in this Article shall apply to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by

the defendant or handed to a witness merely to refresh his memory.

Art. 138. – Rejection of irrelevant or inadmissible documents

The court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Art. 139. – Endorsements on documents

(1) Subject to the provisions of sub-art. (2), a judge shall endorse on every document which has been produced in the suit:

- (a) the number and title of the suit;
- (b) the name of the person producing the document; and
- (c) the date on which it was produced.

(2) Where a document so produced is an entry in a book, account or record, and a copy thereof has been substituted for the original under Art. 140, the particulars aforesaid shall be endorsed on the copy.

Art. 140. – Endorsements on copies

(1). Where a document produced in the suit is an entry in a letter book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the court may require a copy of the entry to be furnished:

- (a) where the book or account is produced on behalf of a party, then by that party; or
- (b) where the book or account is produced in obedience to an order of the court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under this Article the court shall, after causing the copy to be examined, compared and certified in accordance with Art. 230, mark the entry and cause the book or account in which it occurs to be returned to the person producing it.

Art. 141. – Endorsements on documents rejected

Where a document relied on as evidence by either party is considered by the court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in Art. 139 (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by a judge.

Art. 142. – Recording of admitted and return of rejected documents

(1). Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under, Art. 140, shall form part of the record of the suit.

(2). Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

Art. 143. – Court may order any document to be impounded

Notwithstanding the provisions Art. 140, 142 and 230, the court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of the registrar for such period and subject to such conditions as the court thinks fit.

Art. 144. – Return of admitted documents

(1) Any person, whether a party to the suit or not, desirous of receiving back any original document produced by him in the suit and placed on the record shall be entitled to receive back the same when :

(a) a copy is substituted therefor in accordance with the provisions of Art. 140; and

(b) such person undertakes to produce the original if required to do so.

(2), No document shall be returned which, by force of the decree, has become wholly void or useless.

(3). On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

Art. 145.-- Court may send for records

(1). The court may of its own motion or on the application of any of the parties to a suit, send for either from its own records or from any other court, the record of any other suit or proceeding, and inspect the same.

(2) Unless otherwise directed, an application under sub-art. (1) shall show how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such parts, thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing in this Article shall be deemed to enable the court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

Art. 146.- Provisions as to documents apply to material objects

The provisions of this Chapter which apply to documents shall, so far as may be, apply to all other material objects producible as evidence.

Civil Procedure Code: Book 3

CHAPTER 5. PROVISIONAL REMEDIES

PARAGRAPH 1. ARREST BEFORE JUDGMENT

Art. 147.- Security for appearance

(1) Where at any stage of a suit, other than a suit regarding immovable property, the court is satisfied by affidavit or other evidence on oath that the defendant or a plaintiff against whom a counter-claim has been lodged

(a) with intent to delay the plaintiff, or to avoid any process of the court or to obstruct or delay the execution of any decree that may be passed against him is about to abscond or leave, or has absconded or left, the local limits of the jurisdiction of the court, or has disposed of or removed his property or any part

part thereof from such limits; or

(b) is about to leave Ethiopia under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the court may issue a warrant to arrest the defendant and bring him before the court to show cause why he should not furnish security for his appearance.

(2). The defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant such sum specified in the warrant as is sufficient to satisfy the plaintiffs claim, which sum shall be held in deposit by the court until the suit is disposed of or until the further order of the court.

Art. 148.-Amount of security

(1). Where the defendant fails to show such cause the court shall order him either to deposit in court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed

against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under Art. 147 (2)

(2). Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay such sum of money as the defendant may be ordered to pay in the suit.

Art. 149.- Application by surety to be discharged

(1). A surety for the appearance of a defendant may at any time apply to the court in which he became such surety to be discharged from his obligation.

(2). On such application being made, the court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

(4) Where the defendant is unable to find fresh security, the court shall order him to deposit in court, if he is able to do so, money or other property sufficient to satisfy any decree that may be passed against him.

Art. 150.- Refusal to furnish security

In cases of refusal to comply with an order under Art 148 or 149 (4) the court may order the defendant to be detained in the civil prison until he complies with the order or until the decision of the suit or where a decree is passed against the defendant, until the decree has been satisfied:

Provided that the defendant may not be so detained for more than six months.

PARAGRAPH 2. ATTACHMENT BEFORE JUDGMENT

Art. 151.- Security for production of property

(1) Where, at any stage of a suit, the court is satisfied, by affidavit or otherwise, that the defendant or a plaintiff against whom a counter-claim has been lodged, with intent to obstruct or delay the execution of any decree that may be passed against him:

(a) is about to dispose of the whole or any part of his property; or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court, the court may direct the defendant,

within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the court, when required the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof

(3) The court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

Art. 152.- Attachment of property

(1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the court, the court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security after the property specified or any portion of it has been attached, the court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

Art. 153.- Making and effects of attachment

(1) Unless otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

(2) Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against, the defendant from applying for the sale of the property under the attachment in execution of such decree.

(3) Where any claim is preferred to property attached before judgment, such claim shall be investigated in the same manner as a claim to property attached in execution of a decree for the payment of money.

(4) Where an order is made for attachment before judgment, the court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

(5) Where property has been attached under this Article and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a reattachment of the property.

PARAGRAPH 3. TEMPORARY INJUNCTIONS

Art. 154.- When temporary injunction may be granted

Where in any suit it is proved by affidavit or otherwise:

(a) that any property in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) that the defendant threatens or intends to remove or dispose of property

with a view to defraud his creditors. The court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit. until the disposal of the suit or further orders.

Art.155.- Injunction to restrain repetition or continuance of breach

(1) In any suit for restraining the defendant from committing a breach of contract or other act prejudicial to the plaintiff, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the institution of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or act complained of, or any breach of contract or act of a like kind arising out of the same contract or relating, to the same property or right.

(2) The court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as it thinks fit.

(3) Nothing in this Article shall affect the provisions of Art. 2121 of the Civil Code.

Art. 156.- Failure to comply with injunction

(1) In case of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also sentence such person for contempt of court in accordance with Art. 443 of the Penal Code.

(2) No attachment under sub-art. (1) shall remain in force for more than one year, at the end of which time if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

Art. 157.- Notice to opposite party

The court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Art. 158.- Order may be discharged, varied or set aside

Any order for an injunction may be discharged, or varied, or set aside by the court, on application made thereto by any party dissatisfied with such order.

Art. 159.- Injunction to body corporate binding on its officers

An injunction directed to a body corporate shall be binding on the corporation itself as well as on all the members and officers thereof whose personal action it seeks to restrain.

PARAGRAPH 4. INTERLOCUTORY ORDERS

Art. 160.- Interim sale

The court may, on the application of any party to a suit, order the sale, by

any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

Art. 161.- Detention, preservation and inspection

(1) The court may, on the application of any party to a suit, and on such terms as it thinks fit:

(a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein; and

(b) for all or any of the purposes aforesaid, authorize any person to enter upon or into any land or building in the possession of any other party to such suit, or any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full

information or evidence.

(2) The provisions as to execution of process shall apply by analogy to persons authorized to enter under sub-art. (1).

Art. 162.- Notice to opposite party

(1) An application by the plaintiff for an order under Art. 160 or 161 may be made after notice to the defendant at any time after institution of the suit.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

Art. 163.- Suspension of sale

(1) Where a party in possession of land or tenure the subject-matter of a suit, neglects to pay the government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale apply to the court for the suspension of the sale and the court may grant the application on such terms as it thinks fit.

(2) The court in its decree may award against the defaulter the amount paid under sub-art. (1), with interest thereon at such rate as the court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

Art. 164.- Deposit in court

Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the court may order the same to be deposited in court or delivered to such last-named party with or without security, subject to the further direction of the court.

Art. 165. - Other orders

Pending the decision of the suit, the court may at any time, on the application of any party of which notice shall be given to the other party, make on such terms as it thinks fit such orders as it considers necessary or expedient in the circumstances, including orders for the custody of a minor or the payment of alimonies.

PARAGRAPH 5. APPOINTMENT OF RECEIVERS

Art. 166. - When receiver may be appointed

(1) Where it appears to the court to be just and convenient, the court may by order:

- (a) appoint a receiver of any property, whether before or after decree;
- (b) remove any person from the possession or custody of the property;
- (c) commit the same to the possession, custody or management of the receiver;
- (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the court thinks fit.

(2) Where an application is made for an order under sub-art. (1), the court shall have regard to the amount of the debt claimed by the applicant, to the amount which may possibly be obtained by the receiver and to the probable costs of his appointment and may, before making the appointment, direct such inquiries on these or other matters to be made as it thinks fit.

Art. 167. - Remuneration

The court may by general, or special order fix the amount to be paid as remuneration for the services of the receiver.

Art. 168. - Duties

Every receiver appointed under Art. 166 shall:

- (a) furnish such security, if any, as the court thinks fit, duly to account for what he shall receive in respect of the property;
- (b) submit his accounts at such periods and in such form as the court directs;
- (c) pay the amount due from him as the court directs; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Art. 169. - Enforcement of receiver's duties

Where a receiver:

- (a) fails to submit his accounts at such periods and in such form as the court directs;
- (b) occasions loss to the property by his wilful default or gross negligence, the court may direct his property to be attached and sold and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance, if any, to the receiver.

PARAGRAPH 6. AFFIXING OF SEALS AND MAKING OF INVENTORIES

Art. 170. - Principle

(1) Where for the purpose of preserving property which may be or is the subject of proceedings in court, the court considers that seals should be affixed the provisions of this Paragraph shall apply.

(2) No seal when affixed shall be removed without an order of the court for which any interested party may apply.

Art. 171.- Application for affixing of seals

(1) An application for the affixing of seals may be made to any court by any person who satisfies the court, by affidavit or otherwise, that property which may be the subject of proceedings in court should be preserved.

(2) An order for the affixing of seals may be made at any stage of proceedings in court by the court of its own motion or on application.

(3) On making an order for the affixing of seals, the court shall appoint such person (hereinafter referred to as the official sealer) as it thinks fit to carry out such order.

Art. 172.- Record

(1) The official sealer after having affixed seals in accordance with the order of the court, shall prepare a dated and signed record showing:

(a) the order of the court and the date thereof;

(b) a list of the property to which seals have been affixed and the place where such property is to be found;

(c) a list of the articles to be sealed which cannot be found; and

(d) the name of the caretaker, if any, in charge of the premises where the sealing has taken place.

(2) The official sealer shall hand over to the registrar of the court any keys belonging to any locks he has sealed.

Art. 173.- No seals to be affixed on certain property

(1) No seals shall be affixed to:

(a) perishable goods;

(b) any property the affixing of seals to which might cause deterioration ;

(c) any property required for the use of a party to the suit specifically exempted from sealing by the court.

(2) Where any property is committed to the use of any person under sub-art (1)

(c), the official sealer shall make and deposit in court an inventory of all such property.

Art. 174.- Wills and other documents

(1) Where the official sealer finds wills, sealed papers or other documents he shall make a list of such papers and shall place them in a sealed bundle and forward such list to the court for instructions.

(2) The court shall make such order for the disposal of such documents as it thinks fit.

Art. 175.- Removal of seals

(1) Where an application for the removal of seals is made or where the court of its own motion proposes to order such removal, all interested parties shall be informed of the day when the order will be made and if they appear they may

be heard. Any objection shall be considered by the court which shall, having heard the parties, give its decision forthwith.

(2) When an order for the removal of seals has been made the official sealer shall remove the seals and shall make a written dated and signed report to the court giving particulars of all property which he has unsealed.

Art. 176.—Making of inventory

(1) The court may, on the conditions laid down in Art. 171, order that an inventory of property, which is or may be the subject of proceedings in court, be made by such person (hereinafter referred to as the official recorder) as it thinks fit to appoint.

(2) The official recorder shall, in the presence of not less than two independent witnesses, prepare an inventory of the property specified in the order of the court, containing:

(a) a reference to the order of the court; and
(b) an accurate description of each article entered in the inventory and the estimated value thereof.

(3) Where the court, so orders, the estimation of value shall be made by an expert appointed under Art. 136, whose report, dated and signed, shall be attached as an annex to the official recorder's report.

(4) The report of the official recorder, dated and signed, shall be forwarded to the court and, after being registered by the registrar of the court in a special inventory register, shall form part of the record of the case.

PARAGRAPH 7. HABEAS CORPUS

Art. 177.—Application for habeas corpus

(1) An application for habeas corpus may be made to the High Court by any person restrained otherwise than in pursuance of an order duly made under this Code or the Criminal Procedure Code.

(2) The application shall be accompanied by an affidavit by the applicant stating the name of the person under whose custody he is, the nature and place of the restraint and the names of the persons, if any, who can testify to the facts alleged in the application.

(3) Where the person restrained is for whatever reason unable to make the application and/or affidavit himself, the same may be made by any person on his behalf and the affidavit shall then state the name of the person restrained and that he is unable to make the application and/or affidavit himself.

Art. 178. Summons to appear

(1) On receiving an application under Art. 177, the High Court shall forthwith issue a summons directing the person under whose custody the restrained person is to appear before the High Court together with the latter person on such day as shall be fixed in the summons and to show cause why the person restrained should not be released.

(2) Summonses shall also be issued for the appearance of such persons as may be able to testify to the facts alleged in the application.

Art. 179.—Hearing of, and decision on, application

(1) On the day fixed in the summons issued under Art. 178, the court shall investigate the truth or otherwise of the facts alleged in the application and may make with regard to evidence such orders as it thinks fit.

(2) Where the court is satisfied that the restraint is unlawful, it shall order the immediate release of the person restrained and the person under whose custody the person restrained is shall notwithstanding any other orders or instructions to the contrary, by any person or authority forthwith release that person.

(3) Where the court is in doubt as to the truth or otherwise of the facts alleged in the application, it may order the release of the person restrained on his executing a bond, with or without sureties, that he will appear in any court on any future day on which his appearance may be required and comply with such other order as the court ordering release may think fit to make in the circumstances.

Civil Procedure Code: Book 3

CHAPTER 6. JUDGMENTS AND DECREES

PARAGRAPH 1. GENERAL PROVISIONS

Art. 180. - Judgment when pronounced

After a suit has been heard, the court shall pronounce judgment in court either at once or , as soon thereafter as may be practicable, on some future day to be fixed by the court.

Art. 81. Form and pronouncement, of judgment

(1) The judgment shall be reduced to writing, signed by the member or members of the court and pronounced by the judge or presiding judge

(2) Where a case has been heard by more than one judge, the decision of the majority shall be the judgment of the court:

Provided that any judge dissenting from the decision of the majority shall state in writing the decision which he thinks should be made together with the reasons therefor.

(3) A judgment, when signed, may be pronounced by a judge or judges other than those who signed it.

Art. 182. - Contents of judgment

(1) The judgment shall contain the points for determination, the decision thereon and the reasons for such decision:

Provided that a judgment given in first instance shall also contain a concise statement of the case and a judgment of an Appellate Court shall, where the decree appealed from is reversed or varied, specify the relief to which the appellant is entitled.

(2) A court of first instance may not give judgment on any matter not specifically raised by the parties, but an Appellate Court may pass any decree or make any order which ought to have been passed or made, and may pass or make such further or other decree or order as the case may require.

(3) Where several issues have been framed, the court shall state its decision

on each separate issue unless the decision on any one or more issues is sufficient for the decision of the case.

Art. 183.- Framing and consents of decree

(1) After delivery, the operative part of all judgments shall be reduced to the form of a decree which shall contain:

- (a) the number of the suit or appeal;
- (b) the names and discription of the parties;
- (c) when the judgment has been given in first instance, the particulars of the claim;
- (d) a clear order to do or to abstain from doing something or to pay a definite sum of money or to deliver a particular thing or to surrender or restore immovable property, as the case be, and , where appropriate, a description, in the form provided for by Art. 225, of the subject-matter of the case;
- (e) the amount of costs incurred in the suit or appeal, and by whom, or out of what property such costs are to be paid:

Provided that an Appellate Court may specify by whom and how are to be paid the costs incurred in the suit in which the decree appealed from was passed;

(f) such particulars as are necessary so that it be susceptible of execution:

Provided that an Appellate Court may itself give the necessary directions for the execution of its decree or may delegate the execution thereof to the court which first heard the case; and

(g) where the decree can be executed by the personal obedience of the judgment-debtor, the time within which it shall be executed.

(2) The decree shall be signed and dated by the judge or judges who passed it, exclusive of any judge who may have dissented from the judgment:

Provided that, where a judge is for whatever reason, such as death, transfer or retirement, unable to sign the decree after giving judgment, a decree drawn up in accordance with such judgment may be signed by any judge of the court which gave judgment or, if such court has ceased to exist, by any judge of any court to which such court was subordinate.

Art. 184.- Copies of judgment and decree

(1) Certified copies of the judgment or decree or both shall be furnished to the parties on application to the registry of the court which passed it and the date when such copy was furnished shall be mentioned thereon.

(2) A certified copy of the judgment and decree passed by an Appellate Court shall be sent to the court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register. of civil suits.

PARAGRAPH 2. DIRECTIONS TO BE GIVEN IN CERTAIN DECREES

Art.185.-Decree for delivery of movable property

A decree for the delivery of movable property shall also state the amount of money to be paid as an alterdative if delivery cannot be had.

Art.186-- Decree may direct payment by instalments

1) Where and in so far as a decree is for the payment of money, the court may

for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2) An order under sub-art (1) may also be made by the court, after the passing of the decree, on the application of the judgment debtor after the examination held under Art. 356 or with the consent of the decree-holder.

Art. 187.- Decree for possession and mesne profits

Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the court may pass a decree for the possession of the property together with the rent or mesne profits which have accrued on the property prior to the institution of the suit and until the delivery of possession to the decree-holder.

Art. 188.- Taking of accounts

Whenever it is necessary that accounts should be taken in order to ascertain the amount of money due to or from any party, as in a suit for an account of any property and its due administration under the decree of the court, for an account of pecuniary transactions between a principal and an agent or for the dissolution of a partnership or the taking of partnership accounts, the court shall, before passing decree,

order such accounts to be taken and give such other directions as it thinks fit.

Art. 189.- Decree in suit/or dissolution of partnership

Where a suit is for the dissolution of a partnership or the taking of partnership accounts, the court shall, before passing decree, declare the proportionate shares of the parties, fix the day on which the partnership shall stand dissolved or be deemed to have been dissolved and give such other directions, as it thinks fit.

Art. 190.- Decree in suit for partition or separate possession

Where the court passes a decree for the partition of property or for the separate possession of a share thereon, the court may, if the partition or separation cannot be conveniently made without further inquiry, before passing decree, declare the rights of the several parties interested in the property and give such other directions as it thinks fit.

Art. 191. Decree when set-off is allowed

(1) Where a set-off has been allowed, the decree shall state what amount is due to each party and shall be for the recovery of any sum which appears to be due to either party.

(2) Any decree passed in a suit in which a set-off claimed shall be subject to the same provisions with respect to appeal to which it would have been subject if no set-off had been claimed.

Civil Procedure Code: Book 3

CHAPTER 7. MISCELANEOUS PROVISIONS

PARAGRAPH 1. TIME-LIMITS AND ADJOURNMENTS

Art. 192. - Fixing and calculation of time-limit

(1) The period of time for the doing of anything which need or may be done in relation to proceedings in court shall, if not fixed by law, be fixed by the court having regard to all the circumstances of the case.

(2) Unless otherwise expressly provided, a time-limit fixed by law may neither be shortened nor extended.

(3) In calculating a time-limit, whether fixed by law or by the court, the provisions of Art. 1848 Civil Code shall apply

Art.193.- Observance of time-limit

(1) A time-limit shall be deemed to be observed where the purpose for which such time-limit has been fixed is fulfilled prior to the expiry thereof.

(2) Where a dispute arises as to the observance of a time-limit, the party who alleges that such time-limit has been observed shall prove his allegation.

(3) For the purpose of sub-art. (2), official entries, receipts or stamps shall be conclusive unless they are proved to be inaccurate or forged.

Art.194.- Extension of time-limit

(1) A time-limit fixed by the court may for good cause be extended by such court upon an application to this effect being made prior to the expiry of such time-limit.

(2) Save in exceptional circumstances, the same time-limit may not be extended more than twice.

Art. 195.- Lateness

Without prejudice to the provisions of Art. 196, anything which ought to have, but has not been done prior to the expiry of a time-limit may not be done thereafter and, if done thereafter, shall be of no effect.

Art. 196.- Fresh time-limit

(1) Anything which ought to have, but has not been done prior to the expiry of a time-limit, may be done thereafter where the court fixes a fresh time-limit upon an application being made to this effect.

(2) A fresh time-limit may not be fixed under sub-art. (1) unless:

(a) the applicant satisfies the court that he was prevented by circumstances beyond his control from observing the time-limit; and

(b) the application is made within fifteen days of the disappearance of such circumstances.

(3). A fresh time-limit may not be fixed where an application alleges mistake or forgetfulness, burden of business or similar circumstances not amounting to force majeure.

Art. 197.- Court may grant time and adjourn hearing

(1). The court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them and adjourn the hearing of the suit for such time as is necessary to enable the purpose for which the adjournment is granted to be carried out.

(2). The hearing shall be adjourned where the making of the decision is

conditional upon the completion of other proceedings, civil or criminal.

(3). On adjourning the hearing the court shall fix a day for the further hearing of the suit and may make such order as it thinks fit with respect to the costs occasioned by the adjournment :

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall, as far as possible, be continued from day to day until all the witnesses in attendance have been examined.

(4). No adjournment shall be granted when the pleaders of the parties fail to appear

(5). Where a hearing has been adjourned sine die, the court shall issue new summonses to the parties and the witnesses.

Art. 198.- Effect of adjournment

(1). On adjourning the hearing, the court shall make such order as is necessary to ensure that the purpose for which the adjournment was granted is carried out.

(2). For so long as proceedings are suspended, time-limits prescribed by law or fixed by the court shall not run:

Provided that such suspension shall be deemed not to have, taken place if, due to the claimant not having diligently pursued his claim in the court, a case remained dormant for a period of two years.

Art. 199.- Purpose of adjournment not carried out

(1). Where the purpose for which the adjournment was granted has not been carried out for a reason attributable to the default of either party the court may, notwithstanding such failure, proceed to decide the suit immediately on the proceedings being resumed.

(2). Where the purpose for which the adjournment was granted has not been carried out for a reason not attributable to the default of either party, a further adjournment shall be granted.

PARAGRAPH 2. SECURITY FOR COSTS

Art. 200.- When security for costs may be required from plaintiff

(1). At any stage of a suit, the court may, either of its own motion or on the application of any defendant, order the plaintiff, for reasons to be recorded, to give within the time fixed by it security for the payment of all costs incurred and likely to be incurred by any defendant.

(2). An order under sub-art. (1) shall be made whenever it appears to the court that a sole plaintiff is, or if there are more plaintiffs than one that all the plaintiffs are, residing out of Ethiopia and that that such plaintiff does not possess or that no one of such plaintiffs possess any sufficient immovable property within Ethiopia other than the property in suit.

(3). Whosoever is about to leave Ethiopia under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called to pay costs shall be deemed to be residing out of Ethiopia within the meaning of sub-art. (2).

Art. 201.- Effect of failure to furnish security

(1). Where security for costs is not furnished within the time fixed. the court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2). Where a suit is dismissed under sub-art. (1), the plaintiff may, within one month of the date of dismissal, apply for an order to set the dismissal aside, and if it is proved to the satisfaction of the court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the court shall set aside the dismissal upon such terms as to security costs or otherwise as thinks fit, and shall appoint a day for proceeding with the suit

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

Art. 202.- When security for costs may be required from appellant

(1) An Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, require from the appellant security for the costs of the appeal, or of the original suit, or of both.

(2) An order under sub-art. (1) shall be made where the appellant is residing out of Ethiopia and is not possessed of any sufficient immovable property within Ethiopia other than the property, if any, to which the appeal relates.

(3) Where such security is not furnished within such time as the court orders, the court shall dismiss the appeal and the provisions of Art. 201 (2) shall apply by analogy.

PARAGRAPH 3. AFFIDAVITS

Art. 203.- Power to order any point to be proved by affidavit

(1) The court may at any time for sufficient reason order that any particular fact or facts be proved by affidavit, or that the affidavit of any witness be read at the hearing, on such conditions as it thinks reasonable.

(2) Where it appears to the court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, no order under sub-art. (1) shall be made.

Art. 204.- Attendance of deponent

(1) Upon any application evidence may be given by affidavit, but the court may, at the instance of either party, order the attendance (or cross-examination of the deponent.

(2) Such attendance shall be in court, unless the court otherwise directs.

Art. 205.- Matters to which affidavits shall be confined

(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statement of his belief may be admitted if the grounds thereof are stated.

(2) The relief asked for on the grounds mentioned in the affidavit shall be stated in an application to which such affidavit shall be attached.

extracts from documents, shall be paid by the party filing the same.

Art. 206.- Oath by whom administered

In the case of any affidavit under this Code, the oath or affirmation to the deponent may be administered by any court or judge or any other person authorized by virtue of his office or appointed by a court in this- behalf.

PARAGRAPH 4. EFFECT OF NON-COMPLIANCE

Art. 207.- Principle

Unless otherwise expressly provided by law or directed by the court, where irregularities arise from non-compliance with any provision of this Code or regulations made thereunder, the court, may of its own motion or on the application of either party, set aside such proceedings either wholly or in part as irregular, or amend them or make, on such terms as it thinks fit, such other order as may be appropriate.

Art.208.- Correction of mistakes

The court may at any time of its own motion or on the application of either party correct any clerical or arithmetical mistakes in any summons, judgment, decree or order, or any errors arising therein from any accidental slip or omission, and such mistakes or errors shall not be deemed to be irregularities within the meaning of Art. 207.

Art. 209.- Application to set aside irregular proceedings

(1) Any party may apply to the court to set aside all or part of the proceedings as irregular.

(2) Where the application proceeds upon several grounds, they shall all be stated together.

(3) Without prejudice to the provisions of Art 211 (1), the application shall be made at the time when preliminary objections are taken or as soon thereafter as the applicant has knowledge of the irregularity.

Art. 210.- Decision on application

(1) Where the court is satisfied that:

(a) an irregularity has occurred which affects the issue to be decided and has prejudiced or is likely, to prejudice the applicant; and

(b) the applicant has not taken any fresh step in the proceedings after knowledge of the irregularity or has taken such a step under protest, it shall record a reasoned order allowing the application and make in accordance with Art. 207 such order as it thinks fit :

Provided that the proceedings shall not be set aside wholly or in part unless the irregularity cannot be otherwise remedied, and provided further that, where the proceedings are set aside in part, any step taken in the proceedings prior to the occurrence of the irregularity shall not be affected.

(2) Where the court considers that the conditions laid down in sub-art. (1) are not fulfilled, it shall record a reasoned order dismissing the application and the proceedings shall continue as though such application had not been made.

Art. 211.- Appeal

(1) No irregularity other than one arising from an alleged want of material jurisdiction or one alleged in a judgment or decree may be taken as a ground

of appeal unless an application was made under Art. 209.

(2) Notwithstanding the provisions of sub-art (1), an Appellate Court may at any time of its own motion correct any irregularity having occurred in the proceedings in which the judgment appealed from was given:

Provided that, where the irregularity was such as to prevent a valid judgment from being given, the proceedings in which such judgment was given shall be quashed and the Appellate Court shall order the retrial of the case.

Art. 212.- Validation of proceedings

No proceedings in which an irregularity has occurred shall be void where no appeal is made against the judgment given in such proceedings or where such judgment is confirmed by the Appellate Court.

Civil Procedure Code: Book4

BOOK IV. ORDINARY PROCEEDINGS EN FIRST INSTANCE

CHAPTER 1. INSTITUTION AND FRAME OF SUIT

PARAGRAPH 1. GENERAL PROVISIONS

Art.213.- Suit to be instituted by statement of claim

(1) Without prejudice to the provisions of this Code regarding applications and petitions, every suit shall be instituted by filing a statement of claim in the registry of the court.

(2) Every statement of claim shall comply with the rules contained in Arts. 80-93 and 222-236.

(3) Unless the court otherwise directs, the costs of every affidavit or.

Art. 214.- Register of suits

Without prejudice to the provisions of Art. 229, the registrar shall cause the particulars of every suit to be entered in a book kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the statements of claim are admitted.

Art. 215- Court fees

(1) Without prejudice to the provisions of Arts. 467-479, no statement of claim shall be admitted under Art. 230 except after payment of the prescribed court fee.

(2) The prescribed court fee shall also be paid upon the filing of a statement of defence containing a counter-claim.

Art.216.- Frame of suit

(1) Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

2. Every suit shall include the whole of the claim which the plaintiff is entitled to make with respect to the cause of action unless he intentionally relinquishes any portion of his claim so as to bring the suit within the jurisdiction of any court.

(3) A plaintiff who omits to sue in respect of, or intentionally relinquishes, any portion of his claim shall not afterwards sue with respect to the portion so omitted or relinquished.

(4) A person entitled to more than one relief with respect to the same cause of action may sue for all or any of such reliefs, but if he omits except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Art. 217.- Joinder of causes of action

1. Unless otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly.

2. Any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendant jointly, may unite such causes of action in the same suit.

Art. 218.- Claims joined for recovery of immovable

No cause of action shall be joined with a suit for the recovery of immovable property, except:

(a) claims for mesne profits or arrears of rent with respect to such property or any part thereof;

(b) claims for damages for breach of any contract under which such property or any part thereof is held;

(c) claims in which the relief sought is based on the same cause of action.

Art. 219.- Claims by or against executor, administrator or heir

No claim by or against an executor, administrator or heir as-such shall be joined with claims by or against him personally unless the latter claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Art. 220.- Objections as to misjoinder

All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

Art. 221.- Separate trial

The court may at any time order separate trials whenever it appears that causes of action joined in one suit, whether by one or more plaintiffs, or several claims stated together in one statement of claim, or the principal claim and the counter-claim cannot without delay or embarrassment be tried or disposed of together.

PARAGRAPH 2. STATEMENT OF CLAIM AND OF DEFENCE

Art. 222.- Contents of statement of claim

(1) Every statement of claim shall contain:

(a) the name and place of the court in which the action is brought;

(b) the title of the action;

- (c) the name, description, place of residence and address for service of the plaintiff and defendant;
- (d) where the plaintiff or defendant is a person under disability, a statement to that effect;
- (e) where the plaintiff is suing in a representative capacity, a statement showing the capacity in which he is suing;
- (f) the facts constituting the cause of action, and when and where it arose;
- (g) the facts showing that the court has jurisdiction;
- (h) the facts showing that the defendant is or claims to be interested in the subject-matter and is liable to be called upon to answer the claim;
- (i) where appropriate, a statement of the value of the subject-matter of the action.

(2) In suits by or against the Government, instead of inserting the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the appropriate name of the administrative authority concerned.

Art. 223. - Annexes

- (1) The plaintiff shall attach to the statement of claim:
 - (a) a list, which he shall certify to be complete, of the witnesses to be called at the hearing, with their full name and address and the purpose for which they are to be called, and of the documents on which he relies, specifying in whose possession or power such documents are;
 - (b) the original and a copy of any document in his possession upon which he sues;
 - (c) where he has no witnesses or documents to produce, a declaration to that effect.
- (2) A sufficient number of copies of the statement of claim and list, documents or declaration annexed there to shall be filed for the purpose of service on all the defendants named therein.
- (3) Notwithstanding the provisions of sub-art. (2), any document upon which the plaintiff sues may, with the permission of the court, be deposited in the registry where it shall be open to inspection by the defendant, instead of being copied and served on the defendant.

Art. 224. - Relief to be stated

- (1) The statement of claim shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for.
- (2) Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far may be separately and distinctly.

Art. 225. - Identification of subject-matter

- (1) Where a claim relates to a specific thing, the statement of claim shall contain such particulars as are necessary to identify such thing.

(2) Where a claim relates to immovable property, the statement of claim shall contain a description of such property sufficient to identify A and, where such property can be identified by boundaries or numbers in a public record, the statement of claim shall specify such boundaries or numbers.

Art. 226. - Particulars as to amount of claim

(1) Where the plaintiff seeks the recovery of money, the precise amount claimed shall be indicated in the statement of claim.

(2) Where the plaintiff sues for an amount which will be found due to him on taking unsettled accounts between him and the defendant, then, for purposes of pecuniary jurisdiction only, the approximate amount claimed shall, whenever possible, be indicated in the statement of claim.

(3) Where the claim relates to a specific thing, the actual value of such thing shall be indicated in the statement of claim.

(4) Where the claim relates to a generic thing, the current price of such thing shall be indicated in the statement of claim.

Art. 227. - Claim relating to periodical dues

(1) Where the claim relates to periodical dues payable for a specified period of time, the value of the capital producing such dues shall be indicated in the statement of claim.

(2) Where the claim relates to periodical dues payable for an unspecified period of time, then, for purposes of pecuniary jurisdiction only, the value of the annual amount of such dues multiplied by twenty shall be indicated in the statement of claim.

Art. 228. - Establishment, enforcement or termination of right

Where the plaintiff seeks to establish, enforce or terminate a right the actual value of which cannot be indicated in accordance with the preceding Articles, then, for purposes of pecuniary jurisdiction only, statement of claim shall, whenever possible, indicate the estimated pecuniary benefit, if any, which would accrue to the plaintiff in consequence of judgment being given in his favour.

Art. 229. - Rejection of statement of claim by registrar

The statement of claim shall be rejected by the registrar where:

- (a) it is not in the form provided for by Art. 222;
- (b) it is not accompanied by the annexes provided for by Art. 223; or
- (c) it is not verified in the manner provided for by Art. 91.

Art. 230. - Admission of statement of claim by registrar

Where there are no reasons for rejecting the statement of claim under Art. 229, the registrar shall:

- (a) make the entry required by Art. 214;
- (b) examine and compare the original and copy of any document attached to the statement of claim and, on finding the copy to be correct, shall certify it to be so and file it and shall return the original to the plaintiff after marking it for purposes of identification; and
- (c) submit the statement of claim and annexes to the court.

Art. 231. - Rejection of statement of claim by court

(1) The court shall reject any statement of claim submitted under Art 230 where:

- (a) it does not disclose any cause of action; or
- (b) the suit appears from the particulars in the statement of claim to be outside the jurisdiction of the court.

(2) A claim for recovery shall be rejected where the plaintiff fails to produce the securities required by Art. 1403 of the Civil Code.

(3) On rejecting a statement of claim under sub-art. (1), the court shall record a reasoned order to that effect.

Art. 232.- Effect of rejection

(1) Where a statement of claim is rejected, the registrar shall:

- (a) in cases of rejection under Art. 229, return the statement of claim and annexes to the plaintiff give him the reason for such rejection:

Provided that, where the plaintiff is dissatisfied with the reason given for the rejection, he may apply within five days to the court for a revision of the registrar's decision;

- (b) in cases of rejection under Art. 231, refund the plaintiff with the prescribed portion of the court fee paid on filling the statement of claim and enter a note of the rejection in the register of civil suits.

(2) The rejection of a statement of claim under Art. 229 or 231 shall not of its own force preclude the plaintiff from filing a new statement of claim with respect to the same cause of action.

Art. 233.- Service of statement of claim

Where there are no reasons for rejecting a statement of claim under Art. 231, the court shall cause the statement of claim and annexes to be served on the defendant together with a summons requiring him to appear with his statement of defence on a day to be fixed in the summons and informing him that the case will be proceeded with notwithstanding that he does not appear or that he appears without his statement of defence.

Art. 234- Contents of statement of defence

(1) Every statement of defence, to which there shall be attached the annexes mentioned in Art. 223, shall contain:

- (a) the name and place of the court in which the defence is filed;
- (b) the number of the suit;
- (c) the facts, if any, showing that the claim is inadmissible on grounds of want of capacity or jurisdiction, or limitation;
- (d) a concise statement of the material facts on which the defendant relies for his defence and generally of any ground of defence which, if not raised, would be likely to take the opposite party by surprise or, to raise issues of fact not arising out of the statement of claim;
- (e) a specific denial of any fact stated in the statement of claim which is not admitted;
- (f) precise details of the counter-claim, if any, in which case the provisions of Art. 224 shall apply by analogy.

(2) The provisions of Art. 223 (3) shall apply by analogy in appropriate cases.

Art. 235. – Evasive denial

(1) Where a defendant denies an allegation of fact in the statement of claim, he shall not do so evasively, but answer the point of substance and if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances.

(2) Every allegation of fact in the statement of claim, if not denied specifically or by necessary implication, or stated to be not admitted in the statement of defence, shall be taken to be admitted except as against a person under disability: Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

Art. 236. – Particulars of set-off

(1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant shall in his statement of defence give the particulars as to the debt sought to be set-off.

(2) The statement of defence shall have the same effect as a statement of claim in a cross-suit so as to enable the court to give a final judgment with respect both to the original claim and to the set-off.

Art. 237. – Defence or set-off founded upon separate grounds

Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

Art. 238. – Examination of statement of defence

(1) On the day fixed under Art. 233, the court shall examine the statement of defence and the provisions of Art. 229 shall apply by analogy in appropriate cases.

(2) Where the statement of defence is not rejected under sub-art. (1), the court shall examine whether it contains a counter-claim or claim of set-off and the provisions of Art. 231 shall apply by analogy in appropriate cases so far as concerns such counter-claim or claim of set-off.

(3) Where a statement of defence is rejected under this Article, the case shall be proceeded with in accordance with the provisions of the following Chapter notwithstanding such rejection.

Art. 239. – Further pleadings

(1) Where a statement of defence containing a counter-claim or claim of set-off is not rejected under Art. 238, the court shall ask the plaintiff to state whether he wishes to reply thereto and shall, if he so wishes, require him to submit a written reply within time as it shall fix.

(2) On the expiration of the period of time fixed under sub-art. (1), the court shall declare the pleadings closed notwithstanding that the plaintiff fails to submit his reply or that the reply is inadmissible on any of the

grounds mentioned in Arts. 229 and 231 and the case shall thereupon be proceeded with in accordance with the provisions of the following Chapter.

Art. 240.- Notice to admit documents

(1) Either party may, by notice in the form prescribed by the Third Schedule to this Code, call upon the other party to produce or admit any document.

(2) Such notice shall be given not later than ten days before the hearing so as to enable the opposite party to reply thereto before the hearing or to produce the document at the hearing.

Civil Procedure Code: Book 4

CHAPTER 2. TRIAL OF SUIT

PARAGRAPH 1. PROCEDURE AT FIRST HEARING

Art. 241.- Examination of parties

(1) At the first hearing of the suit, the court shall, after verifying the identity of the parties if they appear in person, read the pleadings and ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the

statement of the other party and as are not expressly or by necessary implication admitted or denied by the party against whom they are made

(2) Any party appearing in person or present in court, or any person able to answer any material question relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the court which may, if it thinks fit, put in the course of such examination questions suggested by either party

(3) Where the pleader of any party who appears by a pleader or any such person as is referred to in sub-art. (2) refuses or is unable to answer any material question relating to the suit which court considers that the party whom he represents ought to answer and is likely to be able to answer if examined in person, the court may adjourn the hearing to a future day and direct that such party shall appear in person on that day.

(4) The substance of the examination held under this Article and any admission or denial made in the course thereof shall be reduced to writing by the court and shall form part of the record.

Art. 242.- Judgment on admissions

Any party may, when the opposite party has given notice by his pleading or otherwise in writing that he admits the truth of the whole or any part of the case of the other party, or has made admissions of fact during the examination held under Art. 241, apply to the court for such judgment or order as he may be entitled to upon such admissions, without waiting for the determination of any other question between the parties and the court may thereupon make such order or give such judgment as it thinks fit.

Art. 243.- Saving

Nothing in the preceding Articles shall prevent the court at any later stage of the suit from calling upon any party to admit a fact or document and shall

then record whether such party admits or refuses or neglects to admit the same, whereupon it may in accordance with Art. 241 give judgment or make such other order as it thinks fit.

Art. 244. - Preliminary objections

(1) Before proceeding with the trial of the suit, the court shall decide such preliminary objections as may be taken by the parties.

(2) The provisions of Art. 245 shall apply where either party states that:

(a) the court has no jurisdiction;

(b) the subject-matter of the suit is res judicata;

(c) the suit is pending in another court;

(d) the other party is not qualified for acting in the proceedings;

(e) prior permission to sue has not been obtained, when this is required by law,

(f) the suit is barred by limitation; or

(g) the claim is to be settled by arbitration or has previously been made the subject of a compromise or scheme of arrangement.

(3) Where there are several objections under this Article, they shall all be taken together and any objection not taken at the earliest possible opportunity shall be deemed to have been waived, unless the ground of objection is such as to prevent a valid judgment from being given.

Art. 245. - Decision on objection

(1) The court shall decide any objection taken under Art. 244 after hearing the opposite party and ordering the production of such evidence as may be necessary for the decision to be made.

(2) Where the court is satisfied that the objection is well-founded, it shall, in the case of an objection under Art. 244 (1) (b) or (f), dismiss the suit and, in other cases, strike out the suit and/or make such other order as it thinks fit.

(3) The striking out of the suit shall not of its own force preclude the institution of a fresh suit with respect to the same cause of action and the court shall, in appropriate cases, inform the plaintiff that he may sue in the court having jurisdiction or in the court in which the previously instituted suit is pending.

(4) Where a suit is dismissed on the ground of want of jurisdiction, the prescribed portion of the court fee paid on the filing of the statement of claim shall be refunded.

(5) Any decision taken under this Article shall be recorded together with the reasons for such decision.

Art. 246. Framing of issues

(1) After preliminary objections, if any, have been decided, the court shall ascertain upon what material propositions of fact or of law the parties are in variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(2) Nothing in sub-art. (1) shall compel the court to frame and record issues where the defendant at the first hearing of the suit, makes no defence.

Art. 247.- Issues defined

(1) Issues arise when a material proposition of fact or of law is affirmed by one party and denied by the other.

(2) Material propositions are those propositions of fact or of law which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Where issues both of fact and of law arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Art. 248.- Materials from which issues may be framed

The court may frame the issues from all or any of the following materials:

(a) allegations made in the pleadings;

(b) the contents of documents produced by either party; or

(c) allegations made by the parties, or by any persons present on their behalf, or made by the pleaders of such parties in the course of the examination held under Art. 241.

Art. 249.- Court may examine witnesses or documents before framing issues

Where the court considers that the issues cannot be correctly framed without the examination of some person not before the court or

without the inspection of some document of a kind other than that mentioned in art. 137 (1) but which the Court deems relevant, it may adjourn the framing of the issues to a future day, and may compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

Art. 250.- Dispute as to amount of claim

Where the parties disagree as to the amount or value of the subject-matter of the suit, the court may adjourn the framing of the issues to a future day and issue a commission under Art. 132 or 136.

Art. 251.- Power to amend and strike out issues

(1) The court may at any time before judgment amend the issues or frame additional issues on such terms as it thinks fit, and any such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The court may also, at any time before judgment, strike out any issues that appear to it to be wrongly framed or introduced.

Art. 252.- Questions of fact or law may be stated in form of issues

Where the parties agree as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the court in the affirmative or the negative of such issue

(a) a sum of money specified in the agreement or to be ascertained by the court, or in such manner as the court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement : or

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

Art. 253.- Judgment on agreement executed in good faith

(1) Where the court is satisfied, after making such inquiry as it deems proper

(a) that the agreement under Art. 252 was duly executed by the parties;

(b) that they have a substantial interest in the decision of such question as aforesaid; and

(c) that the same is fit to be tried and decided it shall proceed to record and try the issue, and state its finding decision thereon in the same manner as if the issue had been framed by the court.

(2) Upon the finding or decision on such issue, the court shall pronounce judgment in terms of the agreement.

Art. 254.- Parties not at issue

(1) Where after preliminary objections, if any, have been decided, it appears that the parties are not at issue on any question of law or of fact, the court may at once pronounce judgment.

(2) Where any one of several defendants is not at issue with the plaintiff on any question of law or of fact, the court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

Art. 255.- Parties at issue

(1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the court as hereinbefore provided, if the court is satisfied that no further argument or evidence than the parties can at once adduce is required upon

such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the court may proceed to determine such issues.

(2) If the finding on the issues is sufficient for the decision, the court may pronounce Judgment accordingly.

Art. 256.- Failure to produce evidence

(1) Where evidence which should have been produced in accordance with Art. 137 or 249 is not so produced due to the default of either party, the court may at once pronounce judgment or may, for good cause to be recorded, adjourn the hearing on such terms as to costs or otherwise as it thinks fit.

(2) Where a suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the court, against the claims of any other person upon

such instrument, the court may at once pronounce such judgment as it would have pronounced if the instrument had been produced.

PARAGRAPH .2. HEARING OF SUIT AND EXAMINATION OF WITNESSES

Art. 257. - Summonses

Where the court is satisfied that evidence other than that produced under Art. 249, if any, is required for the proper determination of the suit, it may adjourn the hearing of the suit to some future day and summon the witnesses whose appearance is required by either party to appear on such day.

Art. 258. - Opening of hearing

(1) On the day fixed for the hearing of the suit, the plaintiff shall be entitled to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant shall be entitled to begin.

(2) In courts consisting of three judges evidence may be produced in accordance with the provision of the following Articles notwithstanding that only two judges are present.

Art. 259. - Statement and production of evidence

(1). The party entitled to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2). The other party shall then state his case and produce his evidence and may address the court generally on the whole case.

(3). The party beginning may then reply generally on the whole case.

Art. 260. - Evidence where several issues

(1). Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party.

(2) When evidence is reserved, the party beginning may produce such evidence after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning but the latter party shall then be entitled to reply generally on the whole case.

Art. 261. - Manner of giving evidence

(1) The party entitled to begin shall call his witnesses who, after taking an oath or affirmation in the form provided for by the Third Schedule to this Code, shall be examined-in-chief by such other party and may be re-examined by the party beginning.

(2). If a party wishes to give evidence on his own behalf, he shall do so before calling his witnesses and he shall then for all practice purposes be deemed to be a witness.

(3). Witnesses shall give evidence orally in open court, unless the court otherwise directs for good cause to be recorded.

(4). The court may at any time put to a witness any question which appears

necessary for the proper determination of the suit.

Art. 262.— When deposition to be interpreted

Where evidence is to be given in a language other than Amharic, it shall be interpreted by the official interpreter or by such other person as the court may appoint for the purpose, which person shall before interpreting the evidence, take the oath or affirmation in the form provided for by the Third Schedule to this Code.

Art. 263.— Form of questions

(1). Questions put in examination-in-chief shall only relate to facts relevant to the issues to be decided and only to such facts of which the witness has direct or indirect knowledge.

(2) No leading question shall be put to a witness without the permission of the court

(3) Questions put in cross-examination shall tend to show to the court what is erroneous, doubtful or untrue in the answers given in examination-in-chief. Leading questions may be put in cross-examination.

(4). No question shall be put in re-examination except for the purpose of clarifying matters which have been raised in cross-examination.

Art. 264.— Court may examine other persons

(1). Any person present in court may be required by the court to give evidence or to produce any document then and there in his possession or power.

(2). Where the court considers it necessary at any time to examine any person other than a party to the suit and not called as a witness by a party to the suit, it may of its own motion summon such person as a witness to give evidence or to produce any document in his possession on a day to be fixed and may examine

him as a witness or require him to produce such evidence.

(3) On issuing a summons under sub-art. (2), the court may, where it considers that such person should have been called as a witness by either party for the proper determination of the suit require the defaulting party to comply with the provisions of Art. 112 or make such order as to costs as it thinks fit.

Art. 265.— Power to examine witness immediately

(1). Where at any time after the institution of a suit the court is satisfied that the evidence of a witness should be taken immediately, it may, on the application of any party or of the witness, take the evidence of such witness in the manner hereinbefore provided and such evidence may then be read at any hearing of the suit.

(2). Where such evidence is not taken forthwith and in the presence of the parties such notice, as the court thinks sufficient of the day fixed for the examination, shall be given to the parties.

Art. 266.— Court may recall and examine witness

The court may at any stage of a suit recall any witness who has been examined and may put to him such questions as it thinks fit.

Art. 267.— Refusal of party to give evidence

Where any party to a suit present in court refuses, without lawful excuse, when required by the court, to give evidence or to produce any document then and there in his possession or power, the court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

Art. 268. - Rules as to witnesses to apply to parties summoned

Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him as far as they are applicable.

Art. 269. Recording of evidence

(1). The evidence of each witness shall start with his name, age, occupation and address and an indication that he has been sworn or affirmed.

(2) The evidence of each witness shall be taken down in writing by the presiding judge or, if he is for some reason unable to record, by a judge or clerk under his personal direction and superintendence.

(3). The evidence shall be divided into examination-in-chief, cross-examination and re-examination with a note as to where the cross-examination and re-examination begin and end.

(4). The evidence shall ordinarily be taken down in the form of a narrative, but the presiding judge may in his discretion take down or cause to be taken down any particular question and answer.

(5). When completed, the record shall be signed by the court.

Art. 270. - Recording of objections

Where any question put to a witness is objected to by a party or his pleader, and the court allows the same to be put, the question, the answer, the objection and the name of the person making it shall be recorded together with the decision of the court thereon.

Art. 271. - Evidence recorded by another court

(1) No change in the constitution of any court prior to the conclusion of a suit shall affect evidence recorded in such court before such change occurred and the suit shall be proceeded with on that evidence as recorded.

(2). The provisions of sub-art. (1) shall apply by analogy to evidence taken in a suit transferred under Art. 31.

Art. 272. - Power of court to inspect

The court may at any stage of the suit inspect any property or thing concerning which any question arises and shall in such a case draw up a process-verbal of its proceedings which shall form part of the record.

273. - Judgment

After the evidence has been concluded and the address and reply under Art. 259, if any, have been made, the court shall give judgment

Civil Procedure Code: Book 4

CHAPTER 3. DISCONTINUANCE OF SUITS

PARAGRAPH I. COMPROMISE AND WITHDRAWAL

Art. 274. - Principle

(1) The parties may by a compromise agreement relating to all or some of the matters in issue terminate a dispute with respect to which a suit has been instituted.

(2) Without prejudice to the provisions of this Chapter, the provisions of Arts. 3307–3324 of the Civil Code shall apply to compromise agreements, in particular as regards the effect of, appeal from and invalidation of such agreements.

Art. 275.– Making of compromise agreement

(1) A compromise agreement may at any time be made by the parties at the hearing or out of court, of their own motion or upon the court attempting to reconcile them.

(2) The court may, on the application of the parties, indicate to them the lines on which a compromise agreement may be made.

Art. 276.– Contents of compromise agreement

(1) A compromise agreement shall contain

- (a) the name and place of the court in which the suit is pending;
- (b) the title of the action and the number of the suit;
- (c) the name, description, place of residence and address for service of the parties; and
- (d) the matters to which the agreement relates.

(2) The compromise agreement may settle all accessory matters, in particular as regards costs, damages and execution.

Art. 277.– Recording of compromise agreement

(1) Where a compromise agreement is made at the hearing, it shall be reduced to writing and signed by the parties and the court shall thereupon enter it in the case file on being satisfied that its terms are not contrary to the law or morals.

(2) After entering the compromise agreement in the case file the court may, on the application of the parties, make an order or give judgment in terms of such agreement.

(3) Where a compromise agreement is made out of court, the court shall be informed thereof and the plaintiff may apply to the court for permission to withdraw from the suit.

Art. 278.– Withdrawal or abandonment with leave

(1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(2) Where the court is satisfied :

- (a) that a suit must fail by reason of some formal defect; or
- (b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(3) In any fresh suit instituted on permission granted under sub-art. (2), the

plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

Art. 279.- Withdrawal or abandonment without leave

(1) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in Art 278 (2), he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(2) Nothing in this Article shall be deemed to authorize the court to permit one of several plaintiffs to withdraw without the consent of the others.

Art. 280.- Extinction of cause of action

Where at any stage of a suit it is proved to the satisfaction of the court that the cause of action no longer exists, the court, shall, on such terms as to costs as it thinks fit, dismiss the suit and record a reasoned order to that effect.

PARAGRAPH 2. PAYMENT INTO COURT

Art. 281.- Deposit by defendant of amount in satisfaction of claim

(1) The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in court such sum of money as he considers a satisfaction in full of the claim.

(2). Notice of the deposit shall be given through the court by the defendant to the plaintiff, and the amount of the deposit shall, unless the court otherwise directs, be paid to the plaintiff on his application.

Art. 282.- Deposit accepted as satisfaction in part

(1) Where the plaintiff accepts the amount deposited as satisfaction in part only of his claim, he may prosecute his suit for the balance.

(2). Where the court decides that the deposit by the defendant was a full satisfaction of the plaintiffs claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiffs claim.

Art. 283.- Deposit accepted as satisfaction in full

(1). Where the plaintiff accepts the amount deposited as satisfaction in full of his claim, he shall present to the court a statement to that effect, and such statement shall be tiled and the court shall pronounce judgment accordingly.

(2). In directing by whom the costs of each party are to be paid, the court shall consider which of the parties is most to blame for the litigation.

Civil Procedure Code: Book 5

BOOK V. SPECIAL PROCEDURES

CHAPTER 1. SUMMARY PROCEDURE

Art. 284.- Special endorsement on statement of claim

All suits where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising:

- (a) upon a contract, expressed or implied such as on a bill exchange, promissory note or cheque, or other simple contract debt; or
- (b) on a bond or contract written for payment of a liquidated amount of money; or
- (c) on a guaranty where the claim against the principal is in respect of a debt or liquidated amount only,

May, at the option of the plaintiff, be instituted upon payment of the prescribed court fee by presenting a statement of claim endorsed "Summary Procedure", and accompanied by an affidavit made by the plaintiff or by any other person who can swear positively to the facts, verifying the cause of action, and the amount claimed, if any, and stating that in his belief there is no defence to the suit.

Art. 285.- Judgment in default of application for leave to defend

(1) Upon the filing of an endorsed statement of claim and an affidavit as provided in Art 284, the court shall cause to be served upon the defendant a summons in the form prescribed by the Second Schedule to this Code or in such other form as may be prescribed, and the defendant shall not appear and defend the suit

except upon applying for and obtaining leave from the court.

(2) In default of such application by the defendant or by any one of several defendants within the period fixed by the summons served upon him, the plaintiff shall be entitled to a decree for an amount not exceeding the sum claimed in the statement of claim together with interest, if any, and costs against the defendant

or such of the defendants as have failed to apply for leave to appear and defend the suit.

Art. 286.- Application for leave to defend

(1) An application by the defendant for leave to appear and defend the suit shall be supported by an affidavit, which shall state whether the defence alleged goes to the whole or to part only and, if so, to what part of the plaintiffs claim and the court

also may allow the defendant making the application to be examined on oath.

(2) The court may order the defendant to attend and be examined upon oath, or to produce any deeds, books or documents, or copies of or extracts therefrom.

(3) The plaintiff shall be served with notice of the application and with a copy of the affidavit filed by the defendant.

Art. 287.- Judgment upon refusal to give leave

Where, after hearing an application by a defendant for leave to appear and defend the suit, the court refuses to grant such leave, the plaintiff shall be entitled to judgment as against such defendant.

Art. 288.- Judgment for part of claim

(1) Where it appears that the defence applies only to a part of the claim or that any part of the claim is admitted, the plaintiff shall be entitled to a judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, on such terms as to suspending execution or the payment of

any amount realized by attachment into court, the taxation of costs or otherwise as the court may think fit.

(2) The defendant may be allowed to appear and defend as to the residue of the plaintiffs claim.

Art. 289.- Judgment against one of several defendants

Where it appears to the court that any defendant has a good defence to or ought to be permitted to appear and defend the suit, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to appear and defend, and the plaintiff shall be entitled to issue a decree against the latter, and may issue execution upon such decree without prejudice to his right to proceed with his suit against the former.

Art. 290.- Leave to defend may be conditional

Leave to appear and defend the suit may be given unconditionally, or subject to such terms as to the payment of monies into court giving security or time or mode of trial or otherwise, as the court may think fit.

Art. 291.- Orders for further conduct of suit

Where leave, whether conditional or unconditional, is given to appear and defend, the court shall have power to give all directions and make all orders as to pleadings, issues, and any further steps in the suit as may then appear reasonable or necessary, or may order the suit to be forthwith set down for hearing.

Art. 292.- Setting aside judgment

After the judgment the court may, if satisfied that the service of the summons was not effective, or for any other good cause to be recorded, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the court so to do and on such terms as the court thinks fit.

Civil Procedure Code: Book 5

CHAPTER 2. INTERPLEADER

Art. 293.- Definition

A suit of interpleader is a suit wherein a person in possession of property or owing money which is or may be claimed adversely by two or more persons, to one or other of whom alone he can be liable seeks to be relieved from liability to the claimants, or either of them with regard to the disposition of such property or money.

Art. 294.- Statement of claim in interpleader suit

A suit of interpleader shall be instituted by filing, upon payment of the prescribed court fee, a statement of claim which shall, in addition to the particulars required by Art. 22, state:

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

(b) the claims made by the defendants severally ; and

(c) that there is no collusion between the plaintiff and any of the defendants.

Art. 295. - Payment of thing claimed into court

Where the thing claimed is capable of being paid into court or placed in the custody of the court the plaintiff may be required to so pay or place it before he can be intitled to any order in the suit.

Art. 296. - Defendant suing plaintiff

Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the court in which the suit against the plaintiff is pending shall, on being informed by the court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Art. 297. - Procedure at first hearing

- (1) At the first hearing the court may:
 - (a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or
 - (b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.
- (2) Where the court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.
- (3) Where the admissions of the parties do not enable the court so to adjudicate, it may direct:
 - (a) that an issue or issues between the parties be framed and tried; and
 - (b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff. And shall proceed to try the suit in the ordinary manner.

Art. 298. - Agents and tenants may not institute interpleader-suits

Nothing in this Chapter shall be deemed to enable the agents to sue their principals, or tenants to sue their landlords, for the purpose compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Art. 299. - Deposit in registry

- (1). Nothing in the preceding Articles shall prevent a person seeks to be relieved from liability at any time before or after institution of a suit, from giving notice to any person or persons entitled thereto to accept any sum of money or other property.
- (2). Where such notice is not answered, such person may deposit against receipt such sum of money or other property in the registry of any court or of the court in which the suit is pending, as the case may be, after deducting his costs and charges, if any.
- (3). On making a deposit under sub-art. (2), the depositor shall give the registrar an affidavit showing the reasons for the deposit and deductions, if any, and stating that notice under sub-art. (1) has been given but not

answered, and a copy of the affidavit shall be served on the person or persons concerned in the same manner as a summons.

(4). Any sum of money or other property deposited under sub-art. (2) may at any time be withdrawn by any person who on application satisfies the court that he is entitled thereto.

Civil Procedure Code: Book 5

CHAPTER 3. ACCELERATED PROCEDURE

PARAGRAPH 1. GENERAL PROVISIONS

Art. 300. Scope of application

(1). The provisions of this Chapter shall apply where an application is made concerning any of the matters expressly referred to in the following Articles.

(2). Applications concerning matters other than those expressly referred to in the following Articles may, subject to the provisions of Art. 302 (1) (c), be dealt with in accordance with the provisions of this Chapter.

Art. 301.- Institution of proceedings

(1). Any person legally entitled to institute proceedings under this Chapter may, on payment of the prescribed court fee, file a written, dated and signed application within the time fixed by the law under which the application is made, or, where no such time is fixed, within fifteen days from the occurrence of the facts on which the application is based.

(2) The application shall specify the capacity in which the applicant acts and the provision of the law under which it is made and shall be supported by an affidavit stating the reasons for the application.

(3). The applicant shall attach to the application such documents as are required under the following Articles and may attach thereto such other documentary evidence as he deems necessary for the determination of the application.

Art. 302.- Dismissal of application

(1). The application shall be dismissed where :

(a) the applicant is not qualified for making the application;

(b) the application is not made in the form or within the time specified in Art. 301(1); or

(c) the court considers that the subject-matter of the application cannot be properly determined in the manner hereinafter provided for.

(2). The dismissal of the application shall not create res judicata but shall be a bar to the making of a fresh application on the same grounds.

Art. 303.- Decision on application

(1). Where the application is allowed, the court shall make its decision in accordance with the provisions of the following Articles and such decision shall be in the form of a judgment or written order, as the nature of the case may require.

(2). Unless otherwise provided for in this Chapter or the law under which the application is made, the court shall make its decision on the basis of the

application.

(3). Nothing in sub-art. (2) shall prevent the court from requiring the production of such evidence or additional evidence as may be necessary, on such terms, in such manner and within such time as the court shall direct.

Art. 304.- Consequential orders

(1). Any decision under this Chapter shall be made or given on such terms as to costs or otherwise as the court thinks fit.

(2). No decision under this Chapter shall be a bar to the making of such further orders as may or must be made pursuant to the law under which the application is made or as may appear expedient in the circumstances.

Art. 305.- Issue of certificate

(1). On making its decision in favour of the applicant, the court shall, where he so requires, provide him with a dated and signed certificate stating in a concise form the contents of such decision.

(2). The provisions of sub-art. (1) shall apply in particular in matters concerning change of name (Arts. 42 and 43 Civil Code), refusal to draw up records or to celebrate a marriage (Arts. 139, 470 and 601 Civil Code), prior permission to sue (Arts. 369, 773, 779 and 786 Civil Code), withdrawal of jurisdiction (Art. 377 Civil Code), opposition to marriage (Art. 592 Civil Code), widowhood

(Art. 596 Civil Code) as well as in cases of applications to consult or to be issued with certain powers or documents or to be authorized to depart from certain instructions (Arts. 129, 209, 239, 287, 523, 528, 535 and 630 Civil Code).

(3). Where an application is made for the correction or cancellation of records or entries in registers (Arts. 121, 127, 1623 and 1630 Civil Code) or for approval or confirmation (Arts. 146, 628, 633, 749, 763, 766, 767, and 804 Civil Code and Art. 441 Commercial Code) or registration or certification, the court may, without further proceedings, but after having ordered such investigations as may be necessary, give such directions as are appropriate in the circumstances, or issue a certificate evidencing approval, registration or certification or endorse the fact of approval, registration or certification on the relevant document, as the case may be, together with the date and number thereof, where appropriate.

Art. 306. Appeal

(1) Unless otherwise provided for by the law under which the application is made, no appeal shall lie from any decision under this Chapter other than a judgment under Arts. 309-311.

(2). When an appeal lies from a judgment given under this Chapter it shall be made within ten days from the giving of such judgment and such judgment shall not be enforced until the period for the appeal has expired or the appeal has been decided.

PARAGRAPH 2. SPECIAL CASES

Art. 307.- Calling of meetings

Where, on receiving an application for the calling of a meeting, including a meeting of a family council, the court is satisfied that there is good cause under the law why a meeting should be called, it shall appoint such person as it thinks fit to call such meeting on such terms as the court shall fix and to carry out with regard to the meeting such other duties as are laid down by law or as the court may direct.

Art. 308.- Appointments

(1). Where, on receiving an application for the appointment of a provisional director, trustee or liquidator, the court is satisfied that there is good cause under the law why such appointment should be made, it shall appoint such person as it thinks fit to carry out the duties of a director, trustee or liquidator and shall, where appropriate, fix his remuneration.

(2). On receiving an application for the appointment of a guardian, tutor, co-tutor or tutor ad hoc, or of an additional member of a family council, the court shall summon all the relatives of the minor to appear on such day as it shall fix and the appointment shall be made after such relatives have been heard.

(3) The provisions of this Article shall apply by analogy to applications under Arts. 211, 219, 220, 229, 238, and 383 of the Civil Code.

Art 309.- Setting aside of resolution

(1) An application to set aside a resolution, such as an application under Art. 448 of the Civil Code or Art. 416 of the Commercial Code, shall be accompanied by a copy of such resolution of the memorandum and articles of association of the body corporate concerned.

(2) Where the court considers that judgment cannot be given the application, it shall cause a copy thereof to be served on the body corporate concerned, the directors and auditors of which shall be required to file within fifteen days a written reply showing cause why the resolution should not be set aside.

(3) Where such reply is not filed or such cause is not shown, the court may order the resolution to be set aside.

(4) The provisions of this Article shall apply by analogy to applications concerning resolutions expelling an associate, decisions made by the committee of management of an endowment or under Art. 549 (1) of the Civil Code, schemes of distribution of profits, final balance sheets and, generally but without prejudice

to such other provisions of this Code as may be applicable in any particular case, to objections made by the creditors of a trader.

Art. 310.- Applications for expulsion, dismissal or removal

(1) On receiving an application for the expulsion of a partner or the dismissal of a manager or trustee, such as an application under Art. 261 or 293 of the Commercial Code or Art. 522 of the Civil Code, the court shall cause a copy thereof to be served on him and require him to file within

fifteen days a written reply showing cause why he should not be expelled or dismissed.

(2) Where such reply is not filed or such cause is not shown, the court may order expulsion or dismissal.

(3) The provisions of this Article shall apply by analogy to applications for the removal of a guardian or tutor.

Art. 311.- Dissolution of partnership or body corporate

(1) An application for the dissolution of a partnership or body corporate or for the termination of an endowment or trust shall, where appropriate, be in the form provided for by Art. 309 (1).

(2) The provisions of Art. 309 (2) and (3) shall in appropriate cases apply to applications under this Article.

Art. 312.- Amalgamation of endowments

(1) Where an application for the amalgamation of two or more endowments is made under Art. 505 of the Civil Code, the court shall cause a copy thereof to be served on the Ministry of Interior which may within fifteen days file a written reply concerning the desirability or otherwise of the proposed amalgamation.

(2) The court shall order amalgamation on being satisfied that it is desirable in the general interest.

Art. 313.- Opposition to marriage

On receiving an application for the withdrawal of an opposition to marriage, the court shall summon the applicant and opponent to appear on such day as it shall fix and shall give judgment after both parties have been heard: Provided that the withdrawal of the opposition shall be ordered where the opponent fails without good cause to appear.

Art. 314.- Applications to set aside refusal

(1) On receiving an application to set aside a refusal to make an entry in a public record or register or to celebrate a marriage, the court shall cause a copy thereof to be served on the person who so refused and require him to file within fifteen days a

written reply showing cause why the refusal should not be set aside.

(2) Where such reply is not filed or such cause is not shown, the court shall order the refusal to be set aside.

Civil Procedure Code: Book 5

CHAPTER 4. ARBITRATION

Art. 315.- Principle

(1) Where arbitration is required by law or persons have entered into a written agreement to submit present or future differences to arbitration the provisions of this Chapter shall apply.

(2) No arbitration may take place in relation to administrative contracts as defined in Art. 3132 of the Civil Code or in any other case where it is prohibited by law.

(3) No person shall submit a right to arbitration unless he is capable under the law of disposing of such right..

(4) Nothing in this Chapter shall affect the provisions of Arts. 3325-3346 of the Civil Code.

Art. 316.- Appointment of arbitrator by court

(1) Where a court is required to appoint an arbitrator, including a family arbitrator, such appointment may be made by any court.

(2) Judges shall not be eligible for appointment as arbitrators but may act as family arbitrators.

(3) Where an arbitrator has been appointed he shall without delay signify his acceptance or refusal to the appointment in writing.

Art. 317.- Procedure before arbitration tribunal

(1) The procedure before an arbitration tribunal, including family arbitrators, shall, as near as may be, be the same as in a civil court

(2) The tribunal shall in particular hear the parties and their evidence respectively and decide according to law unless by the submission it has been exempted from doing so.

(3) Summonses may be issued for the attendance of witnesses who may be sworn: Provided that, where a witness fails to appear in answer to the summons, either party may apply to the court for the issue of a summons, in which case the provisions of Arts. 111-121 shall apply.

(4) When a party, who has been given the opportunity to be heard and produce his evidence, fails to do so, the tribunal may give its award in default.

Art. 318. - Making of award

(1) The parties shall fix a period of time within which the award shall be made, and such period may be extended by the parties.

(2) An award shall be made in the same form as a judgment and shall deal with the question of costs.

(3) Where there is more than one arbitrator, the award shall be the decision of the majority,

(4) A copy of the award dated and signed by the arbitrators shall be served on both parties.

(5) Where the fee to be paid to the arbitrator has not been fixed, a reasonable fee shall be fixed by the arbitrator in his award.

Art. 319.- Appeal and execution

(1) The provisions of Arts. 350-357 shall apply to appeals from, and applications to set aside an award, including an award by family arbitrators.

(2) An award may be executed in the same form as an ordinary judgment upon the application of the successful party for the homologation of the award and its execution.

Civil Procedure Code: Book6

BOOK VI. APPEAL, OPPOSITION AND REVISION

PARAGRAPH 1. GENERAL PROVISIONS

Art. 320.- When appeal lies

(1) Unless otherwise expressly provided for by this Code or any other law, the plaintiff or the defendant may, on the conditions laid down in this Chapter, appeal against any final judgment of a civil court.

(2) Where an appeal lies from a judgment or order, but remedy under this Code is available in the court which gave such judgment or made such order, no appeal may be lodged unless such remedy has been exhausted.

(3) No appeal shall lie from any decision or order of any court on interlocutory matters, such as a decision or order on adjournments, preliminary objections, the admissibility or inadmissibility of oral or documentary evidence or permission to sue as a pauper, but any such decision or order may be raised as a ground of appeal when an appeal is made against the final judgment.

(4) Nothing in sub-art. (3) shall prohibit an appeal from any order under any provision of this Code directing the arrest or detention of any person, the transfer of property from the hands of one party into hands of the other or refusing to grant an application for habeas corpus.

Art. 321.- Courts having appellate jurisdiction

(1) An appeal shall lie from a judgment of:

(a) a Woreda Guezat Court in its original jurisdiction to the Awradja Guezat Court in whose area of jurisdiction such Woreda Guezat Court lies;

(b) an Awradja Guezat Court in its original jurisdiction to the High Court;

(c) the High Court in its original jurisdiction to the Supreme Imperial Court.

(2) Where on appeal an Awradja Guezat Court or the High Court varies the judgment appealed from, a second appeal shall lie:

(a) from an Awradja Guezat Court to the High Court;

(b) from the High Court to the Supreme Imperial Court.

Art. 322.- His Imperial Majesty's Chilot

Nothing in Art. 321 shall prevent an appellant who has exhausted his rights of appeal from making a petition to His Imperial Majesty's Chilot for a revision of the case under Art. 361-370.

Art. 323.- Form and time of appeal

(1) Every appeal shall be lodged by filing in the registry of the Appellate Court, upon payment of the prescribed court fee, a memorandum of appeal in the form provided by Art. 327 signed by the appellant or his pleader.

(2) The memorandum of appeal shall be filed within sixty days of the judgment appealed from being delivered.

(3) Where there are several appellants, they may file one memorandum of appeal which shall be signed by all of them or by their pleader on behalf of all of them.

(4) There shall be kept in every court a book called the Register of Appeals where in the particulars of all appeals shall be entered and numbered in order

of reception.

324.- Appeal filed out of time

(1) The registrar shall refuse to accept a memorandum of appeal filed after the expiry of the period laid down in Art. 323 and shall inform the appellant that he may within ten days file an application for leave to appeal out of time.

(2) Where a memorandum of appeal is filed out of time and is accompanied by an application for leave to appeal out of time, the registrar shall refuse to accept such memorandum and shall accept such application only:

Provided that, where such application is contained in the memorandum of appeal, the registrar shall refuse to accept such memorandum and inform the appellant that the application must be filed separately.

(3) A note of a refusal under this Article shall be entered in the Register of Appeals together with the date of such refusal.

Art. 325.- Application for leave to appeal out of time

(1) An application for leave to appeal out of time shall be in writing and show cause why the appellant did not appeal within the period laid down in Art. 323.

(2) The application shall be accompanied by such evidence as may be necessary to enable the court to decide whether the appellant was prevented for good cause from appealing.

(3) Prior to deciding on the application, the court may hear the applicant and the respondent and make with regard to evidence such orders as it thinks fit.

Art. 326.- Decision on application

(1) On being satisfied that the appellant was prevented for good cause from appealing, the court shall record an order granting the application and the appellant shall file his memorandum of appeal within ten days of such order.

(2) There shall not be good cause within the meaning of sub-art. (1) where the failure to appeal in time is due to the default of the appellant's pleader.

(3) No appeal shall lie from a decision dismissing an application under this Article.

(4) A note of any application under this Article and of the decision thereon shall be entered in the Register of Appeals.

Art. 327.- Contents of memorandum of appeal

(1) The memorandum of appeal shall contain:

- (a) the name and place of the court in which the appeal is filed;
- (b) the names and addresses of the appellant and the respondent;
- (c) the name of the court which gave the judgment appealed from, the date of such judgment and the number of the suit in which it was given;
- (d) the address within the jurisdiction of the court for service on the appellant;
- (e) the grounds of appeal; and
- (f) the nature of the relief sought.

(2) Attached to the memorandum of appeal there shall be a certified copy of

the full record of the proceedings in which the judgment appealed from was given and of such judgment.

(3) The appellant shall state whether he bases his appeal entirely on the record of the original hearing and shall, where appropriate attach to the memorandum of appeal an application for permission to call additional evidence, stating the nature of such evidence, the names and addresses of the witnesses to be called if any, the reasons why such evidence was not produced in the court which gave the judgment appealed from and why it should be produced in the Appellate Court.

(4) The memorandum of appeal shall be made in such number of copies as shall permit of one copy being served on each of the respondents.

Art. 328.- Grounds of appeal

(1) The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the judgment appealed from without any arguments and such grounds shall be numbered consecutively.

(2) The appellant shall not, except by leave of the court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal.

(3) The Appellate Court in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the court under sub-art. (2):

Provided that the court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

Art. 329.- New facts and arguments

(1) Subject to the provisions of Art. 345 the appellant may not raise any fact which was not in evidence in the court which gave the judgment appealed from.

(2) The Appellate Court may allow amendment of the memorandum of appeal and arguments upon such terms of service of notice, costs or otherwise as it may think fit.

Art. 330.- Rejection or amendment of memorandum

(1) Where the memorandum of appeal is not drawn up as provided by Art. 327 it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the court or be amended then and there.

(2) Where the court rejects any memorandum, it shall record the reasons for such rejection and a note of the rejection shall be entered in the Register of Appeals.

(3) Where a memorandum of appeal is amended, the court shall make a record of the amendment.

Art. 331.- Several plaintiffs or defendants

Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

PARAGRAPH 2. STAY OF PROCEEDINGS AND OF EXECUTION

Art. 332.- Stay by appellate Court

An appeal shall, not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree, but the Appellate Court may for sufficient cause order stay of execution of such decree.

Art. 333.- Stay by court which passed the decree

Where an application is made for stay of execution of an appealable decree or order before the expiration of the time allowed for appealing therefrom, the court which passed the decree or made the order may on sufficient cause being shown order the execution to be stayed.

Art. 334.- Stay by President

Nothing in Art. 332 shall prevent the President of the Appellate Court, and nothing in Art. 333 shall prevent the President of the court which passed the decree or made the order from granting a stay of execution for a period not exceeding fifteen days:

Provided, when the appeal is not heard or an additional order for stay is not made by the court before the expiry of such period. the execution officer shall execute the decree or order after the expiry of the said period.

Art. 335.- Conditions for ordering stay

(1) No order for stay of execution shall be made under Arts. 332-334 unless the court or President making it is satisfied:

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay ; and

(c) that money has been deposited, security given or a surety produced by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(2) The application shall be decided after the parties have been heard:

Provided that the court may, on an application supported by affidavit, make an ex parte order for stay of execution pending the hearing of such application.

Art. 336.- Security in case of order for execution

Where an order is made for the execution of a decree or order from which an appeal is pending, the Appellate Court may, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or order for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court.

PARAGRAPH 3. ADMISSION AND HEARING OF APPEAL

Art. 337.- Power to dismiss appeal without calling on respondent

Where the appellant states in his memorandum of appeal that he bases his appeal entirely on the record of the original hearing and does not apply for permission to call additional evidence, the Appellate Court may, after fixing a day for hearing the appellant or his pleader and hearing him accordingly on

that day, dismiss such appeal without calling on the respondent to appear, if it thinks fit and agrees with the judgment appealed from.

Art. 338.- Day for hearing appeal

(1) Unless the Appellate Court dismisses the appeal under Art. 337, it shall cause the memorandum of appeal to be served on the respondent, fix a day for hearing the appeal and summon the respondent to appear and answer on such day, informing him that the appeal will be heard notwithstanding that he does not appear on such day.

(2) Such day shall be fixed with reference to the current business of the court, the place of residence of the respondent, and the time necessary for the service of the memorandum of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

Art. 339.- Appellant to begin

(1) On the day fixed for hearing the appeal, the appellant shall be heard in support of the appeal.

(2) The court shall then, if it does not dismiss the appeal at once hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

(3) Nothing in sub-art. (2) shall prevent the court from requiring the respondent to submit a written reply to the memorandum of appeal and the appellant to submit a written counter-reply.

(4) The reply and counter-reply shall be filed within such time as the court shall fix.

Art. 340.- Cross-objection

(1) The respondent may, on payment of the prescribed court fee, take any cross-objection to the decree or order which he could have taken by way of appeal notwithstanding that he did not appeal from any part of the decree or order.

(2) A cross-objection shall be in the form of a memorandum of appeal and shall be filed in the Appellate Court within one month from the date of service on him or his pleader of the summons issued under Art. 338 (1).

(3) Unless the respondent files with the objection a written acknowledgement from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) A cross-objection taken under this Article may, after such notice to the other parties as the court thinks fit, be heard and determined notwithstanding that the original appeal is not proceeded with.

Art. 341.- Remand of case by Appellate Court

(1) Where the court from whose decree or order an appeal is preferred has disposed of the suit upon a preliminary point and the decree or order is reversed in appeal, the Appellate Court may if it thinks fit. by order remand the case, and may further direct what issue or issues shall be tried in the

case so remanded.

(2) Where a case is remanded under sub-art. (1), the Appellate Court shall send a copy of its judgment and order to the court from whose decree or order the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit.

(3) The evidence, if any, recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Art. 342.- Judgment on record

Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit. Notwithstanding that the judgment of the court from whose decree or order the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

Art. 343.- Appellate Court may frame issues and refer them for trial

(1) Where the court from whose decree or order the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues and refer the same for

trial to the court from whose decree or order the appeal is preferred, and in such case shall direct such court to take the additional evidence required.

(2) The court to which issues are referred shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor, which evidence and findings shall form part of the record in the suit.

Art. 344.- Objections to finding

(1) Either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding returned under Art. 343 (2).

(2) After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

Art. 345.- Additional evidence

(1) The parties to an appeal shall not be entitled to produce additional evidence in the Appellate Court. Provided that, where :

(a) the court from whose decree or order the appeal is preferred has refused to admit evidence which ought to have been admitted; or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it pronounce judgment, or for any other substantial cause,

the Appellate Court may, of its own motion or upon an application for permission to call additional evidence being made under Art. 327 (3) , allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the court shall record the reason for its admission.

Art. 346. – Mode of taking additional evidence

Where additional evidence is allowed to be produced, the Appellate Court:

- (a) may either take such evidence, or direct the court from whose decree or order the appeal is preferred, or any other subordinate court, to take such evidence and to send it when taken to the Appellate Court ; and
- (b) shall specify the points to which the evidence is to be confined and record on its proceedings the points so specified.

Art. 347. – Giving of judgment

The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the court from whose decree or order the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment.

Art. 348. – Power of court of appeal

- (1) The judgment may confirm, vary or reverse the decree or order from which the appeal is preferred.
- (2) Where the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

Art. 349. – Application for restitution

- (1) Where and is so far as a decree or order is varied or reversed, the court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied or reversed.
- (2) For the purpose of sub-art. (1) , the court may make any orders including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits which are properly consequential on such variation or reversal.
- (3) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-art (1).

Civil Procedure Code: Book 6

CHAPTER 2. APPEAL FROM, AND SETTING ASIDE

OF ARBITRAL AWARD

Art. 350. – Parties and procedure

- (1) Any party to arbitration proceedings may, in the terms of the arbitral submission and on the conditions laid down in Art. 351, appeal from any arbitral award.
- (2) The parties may waive their right of appeal but any such waiver shall be of no effect unless made with full knowledge of the circumstances.
- (3) The provisions regarding the making and hearing of an appeal from a judgment shall apply by analogy to the making and hearing of an appeal from an award.

(4) Without prejudice to the provisions of Art. 736 of the Civil Code, the provisions of this Chapter shall as far as may be apply to awards made by family arbitrators.

Art. 351.- Grounds of appeal

No appeal shall lie from an award except where:

- (a) the award is inconsistent, uncertain or ambiguous or is on its face wrong in matter of law or fact;
- (b) the arbitrator omitted to decide matters referred to him;
- (c) irregularities have occurred in the proceedings, in particular where the arbitrator -
 - (i) failed to inform the parties or one of them of the time or place of the hearing or to comply with the terms of the submission regarding admissibility of evidence ; or
 - (ii) refused to hear the evidence of material witness or took, evidence in the absence of the parties or of one of them: or
- (d) the arbitrator has been guilty of misconduct, in particular where :
 - (i) he heard one of the parties and not the other;
 - (ii) he was unduly influenced by one party, whether by bribes or otherwise; or
 - (iii) he acquired an interest in the subject-matter of dispute referred to him.

Art. 352.- Court to which appeal lies

An appeal against an award shall be made, on payment of the prescribed court fee, to the court which would have had appellate jurisdiction, had the dispute in which the award appealed from has beer, given not been referred to arbitration.

Art. 353.- Powers of Appellate Court

Without prejudice to its power to confirm, vary or reverse the award appealed from, the Appellate Court may, where it thinks fit, remit such award or a portion thereof to the reconsideration of the arbitrator.

Art. 354.- Remission for reconsideration

- (1) No award may be remitted to the reconsideration of the arbitrator who made it except where the appeal is made on any of grounds mentioned in Art. 351 (a) and (b).
- (2) Where an award is remitted, the arbitrator shall, unless otherwise directed in the order or remission , make his second award within three months of the date of such order.
- (3) Where a portion only of an award is remitted, the remainder may -be enforced pending the making of the second award if it is capable of execution.

Art. 355.- Setting aside of award

- (1) Notwithstanding any agreement to the contrary, the parties to arbitration proceedings may, on the conditions laid down in Art. 356, apply for an order that an award be set aside.
- (2) The application shall be made to the court mentioned in Art. 352 within thirty days of the making of the award.
- (3) The provisions regarding the making and hearing of an opposition shall

apply by analogy to the making and hearing of an application under this Article.

Art. 356.- Grounds for application

No application under Art. 355 shall be made except where:

- (a) the arbitrator decided matters not referred to him or made his award pursuant to a submission which was invalid or had lapsed;
- (b) the reference being to two or more arbitrators, they did not act together; or
- (c) the arbitrator delegated any part of his authority, whether to a stranger, to one of the parties or to a co-arbitrator.

Art. 357.- Decision on application

- (1) Where an application under Art. 355 is dismissed, the award shall be deemed to be valid and enforceable.
- (2) Where the application is granted, the award shall be deemed to be null and void and shall be set aside.

Civil Procedure Code: Book6

CHAPTER 3. OPPOSITION

Art. 358.- Who may file opposition

Any person who should or could have been made a party to a suit and whose interests are affected by a judgment in the suit may, if he was not a party to such suit either in person or through a representative, file an opposition to such judgment at any time before such judgment is executed.

Art. 359.- Form of opposition

- (1) An opposition shall be in the form of a petition which shall, on payment of the prescribed court fee, be filed in the court having given the judgment opposed to.
- (2) The petition shall specify :
 - (a) the name and place of the court in which the petition is filed
 - (b) the name and address of the petitioner;
 - (c) the names of the parties to the case in which the judgment opposed to was given;
 - (d) the name of the court which gave the judgment opposed to the date of such judgment and the number of the suit in which it was given;
 - (e) the grounds of opposition; and
 - (f) the nature of the relief sought.
- (3) The petition shall be accompanied by an affidavit of the truth of the facts therein alleged.
- (4) An application for stay of execution of the judgment opposed to may, where appropriate, be filed together with the petition.

Art. 360.- Effect of opposition

- (1) On the filing of a petition under Art. 359, the court shall fix a day for hearing the opposition and shall cause a copy of the petition to be served on all the persons who were parties to the case in which the judgment opposed to was given together with a summons to appear on such day.

(2) The proceedings upon the filing of the opposition shall be subject to the same provisions as the proceedings upon the original action and the court may on the completion of such proceedings confirm, vary or set aside the judgment opposed to.

Civil Procedure Code: Book 6

CHAPTER 4. REVISION

361. – Petition for revision

(1) A petition to His Imperial Majesty's Chilot for the revision of a case shall be made within one month of the pronouncement of the judgment or decision following which the petitioner's rights of appeal or recourse to any court are exhausted and shall be accompanied by:

(a) a copy of the judgment or judgments with which the petitioner is dissatisfied; and

(b) a written memorandum setting forth clearly and concisely the reasons on which the petitioner bases his petition for a revision.

(2) Upon receipt of the petition the Chilot shall direct notice to be served on the opposite party to show cause why the petition should not be granted.

(3) The provisions of Arts. 324–326 shall apply by analogy when a petition under this Article is made out of time.

Art. 362. – Security for costs

(1) Where the petition is granted, the petitioner shall within not more than sixty days:

(a) furnish security for the costs of the respondent; and

(b) deposit such amount as may be required to defray the expense of sending for, or copying, whichever is more convenient, the record of the case in which the judgment to which the petition relates was given.

(2) Where such copy, if any, has been made, the petitioner shall be refunded with the balance, if any, of the amount deposited under sub-art. (1) (b).

Art. 363. – Granting of petition

Where security has been furnished and deposit made Art. 362, the Chilot shall:

(a) declare the petition admitted;

(b) give notice thereof to the respondent; and

(c) give either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

Art 364. – Notice

(1) Notice under Art. 361 (2) and 363 shall be given by affixing the same in some conspicuous place in the court-house in which the suit was originally brought, and by publication in such newspapers as the Chilot may direct.

(2) Nothing in the preceding Articles requiring any notice to be served on or given to an opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite party or deceased

respondent in a case, where such opposite party or respondent did not appear

either at the hearing in the court whose decree is complained of or at any proceedings subsequent to the decree of that court.

Art. 365. Further orders regarding security

(1) At any time before the admission of the petition the Chilot may upon cause shown, revoke the acceptance of any security furnished under Art. 362, and make further directions thereon.

(2) Where at any time after the admission of the petition any security furnished under Art. 362 (1) (a) appears inadequate or further payment is required for meeting the expense mentioned in Art 362 (1) (b) , the Chilot may order the petitioner to furnish within such a time as it shall fix, other and sufficient security, or to make, within like time, the required payment.

Art. 366.- Failure to comply with order

(1) Where the petitioner fails to comply with an order under Art 365, the proceedings shall be stayed and in the meantime execution of the decree to which the petition relates shall not be stayed.

(2) Nothing in this Article shall affect the provisions of Art. 368.

Art. 367.- Orders pending hearing of petition

(1) Notwithstanding the grant of a petition for revision, the decree to which the petition relates shall be unconditionally executed, unless the Chilot otherwise directs.

The Chilot may, for good cause, of its own motion or on the application of any party to the suit :

- (a) impound any movable property in dispute or any part thereof;
- (b) allow the execution of the decree to which the petition relates taking such security from the respondent as it thinks fit for the due performance of any order which it may make on the petition;
- (c) stay the execution of the decree to which the petition relates, taking such security from the petitioner as it thinks fit for the due performance of the said decree or of any decree or order which it may make on the petition;
- or
- (d) place any party seeking its assistance under such conditions or give such other direction respecting the subject-matter of the petition, as it thinks fit, by the appointment of a receiver or otherwise.

Art. 368,- Increase of security

(1) Where at any time during the pendency of the petition the security furnished by either party appears inadequate, the Chilot may, on the application of the other party, require further security.

(2) In default of such further security being furnished:

- (a) if the original security was furnished by the petitioner, the Chilot may, on the application of the respondent, execute the decree to which the petition relates as if the petitioner had furnished no such security; and
- (b) if the original security was furnished by the respondent, the Chilot shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when

the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the petition as it thinks fit.

Art. 369. - Operation of decree or order

Unless the Chilot otherwise directs, no decree or order of the Chilot shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the court whose decree was complained of or at any proceedings subsequent to the decree of that court, but such order shall have the same force effect as if it had been made before the death took place.

Art. 370. - Execution

(1) Whoever desires to obtain execution of any decree or order of the Chilot shall make an application, accompanied by a certified copy of such decree or order, to the court from whose decree the petition to the Chilot was preferred.

(2) Such court shall execute the decree or order as though it had been passed or made by itself.

(3) The orders made by the court which executes the decree or order of the Chilot relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such court relating to the execution of its own decrees.

Civil Procedure Code: Book 7

BOOK VII. EXECUTION OF DECREES

CHAPTER 1. EXECUTION OF DECREES PASSED IN ETHIOPIA

PARAGRAPH 1. COURTS EXECUTING DECREES

Art. 371. - Principle

(1) A decree may be executed in accordance with the provisions of this Chapter either by the court which passed it or by the court to which it is sent for execution.

(2) Nothing in this Chapter shall affect the provisions of the Maritime Code regarding the arrest, detention and sale of ships.

Art 372. - Transfer of decree

(1) The court which passed a decree may, by order in the form prescribed by the Fourth Schedule to this Code, of its own motion or on the application of the decree-holder when execution is sought in accordance with Art. 378, send it for execution directly to another court where:

(a) the judgment - debtor resides, carries on business or personally works for gain within the local limits of the jurisdiction of such other court;

(b) the judgment-debtor has property sufficient to satisfy the decree within the local limits of the jurisdiction of such other court, but not of the court which passed the decree;

(c) the decree directs the sale or delivery of immovable property situate within the local limits of the jurisdiction of such other court; or
(d) the court which passed the decree considers, for any other reason to be recorded, that the decree should be executed by such other court.

(2) Nothing in sub-art. (1) shall prevent a court from directing the attachment or sale of immovable property notwithstanding that the entire property is not situate within the local limits of its jurisdiction.

Art. 373.- Procedure in case of transfer

(1) The court sending a decree for execution shall send:

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the court by which it was passed or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree or, if no such order has been made, a certificate to that effect.

(2) The court to which a decree is transferred shall execute it after causing such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the court, for any special reason to be recorded, requires such proof.

Art. 374.- Power of court to which decree is transferred

(1) The court to which a decree is transferred shall have the same powers in executing such decree, and its orders in execution shall be subject to the same rules regarding appeals, as if the decree had been passed by itself.

(2) The court to which a decree is transferred shall certify to the court which passed such decree the fact of execution or, where the former court fails to execute the same, the circumstances attending such failure.

Art. 375.- Questions to be determined by court executing decree

(1) Any question arising between the parties to the suit in which the decree was passed concerning the execution, discharge or satisfaction of the decree, shall be determined by the court executing the same and not by a separate suit.

(2) Any question arising as to whether or not any person is the representative of a party shall, for the purposes of this Article, be determined by the court executing the decree.

Art. 376.- Stay of execution

(1) The court to which a decree has been transferred shall, on sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the court which passed the decree for an order to stay execution, or for any other order relating to the decree or execution which

might have been made by such court if execution had been issued thereby.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the court which issued the execution may order the restitution

of such property or the discharge of such person pending the result of the application, but no such order shall prevent such property or person from being subsequently retaken in execution of the decree sent for execution.

(3) Before ordering a stay of execution or the restitution of property or discharge of the judgment-debtor, the court may require such security from, or impose such renditions upon, the judgment debtor as it thinks fit.

4) Any order of the court which passed the decree, in relation to the execution thereof, shall be binding upon the court to which the decree was transferred.

Art. 377.- Stay of execution pending suit against decree-holder

Where a suit is pending in any court against the holder of a decree of such court, on the part of the person against whom the decree was passed, the court may, on such terms as to security or otherwise as it thinks fit, stay the execution of the decree until the pending suit has been decided.

PARAGRAPH 2. APPLICATION AND PROCESS FOR EXECUTION

Art. 378.- Making and contents of application

(1) Where the holder of a decree wishes to execute it, he shall apply to the court which passed such decree to issue process for its execution.

(2) The application may be made upon the passing of the decree, unless the judgment-debtor was given time to satisfy the decree by his personal obedience, in which case the application may not be made until the judgment debtor is in default.

(3) The application, to which there shall be attached a certified copy of the decree sought to be executed, shall be in writing, signed and verified in the same manner as a pleading, and shall state:

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether an appeal has been preferred from the decree;
- (e) whether any, and if any what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
- (f) whether any, and if any what, previous applications have been made for the execution of the decree, together with the dates and results of such applications;
- (g) the amount with interest, if any, due upon the decree or other relief granted thereby, together with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed;
- (h) the amount of the costs, if any, awarded;
- (i) the name of the person against whom execution of the decree is sought; and
- (j) the mode in which the assistance of the court is required, whether:
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment and sale, or by the sale without attachment of any property;
 - (iii) by the appointment of a receiver; or

(iv) otherwise, as the nature of the relief granted may require.

Art. 379.- Particulars in application for attachment

(1) An application for the attachment of any movable property belonging to the judgment-debtor shall be accompanied by an inventory of the property to be attached, containing a reasonably accurate description of the same.

(2) An application for the attachment of any immovable property belonging to the judgment-debtor shall contain:

(a) a description of such property in accordance with Art. 225 (2) Provided that, where such property is entered in the register of immovable property, the court may require the applicant to produce a certified extract from such registers; and

(b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant and so far as he has been able to ascertain the same.

Art. 380.- Application for execution by joint decree-holder

(1) Where a decree has been passed jointly in favour of several persons, any one of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

2) Where the court sees sufficient cause for allowing the decree to be executed on an application made under sub-art. (1) , it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Art. 381. - Application for execution by transferee of decree

(1) Where a decree, or if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree, is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to court which passed it.

(2) Subject to the provisions of sub-arts, (3) and (4), the decree may then be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder.

(3) Where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given in the form prescribed by the Fourth Schedule to this Code to the transferor and the judgment-debtor, and the decree shall not be executed until the court has heard their objections, if any, to its execution.

(4) Where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed.

Art. 382.- Enforcement of liability of surety

Where any person has become liable as surety:

(a) for the execution of a decree or any part thereof;

(b) for the restitution of any property taken in execution of a decree; or

(c) for the payment of any money or the fulfilment of any condition imposed on any person, under an order of the court in proceeding consequent thereon, the decree or order may be executed against him to the extent to which he has rendered himself personally liable and he shall be deemed to be a party within the meaning of Art. 375, provided that such notice as the court in each case thinks sufficient shall be given to him.

Art. 383.- Application for execution against legal representative

Where a judgment-debtor dies before the decree has been fully satisfied, the decree-holder may apply to the court which passed it to execute the same against the legal representative of the deceased.

Art. 384.- Execution when barred

Where an application to execute a decree, other than a decree granting an injunction, has been made, no order for the execution of such decree shall be made upon any fresh application submitted after the expiration of ten years from;

(a) the date of the decree sought to be executed; or

(b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

Art. 385.- Procedure on receiving application for execution

(1) On receiving an application for execution the court shall ascertain whether such of the requirements of the preceding Articles as may be applicable to the case have been complied with and may if they have not been complied with, reject the application or allow the defect to be remedied on such terms as it shall fix.

(2) Where an application is amended under sub-art. (1), it shall be deemed to have been an application in accordance with law and presented on the day when it was first presented.

(3) Every amendment made under sub-art. (1) shall be dated and signed or initialled by the presiding judge.

Art. 386.- Examination of judgment-debtor

(1) Where an application for execution is admitted, a copy thereof shall be served on the judgment-debtor together with a summons requiring him to appear before the court on a day fixed in the summons to show cause why the decree should not be executed.

(2) Where the judgment-debtor appears he shall be bound to answer, on oath, such questions as may be put to him by the court and the decree-holder and, if he offers any objection to the execution of the decree, the court shall consider such objection and make such order as it thinks fit.

(3) Where the judgment-debtor does not appear or show cause to the satisfaction of the court why the decree should not be executed, the court shall issue process for the execution of such decree.

(4) Notwithstanding the provisions of sub-art. (3), where an application is

made for the execution of a decree for the payment of money and the judgment-debtor fails to appear in answer to the summons, the court shall order that he be arrested and brought before it for the purpose of being examined as to his means.

(5) For the purpose of an examination under this Article, the court may summon any person or require the production of any book or record.

Art. 387.- When warrant of arrest may be issued

(1) Without prejudice to the provisions of Art. 386 (4), no summons shall be issued under Art. 386 (1) and the court may forthwith order the arrest of the judgment-debtor on being satisfied, by affidavit or otherwise, that, with the object or effect of obstructing or delaying execution, he is about or likely to abscond or leave

the local limits of the jurisdiction of the court or to dispose of or remove his property or any part thereof from such limits.

(2) An order under sub-art. (1) may be made pending the making of an application for execution.

Art. 388.- Particulars in warrant of arrest

(1) Every warrant issued under Art. 386 (4) or 387 shall direct the officer entrusted with its execution to bring the judgment-debtor before the court unless satisfaction of the decree by his personal obedience is sooner obtained.

(2) No warrant of arrest shall be executed where satisfaction is obtained in accordance with sub-art. (1).

Art. 389.- When detention may be ordered

(1) Where, after the examination held under Art. 386:

(a) the judgment-debtor refuses without good cause to comply with the decree; or

(b) the court is satisfied that the judgment-debtor, although able to comply with the decree, has wilfully failed to do so the court may order the arrest of the judgment-debtor, if he is not already under arrest, and his detention in the civil prison for a period not exceeding six months.

(2) The provisions of Art. 388 (2) shall apply when detention is ordered under sub-art. (1) of this Article.

Art. 390.- Release from detention

(1) The court shall order that the judgment-debtor be released from detention:

(a) upon the amount due of the decree being paid into court or to the officer in charge of the prison, or satisfaction of the decree being otherwise obtained; or

(b) upon the request of the decree-holder.

(2) A judgment-debtor released under sub-art. (1) may not be rearrested in execution of the same decree.

Art. 391.- Effect of detention or release

A judgment-debtor arrested under Art. 389 or released under Art 390 shall not merely by reason of his arrest or release be discharged from the whole or any part of his debt.

Art. 392.- Process for execution

(1) Where, after examining the judgment-debtor, the court considers that there is no reason why the decree should not be executed, it shall issue its process for the execution of such decree in such manner as the nature of the relief granted may require.

(2) No process shall be issued where the court considers that the judgment-debtor is unable to pay the amount due under the decree or any instalment thereof, but the court may at any subsequent time issue process on being satisfied that the judgment debtor has become able to pay such amount or instalment

(3) Every process shall bear date the day on which it is issued and shall be signed by a judge, sealed with the seal of the court and delivered to the execution officer.

(4) In every process a day shall be specified on or before which it shall be executed.

Art. 393.-- Endorsement of process

(1) The execution officer shall endorse on the process the day on and manner in which it was executed and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the court.

(2) Where the endorsement is to the effect that the execution officer is unable to execute the process, the court shall examine him touching his alleged inability and may, if it thinks fit, summon and examine witnesses as to such inability and shall record the result.

PARAGRAPH 3. MODFS OF EXECUTION SUB-PARAGRAPH 1. GENERAL PROVISIONS

Art. 394.-- Decree for payment of Money

(1) Without prejudice to the provisions of the following Articles, every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the attachment and sale of the judgment-debtor's property.

(2) The value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

Art. 395.- Modes of paying money

(1) All money payable under a decree shall be paid as follows, namely:

(a) into the court whose duty it is to execute the decree:

(b) out of court to the decree-holder; or

(c) otherwise as the court which passed the decree directs.

(2) Where any payment is made under sub-art. (1), notice thereof shall be given to the decree-holder.

Art 396.- Payment out of court to decree-holder

(1) Where any money payable under a decree of any kind is paid out of court,

or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the court whose duty it is to execute the decree, and the court shall record the same accordingly.

(2) The judgment-debtor may also inform the court of such payment or adjustment and apply to the court to issue a notice in the form prescribed by the Fourth Schedule of this Code to the decree-holder to show cause, on a day to be fixed by the court, why such payment or adjustment should not be recorded as certified.

(3) If, after service of a notice issued under sub-art. (2), the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly.

(4) A payment or adjustment which has not been certified or recorded as aforesaid shall not be recognized by any court executing the decree.

Art. 397.- Execution in case of cross-decrees

(1) Where applications are made to a court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such court, then :

(a) if the two sums are equal, satisfaction shall be entered upon both decrees; and

(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the

decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) The provisions of sub-art. (1) shall apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) The provisions of sub-art. (1) shall not apply unless ;

(a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits, and

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

Art. 398.- Execution in case of cross-claims under same decrees

Where application is made to a court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then :

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the

smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

Art. 399.— Decree for specific movable property

A decree for any specific movable or any share therein may be executed by the seizure of the movable or share and the delivery thereof to the decree-holder or to such person as he appoints to receive delivery on his behalf.

Art. 400.— Decree for specific performance or injunction

(1) Without prejudice to the provisions of Arts. 389, 415 and 427, where the party against whom a decree for the specific performance of a contract or for an injunction has been passed has had an opportunity of complying with the decree and has wilfully failed to do so, the decree may be executed by the attachment and sale of his property and the court may, out of the proceeds, award to the decree-holder such compensation as it thinks fit.

(2) Nothing in sub-art. (1) shall prevent the court from directing that the act required to be done may be done as far as practicable by the decree-holder or some other person appointed by the court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and may be recovered as though they were included in the decree.

Art. 401.— Decree for execution of document, or endorsement of negotiable instrument.

(1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the court.

(2) The court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections, if any, to be made within such time as the court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the court a copy of the draft with such alterations, if any, as the court may have directed and the execution officer or such officer as may be appointed in this behalf shall execute the document so delivered in the manner provided for by the Fourth Schedule to this Code.

(5) The court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by law and may make such order as it thinks fit as to the payment of the expenses of the registration.

Art. 402.— Decree for immovable property

(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the decree-holder, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any

person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, possession shall be delivered by affixing a copy of the decree in some conspicuous part of the property and proclaiming by beat of drum or other customary mode the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree does not afford free access, the execution officer may remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

Art. 403.- Distribution of assets

Where assets are held by or under the authority of a court and more persons than one have, before the receipt of such assets, applied to the court for the execution of decree for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization shall be distributed among all such persons in the prescribed manner.

SUB-PARAGRAPH 2. ATTACHMENT OF PROPERTY

Art. 404.- Property not liable to attachment

The following property shall not be liable to attachment or sale at any stage of the proceedings:

- (a) the necessary wearing-apparel, cooking vessels, bed and bedding of the judgment-debtor and his family;
- (b) tools, instruments or implements of any kind used by the judgment-debtor in his profession, art or trade;
- (c) where the judgment-debtor is an agriculturist, such cattle and seed-grain as may, in the opinion of the court, be necessary to enable him to earn his livelihood;
- (d) such amount of food and money as may, in the opinion of the court, be necessary for the judgment-debtor and his family for a period of three months;
- (e) pensions and alimonies;
- (f) without prejudice to the provisions of Art. 121 of the Maritime Code, two thirds of the judgment-debtor's salary, provided that the entire salary shall be exempt from liability to attachment where it does not exceed two dollars per day and the judgment-debtor has no other income;
- (g) any other property declared by or in accordance with any law to be exempt from liability to attachment or sale.

Art. 405.- Attachment where amount due not determined

Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

Art. 406.- Attachment of movable property other than agricultural produce

(1) Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment

shall be made by actual seizure, and the execution officer shall, subject to the provisions of sub-art. (2), keep the property in a safe place, and shall be responsible for the due custody thereof.

(2) When the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the execution officer may sell it at once.

Art. 407.- Attachment of agricultural produce

(1) Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment:

(a) where such produce is a growing crop, on the land on which such crop has grown; or

(b) where such produce has been cut or gathered, on the threshing - floor or place for treading out grain or the like or fodder-stack or in which it is deposited.

(2) Another copy. of the warrant shall be affixed on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the court on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain.

(3) Upon the affixing of the warrant, the produce shall be deemed to have passed into the possession of the court.

Art. 408.- Provisions as to agricultural produce under attachment

(1) Where agricultural produce is attached, the court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the court either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it.

(3) Where the judgment-debtor fails to do all or any of the acts mentioned in sub-art. (2), the decree-holder may, with the permission of the court and subject to the like conditions,. do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(4) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require reattachment merely because it has been severed, from the soil.

(5) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered,

the court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending

the execution of the order of attachment.

(6) A growing crop which from its nature does not admit of being stored shall not be attached under this Article at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Art. 409.— Attachment of property not in possession of judgment-debtor

(1) Where the property to be attached is a debt not secured by a negotiable instrument or a debt owing to the judgment-debtor under another decree, the attachment shall be made by a written order prohibiting the creditor from recovering the debt and the

debtor from making payment thereof until the further order of the court.

(2) Where the property to be attached is a share in the capital of a corporation, the attachment shall be made by a written order prohibiting the person in whose name the share may be from transferring the same or receiving any dividend thereon and the corporation from registering any transfer of such share.

(3) Where any other movable property or a sum of money is to be attached, the attachment shall be made by a written order prohibiting the person in possession of the same from giving it over to the judgment-debtor.

(4) A copy of the order made under sub-arts. (1)–(3) shall be affixed on some conspicuous part of the court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of any other movable property, to the person in possession of the same.

(5) A debtor prohibited under sub-art. (1) may pay the amount of his debt into court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

(6) Any order under this Article shall be accompanied by a notice informing the person in possession of the property that he may appear before the court on a day to be fixed in the notice to show cause why he should not comply with the order.

(7) When such person so appears, the provisions of Arts. 418–421 shall apply by analogy.

Art. 410.— Attachment of share in movables

Where the property to be attached consists of the share or interest of the judgment-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

Art. 411.— Attachment of salary

(1) Where the property to be attached is the salary of an employee, the court may order that the amount due be withheld from such salary either in one payment or by monthly instalments, as the court may direct.

(2) A copy of an order made under sub-art. (1) shall be sent to the employer of the judgment-debtor and the amount due under the order, or the monthly instalments, as the case may be, shall there upon be withheld from the judgment-debtor's salary and remitted to the court.

(3) Where the attachable proportion of the judgment-debtor's salary is already being withheld and remitted to a court in pursuance of a previous and unsatisfied order of attachment, the employer of the judgment-debtor shall forthwith return the subsequent order to the court issuing it with a full statement of all the particulars of the existing attachment.

Art. 412.- Attachment of negotiable instruments

Where the property is a negotiable instrument not deposited in a court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into court and held subject to further orders of the court.

Art. 413.- Attachment of property in custody of court or public officer

Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the court from which the notice is issued:

Provided that, where such property is in the custody of a court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

Art. 414.- Attachment of immovable property

(1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property with any right in rem, and all persons from taking any benefit from such transfer or charge.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house.

Art. 415.- Removal of attachment after satisfaction of decree

Where:

(a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into court;

(b) satisfaction of the decree is otherwise made through the court or certified to the court; or

(c) the decree is set aside or reversed, the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the

proclamation shall be affixed in the manner prescribed by Art. 414 (2).

Art. 416.- Order for payment of coin or currency notes to party entitled under decree

Where the property attached is current coin or currency notes, the court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Art. 417.- Determination of attachment

(1) Where any property has been attached in execution of a decree but by reason of the decree-holder's default the court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a further date.

(2) Upon the dismissal of such application the attachment shall cease.

SUB-PARAGRAPH 3. INVESTIGATION OF CLAIMS AND OBJECTIONS

Art. 418.- Investigation of claims to attached property

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Provided that no such investigation shall be made where the court considers that the claim or objection was designedly or unnecessarily delayed.

(2) Any claim or objection under sub-art. (1) shall be made by presenting a written application to the court executing the decree.

(3) The claimant or" objector shall adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

(4) Where the property to which the claim or objection applies has been advertised for sale, the. court ordering the sale may postpone it pending the investigation of the claim or objection.

419.- Decision on claim or objection

(1) Where upon the said investigation the court is satisfied that for the reason stated in the claim or objection or for any other reason such property is not liable to attachment, it shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

(2) Where the court is satisfied that such property is liable to attachment, it shall disallow the claim or objection.

Art. 420.- Continuance of attachment subject to claim of incumbrancer

Where the court is satisfied that the property is subject to a mortgage or right in rem in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or right in rem..

Art. 421.- Suits to establish right to attached property

Where a claim or an objection is preferred, the party against whom an order is

made may institute a suit to establish the right which he claims, to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

SUB-PARAGRAPH 4. SALE GENERALLY

Art. 422.- Order for sale of property attached

(1) Any court executing a decree may on application order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

(2) Unless otherwise directed, every sale in execution of a decree shall be:
(a) conducted by an officer of the court or by such other person as the court may appoint in this behalf (hereinafter referred to as the auctioneer); and
(b) made by public auction in accordance with the following Articles.

(3) Nothing in this Article shall prevent the court from authorizing a sale by private contract at the request or with the consent of the judgment - debtor and after hearing the decree-holder.

Art. 423.- Proclamation of sales by public auction

(1) Where any property is ordered to be sold by public auction in execution of a decree, the court shall cause a proclamation of the intended sale to be made.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible:

- (a) the property to be sold and the estimated value thereof;
- (b) any incumbrance to which the property is liable;
- (c) the amount for the recovery of which the sale is ordered;
- (d) the terms and conditions of the sale and manner in which and time within which the purchase price shall be paid; and
- (e) every other thing which the court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) The proclamation shall also draw attention to the provisions of Arts. 440-442 of this Code.

Art. 424.- Application/or sale

(1) An application for an order for sale under Art. 422 shall be accompanied by a statement signed and verified in the manner described for the signing and verification of pleadings and containing so far as they are known to or can be ascertained by the person making the verification, the matters required by Art. 423 (2) to be specified in the proclamation.

(2) For the purpose of ascertaining the matters to be specified in the proclamation, the court may summon any person whom it thinks necessary to summon and may examine him with respect to any such matters and require him to produce any document in his possession or power relating thereto, and may appoint an expert to

estimate the value of the property to be sold.

Art. 425.- Mode of making proclamations

(1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by Art 414 (2).

(2) Where the court so directs, such proclamation shall also be published in a newspaper circulating at the place of the sale and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot unless proper notice of the sale cannot, in the opinion of the court, otherwise be given.

Art. 426.- Time of sale

Save in the case of property of the kind described in Art. 406 (2), no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of movable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the court.

ordering the sale or, where the proclamation has been published in court newspaper, from the date of such publication, whichever is the later.

Art. 427.- Stoppage of sale

Every sale shall be stopped if, before the lot is knocked down, the debt and costs, including the costs of the sale, are tendered to the auctioneer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the court which ordered the sale.

Art. 428.- Second auction

(1) Where the highest bid at a sale by auction does not reach a sum equal to the value specified in the proclamation in accordance with Art. 423 (2) (a), a second sale by auction shall be held after the issue of a fresh proclamation in the manner and within the time specified above and the sale shall thereafter be effected to the highest bid, whatever its amount.

(2) Where no bidder presents himself at the second auction, the court may, notwithstanding any provision to the contrary, authorize the decree-holder to take possession of the property ordered to be sold at its estimated value in full or partial satisfaction of the decree, as the case may be.

Art. 429.- Defaulting purchaser answerable for loss on re-sale

(1) Where the purchase price is not paid or deposited according to the provisions of the law or the terms and conditions of sale, such sale shall be deemed to be cancelled and a resale may be ordered by the court after the issue of a fresh proclamation in the manner and within the time specified above.

(2) Any deficiency of price which may happen on such resale and all expenses attending such resale shall be certified to the court by the auctioneer and shall, at the instance of either the decree-holder or the judgment-debtor, be

recoverable from the defaulting purchaser under the provisions relating to the execution of

a decree for the payment of money.

(3) On payment of the purchase money, the auctioneer shall grant a receipt for the same, and the sale shall become absolute,

(4) For purposes of bidding, a resale by auction ordered under this Article shall be deemed to be a first auction.

Art. 430.- Decree-holder not to bid for or buy property without permission

(1) No holder of a decree in execution of which property is sold shall, without the written permission of the court, a copy of which shall be given by the court to the auctioneer, bid for or purchase the property.

(2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, on such terms as shall be prescribed, be set off against one other, and the court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree - holder purchases, by himself or through another person, without such permission, the court may, it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale and order a resale, in which case the provisions of Art. 429 shall apply by analogy.

Art. 431.- Restriction on bidding or purchase by officers

(1) No auctioneer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the, property sold.

(2) Where a sale takes place in contravention of the provisions of sub-art.

(1), the sale may be set aside in accordance with Art. 430 (3).

SUB-PARAGRAPH 5. SALE OF MOVABLE PROPERTY

Art. 432.- Sale of agricultural produce

(1) Where the property to be sold is agricultural produce, the sale shall be held :

(a) if such produce is a growing crop, on or near the land on which such crop has grown; or

(b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited :

Provided that the court may direct the sale to be held at the place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) The sale shall as far as possible be held on a market day.

Art. 433.- Special provisions relating to growing crops

(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day,

and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

Art. 434.- Negotiable instruments and shares in corporations

Where the property to be sold is a negotiable instrument or a share in a corporation, the court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

Art. 435.- Irregularity not to vitiate sale

No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or, if such other person is the purchaser, for the recovery of the specific property and for compensation in default of such recovery.

Art. 436.- Delivery of movable property, debts and shares

(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a share in a corporation, the delivery thereof shall be made by a written order of the court prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest hereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Art. 437.- Transfer of negotiable instruments and shares

(1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the provisions of Art. 401 (4) shall apply and the execution or endorsement shall have the same effects as an execution or endorsement by the party.

(2) Until the transfer of such negotiable instrument or share, the court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same, and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

Art. 438.- Vesting order in case of other property

In the case of any movable property not hereinbefore provided for, the court may make an order vesting such property in the purchaser or as he may direct, and such property shall vest accordingly

SUB-PARAGRAPH 6. SALE OF IMMOVABLE PROPERTY

Art. 439.- Postponement of sale to enable judgment-debtor to raise amount of decree

(1) Where an order for the sale of immovable property has been made if the judgment-debtor can satisfy the court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor, the court may, on his application and on the conditions laid down in Art 422 (3), postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount

(2) In such case the court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein and notwithstanding anything contained in Art. 422, to make the proposed mortgage, lease or sale: Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set off such money under the provisions of Art. 430 (2), into court.

(3) No mortgage, lease or sale under this Article shall become absolute until it has been confirmed by the court.

(4) Nothing in this Article shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of such property.

Art. 440.- Deposit by purchaser and re-sale on default

(1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent on the amount of his purchase-money to the auctioneer.

(2) Where the decree-holder is the purchaser and is entitled to set off the purchase-money under Art. 430 (2) the court may dispense with the requirements of sub-art. (1).

Art. 441.- Time for payment in full of purchase money

The full amount of purchase-money payable shall be paid by the purchaser to the auctioneer within fifteen days from the sale of the property:

Provided that. in calculating the amount to be so paid, the purchaser shall have the advantage of any set-off to which he may be entitled under Art. 430 (2).

Art. 442.- Procedure in default of payment

In default of payment within the period mentioned in Art 441, the deposit may, if the court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Art. 443.- Bid of co-sharer to have preference

Where the property sold is a share of undivided immovable property and two or

more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Art. 444.- Application to set aside sale

(1) Where immovable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on such conditions as the court may determine.

(2) Where a person applies under Art. 445 to set aside the sale of his immovable property, he shall not, unless he withdraws his application be entitled to make or prosecute an application under this Article.

(3) Nothing in this Article shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

Art. 445.- Application to set aside sale on ground of irregularity or fraud

Where an immovable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale may apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless the applicant satisfies the court that he has sustained substantial injury by reason of such irregularity or fraud.

Art. 446.- Application to set aside sale where no saleable interest

The purchaser at any such sale in execution of a decree may apply to the court to set aside the sale, on the ground that the judgment debtor had no saleable interest in the property sold.

Art. 447.- Sale when to become absolute or be set aside

(1) Where no application is made under Arts. 444-446 within two months of the sale, the sale shall become absolute.

(2) Where any such application is made but it is disallowed, the court shall make an order confirming the sale and thereupon the sale shall become absolute.

(3) Where a sale of immovable property has become absolute, the court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

(4) Where any such application is made and allowed, the court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(5) Where a sale of immovable property is set aside under sub-art. (4), the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the court may direct, against any person to whom it has been paid.

Art. 448.- Delivery of property in occupancy of judgment-debtor

Where the immovable property sold is in the occupancy of the judgment-debtor or of 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 and a certificate in respect thereof has been granted under Art 447 (3), the court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Art. 449.- Delivery of property in occupancy of tenant

Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under Art. 447 (3), the court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the" interest of the judgment-debtor has been transferred to the purchaser.

PARAGRAPH 4. RESISTANCE TO DELIVERY OF POSSESSION

Art. 450.- Resistance or obstruction to possession of immovable property

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction.

(2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Art. 451.- Resistance or obstruction by judgment-debtor

Where the court is satisfied that the resistance or obstruction was occasioned without good cause by the judgment-debtor or some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a period not exceeding thirty days.

Art. 452.- Resistance or obstruction by bona fide claimant

Where the court is satisfied that the resistance or obstruction was occasioned by any person, other than the judgment-debtor, claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the court shall make an order dismissing the application.

Art. 453.- Dispossession by decree-holder or purchaser

(1) Where any person other than the judgment-debtor is dispossessed of

immovable property by the holder of a decree for the possession of such property or where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession.

(2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

(3) Where the court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

Art. 454.- Provisions not applicable to transferee lite pendente

Nothing in Arts. 452 and 453 (3) shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Art. 455.- Orders conclusive subject to regular suit

Any person not being a judgment-debtor against whom an order is made under Art. 451, 452, or 453 (3) may institute a suit to establish the right which he claims to the present possession of the property, but, subject to the result of such suit, if any, the order shall be conclusive.

Civil Procedure Code: Book 7

CHAPTER 2. EXECUTION OF FOREIGN JUDGMENTS

Art. 456.- Principle

(1) Unless otherwise expressly provided for by international conventions, foreign judgments may not be executed in Ethiopia except in accordance with the provisions of this Chapter.

(2) No foreign judgment shall be executed in Ethiopia unless an application to this effect is made.

(3) An application under sub-art. (2) shall be made to the division of the High Court on circuit in the Teklay Guezat where execution is to take place.

Art. 457.- Form of application

An application for the execution of a foreign judgment shall be in writing and shall be accompanied by:

- (a) a certified copy of the judgment to be executed; and
- (b) a certificate signed by the President or the registrar of the court having given judgment to the effect that such judgment is final and enforceable.

Art. 458.- Conditions for allowing application

Permission to execute a foreign judgment shall not be granted unless

- (a) the execution of Ethiopian judgments is allowed in the country in which the judgment to be executed was given;
- (b) the judgment was given by a court duly established and constituted ;
- (c) the judgment-debtor was given the opportunity to appear and present his

defence;

(d) the judgment to be executed is final and enforceable; and

(e) execution is not contrary to public order or morals.

Art. 459.- Procedure

(1) The court to which the application is made shall enable the party against whom the judgment is to be executed to present his observations within such time as it shall fix.

(2) The court shall decide whether pleadings may be SL

(3) In cases of doubt the court may suspend its decision doubtful points have been clarified.

Art. 460.- Decision

(1) The decision shall be made on the basis of the application unless the court for some special reason to be recorded to hear the parties at a hearing which it shall fix.

(2), The court shall at the same time decide on costs.

(3) Where the application is allowed and permission to execute granted, the foreign judgment shall be executed in Ethiopia though it had been given by an Ethiopian court.

Art. 461.- Enforcement of foreign awards

(1) Foreign arbitral awards may not be enforced in Ethiopia unless:

(a) reciprocity is ensured as provided for by Art. 458 (a);

(b) the award has been made following a regular arbitration agreement or other legal act in the country where it was made.

(c) the parties have had equal rights in appointing the arbitrators and they have been summoned to attend the proceedings;

(d) the arbitration tribunal was regularly constituted;

(e) the award does not relate to matters which under the provisions of Ethiopian laws could not be submitted to arbitration or is not contrary to public order or morals; and

(f) the award is of such nature as to be enforceable on the condition laid down in Ethiopian laws.

(2) The provisions of the preceding Articles shall apply by analogy when the enforcement of a foreign award is sought. Civil Procedure Code: Book 8

BOOK VIII. COSTS

CHAPTER 1. GENERAL PROVISIONS

Art. 462.- Power of court

Unless otherwise expressly provided, the costs of and incident to all suits shall be in the discretion of the court and the court shall have full power to decide by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions to this effect.

Art. 463.- Bill of costs

(1) Where the court has ordered the unsuccessful party to pay the costs, the

successful party shall prepare an itemised bill of costs showing the expenses he has incurred in the suit.

(2) The bill shall be filed in the court having given judgment and a copy thereof shall be served on the party liable for costs.

Art. 464.- Taxation of bill

(1) On the filing of the bill, the court shall fix a day for considering the bill and shall summon the parties to appear on such day.

(2) After considering the bill and hearing the parties, the court may:

(a) reduce any item in the bill which in its opinion is excessive; or

(b) disallow such costs, charges and expenses as in its opinion were not necessary or proper for the attainment of justice or for the defending of the rights of any party.

(3) Where the party entitled to costs has failed to file a bill, the court shall, after recording such failure, certify the costs of the other parties or may allow the defaulting party a nominal or other sum so as to prevent any other party being prejudiced by such default.

(4) Costs shall carry interest at the legal rate as from the day of the judgment until final settlement.

(5) Nothing in this Article shall prevent the court from requiring the registrar to consider the bill and hear the submissions of the parties and to report thereon to the court before any decision is made under this Article.

Art. 465.- Compensatory costs

(1) Where in any suit or proceeding, a party objects to a claim or defence on the ground that it is, in whole or in part, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and such claim or defence is subsequently disallowed, abandoned or withdrawn in whole, or in part as against the objector, the court may, if it thinks fit and after recording its reasons for holding such claim or defence false or vexatious, make an order for the payment to the objector, by the party by whom such claim or defence was put forward, of costs by way of compensation up to an amount not exceeding five hundred dollars.

(2) No person against whom an order has been made under this Article shall, by reason thereof, be exempted from criminal proceedings under Art. 446 of the Penal Code with respect to any false statement made by him.

(3) The amount of any compensation awarded under this Article shall be taken into account in any subsequent suit for damages or compensation with respect to the claim or defence held to be false or vexatious.

Art. 466.- Appeal

A party may, notwithstanding that he does not appeal from a judgment, appeal from any decision on costs made in such judgment and the decision of the Appellate Court shall be final.

Civil Procedure Code: Book 8

CHAPTER 2. SUITS BY PAUPERS

Art. 467.- Suits may be instituted in forma puperis

(1) Any suit may be instituted by a pauper on the conditions laid down in this Chapter.

(2) Whosoever is not possessed of sufficient means to enable him to pay all or part of the prescribed court fee shall be deemed to be a pauper within the meaning of sub-art. (1) and may apply for leave to sue as a pauper.

Art. 468. - Contents of application

(1) An application under Art. 467 (2) shall be in the form provided for by the Third Schedule to this Code and shall be supported by an affidavit in the form provided for by the said Schedule.

(2) The applicant or his agent shall file the application together with the statement of claim.

Art. 469. - Examination of applicant

(1) On the filing of an application made in proper form, the court may, if it thinks fit, examine the applicant or his agent as to the merits of the claim and the property of the applicant.

(2) Where the application is filed by an agent, the court may, if it thinks fit, summon the applicant to appear or issue a commission for his examination.

(3) Where the application is not made in proper form, the court may require the applicant to amend it then and there or within such time as it shall think fit.

Art. 470. - Rejection of application

The application shall be rejected where it appears from the application or the examination held under Art. 469 or 471 that:

(a) the applicant is not a pauper;

(b) there is no cause of action;

(c) the applicant has, within two months next before the filing of the application disposed of any property fraudulently or in order to be able to apply for leave to sue as a pauper; or

(d) the applicant has entered into any agreement with respect to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

Art. 471. - Evidence of pauperism

(1) Where the court sees no reason for rejecting the application under Art. 470, it shall fix a day for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

(2) The day fixed under sub-art. (1) shall be notified not less than ten days in advance to the opposite party.

Art. 472. - Procedure at hearing

(1) On the day fixed under Art. 471, the court shall examine such witnesses as may be produced by either party, and may examine the applicant or his agent, and shall record the substance of their evidence.

(2) The court shall also hear any argument which the parties may wish to offer on the question whether, on the face of the application and of the evidence, if any, taken by the court, the application should be rejected under Art. 470

(a), (c) or (d).

(3) The court shall then allow or refuse to allow the applicant to sue as a pauper.

Art. 473.- Procedure when application granted

Where the application is granted, the applicant shall be given a certificate to this effect and upon the application being numbered and registered, the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay the whole or part of the court fee or other fees or charges in proceedings connected with the suit, as the court may direct.

Art. 474.- Validity of certificate

(1) A certificate issued under Art. 473 shall be valid until the proceedings in relation to which it was issued are completed or until it is discharged.

(2) A certificate shall only be valid in the proceedings in relation to which it was issued:

Provided that, where an appeal is made against any order or judgment given in the proceedings in relation to which a certificate was issued, such certificate shall be discharged where the poor person appeals but shall remain valid where the other party appeals.

(3) Nothing in sub-art. (2) shall prevent a pauper from applying to the Appellate Court for leave to appeal as a pauper.

Art. 475.- Dispaupering

(1) The court may, of its own motion, or on the application of the defendant of which notice has been given to the plaintiff, order the plaintiff to be dispaupered and the certificate issued under Art. 473 to be discharged where:

(a) in the course of the proceedings he fails without good cause to appear or is guilty, of vexatious or improper conduct;

(b) it appears that his means are such that he should not have been permitted or ought not to continue to sue as a pauper; or

(c) he has entered into any agreement with respect to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

(2) Where the plaintiff is dispaupered for the reasons mentioned in sub-art (1) (b) or (c), the court shall order him, or any person added as co-plaintiff to the suit, to pay such fees as would have been payable if the plaintiff had not been permitted to sue as a pauper.

Art. 476.- Costs where pauper succeeds

Where the plaintiff succeeds in the suit, the court fee and other fees which would have been payable if the plaintiff had not been permitted to sue as a pauper shall be recoverable by the execution officer from the unsuccessful party, and shall be first charge on the subject-matter of the suit.

Art. 477.- Bar of subsequent applications

An order refusing to allow the applicant leave to sue as a pauper or dispaupering him shall be a bar to any subsequent application of the like

nature by him with respect to the right to institute the same suit, but the applicant shall be at liberty to institute a suit in the ordinary manner with respect to such right, provided that he first pays the costs, if any, incurred by the opposite party in opposing his application for leave to sue as a pauper.

Art. 478. – Pauper becoming possessed of means

A pauper becoming possessed of means in the course of the proceedings in relation to which a certificate has been issued under Art. 473 or within ten years of having been issued therewith shall forth-with inform the court which issued the same and shall, where he fails so to inform the court be deemed to be guilty of an offence contrary to Art. 656 of the Penal Code.

Art. 479. – Costs

The costs of an application for leave to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

Civil Procedure Code: Book 9

BOOK IX. FINAL PROVISIONS

Art. 481. – Disciplinary powers

Any president of a court or presiding judge may take such action as may be necessary to ensure order in court and the administration justice in accordance with the provisions of this Code and may summarily punish with a fine any party, pleader or other person who guilty of improper conduct in the course of any proceedings.

Art. 481. – Summary punishment of certain offences

Any court may summarily punish flagrant offences committed a violation of Art. 442, 446 or 447 of the Penal Code, provided that in passing sentence for such an offence:

- (a) a Woreda Guezat Court may only impose simple imprisonment not exceeding one year; and
- (b) an Awradja Guezat Court may only impose rigorous imprisonment not exceeding three years.

Art. 482. – Regulations

The Minister of Justice shall make regulations concerning any matter which under this Code may or shall be prescribed.

Art. 483. – Power of Minister to make Rules

(1) The Minister of Justice may, from time to time, make Rules to add to, or to amend, the provisions of this Code:

Provided that no rules shall be made inconsistent with the provisions of this Code dealing with the material jurisdiction (Arts. 12 to 18) and appellate jurisdiction (Arts. 321 to 322) of the Courts.

(2) Rules made under this Article and under Article 482 shall be published in the Negarit Gazeta.