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Staatskoerant

VAN DIE UNIE VAN SUID-AFRIKA

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OFFICE OF THE PRIME MINISTER.

The following Government Notice is published for general information :—

No. 819.] [19th May, 1944.

It is notified that His Excellency the Officer Administering the Government has been pleased to assent to the following Acts, which are hereby published for general information :—

KANTOOR VAN DIE EERSTE MINISTER.

Onderstaande Goewermentskennisgewing word ter algemene inligting gepubliseer :—

No. 819.] [19 Mei 1944.

Hierby word bekendgemaak dat dit Sy Ekselleusie die Amptenaar Belas met die Uitoefening van die Uitvoerende Gesag behaag het om sy goedkeuring te heg aan onderstaande Wette, wat hierby ter algemene inligting, gepubliseer word :—

No. 31, 1944.]

ACT

To facilitate, in certain respects, the admission and enrolment, as attorneys, of persons who have rendered military service during the present war, and to make provision for certain incidental matters.

(*Signed by the Officer Administering the Government in English.*)
(*Assented to* 16*th May*, 1944.)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows :—

Definitions.

1. In this Act, unless the context indicates otherwise—

" military service " means—

(*a*) whole-time service during the war with any force or service established by or under—

(i) the South Africa Defence Act, 1912 (Act No. 13 of 1912), as amended ; or

(ii) any proclamation or regulation validated by section *two* of the War Measures Act, 1940 (Act No. 13 of 1940) ; or

(iii) any regulation made under section *one bis* of the latter Act, as amended ; or

(*b*) whole-time service during the war with the land, naval or air forces of any ally of the Union ;

" the 1934 Act " means the Attorneys, Notaries and Conveyancers Admission Act, 1934 (Act No. 23 of 1934), as amended ;

" the war " means the period from and including the sixth day of September, 1939, to the date which the Governor-General may by proclamation declare to be the date of termination of the war ;

" volunteer " means a person who has rendered military service ; and

any expression to which a meaning has been assigned in section *two* of the 1934 Act, shall, when used in this Act, bear the same meaning.

Duration of articles in case of volunteers.

2. (1) Notwithstanding the provisions of section *six* of the 1934 Act, but subject to clause 6 of the First Schedule thereto, the term for which a person desirous of being admitted as an attorney, not being exempted from service under articles by virtue of any provision of Part II of the said Act, is required to be bound by, and serve under, articles shall, if such person is a volunteer, be reduced as hereunder provided :—

(*a*) if he is a volunteer to whom clause 1 or 3 of the said Schedule is applicable, the term shall be reduced by one year or by the period of the volunteer's military service, whichever is the shorter ;

(*b*) if he is a volunteer to whom clause 4 of the said Schedule is applicable, the term shall be reduced by six months or by the period of the volunteer's military service, whichever is the shorter ;

(*c*) if he is a volunteer to whom clause 5 of the said Schedule is applicable, the term shall be reduced by two years or by the period of the volunteer's military service, whichever is the shorter.

(2) (*a*) If the court having jurisdiction has either permitted or condoned the absence on military service of a volunteer who was an articled clerk at the commencement of his military service, from the office of an attorney whom he was bound to serve under articles, any period served by that volunteer under those articles prior to the commencement of his military service, shall be deemed to form part of any reduced term of service under articles prescribed by subsection (1).

(*b*) If the court has not permitted or condoned such absence, the volunteer shall lose the benefit of any

No. 31, 1944.]

WET

Om die toelating en inskrywing, as prokureurs, van persone wat gedurende die huidige oorlog militêre diens verrig het, in sekere opsigte te vergemaklik, en om vir sekere daarmee in verband staande aangeleenthede voorsiening te maak.

(*Deur die Amptenaar Belas met die Uitoefening van die Uitvoerende Gesag in Engels geteken.*)
(*Goedgekeur op* 16 *Mei* 1944.)

DIT WORD BEPAAL deur Sy Majesteit die Koning, die Senaat en die Volksraad van die Unie van Suid-Afrika, as volg :—

Woordbepaling.

1. In hierdie Wet, tensy uit die samehang anders blyk—
beteken „militêre diens"—
(*a*) voltydse diens gedurende die oorlog by 'n mag of diens ingestel deur of kragtens—
(i) die „Zuid Afrika Verdedigings Wet, 1912" (Wet No. 13 van 1912), soos gewysig ; of
(ii) 'n proklamasie of regulasie bekragtig deur artikel *twee* van die Wet op Oorlogsmaatreëls, 1940 (Wet No. 13 van 1940) ; of
(iii) 'n regulasie kragtens artikel *een bis* van laasgenoemde Wet, soos gewysig, uitgevaardig ; of
(*b*) voltydse diens gedurende die oorlog by die land-, see- of lugmagte van 'n bondgenoot van die Unie ;
beteken „die 1934 Wet", die Toelating van Prokureurs, Notarisse en Transportbesorgers Wet, 1934 (Wet No. 23 van 1934), soos gewysig ;
beteken „die oorlog", die tydperk vanaf en met die sesde dag van September 1939, tot die datum wat die Goewerneur-generaal by proklamasie verklaar die datum van beëindiging van die oorlog te wees ;
beteken „vrywilliger", iemand wat militêre diens verrig het ; en
het 'n uitdrukking waaraan 'n betekenis in artikel *twee* van die 1934 Wet toegeskryf is, dieselfde betekenis wanneer dit in hierdie Wet voorkom.

Duur van dienstyd onder leerkontrak in die geval van vrywilligers.

2. (1) Ondanks die bepalings van artikel *ses* van die 1934 Wet, dog met inagneming van klousule 6 van die Eerste Bylae daarby, word die termyn waarvoor iemand wat wens om as prokureur toegelaat te word, en wat nie uit hoofde van een of ander bepaling van Deel II van genoemde Wet van diens onder leerkontrak vrygestel is nie, onder leerkontrak gebind moet word en moet dien, in die geval van 'n vrywilliger volgens onderstaande bepalings verkort—
(*a*) as so iemand 'n vrywilliger is op wie klousule 1 of 3 van genoemde Bylae toepaslik is, word die termyn verkort met een jaar of met die tydperk van die vrywilliger se militêre diens, na gelang van watter die kortste is ;
(*b*) as so iemand 'n vrywilliger is op wie klousule 4 van genoemde Bylae toepaslik is, word die termyn verkort met ses maande of met die tydperk van die vrywilliger se militêre diens, na gelang van watter die kortste is ;
(*c*) as so iemand 'n vrywilliger is op wie klousule 5 van genoemde Bylae toepaslik is, word die termyn verkort met twee jaar of met die tydperk van die vrywilliger se militêre diens, na gelang van watter die kortste is.

(2) (*a*) Indien die bevoegde hof die afwesigheid met militêre diens uit die kantoor van 'n prokureur aan wie hy onder leerkontrak verbind was, van 'n vrywilliger wat by die aanvang van sy militêre diens 'n klerk onder leerkontrak was, òf toegelaat òf gekondoneer het, dan word 'n termyn wat deur daardie vrywilliger vòòr die aanvang van sy militêre diens onder daardie leerkontrak gedien is, geag deel uit te maak van enige verkorte termyn van diens onder leerkontrak deur sub-artikel (1) voorgeskryf.
(*b*) Indien die hof sodanige afwesigheid nie toegelaat of gekondoneer het nie, dan verbeur die vrywilliger die

period served by him under articles prior to the commencement of his military service, but he may, in such a case, serve for the whole of the relevant term laid down in sub-section (1), either under his existing articles of clerkship, suitably amended if need be, or under any fresh articles into which he may enter.

(3) Subject to the provisions of sub-section (5) the provisions of sub-section (1) shall not apply in respect of—

(*a*) a volunteer who was not an articled clerk at the commencement of his military service, and was discharged from military service while in the Union or the Mandated Territory of South-West Africa, unless he enters into articles of clerkship within a period of six months after the date of such discharge, or of the commencement of this Act, whichever is the later; or

(*b*) a volunteer who was not an articled clerk at the commencement of his military service, and was discharged from military service while outside the Union or the Mandated Territory of South-West Africa, unless he enters into articles of clerkship within a period of three years after the date of such discharge or of the commencement of this Act, whichever is the later.

(4) The provisions of sub-sections (1) and (2) shall not apply in respect of—

(*a*) a volunteer who was an articled clerk at the commencement of his military service and was discharged from military service while in the Union or the Mandated Territory of South-West Africa, unless he has, within a period of six months after the date of such discharge or of the commencement of this Act (whichever is the later) notified the law society concerned and the registrar of the court in which his articles are registered, in a manner and on a form approved by the law society in consultation with the registrar, of his intention to take advantage of the reduced term of service under articles prescribed by sub-section (1); or

(*b*) a volunteer who was an articled clerk at the commencement of his military service, and was discharged from military service while outside the Union or the Mandated Territory of South-West Africa, unless he has, within a period of three years after the date of such discharge, or of the commencement of this Act, whichever is the later, notified the law society concerned, and the registrar of the court in which his articles are registered, in a manner and on a form approved by the law society in consultation with the registrar, of his intention to take advantage of the reduced term of service under articles prescribed by sub-section (1).

(5) The periods of six months and three years mentioned respectively in paragraphs (*a*) and (*b*) of sub-section (3), shall in each case be extended by seven years in the case of a volunteer who has, after his discharge from military service, *bona fide* entered upon or resumed, at any university in or outside the Union, a course of study which, if successfully completed, would have rendered the provisions of clause 1, 3 or 4 of the First Schedule to the 1934 Act applicable to him, provided such volunteer has, within the said period of six months or of three years (according to whether he is a volunteer referred to in paragraph (*a*) or (*b*) of sub-section (3)), notified the law society concerned in a manner and on a form approved by it, of his intention so to enter upon or to resume such course of study, and thereafter to enter into articles of clerkship in the province for which that law society is constituted.

(6) A registrar or the secretary of a law society who receives a notification in terms of paragraph (*a*) or (*b*) of sub-section (4) or in terms of sub-section (5) shall make an entry, in the appropriate registers kept by him, of the relevant particulars contained in the notification: Provided that this sub-section shall not be construed as derogating from the provisions of section *fourteen*, *fifteen*, *sixteen* or *seventeen* of the 1934 Act in regard to the lodging, endorsement and registration of original articles of clerkship or of any cession of

voordeel van enige termyn wat hy vòòr die aanvang van sy militêre diens onder leerkontrak gedien het, maar hy kan, in so 'n geval, vir die hele tersaaklike termyn in sub-artikel (1) bepaal, dien, òf onder sy bestaande leerkontrak, behoorlik gewysig indien nodig, òf onder 'n nuwe kontrak wat hy mag aangaan.

(3) Die bepalings van sub-artikel (1) is behoudens die bepalings van sub-artikel (5) nie van toepassing nie ten opsigte van—

(*a*) 'n vrywilliger wat by die aanvang van sy militêre diens nie 'n klerk onder leerkontrak was nie, en uit militêre diens ontslaan is terwyl hy in die Unie of die Mandaatgebied Suidwes-Afrika was, tensy hy 'n leerkontrak aangaan binne 'n tydperk van ses maande na die datum van bedoelde ontslag of van die inwerkingtreding van hierdie Wet, na gelang van watter die jongste is; of

(*b*) 'n vrywilliger wat by die aanvang van sy militêre diens nie 'n klerk onder leerkontrak was nie, en uit militêre diens ontslaan is terwyl hy buite die Unie of die Mandaatgebied Suidwes-Afrika was, tensy hy 'n leerkontrak aangaan binne 'n tydperk van drie jaar na die datum van bedoelde ontslag of van die inwerkingtreding van hierdie Wet, na gelang van watter die jongste is.

(4) Die bepalings van sub-artikels (1) en (2) is nie van toepassing nie ten opsigte van—

(*a*) 'n vrywilliger wat by die aanvang van sy militêre diens 'n klerk onder leerkontrak was, en uit militêre diens ontslaan is terwyl hy in die Unie of die Mandaatgebied Suidwes-Afrika was, tensy hy binne 'n tydperk van ses maande na die datum van bedoelde ontslag of van die inwerkingtreding van hierdie Wet, na gelang van watter die jongste is, die betrokke wetsgenootskap en die griffier van die hof waarin sy leerkontrak geregistreer is, op 'n wyse en 'n vorm deur die wetsgenootskap in oorleg met die griffier goedgekeur, in kennis gestel het van sy voorneme om van die by sub-artikel (1) voorgeskrewe verkorte termyn van diens onder leerkontrak gebruik te maak; of

(*b*) 'n vrywilliger wat by die aanvang van sy militêre diens 'n klerk onder leerkontrak was, en uit militêre diens ontslaan is terwyl hy buite die Unie of die Mandaatgebied Suidwes-Afrika was, tensy hy binne 'n tydperk van drie jaar na die datum van sodanige ontslag of van die inwerkingtreding van hierdie Wet, na gelang van watter die jongste is, die betrokke wetsgenootskap en die griffier van die hof waarin sy leerkontrak geregistreer is, op 'n wyse en 'n vorm deur die wetsgenootskap in oorleg met die griffier goedgekeur, in kennis gestel het van sy voorneme om van die by sub-artikel (1) voorgeskrewe verkorte termyn van diens onder leerkontrak gebruik te maak.

(5) Die tydperke van ses maande en drie jaar wat onderskeidelik in paragrawe (*a*) en (*b*) van sub-artikel (3) vermeld word, word in albei gevalle verleng met sewe jaar in die geval van 'n vrywilliger wat, na sy ontslag uit militêre diens, by een of ander Universiteit in of buite die Unie te goeder trou 'n aanvang gemaak of voortgegaan het met 'n studiekursus wat, as hy dit met goeie gevolg voltooi het, die bepalings van klousule 1, 3 of 4 van die Eerste Bylae by die 1934 Wet op hom toepaslik sou gemaak het, mits daardie vrywilliger die betrokke wetsgenootskap binne bedoelde tydperk van ses maande of van drie jaar (na gelang hy 'n in paragraaf (*a*) of (*b*) van sub-artikel (3) bedoelde vrywilliger is) op 'n deur die wetsgenootskap goedgekeurde wyse en vorm in kennis gestel het van sy voorneme om aldus met sodanige studiekursus 'n aanvang te maak of voort te gaan, en om daarna 'n leerkontrak aan te gaan in die provinsie waarvoor daardie wetsgenootskap ingestel is.

(6) 'n Griffier of die sekretaris van 'n wetsgenootskap wat 'n kennisgewing ingevolge paragraaf (*a*) of (*b*) van sub-artikel (4) of ingevolge sub-artikel (5) ontvang, moet in die betrokke registers deur hom gehou, 'n aantekening maak van die ter saaklike gegewens in die kennisgewing vervat: Met dien verstande dat hierdie sub-artikel nie uitgelê word nie asof dit afbreuk doen aan die bepalings van artikel *veertien*, *vyftien*, *sestien* of *sewentien* van die 1934 Wet in verband met die inlewering van, die maak van aantekenings op en die registrasie van oorspronklike leerkontrakte of sessies van leerkontrakte,

articles, or in regard to the payment of any fee in respect of any such endorsement or registration.

(7) Service under articles by a volunteer in accordance with the foregoing provisions of this section shall be deemed to be a compliance with the requirements of the 1934 Act in regard to service under articles.

Operation of this Act in relation to certain prior orders of court.

3. If in terms of any order of court made under section *ten* of the Defence Special Pensions and Moratorium Act, 1940 (Act No. 29 of 1940), a volunteer is required to serve under articles for any reduced period, such order shall, notwithstanding the provisions of sub-section (1) of section *two*, continue to govern that volunteer's service under articles: Provided that if the provisions of this Act are more advantageous to the volunteer than the terms of such order, the court may, on the application of the volunteer, vary such order so as to bring it into harmony with the provisions of this Act.

Powers of court in regard to permitting or condoning absence on military service of articled clerks.

4. (1) Upon the application of any volunteer who was an articled clerk at the commencement of his military service, the court having jurisdiction may condone the absence, on such service, of the volunteer from the office of an attorney whom he was bound to serve under articles, notwithstanding the fact that the applicant did not, before the absence commenced, obtain the permission of the court so to absent himself from that office in terms of sub-section (2) of section *nineteen* of the 1934 Act.

(2) For the purposes of the said sub-section, military service shall be deemed to be sufficient cause, and the proviso to that sub-section shall not apply in connection with absence on military service.

Repeal of laws.

5. Section *ten* of the Defence Special Pensions and Moratorium Act, 1940 (Act No. 29 of 1940), and regulation 33 of War Measure No. 4 of 1941 (Proclamation No. 20 of 1941), are hereby repealed.

Effect of provisions of this Act upon 1934 Act.

6. Save as specially provided in this Act, the provisions of the 1934 Act shall remain of full force in relation to volunteers.

Short title.

7. This Act shall be called the Attorneys' Admission (Military Service) Act, 1944.

of in verband met die betaling van gelde ten opsigte van die maak van sodanige aantekenings of ten opsigte van sodanige registrasie.

(7) Diens onder leerkontrak deur 'n vrywilliger ooreenkomstig die voorgaande bepalings van hierdie artikel word geag 'n voldoening te wees aan die vereistes van die 1934 Wet met betrekking tot diens onder leerkontrak.

Uitwerking van hierdie Wet ten opsigte van sekere vroeëre hofbevele.

3. Indien 'n vrywilliger luidens 'n bevel van die hof, kragtens artikel *tien* van die Verdediging Spesiale Pensioen- en Moratoriumwet, 1940 (Wet No. 29 van 1940) verleen, vir 'n verkorte termyn onder leerkontrak moet dien, dan bly daardie vrywilliger se diens onder leerkontrak, ondanks die bepalings van sub-artikel (1) van artikel *twee*, onderworpe aan die reëling in bedoelde hofbevel vervat: Met dien verstande dat ingeval die bepalings van hierdie Wet vir die vrywilliger meer voordelig is as die voorwaardes van so 'n bevel, die hof op aansoek van die vrywilliger so 'n bevel kan wysig om dit met die bepalings van hierdie Wet in ooreenstemming te bring.

Bevoegdheid van hof om afwesigheid van klerke onder leerkontrak met militêre diens toe te laat of te kondoneer.

4. (1) Die bevoegde hof kan, op aansoek van 'n vrywilliger wat by die aanvang van sy militêre diens 'n klerk onder leerkontrak was, die afwesigheid, met sodanige diens, van die vrywilliger uit die kantoor van 'n prokureur aan wie hy onder leerkontrak verbind was, kondoneer, al het die applikant nie, voordat die afwesigheid begin het, ingevolge sub-artikel (2) van artikel *negentien* van die 1934 Wet die toestemming van die hof om hom uit daardie kantoor afwesig te hou, verkry nie.

(2) By die toepassing van bedoelde sub-artikel word militêre diens geag genoegsame grond te wees, en die voorbehoudsbepaling by daardie sub-artikel is nie in verband met afwesigheid met militêre diens van toepassing nie.

Herroeping van Wette.

5. Artikel *tien* van die Verdediging Spesiale Pensioen- en Moratoriumwet, 1940 (Wet No. 29 van 1940) en regulasie 33 van Oorlogsmaatreël No. 4 van 1941 (Proklamasie No. 20 van 1941) word hierby herroep.

Uitwerking van bepalings van hierdie Wet op 1934 Wet.

6. Behalwe vir sover uitdruklik in hierdie Wet bepaal word, bly die bepalings van die 1934 Wet van volle krag met betrekking tot vrywilligers.

Kort titel.

7. Hierdie Wet heet die Wet op Toelating van Prokureurs (Militêre Diens), 1944.

No. 32, 1944.]

ACT

To consolidate and amend the law relating to Magistrates' Courts.

(*Signed by the Officer Administering the Government in Afrikaans.*)
(*Assented to* 61*th May*, 1944.)

DIVISION OF ACT.

The Act is divided as follows :—

Definitions (section 1).
Part I : Courts (Chapters I to V ; sections 2 to 25).
Part II : Civil Matters (Chapters VI to XI ; sections 26 to 88).
Part III : Criminal Matters (Chapters XII to XVI ; sections 89 to 105).
Part IV : Offences (Chapter XVII ; sections 106 to 109).
Part V : General and Supplementary (Chapter XVIII ; sections 110 to 117).
Schedule : Laws repealed.

and the content is as follows—

No. 32, 1944.]

WET

Tot samevatting en wysiging van die wetsbepalings op Magistraatshowe.

(*Deur die Amptenaar Belas met die Uitoefening van die Uitvoerende Gesag in Afrikaans geteken.*)
(*Goedgekeur op* 16 *Mei* 1944.)

INDELING VAN WET.

Hierdie Wet is as volg verdeel:

Woordbepaling (artikel 1).
Deel I: Howe (Hoofstukke I tot V; artikels 2 tot 25).
Deel II: Siviele sake (Hoofstukke VI tot XI; artikels 26 tot 88).
Deel III: Strafsake (Hoofstukke XII tot XVI; artikels 89 tot 105).
Deel IV: Misdrywe (Hoofstuk XVII; artikels 106 tot 109).
Deel V: Algemene en aanvullende bepalings (Hoofstuk XVIII; artikels 110 tot 117).
Bylae: Wette herroep.

En bevat—

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows :—

Definitions.

1. In this Act, except where the context otherwise indicates—

" Attorney-General " includes, in relation to matters within his jurisdiction, the Solicitor-General of the Eastern Districts of the Province of the Cape of Good Hope ;

" court " means a magistrate's court ;

" court of appeal " means the provincial or local division of the Supreme Court to which an appeal lies from the magistrate's court ;

" judgment ", in civil cases, includes a decree, a rule and an order ;

" judicial officer " means a magistrate, an additional magistrate or an assistant magistrate ;

" magistrate " does not include an assistant magistrate ;

" Minister " in sub-section (2) of section *fifteen* and in section *one hundred and thirteen* means the Minister of Justice ; in any other provision of this Act, " Minister ", in relation to any matter to be dealt with in a district administered under the control of the Minister of Justice, means that Minister or any other Minister of State acting on his behalf, and in relation to any matter to be dealt with in a district under the control of the Minister of Native Affairs, means the latter Minister or any other Minister of State acting on his behalf ;

" offence " means an act or omission punishable by law ;

" practitioner " means an advocate, an attorney, an articled clerk such as is referred to in section *twenty-one* or an agent such as is referred to in section *twenty-two* ;

" the district " if used in relation to any court means the district, sub-district, or area within which that court has jurisdiction ;

" the rules " means the rules referred to in section *twenty-four* or made under section *twenty-five* ;

" this Act " includes the rules.

PART I.—COURTS.

CHAPTER I.

ESTABLISHMENT AND NATURE OF COURTS.

Minister's powers relative to districts and courts.

2. The Minister may, by notice in the *Gazette*—

(*a*) create districts and declare the name by which any district shall be known ;

(*b*) define, increase or decrease the local limits of any district ;

(*c*) for all purposes or for such purposes as he may declare annex any district or any portion thereof to another district ;

(*d*) establish a court for any district ;

(*e*) appoint one or more places within each district for the holding of a court for such district ; of which places if more than one is appointed, one shall be specified as the seat of magistracy ;

DIT WORD BEPAAL deur Sy Majesteit die Koning, die Senaat en die Volksraad van die Unie van Suid-Afrika, as volg :—

Woordbepaling.

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—

„Prokureur-generaal", met betrekking tot aangeleenthede binne sy regsbevoegdheid, ook die Solisiteur-generaal van die Oostelike Distrikte van die Provinsie Kaap die Goeie Hoop ;

„hof" 'n magistraatshof ;

„die hof van appèl" die provinsiale of plaaslike afdeling van die Hooggeregshof waarna 'n appèl van die magistraatshof aangeteken kan word ;

„vonnis" in siviele sake, ook 'n bevel en 'n order ;

„regterlike amptenaar" 'n magistraat, 'n addisionele magistraat of 'n assistent-magistraat ;

„magistraat" nie ook 'n assistent-magistraat nie ;

„Minister" in sub-artikel (2) van artikel *vyftien* en in artikel *honderd-en-dertien* die Minister van Justisie ; in elke ander bepaling van hierdie Wet beteken „Minister", met betrekking tot 'n aangeleentheid waarmee gehandel moet word in 'n distrik wat onder beheer van die Minister van Justisie geadministreer word, daardie Minister of enige ander Staatsminister wat namens hom optree, en met betrekking tot 'n aangeleentheid waarmee gehandel moet word in 'n distrik onder beheer van die Minister van Naturellesake, beteken dit laasgenoemde Minister of enige ander Staatsminister wat namens hom optree ;

„misdryf" 'n handeling of versuim wat volgens wet strafbaar is ;

„praktisyn" 'n advokaat, 'n prokureur, 'n in artikel *een-en-twintig* bedoelde klerk onder leerkontrak of 'n in artikel *twee-en-twintig* bedoelde agent ;

„die distrik", wanneer die uitdrukking met betrekking tot 'n hof gebesig word, die distrik, sub-distrik of gebied waarin daardie hof jurisdiksie het ;

„die reëls" die in artikel *vier-en-twintig* bedoelde of die kragtens artikel *vyf-en-twintig* uitgevaardigde reëls ;

„hierdie Wet" ook die reëls.

DEEL I.—HOWE.

HOOFSTUK I.

INSTELLING EN AARD VAN HOWE.

Bevoegdhede van Minister met betrekking tot distrikte en howe.

2. Die Minister kan, by kennisgewing in die *Staatskoerant*—

(*a*) distrikte instel en die name waaronder die distrikte bekend sal staan, bepaal ;

(*b*) die plaaslike grense van 'n distrik omskryf, uitbrei of inperk ;

(*c*) 'n distrik of enige gedeelte daarvan vir alle doeleindes of vir sodanige doeleindes as wat hy bepaal by 'n ander distrik byvoeg ;

(*d*) 'n hof vir enige distrik instel ;

(*e*) een of meer plekke in elke distrik vir die hou van hofsittings vir daardie distrik bepaal : indien meer dan een sodanige plek bepaal word, word een daarvan as die magistraatsetel aangewys ;

(*f*) within any district appoint places other than the seat of magistracy for the holding of periodical courts, and prescribe the local limits within which such courts shall have jurisdiction and include within those limits any portion of an adjoining district;

(*g*) detach a portion of a district or portions of two or more adjoining districts as a sub-district, to form the area of jurisdiction of a detached court, and declare the name by which such sub-district shall be known and appoint the places where such detached court is to be held;

(*h*) withdraw or vary any notice under this section and abolish any district or sub-district and the court thereof.

Existing courts and districts to continue.

3. (1) The courts and districts existing immediately before the commencement of this Act shall be deemed to have been established under this Act.

(2) All references in any other law to magistrates' courts or courts of resident magistrate shall be read as referring to courts established under this Act.

(3) After the commencement of this Act no new district or sub-district shall be created until a report upon the proposal to create such district or sub-district has been obtained from the Public Service Commission.

Nature of the courts and force of process.

4. (1) Every court shall be a court of record.

(2) Every garnishee order, writ or warrant issued out of any court shall be of force throughout the district, and all such process when endorsed by a judicial officer of any other district (and every judicial officer is hereby required on production to him of any such process to endorse the same), shall be of force throughout the district for which such judicial officer is appointed.

(3) Every process issued out of any court other than a garnishee order, writ or warrant shall be of force throughout the Union.

(4) Any process issued out of any court may be served or executed through the messenger of the court out of which such process is issued or through any other messenger: Provided that no costs shall be payable in excess of the costs of personal service in the cheapest and most effective manner suited to the circumstances.

Courts to be open to the public, with exceptions.

5. (1) Except where otherwise provided by law, the proceedings in every court in all criminal cases and the trial of all defended civil actions shall be carried on in open court, and recorded by the presiding officer or other officer appointed to record such proceedings.

(2) The court may in any case, in the interests of good order or public morals, direct that a trial shall be held with closed doors, or that (with such exceptions as the court may direct) females or minors or the public generally shall not be permitted to be present thereat.

(3) If any person present in court disturbs the peace or order thereof, the court may order that person to be removed and detained in custody until the rising of the court, or, if in the opinion of the court peace cannot be otherwise secured, may order the court room to be cleared and the doors thereof to be closed to the public.

(4) Except where otherwise provided by law, every witness in a criminal case shall deliver his evidence *viva voce* and in open court: Provided that, where any witness is unable on account of illhealth or advanced age to attend the court, his evidence may be taken in the presence of the presiding judicial officer, the prosecutor, the accused person, and the legal representative (if there be such a representative and he chooses to attend) of the accused person at such place as may seem to the court most convenient.

Medium to be employed in proceedings.

6. (1) Either of the official languages may be used at any stage of the proceedings in any court and the evidence shall be taken down in the language so used.

(2) If, in a criminal case, evidence is given in a language with which the accused is not in the opinion of the court sufficiently conversant, a competent interpreter shall be called by the court in order to translate such evidence into a language with which the accused professes or appears to the court to be sufficiently conversant, irrespective of whether the language in which the evidence is given, is one of the official languages or of whether the representative of the accused is conversant with the language used in the evidence or not.

(*f*) binne 'n distrik ander plekke as die magistraatsetel vir die hou van periodieke hofsittings bepaal, en die plaaslike grense bepaal waarbinne sulke howe jurisdiksie het, en enige gedeelte van 'n aangrensende distrik binne daardie grense opneem;

(*g*) 'n gedeelte van 'n distrik of gedeeltes van twee of meer aangrensende distrikte as 'n sub-distrik afsonder om die regsgebied van 'n afgesonderde hof uit te maak, en die naam bepaal waaronder so 'n sub-distrik bekend sal staan, en die plekke waar so 'n afgesonderde hof sitting sal hou, aanwys;

(*h*) enige kennisgewing kragtens hierdie artikel intrek of wysig en enige distrik of sub-distrik asmede die hof daarvan, afskaf.

Bestaande howe en distrikte bly voortbestaan.

3. (1) Die howe en distrikte wat onmiddellik voor die inwerkingtreding van hierdie Wet bestaan, word geag kragtens hierdie Wet ingestel te gewees het.

(2) Alle verwysings in enige ander wet na magistraatshowe of residentmagistraatshowe word geag verwysings te wees na howe kragtens hierdie Wet ingestel.

(3) Geen nuwe distrik of sub-distrik mag na die inwerkingtreding van hierdie Wet ingestel word nie voordat 'n verslag omtrent die voorstel om so 'n distrik of sub-distrik in te stel, van die Staatsdienskommissie verkry is.

Aard van howe en regskrag van prosesstukke.

4. (1) Elke hof is 'n hof van rekord.

(2) Elke skuldbeslagorder, bevelskrif of lasbrief uit 'n hof uitgereik, is deur die hele distrik van krag, en alle sodanige prosesstukke wat deur 'n regterlike amptenaar van 'n ander distrik geëndosseer is (en dit word hierby van elke regterlike amptenaar verlang om sodanige prosesstukke wat aan hom oorgelê word, te endosseer), is van krag deur die hele distrik waarvoor daardie regterlike amptenaar aangestel is.

(3) Alle prosesstukke uit 'n hof uitgereik, behalwe 'n skuldbeslagorder, bevelskrif of lasbrief, is deur die hele Unie van krag.

(4) Prosesstukke uit 'n hof uitgereik kan gedien of ten uitvoer gelê word deur bemiddeling van die geregsbode van die hof waaruit sodanige prosesstukke uitgereik word of deur bemiddeling van enige ander geregsbode: Met dien verstande dat geen koste betaalbaar is wat die koste van persoonlike diening op die goedkoopste en doeltreffendste wyse wat by die omstandighede pas, te bowe gaan nie.

Hofsittings moet openbaar wees, met uitsonderings.

5. (1) Behoudens andersluidende wetsbepalings, vind die verrigtings in elke hof in alle strafsake en die verhoor van alle bestrede siviele sake in die openbaar plaas, en word sodanige verrigtings genotuleer deur die presiderende amptenaar of ander amptenaar wat aangestel is om sodanige notule te hou.

(2) Die hof kan, in die belang van die goeie orde of die openbare sedelikheid, beveel dat 'n verhoor agter geslote deure moet plaasvind, of dat (met sulke uitsonderings as wat die hof bepaal) vroue of minderjariges of die publiek in die algemeen nie daarby aanwesig mag wees nie.

(3) Indien iemand wat by 'n hofsitting aanwesig is, die rus of orde verstoor, dan kan die hof so iemand laat verwyder en tot na afloop van die sitting in versekerde bewaring laat aanhou, of die hof kan, indien hy van mening is dat die orde nie anders gehandhaaf kan word nie, die hofsaal laat ontruim en die publiek laat uitsluit.

(4) Behoudens andersluidende wetsbepalings, moet elke getuie in 'n strafsaak sy getuienis mondelings en in die openbaar voor die hof aflê: Met dien verstande dat wanneer 'n getuie weens slegte gesondheid of gevorderde leeftyd nie in staat is om die hofsitting by te woon nie, sy getuienis in die teenwoordigheid van die presiderende regterlike amptenaar, die vervolger, die beskuldigde en die regsverteenwoordiger van die beskuldigde (as daar so 'n verteenwoordiger is en hy verkies om teenwoordig te wees), op 'n plek wat die hof die geskikste ag, afgeneem kan word.

Voertaal wat by verrigtings gebruik word.

6. (1) Die een of die ander van die landstale kan op enige stadium van die verrigtings in 'n hof gebesig word en die getuienis word in die aldus gebesigde taal genotuleer.

(2) Indien getuienis in 'n strafsaak afgelê word in 'n taal waarmee na mening van die hof die beskuldigde nie genoegsaam vertroud is nie, moet die hof 'n bevoegde tolk inroep om sodanige getuienis oor te sit in 'n taal waarmee die beskuldigde voorgee of aan die hof blyk genoegsaam vertroud te wees onverskillig of die taal waarin die getuienis afgelê word een van die landstale is en of die beskuldigde se verteenwoordiger met die in die getuienis gebesigde taal vertroud is al dan nie.

Public access to records.

7. Subject to the rules the records of the court shall be accessible to the public under supervision of the clerk of the court at convenient times and upon payment of such fees as may be prescribed by such rules ; and for this purpose and for all other purposes the records of any court of magistrate or resident magistrate which has at any time existed within the Union shall be preserved at the seat of magistracy of the district containing the place where such court was held, and shall be deemed to be records of the court of such district : Provided that after fifteen years from the date of the judgment in any proceedings, the record of such proceedings may upon the order of the Secretary for Justice be removed to a central place of custody or be destroyed or otherwise disposed of.

CHAPTER II.

JUDICIAL OFFICERS.

Before whom courts to be held.

8. Every court held under this Act shall be presided over by a judicial officer appointed in the manner provided by this Act.

Appointment of judicial officers.

9. (1) Subject to the provisions of the law governing the public service and of section *ten*, the Minister may appoint for any district or sub-district a magistrate, one or more additional magistrates or one or more assistant magistrates.

(2) Whenever by reason of absence or incapacity a magistrate, additional magistrate or assistant magistrate is unable to carry out the functions of his office or whenever such office becomes vacant, the Minister, or, if delegated by the Minister, the Secretary or Under-Secretary for Justice may authorize any other competent officer of the public service to act in the place of the absent or incapacitated officer during such absence or incapacity or to act in the vacant office until the vacancy is filled : Provided that when any such vacancy has remained unfilled for a continuous period exceeding six months the fact shall be reported to the Public Service Commission.

(3) The Minister or, if delegated thereto by the Minister, the Secretary or Under-Secretary for Justice may appoint temporarily any competent person to act either generally or in a particular matter as additional or assistant magistrate for any district or sub-district in addition to the magistrate or any other additional or assistant magistrate.

(4) In applying this section to a district or sub-district under the administrative control of the Minister of Native Affairs, the words " Secretary or Under-Secretary for Native Affairs " shall be substituted for the words " Secretary or Under-Secretary for Justice ".

Qualifications for appointments of judicial officers.

10. Subject to the provisions of the law governing the public service and of section *eleven*—

(*a*) a person who has not before the commencement of this Act held a substantive appointment as magistrate shall not hold such an appointment and a person who has not before the commencement of this Act held a substantive appointment as assistant magistrate shall not hold such an appointment, unless in either case he has passed the civil service lower law examination or an examination declared by the Public Service Commission to be equivalent thereto ;

(*b*) in recommending any person for appointment as a magistrate, additional magistrate or assistant magistrate the Public Service Commission may give preference to a person who holds a degree in law of a university in South Africa, or has passed the Civil Service Higher Law Examination or an examination deemed by the Commission to be equivalent thereto.

Existing judicial officers to continue in office.

11. (1) All magistrates, additional magistrates and assistant magistrates holding office at the commencement of this Act shall be deemed to have been appointed under this Act.

(2) References in any other law to chief magistrates, resident magistrates, magistrates, additional magistrates, civil magistrates or criminal magistrates, shall be read as referring to magistrates appointed under this Act.

(3) All such references to assistant resident magistrates or to assistant magistrates shall be read as referring to assistant magistrates appointed under this Act.

Insae van stukke deur publiek.

7. Behoudens die bepalings van die reëls lê die stukke van die hof op gepaste tye en teen betaling van die deur die reëls voorgeskrewe gelde ter insae van die publiek onder toesig van die klerk van die hof; vir hierdie doel en vir alle ander doeleindes word die stukke van 'n magistraatshof of resident-magistraatshof wat te eniger tyd in die Unie bestaan het, bewaar by die magistraatsetel van die distrik waarin die plek waar sodanige hof sitting gehou het geleë is, en word geag stukke van die hof van daardie distrik te wees: Met dien verstande dat die Sekretaris van Justisie na verloop van vyftien jaar vanaf die datum van die uitspraak in enige verrigtings, kan gelas dat die stukke in daardie verrigtings na 'n sentrale bewaarplek oorgebring word of dat hulle vernietig word of dat op ander wyse daaroor beskik word.

HOOFSTUK II.

Regterlike Amptenare.

Wie by hofsittings presideer.

8. Die presiderende amptenaar by elke hofsitting wat kragtens hierdie Wet gehou word, is 'n regterlike amptenaar volgens voorskrif van hierdie Wet aangestel.

Aanstelling van regterlike amptenare.

9. (1) Met inagneming van die wetsbepalings op die staatsdiens en van artikel *tien*, kan die Minister vir enige distrik of sub-distrik 'n magistraat, een of meer addisionele magistrate of een of meer assistent-magistrate aanstel.

(2) Wanneer 'n magistraat, addisionele magistraat of assistent-magistraat weens afwesigheid of onvermoë om watter rede ook, nie in staat is om sy ampswerksaamhede te verrig nie, of wanneer so 'n amp vakant word, kan die Minister of, indien deur die Minister daartoe gemagtig, die Sekretaris of die Ondersekretaris van Justisie, enige ander bevoegde amptenaar in die staatsdiens magtig om in die plek van die afwesige of onvermoënde amptenaar gedurende sodanige afwesigheid of tydperk van onvermoë op te tree, of om die vakante amp waar te neem totdat die vakature aangevul word: Met dien verstande dat wanneer so 'n vakature ononderbroke gedurende 'n tydperk van meer as ses maande onaangevul gebly het, die geval aan die Staatsdienskommissie meegedeel moet word.

(3) Die Minister of, indien deur die Minister daartoe gemagtig, die Sekretaris of die Ondersekretaris van Justisie kan tydelik enige bevoegde persoon aanstel om, hetsy in die algemeen hetsy in 'n bepaalde aangeleentheid op te tree as addisionele magistraat of assistent-magistraat vir enige distrik of sub-distrik, benewens die magistraat of enige ander addisionele magistraat of assistent-magistraat.

(4) By die toepassing van hierdie artikel op 'n distrik of sub-distrik onder die administratiewe beheer van die Minister van Naturellesake, word die woorde „Sekretaris of Ondersekretaris van Justisie" deur die woorde „Sekretaris of Ondersekretaris van Naturellesake" vervang.

Kwalifikasies vir aanstelling as regterlike amptenaar.

10. Behoudens die wetsbepalings op die staatsdiens en die bepalings van artikel *elf*—

(*a*) mag niemand wat nie voor die inwerkingtreding van hierdie Wet 'n substantiewe betrekking as magistraat beklee het nie, so 'n betrekking beklee nie, en mag niemand wat nie voor die inwerkingtreding van hierdie Wet 'n substantiewe betrekking as assistent-magistraat beklee het nie, so 'n betrekking beklee nie, tensy so iemand in die een of die ander geval die staatsdiens-laerwetseksamen of 'n eksamen wat volgens verklaring van die Staatsdienskommissie daarmee gelykstaan, met goeie gevolg afgelê het;

(*b*) kan die Staatsdienskommissie wanneer hy 'n aanbeveling doen vir die aanstelling van iemand as 'n magistraat, addisionele magistraat of assistent-magistraat, voorkeur gee aan iemand wat 'n graad in die regte van 'n universiteit in Suid-Afrika besit, of wat die staatsdiens-hoërwetseksamen of 'n eksamen wat volgens oordeel van die Kommissie daarmee gelykstaan, met goeie gevolg afgelê het.

Bestaande regterlike amptenare bly aan.

11. (1) Alle magistrate, addisionele magistrate en assistent-magistrate wat hul amp by die inwerkingtreding van hierdie Wet beklee, word geag kragtens hierdie Wet aangestel te gewees het.

(2) Verwysings in enige ander wet na hoofmagistrate, residentmagistrate, magistrate, addisionele magistrate, siviele magistrate of kriminele magistrate, word geag op kragtens hierdie Wet aangestelde magistrate te slaan.

(3) Alle sodanige verwysings na assistent-residentmagistrate of na assistent-magistrate word geag op kragtens hierdie Wet aangestelde assistent-magistrate te slaan.

Powers of judicial officers.

12. (1) A magistrate—

(*a*) may hold a court;

(*b*) shall possess the powers and perform the duties conferred or imposed upon magistrates by any law for the time being in force within the province wherein his district is situate.

(2) An additional magistrate or an assistant magistrate—

(*a*) may hold a court;

(*b*) shall possess such powers and perform such duties conferred or imposed upon magistrates as he is not expressly prohibited from exercising or performing either by the Minister or by the magistrate of the district.

(3) An acting magistrate, additional magistrate, or assistant magistrate, respectively, shall possess the powers and jurisdiction and perform the duties of the magistrate, additional magistrate, or assistant magistrate in whose place he is appointed to act, for the particular case or during the time or in the circumstances for which he is appointed to act.

(4) Every additional magistrate and every assistant magistrate shall, in each district for which he has been appointed, be subject to the administrative direction of the magistrate; and the magistrate shall allocate the work among the additional magistrates and assistant magistrates.

CHAPTER III.

OFFICERS OF THE COURT.

Clerk of the court.

13. (1) There shall be appointed for every court so many clerks of the court and assistant clerks of the court as may be necessary.

(2) A refusal by the clerk of the court to do any act which he is by any law empowered to do shall be subject to review by the court on application either *ex parte* or on notice, as the circumstances may require.

Messengers of the court.

14. (1) Subject to the provisions of the law governing the public service of the Union, the Minister may appoint for every court a person who is an officer of the said service as messenger and so many persons who are such officers as deputy-messengers as may be necessary: Provided that if the duties to be performed by the messenger or a deputy-messenger of any court are in the opinion of the Public Service Commission insufficient to keep at least one person fully occupied throughout the year, and no officer of the said service is, in the opinion of the said Commission, able to perform the duties of messenger or deputy-messenger of such court in addition to his ordinary duties, or if, in the opinion of the Minister, the duties of the messenger or of a deputy-messenger of any court can be performed satisfactorily and at less cost to the State by a person who is not such an officer, the Minister may, without reference to the said law appoint as messenger or deputy-messenger of such court at such remuneration and upon such conditions as the Minister may determine, any person who is not an officer of the said service.

(2) A messenger of any court who is not an officer of the public service may, with the prior approval of the magistrate of such court, appoint one or more deputy-messengers for whom he shall be responsible.

(3) All fees payable to a messenger who is an officer of the public service, shall be paid into the Consolidated Revenue Fund.

(4) The State shall be liable for any loss or damage resulting from any act performed by a messenger who is an officer of the public service, within the scope of his employment as messenger, or by any deputy to such a messenger or from any neglect of duty of such a messenger or deputy-messenger, if such messenger would himself have been liable for such loss or damage had he not been an officer of such service.

(5) No person shall be appointed a messenger or deputy-messenger who is an attorney practising in the district, or who is an agent practising in the court, or is a clerk or employee of any such attorney or agent.

(6) Whenever in any matter objection is made to the service or execution of process by the messenger or his deputy by reason of the interest of either of them in such matter or of the relation of either of them to a party to such matter or of any other good cause of challenge, or whenever, by reason of the illness or absence of the messenger, it is necessary to appoint an acting messenger, the magistrate may appoint a person so to act.

12. (1) 'n Magistraat— Bevoegdhede van regterlike amptenare.

(*a*) kan hofsittings hou;

(*b*) besit die bevoegdhede en verrig die pligte aan magistrate verleen of opgelê deur wette wat van krag is in die provinsie waarin sy distrik geleë is.

(2) 'n Addisionele magistraat of 'n assistent-magistraat—

(*a*) kan hofsittings hou;

(*b*) besit sulke bevoegdhede en verrig sulke pligte as wat aan magistrate verleen of opgelê word, vir sover die uitoefening of verrigting daarvan hom nie deur die Minister of deur die magistraat van die distrik uitdruklik ontsê is nie.

(3) 'n Waarnemende magistraat, addisionele magistraat of assistent-magistraat besit onderskeidelik die bevoegdhede en jurisdiksie en verrig die pligte van die magistraat, addisionele magistraat of assistent-magistraat in wie se plek hy aangestel is om vir die bepaalde saak of gedurende die tydperk of in die omstandighede waarvoor hy aangestel is, op te tree.

(4) Elke addisionele magistraat en elke assistent-magistraat is, in elke distrik waarvoor hy aangestel is, onderworpe aan die administratiewe beheer van die magistraat. Die magistraat verdeel die werk onder die addisionele magistrate en assistent-magistrate.

HOOFSTUK III.

Beamptes van die Hof.

13. (1) Daar word vir elke hof so 'n aantal klerke van die hof en assistent-klerke van die hof aangestel as wat nodig is. Klerk van die hof.

(2) Indien die klerk van die hof weier om 'n handeling waartoe hy by wet gemagtig is, te verrig, dan is sodanige weiering onderhewig aan hersiening deur die hof op aansoek gedoen òf *ex parte* òf na kennisgewing, na gelang van die omstandighede.

14. (1) Met inagneming van die wetsbepalings op die staatsdiens van die Unie, kan die Minister vir elke hof iemand wat 'n amptenaar in bedoelde diens is as geregsbode, en so 'n aantal persone (synde sodanige amptenare) as wat nodig is, as adjunk-geregsbodes aanstel: Met dien verstande dat indien die deur die geregsbode of 'n adjunk-geregsbode van een of ander hof te verrigte werksaamhede volgens oordeel van die Staatsdienskommissie nie voldoende is om minstens een persoon gedurende die hele jaar ten volle besig te hou nie, en geen amptenaar in bedoelde diens volgens oordeel van bedoelde Kommissie in staat is om die werksaamhede van geregsbode of adjunk-geregsbode van sodanige hof tesame met sy gewone werksaamhede te verrig nie, of indien die Minister van oordeel is dat die werksaamhede van die geregsbode of van 'n adjunk-geregsbode van een of ander hof op bevredigende wyse en teen geringer koste vir die Staat verrig kan word deur iemand wat nie so 'n amptenaar is nie, die Minister sonder om hom aan voormelde wet te hou, iemand wat nie 'n amptenaar in bedoelde diens is nie, as geregsbode of adjunk-geregsbode van daardie hof kan aanstel, en wel teen so 'n besoldiging en op sulke voorwaardes as wat die Minister bepaal. Geregsbodes.

(2) 'n Geregsbode van 'n hof wat nie 'n amptenaar in die staatsdiens is nie, kan met die voorafgaande goedkeuring van die magistraat van daardie hof, een of meer adjunk-geregsbodes, vir wie hy verantwoordelik is, aanstel.

(3) Alle bodelone betaalbaar aan 'n geregsbode wat 'n amptenaar in die staatsdiens is, word in die Gekonsolideerde Inkomstefonds gestort.

(4) Die Staat is aanspreeklik vir alle verlies of skade wat voortspruit uit 'n handeling van 'n geregsbode wat 'n amptenaar in die staatsdiens is, verrig binne sy amptelike werkkring as geregsbode, of deur 'n adjunk van so 'n geregsbode of uit pligsversuim aan die kant van so 'n geregsbode of adjunk-geregsbode, indien bedoelde geregsbode self weens sodanige verlies of skade aanspreeklik sou gewees het as hy nie 'n amptenaar in die Staatsdiens was nie.

(5) Niemand wat as prokureur in die distrik praktiseer, of wat as agent in die hof praktiseer, of wat 'n klerk of werknemer van so 'n prokureur of agent is, mag as geregsbode of adjunk-geregsbode aangestel word nie.

(6) Wanneer in enige saak beswaar gemaak word teen die diening of tenuitvoerlegging van 'n prosesstuk deur die geregsbode of sy adjunk op grond van sy belang in die saak of van sy verwantskap met een van die partye in die saak, of om enige ander gegronde rede van wraking, of wanneer dit vanweë die siekte of afwesigheid van die geregsbode nodig is om 'n waarnemende geregsbode aan te stel, dan kan die magistraat iemand anders as sodanig aanstel.

(7) A messenger receiving any process for service or execution from a practitioner by whom there is due and payable to the messenger any sum of money in respect of services performed more than three months previously in the execution of any duty of his office, and which notwithstanding request has not been paid, may refer such process to the magistrate of the court out of which the process was issued with particulars of the sum due and payable by the practitioner; and the magistrate may, if he is satisfied that a sum is due and payable by the practitioner to the messenger as aforesaid which notwithstanding request has not been paid, by writing under his hand authorize the messenger to refuse to serve or execute such process until the sum due and payable to the messenger has been paid.

(8) A magistrate granting any such authority shall forthwith transmit a copy thereof to the practitioner concerned and a messenger receiving any such authority shall forthwith return to the practitioner the process to which such authority refers with an intimation of his refusal to serve or execute the same and of the grounds for such refusal.

(9) The provisions of sub-sections (1) to (4) shall not affect a messenger or deputy-messenger holding office as such on the thirteenth day of May, 1935, whose rights and obligations shall be governed by the law applicable thereto on that date.

Service of process by the police.

15. (1) Whenever process of the court in a civil case is to be served or executed in a district for which no messenger or deputy messenger has been appointed and whenever process of any court in a criminal case is to be served, a member of the police force shall be as qualified to serve or execute all such process and all other documents in such a case as if he had been duly appointed deputy-messenger. The fees payable in respect of or in connection with any such service to a messenger shall in any such case be chargeable but shall be paid into the Consolidated Revenue Fund.

(2) Whenever under any law a public body has the right to prosecute privately in respect of any offence and any fine imposed on conviction thereof is to be paid into the revenue of that public body, the process of the court and all other documents in the case in which such prosecution takes place, shall be served either by a person duly authorized in writing by such public body or with the consent of the Minister by a member of the police force. If the service is made by a member of the police force, fees in accordance with the scale set out in the rules shall be paid by the public body or such compounded amount in respect of all such process and other documents in any year as may be agreed between the said public body and the Minister. Such fees or such amount shall be paid into the Consolidated Revenue Fund.

Messengers' duties respecting detention of persons by order of court.

16. The messenger shall receive and cause to be lodged in gaol all persons arrested by such messenger or committed to his custody.

Messengers' return to be evidence.

17. The return of a messenger or of any person authorized to perform any of the functions of a messenger to any process of the court shall be *prima facie* evidence of the matters therein stated.

Suspension of messenger for misconduct.

18. A messenger who is alleged to have been negligent or dilatory in the service or execution of process, or wilfully to have demanded payment of more than his proper fees or expenses, or to have made a false return, or in any other manner to have misconducted himself in connection with his duties may, pending investigation, be suspended from office and profit by the magistrate, who may appoint a person to act in his place during the period of suspension. The magistrate shall forthwith report to the Minister any action he has taken under this section and the Minister may, after investigation, set aside the order of suspension or may confirm it and may also dismiss from his office the messenger who has been so suspended.

Officers appointed previously to remain in office.

19. Every officer of the court holding office immediately prior to the commencement of this Act shall be deemed to be duly appointed under this Act, and shall be invested with power, duties and authority accordingly.

(7) 'n Geregsbode wat 'n prosesstuk ontvang om te dien of ten uitvoer te lê van 'n praktisyn deur wie daar aan die geregsbode ten opsigte van dienste meer as drie maande tevore by die uitvoering van sy ampswerksaamhede verrig, 'n som geld verskuldig is wat, ondanks 'n versoek daarom, nog nie betaal is nie, kan daardie prosesstuk verwys na die magistraat van die hof waaruit die prosesstuk uitgereik is, met besonderhede van die bedrag wat deur die praktisyn verskuldig is; en die magistraat kan, as hy oortuig is dat daar soos voormeld deur die praktisyn aan die geregsbode 'n bedrag verskuldig is wat ondanks 'n versoek daarom, nie betaal is nie, by 'n deur hom ondertekende geskrif die geregsbode magtig om te weier om daardie prosesstuk te dien of ten uitvoer te lê totdat die aan die geregsbode verskuldigde bedrag betaal is.

(8) Wanneer 'n magistraat sodanige magtiging verleen moet hy onverwyld 'n afskrif daarvan aan die betrokke praktisyn deurstuur, en wanneer 'n geregsbode sodanige magtiging ontvang moet hy die prosesstuk waarop die magtiging betrekking het onverwyld aan die praktisyn teruggee en aan hom meedeel dat hy weier om dit te dien of ten uitvoer te lê, en om watter rede hy aldus weier.

(9) Die bepalings van sub-artikels (1) tot (4) raak nie 'n geregsbode of adjunk-geregsbode wat op die dertiende dag van Mei 1935 as sodanig werksaam was nie. Sy regte en verpligtings word beheers deur die regsbepalings wat op genoemde datum daarop van toepassing was.

Diening van prosesstukke deur polisie.

15. (1) Wanneer prosesstukke van die hof in 'n siviele saak gedien of ten uitvoer gelê moet word in 'n distrik waarvoor geen geregsbode of adjunk-geregsbode aangestel is nie, en wanneer prosesstukke van enige hof in 'n strafsaak gedien moet word, dan is 'n lid van die polisiemag ewe bevoeg om alle sodanige prosesstukke en alle ander stukke in so 'n saak te dien of ten uitvoer te lê, asof hy behoorlik as adjunk-geregsbode aangestel was. Die lone wat ten opsigte van of in verband met so 'n diening aan 'n geregsbode betaalbaar is, word in so 'n geval in rekening gebring, maar word in die Gekonsolideerde Inkomstefonds gestort.

(2) Wanneer 'n openbare liggaam kragtens een of ander wet die reg het om weens 'n misdryf privaat te vervolg, en 'n by skuldigbevinding opgelegde boete in die kas van daardie openbare liggaam gestort moet word, dan word die prosesstukke en alle ander stukke in die saak waarin so 'n vervolging plaasvind, gedien òf deur iemand wat behoorlik in geskrifte deur die openbare liggaam daartoe gemagtig is òf met toestemming van die Minister deur 'n lid van die polisiemag. Geskied die diening deur 'n lid van die polisiemag, dan word deur die openbare liggaam lone betaal ooreenkomstig die tarief in die reëls opgeneem, of so 'n samegestelde bedrag ten opsigte van alle sodanige prosesstukke en ander stukke in 'n jaar as wat tussen die Minister en bedoelde openbare liggaam ooreengekom word. Sodanige lone of sodanige bedrag word in die Gekonsolideerde Inkomstefonds gestort.

Pligte van geregsbodes met betrekking tot aanhouding van persone op bevel van hof.

16. Die geregsbode moet iedereen wat deur hom in hegtenis geneem is of wat in sy bewaring gestel is, ontvang en in 'n gevangenis laat sit

Relaas van bode het bewyskrag.

17. Die relaas op 'n prosesstuk, gemaak deur 'n geregsbode of deur iemand wat gemagtig is om die werksaamhede van 'n geregsbode te verrig, lewer *prima facie* bewys op van die verklarings wat daarin voorkom.

Skorsing van geregsbode weens wangedrag.

18. 'n Geregsbode wat beskuldig word van nalatigheid of traagheid in verband met die diening of tenuitvoerlegging van prosesstukke, of wat daarvan beskuldig word dat hy willens en wetens betaling geëis het van meer lone of uitgawes as wat hom toekom, of dat hy 'n valse relaas gemaak het of dat hy hom op enige ander wyse in verband met sy werksaamhede aan wangedrag skuldig gemaak het, kan, hangende ondersoek, deur die magistraat in sy amp en wins geskors word, en die magistraat kan iemand aanstel om solank die skorsing duur, as geregsbode op te tree. Die magistraat doen onverwyld aan die Minister verslag van wat hy kragtens hierdie artikel gedoen het, en die Minister kan, na ondersoek, die bevel van skorsing ophef, of bekragtig, en tewens die aldus geskorste geregsbode uit sy amp ontslaan.

Tevore aangestelde beamptes bly in diens.

19. Alle beamptes van die hof wat onmiddellik voor die inwerkingtreding van hierdie Wet in diens is, word geag behoorlik kragtens hierdie Wet aangestel te gewees het, en hulle geniet en oefen hul bevoegdhede, pligte en gesag dienooreenkomstig uit.

CHAPTER IV.

PRACTITIONERS.

Advocates and attorneys.

20. An advocate or attorney of any division of the Supreme Court may appear in any proceeding in any court.

Articled clerks.

21. An articled clerk referred to in sub-section (3) of section *twenty-one* of the Attorneys, Notaries and Conveyancers Admission Act, No. 23 of 1934, may appear instead and on behalf of the attorney to whom he has been articled in any proceeding in any court within the jurisdiction of the division concerned.

Agents.

22. (1) A person who, immediately prior to the commencement of this Act, was entitled to practise as an agent in any court may practise in any court in which he was so entitled, and shall be entitled to be enrolled and to practise in any other court in which he would have been entitled to be enrolled if this Act had not been passed.

(2) The Supreme Court shall possess in respect of any such agent the same powers as it possesses in respect of attorneys of the Supreme Court.

(3) The law society of any Province may bring to the notice of the Supreme Court any facts regarding the conduct of any such agent which, in the opinion of the said Society, ought to be brought to the notice of the Supreme Court, in the same manner as if such agent were an attorney of the Supreme Court.

Misconduct of practitioners.

23. Whenever in the opinion of a judicial officer a practitioner has been guilty of misconduct or dishonourable practice he shall report the fact—

(*a*) in the case of an advocate, to the branch of the Society of Advocates or Bar Council at the centre in which such advocate practises; and

(*b*) in the case of all other practitioners, to the law society concerned.

CHAPTER V.

RULES OF COURT.

Rules of Court.

24. The rules for the better carrying out of the purposes of this Act shall, until repealed in terms of section *twenty-five*, be the rules contained in the Second Schedule to the Magistrates' Courts Act, No. 32 of 1917.

Rules Board.

25. (1) There shall be a Rules Board consisting of—

(i) three officers of the Department of Justice nominated by the Minister to hold office during his pleasure, one of whom shall be chairman and shall have a casting as well as a deliberative vote;

(ii) one advocate nominated by the Minister for a period of two years; and

(iii) two attorneys nominated by the Executive Council of the Association of Law Societies of South Africa for a period of two years.

(2) Three members of the board shall constitute a quorum.

(3) The Board shall have the power—

(*a*) to make, alter or repeal rules regulating the following matters in respect of magistrates' courts—

(i) practice and procedure, including procedure in appealing;

(ii) fees and costs;

(iii) appointment of assessors;

(iv) the giving of security;

(v) the duties of officers of the court; and

(vi) such other matters as are necessary or useful for carrying out the purposes of this Act; and

(*b*) to alter or repeal any of the rules contained in the Second Schedule to the Magistrates' Courts Act, No. 32 of 1917.

(4) Different rules may be made as to different classes of cases.

(5) No new rule or any alteration or rescission of a rule shall take effect unless it has been confirmed by the Minister and published in three consecutive ordinary issues of the *Gazette* so that the last publication thereof shall be at least one month before the day upon which it is expressed to take effect.

HOOFSTUK IV.

PRAKTISYNS.

Advokate en prokureurs.

20. 'n Advokaat of prokureur van enige afdeling van die Hooggeregshof kan in enige proses in enige hof verskyn.

Klerke onder leerkontrak.

21. 'n Klerk onder leerkontrak soos in sub-artikel (3) van artikel *een-en-twintig* van die Toelating van Prokureurs, Notarisse en Transportbesorgers Wet, No. 23 van 1934, bedoel, kan in plaas van en namens die prokureur by wie hy onder leerkontrak in diens is, in enige proses in 'n hof binne die regsgebied van die betrokke afdeling, verskyn.

Wetsagente.

22. (1) Iemand wat onmiddellik voor die inwerkingtreding van hierdie Wet geregtig was om as wetsagent in een of ander hof te praktiseer, kan in enige hof waarin hy aldus geregtig was, praktiseer, en is geregtig om ingeskryf te word en te praktiseer in enige ander hof waarin hy geregtig sou gewees het om ingeskryf te word as hierdie Wet nie ingevoer was nie.

(2) Die Hooggeregshof besit ten opsigte van sulke wetsagente dieselfde bevoegdhede wat hy ten opsigte van prokureurs van die Hooggeregshof besit.

(3) Die prokureursorde van 'n provinsie kan onder die aandag van die Hooggeregshof alle feite betreffende die gedrag van so 'n agent bring wat, volgens oordeel van bedoelde orde, onder die aandag van die Hooggeregshof gebring behoort te word, op dieselfde wyse asof sodanige agent 'n prokureur van die Hooggeregshof was.

Wangedrag van praktisyns.

23. So dikwels 'n regterlike amptenaar van oordeel is dat 'n praktisyn hom aan wangedrag of oneerbare praktyk skuldig gemaak het, moet hy die geval rapporteer—

(*a*) in die geval van 'n advokaat, aan die sekretaris van die tak van die vereniging van advokate of van die Balieraad in die plek waar so 'n advokaat kamers het; en

(*b*) in die geval van alle ander praktisyns, aan die betrokke prokureursorde.

HOOFSTUK V.

REËLS VAN DIE HOF.

Reëls van die hof, gelde en koste.

24. Die reëls vir die beter verwesenliking van die oogmerke van hierdie Wet is, totdat hulle kragtens artikel *vyf-en-twintig* herroep word, dié wat in die Tweede Bylae by die „Magistraatshoven Wet", No. 32 van 1917, vervat is.

Reglementsraad.

25. (1) Daar word 'n Reglementsraad ingestel bestaande uit—

(i) drie amptenare van die Departement van Justisie deur die Minister benoem om hul amp vir solank dit hom behaag te beklee, een van wie voorsitter is en benewens sy beraadslagende stem ook 'n beslissende stem het;

(ii) een advokaat deur die Minister benoem vir 'n tydperk van twee jaar; en

(iii) twee prokureurs benoem deur die Uitvoerende Raad van die Vereniging van Wetsgenootskappe van die Unie van Suid-Afrika vir 'n tydperk van twee jaar.

(2) Drie lede van die Raad maak 'n kworum uit.

(3) Die Raad is bevoeg—

(*a*) om reëls uit te vaardig, te wysig of te herroep tot reëling van die volgende aangeleenthede ten opsigte van magistraatshowe—

(i) die praktyk en die prosedure, met inbegrip van die prosedure wanneer geappelleer word;

(ii) koste en onkoste;

(iii) die aanstelling van assessore;

(iv) die stel van sekerheid;

(v) die pligte van beamptes van die hof; en

(vi) sodanige ander aangeleenthede as wat nodig of nuttig mag wees om vir die doeleindes van hierdie Wet voor te skryf; en

(*b*) om enige van die reëls in die Tweede Bylae by die „Magistraatshoven Wet", No. 32 van 1917 vervat, te wysig of te herroep.

(4) Verskillende reëls kan ten aansien van verskillende soorte sake uitgevaardig word.

(5) Geen reël en geen wysiging of herroeping daarvan tree in werking nie tensy dit deur die Minister bekragtig en in drie agtereenvolgende gewone uitgawes van die *Staatskoerant* gepubliseer is, in dier voege dat die laaste publikasie minstens 'n maand voor die dag waarop die reël, wysiging of herroeping verklaar word in werking te tree, geskied.

(6) Every new rule and every alteration or rescission of a rule shall, within fourteen days after it has taken effect, be laid upon the Tables of both Houses of Parliament, if Parliament be then in session, or if it be not then in session, within fourteen days after the commencement of its next ensuing session.

PART II.—CIVIL MATTERS.

CHAPTER VI.

CIVIL JURISDICTION.

Area of jurisdiction.

26. (1) Except where it is otherwise by law provided, the area of jurisdiction of a court shall be the district or sub-district for which such court is established.

(2) Where in any district a sub-district has been created the court of the district shall have no jurisdiction in the sub-district.

Jurisdiction of periodical courts.

27. The jurisdiction of a periodical court within the area for which it has been appointed shall be subject to the following provisions—

(*a*) The court of a district within which the said area or any part thereof is situate shall retain concurrent jurisdiction with the periodical court within such portions of such area as shall be situate within such district; and

(*b*) no person shall, without his own consent, be liable to appear as a party before any periodical court to answer any claim unless he resides nearer to the place where the periodical court is held than to the seat of magistracy of the district.

Jurisdiction in respect of persons.

28. (1) Saving any other jurisdiction assigned to a court by this Act or by any other law, the persons in respect of whom the court shall have jurisdiction shall be—

(*a*) any person who resides, carries on business or is employed within the district;

(*b*) any partnership which has business premises situated or any member whereof resides within the district;

(*c*) any person whatever, in respect of any proceedings incidental to any action or proceeding instituted in the court by such person himself;

(*d*) any person, whether or not he resides, carries on business or is employed within the district, if the cause of action arose wholly within the district;

(*e*) any party to interpleader proceedings, if—

(i) the execution creditor and every claimant to the subject matter of the proceedings reside, carry on business, or are employed within the district; or

(ii) the subject matter of the proceedings has been attached by process of the court;

(*f*) any defendant (whether in convention or reconvention) who appears and takes no objection to the jurisdiction of the court;

(*g*) any person who owns immovable property within the district in actions in respect of such property or in respect of mortgage bonds thereon.

(2) "Person" and "defendant" in this section include the State.

Jurisdiction in respect of causes of action.

29. (1) Subject to the provisions of this Act, the court, in respect of causes of action shall have jurisdiction—

(*a*) in actions in which is claimed the delivery or transfer of any property movable or immovable, not exceeding two hundred pounds in value;

(*b*) in actions of ejectment against the occupier of any premises within the district: Provided that, where the right of occupation of any such premises is in dispute between the parties, such right does not exceed two hundred pounds in clear value to the occupier;

(*c*) notwithstanding the provisions of section *forty-six*, in actions for the determination of a right of way;

(*d*) in actions on a liquid document or a mortgage bond for the recovery of an amount not exceeding five hundred pounds;

(*e*) in actions other than those already in this section mentioned, where the claim or the value of the matter in dispute does not exceed two hundred pounds.

(2) In sub-section (1), "action" includes a claim in reconvention.

(6) Elke reël, en elke wysiging of herroeping daarvan, moet binne veertien dae nadat dit in werking getree het, in beide Huise van die Parlement ter Tafel gelê word as die Parlement dan in sitting is of, as die Parlement nie dan in sitting is nie, binne veertien dae na die aanvang van sy eersvolgende sitting.

DEEL II.—SIVIELE SAKE.

HOOFSTUK VI.

SIVIELE JURISDIKSIE.

Regsgebied.

26. (1) Behalwe vir sover by wet anders bepaal word, omvat die regsgebied van 'n hof die distrik of sub-distrik waarvoor daardie hof ingestel is.

(2) Wanneer daar in 'n distrik 'n sub-distrik ingestel is, dan het die hof van die distrik geen jurisdiksie in die sub-distrik nie.

Jurisdiksie van periodieke howe.

27. Die jurisdiksie van 'n periodieke hof binne die gebied waarvoor hy ingestel is, is aan onderstaande bepalings onderworpe—

(*a*) die hof van 'n distrik waarin bedoelde gebied of enige gedeelte daarvan geleë is, behou naas die periodieke hof konkurrente jurisdiksie binne sodanige gedeeltes van daardie gebied as wat in sodanige distrik geleë is; en

(*b*) niemand kan, sonder sy eie toestemming, verplig word om as verweerder voor 'n periodieke hof te verskyn nie tensy hy digter by die plek woon waar die periodieke hof sitting hou as by die plek waar die magistraatsetel van die distrik gevestig is.

Jurisdiksie ten aansien van persone.

28. (1) Behoudens enige ander jurisdiksie wat by hierdie Wet of ander wetsbepalings aan 'n hof verleen word, het die hof jurisdiksie ten aansien van ondervermelde persone—

(*a*) 'n persoon wat in die distrik woon, besigheid dryf of in diensbetrekking is;

(*b*) 'n vennootskap waarvan 'n besigheidsperseel geleë is, of waarvan 'n lid woon, in die distrik;

(*c*) 'n persoon wie ookal, ten opsigte van enige verrigtings wat in verband staan met 'n aksie of verrigting deur sodanige persoon selfs in die hof ingestel;

(*d*) 'n persoon, hetsy hy in die distrik woon, besigheid dryf of in diensbetrekking is al dan nie, indien die skuldoorsaak geheel en al in die distrik ontstaan het;

(*e*) 'n party by 'n tussenpleit-geding, indien—

(i) die eksekusie-skuldeiser en elke reklamant van die onderwerp van die geding in die distrik woon, besigheid dryf of in diensbetrekking is; of

(ii) die onderwerp van die geding geregtelik in beslag geneem is;

(*f*) 'n verweerder (hetsy in konvensie of in rekonvensie), wat verskyn en geen beswaar teen die bevoegdheid van die hof opper nie;

(*g*) 'n persoon wat die eienaar is van vaste eiendom in die distrik, in aksies in verband met bedoelde eiendom of in verband met 'n verband daarop.

(2) In hierdie artikel omvat „persoon" en „verweerder" ook die Staat.

Jurisdiksie ten aansien van skuldoorsaak.

29. (1) Behoudens die bepalings van hierdie Wet het die hof, ten aansien van skuldoorsaake, jurisdiksie in—

(*a*) aksies tot lewering of oordrag van roerende of onroerende goed waarvan die waarde nie tweehonderd pond te bowe gaan nie;

(*b*) aksies tot uitsetting teen die okkupeerder van 'n perseel binne die distrik geleë: Met dien verstande dat wanneer die reg tot okkupasie van sodanige perseel tussen die partye in geskil is, die suiwere waarde van daardie reg vir die okkupeerder nie meer as tweehonderd pond bedra nie;

(*c*) aksies vir die vasstelling van 'n reg van weg, nieteenstaande die bepalings van artikel *ses-en-veertig*;

(*d*) aksies op 'n likwide dokument of 'n verband vir vordering van 'n bedrag wat nie vyfhonderd pond te bowe gaan nie;

(*e*) ander aksies as die wat reeds in hierdie artikel vermeld is, wanneer die vordering of die waarde van die onderwerp in geskil nie meer as tweehonderd pond bedra nie.

(2) Die woord „aksie" in sub-artikel (1) omvat ook 'n vordering in rekonvensie.

Arrests and interdicts.

30. (1) Subject to the limits of jurisdiction prescribed by this Act, the court may grant against persons and things orders for arrest *tanquam suspectus de fuga*, attachments, interdicts and *mandamenten van spolie*.

(2) Confirmation by the court of any such attachment or interdict in the judgment in the action shall operate as an extension of the attachment or interdict until execution or further order of the court.

(3) No order of personal arrest *tanquam suspectus de fuga* shall be made unless—

(*a*) the cause of action appears to amount, exclusive of costs, to at least twenty pounds;

(*b*) the applicant appears to have no security for the debt or only security falling short of the amount of the debt by at least twenty pounds; and

(*c*) it appears that the respondent is about to remove from the Union.

Automatic rent interdict.

31. (1) When a summons is issued in which is claimed the rent of any premises, the plaintiff may include in such summons a notice prohibiting any person from removing any of the furniture or other effects thereon which are subject to the plaintiff's hypothec for rent until an order relative thereto has been made by the court.

(2) The messenger shall, if required by the plaintiff and at such plaintiff's expense, make an inventory of such furniture or effects.

(3) Such notice shall operate to interdict any person having knowledge thereof from removing any such furniture or effects.

(4) Any person affected by such notice may apply to the court to have the same set aside.

Attachment of property in security of rent.

32. (1) Upon an affidavit by or on behalf of the landlord of any premises situate within the district, that an amount of rent not exceeding the jurisdiction of the court is due and in arrear in regard to the said premises, and that the said rent has been demanded in writing for the space of seven days and upwards, or, if not so demanded, that the deponent believes that the tenant is about to remove the movable property upon the said premises, in order to avoid the payment of such rent, and upon security being given to the satisfaction of the clerk to the court to pay all damages, costs and charges which the tenant of such premises, or any other person, may sustain or incur by reason of the attachment hereinafter mentioned, if the said attachment be thereafter set aside, the court may, upon application, issue an order to the messenger requiring him to attach so much of the movable property upon the premises in question and subject to the landlord's hypothec for rent as may be sufficient to satisfy the amount of such rent, together with the costs of such application and of any action for the said rent.

(2) Any person affected by such order may apply to have it set aside.

(3) A respondent whose property has been so attached may by notice in writing to the clerk of the court admit that such property is subject to the landlord's hypothec for an amount to be specified in such notice and may consent that such property (other than property protected from seizure by the provisions of section *sixty-seven*) be sold in satisfaction of such amount and costs; and such notice shall have the same effect as a consent to judgment for the amount specified.

Curator ad litem.

33. The court may appoint a *curator ad litem* in any case in which such a curator is required or allowed by law for a party to any proceedings brought or to be brought before the court.

Assessors.

34. In any action the court may, upon the application of either party, summon to its assistance one or two persons of skill and experience in the matter to which the action relates who may be willing to sit and act as assessors in an advisory capacity.

Transfer from one court to another.

35. (1) An action or proceeding may, with the consent of all the parties thereto, or upon the application of any party thereto, and upon its being made to appear that the trial of such action or proceeding in the court wherein summons has been issued may result in undue expense or inconvenience to such party, be transferred by the court to any other court.

(2) An interpleader summons, if issued in the court of the district in which the property was attached, may, at the dis-

Arreste en interdikte.

30. (1) Die hof kan, binne die grense van die bevoegdheid by hierdie Wet aan hom verleen, teen persone en sake bevele vir arres *tanquam suspectus de fuga*, beslaglegging, interdikte en mandamente van spolie verleen.

(2) Die bekragtiging van so 'n beslaglegging of interdik deur die hof in die vonnis in die aksie gevel, het tot gevolg dat die beslaglegging of interdik van krag bly totdat die tenuitvoerlegging geskied het of tot nadere bevel van die hof.

(3) Geen bevel vir persoonlike arres *tanquam suspectus de fuga* word verleen nie tensy—

(*a*) die skuldoorsaak 'n bedrag, met uitsluiting van koste, van minstens twintig pond blyk te bedra; en

(*b*) die applikant geen sekerheid vir die skuld blyk te hê nie of slegs sekerheid wat ten bedrae van minstens twintig pond aan die bedrag van die skuld te kort skiet; en

(*c*) dit blyk dat die respondent op die punt staan om die Unie te verlaat.

Outomatiese huurgeld-interdik.

31. (1) Wanneer 'n dagvaarding uitgereik word waarin die huurgeld van 'n perseel gevorder word, dan kan die eiser in daardie dagvaarding 'n kennisgewing stel waarby iedereen verbied word om die meubels of ander besittings daarop, wat aan die eiser se huurverband onderhewig is, te verwyder totdat 'n bevel met betrekking daartoe deur die hof verleen is.

(2) Indien die eiser dit verlang moet die bode op koste van die eiser 'n inventaris opstel van bedoelde meubels of besittings.

(3) So 'n kennisgewing dien as 'n interdik teen iedereen wat daarvan kennis dra, om sodanige meubels of besittings te verwyder.

(4) Iedereen wat deur so 'n kennisgewing geraak word kan by die hof om die tersydestelling daarvan aansoek doen.

Inbeslagneming van goedere as sekerheid vir huurgeld.

32. (1) Op grond van 'n beëdigde verklaring deur of namens die verhuurder van 'n perseel binne die distrik geleë dat 'n bedrag aan huurgeld wat nie die jurisdiksie van die hof te bowe gaan nie, ten opsigte van daardie perseel verskuldig en agterstallig is, en dat betaling van sodanige huurgeld sedert sewe dae of langer skriftelik geëis is, of, by gebreke aan sodanige opeising, dat die deponent glo dat die huurder op die punt staan om die roerende goedere op die betrokke perseel te verwyder ten einde betaling van sodanige huurgeld te ontduik, en mits ten genoeë van die klerk van die hof sekerheid gestel word vir alle skade, koste en onkoste wat die huurder van sodanige perseel of iemand anders mag ly of oploop ten gevolge van die hieronder vermelde beslaglegging, indien sodanige beslaglegging later ter syde gestel word, kan die hof, op aansoek daartoe, by bevel die geregsbode gelas om beslag te lê op 'n genoegsame hoeveelheid van die roerende goedere wat aan die verhuurder se huurverband onderhewig en op die betrokke perseel is om die bedrag van sodanige huurgeld, tesame met die koste van sodanige aansoek en van 'n aksie vir bedoelde huurgeld, te dek.

(2) Iedereen wat deur so 'n bevel getref word kan om die tersydesetting daarvan aansoek doen.

(3) 'n Respondent op wie se goedere aldus beslag gelê is, kan by skriftelike kennisgewing aan die klerk van die hof erken dat sodanige goedere aan die verhuurder se huurverband onderhewig is vir 'n in die kennisgewing te vermelde bedrag, en kan toestemming daartoe verleen dat die betrokke goedere (behalwe goedere wat deur die bepalings van artikel *sewen-en-sestig* teen beslaglegging beskerm word), ter voldoening aan bedoelde bedrag en die koste verkoop word; so 'n kennisgewing het dieselfde uitwerking as 'n toestemming tot vonnis vir die bepaalde bedrag.

Curator ad litem.

33. Die hof kan 'n *curator ad litem* in enige geval benoem waarin 'n party by 'n proses wat in daardie hof ingestel is of gaan word, volgens wet so 'n kurator moet of mag hê.

Assessore.

34. Die hof kan in enige aksie op aansoek van een van die partye, die hulp inroep van een of twee persone wat in die saak waarop die aksie betrekking het, kundig en ervare en tewens bereid is om as assessore in 'n raadgewende hoedanigheid sitting te neem en te dien.

Oorplasing van saak van een hof na 'n ander.

35. (1) 'n Aksie of proses kan, met die toestemming van al die partye, of op aansoek van een van die partye, en nadat aangetoon is dat die verhoor van sodanige aksie of proses in die hof waarin die dagvaarding uitgereik is, daardie party onmatige koste of ongerief kan veroorsaak, deur die hof na 'n ander hof oorgeplaas word.

(2) 'n Tussenpleitdagvaarding wat uitgereik is in die hof van die distrik waarin die goed in beslag geneem is, kan deur

cretion of the court, be remitted for trial to the court in which the judgment was given.

(3) An action commenced in a periodical court may, at the discretion of the court, be transferred to the court of the district, or (subject to the provisions of paragraph (*b*) of section *twenty-seven*) *vice versa*.

What judgments may be rescinded.

36. The court may, upon application by any person affected thereby, or, in cases falling under paragraph (*c*), *suo motu*—

(*a*) rescind or vary any judgment granted by it in the absence of the person against whom that judgment was granted;

(*b*) rescind or vary any judgment granted by it which was void *ab origine* or was obtained by fraud or by mistake common to the parties;

(*c*) correct patent errors in any judgment in respect of which no appeal is pending;

(*d*) rescind or vary any judgment in respect of which no appeal lies.

Incidental jurisdiction.

37. (1) In actions wherein the sum claimed, being within the jurisdiction, is the balance of an account, the court may enquire into and take evidence if necessary upon the whole account, even though such account contains items and transactions exceeding the amount of the jurisdiction.

(2) Where the amount claimed or other relief sought is within the jurisdiction, such jurisdiction shall not be ousted merely because it is necessary for the court, in order to arrive at a decision, to give a finding upon a matter beyond the jurisdiction.

(3) In considering whether a claim is or is not within the jurisdiction, no prayer for interest on the principal sum claimed or for costs or for general or alternative relief shall be taken into account.

Abandonment of part claim.

38. (1) In order to bring a claim within the jurisdiction, a plaintiff may in his summons or at any time thereafter explicitly abandon part of such claim.

(2) If any part of a claim be so abandoned it shall thereby be finally extinguished: Provided that, if the claim be upheld in part only, the abandonment shall be deemed first to take effect upon that part of the claim which is not upheld.

Deduction of admitted debt.

39. In order to bring a claim within the jurisdiction a plaintiff may, in his summons or at any time after the issue thereof, deduct from his claim, whether liquidated or unliquidated, any amount admitted by him to be due by himself to the defendant.

Splitting of claims disallowed.

40. A substantive claim exceeding the jurisdiction may not be split with the object of recovering the same in more than one action if the parties to all such actions would be the same and the point at issue in all such actions would also be the same.

Joinder of plaintiffs.

41. (1) Any number of persons, each of whom has a separate claim against the same defendant, may join as plaintiffs in one action if their right to relief depends upon the determination of some question of law or fact which if separate actions were instituted would arise in each action: Provided that if such joint action be instituted the defendant may apply to court for an order directing that separate trials be held and the court in its discretion may make such order as it deems just and expedient.

(2) In any joint action instituted as aforesaid judgment may be given for such one or more of the plaintiffs as may be found entitled to relief.

(3) If all the plaintiffs fail in any such action, the court may make such order as to costs as to it may seem just; in particular, it may order that the plaintiffs pay the costs of the defendant jointly and severally, the one paying the other to be absolved, and that if one plaintiff pays more than his *pro rata* share of the costs of the defendant, he shall be entitled to recover from the other plaintiffs their *pro rata* share of such excess.

(4) If some of the plaintiffs succeed and others fail, the court may make such order as to costs as it may deem just.

Joinder of defendants.

42. (1) Several defendants may be sued in the alternative or both in the alternative and jointly in one action, whenever it is alleged by the plaintiff that he has suffered damages and

die hof volgens goeddunke ter verhoor verwys word na die hof waarin die vonnis gevel is.

(3) 'n Aksie wat in 'n periodieke hof aanhangig gemaak is kan deur die hof volgens goeddunke na die hof van die distrik verwys word, of onderhewig aan die bepalings van paragraaf (*b*) van artikel *sewen-en-twintig*, omgekeerd.

Watter vonnisse vernietig kan word.

36. Die hof kan, op aansoek van enige persoon wat daardeur geraak word of, in gevalle wat onder paragraaf (*c*) val, *suo motu*—

(*a*) 'n vonnis wat deur hom gevel is in die afwesigheid van die persoon teen wie daardie vonnis gevel is, vernietig of wysig;

(*b*) 'n vonnis deur hom gevel wat *ab origine* nietig was of wat deur bedrog of ten gevolge van 'n aan die partye gemene dwaling verkry is, vernietig of wysig;

(*c*) klaarblyklike foute in 'n vonnis ten aansien waarvan geen appèl hangende is nie, herstel;

(*d*) 'n vonnis wat nie aan appèl onderhewig is nie, vernietig of wysig.

Insidentele jurisdiksie.

37. (1) Die hof kan, in aksies waarin die gevorderde bedrag die jurisdiksie nie oorskry nie en die saldo is van 'n rekening, ondersoek instel na en, so nodig, getuienis op die hele rekening afneem, selfs al bevat so 'n rekening poste en transaksies wat die jurisdiksie van die hof oorskry.

(2) Wanneer die gevorderde bedrag of die gevraagde ander tegemoetkoming binne die jurisdiksie val, dan word sodanige jurisdiksie nie opgehef enkel en alleen deurdat die hof, teneinde tot 'n beslissing te kan kom, 'n bevinding oor 'n aangeleentheid wat buite sy jurisdiksie val, moet gee nie.

(3) By oorweging daarvan of 'n vordering binne die jurisdiksie val al dan nie, word vorderings tot betaling van rente op die geëiste hoofsom of vir koste of vir algemene of alternatiewe tegemoetkoming, nie in ag geneem nie.

Afstanddoening van gedeelte van vordering.

38. (1) 'n Eiser kan, ten einde 'n vordering binne die jurisdiksie te bring, in sy dagvaarding of te eniger tyd daarna uitdruklik van 'n gedeelte van sy vordering afstand doen.

(2) 'n Vordering waarvan aldus gedeeltelik afstand gedoen is, gaan ten aansien van daardie gedeelte te niet: Met dien verstande dat indien die vordering slegs ten dele toegewys word, die afstanddoening geag word eers ten aansien van die nietoegewese gedeelte van die vordering te geld.

Aftrekking van erkende skuld.

39. 'n Eiser kan, ten einde 'n vordering binne die jurisdiksie van die hof te bring, in sy dagvaarding of te eniger tyd na die uitreiking daarvan, van sy vordering (hetsy dit 'n gelikwideerde of 'n ongelikwideerde is) 'n bedrag wat volgens eie erkenning deur hom aan die verweerder verskuldig is, aftrek.

Splitsing van vorderings nie geoorloof nie.

40. 'n Hoofvordering wat die jurisdiksie oorskry, mag nie gesplits word met die oogmerk om dit in meer as een aksie te verhaal nie, indien die partye sowel as die geskilpunt in al sulke aksies dieselfde sou wees.

Gesamentlike ingedingtreding van eisers.

41. (1) Enige aantal persone, elk van wie 'n afsonderlike vordering teen dieselfde verweerder het, kan as eisers gesamentlik in geding tree indien hul reg op geregtelike bystand afhang van die beslissing van een of ander regs- of feitelike vraag wat, indien daar afsonderlike aksies ingestel was, in elke aksie sou ontstaan: Met dien verstande dat indien so 'n gesamentlike aksie ingestel word, die verweerder by die hof 'n bevel kan aanvra waarby afsonderlike verhore beveel word, en die hof volgens goeddunke so 'n bevel kan verleen as wat hy billik en raadsaam ag.

(2) In 'n gesamentlike aksie soos voormeld ingestel, kan vonnis gevel word ten gunste van een of meer van die eisers wat bevind word op regterlike tegemoetkomings geregtig te wees.

(3) Indien die vorderings van al die eisers in so 'n aksie afgewys word, kan die hof met betrekking tot die koste sodanige bevel gee as wat hy billik ag; in besonder kan hy beveel dat die eisers die koste van die verweerder gesamentlik en afsonderlik moet betaal, betaling deur die een die ander te bevry, en dat as een eiser meer as sy *pro rata* deel van die koste van die verweerder betaal, hy die reg sal hê om op die ander eisers hulle *pro rata* deel van die deur hom te veel betaalde bedrag te verhaal.

(4) Indien die vorderings van een of meer van die eisers toegewys en die van ander afgewys word, kan die hof sodanige bevel ten aansien van die koste gee as wat hy billik ag.

Samevoeging van verweerders.

42. (1) Verskeie verweerders kan in die alternatief of sowel in die alternatief as gesamentlik in een aksie aangespreek word so dikwels die eiser beweer dat hy skade gely het en dat dit

that it is uncertain which of the defendants is in law responsible for such damages: Provided that on the application of any of the defendants the court may in its discretion order that separate trials be held, or make such other order as it may deem just and expedient.

(2) If judgment is given in favour of any defendant or if any defendant is absolved from the instance, the court may make such order as to costs as to it may seem just; in particular, it may order—

(*a*) the plaintiff to pay such defendant's costs; or

(*b*) the unsuccessful defendants to pay the costs of the successful defendant jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his *pro rata* share of the costs of the successful defendant, he shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess, and the court may further order that if the successful defendant is unable to recover the whole or any part of his costs from the unsuccessful defendants, he shall be entitled to recover from the plaintiff such part of his costs as he cannot recover from the unsuccessful defendants.

(3) If judgment is given in favour of the plaintiff against more than one of the defendants the court may make such order as to costs as to it may seem just; in particular it may order those defendants against whom it gives judgment to pay the plaintiff's costs jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his *pro rata* share of the costs of the plaintiff he shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess.

Jurisdiction cumulative.

43. (1) If two or more claims, each based upon a different cause of action, are combined in one summons, the court shall have the same jurisdiction to decide each such claim as it would have had if each claim had formed the sole subject of a separate action.

(2) If a claim for the confirmation of an interdict or arrest granted *pendente lite* be joined in the same summons with a claim for relief of any other character, the court shall have the same jurisdiction to decide each such claim as it would have had if each claim had formed the sole subject of a separate action, even though all the claims arise from the same cause of action.

Application of sections 34, 35 and 37 to 43 inclusive to claims in reconvention.

44. In sections *thirty-four*, *thirty-five* and *thirty-seven* to *forty-three* inclusive, "action", "claim" and "summons" include "claim in reconvention", and "plaintiff" and "defendant" include "plaintiff in reconvention" and "defendant in reconvention" respectively.

Jurisdiction by consent of parties.

45. (1) Subject to the provisions of section *forty-six*, the court shall have jurisdiction to determine any action or proceeding otherwise beyond the jurisdiction, if the parties consent in writing thereto: Provided that no court other than a court having jurisdiction under section *twenty-eight* shall, except where such consent is given specifically with reference to particular proceedings already instituted or about to be instituted in such court, have jurisdiction in any such matter.

(2) Any provision in a contract existing at the commencement of the Act or thereafter entered into, whereby a person undertakes that, when proceedings have been or are about to be instituted, he will give such consent to jurisdiction as is contemplated in the proviso to sub-section (1), shall be null and void.

Matters beyond the jurisdiction.

46. (1) Subject to the provisions of the Indian Immigration Law, No. 25 of 1891 of Natal, the court shall have no jurisdiction in matters in which the dissolution of a marriage or separation from bed and board or of goods of married persons is sought.

(2) A court shall have no jurisdiction in matters—

(*a*) in which the validity or interpretation of a will or other testamentary document is in question;

(*b*) in which the status of a person in respect of mental capacity is sought to be affected;

onseker is wie van die verweerders in regte vir bedoelde skade verantwoordelik is: Met dien verstande dat die hof op aansoek van een of meer van die verweerders volgens goeddunke afsonderlike verhore kan beveel of sodanige ander bevel kan gee as wat hy billik en raadsaam ag.

(2) Indien vonnis ten gunste van een of ander verweerder gevel word of indien aan een of ander verweerder absolusie van die instansie verleen word, kan die hof ten aansien van die koste so 'n bevel gee as wat hy billik ag; in besonder kan hy beveel—

(*a*) dat die eiser die koste van daardie verweerder moet betaal; of

(*b*) dat die onsuksesvolle verweerders die koste van die suksesvolle verweerder gesamentlik en afsonderlik moet betaal, betaling deur die een die ander te bevry, en dat ingeval een van die onsuksesvolle verweerders meer as sy *pro rata* deel van die koste van die suksesvolle verweerder betaal, hy die reg sal hê om op die ander onsuksesvolle verweerders hul *pro rata* deel van sodanige deur hom te veel betaalde bedrag te verhaal, en die hof kan voorts beveel dat indien die suksesvolle verweerder nie in staat is om sy koste geheel of ten dele op die onsuksesvolle verweerders te verhaal nie, hy die reg sal hê om op die eiser sodanige deel van sy koste te verhaal as wat hy nie op die onsuksesvolle verweerders kan verhaal nie.

(3) Indien vonnis ten gunste van die eiser teen meer as een van die verweerders gevel word, kan die hof sodanige bevel ten aansien van die koste gee as wat hy billik ag; in besonder kan hy beveel dat daardie verweerders teen wie hy vonnis vel die eiser se koste gesamentlik en afsonderlik moet betaal, betaling deur die een die ander te bevry, en dat ingeval een van die onsuksesvolle verweerders meer as sy *pro rata* deel van die koste van die eiser betaal, hy die reg sal hê om op die ander onsuksesvolle verweerders hul *pro rata* deel van die deur hom te veel betaalde koste te verhaal.

Kumulatiewe jurisdiksie.

43. (1) Wanneer twee of meer vorderings, waarvan elkeen op 'n afsonderlike skuldoorsaak gegrond is, in een dagvaarding verenig word, dan het die hof dieselfde jurisdiksie om elke sodanige vordering te beslis as wat hy sou gehad het as elke sodanige vordering die uitsluitende onderwerp van 'n afsonderlike aksie uitgemaak het.

(2) Wanneer 'n vordering vir die bekragtiging van 'n interdik of arres *pendente lite* verleen, in dieselfde dagvaarding verenig word met 'n vordering waarby tegemoetkoming van 'n ander aard gevra word, dan het die hof dieselfde jurisdiksie om elke sodanige vordering te beslis as wat hy sou gehad het indien elke vordering die uitsluitende onderwerp van 'n afsonderlike aksie uitgemaak het, selfs al ontstaan al die vorderings uit dieselfde skuldoorsaak.

Toepassing van artikels 34, 35 en 37 tot en met 43 op vorderings in rekonvensie.

44. In artikels *vier-en-dertig*, *vyf-en-dertig* en *sewen-en-dertig* tot en met *drie-en-veertig* omvat „aksie", „vordering" en „dagvaarding" ook „vordering in rekonvensie", en omvat „eiser" en „verweerder" onderskeidelik ook „eiser in rekonvensie" en „verweerder in rekonvensie".

Jurisdiksie uit hoofde van toestemming van partye.

45. (1) Met inagneming van die bepalings van artikel *ses-en-veertig* het die hof, met die skriftelike toestemming van die partye, jurisdiksie om enige aksie of proses wat anders buite sy jurisdiksie val, te beslis: Met dien verstande dat geen hof jurisdiksie in so 'n saak het nie behalwe 'n hof wat kragtens artikel *agt-en-twintig* jurisdiksie het, tensy sodanige toestemming gegee is spesifiek met betrekking tot 'n bepaalde proses wat in daardie hof alreeds ingestel is of op die punt staan om ingestel te word.

(2) 'n Bepaling van 'n kontrak wat by die inwerkingtreding van hierdie Wet bestaan of daarna aangegaan is waardeur iemand onderneem dat wanneer 'n proses ingestel is of op die punt staan om ingestel te word, hy sodanige toestemming ten opsigte van jurisdiksie sal gee as wat in die voorbehoudsbepaling by sub-artikel (1) bedoel word, is nul en van gener waarde.

Sake buite die jurisdiksie.

46. (1) Behoudens die bepalings van die „Indian Immigration Law", No. 25 van 1891 van Natal, het die hof geen jurisdiksie in regsvorderings tot ontbinding van 'n huwelik of tot skeiding van tafel en bed of van goedere van eggenote nie.

(2) 'n Hof het geen jurisdiksie nie in sake—

(*a*) waarin die geldigheid of uitleg van 'n testament of ander testamentêre dokument in geskil is;

(*b*) rakende die status van 'n persoon ten opsigte van geestelike bekwaamheid;

(*c*) in which is sought specific performance without an alternative of payment of damages except in—

(i) the rendering of an account in respect of which the claim does not exceed two hundred pounds;

(ii) the delivery or transfer of property movable or immovable, not exceeding two hundred pounds in value; and

(iii) the delivery or transfer of property movable or immovable exceeding two hundred pounds in value where the consent of parties has been obtained in terms of section *forty-five*;

(*d*) in which is sought a decree of perpetual silence.

Counterclaim exceeding jurisdiction.

47. (1) When in answer to a claim within the jurisdiction the defendant sets up a counterclaim exceeding the jurisdiction, the claim shall not on that account be dismissed; but the court may, if satisfied that the defendant has *prima facie* a reasonable prospect on his counterclaim of obtaining a judgment in excess of its jurisdiction, stay the action for a reasonable period in order to enable him to institute an action in a competent court. The plaintiff in the magistrate's court may (notwithstanding his action therein) counterclaim in such competent court and in that event all questions as to the costs incurred in the magistrate's court shall be decided by that competent court.

(2) If the period for which such action has been stayed has expired and the defendant has failed to issue and serve a summons in a competent court in relation to the matters and the subject of such counterclaim the magistrate's court shall on application either—

(*a*) stay the action for a further reasonable period; or

(*b*) dismiss the counterclaim (whether the defendant does or does not reduce such counterclaim to an amount within the jurisdiction of the court).

(3) If the defendant has failed to institute action within such further period or if the action instituted by the defendant be stayed, dismissed, withdrawn, or abandoned, or if the competent court has granted absolution from the instance thereon, the magistrate's court shall, upon application, dismiss the counterclaim and shall proceed to determine the claim.

Judgment.

48. The court may, as a result of the trial of an action, grant—

(*a*) judgment for the plaintiff in respect of his claim in so far as he has proved the same;

(*b*) judgment for the defendant in respect of his defence in so far as he has proved the same;

(*c*) absolution from the instance, if it appears to the court that the evidence does not justify the court in giving judgment for either party;

(*d*) such judgment as to costs as may be just;

(*e*) an order, subject to such conditions as the court thinks fit, against the party in whose favour judgment has been given suspending wholly or in part the taking of further proceedings upon the judgment for a specified period pending arrangements by the other party for payment.

Cession of costs.

49. Costs awarded in interlocutory proceedings shall not be ceded without the consent of the court awarding such costs.

Removal of actions from court to provincial or local division.

50. (1) Any action in which the amount of the claim exceeds one hundred pounds, exclusive of interest and costs, may, upon application to the court by the defendant, or if there is more than one defendant, by any defendant, be removed to the provincial or local division having jurisdiction where the court is held, subject to the following provisions:

(*a*) notice of intention to make such application shall be given to the plaintiff, and to other defendants (if any) before the date on which the action is set down for hearing;

(*b*) the notice shall state that the applicant objects to the action being tried by the court or any magistrate's court;

(*c*) the applicant shall give such security as the court may determine and approve, for payment of the amount claimed and such further amount to be determined

(*c*) waarin daadwerklike vervulling sonder 'n alternatiewe eis om betaling van skadevergoeding gevorder word, behalwe in—

(i) die verstrekking van 'n rekening ten opsigte waarvan die vordering nie tweehonderd pond te bowe gaan nie;

(ii) die lewering of oordrag van roerende of onroerende goedere ter waarde van hoogstens tweehonderd pond; en

(iii) die lewering of oordrag van roerende of onroerende goedere ter waarde van meer as tweehonderd pond, in gevalle waar die toestemming van die partye ooreenkomstig artikel *vyf-en-veertig* verkry is;

(*d*) waarin 'n bevel tot ewigdurende stilswye aangevra word.

Teenvordering wat jurisdiksie oorskry.

47. (1) Wanneer die verweerder in antwoord op 'n vordering binne die jurisdiksie, 'n teenvordering instel wat die jurisdiksie oorskry, dan word die vordering nie om die rede afgewys nie; die hof kan egter, indien hy daarvan oortuig is dat die verweerder *prima facie* redelike vooruitsigte het dat 'n vonnis op sy teenvordering wat die jurisdiksie van die hof oorskry ten gunste van hom gevel sal word, die aksie vir 'n redelike termyn skors ten einde hom in staat te stel om 'n aksie in 'n bevoegde hof in te stel. Die eiser in die magistraatshof kan (ondanks sy aksie daarin) 'n teeneis in sodanige bevoegde hof instel, en in daardie geval word alle vrae met betrekking tot die koste in die magistraatshof opgeloop, deur daardie bevoegde hof beslis.

(2) Indien die termyn waarvoor sodanige aksie geskors is, verloop het, en die verweerder in gebreke gebly het om 'n dagvaarding ter sake van sodanige teenvordering in 'n bevoegde hof uit te reik en te dien, dan moet die magistraatshof, op aansoek daartoe, of—

(*a*) die aksie vir 'n verdere redelike termyn skors; of

(*b*) die teenvordering afwys (onverskillig of die verweerder sodanige teenvordering tot 'n bedrag binne die jurisdiksie van die hof verminder al dan nie).

(3) Indien die verweerder in gebreke gebly het om 'n aksie binne sodanige verdere termyn in te stel of indien die deur die verweerder ingestelde aksie geskors, afgewys, teruggetrek of prysgegee word, of indien die bevoegde hof absolusie van die instansie daarop verleen het, dan moet die magistraatshof, op aansoek daartoe, die teenvordering afwys en tot die beslissing van die vordering oorgaan.

Vonnis.

48. Die hof kan, wanneer hy op 'n aksie uitspraak gee—

(*a*) vonnis ten gunste van die eiser vel ten opsigte van sy vordering, vir sover hy dit bewys het;

(*b*) vonnis ten gunste van die verweerder vel ten opsigte van sy verweer, vir sover hy dit bewys het;

(*c*) absolusie van die instansie verleen, wanneer dit aan die hof blyk dat die getuienis hom nie daartoe regverdig om vonnis ten gunste van die een of die ander party te vel nie;

(*d*) so 'n vonnis met betrekking tot die koste vel as wat billik is;

(*e*) onderworpe aan die voorwaardes wat die hof goed ag 'n bevel verleen teen die party ten gunste van wie vonnis gevel is, waarby alle verdere verrigtings ten aansien van die vonnis vir 'n bepaalde termyn geheel of gedeeltelik opgeskort word onderwyl die ander party reëlings vir betaling tref.

Sessie van koste.

49. Geen koste wat in 'n interlokutore proses toegewys is mag sonder die toestemming van die hof wat daardie koste toegewys het, gesedeer word nie.

Oorplasing van aksies van hof na provinsiale of plaaslike afdeling.

50. (1) 'n Aksie waarin die bedrag van die vordering (rente en koste nie bygereken nie) honderd pond te bowe gaan, kan, op aansoek by die hof deur die verweerder of, indien daar meer as een verweerder is, deur enige verweerder gedoen, oorgeplaas word na die bevoegde provinsiale of plaaslike afdeling waar die hof sitting hou, onderworpe aan die volgende bepalings—

(*a*) kennis van die voorneme om so 'n aansoek te doen moet aan die eiser en aan ander verweerders (indien daar is) gegee word voor die datum waarop die aksie vir verhoor op die rol geplaas is;

(*b*) die kennisgewing moet meld dat die applikant daarteen beswaar het dat die aksie deur die hof of deur enige magistraatshof verhoor word;

(*c*) die applikant moet sodanige sekerheid stel as wat die hof bepaal en goedkeur, vir die betaling van die gevorderde bedrag en so 'n verdere bedrag van hoog-

by the court not exceeding one hundred pounds, for costs already incurrred in the action and which may be incurred in the said provincial or local division.

Upon compliance by the applicant with those provisions, all proceedings in the action in the court shall be stayed, and the action and all proceedings therein shall, if the plaintiff so requires, be as to the defendant or defendants, forthwith removed from the court into the provincial or local division aforesaid having jurisdiction. Upon the removal, the summons in the court shall, as to the defendant or defendants, stand as the summons in the division to which the action is removed, the return date thereof being the date of the order of removal in an action other than one founded on a liquid document, and, in an action founded on a liquid document, being such convenient day on which the said division sits for the hearing of provisional sentence cases, as the court may order: Provided that the plaintiff in the action may, instead of requiring the action to be so removed, issue a fresh summons against the defendant or defendants in any competent court and the costs already incurred by the parties to the action shall be costs in the cause.

(2) If the plaintiff is successful in an action so removed to a provincial or local division, he may be awarded costs as between attorney and client.

CHAPTER VII.

WITNESSES AND EVIDENCE.

Modes of procuring attendance of witnesses and penalty for non-attendance.

51. (1) Any party to any civil action or other proceeding where the attendance of witnesses is required may procure the attendance of any witness (whether residing or for the time being within the district or not) in the manner in the rules provided.

(2) (*a*) If any person, being duly subpœnaed to give evidence or to produce any books, papers or documents in his possession or under his control, which the party requiring his attendance desires to show in evidence, fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpœna or, unless duly excused, fails to remain in attendance throughout the trial, the court may, upon being satisfied upon oath or by the return of the messenger that such person has been duly subpœnaed and that his reasonable expenses have been paid or offered to him, impose upon the said person a fine not exceeding twenty-five pounds, and in default of payment, imprisonment for a period notexceeding one month, whether or not such person is ot herwise subject to the jurisdiction of the court.

(*b*) If any person so subpœnaed fails to appear or, unless duly excused, to remain in attendance throughout the trial the court may also, upon being satisfied as aforesaid and in case no lawful excuse for such failure seems to the court to exist, issue a warrant for his apprehension in order that he may be brought up to give his evidence and to be otherwise dealt with according to law, whether or not such person is otherwise subject to the jurisdiction of the court.

(*c*) The court may, on cause shown, remit the whole or any part of any fine or imprisonment which it has imposed under this sub-section.

(*d*) The court may order the costs of any postponement or adjournment occasioned by the default of a witness or any portion of such costs to be paid out of any fine imposed upon such witness.

(3) Notwithstanding anything in this section contained, when a subpoena is issued to procure the attendance of a judicial officer to give evidence or to produce any book, paper or document in a criminal case, civil action or other proceeding, if it appears—

(i) that he is unable to give any evidence or to produce any book, paper or document which would be relevant to any issue in such case, action or proceedings; or

(ii) that such book, paper or document could properly be produced by some other person; or

stens honderd pond, deur die hof vas te stel, ten aansien van koste reeds in die aksie opgeloop en wat in bedoelde provinsiale of plaaslike afdeling opgeloop mag word.

Sodra deur die applikant aan al voormelde bepalings voldoen is, word alle geregtelike verrigtings in die aksie in die hof gestaak, en die aksie en alle verrigtings daarin word, indien die eiser dit verlang, wat die verweerder of verweerders betref, onverwyld uit die hof oorgeplaas na die bevoegde provinsiale of plaaslike afdeling voormeld. Na die oorplasing hou die dagvaarding in die hof, wat die verweerder of verweerders betref, stand as die dagvaarding in die afdeling waarheen die aksie oorgeplaas is, en die verskyningsdag daarvan is die datum van die bevel tot oorplasing in alle aksies behalwe die wat op 'n likwiede dokument gegrond is, en in 'n aksie wat op 'n likwiede dokument gegrond is, is dit so 'n gerieflike dag waarop bedoelde afdeling vir die verhoor van sake vir provisionele vonnis sitting hou, as wat die hof beveel: Met dien verstande dat die eiser in die aksie, in plaas van om oorplasing van die aksie soos voormeld te verlang, 'n nuwe dagvaarding teen die verweerder of verweerders in 'n bevoegde hof kan uitreik, en die koste wat reeds deur die partye in die aksie opgeloop is, koste van die geding is.

(2) Indien die eiser in 'n aksie wat aldus na 'n provinsiale of plaaslike afdeling oorgeplaas is, slaag, kan aan hom koste tussen prokureur en kliënt toegewys word.

HOOFSTUK VII.

Getuies en Bewyslewering.

Wyse waarop verskyning van getuies verkry word en straf op nie-verskyning.

51. (1) Iedere party by 'n siviele aksie of ander proses waarin die verskyning van getuies vereis word, kan die verskyning van 'n getuie (hetsy hy in die distrik woon of tydelik daarin verblyf hou al dan nie) op die in die reëls voorgeskrewe wyse verkry.

(2) (*a*) Wanneer iemand wat behoorlik gedagvaar is om getuienis af te lê of om boeke, geskrifte of dokumente in sy besit of onder sy beheer oor te lê, wat die party wat sy aanwesigheid verlang, as bewysstukke wil toon, sonder wettige verontskuldiging versuim om sy opwagting te maak of om getuienis af te lê of om daardie boeke, geskrifte of dokumente ooreenkomstig die getuiedagvaarding oor te lê of, sonder behoorlik verskoon te wees, versuim om gedurende die hele verhoor aanwesig te bly, dan kan die hof, indien hy op grond van 'n verklaring onder eed of van die relaas van die geregsbode oortuig is dat so iemand behoorlik gedagvaar is en dat sy redelike koste aan hom betaal of aangebied is, so iemand veroordeel tot 'n boete van hoogstens vyf-en-twintig pond, en by wanbetaling, tot gevangenisstraf vir 'n tydperk van hoogstens 'n maand, onverskillig of so iemand origens aan die jurisdiksie van die hof onderworpe is al dan nie.

(*b*) Wanneer iemand wat aldus as getuie gedagvaar is, versuim om sy opwagting te maak of sonder behoorlik verskoon te wees versuim om gedurende die hele verhoor aanwesig te bly, dan kan die hof ook, indien hy oortuig is soos voormeld, en mits daar geen wettige verontskuldiging vir die versuim blyk te wees nie, 'n lasbrief vir sy inhegtenisneming uitreik ten einde hom voor die hof te laat bring om getuienis af te lê en om andersins volgens wet behandel te word, onverskillig of so iemand origens aan die jurisdiksie van die hof onderworpe is al dan nie.

(*c*) Die hof kan, indien gegronde redes aangevoer word, algehele of gedeeltelike kwytskelding verleen van 'n boete of gevangenisstraf wat hy kragtens hierdie artikel opgelê het.

(*d*) Die hof kan beveel dat die koste van 'n uitstel of verdaging wat deur die versuim van 'n getuie veroorsaak is, geheel of ten dele uit 'n boete wat aan die getuie opgelê is, betaal moet word.

(3) Ondanks die bepalings van hierdie artikel, wanneer 'n getuiedagvaarding uitgereik is om die verskyning van 'n regterlike amptenaar te verkry om getuienis af te lê of om 'n boek, geskrif of dokument oor te lê in 'n kriminele saak, siviele geding of ander verrigting, kan die hof, indien dit voorkom—

(i) dat hy nie in staat is om getuienis af te lê of enige boek, geskrif of dokument wat in bedoelde saak, geding of verrigting ter sake sou wees oor te lê nie; of

(ii) dat bedoelde boek, geskrif of dokument regsgeldig deur iemand anders oorgelê kan word; of

(iii) that the compelling of his attendance would be an abuse of the process of the court,

the court may, after reasonable notice to the party suing out the subpœna, make an order cancelling such subpœna.

Interrogatories.

52. (1) Whenever a witness resides or is in a district other than that wherein the case is being heard, the court may, if it appears to be consistent with the ends of justice, upon the application of either party approve of such interrogatories as either party shall desire to have put to such witness and shall transmit the same, together with any further interrogatories framed by the court, to the court of the district within which such witness resides or is.

(2) The last-mentioned court shall thereupon subpœna such witness to appear and upon his appearance shall take his evidence in manner and form as if he were a witness in a case pending before that court, and shall put to the witness the said interrogatories and such other questions as may seem to it necessary to obtain full and true answers to the interrogatories and shall record the evidence of the witness and shall transmit such record to the court in which such case is pending. The said record shall (subject to all lawful objections) be received as evidence in that case.

(3) Every witness so subpœnaed to appear shall be liable to the like penalties in case of non-attendance or failure to give evidence or to produce books, papers or documents as if he had been subpœnaed to give evidence in the court of the district in which he resides or is.

Commissions *de bene esse.*

53. (1) The court may in any case which is pending before it, where it may be expedient and consistent with the ends of justice to do so, appoint a person to be a commissioner to take evidence of any witness, whether within the Union or elsewhere, upon the request of one of the parties to such case and after due notice to the other party.

(2) The person so appointed shall put to such witness such questions as have been transmitted to him on agreement between the parties, or otherwise shall allow the parties to examine such witness, and may himself examine such witness as if the witness were being examined in court, and shall record the evidence or cause it to be recorded, whereupon the evidence taken down shall be read over to the witness and shall be signed by him.

(3) The said record shall (subject to all lawful objections) be received as evidence in the case.

Pre-trial procedure for formulating issues.

54. (1) The court may at any stage in any legal proceedings in its discretion *suo motu* or upon the request in writing of either party direct the parties or their representatives to appear before it in chambers for a conference to consider—

(*a*) the simplification of the issues ;
(*b*) the necessity or desirability of amendments to the pleadings ;
(*c*) the possibility of obtaining admissions of fact and of documents with a view to avoiding unnecessary proof ;
(*d*) the limitation of the number of expert witnesses ;
(*e*) such other matters as may aid in the disposal of the action in the most expeditious and least costly manner.

(2) The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of the parties or their representatives.

(3) Such order shall be binding on the parties unless altered at the trial to prevent manifest injustice.

(4) If a party refuses or neglects to appear at the conference the court may, without derogation from its power to punish for contempt of court, make such order as it considers equitable in the circumstances and upon conclusion of the proceedings may order the party who has so absented himself to pay such costs as in the opinion of the court were incurred as a result of the said absence.

(5) The Court may make such order as to the costs of any proceedings under this section as it deems fit.

(iii) dat dit 'n misbruik van die prosedure van die hof sou wees as hy verplig was om te verskyn,

na redelike kennisgewing aan die party wat die getuiedagvaarding uitgeneem het, 'n order uitvaardig waarby bedoelde dagvaarding ingetrek word.

Verhoor op vraagpunte.

52. (1) Wanneer 'n getuie woon of hom bevind in 'n ander distrik as die waarin die verhoor plaasvind, dan kan die hof, indien die regsbelang volgens sy oordeel daardeur gedien sal wees, op versoek van een van die partye sulke vraagpunte goedkeur as wat enigeen van die partye verlang om aan die getuie te laat stel, en moet vervolgens sodanige vraagpunte, tesame met enige verdere deur die hof gestelde vraagpunte, deurstuur aan die hof van die distrik waarin die betrokke getuie woon of hom bevind.

(2) Laasvermelde hof dagvaar daarop die getuie om voor hom te verskyn en neem by sy verskyning sy getuienis af op dieselfde wyse en in dieselfde vorm asof hy 'n getuie in 'n voor daardie hof aanhangige saak was. Die hof verhoor hom op genoemde vraagpunte en stel aan hom sulke verdere vrae as wat hy nodig ag om volledige en ware antwoorde op die vraagpunte te verkry. Die hof notuleer die getuienis van die getuie, en stuur die notule deur aan die hof waarin die saak hangende is. Sodanige notule word (onderworpe aan alle wettige besware) as getuienis in daardie saak aangeneem.

(3) Elke getuie wat aldus gedagvaar is om te verskyn, is weens nie-verskyning of versuim om getuienis af te lê of om boeke, geskrifte of dokumente oor te lê, aan dieselfde strawwe onderhewig asof hy gedagvaar was om getuienis af te lê in die hof van die distrik waarin hy woon of hom bevind.

Rogatore kommissies.

53. (1) Die hof kan in enige daarin hangende saak, wanneer dit dienstig is en die regsbelang daardeur gedien sal wees, iemand as kommissaris aanstel om, op daartoe strekkende versoek van een van die partye by so 'n saak, en na behoorlike kennisgewing aan die ander party, die getuienis van een of ander getuie, hetsy in die Unie of elders, af te neem.

(2) Die aldus aangestelde kommissaris stel aan so 'n getuie sulke vrae as wat volgens onderlinge ooreenkoms van partye aan hom deurgestuur is, of laat anders die partye toe om die getuie te ondervra, en kan self die getuie ondervra asof die ondervraging van die getuie in 'n hof plaasgevind het. Hy notuleer die getuienis of laat dit notuleer, en die aldus genotuleerde getuienis word daarna aan die getuie oorgelees en deur hom onderteken.

(3) Sodanige notule word, behoudens alle wettige besware, as getuienis in die saak aangeneem.

Voorlopige verhoorprosedure vir formulering van geskilpunte.

54. (1) Op enige stadium in enige geregtelike verrigtings kan die hof, volgens goeddunke en òf uit eie beweging òf op die skriftelike versoek van 'n party daarby, die partye of hul verteenwoordigers gelas om voor die hof in kamers te verskyn vir 'n onderhoud ter oorweging van die volgende—

(*a*) die vereenvoudiging van die geskilpunte;
(*b*) die noodsaaklikheid of wenslikheid daarvan om die pleitstukke te wysig;
(*c*) die moontlikheid om erkennings van feite en van skriftelike stukke te verkry met die oog op die vermyding van onnodige bewyse;
(*d*) die beperking van die aantal deskundige getuies;
(*e*) alle ander sake wat tot die afhandeling van die aksie op die spoedigste en goedkoopste wyse kan bydra.

(2) Die hof vaardig 'n bevel uit waarin die stappe wat by die onderhoud gedoen is, die wysigings van die pleitstukke wat toegelaat is en die ooreenkomste waartoe die partye met betrekking tot een of meer van die oorwoë sake geraak het, vermeld word, en waarby die geskilpunte by die verhoor tot die wat nie deur erkenning of ooreenkoms van die partye of hul verteenwoordigers besleg is nie, beperk word.

(3) So 'n bevel bind die partye tensy dit by die verhoor gewysig word ten einde 'n klaarblyklike onreg te voorkom.

(4) Indien 'n party weier of versuim om by die onderhoud aanwesig te wees, kan die hof sonder om afbreuk te doen aan sy reg van bestraffing weens minagting van die hof, so 'n bevel uitvaardig as wat hy in die omstandighede billik ag, en kan na afloop van die geding die party wat aldus afwesig was beveel om sodanige koste te betaal as wat volgens oordeel van die hof, as gevolg van sodanige afwesigheid opgeloop is.

(5) Die hof kan ten aansien van die koste van enige verrigtings ingevolge hierdie artikel, sodanige bevel gee as wat hy goeddink.

CHAPTER VIII.

RECOVERY OF SMALL DEBTS.

Recovery of small debts.

55. (1) An individual (natural person) who claims to have a right of action against any other person not based on cession, for a sum not exceeding ten pounds for or in respect of goods sold and delivered, money lent, work or labour done, or rent due or in respect of any unconditional acknowledgment of debt, a dishonoured cheque, or a promissory note, may personally produce to the clerk of the court a summons as in the rules provided, and the clerk shall enter the particulars of such summons in the civil record book and shall sign and issue such summons: Provided that no such summons shall be issued until there has been lodged with the said clerk a copy of a demand in writing previously sent by the plaintiff to the defendant, in terms of which the defendant was allowed at least seven days within which to comply with such demand.

(2) Where the clerk of the court is satisfied that the individual claiming the right is unable to attend in person he may, at his discretion, permit a close relative or other person whom he considers the natural representative of the plaintiff and who is authorized thereto in writing by the plaintiff and who appears as such without remuneration therefor, to act for such plaintiff.

Where no appearance is entered.

56. When any defendant having been duly served with a summons under section *fifty-five* fails to enter appearance to defend within the time prescribed by the rules, or consents to judgment, the clerk of the court shall, on the application of plaintiff, enter judgment in his favour.

Where appearance is entered.

57. (1) If appearance is entered by the defendant within the period prescribed by the rules, the clerk of the court shall make an entry thereof in the civil record book and shall appoint a day for the hearing of the claim.

(2) The Court may at its discretion permit a close relative or other person whom it considers the natural representative of either of the parties and who is authorized thereto in writing by such party, and who appears as such without remuneration therefor, to appear for such party.

No further pleadings necessary.

58. No further pleadings shall be required of the parties but the defendant may at any time before the hearing lodge with the clerk of the court a written statement setting forth the nature of his defence and particulars of the grounds on which it is based, and a copy of such statement shall be furnished to the plaintiff by the defendant.

Costs.

59. (1) An award of costs in any proceedings under this Chapter may include—

(*a*) court fees;
(*b*) an amount not exceeding two shillings in respect of the issue of summons and of each other process considered by the court to have been essential;
(*c*) an amount not exceeding ten shillings per day in respect of each necessary witness;
(*d*) the travelling expenses of such witness; and
(*e*) messenger's fees and travelling expenses.

(2) No costs shall be allowed in respect of fees payable to legal practitioners for their services in proceedings under this Chapter: Provided that if the court is satisfied that it was desirable that a party should be so represented, it may allow such costs on the ordinary scale.

Procedure not compulsory.

60. No person shall be obliged to take action in terms of this Chapter but may proceed as otherwise provided in this Act.

CHAPTER IX.

EXECUTION.

Definition.

61. In this Chapter—

"emoluments" includes—

(i) salary, wages or any other form of remuneration; and

(ii) any allowances,

whether expressed in money or not; and

"debts" includes any income from whatever source other than emoluments.

HOOFSTUK VIII.

INVORDERING VAN KLEIN SKULDE.

Invordering van klein skulde.

55. (1) 'n Indiwidu (natuurlike persoon) wat aanspraak maak op 'n vorderingsreg (wat nie op 'n sessie berus nie) teen iemand anders vir 'n bedrag van hoogstens tien pond vir of ten opsigte van verkoopte en gelewerde goedere, geleende geld, verrigte werk of arbeid of verskuldigde huurgeld of ten opsigte van enige onvoorwaardelike erkenning van skuld 'n onteerde tjek of 'n promesse, kan persoonlik aan die klerk van die hof 'n dagvaarding soos in die reëls bepaal, oorlê, en die klerk teken die besonderhede van so 'n dagvaarding in die register van siviele sake aan, en onderteken die dagvaarding en reik dit uit: Met dien verstande dat geen sodanige dagvaarding uitgereik mag word nie tensy daar by genoemde klerk 'n afskrif van 'n skriftelike aanmaning ingedien is wat voorraf deur die eiser aan die verweerder gestuur is, en luidens welke aan die verweerder minstens sewe dae gegee is om aan die aanmaning te voldoen.

(2) Indien die klerk van die hof oortuig is dat die indiwidu wat op die vorderingsreg aanspraak maak, nie in staat is om sy opwagting in eie persoon te maak nie, kan hy volgens goeddunke toelaat dat 'n nouverwante familiebetrekking of ander persoon wat hy as die natuurlike verteenwoordiger van die eiser beskou en wat deur die eiser daartoe skriftelik gemagtig is, en wat as sodanig sonder vergoeding verskyn, namens sodanige eiser optree.

Wanneer geen verskyning tot verdediging aangeteken word nie.

56. Wanneer 'n verweerder, nadat 'n dagvaarding ingevolge artikel *vyf-en-vyftig* behoorlik op hom gedien is, versuim om binne die deur die reëls voorgeskrewe tydperk verskyning tot verdediging aan te teken, of toestemming tot vonnis verleen, dan moet die klerk van die hof, op aansoek van die eiser, in sy guns vonnis aanteken.

Waar verskyning tot verdediging aangeteken word.

57. (1) Indien die verweerder binne die by die reëls voorgeskrewe tydperk verskyning tot verdediging aanteken, dan maak die klerk van die hof 'n aantekening daarvan in die register van siviele sake, en stel hy 'n dag vas vir die verhoor van die vordering.

(2) Die hof kan volgens goeddunke toelaat dat 'n nouverwante familiebetrekking of ander persoon wat hy as die natuurlike verteenwoordiger van die een of die ander party beskou, en wat deur bedoelde party daartoe skriftelik gemagtig is, en wat as sodanig sonder vergoeding verskyn, namens sodanige party optree.

Geen verdere pleitstukke nodig nie.

58. Geen verdere pleitstukke word van die partye verlang nie, dog die verweerder kan te eniger tyd voor die verhoor by die klerk van die hof 'n skriftelike verklaring indien waarin die aard van sy verweer en besonderhede van die gronde waarop dit steun, vermeld word, en 'n afskrif van sodanige verklaring moet deur die verweerder aan die eiser verstrek word.

Koste.

59. (1) 'n Toewysing van koste in 'n geding ingevolge hierdie Hoofstuk, kan die volgende insluit—

(*a*) hofgelde;

(*b*) 'n bedrag van hoogstens twee sjielings ten opsigte van die uitreiking van die dagvaarding en van elke ander prosesstuk wat volgens oordeel van die hof noodsaaklik was;

(*c*) 'n bedrag van hoogstens tien sjielings per dag ten opsigte van elke noodsaaklike getuie;

(*d*) die reiskoste van so 'n getuie; en

(*e*) die gelde en reiskoste van die geregsbode.

(2) Geen koste word ten opsigte van gelde aan regspraktisyns betaalbaar vir hul dienste in verrigtings ingevolge hierdie Hoofstuk toegestaan nie: Met dien verstande dat as die hof oortuig is dat dit wenslik was dat 'n party aldus verteenwoordig moes wees, hy sodanige koste teen die gewone tarief kan toestaan.

Prosedure nie verpligtend nie.

60. Niemand is verplig om volgens voorskrif van hierdie Hoofstuk op te tree nie, maar kan optree soos elders in hierdie Wet bepaal.

HOOFSTUK IX.

TENUITVOERLEGGING.

Woordbepaling.

61. In hierdie Hoofstuk omvat—

„besoldiging"—

(i) salaris, arbeidsloon, en enige ander vorm van besoldiging; en

(ii) alle toelaes,

hetsy in geld uitgedruk al dan nie; en

„skuld" enige inkomste van watter bron ook al behalwe besoldiging.

Power to grant or set aside a warrant.

62. (1) Any court which has jurisdiction to try an action shall have jurisdiction to issue against any party thereto any form of process in execution of its judgment in such action.

(2) A court (in this sub-section called a second court), other than the court which gave judgment in an action, shall have jurisdiction on good cause shown to stay any warrant of execution or arrest issued by another court against a party who is subject to the jurisdiction of the second court.

(3) Any court may, on good cause shown, stay or set aside any warrant of execution or arrest issued by itself, including an order under section *seventy-two*.

Execution to be issued within three years.

63. Execution against property may not be issued upon a judgment after three years from the day on which it was pronounced or on which the last payment in respect thereof was made, except upon an order of the court in which judgment was pronounced or of any court having jurisdiction, in respect of the judgment debtor, on the application and at the expense of the judgment creditor, after due notice to the judgment debtor to show cause why execution should not be issued.

Execution in case of judgment debt ceded.

64. Any person who has, either by cession or by operation of law, become entitled to the benefit of a judgment debt may, after notice to the judgment creditor, and the judgment debtor, be substituted on the record for the judgment creditor and may obtain execution in the manner provided for judgment creditors.

Enquiry into financial position of debtor.

65. (1) (*a*) If a court has given judgment for the payment of money ; and

(*b*) if such judgment has remained unsatisfied for a period of ten days from the date on which it was given, or from the expiration of the period of suspension ordered under paragraph (*e*) of section *forty-eight* as the case may be ; and

(*c*) if the judgment creditor upon application to the court of the district where the judgment debtor resides, carries on business or is employed, after at least seven days' notice to such debtor, *prima facie* establishes that satisfaction of the judgment cannot be obtained by execution against the movable property of the judgment debtor, and that the judgment debtor has not made a reasonable offer to liquidate the debt in instalments or otherwise,

then such court may issue a notice calling upon the judgment debtor to appear before that court in chambers for the purpose of enquiry into his financial position.

(2) (*a*) Such notice shall be signed by the clerk of the court specifying a date fixed by him for the holding of the enquiry ;

(*b*) the notice shall be addressed to the judgment debtor giving him at least seven days notice of such enquiry and shall require the judgment debtor to produce at the enquiry a statement—

(i) of his assets and liabilities ;

(ii) of his monthly or weekly income and expenses, supported by documentary evidence, and if he is in receipt of emoluments, including a statement by his employer giving full particulars of such emoluments ; and

(iii) any book of account or other document in his possession or custody or under his control, specified in such notice.

(3) The notice shall be served on the debtor personally by the messenger, but if personal service is impracticable, the messenger shall report such fact to the judgment creditor who may apply to the court in chambers for directions as to service in some other manner.

(4) (*a*) On receipt of such notice but before the date fixed for the enquiry, the judgment debtor may produce to the judgment creditor the documents referred to in paragraph (*b*) of sub-section (2) and make a written offer to liquidate the debt in instalments or otherwise. A copy of such written offer shall forthwith be filed by the judgment debtor with the clerk of the court and the judgment creditor shall inform the said clerk

62. (1) 'n Hof wat bevoeg is om van 'n aksie kennis te neem, is bevoeg om enige prosesstuk vir die tenuitvoerlegging van die vonnis in daardie aksie gevel, teen enige party daarin uit te reik.

Bevoegdheid om lasbrief uit te reik of ter syde te stel.

(2) 'n Ander hof as dié wat in 'n aksie vonnis gevel het (in hierdie sub-artikel 'n tweede hof genoem), is bevoeg om, mits gegronde redes aangevoer word, 'n lasbrief vir eksekusie of arres deur 'n ander hof uitgereik teen 'n party wat aan die jurisdiksie van die tweede hof onderworpe is, op te skort.

(3) 'n Hof kan, indien gegronde redes aangevoer word, 'n lasbrief vir eksekusie of arres deur homself uitgereik, opskort of ter syde stel, met inbegrip van 'n bevel kragtens artikel *twee-en-sewentig*.

63. Tenuitvoerlegging teen goedere kan nie uit hoofde van 'n vonnis geskied na verloop van drie jaar vanaf die datum waarop dit gevel is of waarop die laaste paaiement ten opsigte daarvan gemaak is nie, behalwe uit hoofde van 'n bevel van die hof waarin vonnis gevel is of van 'n hof wat jurisdiksie ten opsigte van die vonnisskuldenaar het, verleen op aansoek en op koste van die vonnisskuldeiser, nadat die vonnisskuldenaar behoorlike kennis gegee is om redes aan te voer waarom tenuitvoerlegging nie moet geskied nie.

Tenuitvoerlegging moet binne drie jaar geskied.

64. Iemand wat òf deur sessie òf regtens op die voordeel van 'n vonnisskuld geregtig geword het, kan, na kennisgewing aan die vonnisskuldeiser en die vonnisskuldenaar, op die rol in die plek van die vonnisskuldeiser gestel word, en kan 'n lasbrief vir eksekusie op die vir vonnisskuldeisers bepaalde wyse verkry.

Tenuitvoerlegging in geval van gesedeerde vonnisskuld.

65. (1) (*a*) Indien 'n hof vonnis gevel het vir die betaling van geld; en

(*b*) indien bedoelde vonnis onvoldaan gebly het vir 'n tydperk van tien dae vanaf die datum waarop dit gevel is, of vanaf die verstryking van die tydperk van opskorting ingevolge paragraaf (*e*) van artikel *agt-en-veertig* gelas, na gelang van die geval; en

(*c*) indien die vonnisskuldeiser by aansoek aan die hof van die distrik waar die vonnisskuldenaar woon, besigheid dryf of in diensbetrekking is, na minstens sewe dae kennis aan bedoelde skuldenaar, dit *prima facie* vasstel dat aan die vonnisskuld nie voldoen kan word deur eksekusie teen die roerende goedere van die vonnisskuldenaar nie, en dat die vonnisskuldenaar geen redelike aanbod gemaak het om die skuld in paaiemente of andersins te vereffen nie—

dan kan bedoelde hof 'n kennisgewing uitreik waarby die vonnisskuldenaar aangesê word om voor die hof waaruit die kennisgewing uitgereik is, in kamers te verskyn vir die doeleindes van 'n ondersoek na sy finansiële toestand.

Ondersoek insake finansiële toestand van skuldenaar.

(2) (*a*) So 'n kennisgewing word deur die klerk van die hof onderteken en gee 'n deur hom vasgestelde dag vir die hou van die ondersoek aan.

(*b*) Die kennisgewing word aan die vonnisskuldenaar gerig, en moet hom minstens sewe dae kennis van bedoelde ondersoek gee, en bevat tewens 'n bevel aan die vonnisskuldenaar om by die ondersoek 'n staat oor te lê—

(i) van sy bate en laste;

(ii) van sy maandelikse of weeklikse inkomste en uitgawes, gestaaf deur dokumentêre bewyse, en indien hy besoldiging ontvang, bevattende tewens 'n verklaring deur sy werkgewer waarin volledige besonderhede omtrent sodanige besoldiging verstrek word; en

(iii) enige rekeningboek of geskrif in sy besit of bewaring of onder sy beheer, wat in bedoelde kennisgewing bepaal word.

(3) Die kennisgewing word op die skuldenaar persoonlik deur die geregsbode gedien; ingeval persoonlike diening egter ondoenlik is, moet die bode die vonnisskuldeiser daarvan verwittig, en laasgenoemde kan dan by die hof in kamers aansoek doen om opdrag met betrekking tot diening op 'n ander wyse.

(4) (*a*) Nadat hy so 'n kennisgewing ontvang het, maar voor die datum vir die ondersoek bepaal, kan die vonnisskuldenaar die in paragraaf (*b*) van sub-artikel (2) bedoelde dokumente aan die vonnisskuldeiser oorlê en 'n skriftelike aanbod maak om die skuld in paaiemente of andersins te vereffen. 'n Afskrif van sodanige skriftelike aanbod word onverwyld deur die vonnisskuldenaar by die klerk van die hof ingedien, en die vonnisskuldeiser moet aan genoemde klerk

whether he accepts or declines the offer. If any offer is accepted the clerk of the court shall notify the judgment debtor that the enquiry has been postponed *sine die*, and that the judgment debtor need not appear in court on the specified date.

(*b*) If the debtor fails to carry out the terms of an offer which has been accepted by the judgment creditor under paragraph (*a*), the clerk of the court shall upon application by the judgment creditor, re-issue such notice.

(*c*) On payment of the judgment debt and costs in full, the judgment creditor shall notify the clerk of the court and the notice shall thereupon be deemed to have been withdrawn.

(5) Such notice shall be deemed to be an order for the purposes of section *one hundred and six*.

(6) On the appearance of the judgment debtor at the enquiry the court in chambers shall at the request of the judgment creditor or *suo motu* call on the judgment debtor to give evidence on oath as to his financial position and to produce the documents referred to in sub-section (2) which shall be admissible in evidence, and shall permit the examination or cross-examination of such judgment debtor on all matters affecting his failure to pay the judgment debt, and the court shall hear such further evidence as may be called either by the judgment debtor or the judgment creditor which is material to the judgment debtor's financial position.

(7) The court may, after having heard the evidence adduced—

(*a*) authorize the issue of a warrant of execution against the movable or immovable property of the debtor or such portion thereof as the court deems fit;

(*b*) make an order in terms of section *seventy-two*;

(*c*) authorize the issue of such warrant coupled with an order under section *seventy-three*;

(*d*) make an order in terms of section *seventy-four*;

(*e*) make such order as to costs as may be just.

(8) An employer who fails to furnish an employee with a written statement containing full particulars of such employee's emoluments at the request of such employee, or who knowingly or negligently furnishes incorrect particulars, shall be guilty of an offence and liable to a fine not exceeding twenty-five pounds.

Manner of execution.

66. (1) Whenever a court gives judgment for the payment of money the amount shall be recoverable, in case of failure to pay the same forthwith or at the time or times and in the manner ordered by the court, by execution against the movable property and, if there be not found sufficient movable property to satisfy the judgment, then against the immovable property of the party against whom such judgment has been given.

(2) No immovable property which is subject to any claim preferent to that of the judgment creditor shall be sold in execution unless—

(*a*) the judgment creditor has caused such notice in writing of the intended sale in execution to be served personally upon the preferent creditor as may be prescribed by the rules; or

(*b*) the magistrate or an additional or assistant magistrate of the district in which the property is situate has, upon the application of the judgment creditor and after enquiry into the circumstances of the case, directed what steps shall be taken to bring the intended sale to the notice of the preferent creditor, and those steps have been carried out,

and unless

(*c*) the proceeds of the sale are sufficient to satisfy the claim of such preferent creditor, in full; or

(*d*) the preferent creditor confirms the sale in writing, in which event he shall be deemed to have agreed to accept such proceeds in full settlement of his claim.

(3) A sale in execution of such immovable property as is referred to in sub-section (2) shall take place within such period of the date of attachment and in such manner as may be provided by the rules.

meedeel of hy die aanbod aanvaar of afwys. Word so 'n aanbod aanvaar, dan gee die klerk van die hof die vonnisskuldenaar kennis dat die ondersoek *sine die* uitgestel is, en dat dit nie vir die vonnisskuldenaar nodig is om op die vasgestelde dag in die hof te verskyn nie.

(*b*) Ingeval die skuldenaar versuim om die voorwaardes van 'n aanbod wat ingevolge paragraaf (*a*) deur die vonnisskuldeiser aanvaar is, na te kom, moet die klerk van die hof bedoelde kennisgewing op versoek van die vonnisskuldeiser weer uitreik.

(*c*) Wanneer die vonnisskuld en die koste ten volle vereffen is, moet die vonnisskuldeiser die klerk van die hof daarvan in kennis stel, en die kennisgewing word vervolgens geag teruggetrek te gewees het.

(5) Sodanige kennisgewing word geag te wees 'n order vir die doeleindes van artikel *honderd-en-ses*.

(6) Wanneer die skuldenaar sy verskyning by die ondersoek maak, moet die hof in kamers op versoek van die vonnisskuldeiser of uit eie beweging, die vonnisskuldenaar oproep om getuienis onder eed aangaande sy finansiële toestand af te lê, en om die in sub-artikel (2) bedoelde dokumente wat as bewys toelaatbaar is, oor te lê. Die hof veroorloof die verhoor of kruisverhoor van die vonnisskuldenaar ten aansien van alle aangeleenthede wat betrekking het op sy versuim om die vonnisskuld te vereffen, en ontvang sodanige verdere getuienis, deur òf die vonnisskuldenaar òf die vonnisskuldeiser aangevoer wat by die vasstelling van die vonnisskuldenaar se finansiële toestand van belang is.

(7) Die hof kan, nadat hy die aangevoerde getuienis ontvang het—

(*a*) magtiging verleen vir die uitreiking van 'n lasbrief vir eksekusie teen die roerende of onroerende goed van die skuldenaar, of sodanige gedeelte daarvan as wat die hof goed dink;

(*b*) 'n order ooreenkomstig artikel *twee-en-sewentig* verleen;

(*c*) magtiging verleen vir die uitreiking van so 'n lasbrief, gepaard met 'n bevel kragtens artikel *drie-en-sewentig*;

(*d*) 'n bevel ooreenkomstig artikel *vier-en-sewentig* verleen;

(*e*) so 'n vonnis met betrekking tot die koste vel as wat billik is.

(8) 'n Werkgewer wat versuim om aan 'n werknemer, op laasgenoemde se versoek, 'n skriftelike verklaring te verstrek wat volledige besonderhede omtrent daardie werknemer se besoldiging bevat, of wat opsetlik of deur nalatigheid onjuiste besonderhede verstrek, is aan 'n misdryf skuldig en strafbaar met 'n boete van hoogstens vyf-en-twintig pond.

Wyse van tenuitvoerlegging.

66. (1) Wanneer 'n hof vir die betaling van geld vonnis vel, dan kan die bedrag, ingeval van nie-betaling daarvan, hetsy onverwyld hetsy op die tyd of tye en op die wyse deur die hof bepaal by eksekusie verhaal word teen die roerende goedere, en ingeval die roerende goedere nie toereikend is om aan die vonnis te voldoen nie, teen die onroerende goed van die party teen wie die vonnis gevel is.

(2) Geen onroerende goed wat onderworpe is aan 'n vordering wat voorrang het bo die van die vonnisskuldeiser, mag in eksekusie verkoop word nie tensy—

(*a*) die vonnisskuldeiser die deur die reëls voorgeskrewe skriftelike kennisgewing van die voorgenome verkoop in eksekusie op die preferente skuldeiser persoonlik laat dien het; of

(*b*) die magistraat of 'n addisionele of 'n assistent-magistraat van die distrik waarin die goed geleë is, op aansoek van die vonnisskuldeiser en nadat hy die omstandighede van die geval ondersoek het, beveel het watter stappe gedoen moet word ten einde die voorgenome verkoop onder die aandag van die preferente skuldeiser te bring, en daardie stappe gedoen is,

en tensy

(*c*) die opbrings van die verkoop genoeg is om bedoelde preferente skuldeiser se eis ten volle te vereffen; of

(*d*) die preferente skuldeiser die verkoop skriftelik bekragtig, in watter geval hy geag word in te gewillig het om sodanige opbrings as volle betaling van sy eis aan te neem.

(3) 'n Verkoop in eksekusie van in sub-artikel (2) bedoelde onroerende goed moet plaasvind binne die tydperk na datum van inbeslagneming en op die wyse wat deur die reëls voorgeskryf mag wees.

Property exempt from execution.

67. In respect of any process of execution issued out of any court the following property shall be protected from seizure and shall not be attached or sold, namely:

(*a*) the necessary beds, bedding and wearing apparel of the execution debtor and of his family;

(*b*) the necessary furniture (other than beds) and household utensils in so far as they do not exceed in value the sum of fifty pounds;

(*c*) stock, tools and agricultural implements of a farmer in so far as they do not exceed in value the sum of fifty pounds;

(*d*) the supply of food and drink in the house sufficient for the needs of such debtor and of his family during one month;

(*e*) tools and implements of trade, in so far as they do not exceed in value the sum of fifty pounds;

(*f*) professional books, documents or instruments necessarily used by such debtor in his profession, in so far as they do not exceed in value the sum of fifty pounds;

(*g*) such arms and ammunition as such debtor is required by law, regulation or disciplinary order to have in his possession as part of his equipment:

Provided that the court shall have a discretion in exceptional circumstances and on such conditions as it may determine to increase the sums referred to in paragraphs (*b*), (*c*), (*d*), (*e*) and (*f*) to the extent of not more than twice such sums.

Property executable.

68. (1) The messenger executing any process of execution against movable property may, by virtue of such process, also seize and take any money or bank notes, and may seize, take and sell in execution cheques, bills of exchange, promissory notes, bonds, or securities for money belonging to the execution debtor.

(2) The messenger may also hold any cheques, bills of exchange, promissory notes, bonds or securities for money which have been seized or taken, as security for the benefit of the execution creditor for the lamount directed to be levied by the execution so far as it is stil unsatisfied; and the execution creditor may, when the time of payment has arrived, sue in the name of the execution debtor, or in the name of any person in whose name the execution debtor might have sued, for the recovery of the sum secured or made payable thereby.

(3) The messenger may also under any process of execution against movable property attach and sell in execution the interest of the execution debtor in any movable property belonging to him and pledged or sold under a suspensive condition to a third person, and may also sell the interest of the execution debtor in property movable or immovable leased to the execution debtor or sold to him under any hire purchase contract or under a suspensive condition.

(4) Whenever, if the sale had not been in execution, it would have been necessary for the execution debtor to endorse a document or to execute a cession in order to pass the property to a purchaser, the messenger may so endorse the document or execute the cession, as to any property sold by him in execution.

(5) The messenger may also, as to immovable property sold by him in execution, do anything necessary to effect registration of transfer. Anything done by the messenger under this sub-section or sub-section (4) shall be as valid and effectual as if he were the execution debtor.

(6) Where judgment is given against a member of a partnership or syndicate in an action in which he individually was plaintiff or defendant, his interest in the partnership or syndicate may be attached and sold in execution.

Interpleader claims.

69. (1) (*a*) Where any person, not being the judgment debtor makes any claim to or in respect of any property attached or about to be attached in execution under the process of any court, or to the proceeds of such property sold in execution, his claim shall be adjudicated upon after issue of a summons in the manner provided by the rules.

(*b*) Upon the issue of such summons any action which may have been brought in any court whatsoever in respect of such property shall be stayed and shall abide the result of the proceedings taken upon such summons.

(2) Where two or more persons make adverse claims to any property in the custody or possession of a third party such claims shall be adjudicated upon after issue of a summons in the manner provided by the rules.

67. Die volgende goedere mag nie ingevolge 'n lasbrief vir eksekusie, uit enige hof uitgereik, in beslag geneem of verkoop word nie, naamlik— Goedere wat nie vir eksekusie vatbaar is nie.

(*a*) die nodige beddens, beddegoed en klere van die eksekusieskuldenaar en van sy huisgesin ;

(*b*) die nodige meubels (behalwe beddens) en huisgereedskap ter waarde van hoogstens vyftig pond ;

(*c*) lewende hawe, gereedskap en landbougereedskap van 'n boer, ter waarde van hoogstens vyftig pond ;

(*d*) 'n hoeveelheid voedsel en drank in die huis wat voldoende is om in die behoeftes van sodanige skuldenaar en van sy huisgesin gedurende een maand te voorsien ;

(*e*) ambagsgereedskap en -werktuie ter waarde van hoogstens vyftig pond ;

(*f*) professionele boeke, dokumente of instrumente deur die betrokke skuldenaar noodsaaklikerwys in sy beroep gebruik, ter waarde van hoogstens vyftig pond ;

(*g*) sodanige wapens en ammunisie as wat die betrokke skuldenaar volgens wet, regulasie of dissiplinêre bevel, as deel van sy uitrusting in sy besit moet hê :

Met dien verstande dat die hof volgens goeddunke en op sulke voorwaardes as wat hy mag bepaal die in paragrawe (*b*), (*c*), (*d*), (*e*) en (*f*) vermelde bedrae in buitengewone omstandighede tot hoogstens tweemaal daardie bedrae kan verhoog.

68. (1) Die geregsbode wat 'n lasbrief vir eksekusie teen roerende goedere ten uitvoer lê, kan, ingevolge so 'n lasbrief, ook op geld of banknote beslag lê en kan tjeks, wissels, promesses, obligasies of sekuriteite vir geld wat aan die eksekusieskuldenaar behoort, in beslag neem en verkoop. Goedere vatbaar vir beslaggegging.

(2) Die bode kan eweneens inbeslaggenome tjeks, wissels, promesses, obligasies of sekuriteite vir geld, ten bate van die eksekusieskuldeiser as sekerheid hou vir die by eksekusie te verhale bedrag, vir sover bedoelde bedrag nog onvoldaan is. Die eksekusieskuldeiser kan, wanneer die tyd vir betaling aanbreek, in naam van die eksekusieskuldenaar, of in naam van enigeen in wie se naam die eksekusieskuldenaar sou kon gedagvaar het, dagvaar tot verhaal van die daarby versekerde of betaalbaar gestelde bedrag.

(3) Die bode kan eweneens, uit kragte van 'n lasbrief vir eksekusie teen roerende goedere, die belang van die eksekusieskuldenaar in roerende goedere wat aan hom behoort en wat aan 'n derde persoon verpand of onder opskortende voorwaarde verkoop is, in beslag neem en in eksekusie verkoop, en kan ook die belang van die vonnisskuldenaar in roerende of onroerende goedere wat aan die eksekusieskuldenaar verhuur is of onder 'n huurkoopkontrak of 'n opskortende voorwaarde aan hom verkoop is, verkoop.

(4) So dikwels dit vir die eksekusieskuldenaar nodig sou gewees het om, as die verkoop nie 'n eksekutoriale verkoop was nie, 'n dokument te endosseer of 'n sessie te gee ten einde die eiendom aan 'n koper oor te dra, kan die geregsbode ten aansien van enige deur hom in eksekusie verkoopte goedere, die dokument aldus endosseer of die sessie gee.

(5) Die geregsbode kan eweneens, ten aansien van onroerende goed deur hom in eksekusie verkoop, alles doen wat nodig is om die registrasie van transport te bewerkstellig. 'n Handeling deur die bode ingevolge hierdie sub-artikel of sub-artikel (4) verrig, is ewe geldig en bindend asof hy die eksekusieskuldenaar was.

(6) Wanneer daar teen 'n lid van 'n vennootskap of sindikaat vonnis gevel word in 'n aksie waarin hy afsonderlik eiser of verweerder was, dan kan sy belang in die vennootskap of sindikaat in beslag geneem en in eksekusie verkoop word.

69. (1) (*a*) Wanneer iemand anders as die vonnisskuldenaar op of ten aansien van goedere wat uit kragte van 'n lasbrief van enige hof in beslag geneem is of gaan word, of op die opbrengs van sodanige in eksekusie verkoopte goedere aanspraak maak dan word sodanige aanspraak of eise beslis na die uitreiking van 'n dagvaarding op die deur die reëls voorgeskrewe wyse. Tussenpleitvorderings.

(*b*) Wanneer so 'n dagvaarding uitgereik is word alle aksies wat in watter hof ook al ter sake van sodanige goedere ingestel is, gestaak, en staan dan oor hangende die uitslag van die verrigtings waartoe bedoelde dagvaarding gelei het.

(2) Wanneer twee of meer persone strydige eise maak op goedere wat in die bewaring of die besit van 'n derde is, word sodanige eise beslis na die uitreiking van 'n dagvaarding op die deur die reëls voorgeskrewe wyse.

Sale in execution gives good title.

70. A sale in execution by the messenger shall not, in the case of movable property after delivery thereof or in the case of immovable property after registration of transfer, be liable to be impeached as against a purchaser in good faith and without notice of any defect.

Surplus after execution.

71. If, after a sale in execution, there remains any surplus in the hands of the messenger, it shall be liable to attachment for any other unsatisfied judgment debt.

Debts and emoluments may be attached.

72. (1) The court may on application by a judgment creditor, or under paragraph (*b*) of sub-section (7) of section *sixty-five*, order the attachment of any debt or emoluments at present or in future owing or accruing to a judgment debtor by or from any other person (including the State in respect of emoluments only), residing, carrying on business or employed within the district to the amount necessary to satisfy the judgment and the costs of the proceedings for attachment, whether such judgment has been obtained in such court or in any other magistrate's court, and may order such other person (hereinafter called the " garnishee ") to pay to the messenger of the court so much of the debt or emoluments, as may be sufficient to satisfy the said judgment and costs, and may enforce the order as if it were a judgment of the court.

(2) No such order in respect of any debt or emoluments shall be granted upon the consent alone of the judgment debtor but the court shall satisfy itself by examination of the judgment debtor or upon other sworn information that sufficient means will, after satisfaction of the order, be left to the judgment debtor to maintain himself and those dependent on him.

(3) Such an order may require the garnishee to pay periodically to the messenger definite amounts out of the emoluments of the judgment debtor.

(4) The judgment debtor shall be notified of the day of the hearing of an application for such an order in respect of debt or emoluments and may be called upon *mutatis mutandis* in the manner provided for in sub-sections (2) to (8) inclusive of section *sixty-five*, to appear for enquiry into his circumstances and general financial position.

(5) If, after any such order in respect of any debt or emoluments has been granted, it is shown to the satisfaction of the court that sufficient means to maintain himself, and those dependent upon him will not, after satisfaction of the order, be left to the judgment debtor, the court shall set aside the order or vary it in such manner that it will affect only the balance of the debt or emoluments over and above such sufficient means.

(6) An order under this section may at any time and for good cause be suspended, varied or rescinded by the court.

(7) The court may, if it appears that there are unsatisfied claims owing to other creditors, postpone the application to enable the judgment debtor to make application for an administration order under section *seventy-four*.

(8) Where a judgment debtor affected by an order leaves the employment of a garnishee before the judgment debt is fully satisfied the judgment creditor may cause a certified copy of the order to be served upon any new employer of the judgment debtor, together with a copy of an affidavit sworn to by him specifying the payments received since the grant and issue of the order, whereupon such order shall be binding upon the employer so served, who shall then be substituted for the original garnishee, subject however to the right of the judgment debtor, the garnishee, or other interested party to challenge the existence or validity of the order and the correctness or accuracy of the balance claimed. If the judgment debtor has obtained employment in some district other than that in which the order was originally granted the garnishee order and affidavit with the necessary copies shall be endorsed pursuant to sub-section (2) of section *four* prior to service upon the garnishee and the judgment debtor.

Order for payment by instalments.

73. (1) The court may, upon the application of any judgment debtor or under paragraph (*c*) of sub-section (7) of section *sixty-five* and if it appears that the debtor is unable to satisfy the judgment in full at once, but is able to pay reasonable periodical instalments towards satisfaction thereof, suspend execution against that debtor either wholly or in part on such

70. 'n Verkoop in eksekusie deur die geregsbode kan, in die geval van roerende goedere, na aflewering daarvan, en in die geval van onroerende goed, na registrasie van transport, nie ten aansien van 'n koper te goeder trou en sonder kennis van 'n gebrek, bestry word nie. Verkoop in eksekusie gee regstitel.

71. Indien daar na 'n verkoop in eksekusie, 'n oorskot van die opbrings in hande van die geregsbode oorbly, kan op sodanige oorskot weens ander onvoldane vonnisskulde beslag gelê word. Oorskot van opbrings van eksekutoriale verkoop.

72. (1) Die hof kan, na gedane aansoek deur 'n vonnisskuldeiser of kragtens paragraaf (*b*) van sub-artikel (7) van artikel *vyf-en-sestig*, die inbeslagneming beveel van enige skuld of besoldiging wat dan of in die toekoms aan 'n vonnisskuldenaar verskuldig is of hom toekom deur of van enige ander persoon (met inbegrip van die Staat slegs ten opsigte van besoldiging) wat in die distrik woon, besigheid dryf of in diensbetrekking is, en wel tot 'n bedrag wat voldoende is om die vonnis en die koste van die verrigtings tot inbeslagneming te dek, hetsy die vonnis in daardie hof of in enige ander magistraatshof verkry is, en kan daardie ander persoon (hieronder die beslagskuldenaar genoem) beveel om aan die geregsbode soveel van die skuld of besoldiging te betaal as wat nodig is om bedoelde vonnis en koste te dek, en kan die bevel op dieselfde wyse ten uitvoer laat lê asof dit 'n vonnis van die hof was. Skulde en besoldiging kan in beslag geneem word.

(2) Geen sodanige bevel ten opsigte van skuld of besoldiging mag bloot op grond van die toestemming van die vonnisskuldenaar verleen word nie maar die hof moet, deur ondervraging van die vonnisskuldenaar of aan die hand van ander onder eed verstrekte inligting, hom daarvan vergewis dat die vonnisskuldenaar, nadat aan die bevel voldoen is, genoegsame middele sal hê om homself en sy afhanklikes te onderhou.

(3) So 'n bevel kan die beslagskuldenaar verplig om van tyd tot tyd aan die geregsbode bepaalde bedrae uit die besoldiging van die vonnisskuldenaar te betaal.

(4) Die vonnisskuldenaar moet in kennis gestel word van die verhoordag van 'n aansoek om so 'n bevel ten opsigte van skuld of besoldiging, en kan *mutatis mutandis* op die wyse in sub-artikels (2) tot en met (8) van artikel *vyf-en-sestig* bepaal, aangesê word om te verskyn sodat ondersoek na sy omstandighede en algemene finansiële toestand ingestel kan word.

(5) Indien dit nà die verlening van so 'n bevel ten opsigte van enige skuld of besoldiging, ten genoeë van die hof bewys word dat die vonnisskuldenaar, nadat aan die bevel voldoen is, nie genoegsame middele sal hê om homself en sy afhanklikes te onderhou nie, dan vernietig die hof die bevel of wysig dit op so 'n wyse dat dit slegs op die restant van sodanige skuld of besoldiging, bo en behalwe sodanige voldoende middele, sal inwerk.

(6) 'n Order ingevolge hierdie artikel kan te eniger tyd, mits gegronde redes aangevoer word, deur die hof opgeskort, gewysig of vernietig word.

(7) Indien dit blyk dat daar onvoldane vorderings aan ander skuldeisers verskuldig is, kan die hof die aansoek uitstel ten einde die vonnisskuldenaar in die geleentheid te stel om 'n administrasie-order kragtens artikel *vier-en-sewentig* aan te vra.

(8) Wanneer 'n vonnisskuldenaar op wie 'n skuldbeslagorder betrekking het, die diens van die beslagskuldenaar verlaat voordat die vonnisskuld ten volle voldaan is, kan die vonnisskuldeiser 'n gesertifiseerde afskrif van die order op enige nuwe werkgewer van die vonnisskuldenaar laat dien, tesame met 'n afskrif van 'n beëdigde verklaring deur hom afgelê, waarin die betalings deur hom sedert die verlening en uitreiking van die order gemaak, vermeld word. Sodanige order bind daarop die werkgewer op wie dit aldus gedien is en laasgenoemde word dan in die plek van die oorspronklike beslagskuldenaar gestel, dog onderworpe aan die reg van die vonnisskuldenaar, die beslagskuldenaar of 'n ander belanghebbende party om die bestaan of geldigheid van die order en die juistheid van die gevorderde restant, te betwis. Indien die vonnisskuldenaar 'n diensbetrekking verkry het in 'n ander distrik as die waarin die order oorspronklik verleen is, dan word die skuldbeslagorder en beëdigde verklaring tesame met die nodige afskrifte, ooreenkomstig sub-artikel (2) van artikel *vier* geëndosseer voordat hulle op die beslagskuldenaar en die vonnisskuldenaar gedien word.

73. (1) Die hof kan, op aansoek van 'n vonnisskuldenaar of kragtens paragraaf (*c*) van sub-artikel (7) van artikel *vyf-en-sestig* en indien dit blyk dat die skuldenaar nie by vermoë is om onmiddellik ten volle aan die vonnisskuld te voldoen nie, dog wel by vermoë is om dit in redelike periodieke paaiemente af te betaal, eksekusie teen daardie skuldenaar geheel of ten Bevel vir betaling in paaiemente.

conditions as to security or otherwise as the court may determine.

(2) Nothing in this section contained shall be construed as authorizing the court to suspend the execution of a judgment upon any property subject to a hypothec for the judgment debt existing irrespective of attachment in execution.

(3) An order under paragraph (*e*) of section *forty-eight* or under this section may at any time and for good cause be varied or rescinded by the court.

Administration orders.

74. (1) Where a judgment has been obtained for the payment of money and the judgment debtor is unable to pay the amount forthwith, or where a debtor is unable to liquidate his liabilities and has not sufficient assets capable of attachment to satisfy such liabilities or a judgment which has been obtained against him, the court may, upon the application of the judgment debtor or the debtor or under paragraph (*d*) of sub-section (7) of section *sixty-five*, make an order on such terms with regard to security, preservation or disposal of assets, realization of movables subject to hypothec, or otherwise as it thinks fit, providing for the administration of his estate, and for the payment of his debts by instalments or otherwise. The court shall have jurisdiction to make such an order, notwithstanding that the debts of the debtor may exceed the sum of two hundred pounds, or that any creditor is outside the jurisdiction of the court.

(2) With the application the debtor shall submit a full statement of his debts with the names and addresses of his creditors together with a statement of his assets with details of his income, the names of those dependent upon him, and his weekly or monthly commitments. Such statements shall be verified by his affidavit.

(3) The debtor shall, by prepaid registered post, give to all his creditors at least seven days' notice of such application.

(4) On the day appointed for the hearing the debtor shall appear in person and may be examined by the court in chambers and by any creditor or his legal representative, as to—

(*a*) his assets and liabilities ;

(*b*) his present and future income ;

(*c*) his standard of living and the possibility of practising economies ; and

(*d*) any other matters which the court may deem relevant.

(5) The court shall when an order has been granted under sub-section (1) appoint as an administrator, an officer of the court.

(6) When the order provides for periodical payments out of future income it shall be accompanied by an attachment under section *seventy-two*, of any debt, or emoluments owing or accruing to the debtor, so far as that section is applicable.

(7) After such order of attachment has been served upon the garnishee it shall be his duty to pay to the administrator in terms of the order the amounts directed by the court. Such payments shall constitute a first charge upon the income of the debtor.

(8) An order under this section shall specify the amount of the weekly or monthly payments to be made thereunder and the total sum to be covered by such payments.

(9) The administrator shall as soon as practicable compile a complete list of the names of the creditors and the amounts due to them individually. Such lists shall be open to inspection by creditors at all reasonable times.

(10) The administrator shall collect the periodical payments and distribute the same at least once a quarter *pro rata* amongst the creditors : Provided that claims which would enjoy preference under the law relating to insolvency, shall be paid out preferentially and in the order laid down in that law.

(11) The administrator shall, before making a distribution, be entitled to deduct from the moneys received, his out-of-pocket expenses and a remuneration representing five per centum of the amount received.

(12) Unless the court otherwise directs no costs in connection with an application under the section shall be recoverable except from the administrator as a first charge against the moneys he controls.

dele opskort op sulke voorwaardes ten aansien van sekerheidstelling of andersins as wat die hof bepaal.

(2) Die bepalings van hierdie artikel word nie geag die hof te magtig tot opskorting van die tenuitvoerlegging van 'n vonnis op enige goedere wat onderhewig is aan 'n hipoteek vir die vonnisskuld wat afgesien van beslaglegging bestaan nie.

(3) 'n Order ingevolge paragraaf (*e*) van artikel *agt-en-veertig* of ingevolge hierdie artikel kan te eniger tyd, mits gegronde redes aangevoer word, deur die hof gewysig of vernietig word.

Administrasie-orders.

74. (1) Wanneer 'n vonnis vir die betaling van geld verkry is en die vonnisskuldenaar nie by vermoë is om die bedrag onmiddellik te betaal nie of wanneer 'n skuldenaar sy finansiële verpligtings nie kan nakom, en nie genoegsame vir beslag vatbare bate het om aan bedoelde verpligtings of 'n vonnis wat teen hom verkry is te voldoen nie, dan kan die hof op aansoek van die vonnisskuldenaar of van die skuldenaar of kragtens paragraaf (*d*) van sub-artikel (7) van artikel *vyf-en-sestig*, onderworpe aan die voorwaardes wat die hof goed ag ten opsigte van die stel van sekuriteit, bewaring of van die hand sit van bate, tegeldemaking van verhipotekeerde roerende goed, of andersins, 'n order verleen waarby voorsiening gemaak word vir die administrasie van sy boedel en vir die vereffening van sy skulde in paaiemente of andersins. Die hof is bevoeg om so 'n bevel te verleen al gaan die skulde van die skuldenaar die bedrag van tweehonderd pond te bowe, of al is enige skuldeiser buite die jurisdiksie van die hof.

(2) Die skuldenaar moet by sy aansoek 'n volledige staat van sy skulde, met die name en adresse van sy skuldeisers, tesame met 'n staat van sy bate waarin hy sy inkomste, die name van persone wat van hom afhanklik is en sy weeklikse of maandelikse verpligtings, in besonderhede aangee. Sodanige state moet deur hom by wyse van beëdigde verklaring bevestig word.

(3) Die skuldenaar moet aan al sy skuldeisers, per vooruitbetaalde aangetekende pos, minstens sewe dae kennis van sodanige aansoek gee.

(4) Die skuldenaar verskyn in eie persoon op die vir die verhoor bepaalde dag, en kan deur die hof in kamers, en deur enige skuldeiser of sy regsverteenwoordiger ondervra word met betrekking tot—

(*a*) sy bate en laste;

(*b*) sy teenswoordige en toekomstige inkomste;

(*c*) sy lewenstandaard, en die moontlikheid om besuiniging te beoefen; en

(*d*) alle ander aangeleenthede wat die hof ter sake ag.

(5) Wanneer 'n order kragtens sub-artikel (1) verleen is, stel die hof as administrateur 'n beampte van die hof aan.

(6) Wanneer die order vir periodieke betalings uit toekomstige inkomste voorsiening maak, dan gaan dit vergesel van 'n inbeslagneming, ingevolge artikel *twee-en-sewentig*, vir sover daardie artikel van toepassing is, van enige skuld of besoldiging wat aan die skuldenaar verskuldig is of hom toekom.

(7) Nadat sodanige beslagorder op die beslagskuldenaar gedien is, is laasgenoemde verplig om die deur die hof bevole bedrae volgens voorskrif van die order aan die administrateur te betaal. Sodanige betalings maak 'n eerste preferensie teen die inkomste van die skuldenaar uit.

(8) 'n Order ingevolge hierdie artikel bepaal die bedrag van die weeklikse of maandelikse betalings wat ingevolge daarvan gemaak moet word, en die totaalbedrag wat deur sodanige betalings gedek moet word.

(9) Die administrateur stel so spoedig doenlik 'n volledige lys op van die name van die skuldeisers en die bedrae wat afsonderlik aan hulle verskuldig is. Sulke lyste moet te alle redelike tye vir skuldeisers ter insage beskikbaar wees.

(10) Die administrateur vorder die periodieke betalings in en verdeel bedoelde betalings minstens eenmaal in die kwartaal *pro rata* onder die skuldeisers: Met dien verstande dat vorderings wat volgens die wetsbepalings op insolvensie 'n preferensie sou geniet, preferensieel en in die volgorde deur bedoelde wetsbepalings voorgeskryf, uitbetaal word.

(11) Die administrateur het die reg om, voordat hy 'n verdeling maak, sy werklike uitgawes asmede 'n besoldiging bereken teen vyf persent van die ontvange bedrag, van die ingevorderde gelde af te trek.

(12) Tensy die hof anders beveel, mag geen koste in verband met 'n aansoek ingevolge hierdie artikel op iemand anders as die administrateur verhaal word nie, en dan wel as 'n eerste skuldvordering teen die deur hom beheerde gelde.

(13) As long as an order under this section is in force, no creditor who has received notice in terms of sub-section (3) may, save on a mortgage bond or with the leave of the court, institute or proceed with any action against the debtor for money due under a contract.

(14) A filing of a claim against the debtor with the administrator shall interrupt prescription.

(15) An administration order may at any time and for good cause be suspended, varied or rescinded by the court.

(16) A debtor subject to an administration order who during its currency contracts any debt without disclosing that fact shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty-five pounds.

(17) Any person who lends money or who sells goods or renders services on credit to a debtor, knowing that the latter is subject to an administration order, shall be debarred from recovering the money so lent or the price of such goods or the remuneration for such services by process of law unless he satisfies the court on application under sub-section (15) or in proceedings instituted after termination of the operation of the order under this section, that such money, goods or services were urgently required for the preservation of the health or property of the debtor or his dependants, and that payment could not reasonably have been demanded from the debtor out of the income remaining available to him in terms of the administration order.

(18) The granting of an order under this section shall be no bar to the sequestration of the debtor's estate.

Jurisdiction to decide disputes arising out of garnishee orders.

75. (1) If the garnishee disputes that the debt or emoluments sought to be attached are owing or accruing or alleges that they are subject to a set-off or belong to or are subject to a claim by some third person, the court may determine the rights and liabilities of all the parties and may declare the claim of that third person to be barred, provided that the claim or value of the matter in dispute is otherwise within the jurisdiction of the court.

(2) If it be proved that such third person neither resides nor carries on business nor is employed within the Union and that he has a *prima facie* claim to the debt, the court shall not have jurisdiction under this section.

Execution or payment is discharge *pro tanto*.

76. Payment made by or execution levied upon the garnishee under the provisions of this Act shall be valid discharge of the debt or amount of emoluments due from him to the judgment debtor to the extent of the amount paid or levied.

Saving of existing law prohibiting attachment.

77. Save where under section *seventy-two* an order may be granted against the State, nothing in this Act contained shall be construed as authorizing the attachment of any debt or emoluments or any moneys or property specially declared by any law not to be liable to attachment.

Execution or suspension in case of appeal, etc.

78. Where an appeal has been noted or an application to rescind, correct or vary a judgment has been made, the court may direct either that the judgment shall be carried into execution or that execution thereof shall be suspended pending the decision upon the appeal or application. The direction shall be made upon such terms, if any, as the court may determine as to security for the due performance of any judgment which may be given upon the appeal or application.

Person who has made a *nulla bona* return not to incur debts.

79. Any person shall be guilty of an offence and liable to a fine not exceeding twenty-five pounds if after a return of *nulla bona* has been made in respect of a judgment against him and before satisfaction of the said judgment, he obtains credit to an amount exceeding twenty-five pounds in the aggregate without previously informing all persons from whom he so obtains credit that there is an unsatisfied judgment against him and that a return of *nulla bona* has been made in respect thereof.

CHAPTER X.

COSTS.

Costs to be in accordance with scales and to be taxed.

80. (1) The stamps, fees, costs and charges in connection with any civil proceedings in magistrates' courts shall, as between party and party, be payable in accordance with the scales prescribed by the rules.

(2) As between attorney and client, the clerk of the court may in his discretion (subject to the review hereinafter men-

(13) Solank as wat 'n administrasie-order ingevolge hierdie artikel van krag is, mag geen skuldeiser wat ooreenkomstig sub-artikel (3) kennis gekry het, behalwe op 'n verband of met die verlof van die hof, teen die skuldenaar 'n aksie om geld onder 'n kontrak verskuldig, instel of voortsit nie.

(14) Die indiening van 'n vordering teen die skuldenaar by die administrateur, onderbreek verjaring.

(15) 'n Administrasie-order kan te eniger tyd, mits gegronde redes aangevoer word, deur die hof opgeskort, gewysig of vernietig word.

(16) 'n Skuldenaar wat aan 'n administrasie-order onderhewig is en wat, terwyl sodanige order van krag is, 'n skuld aangaan sonder te openbaar dat hy aldus onderhewig is, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens vyf-en-twintig pond.

(17) Iemand wat geld leen of wat op krediet goedere verkoop of dienste bewys aan 'n skuldenaar wetende dat laasgenoemde aan 'n administrasie-order onderhewig is, word belet om die aldus geleende geld of die prys van daardie goedere of die beloning vir daardie dienste in 'n regsgeding te verhaal tensy op aansoek ingevolge sub-artikel (15), of by proses na afloop van die werking van die ingevolge hierdie artikel verleende bevel ingestel, hy die hof tevrede stel dat bedoelde geld, goedere of dienste dringend nodig was vir die behoud van die gesondheid of bewaring van die goedere van die skuldenaar of sy afhanklikes, en dat betaling nie redelikerwyse uit die beskikbare inkomste wat ingevolge die administrasie-order aan hom oorgebly het, van die skuldenaar vereis kon word nie.

(18) Die verlening van 'n order kragtens hierdie artikel sluit nie die sekwestrasie van die skuldenaar se boedel uit nie.

Bevoegdheid om geskille wat uit skuldbeslagorders voortspruit, te beslis.

75. (1) Indien die beslagskuldenaar betwis dat die in beslag te neme skuld of besoldiging opeisbaar of toekomend is, of beweer dat dit aan skuldvergelyking onderhewig is of aan 'n derde party behoort of dat 'n derde party 'n reg daarop het, dan kan die hof die regte en verpligtings van al die partye vasstel en kan verklaar dat die reg van daardie derde party uitgesluit is, mits die reg of waarde van die saak in geskil origens binne die jurisdiksie van die hof val.

(2) Indien bewys word dat bedoelde derde party nòg in die Unie woon nòg daarin besigheid dryf of in diensbetrekking is, en dat hy 'n *prima facie* reg op die skuld het, dan het die hof geen jurisdiksie kragtens hierdie artikel nie.

Eksekusie of betaling is bevryding *pro tanto*.

76. Betaling gedoen deur, of verhaal by eksekusie op, 'n beslagskuldenaar ingevolge die bepalings van hierdie Wet, is tot die bedrag van wat betaal of verhaal is, 'n regsgeldige betaling van die skuld of van die besoldiging wat deur hom aan die vonnisskuldenaar verskuldig is.

Handhawing van bestaande wetsbepalings wat beslaglegging verbied.

77. Behalwe wanneer kragtens artikel *twee-en-sewentig* 'n bevel teen die Staat verleen mag word, word geen bepaling van hierdie Wet geag magtiging te verleen vir die inbeslagneming van enige skuld of besoldiging of enige geld of goedere wat volgens uitdruklike voorskrif van ander wetsbepalings, nie vir beslaglegging vatbaar is nie.

Tenuitvoerlegging of opskorting in geval van appèl, ens.

78. Wanneer 'n appèl aangeteken is of 'n aansoek gedoen is om 'n vonnis ter syde te stel, te verbeter of te wysig, dan kan die hof òf beveel dat die vonnis ten uitvoer gelê word òf dat tenuitvoerlegging daarvan opgeskort word hangende die beslissing insake die appèl of aansoek. Die bevel word verleen op sulke voorwaardes (as dié gestel word) as wat die hof bepaal met betrekking tot sekerheidstelling vir die behoorlike nakoming van 'n vonnis wat ter sake van die appèl of aansoek gevel mag word.

Iemand wat opgaaf van geen goedere gemaak het, mag nie skulde aangaan nie.

79. Iedereen is aan 'n misdryf skuldig en strafbaar met 'n boete van hoogstens vyf-en-twintig pond indien hy, nadat 'n relaas *nulla bona* ten opsigte van 'n vonnis teen hom gemaak is, en voordat aan bedoelde vonnis voldoen is, krediet verkry vir 'n bedrag of bedrae wat altesaam vyf-en-twintig pond te bowe gaan sonder dat hy vooraf iedereen van wie hy aldus krediet verkry, daarvan verwittig het dat daar 'n onvoldane vonnis teen hom is en dat 'n relaas *nulla bona* ten opsigte daarvan gemaak is.

HOOFSTUK X.

Koste.

Koste word berekend volgens tarief en moet getakseer word.

80. (1) Die seëls, gelde, koste en onkoste in verband met siviele sake in magistraatshowe word tussen party en party volgens die deur die reëls voorgeskrewe tariewe bereken.

(2) Onderworpe aan die hieronder vermelde hersiening, kan die klerk van die hof volgens goeddunke tussen prokureur en

tioned) allow costs and charges for services reasonably performed by the attorney at the request of the client for which no remuneration is recoverable as between party and party and for which no provision is made in the rules.

(3) Payment of costs awarded by the court (otherwise than by a judgment in default of the defendant's appearance to defend or on the defendant's consent to judgment before the time for such appearance has expired) may not be enforced until they have been taxed by the clerk of the court.

(4) Any person who is liable to pay or who is sued for costs of any civil proceedings in a court otherwise than under an award by the court or under a special agreement, may require that those costs shall be taxed by the clerk of the court as between attorney and client; and thereupon any action for the recovery of those costs shall be stayed pending the taxation. The costs of and incidental to such a taxation shall be borne, if not more than one-sixth of such costs is disallowed on taxation, by the person requiring the taxation, and, if more than one-sixth is so disallowed, by the person claiming the costs.

Review of taxation.

81. Taxation by the clerk of the court shall be subject to review free of charge by a judicial officer of the district; and the decision of such judicial officer may at any time within one month thereafter be brought in review before a judge of the court of appeal in the manner prescribed by the rules.

CHAPTER XI.

APPEAL AND REVIEW.

By consent, decision of magistrate's court may be final.

82. No appeal shall lie from the decision of a court if, before the hearing is commenced, the parties lodge with the court an agreement in writing that the decision of the court shall be final.

Appeals from magistrates' courts.

83. Subject to the provisions of section *eighty-two*, a party to any civil suit or proceeding in a court may appeal to the provincial division of the Supreme Court having local jurisdiction or within those districts of the Province of the Cape of Good Hope for which the Griqualand West Local Division is established, to that division also, against—

(*a*) any judgment of the nature described in section *forty-eight*;

(*b*) any rule or order made in such suit or proceeding and having the effect of a final judgment, including any order under Chapter IX and any order as to costs;

(*c*) any decision overruling an exception, when the parties concerned consent to such an appeal before proceeding further in an action or when it is appealed from in conjunction with the principal case, or when it includes an order as to costs:

Provided that the Eastern Districts Local Division shall have jurisdiction concurrent with the Cape Provincial Division to hear and determine any appeals which may be made under this section from courts within the districts for which the said local division is established.

Time, manner and conditions of appeal.

84. Every party so appealing shall do so within the period and in the manner prescribed by the rules; but the court of appeal may in any case extend such period.

No peremption of appeal by satisfaction of judgment.

85. A party shall not lose the right to appeal through satisfying or offering to satisfy the judgment in respect of which he appeals or any part thereof or by accepting any benefit from such judgment, decree or order.

Respondent may abandon judgment.

86. (1) A party may by notice in writing abandon the whole or any part of a judgment in his favour.

(2) Where the party so abandoning was the plaintiff, or applicant, judgment in respect of the part abandoned shall be entered for the defendant or respondent with costs.

(3) Where the party so abandoning was the defendant or respondent, judgment in respect of the part abandoned shall be entered for the plaintiff or applicant in terms of the claim in the summons or application.

(4) A judgment so entered shall have the same effect in all respects as if it had been the judgment originally pronounced by the court in the action or matter.

kliënt koste en onkoste toestaan ten aansien van dienste wat redelikerwys deur die prokureur op versoek van die kliënt verrig is en waarvoor geen besoldiging tussen party en party verhaal kan word nie en waarvoor in die reëls geen voorsiening gemaak is nie.

(3) Betaling van koste deur die hof toegewys (anders as by verstekvonnis weens die verweerder se nie-verskyning om te verdedig of op grond van verweerder se toestemming tot vonnis voor die verstryking van die termyn vir sodanige verskyning) kan nie afgedwing word voordat die koste deur die klerk van die hof getakseer is nie.

(4) Iedereen wat aanspreeklik is of gedagvaar word vir die koste van enige siviele verrigtings in 'n hof anders as uit kragte van 'n toewysing deur die hof of ingevolge besondere ooreenkoms, kan vereis dat daardie koste deur die klerk van die hof tussen prokureur en kliënt getakseer moet word; daarop word enige aksie vir die verhaal van daardie koste hangende die taksasie geskors. Die koste van en in verband staande met so 'n taksasie word, indien nie meer as een-sesde van daardie koste afgetakseer word nie, gedra deur die persoon wat die taksasie verlang en, indien meer as een-sesde aldus afgetakseer word, deur die persoon wat die koste vorder.

Hersiening van taksasie.

81. Die deur die klerk van die hof verrigte taksasie is aan kostelose hersiening deur 'n regterlike amptenaar van die distrik onderhewig, en die beslissing van so 'n regterlike amptenaar kan te eniger tyd binne 'n maand daarna voor 'n regter van die hof van appèl in hersiening gebring word, soos deur die reëls voorgeskryf.

HOOFSTUK XI.

APPÈL EN HERSIENING.

Met toestemming van partye kan uitspraak van hof finaal wees.

82. Teen die uitspraak van 'n hof kan nie geappelleer word nie indien die partye, voordat die verhoor 'n aanvang neem, by die hof 'n skriftelike verklaring indien dat die uitspraak van die hof finaal sal wees.

Appèl teen beslissing van magistraatshof.

83. Behoudens die bepalings van artikel *twee-en-tagtig*, kan 'n party in enige siviele geding of verrigting in 'n hof na die provinsiale afdeling van die Hooggeregshof wat plaaslike jurisdiksie het, of binne die distrikte van die Provinsie Kaap die Goeie Hoop waarvoor die plaaslike afdeling van Grikwaland-Wes ingestel is, ook na daardie afdeling appelleer teen—

(*a*) 'n vonnis van die in artikel *agt-en-veertig* bedoelde aard;

(*b*) elke beskikking of bevel gemaak of gegee in so 'n geding of proses, wat die uitwerking van 'n finale vonnis het, met inbegrip van enige order kragtens Hoofstuk IX en 'n bevel ten aansien van koste;

(*c*) elke beslissing waarby 'n eksepsie afgewys word, wanneer die betrokke partye tot sodanige appèl toestem alvorens 'n aksie verder te voer, of wanneer daarteen geappelleer word in verband met die hoofsaak, of wanneer dit 'n bevel ten aansien van koste insluit:

Met dien verstande dat die Plaaslike Afdeling van die Oostelike Distrikte konkurrente jurisdiksie het met die Kaapse Provinsiale Afdeling om alle appèlle te verhoor en te beslis, wat kragtens hierdie artikel aangeteken mag word van howe binne die distrikte waarvoor bedoelde plaaslike afdeling ingestel is.

Tyd, wyse en voorwaardes van appèl.

84. Elke party wat aldus appelleer moet sulks doen binne die termyn en op die wyse deur die reëls voorgeskryf; die hof van appèl kan egter in enige geval sodanige termyn verleng.

Reg van appèl verval nie deur voldoening aan vonnis.

85. 'n Party verloor nie sy reg van appèl deur aan die vonnis ten opsigte waarvan hy appelleer, of 'n gedeelte daarvan te voldoen of aan te bied om daaraan te voldoen of deur een of ander voordeel ter sake van so 'n vonnis of bevel aan te neem nie.

Respondent kan van vonnis afstand doen.

86. (1) 'n Party kan by skriftelike kennisgewing geheel of ten dele van 'n vonnis in sy guns afstand doen.

(2) Wanneer die party wat aldus afstand doen die eiser of applikant was, dan word vonnis ten opsigte van die afgestane gedeelte ten gunste van die verweerder of respondent met koste aangeteken.

(3) Wanneer die party wat aldus afstand doen die verweerder of respondent was, dan word vonnis ten opsigte van die afgestane gedeelte ten gunste van die eiser of applikant ooreenkomstig die vordering in die dagvaarding of aansoek aangeteken.

(4) 'n Aldus aangetekende vonnis het in alle opsigte dieselfde uitwerking asof dit die vonnis was wat oorspronklik deur die hof in die aksie of saak gevel is.

Procedure of court of appeal.

87. The court of appeal may—

(*a*) confirm, vary or reverse the judgment appealed from, as justice may require;

(*b*) if the record does not furnish sufficient evidence or information for the determination of the appeal, remit the matter to the court from which the appeal is brought, with instructions in regard to the taking of further evidence or the setting out of further information;

(*c*) order the parties or either of them to produce at some convenient time in the court of appeal such further proof as shall to it seem necessary or desirable; or

(*d*) take any other course which may lead to the just, speedy and as much as may be inexpensive settlement of the case; and

(*e*) make such order as to costs as justice may require.

Execution of judgment of court of appeal.

88. The judgment of the court of appeal shall be recorded in the court appealed from, and may be enforced as if it had been given in such last-mentioned court.

PART III.—CRIMINAL MATTERS.

CHAPTER XII.

CRIMINAL JURISDICTION.

Criminal jurisdiction in respect of crimes.

89. The court shall have jurisdiction over all offences except treason, murder and rape.

Local limits of jurisdiction.

90. (1) Subject to the provisions of section *eighty-nine*, any person charged with any offence committed within any district may be tried by the court of that district.

(2) When any person is charged with any offence—

(*a*) committed within the distance of two miles beyond the boundary of the district; or

(*b*) committed in or upon any vessel or vehicle employed on a voyage or journey any part whereof was performed within the distance of two miles of the district; or

(*c*) begun or completed within the district,

such person may be tried by the court of the district as if he had been charged with an offence committed within the district.

(3) Where it is uncertain in which of several jurisdictions an offence has been committed, it may be tried in any of such jurisdictions.

(4) A person charged with an offence may be tried by the court of any district wherein any act or omission or event which is an element of the offence took place.

(5) A person charged with theft of property or with obtaining property by an offence or with an offence which involves the receiving of any property by him may also be tried by the court of any district wherein he has or had part of the property in his possession.

(6) A person charged with kidnapping, child-stealing or abduction may also be tried by the court of any district through or in which he conveyed or concealed or detained the person kidnapped, stolen or abducted.

(7) Where by any special provision of law a magistrate's court has jurisdiction in respect of an offence committed beyond the local limits of the district, such court shall not be deprived of such jurisdiction by any of the provisions of this section.

(8) Notwithstanding anything contained in this section the Attorney-General may, with the consent of the person charged with having committed an offence within the area of jurisdiction of such Attorney-General, cause such person to be tried for such offence in the court of any district within such area.

Criminal jurisdiction of periodical court.

91. The jurisdiction of the periodical court in criminal matters shall be subject, *mutatis mutandis*, to the provisions contained in section *twenty-seven* and in sub-section (3) of section *thirty-five*.

Jurisdiction in the matter of punishments.

92. (1) Subject to the provisions of this Act and of Chapter VI of the Prisons and Reformatories Act, No. 13 of 1911, the court may punish any person convicted of an offence in the following manner and (save as specially provided by this Act or any other law) in no other or more severe manner, that is to say, by—

(*a*) imprisonment for a period not exceeding six months with or without hard labour and with or without

87. Die hof van appèl kan— Prosedure van hof van appèl.

(*a*) die vonnis waarteen geappelleer word, bekragtig, wysig of vernietig, na gelang die billikheid vereis ;

(*b*) indien die stukke geen voldoende getuienis of informasie vir die beslissing van die appèl verstrek nie, die saak terugverwys na die hof teen die beslissing waarvan geappelleer word, met instruksies betreffende die afneem van verdere getuienis of die verstrekking van nadere informasie ;

(*c*) beveel dat die partye of een van hulle op 'n geskikte tyd in die hof van appèl sodanige verdere bewyse moet aanvoer as wat die hof nodig of wenslik ag ; of

(*d*) enige ander stappe doen wat tot die regverdige, spoedige en so goedkoop moontlike afhandeling van die saak kan lei ; en

(*e*) so 'n bevel met betrekking tot die koste gee as wat billik mag wees.

88. Die vonnis van die hof van appèl word in die hof teen die beslissing waarvan geappelleer is, aangeteken, en kan uitgevoer word asof dit 'n vonnis van laasgenoemde hof was. Tenuitvoerlegging van vonnis van hof van appèl.

DEEL III.—STRAFSAKE.

HOOFSTUK XII.

STRAFREGTELIKE JURISDIKSIE.

89. Die hof is bevoeg om van alle misdrywe behalwe hoogverraad, moord en verkragting kennis te neem. Jurisdiksie ten aansien van misdrywe.

90. (1) Behoudens die bepalings van artikel *negen-en-tagtig*, kan iedereen wat beskuldig word van 'n misdryf binne 'n distrik gepleeg, deur die hof van daardie distrik verhoor word. Plaaslike grense van regsgebied.

(2) Wanneer iemand beskuldig word van 'n misdryf—

(*a*) gepleeg binne die afstand van twee myl oor die grens van die distrik ; of

(*b*) gepleeg in of op 'n vaar- of voertuig gedurende 'n reis waarvan enige gedeelte binne die afstand van twee myl van die distrik afgelê is ; of

(*c*) wat binne die distrik begin of voltooi is,

kan so iemand deur die hof van die distrik verhoor word asof hy van 'n binne die distrik gepleegde misdryf beskuldig gestaan het.

(3) Wanneer dit onseker is in welke van verskeie regsgebiede 'n misdryf gepleeg is, kan so 'n misdryf in enigeen van daardie regsgebiede verhoor word.

(4) Iemand wat van 'n misdryf beskuldig word kan verhoor word deur die hof van enige distrik waarin 'n handeling of versuim of gebeurtenis wat 'n bestanddeel van die misdryf uitmaak, plaasgevind het.

(5) Iemand wat beskuldig word van diefstal van 'n saak of van die verkryging van 'n saak deur middel van 'n misdryf of van heling, kan ook verhoor word deur die hof van 'n distrik waarin hy enige gedeelte van die sake in sy besit het of gehad het.

(6) Iemand wat beskuldig word van ontvoering, kinderdiefstal of skaking kan ook verhoor word deur die hof van enige distrik waardeur of waarin hy die ontvoerde, gestole of geskaakte persoon vervoer, verberg of aangehou het.

(7) Wanneer 'n magistraatshof uit hoofde van 'n besondere wetsbepaling jurisdiksie het ten aansien van 'n misdryf wat buite die plaaslike grense van die distrik gepleeg is, dan word sodanige jurisdiksie nie deur die bepalings van hierdie artikel aan die hof ontneem nie.

(8) Ondanks die bepalings van hierdie artikel, kan die Prokureur-generaal, met die toestemming van die persoon wat daarvan beskuldig word dat hy 'n misdryf binne die regsgebied van sodanige Prokureur-generaal gepleeg het, so 'n persoon weens sodanige oortreding in die hof van enige distrik binne daardie gebied laat verhoor.

91. Die jurisdiksie van die periodieke hof in strafsake is *mutatis mutandis* onderworpe aan die bepalings van artikel *sewen-en-twintig* en sub-artikel (3) van artikel *vyf-en-dertig*. Strafregtelike jurisdiksie van periodieke hof.

92. (1) Behoudens die bepalings van hierdie Wet en van Hoofstuk VI van die „Wet op Gevangenissen en Verbetergestichten", No. 13 van 1911, kan die hof iemand wat aan 'n misdryf skuldig bevind is, op die volgende wyse straf en (behalwe vir sover by hierdie Wet of 'n ander wet uitdruklik anders bepaal is) op geen ander of swaarder wyse nie, naamlik met— Jurisdiksie ten aansien van strawwe.

(*a*) gevangenisstraf vir 'n tydperk van hoogstens ses maande met of sonder dwangarbeid en met of sonder

solitary confinement and spare diet: Provided that the provisions of paragraph (*c*) of section *thirty-six* of the said Act shall apply in respect of any portion of a sentence which imposes solitary confinement and spare diet;

(*b*) fine not exceeding fifty pounds or in default of payment such period of imprisonment as aforesaid;

(*c*) whipping, subject to the provisions hereinafter contained, not exceeding ten strokes with a cane.

(2) Any person convicted of any offence may be punished by both such fine and such imprisonment or by both such imprisonment and such whipping, but the offender shall not for the same offence be punished both by fine and by whipping.

(3) Whipping shall only be imposed—

(*a*) in the case of a first conviction for—

(i) assault of an aggravated or indecent nature or with intent to do grievous bodily harm or with intent to commit any other offence;

(ii) culpable homicide, robbery, bestiality or an act of gross indecency committed by one male person with another or any attempt to commit any such offence; or

(iii) any statutory offence for which whipping may be imposed as a punishment, unless it is expressly provided that whipping shall only be imposed as a punishment on a second or subsequent conviction;

(*b*) in the case of a second or subsequent conviction for an offence committed within a period of three years after the former conviction;

and every whipping shall be carried out privately in a convict prison or gaol.

(4) Where any law provides that for any offence there may be imposed any forfeiture, the court before which such offence is prosecuted may impose such forfeiture in addition to any other penalty.

(5) Nothing in this section contained shall be construed as authorizing a court to impose for any offence a punishment greater than may by law be imposed for such offence or as preventing a court from imposing, as often as it is specially authorized by any law so to do, any other or more severe punishment than the punishments mentioned in sub-section (1) of this section.

When summary trial to be turned into preparatory examination.

93. (1) When in the course of any trial it appears that the offence under trial is from its nature or magnitude only subject to the jurisdiction or more proper for the cognizance of a superior court, or when the public prosecutor so requests, the presiding judicial officer shall stop the trial, and the proceedings shall thereupon be those of a preparatory examination.

(2) If upon conviction of an accused person after summary trial it is brought to the notice of the presiding judicial officer before sentence is passed, that the accused has previous convictions which in the opinion of that officer, would justify a sentence in excess of his jurisdiction he may set aside his finding and the proceedings shall thereupon be deemed to have been a preparatory examination.

CHAPTER XIII.

REMITTAL.

Cases remitted for trial or sentence.

94. When a case in which a preparatory examination was held, has been remitted for trial or sentence, the court to which it has been remitted shall deal therewith as prescribed by the Criminal Procedure and Evidence Act, No. 31 of 1917, and shall have power, in respect of each offence or count to which the remittal refers, to impose a sentence in accordance with the provisions of section *ninety-two* of this Act, if the remittal is expressed to be under the ordinary jurisdiction of such court, or a sentence in accordance with the provisions of section *ninety-five* of this Act, if the remittal is expressed to be under the increased jurisdiction conferred by the said section *ninety-five*.

Jurisdiction in respect of punishments in remitted cases.

95. When a case has been so remitted and the remittal is expressed to be under the increased jurisdiction given by this section, the jurisdiction of the court in respect of punishments as expressed in section *ninety-two*, shall be increased in the manner following:

eensame opsluiting en skraal rantsoen: Met dien verstande dat die bepalings van paragraaf (*c*) van artikel *ses-en-dertig* van gemelde Wet van toepassing is ten opsigte van enige gedeelte van 'n vonnis wat eensame opsluiting en skraal rantsoen oplê;

(*b*) 'n boete van hoogstens vyftig pond of, by wanbetaling, met gevangenisstraf soos voormeld;

(*c*) lyfstraf, met inagneming van onderstaande bepalings, van hoogstens tien houe met 'n rottang.

(2) Iemand wat aan 'n misdryf skuldig bevind is kan tot beide sodanige boete en sodanige gevangenisstraf, of tot beide sodanige gevangenisstraf en sodanige lyfstraf veroordeel word, dog nie, weens dieselfde misdryf, tot beide 'n boete en lyfstraf nie.

(3) Lyfstraf kan slegs opgelê word—

(*a*) in die geval van 'n eerste veroordeling weens—

(i) aanranding van 'n verswarende of onsedelike aard, of met die opset om ernstige liggaamlike letsel toe te dien of met die opset om 'n ander misdryf te pleeg;

(ii) strafbare manslag, roof, bestialiteit of 'n daad van growwe onsedelikheid deur een manspersoon met 'n ander begaan, of 'n poging om so 'n misdaad te pleeg; of

(iii) 'n wetteregtelike misdryf waarvoor lyfstraf opgelê kan word, tensy dit uitdruklik bepaal word dat lyfstraf slegs in geval van 'n tweede of daaropvolgende veroordeling opgelê mag word;

(*b*) in die geval van 'n tweede of daaropvolgende veroordeling weens 'n misdryf gepleeg binne 'n tydperk van drie jaar na die vorige veroordeling;

en word in alle gevalle in 'n bandietegevangenis of tronk in afsondering toegedien.

(4) Wanneer daar volgens een of ander wet weens 'n misdryf verbeurdverklaring uitgespreek kan word, dan kan die hof wat van die misdryf kennis neem, sodanige verbeurdverklaring bo en behalwe enige ander straf uitspreek.

(5) Die bepalings van hierdie artikel word nie geag 'n hof te magtig om weens een of ander misdryf 'n swaarder straf op te lê as wat volgens wet weens daardie misdryf opgelê mag word nie, of 'n hof te verhinder om, so dikwels hy by wet daartoe gemagtig word, 'n ander of swaarder straf as die in sub-artikel (1) van hierdie artikel vermelde strawwe, op te lê nie.

Wanneer summiere verhoor in voorlopige ondersoek verander kan word.

93. (1) Indien dit in die loop van 'n verhoor blyk dat die misdryf wat verhoor word weens sy aard of omvang, slegs onderworpe is aan die jurisdiksie van 'n hoërhof of meer gevoeglik tot die kennisname van so 'n hof behoort, of indien die openbare aanklaer dit versoek, moet die presiderende regterlike amptenaar die verhoor staak, en die verdere verrigtings is daarop dié van 'n voorlopige ondersoek.

(2) Indien die presiderende regterlike amptenaar by skuldigbevinding van 'n beskuldigde na summiere verhoor maar voor vonnisoplegging, in kennis gestel is dat die beskuldigde vorige veroordelings het wat na die oordeel van bedoelde amptenaar, 'n vonnis sou regverdig wat sy jurisdiksie te bowe gaan, kan hy sy bevinding ter syde stel, en die verrigtings word geag 'n voorlopige ondersoek te gewees het.

HOOFSTUK XIII.

TERUGVERWYSING.

Terugverwese sake vir beregting of vonnisoplegging.

94. Wanneer 'n saak waarin 'n voorlopige ondersoek gehou is, vir beregting of vonnisoplegging terugverwys is, moet die hof waarna die saak verwys is, daarmee handel volgens voorskrif van die „Wet op de Kriminele Procedure en Bewijslevering", No. 31 van 1917, en is bevoeg om ten aansien van elke misdryf of aanklag waarop die terugverwysing betrekking het, 'n vonnis op te lê ooreenkomstig die bepalings van artikel *twee-en-negentig* van hierdie Wet, indien die terugverwysing verklaar word onder die gewone jurisdiksie van daardie hof te geskied het, of 'n vonnis ooreenkomstig die bepalings van artikel *vyf-en-negentig* van hierdie Wet, indien die terugverwysing verklaar word te geskied het onder die verhoogde jurisdiksie deur genoemde artikel *vyf-en-negentig* verleen.

Jurisdiksie ten aansien van strawwe in terugverwese sake.

95. Wanneer 'n saak aldus terugverwys is en die terugverwysing verklaar word te geskied het onder die verhoogde jurisdiksie by hierdie artikel verleen, dan word die jurisdiksie van die hof ten aansien van strawwe, soos in artikel *twee-en-negentig* voorgeskryf, as volg verhoog—

(*a*) The maximum amount of fine shall be one hundred pounds; the maximum period of imprisonment shall be one year;

(*b*) the court may, in imposing a punishment of both fine and imprisonment, sentence the accused to a further period of imprisonment if the fine be not paid: Provided that the said maximum period of imprisonment be not exceeded.

CHAPTER XIV.

REVIEW AS OF COURSE.

What sentences subject to automatic review.

96. (1) All sentences in criminal cases in which the punishment awarded is imprisonment (including detention in a reformatory, industrial school, inebriate reformatory, farm colony, work colony, refuge, rescue home or other similar institution) for a period exceeding three months or a fine exceeding twenty-five pounds or whipping (save in a case in which a male person of an age not exceeding twenty-one years has been sentenced under the Criminal Procedure and Evidence Act, No. 31 of 1917), shall be subject in ordinary course to review by the court of appeal or one of the judges thereof; without prejudice to the right of appeal against such sentence whether before or after confirmation of the sentence by the judge or court reviewing the same.

(2) For the purposes of this section each sentence on a separate count shall be regarded as a separate sentence and the fact that the aggregate of sentences imposed on an accused person in respect of more than one count in the same charge sheet exceeds three months or twenty-five pounds shall not render those sentences liable to automatic review.

Submission of records and remarks to judge for consideration.

97. Whenever a court imposes upon any person convicted of an offence any such punishment as is mentioned in subsection (1) of section *ninety-six*, the clerk of the court shall transmit to the registrar of the court of appeal, not later than one week next after the determination of the case, the record of the proceedings in the case together with such remarks, if any, as the presiding judicial officer may desire to append thereto, and with any written statements or arguments which the accused may within three days after the sentence supply to the clerk of the court, and such registrar shall, with all convenient speed, lay the same before one of the judges of the court of appeal, in chambers, for his consideration.

Proceedings on review.

98. (1) If, upon considering the proceedings referred to in section *ninety-seven* and any further information or evidence which may, by the direction of the judge, be supplied or taken by the magistrate's court, it appears to the judge that they are in accordance with justice, he shall endorse his certificate to that effect upon the record thereof; and the said record shall then be returned by the registrar to the court from which it was transmitted.

(2) If, upon considering the proceedings aforesaid, it appears to the judge that they are not in accordance with justice or that doubts exist whether or not they are in accordance with justice, then such judge shall lay them before the court of appeal for its consideration; and the said court at any sitting thereof may hear any evidence and for that purpose the same court may summon any person to appear and give evidence or produce any document or other article, and whether it has or has not heard any such evidence, it may confirm, alter, or quash the conviction, or confirm, reduce, alter or set aside the sentence or any order of the magistrate's court (and if the accused was convicted on one of two or more alternative counts, it may, when quashing that conviction, convict the accused on the other alternative count or on one or other of the alternative counts) or it may set aside or correct the proceedings of the magistrate's court, or generally give such judgment or impose such sentence or make such order as the magistrate's court ought to have given, imposed or made on any matter which was before it at the trial of the case in question, or may remit the case to the magistrate's court with instructions to deal with any such matter in such manner as the court of appeal may think fit, and may make such order touching the suspension of the execution of any sentence against the person convicted or the admitting him to bail, or, generally, touching any matter or thing connected with him or the pro-

(*a*) die maksimum-boete is honderd pond ; die maksimum-tydperk van gevangenisstraf is een jaar ;

(*b*) die hof kan, by die oplegging van 'n straf van sowel 'n boete as gevangenisstraf die beskuldigde tot 'n verdere tydperk van gevangenisstraf vonnis, indien die boete nie betaal word nie : Met dien verstande dat genoemde maksimum-tydperk van gevangenisstraf nie oorskry word nie.

HOOFSTUK XIV.

Outomatiese Hersiening.

Watter vonnisse aan outomatiese hersiening onderhewig is.

96. (1) Alle vonnisse in strafsake waarin die opgelegde straf gevangenisstraf (met inbegrip van aanhouding in 'n verbeteringshuis, nywerheidskool, dronkaardsasyl, boerderykolonie, werkkolonie, toevlug, reddingshuis of ander dergelike inrigting) vir 'n tydperk van meer as drie maande, of 'n boete van meer as vyf-en-twintig pond of lyfstraf is (uitgesonderd die geval waar 'n manspersoon nie bo die leeftyd van een-en-twintig jaar kragtens die „Wet op de Kriminele Procedure en Bewijslevering", No. 31 van 1917, gevonnis is), is in die gewone loop van sake onderhewig aan hersiening deur die hof van appèl of een van die regters daarvan ; onverminderd die reg van appèl teen sodanige vonnis hetsy voor of ná bekragtiging van die vonnis deur die regter of hof wat die vonnis in hersiening neem.

(2) Vir die doeleindes van hierdie artikel word elke vonnis ten opsigte van 'n afsonderlike aanklag as 'n afsonderlike vonnis beskou, en die feit dat die gesamentlike vonnisse wat die beskuldigde opgelê word ten opsigte van meer as een aanklag in dieselfde beskuldiging drie maande of vyf-en-twintig pond oorskry, maak daardie vonnisse nie vir outomatiese hersiening vatbaar nie.

Voorlegging van stukke en opmerkings aan regter ter oorweging.

97. Wanneer 'n hof aan iemand wat aan 'n misdryf skuldig bevind is, 'n in sub-artikel (1) van artikel *ses-en-negentig* vermelde straf oplê, moet die klerk van die hof nie later as 'n week na die uitwysing van die saak, die stukke van die saak, tesame met sodanige opmerkings as wat die presiderende regterlike amptenaar verlang om daaraan by te voeg, en met alle skriftelike verklarings of argumente wat die beskuldigde binne drie dae na die vonnis aan die klerk van die hof verstrek, aan die griffier van die hof van appèl deurstuur. Die griffier moet, so spoedig doenlik, voormelde stukke aan een van die regters van die hof van appèl in kamers ter oorweging voorlê.

Prosedure by hersiening.

98. (1) Indien die regter, op grond van die in artikel *sewen-en-negentig* vermelde stukke, asook van enige verdere informasie of getuienis wat, in opdrag van die regter, deur die magistraatshof verstrek of afgeneem is, van oordeel is dat behoorlik reg geskied het, dan teken hy sy sertifikaat te dien effekte op die stukke van die saak aan, en bedoelde stukke word dan deur die griffier teruggestuur aan die hof vanwaar hulle afkomstig is.

(2) Indien dit op grond van voormelde stukke aan die regter blyk dat nie behoorlik reg geskied het nie, of dat daar twyfel bestaan of daar behoorlik reg geskied het al dan nie, dan lê hy hulle aan die hof van appèl ter oorweging voor ; en daardie hof kan op enige sitting daarvan getuienis aanhoor en te dien einde kan bedoelde hof enigeen dagvaar om voor hom te verskyn en getuienis af te lê of 'n geskrif of ander voorwerp oor te lê en onverskillig of hy al dan nie sodanige getuienis aangehoor het, kan hy die skuldigbevinding van die magistraatshof bekragtig, wysig of vernietig, of die vonnis of 'n bevel van die magistraatshof bekragtig, versag, wysig of te niet doen (en, indien die beskuldigde op een van twee of meer alternatiewe aanklagte skuldig bevind is, kan hy, wanneer hy daardie skuldigbevinding vernietig, die beskuldigde op die ander alternatiewe aanklag of op een of ander van die alternatiewe aanklagte skuldig bevind) of hy kan die verrigtings van die magistraatshof te niet doen of verbeter, of, in die algemeen, so 'n uitspraak gee of so 'n vonnis oplê of so 'n bevel uitvaardig as wat die magistraatshof moes gegee, opgelê of uitgevaardig het met betrekking tot een of ander aangeleentheid wat by die beregting van die betrokke saak voor die hof was, of die saak na die magistraatshof terugverwys met opdrag om met 'n sodanige aangeleentheid op 'n wyse wat die hof van appèl wenslik ag, te handel, en kan so 'n bevel gee betreffende die opskorting van die tenuitvoerlegging van 'n vonnis teen die veroordeelde persoon of die vrylating van die persoon onder borgtog, of, in die algemeen, betreffende enige aangeleentheid in verband met die persoon of die verrigtings

ceedings in regard to him as to the said court seems calculated to promote the ends of justice: Provided that in the event of any conviction being quashed or proceedings being set aside on any grounds mentioned in sub-section (7) of section *one hundred and three* the provisions of that sub-section in respect of the institution of fresh proceedings shall *mutatis mutandis* apply.

(3) If the court of appeal desires to have a question of law or fact arising in any case argued it may direct such question to be argued by the Attorney-General and such other advocate as the said courtmay appoint.

(4) If in any criminal case in which the court has imposed a sentence which is not subject to review in the ordinary course in terms of section *ninety-six* it is brought to the notice of the court of appeal or of any judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice, such court of appeal or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before it or him in terms of section *ninety-seven*.

Case may be set down for argument.

99. (1) Every court imposing a sentence which, under section *ninety-six*, is subject to review shall thereupon inform the person convicted that the record will be transmitted within seven days; and such person or his lawful representative may inspect, and take a copy of such record before transmission or whilst in the possession of the court of appeal and may set down the case for argument before the court of appeal in like manner as if the record had been returned or transmitted to the court of appeal in obedience to any order made by it for the purpose of bringing in review the proceedings of an inferior court.

(2) Whenever such a case is so set down, whether the offence has been prosecuted at the public instance or at the instance of a private party, a written notice shall be served by or on behalf of the person convicted, upon the Attorney-General at his office not less than seven days before the day appointed for the argument, setting forth the name and number of the case, the court before which it was tried, the date for which the case has been set down for argument and the grounds or reasons upon which the judgment is sought to be reversed or altered.

(3) Whether such judgment be confirmed or reversed or altered, no costs shall in respect of the proceedings in review be payable by the prosecutor to the person convicted or by the person convicted to the prosecutor.

CHAPTER XV.

EXECUTION OF SENTENCES.

Warrant required for commitment to gaol.

100. (1) Any person sentenced to imprisonment shall be committed to the gaol of the district by a warrant under the hand of a judicial officer specifying the punishment to which the accused has been sentenced.

(2) Such warrant may be signed either by the judicial officer who passed the sentence or by any other judicial officer for the same district.

Execution of sentence suspended under certain conditions.

101. The execution of any sentence of fine or of imprisonment, whether with or without hard labour, shall not be suspended by the transmission of or the obligation to transmit the record for review unless the person sentenced shall give sufficient bail to pay the fine imposed upon him or to surrender himself in order to undergo such imprisonment (as the case may be) in case the proceedings in the case shall be approved as aforesaid and in case a written notice to pay or to surrender (as the case may be), signed by the clerk of the court, shall be served upon or for such person at some place to be mentioned in the bail bond or recognizance.

Person sentenced to whipping to be detained pending review.

102. (1) Whipping shall in no case (except where a male person of an age not exceeding twenty-one years has been sentenced under the Criminal Procedure and Evidence Act, No. 31 of 1917) be inflicted until either the proceedings in the case have been returned with such a certificate as is in section *ninety-eight* of this Act mentioned or the court of appeal has confirmed the sentence of the magistrate's court.

(2) If a person sentenced to receive whipping is not also sentenced to imprisonment for such a period as shall allow

ten aansien van hom as wat voormelde hof in belang van die regspraak nodig ag: Met dien verstande dat ingeval 'n skuldigbevinding vernietig word of verrigtings te niet gedoen word op een van die in sub-artikel (7) van artikel *honderd-en-drie* vermelde gronde, die bepalings van daardie sub-artikel betreffende die instelling van nuwe verrigtings *mutatis mutandis* van toepassing is.

(3) Wanneer die hof van appèl dit wenslik ag dat 'n regsvraag of feitlike vraag wat in enige saak mag ontstaan, bepleit word, kan hy beveel dat bedoelde vraag bepleit word deur die Prokureur-generaal en sodanige ander advokaat as wat die hof aanwys.

(4) Indien in 'n kriminele saak waarin die hof 'n vonnis opgelê het wat in die gewone gang van sake kragtens artikel *ses-en-negentig* nie aan hersiening onderhewig is nie, ter kennis van die hof van appèl of van 'n regter daarvan gebring is dat die verrigtings waarby die vonnis opgelê was nie ooreenkomstig reg en wet was nie, het bedoelde hof van appèl of regter ten opsigte van sulke verrigtings dieselfde bevoegdhede asof die stukke daarvan ingevolge artikel *sewen-en-negentig* voor hom gelê was.

Saak kan op rol geplaas word vir beredenering.

99. (1) Elke hof wat 'n vonnis oplê wat ingevolge artikel *ses-en-negentig* aan hersiening onderhewig is, moet aan die veroordeelde meedeel dat die stukke van die saak binne sewe dae deurgestuur sal word; en so iemand, of sy wettige verteenwoordiger kan in sodanige stukke insae kry en 'n afskrif daarvan maak voordat hulle deurgestuur word of terwyl hulle by die hof van appèl berus, en kan die saak vir beredenering voor die hof van appèl op die rol plaas op dieselfde wyse asof die stukke aan die hof van appèl teruggestuur of deurgestuur was ingevolge 'n bevel deur hom gegee ten einde die verrigtings van 'n laerhof in hersiening te bring.

(2) Wanneer so 'n saak aldus op die rol geplaas is, hetsy die misdryf van owerheidsweë of op versoek van 'n private party vervolg is, moet 'n skriftelike kennisgewing deur of ten behoewe van die veroordeelde op die Prokureur-generaal op sy kantoor gedien word minstens sewe dae voor die vir die beredenering bepaalde dag, met vermelding van die naam en nommer van die saak, die hof waarvoor dit gedien het, die datum waarvoor die saak vir beredenering op die rol geplaas is en die gronde of redes waarop tenietdoening of wysiging van die vonnis gevra word.

(3) Geen koste is ten aansien van die verrigtings by hersiening deur die vervolger aan die veroordeelde of deur die veroordeelde aan die vervolger betaalbaar nie, onverskillig of so 'n vonnis bekragtig of te niet gedoen of gewysig word.

HOOFSTUK XV.

TENUITVOERLEGGING VAN VONNISSE.

Lasbrief benodig vir gevangesetting.

100. (1) Iedereen wat tot gevangenisstraf veroordeel is word in die gevangenis van die distrik geplaas uit kragte van 'n lasbrief onder die handtekening van 'n regterlike amptenaar, waarin die straf wat aan die beskuldigde opgelê is, vermeld word.

(2) So 'n lasbrief kan onderteken word òf deur die regterlike amptenaar wat die vonnis opgelê het òf deur 'n ander regterlike amptenaar vir dieselfde distrik.

Tenuitvoerlegging van vonnis onder sekere omstandighede opgeskort.

101. Die tenuitvoerlegging van 'n vonnis waarby iemand tot 'n boete of tot gevangenisstraf met of sonder dwangarbeid veroordeel is, word nie opgeskort deur die deurstuur van die stukke vir hersiening of die verpligting om die stukke aldus deur te stuur nie, tensy die veroordeelde persoon voldoende borgtog stel dat hy, na gelang van die geval, die opgelegde boete sal betaal of hom sal oorgee om die gevangenisstraf te ondergaan, ingeval die verrigtings in die saak soos voormeld goedgekeur word, en ingeval 'n skriftelike kennisgewing om te betaal of om hom oor te gee (na gelang van die geval), onderteken deur die klerk van die hof, op of vir so iemand op 'n in die akte van borgtog of verbintenis te vermelde plek gedien word.

'n Tot lyfstraf veroordeelde persoon word aangehou hangende hersiening

102. (1) Behalwe in die geval waar 'n manspersoon wat nie bo die leeftyd van een-en-twintig is nie, kragtens die „Wet op de Kriminele Procedure en Bewijslevering", No. 31 van 1917, gevonnis is, mag lyfstraf in geen geval toegedien word nie tensy òf die stukke in die saak teruggestuur is, met 'n sertifikaat soos in artikel *agt-en-negentig* van hierdie Wet vermeld, òf die hof van appèl die vonnis van die magistraatshof bekragtig het.

(2) As iemand wat tot lyfstraf gevonnis is, nie ook gevonnis is tot gevangenisstraf van sodanige duur dat dit moontlik is

time for the judge's certificate to be received before inflicting the said whipping, such person, in case he shall not give sufficient bail to appear after being served at some place to be mentioned in the bail bond or recognizance with a written notice signed by the clerk of the court requiring him so to do, shall be detained in custody until either the proceedings in the case have been returned as aforesaid, or the sentence has been confirmed as aforesaid.

CHAPTER XVI.

CRIMINAL APPEALS.

Appeals.

103. (1) Any person convicted of any offence by the judgment of any magistrate's court (including a person discharged after conviction under any provision of the Criminal Procedure and Evidence Act, No. 31 of 1917) may appeal against such conviction and against any sentence or order of the court following thereupon to the provincial division of the supreme court having jurisdiction or within those districts of the Province of the Cape of Good Hope for which the Griqualand West Local Division is established, to that division also, or within those districts of the Province of the Cape of Good Hope for which the Eastern Districts Local Division is established, to that division only.

(2) Whenever a criminal summons or charge is dismissed at any stage of the proceedings on exception or on the ground that it is bad in law or that it discloses no offence, the Attorney-General may in like manner appeal against such dismissal.

(3) Any such appeal shall be noted and prosecuted within the period and in the manner prescribed by the rules; but the court of appeal may in any case extend such period.

(4) The court of appeal shall thereupon have the powers set out in sub-section (2) of section *ninety-eight* and unless the appeal is based solely upon a question of law, the court of appeal shall, in addition to those powers, have the power to increase any sentence imposed upon the appellant or impose any other form of sentence in lieu of or in addition to such sentence: Provided that, notwithstanding that such a court is of opinion that any point raised might be decided in favour of the appellant, no conviction or sentence shall be reversed or altered by reason of any irregularity or defect in the record or proceedings unless it appears to the court of appeal that a failure of justice has in fact resulted therefrom.

(5) When an appeal under this section is noted, the provisions of sections *one hundred and one* and *one hundred and two* shall apply *mutandis mutandis* to the sentence appealed against.

(6) Notwithstanding anything in this section contained, whenever any person has been convicted by a magistrate's court of an offence and is undergoing imprisonment for that or any other offence, he shall not be entitled to prosecute in person an appeal which he has noted against the conviction, unless a judge of the court of appeal has certified that there are reasonable grounds for appeal.

(7) Whenever a conviction and sentence of a magistrate's court are set aside on appeal or on review on the ground that evidence was admitted which should not have been admitted, or that evidence was rejected which should have been admitted or on the ground of any other irregularity or defect in the procedure, proceedings in respect of the same offence to which the conviction and sentence referred, may again be instituted either on the original summons or charge or upon any other indictment, summons or charge, as if the accused had not previously been arraigned, tried and convicted: Provided that such proceedings shall be instituted before some judicial officer other than the judicial officer who recorded the conviction and imposed the sentence set aside on appeal or review.

Appeal by prosecutor.

104. (1) When a magistrate's court has in any criminal proceedings given a decision in favour of the accused on any matter of law, the Attorney-General, or if a person or a body other than the Attorney-General or his representative was the prosecutor in those proceedings, then that other prosecutor may require the magistrate to state a case for the consideration of the court of appeal, setting forth the question of law and his decision thereon, and, if evidence has been heard, his findings of fact, in so far as they are material to the question of law.

om die regterlike sertifikaat betyds voor die toediening van die lyfstraf te verkry nie, dan word so iemand, tensy hy voldoende borgtog stel om te verskyn nadat 'n skriftelike kennisgewing om sulks te doen, deur die klerk van die hof onderteken, op hom op 'n in die akte van borgtog of verbintenis te vermelde plek gedien is, in hegtenis aangehou totdat òf die stukke in die saak soos voormeld teruggestuur is òf die vonnis soos voormeld bekragtig is.

HOOFSTUK XVI.

APPÈLLE IN STRAFSAKE.

Appèlle.

103. (1) Iedereen wat by uitspraak van 'n magistraatshof aan 'n misdryf skuldig bevind is (met inbegrip van iemand wat ingevolge 'n bepaling van die „Wet op de Kriminele Procedure en Bewijslevering", No. 31 van 1917, ná skuldigbevinding ontslaan is), kan appelleer teen so 'n skuldigbevinding en teen 'n daaropvolgende vonnis of bevel van die hof, na die bevoegde provinsiale afdeling van die Hooggeregshof, of binne daardie distrikte van die Provinsie Kaap die Goeie Hoop waarvoor die Plaaslike Afdeling Grikwaland-Wes ingestel is, ook na daardie afdeling, of binne daardie distrikte van die Provinsie Kaap die Goeie Hoop waarvoor die Plaaslike Afdeling van die Oostelike Distrikte ingestel is, na daardie afdeling alleen.

(2) Wanneer 'n dagvaarding of aanklag in 'n strafsaak op enige punt in die loop van die verrigtings afgewys word op eksepsie of op grond daarvan dat dit regtens ongegrond is of geen misdryf openbaar nie, kan die Prokureur-generaal op gelyke wyse teen sodanige afwysing appelleer.

(3) So 'n appèl moet binne die termyn en op die wyse deur die reëls voorgeskryf, aangeteken en voortgesit word ; die hof van appèl kan egter in enige geval daardie termyn verleng.

(4) Die hof van appèl het daarop die in sub-artikel (2) van artikel *agt-en-negentig* vermelde bevoegdhede, en tensy die appèl alleen op 'n regsvraag steun, het die hof van appèl benewens voormelde bevoegdhede, ook die bevoegdheid om 'n aan die appellant opgelegde vonnis te verskerp of om 'n ander soort vonnis in plaas van of benewens daardie vonnis op te lê : Met dien verstande dat nieteenstaande sodanige hof van oordeel is dat een of ander geopperde vraagpunt ten gunste van die appellant beslis mag word, geen skuldigbevinding of vonnis vernietig of gewysig word op grond van 'n onreëlmatigheid of gebrek in die stukke van die saak of die verrigtings nie, tensy dit aan die hof van appèl blyk dat 'n regskending werklik as gevolg daarvan plaasgevind het.

(5) Wanneer ingevolge hierdie artikel appèl aangeteken word, is die bepalings van artikels *honderd-en-een* en *honderd-en-twee mutatis mutandis* van toepassing op die vonnis waarteen geappelleer word.

(6) Ondanks die bepalings van hierdie artikel, is iemand wat deur 'n magistraatshof aan 'n misdryf skuldig bevind is, en weens sodanige of 'n ander misdryf gevangenisstraf ondergaan, nie geregtig om 'n deur hom teen die skuldigbevinding aangetekende appèl in eie persoon voort te sit nie, tensy 'n regter van die hof van appèl gesertifiseer het dat daar redelike gronde vir appèl bestaan.

(7) Wanneer 'n skuldigbevinding en vonnis van 'n magistraatshof by appèl of by hersiening te niet gedoen word op grond daarvan dat getuienis toegelaat is wat nie toegelaat moes geword het nie, of dat getuienis verwerp is wat toegelaat moes geword het, of op grond van enige ander onreëlmatigheid of gebrek in die prosedure, dan kan strafregtelike stappe ten opsigte van dieselfde misdryf waarop die skuldigbevinding en vonnis betrekking gehad het, opnuut gedoen word òf op die oorspronklike dagvaarding of aanklag òf op 'n ander akte van beskuldiging, dagvaarding of aanklag, asof die beskuldigde nie reeds tevore in 'n staat van beskuldiging gestel, verhoor en skuldig bevind was nie : Met dien verstande dat sodanige stappe gedoen moet word voor 'n ander regterlike amptenaar as die regterlike amptenaar deur wie die skuldigbevinding aangeteken en die vonnis opgelê is wat by appèl of hersiening te niet gedoen is.

Appèl deur vervolger.

104. (1) Wanneer 'n magistraatshof in 'n strafsaak op 'n regsvraag 'n beslissing ten gunste van die beskuldigde gegee het, kan die Prokureur-generaal, of indien 'n ander persoon of liggaam as die Prokureur-generaal of sy verteenwoordiger die vervolger in die saak was, dan daardie ander vervolger, van die magistraat eis dat hy 'n casus-posisie ter oorweging van die hof van appèl opstel, met vermelding van die regsvraag en sy beslissing daaroor, en, indien getuienis aangevoer is, met vermelding van sy bevinding van die feite, vir sover hulle vir die regsvraag van belang is.

(2) When such case has been stated, the Attorney-General, or other prosecutor, as the case may be, may appeal from that decision to the court of appeal referred to in sub-section (1) of section *one hundred and three.*

(3) Sub-section (3) of section *one hundred and three* shall apply to an appeal under sub-section (2) of this section.

(4) If an appeal under sub-section (2) is allowed, the magistrate's court which gave the decision appealed from shall, subject to the provisions of sub-section (5), after giving sufficient notice to both parties, re-open the case in which the decision was given and deal with it in the same manner as it should have dealt therewith if it had given a decision in accordance with the law as laid down by the court of appeal.

(5) In allowing such appeal, whether wholly or in part, the court of appeal may itself impose such sentence upon the respondent or make such order as the magistrate's court ought to have imposed or made, or it may remit the case to the magistrate's court and direct that court to take such further steps as the court of appeal thinks proper.

Appeal to Appellate Division of Supreme Court.

105. (1) When in any criminal appeal, whether brought by the accused or by the Attorney-General or other prosecutor, the court of appeal has given a decision in favour of the accused on a matter of law, the Attorney-General or other prosecutor against whom that decision was given may appeal to the Appellate Division of the Supreme Court which shall, if it decides the matter in issue in favour of the appellant, set aside or vary the decision appealed from and—

(*a*) if the matter was brought before the provincial or local division of the Supreme Court in terms of sub-section (1) of section *one hundred and three*, re-instate the conviction, sentence or order of the magistrate's court appealed from, either in its original form or in such a modified form as the Appellate Division may think desirable ; or

(*b*) if the matter was brought before the provincial or local division in terms of sub-section (2) of section *one hundred and four*, give such decision or take such action as the provincial or local division ought, in the opinion of the Appellate Division, to have given or taken (including any action under sub-section (5) of section *one hundred and four*) and thereupon the provisions of sub-section (4) of that section shall *mutatis matandis* apply.

(2) If any appeal brought by the Attorney-General or other prosecutor under this section or under section *one hundred and four* is disallowed, the court disallowing the appeal may order that the appellant pay to the respondent the costs to which the respondent may have been put in opposing the appeal, taxed according to the scale in civil cases of that court : Provided that, if the Attorney-General was the appellant, the costs which he is so ordered to pay shall be paid by the State.

PART IV.

CHAPTER XVII.

OFFENCES.

Penalty for disobedience of order of court.

106. Any person wilfully disobeying or neglecting to comply with any order of a court or with a notice lawfully endorsed on a summons for rent prohibiting the removal of any furniture or effects shall be guilty of a contempt of court and shall, upon conviction, be liable to a fine not exceeding fifty pounds or, in default of payment, to imprisonment for a period not exceeding three months or to such imprisonment without the option of a fine.

Offences relating to execution.

107. Any person who—

(1) obstructs a messenger or deputy-messenger in the execution of his duty ;

(2) being aware that goods are under arrest, interdict, or attachment by the court makes away with or disposes of those goods in manner not authorized by law or knowingly permits those goods, if in his possession or under his control, to be made away with or disposed of in such manner ;

(2) Nadat so 'n casus-posisie opgestel is, kan die Prokureur-generaal of die ander vervolger, na gelang van die geval, teen daardie beslissing appelleer na die hof van appèl in sub-artikel (1) van artikel *honderd-en-drie* vermeld.

(3) Sub-artikel (3) van artikel *honderd-en-drie* is van toepassing op 'n appèl ingevolge sub-artikel (2) van hierdie artikel.

(4) Indien 'n appèl ingevolge sub-artikel (2) gehandhaaf word, moet (behoudens die bepalings van sub-artikel (5)) die magistraatshof wat die beslissing gegee het waarteen geappelleer word, nadat hy aan beide partye voldoende kennis gegee het, die saak waarin die beslissing gegee is heropen, en op dieselfde wyse daarmee handel as wat hy daarmee sou moes gehandel het indien hy 'n beslissing gegee het in ooreenstemming met die regsvertolking van die hof van appèl.

(5) Wanneer die hof van appèl so 'n appèl handhaaf, hetsy geheel of ten dele, kan hy self aan die respondent so 'n vonnis oplê of so 'n bevel uitvaardig as wat die magistraatshof moes opgelê of uitgevaardig het, of kan hy die saak na die magistraatshof terugverwys en daardie hof gelas om sulke verdere stappe te doen as wat die hof van appèl goed vind.

Appèl na Afdeling van Appèl van Hooggeregshof.

105. (1) Wanneer die appèlhof in 'n strafappèl (onverskillig of dit deur die beskuldigde of deur die Prokureur-generaal of ander vervolger aangebring is) op 'n regsvraag 'n beslissing ten gunste van die beskuldigde gegee het, kan die Prokureur-generaal of ander vervolger teen wie daardie beslissing gegee is, na die Afdeling van Appèl van die Hooggeregshof appelleer, en laasgenoemde afdeling kan, indien hy die geskilpunt ten gunste van die appellant beslis, die beslissing waarteen geappelleer word, ter syde stel of wysig en—

(*a*) indien die saak ingevolge sub-artikel (1) van artikel *honderd-en-drie* voor die provinsiale of plaaslike afdeling van die Hooggeregshof gebring is, die veroordeling, vonnis of bevel van die magistraatshof, waarteen geappelleer is, herstel, en wel in die oorspronklike vorm of in so 'n gewysigde vorm as die Afdeling van Appèl wenslik ag ; of

(*b*) indien die saak ingevolge sub-artikel (2) van artikel *honderd-en-vier* voor die provinsiale of plaaslike afdeling gebring is, so 'n beslissing gee of so handel as wat die provinsiale of plaaslike afdeling volgens oordeel van die Afdeling van Appèl moes gegee of moes gehandel het (met inbegrip van 'n handeling ingevolge sub-artikel (5) van artikel *honderd-en-vier*) en daarop is die bepalings van sub-artikel (4) van daardie artikel *mutatis mutandis* van toepassing.

(2) Indien 'n appèl deur die Prokureur-generaal of ander vervolger ingevolge hierdie artikel of artikel *honderd-en-vier* aangebring, afgewys word, kan die hof wat die appèl afwys gelas dat die appellant aan die respondent die koste moet betaal wat die respondent in sy verset teen die appèl mag opgeloop het, getakseer volgens die tarief van daardie hof in siviele sake : Met dien verstande dat indien die Prokureur-generaal die appellant was, die koste wat hy gelas word om te betaal, deur die Staat betaal word.

DEEL IV.

HOOFSTUK XVII.

MISDRYWE.

Straf op verontagsaming van bevel van die hof.

106. Iedereen wat hom skuldig maak aan opsetlike verontagsaming van, of versuim om te voldoen aan, 'n bevel van 'n hof of 'n kennisgewing wat wettig op 'n dagvaarding vir huurgeld geëndosseer is, waarby die verwydering van meubels of besittings verbied word, is aan minagting van die hof skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens vyftig pond, of by wanbetaling, met gevangenisstraf vir 'n tydperk van hoogstens drie maande of met sodanige gevangenisstraf sonder die keuse van 'n boete.

Misdrywe met betrekking tot tenuitvoerlegging.

107. Iedereen wat—

(1) 'n geregsbode of adjunk-geregsbode by die uitvoering van sy pligte belemmer ;

(2) wetende dat goedere deur die hof onder arres, interdik of beslaglegging geplaas is, daardie goedere wegmaak of op 'n volgens wet ongeoorloofde wyse daaroor beskik, of doelbewus toelaat dat daardie goedere, indien hulle in sy besit of onder sy beheer is, aldus weggemaak word of dat aldus daaroor beskik word ;

(3) being a judgment debtor and being required by a messenger or deputy-messenger to point out property to satisfy a warrant issued in execution of judgment against such person, either—

(*a*) falsely declares to that messenger or deputy-messenger that he possesses no property or not sufficient property to satisfy the warrant; or

(*b*) although owning such property neglects or refuses to point out the same; or

(4) being a judgment debtor refuses or neglects to comply with any requirement of a messenger or deputy-messenger in regard to the delivery of documents in his possession or under his control relating to the title of the immovable property under execution,

shall be liable upon conviction to a fine not exceeding fifty pounds or, in default of payment, to imprisonment for a period not exceeding three months or to such imprisonment without the option of a fine.

Custody and punishment for contempt of court.

108. (1) If any person, whether in custody or not, wilfully insults a judicial officer during his sitting or a clerk or messenger or other officer during his attendance at such sitting, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where such court is held, he shall (in addition to his liability to being removed and detained as in sub-section (3) of section *five* provided) be liable to be sentenced summarily or upon summons to a fine not exceeding fifty pounds or in default of payment to imprisonment for a period not exceeding three months or to such imprisonment without the option of a fine. In this sub-section the word "court" includes a preparatory examination held under the law relating to criminal procedure.

(2) In any case in which the court commits or fines any person under the provisions of this section, the judicial officer shall without delay transmit to the registrar of the court of appeal for the consideration and review of a judge in chambers, a statement, certified by such judicial officer to be true and correct, of the grounds and reasons of his proceedings, and shall also furnish to the party committed a copy of such statement.

Judgment debtor to inform court of his address.

109. Any person against whom a court has, in a civil case, given any judgment or made any order, who has not satisfied in full such judgment or order and all costs for which he is liable in connection therewith, shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds if he has changed his place of residence or employment and fails to give within fourteen days from the date of every such change to the clerk of the court which gave such judgment or made such order a notice in writing setting forth fully and correctly the new place of residence or employment.

PART V.

CHAPTER XVIII.

GENERAL AND SUPPLEMENTARY.

Jurisdiction as to plea of *ultra vires*.

110. No magistrate's court shall be competent to pronounce upon the validity of a provincial ordinance or of a statutory proclamation of the Governor-General and every such court shall assume that every such ordinance or proclamation is valid; but every such court shall be competent to pronounce upon the validity of any statutory regulation, order or bye-law.

Amendment of proceedings.

111. (1) In any civil proceedings, the court may, at any time before judgment, amend any summons or other document forming part of the record: Provided that no amendment shall be made by which any party other than the party applying for such amendment may (notwithstanding adjournment) be prejudiced in the conduct of his action or defence.

(2) In civil proceedings an amendment may be made upon such terms as to costs and otherwise as the court may judge reasonable.

(3) No misnomer in regard to the name of any person or place shall vitiate any proceedings of the court if the person or place be described so as to be commonly known.

Administration of oath or affirmation.

112. The oath to be taken by any witness in any proceedings, whether civil or criminal, in any court or at any preparatory examination shall be administered by the officer presiding at such proceedings or by the clerk of the court (or any person

(3) 'n vonnisskuldenaar synde, wanneer deur 'n geregsbode of adjunk-geregsbode van hom verlang word om goedere aan te wys ter voldoening aan 'n lasbrief uitgereik ter tenuitvoerlegging van 'n vonnis teen so iemand, òf—

(*a*) valselik aan daardie bode of adjunk-bode verklaar dat hy geen goedere of geen voldoende goedere besit om aan die lasbrief te voldoen nie; òf

(*b*) hoewel hy sodanige goedere besit, versuim of weier om die goedere aan te wys; of

(4) 'n vonnisskuldenaar synde, weier of versuim om te voldoen aan 'n vereiste van 'n geregsbode of adjunk-geregsbode met betrekking tot die aflewering van dokumente in sy besit of onder sy beheer, betreffende die titel van die onroerende goed onder eksekusie,

is by skuldigbevinding strafbaar met 'n boete van hoogstens vyftig pond of, by wanbetaling, met gevangenisstraf vir 'n tydperk van hoogstens drie maande of met sodanige gevangenisstraf sonder die keuse van 'n boete.

Gevangehouding en straf weens minagting van die hof.

108. (1) Iemand wat, hetsy hy in versekerde bewaring is al dan nie, 'n regterlike amptenaar gedurende sy hofsitting, of 'n klerk of geregsbode of ander beampte wat by die sitting aanwesig is, opsetlik beledig of die verrigtings van die hof opsetlik onderbreek of hom op ander wyse aan wangedrag skuldig maak in die plek waar die hofsitting gehou word, is (bo en behalwe dat hy volgens voorskrif van sub-artikel (3) van artikel *vyf* verwyder en aangehou kan word), summierlik of na dagvaarding strafbaar met 'n boete van hoogstens vyftig pond of by wanbetaling met gevangenisstraf vir 'n tydperk van hoogstens drie maande, of met sodanige gevangenisstraf sonder die keuse van 'n boete. In hierdie sub-artikel omvat die word „hof" of „hofsitting" ook 'n voorlopige ondersoek, gehou ingevolge die wetsbepalings op die strafregtelike prosedure.

(2) In iedere geval wanneer die hof iemand kragtens hierdie artikel na die gevangenis verwys of beboet, stuur die regterlike amptenaar sonder versuim aan die griffier van die appèlhof ter oorweging en hersiening van 'n regter in kamers, 'n deur die regterlike amptenaar as waar en juis gesertifiseerde verklaring, waarin die gronde en redes vir sy optrede vermeld word, en verstrek hy ook 'n afskrif van die verklaring aan die gevangegesette party.

Vonnisskuldenaar moet sy adres aan hof meedeel.

109. Iedereen teen wie 'n hof in 'n siviele saak 'n vonnis gevel of 'n bevel uitgevaardig het, wat nie ten volle aan daardie vonnis of bevel en alle koste waarvoor hy in verband daarmee aanspreeklik is, voldoen het nie, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens vyf-en-twintig pond, indien hy sy woon- of werkplek verander het en versuim om binne veertien dae vanaf die datum van elke sodanige verandering, aan die klerk van die hof wat bedoelde vonnis gevel of bevel uitgevaardig het by skriftelike kennisgewing die nuwe woon- of werkplek volledig en juis mee te deel.

DEEL V.

HOOFSTUK XVIII.

ALGEMENE EN AANVULLENDE BEPALINGS.

Jurisdiksie met betrekking tot pleit van *ultra vires*.

110. Geen magistraatshof is bevoeg om 'n oordeel uit te spreek oor die regsgeldigheid van 'n provinsiale ordonnansie of 'n uit kragte van 'n wet uitgevaardigde proklamasie van die Goewerneur-generaal nie en elke sodanige hof moet aanneem dat elke sodanige ordonnansie of proklamasie regsgeldig is; elke sodanige hof is egter bevoeg om 'n oordeel uit te spreek oor die regsgeldigheid van 'n uit kragte van 'n wet uitgevaardigde regulasie, order of verordening.

Wysiging van verrigtings.

111. (1) Die hof kan, in alle siviele sake, te eniger tyd voordat vonnis gevel is, 'n dagvaarding of ander dokument wat deel van die stukke uitmaak, wysig: Met dien verstande dat geen wysiging aangebring word waarby 'n ander party as die party wat die wysiging aanvra (ondanks verdaging) in sy aksie of verweer benadeel sou kon word nie.

(2) In siviele sake kan 'n wysiging aangebring word op sodanige voorwaardes, ten aansien van koste en andersins, as wat die hof redelik ag.

(3) Geen verkeerde benaming van 'n persoon of plek maak die verrigtings van die hof nietig nie, as die persoon of plek beskryf is soos hy algemeen bekend staan.

Afneem van eed of bevestiging.

112. Die eed wat in regsverrigtings, hetsy van 'n siviele of strafregtelike aard, in 'n hof of by 'n voorlopige ondersoek deur 'n getuie afgelê moet word, moet afgeneem word deur die amptenaar wat by daardie verrigtings presideer of deur

acting in his stead) in the presence of the said officer, or if the witness is to give his evidence through an interpreter, by the said officer through the interpreter or by the interpreter in the said officer's presence.

Settlement of conflicting decisions in different provinces.

113. Whenever in one province any decision is given by a provincial or local division of the Supreme Court as to the interpretation of any provision of this Act in conflict with a decision of any other such court in another province, the Minister may proceed to have a special case prepared for the Appellate Division and to have the matter argued before it in order to obtain its ruling thereon; and such ruling shall thereafter be deemed by all other courts to be the true interpretation of such provision.

Savings and non-application of Act.

114. (1) Nothing in this Act shall be construed as affecting the operation of the Criminal Procedure and Evidence Act, No. 31 of 1917, or the conduct within the Province of Natal, of native cases as defined in the Courts Act No. 49 of 1898, of that Province; but such cases shall, within that Province, continue to be dealt with as if this Act had not been passed: Provided that Part III of this Act shall apply in respect of native criminal cases in magistrates' courts in Natal in the same manner and to the same extent as it applies to criminal cases in those courts which are not native cases, the Natal Provincial Division of the Supreme Court being the court of appeal in the application of Chapters XIV and XVI.

(2) Nothing in this Act contained shall be construed as depriving any superior court of any power to review and correct the proceedings of any magistrate's court.

(3) Nothing in this Act contained shall be construed as affecting the provisions of section *one hundred and five* of the South Africa Act, 1909, relating to appeals to the Appellate Division.

(4) This Act shall not apply to the Transkeian Territories of the Province of the Cape of Good Hope, except in so far as it may be extended thereto by proclamation.

Saving of pending proceedings.

115. (1) Nothing in this Act shall affect proceedings pending at the commencement of this Act and such proceedings shall be continued and concluded in every respect as if this Act had not been passed.

(2) Proceedings shall, for the purposes of this section, be deemed to be pending if, at the commencement of this Act, summons had been issued or the accused had pleaded but judgment had not been given; and to be concluded when judgment is given.

(3) At the expiration of one year from the commencement of this Act, sub-section (1) of this section shall cease to have effect; and any cases pending at the commencement of this Act and not concluded within one year thereafter shall become subject to the provisions of this Act.

Laws repealed.

116. The laws specified in the Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule.

Short title.

117. This Act may be cited for all purposes as the Magistrates' Courts Act, 1944, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.

Schedule.

LAWS REPEALED.

No. and Year.	Title.	Extent of Repeal.
Act No. 32 of 1917.	Magistrates' Courts Act	The whole, except the Second Schedule.
Act No. 13 of 1921.	Magistrates' Courts Act Amendment Act.	So much as remains unrepealed.
Act No. 9 of 1923.	Magistrates' Courts Act, 1917, Further Amendment Act.	So much as remains unrepealed.
Act No. 39 of 1926.	Criminal and Magistrates' Courts Procedure (Amendment) Act.	Sections *forty-nine* to *sixty* inclusive.
Act No. 17 of 1932.	Magistrates' Courts Amendment Act.	The whole.
Act No. 46 of 1935.	General Law Amendment Act.	Sections *eighty-three* to *ninety-nine* inclusive.
Act No. 21 of 1942.	Civil Imprisonment Restriction Act.	Sections *one*, *two* and *three*.

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GOVERNMENT NOTICES.

ollowing Government Notices are published for general on:—

DEPARTMENT OF MINES.

* [26 May 1944.

COMMISSION OF ENQUIRY.—CESSATION OF MINING OPERATIONS: VAN RYN DEEP, LIMITED.

It is hereby notified that His Excellency the Officer Administering the Government, under the powers vested in him by sub-section (1) of section *one hundred and twenty-seven bis* of the Precious and Base Metals Act, 1908 (Act No. 35 of 1908 of the Transvaal), as inserted by section *forty-three* of the Mineral Law Amendment Act, 1934 (Act No. 36 of 1934), has been pleased to appoint the undermentioned persons as a Commission—

Henry Stone Hutcheon Donald, the Government Mining Engineer, as Chairman,
Alan Frederick Corbett, Esquire, and
Albert Edward Payne, Esquire,

to enquire into and report upon the proposed cessation of mining operations by Van Ryn Deep, Limited, on its mining title, situate on the farm Benoni No. 3, in the Mining District of Johannesburg, Transvaal Province, and upon the following relevant matters:—

(1) The effect of Group Control of the mine including cost of such control.

(2) The cost structure of the mine with special reference to the extent to which working costs have been affected—

(*a*) by variations in the native labour supply;

(*b*) by Government, Provincial and Municipal imposts, and the effect of the removal or modification of any of these factors.

(3) The desirability of prolonging the working of the mine by subsidy or other form of Government assistance and the possibility of a continuation of profitable mining operations thereafter as the result of such assistance.

It is further notified that Mr. W. L. Eales, Acting Chief Clerk in the Department of Mines, has been appointed Secretary to the aforementioned Commission.

All correspondence should be addressed to P.O. Box 1132, Johannesburg. M.M. 58/25.

* No. 865.] [26 May 1944.

COMMISSION OF ENQUIRY.—CESSATION OF MINING OPERATIONS: WITWATERSRAND DEEP, LIMITED.

It is hereby notified that His Excellency the Officer Administering the Government, under the powers vested in him by sub-section (1) of section *one hundred and twenty-seven bis* of the Precious and Base Metals Act, 1908 (Act No. 35 of 1908 of the Transvaal), as inserted by section *forty-three* of the Mineral Law Amendment Act, 1934 (Act No. 36 of 1934), has been pleased to appoint the undermentioned persons as a Commission—

Henry Stone Hutcheon Donald, the Government Mining Engineer, as Chairman,
Alan Frederick Corbett, Esquire, and
Albert Edward Payne, Esquire,

to enquire into and report upon the proposed cessation of mining operations by Witwatersrand Deep, Limited, on its mining titles, situate on the farms Driefontein No. 1 and Driefontein No. 12, Mining District of Johannesburg, Transvaal Province, and upon the following relevant matters:—

(1) The tonnage, if any, of payable ore that is unavailable and the reasons therefor.

(2) The cost structure of the mine with special reference to the extent to which working costs have been affected—

(*a*) by variations in the native labour supply;

(*b*) by Government, Provincial and Municipal imposts, and the effect of the removal or modification of any of these factors.

(3) The desirability of prolonging the working of the mine by subsidy or other form of Government assistance and the possibility of a continuation of profitable mining operations thereafter as the result of such assistance.

It is further notified that Mr. W. L. Eales, Acting Chief Clerk in the Department of Mines, has been appointed Secretary to the aforementioned Commission.

All correspondence should be addressed to P.O. Box 1132, Johannesburg. M.M. 58/26.

GOEWERMENTSKENNISGEWINGS.

Onderstaande Goewermentskennisgewings word vir algemene informasie gepubliseer:—

DEPARTEMENT VAN MYNWESE.

* No. 864.] [26 Mei 1944.

KOMMISSIE VAN ONDERSOEK.—STAKING VAN MYNWERKSAAMHEDE: VAN RYN DEEP, LIMITED.

Hierby word bekendgemaak dat dit Sy Eksellensie die Amptenaar Belas met die Uitoefening van die Uitvoerende Gesag behaag het, ingevolge die bevoegdheid hom verleen by subartikel (1) van artikel *honderd sewe-en-twintig bis* van die Precious and Base Metals Act, 1908 (Wet No. 35 van 1908 van Transvaal), soos ingevoeg by artikel *drie-en-veertig* van die Minerale Wysigingswet, 1934 (Wet No. 36 van 1934), ondergemelde persone—

Die heer Henry Stone Hutcheon Donald, Staatsmyningenieur, Voorsitter,
die heer Alan Frederick Corbett, en
die heer Albert Edward Payne,

te benoem as 'n Kommissie om ondersoek in te stel en verslag te doen betreffende die voorgenome staking van mynwerksaamhede deur Van Ryn Deep, Limited, op sy myntitel, geleë op die plaas Benoni No. 3, myndistrik Johannesburg, Provinsie Transvaal, en betreffende die volgende verwante aangeleenthede:—

(1) Die uitwerking van Groepbeheer van die myn met insluiting van die koste van sodanige beheer.

(2) Die kostestruktuur van die myn met spesiale verwysing na die maté waarin bedryfskoste beïnvloed is—

(*a*) deur skommelinge in die beskikbare naturelle-arbeid,

(*b*) deur Staats-, Provinsiale en Munisipale heffings, en die uitwerking van die verwydering of wysiging van enigeen van hierdie faktore.

(3) Die wenslikheid om die eksploitasie van die myn te verleng deur subsidie of ander vorm van Staatshulp en die moontlikheid van die voortsetting van winsgewende mynverrigtinge daarna as gevolg van sodanige hulp.

Verder word bekendgemaak dat die heer W. L. Eales, Waarnemende Hoofklerk in die Departement van Mynwese, aangestel is as Sekretaris van voormelde Kommissie.

Alle korrespondensie moet aan Posbus 1132, Johannesburg, gerig word. M.M. 58/25.

* No. 865.] [26 Mei 1944.

KOMMISSIE VAN ONDERSOEK.—STAKING VAN MYNWERKSAAMHEDE: WITWATERSRAND DEEP, LIMITED.

Hierby word bekendgemaak dat die Amptenaar Belas met die Uitoefening van die Uitvoerende Gesag van die Unie van Suid-Afrika behaag het om, kragtens die bevoegdheid hom verleen by subartikel (1) van artikel *honderd sewe-en-twintig bis* van die Precious and Base Metals Act, 1908 (Wet No. 35 van 1908 van Transvaal), soos ingevoeg by artikel *drie-en-veertig* van die Minerale Wysigingswet, 1934 (Wet No. 36 van 1934), om ondergemelde persone—

Die heer Henry Stone Hutcheon Donald, Staatsmyningenieur, Voorsitter,
die heer Alan Frederick Corbett, en
die heer Albert Edward Payne,

te benoem as 'n Kommissie om ondersoek in te stel en verslag te doen betreffende die voorgenome staking van mynwerksaamhede deur „Witwatersrand Deep, Limited", op sy myntitel, geleë op die plaas Driefontein No. 1 en Driefontein No. 12, myndistrik Johannesburg, Provinsie Transvaal, en betreffende die volgende verwante aangeleenthede:—

(1) Die tonnemaat lonende erts wat nie beskikbaar is nie en die redes daarvoor.

(2) Die kostestruktuur van die myn met spesiale verwysing na die mate wat bedryfskoste beïnvloed is—

(*a*) deur skommelinge in die beskikbare naturelle-arbeid,

(*b*) deur Staats-, Provinsiale en Munisipale heffings, en die uitwerking van die verwydering of wysiging van enigeen van hierdie faktore.

(3) Die wenslikheid om die eksploitasie van die myn te verleng deur subsidie of ander vorm van Staatshulp en die moontlikheid van die voortsetting van winsgewende mynverrigtinge daarna as gevolg van sodanige hulp.

Verder word bekendgemaak dat die heer W. L. Eales, Waarnemende Hoofklerk in die Departement van Mynwese, aangestel is as Sekretaris van voormelde Kommissie.

Alle korrespondensie moet aan Posbus 1132, Johannesburg, gerig word. M.M. 58/26.

GENERAL NOTICE.

MISCELLANEOUS.

✱ NOTICE No. 388 OF 1944.

VAN RYN DEEP, LIMITED, AND WITWATERSRAND DEEP, LIMITED.—COMMISSIONS.

With reference to Government Notices Nos. 864 and 865, published in the *Government Gazette* of the 26th May, 1944, whereby Commissions were appointed to enquire into the proposed cessation of mining operations by Van Ryn Deep, Limited, and Witwatersrand Deep, Limited, it is hereby notified that any person desirous of giving evidence before the Commissions should forward a memorandum to the undersigned at P.O. Box, 1132, Johannesburg, before the 14th June, 1944, setting out the matters on which it is desired to give evidence.

W. L. EALES,
Johannesburg. Secretary to the Commission.

ALGEMENE KENNISGEWING.

DIVERSE.

✱ KENNISGEWING No. 388 VAN 194

VAN RYN DEEP LIMITED EN WITWATE DEEP LIMITED.—KOMMISSIES.

Met verwysing na Goewermentskennisgewings Nos. 864 en 865, gepubliseer in die *Staatskoerant* van 26 Mei 1944, waarby Kommissies benoem is om ondersoek in te stel na die voorgenome staking van Mynwerksaamhede deur Van Ryn Deep, Limited en Witwatersrand Deep, Limited, word hierby bekendgemaak dat enigeen wat getuienis voor die Kommissies wil aflê, voor 14 Junie 1944 'n memorandum wat 'n uiteensetting van die sake waaroor hy getuienis wil aflê, aan die ondergetekende per adres Posbus 1132, Johannesburg, moet stuur.

W. L. EALES,
Johannesburg. Sekretaris van die Kommissie.

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FORM No. 3—VORM No. 3. SCHEDULE—*SKEDULE.*

No. of Estate. *No. van Boedel.*	Name and Description of Estate. *Naam en Beskrywing van Boedel.*	Whether Assigned or Sequestrated. *Of Boedel Afgestaan of Gesekwestreer is.*	Name and Address of Trustee or Assignee. *Naam en Adres van Voog of Kurator.*	Day, Date, Hour and Place of Meeting. *Dag, Datum, Uur en Plek van Byeenkoms.*	Time within which debts payable. *Tyd binne welke skuld betaal moet word.*
[illegible]1404	Insolvent Estate A. Charalambous, trading as Parisian Café, Skinner Street, Pretoria	—	Maurice Joseph Chipkin, 301 Hollandia House, 127 President Street, P.O. Box 8733, Johannesburg	Fri., 9/6/44, 10 a.m., Pretoria	Forthwith.
C/21381	Insolvent Estate Ebrahim Khan, butcher, 31A Pioneer Road, Fordsburg	—	Emanuel Gluckmann, Victory House, Commissioner Street, Johannesburg	Wed., 14/6/44, Johannesburg	—
C/21405	Baba Bawa, butcher, Stand 242, corner Sixteenth Street and Third Avenue, Asiatic Bazaar, Benoni	Sequestrated...	John Cameron, 64 N.B.S. Buildings, Rissik and Market Streets, Johannesburg	Wed., 7/6/44, 10 a.m., Benoni	Forthwith.
C/21408	Emerentius Botha, partner in Botha & Company, 28 Buffalo Road, Emmarentia, Johannesburg	Sequestrated...	J. N. Benjamin, 401/404, A.B.C. Chambers, Simmonds Street, P.O. Box 3428, Johannesburg	Wed., 7/6/44, 9.30 a.m., Johannesburg	10 days.

NOTICES OF TRUSTEES AND ASSIGNEES.

Pursuant to section *ninety-four* of the Insolvency Act, 1916 and pursuant to section *one hundred and nine* (1) of the Insolvency Act, 1936.

Notice is hereby given that fourteen days after the date hereof it is the intention of the Trustees or Assignees of the Sequestrated or Assigned Estates mentioned in the subjoined Schedule to apply to the Master for an extension of time, as specified in the Schedule, within which to lodge a Liquidation Account and Plan of Distribution or/and Contribution.

KENNISGEWING VAN VOOGDE EN KURATORS.

Ingevolge artikel *vier-en-negentig* van die Insolvensiewet, 1916, en ingevolge artikel *eenhonderd-en-nege* (1) van die Insolvensiewet, 1936.

Hierby word kennis gegee dat die Voogde of Kurators van die Gesekwestreerde of Afgestane Boedels, vermeld in onderstaande Skedule, voornemens is om veertien dae na datum hiervan die Meester te versoek om 'n verlenging van die tyd genoem in die Bylae vir die indiening van 'n Likwidasierekening en Plan van Distribusie of/en Kontribusie.

FORM No. 5—VORM No. 5. SCHEDULE—*SKEDULE.*

No. of Estate. *No. van Boedel.*	Name and Description of Estate. *Naam en Beskrywing van Boedel.*	Name and Date of Trustee or Assignee's Appointment. *Naam en Datum van Aanstelling van Voog of Kurator.*	Date when Account due. *Datum waarop Rekening ingedien moet word.*	Period of Extension Required and to whom Application will be made. *Tydperk van Vereiste Verlenging en by wie Aansoek gedoen moet word.*
C/21376	Insolvent Estate Johannes Petrus van Vuuren.....	Victor Toker, 28/10/43.....	28/4/44	Six months, Master, Pretoria.

NOTICES OF TRUSTEES, ASSIGNEES AND LIQUIDATORS.

Pursuant to section *ninety-six*, sub-section (2), of the Insolvency Act, 1916, and pursuant to section *one hundred and eight*, sub-section (2), of the Insolvency Act, 1936, and pursuant to section *one hundred and thirty-six*, sub-section (2) of the Companies Act, 1926.

Notice is hereby given that the liquidation accounts and plans of distribution or/and contribution in the Estates mentioned in the subjoined Schedule will lie open at the offices therein mentioned for a period of fourteen days, or such longer period as is therein stated from the date mentioned in the Schedule or from the date of publication hereof, whichever may be the later, for inspection by creditors.

KENNISGEWINGS VAN VOOGDE, KURATORS EN LIKWIDATEURE.

Ingevolge artikel *ses-en-negentig*, subartikel (2), van die Insolvensiewet, 1916, en ingevolge artikel *eenhonderd-en-ag*, subartikel (2), van die Insolvensiewet, 1936, en ingevolge artikel *eenhonderd ses-en-dertig*, subartikel (2), van die Maatskappywet, 1926.

Hierby word kennis gegee dat die likwidasierekeninge en planne van distribusie of/en kontribusie in die Boedels genoem in onderstaande Skedule ter insage sal lê vir skuldeisers in die kantore daarin genoem, gedurende 'n tydperk van veertien dae of soveel langer as daarin vermeld vanaf die datum vermeld in die Skedule of vanaf die datum van publikasie hiervan, as dit later is.

FORM No. 6—VORM No. 6. SCHEDULE—*SKEDULE.*

No. of Estate. *No. van Boedel.*	Name and Description of Estate. *Naam en Beskrywing van Boedel.*	Description of Account. *Beskrywing van Rekening.*	Offices and Date at which Account will lie open. *Kantore en Datum waar Rekening ter insage sal lê.*	Period, if more than 14 days, for which Account will lie open. *Tydperk, indien langer as 14 dae, gedurende welke Rekening ter insage sal lê.*
C/21356	Insolvent Estate Frederick Cornelius Christoffel Swanepoel, late contractor, of Pretoria	First and Final Liquidation Distribution and Contribution	Pretoria, 26/5/44.....	14 days.
C/21314	John Jannopoulos, formerly trading as J. Jannopoulos & Co., of c/o Vaal Farmers Dairy Corp. (Pty.), Ltd., 11 Booysens Road, Booysens, Johannesburg	Third Liquidation and Distribution	Pretoria, Johannesburg, 26/5/44.....	—
C.A./3992	Premier Heights Amusements (Pty.), Ltd. (in Liquidation), restaurant and café owners, Sonderwater, near Pretoria, Transvaal	Second and Final Liquidation and Distribution	Pretoria, Johannesburg, 26/5/44.....	14 days.
C/383	Abelman Goidblum (Pty.), Limited (in Voluntary Liquidation)	First and Final Liquidation and Distribution	Cape Town, East London, 30/5/44....	—
4426	C. J. B. Bate, of Letterstedt Road, Newlands, Cape Province	Twenty-seventh and Final Liquidation and Distribution	Cape Town, Wynberg, 26/5/44.....	—
C.A./4182	Boere Meubels (Eiendoms), Beperk (in Vrywillige Likwidasie)	Eerste Likwidasie en Distribusie	Pretoria, Brakpan, 26/5/44.....	14 dae.
C/18991	Petrus Benhardus van Deventer, a miner, of Benoni Small Farms, Benoni	Sixth and Final Liquidation and Distribution	Pretoria, Benoni, 27/5/44.....	—

NOTICES OF TRUSTEES AND ASSIGNEES.

Pursuant to section *ninety-nine*, sub-section (2), of the Insolvency Act, 1916, and
Pursuant to section *one hundred and thirteen*, sub-section (1) of the Insolvency Act, 1936.

The liquidation accounts and plans of distribution or/and contribution in the Assigned or Sequestrated Estates mentioned in the subjoined Schedule having been confirmed on the dates therein mentioned, notice is hereby given that a dividend is in course of payment or/and a contribution in course of collection in the said Estates as in the Schedule is set forth, and that every creditor liable to contribute is required to pay the trustee or assignee the amount for which he is liable at the address mentioned in the Schedule.

KENNISGEWINGS VAN VOOGDE EN KURATORS.

Ingevolge artikel *nege-en-negentig*, subartikel (2), van die Insolvensiewet, 1916, en ingevolge artikel *eenhonderd-en-dertien*, subartikel (1), van die Insolvensiewet, 1936.

Nademaal die likwidasierekeninge en planne van distribusie of/en kontribusie in die Afgestane of Gesekwestreerde Boedels vermeld in die hierondervolgende Skedule bekragtig is op die daarin genoemde datums, so word hierby kennis gegee, dat 'n dividend uitgekeer of/en 'n kontribusie ingesamel sal word in die gesegde Boedels soos uiteengesit in die Skedule, en dat iedere kontribusiepligtige skuldeiser die deur hom verskuldigde bedrag moet betaal aan die kurator of voog by die adres wat in die Skedule genoem word.

FORM No. 7—VORM No. 7. SCHEDULE—*SKEDULE.*

No. of Estate. *No. van Boedel.*	Name and Description of Estate. *Naam en Beskrywing van Boedel.*	Date when Account Confirmed. *Datum waar Op Rekening bekragtig is.*	Whether a Dividend is being paid or a Contribution being collected, or both. *Of 'n Dividend uitgekeer of 'n Kontribusie ingevorder word, of beide.*	Name and Address of Trustee or Assignee. *Naam en Adres van Voog of Kurator.*
3451	Julekha Hassam, of 307 Randles Road, Sydenham, Durban	11/5/44	Second and Final Dividend has been paid	E. Jacobson, 603 Payne's Buildings, West Street, Durban.
33245	Second and Final Liquidation and Distribution Account in the Estate of the late Gavin Martin, a blacksmith and engineer, of Frankfort, administered under Section 48 (3) (*b*) of Act No. 24 of 1913	5/5/44	Dividend being paid.....	Elizabeth Martin (born McBryde), Executrix, c/o P.O. Box 35, Frankfort, Orange Free State.
8315	Josias Stephanus du Toit, a farmer, of Stompieskloof, Division of Caledon	16/5/44	No Dividend or Contribution	Joseph Hermanus Fourie, P.O. Box 17, Caledon.

NOTICES OF INTENTION TO APPLY FOR REHABILITATION

Pursuant to section *one hundred and eight* of the Insolvency Act, 1916, and pursuant to section *one hundred and twenty-four* of the Insolvency Act, 1936.

Notice is hereby given that the insolvents mentioned in the subjoined Schedule will apply for their rehabilitation at the times and places and upon the grounds therein set opposite their respective names.

KENNISGEWINGS VAN VOORNEME OM AANSOEK OM REHABILITASIE TE DOEN.

Ingevolge artike. *eenhonderd-en-ag* van die Insolvensiewet, 1916, en ingevolge artikel *eenhonderd-vier-en-twintig* van die Insolvensiewet, 1936.

Hierby word kennis gegee dat die insolvente persone genoem in onderstaande Skedule, aansoek sal doen om hulle rehabilitasie op die ure en plekke en om die redes daarin opgegee teenoor hulle respektiewe name.

FORM No. 8—VORM No. 8. SCHEDULE—*SKEDULE.*

No. of Estate. *No. van Boedel.*	Full Name and Description of Insolvent and Place of Business or Residence. *Volle Naam en Beskrywing van Insolvente Persoon en Plek van Besigheid of Woonplek.*	Date when Estate Sequestrated. *Datum waarop Boedel Gesekwestreer is.*	Day, Date, Hour, and Division of Court to which Application will be made. *Dag, Datum, Uur en Afdeling van Hof waarby Aansoek gedoen sal word.*	Ground of Application. *Rede van Aansoek.*
8008	Insolvent Estate of Martha Johanna Morkel (born Rapp), married without community of property, to Henry George Morkel, formerly a garage proprietress, who carried on business as Morkel's Garage, at 9 Market Street, Strand, and now a housewife of The Strand	26/10/38	Wed., 12/7/44, 10.30 a.m., Cape of Good Hope Provincial	First Account confirmed on 30/11/39. Second and Final Account confirmed on 19/6/40
C/20951	Vasilios Yanoutsos, formerly trading as Stirling Café, at 171 President Street, Germiston, presently employed by Central Steam Bakery, Piet Retief	20/5/40	Tues., 11/7/44, 10 a.m., Witwatersrand Local	In terms of Section 124 (2) (*b*) of Act No. 24 of 1936. Account confirmed on 2/4/41.
X/5641	Jan Hendrik Zaaiman (Saayman) Hugo, railway clerk, of Bloemfontein, Orange Free State	7/3/35	Thurs., 13/7/44, 10 a.m., Orange Free State Provincial	Section 124 of Act No. 24 of 1936.
F/98	Gert Jacobus Ferreira, formerly a general dealer, of Koffiefontein	29/8/17	Thurs., 13/7/44, 10 a.m., Orange Free State Provincial	Account confirmed on 29/4/18.
8423	Max Labovitz, shoe manufacturer, formerly a shoe manufacturer, of Grouse Lane, Cape Town, and now a traveller, of Virginia Avenue, Cape Town	16/8/40	Wed., 12/7/44, 10.30 a.m., Cape of Good Hope Provincial	No claims proved.
7992	Samuel Saevitzon, formerly a company director of Main Roads, Goodwood and Claremont, and now a manager, of Main Road, Claremont	9/9/38	Wed., 12/7/44, 10.30 a.m., Cape of Good Hope Provincial	Account confirmed on 3/10/39.
7892	Joseph Rabinowitz, formerly a butcher, of 52 Napier Street, Worcester, Cape Province, now a shop assistant, of 78 Upper Mill Street, Cape Town	29/4/38	Wed., 19/7/44, 10.30 a.m., Cape of Good Hope Provincial	Account confirmed on 21/3/39, pursuant to Section 108 (2) (*c*) of Act No. 32 of 1916 as amended.
C/15251	Clara Elizabeth McCann, formerly trading as McCann's Shoe Store, corner Kerk and Rissik Streets, Johannesburg, presently shop assistant, residing at 204 Cumberland Road, Kensington South, Johannesburg	15/12/30	Tues., 11/7/44, 10 a.m., Witwatersrand Local	Section 108 (2) (*a*) of Act No. 32 of 1916, as amended. Account confirmed on 30/6/31.
C/20841	Maarten David Jacobus Potgieter, transport contractor, 35 Seymour Street, Pretoria-North, Pretoria	22/2/40	Thurs., 13/7/44, 10 a.m., Transvaal Provincial	Account confirmed on 31/12/40. Section 124 (2) (*a*).
C/21221	Immanuel Kolver, a winding-engine driver, of 90 Third Street, Boksburg North.	25/8/41	Tues., 11/7/44, Witwatersrand Local	Account confirmed on 23/2/42.
C/19205	Eric Christian Watermeyer, a miner, of Benoni Hotel, Benoni	13/7/37	Tues., 11/7/44, Witwatersrand Local	Account confirmed on 30/12/37.

NOTICE.

TO ALL HEADS OF DEPARTMENTS.

PROCLAMATIONS, GOVERNMENT AND GENERAL NOTICES FOR INSERTION IN *UNION GOVERNMENT GAZETTES* AND *GOVERNMENT GAZETTES EXTRAORDINARY.*

With reference to the submission of "copy" in the above regard for publication in the *Union Government Gazette* and/or *Gazette Extraordinary*, departments are hereby advised that on account of the acute shortage of technical staff and the impossibility under present conditions of obtaining additional technicians, it has been decided to amend as from the 6th March, 1944, the existing closing date for the acceptance of "copy" by the Government Printer.

As from and after this date Proclamations, Government and General Notices for insertion in the *Union Government Gazette* should be in the hands of the Government Printer, Pretoria, NOT LATER THAN 4 P.M., MONDAYS (and not Tuesdays).

Proclamations, Government and General Notices for insertion in the *Gazette Extraordinary* should reach the Government Printer on or before 12 noon Tuesdays (not Wednesdays).

Departments are therefore requested to ensure that Proclamations, Government and General Notices for publication in these *Gazettes* are NOT allowed to accumulate in their offices but that they are sent individually to the Government Printer as and when approved.

It might be mentioned that "copy" received after the closing hours as indicated above, will, without exception, be held over for publication in the next issue of the relative *Gazette*.

In the circumstances, it would be appreciated if the contents of this circular could be brought to the notice of all officers whose duties entail submission of "copy" in this connection to the Government Printer.

J. J. KRUGER,
24th February, 1944. Government Printer.

KENNISGEWING.

AAN ALLE HOOFDE VAN DEPARTEMENTE.

PROKLAMASIES, ALGEMENE EN GOEWERMENTSKENNISGEWINGS VIR PLASING IN *UNIE-STAATSKOERANTE EN BUITENGEWONE STAATSKOERANTE.*

In verband met die voorlê van stukke vir publikasie in die *Unie-staatskoerant* en/of *Buitengewone Staatskoerante* word departemente meegedeel dat weens die akute tekort aan tegniese personeel en die onmoontlikheid om addisionele tegnici onder die huidige omstandighede te verkry, dit besluit is om die sluitingsdatum vir die aanname van kopie deur die Staatsdrukker vanaf 6 Maart 1944 te verander.

Vanaf en na daardie datum moet alle proklamasies, algemene en Goewermentskennisgewings vir plasing in die *Unie-staatskoerant* in die hande van die Staatsdrukker, Pretoria, VOOR 4 NM., MAANDAE (en nie Dinsdae nie) wees.

Proklamasies, algemene en Goewermentskennisgewings vir plasing in 'n *Buitengewone Staatskoerant* moet die Staatsdrukker op of voor 12 NM., DINSDAE (nie Woensdae nie) bereik.

Departemente word dus versoek om te verseker dat proklamasies, algemene en Goewermentskennisgewings vir plasing in hierdie *Staatskoerante* nie in hul kantore ophoop nie, dog dat hulle afsonderlik aan die Staatsdrukker deurgestuur word sodra hulle goedgekeur is.

U aandag kan daarop gevestig word dat alle stukke wat na die sluitingsure hierbo genoem, ontvang word, sonder uitsondering oorgehou sal word vir publikasie in die volgende uitgawe van die betrokke *Staatskoerant*.

Onder die omstandighede sal dit op prys gestel word as die inhoud van hierdie omsendbrief onder die aandag gebring sal word van alle amptenare wie se pligte dit o.a. is om kopie aan die Staatsdrukker deur te stuur.

J. J. KRUGER,
24 Februarie 1944. *Staatsdrukker.*