Tog wil dit my voorkom dat die Wetgewer nie kon bedoel het dat elke woord van die betrokke bepaling uitdruklik en letterlik „op skrif" moet wees nie. 'n Klaarblyklike foutiewe weglating van 'n woord, wat nogtans duidelik uit die samehang ingelees moet word, selfs 'n klaarblyklike tikfout, sou die betrokke geskrif, vir doeleindes van die artikel, nutteloos maak. Formalisme van hierdie aard is moeilik denkbaar in hierdie eeu. Myns insiens is daar 'n mate van rekbaarheid in die begrip „op skrif". Die duidelike implikasies, bv. van geskrewe woorde kan denkbaar ook as „op skrif" beskou word, aangesien hul die uitvloeisels is van die geskrewe woorde. Die blote feit dat die betekenis van sekere woorde met hulp van getuienis bepaal moet word, maak die bepalings in die woorde opgesluit tog nie minder „op skrif" nie. Om egter *in abstracto* die grense van die woorde „op skrif" te bepaal, sou uiters moeilik wees. Veel makliker sou dit wees om in 'n bepaalde geval, na aanhoor van alle relevante en toelaatbare getuienis, te beslis of die beweerde stilswyende of geïmpliseerde beding wel „op skrif" is al dan nie.

Myns insiens sou 'n Hof onwillig wees om by voorbaat op eksepsie te beslis dat die voorgenome beroep in die onderhawige geval op die omskrywing in art. 1 van die Verjaringswet, veral waar dit slegs 'n alternatiewe antwoord sou uitmaak op die verweerder se beroep op verjaring, nie kan slaag nie. Om hierdie rede is die beswaar teen die wysigings in hierdie opsig myns insiens ongegrond.

Op grond van die voorgaande word die aangevraagde wysigings toegestaan. Die eiser moet die verkwiste koste hierdeur veroorsaak betaal. Aangesien die opposisie deur die verweerder hoegenaamd nie as frivool of onredelik bestempel kan word nie, sal hierdie koste die verweerder se koste van opposisie insluit, wat onder andere sal behels die koste van twee advokate.

Applikant se Prokureurs: *Roos en Jacobsz.* Respondent se Prokureurs: *Rooth en Wessels.*

WAUD & BLACKMAN (PTY.), LTD. v. PETERSEN.

(CAPE PROVINCIAL DIVISION.)

1965. *December* 23. VAN WINSEN, J.

Costs.—Attorney's fee for attending on return of brief.—When not allowed.—Meetings of creditors to consider a compromise.—Charges for not permitted in a party-and-party bill of costs in sequestration proceedings.

It is not the practice in the Cape Provincial Division to allow a separate charge to an attorney for attending on a return of counsel's brief where an allowance is made for the attorney's attendance in Court in connection with the matter covered by the brief.

Various meetings of creditors called to consider the question of a compromise are not acts in connection with a petition for the sequestration of a debtor's estate. Charges for such meetings cannot therefore be permitted to appear in a party-and-party bill of costs in sequestration proceedings.

Quaere: Whether they should appear in a separate attorney-and-client bill for the trustee to consider.

Review of taxation.

A VAN WINSEN, J.: This matter comes before me on a review of certain items disallowed by the Taxing Master in a bill of costs as between party and party taxed on 28th July, 1965, in connection with a final order of sequestration. The Taxing Master taxed off a number of items, but the review concerns only certain of these items. They fall into three
B well-defined groups:

(*a*) Items 1, 2, 11 and 18, which relate to a charge for attending on the return of counsel's brief;

(*b*) Items 3, 4 and 5, which deal with a postponement for which the applicant applied to enable him to investigate an offer of compromise; and

C (*c*) Items 6-10, and 12-17 inclusive, which concern costs incurred in connection with various meetings of creditors held to consider a compromise.

As to (*a*): The fee sought to be charged in regard to these items is for noting the fee marked by counsel on his brief. The Taxing Master
D states in his report that it has never been the practice in this Division to allow a separate charge for attending on a return of counsel's brief where an allowance is made for the attorney's attendance in Court in connection with the matter covered by the brief. The applicant on review states that the Rules of Court lay down no tariff of fees in connection with counsel's appearances in sequestration proceedings, and
E that the tariff drawn up by the Bar Council in connection with these proceedings is not generally available to attorneys. I see no good reason for disturbing the practice presently existing in this Division. Even in the absence of a provision in the tariff for such fees, the fee usually charged by counsel in unopposed sequestration matters must be well
F known to all attorneys practising in the Third Division, and a special fee for noting the fee marked by counsel on his brief is, in my view, unwarranted.

As to (*b*): The Taxing Master allowed a letter to the provisional trustee advising him that a postponement would be applied for, but he disallowed the other items on a party-and-party basis, since he con-
G sidered that no purpose could be served by advising respondent's attorneys and the trustee that a postponement had in fact been granted. I would point out that, according to the provisions of Rule 17 (3), the Taxing Master is required to allow all charges

"as appear to him to have been necessary or proper for the attainment of justice".

H In this event the Taxing Master has decided that these fees are not necessary on a party-and-party basis for that purpose. It does not appear from the contention advanced by the applicant that the Taxing Master has made any error in principle in coming to the decision which he did. The Courts are, generally speaking, loath to interfere with the Taxing Master's decision in regard to matters which are peculiarly entrusted to his discretion. I can see no ground for interfering in this case with the decision to which he has come.

As to (*c*): Sec. 97 (3) of the Insolvency Act, 24 of 1936, defines the taxed costs of sequestration as meaning the costs in connection with the petition of a creditor for the sequestration of the debtor's estate. In regard to these items the Taxing Master did not think that the various meetings of creditors called to consider the question of the compromise were acts in connection with a petition for the sequestration of the debtor's estate. Clearly he is right in this conclusion, since the object of these meetings was in fact intended to achieve, if possible, the very opposite of the sequestration of the debtor's estate. Under whatever other head these fees may be allowed, they cannot, in my opinion, rightly be permitted to appear in the party-and-party bill. It is unnecessary for me to express an opinion in regard to the Taxing Master's view that these charges should appear in a separate attorney-and-client bill, leaving it to the trustee to decide whether to treat them as an administrative charge against the estate, or not.

The Taxing Master's decision to disallow the items in question is accordingly confirmed.

S. v. SHIMBARTA.

(NATAL PROVINCIAL DIVISION.)

1965. *December* 6. HARCOURT, J., and VAN HEERDEN, A.J.

Criminal law.—Traffic offences.—Negligent driving.—Pedestrian not looking.—Pedestrian walking into approaching vehicle after it had stopped.—Motorist nevertheless having been negligent in failing to hoot or avoid the collision.—Conviction upheld.

In an appeal from a conviction of negligent driving, it appeared that the appellant had seen the complainant step into the road from a distance of 10 to 15 paces, the complainant at that time being a pace into the road and looking straight across the road. The appellant had then stopped and the complainant, who still had not seen the car, walked right into it and was injured.

Held, that the appellant had not avoided the collision by stopping his vehicle and that he should have taken other reasonable steps to do so.

Held, further, that he had time to give the complainant warning of his approach and that he had been negligent in failing to hoot. Appeal accordingly dismissed.

Appeal from a conviction in a magistrate's court. The facts appear from the reasons for judgment.

J. H. Niehaus, for the appellant.

J. J. Boshoff, for the State.

VAN HEERDEN, A.J.: The appellant was charged before the magistrate on two counts under the Road Traffic Ordinance of Natal, 26 of 1956. The first count alleged that the appellant had contravened sec. 110 (1) (*b*) of that Ordinance in that upon or about 5th February, 1965, and upon Retief Street, a public road in the District of Pietermaritzburg, he