

South Africa

Magistrates' Courts Act, 1944

Act 32 of 1944

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South Africa

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Act 32 of 1944

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[This is the version of this document as it was from 2 July 1945 to 26 June 1952.]

[Amended by Magistrates' Courts Amendment Act, 1952 (Act 40 of 1952) on 2 July 1945]

[Amended by General Law Amendment Act, 1972 (Act 102 of 1972) on 2 July 1945]

ACT

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

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:—

1. Definitions

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

2. Minister's powers relative to districts and courts

- (1) 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;
 - (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.

[subsection (1), previously section 2, renumbered by section 7(1) of [Act 102 of 1972](#)]

- (2) Notwithstanding anything to the contrary in this Act contained—
- (a) the Minister of Justice, after consultation with the Minister of Bantu Administration and Development, may under subsection (1)—
 - (i) include as part of an existing district administered under the control of the Minister of Justice, an area which prior to its being so included forms part of a district administered under the control of the Minister of Bantu Administration and Development;
 - (ii) create a district which consists of or includes an area which prior to the creation of such district forms part of a district administered under the control of the Minister of Bantu Administration and Development;
 - (iii) include as part of an existing regional division administered under the control of the Minister of Justice, a district or subdistrict administered under the control of the Minister of Bantu Administration and Development;
 - (iv) create a regional division which includes a district or subdistrict administered under the control of the Minister of Bantu Administration and Development;
 - (b) the Minister of Bantu Administration and Development, after consultation with the Minister of Justice, may under subsection (1)—
 - (i) include as part of an existing district administered under the control of the Minister of Bantu Administration and Development, an area which prior to its being so included forms part of a district administered under the control of the Minister of Justice;

- (ii) create a district which consists of or includes an area which prior to the creation of such district forms part of a district administered under the control of the Minister of Justice;
- (iii) include as part of an existing regional division administered under the control of the Minister of Bantu Administration and Development, a district or subdistrict administered under the control of the Minister of Justice;
- (iv) create a regional division which includes a district or subdistrict administered under the control of the Minister of Justice.

[subsection (2) added by section 7(1) of [Act 102 of 1972](#)]

3. Existing courts and districts to continue

- (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.

4. Nature of the courts and force of process

- (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.

5. Courts to be open to the public, with exception

- (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 ill health 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.

6. Medium to be employed in proceedings

- (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.

7. Public access to records

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

8. Before whom courts to be held

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

9. Appointment of judicial officers

- (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.
- (1A) (a) If the Minister of Justice and the Minister of Bantu Administration and Development deem it expedient, and subject to the provisions mentioned in subsection (1)—
 - (i) the Minister of Justice may appoint a magistrate for a regional division, district or subdistrict which prior to the date upon which the appointment takes effect is administered under the control of the Minister of Bantu Administration and Development or which on that date is created by the last-mentioned Minister;
 - (ii) the Minister of Bantu Administration and Development may appoint a magistrate for a regional division, district or subdistrict which prior to the date upon which the appointment takes effect is administered under the control of the Minister of Justice or which on that date is created by the last-mentioned Minister.

- (b) As from the date upon which the appointment of a magistrate for a regional division, district or subdistrict under paragraph (a) takes effect—
 - (i) that regional division, district or subdistrict shall for the purposes of this Act be deemed to be administered under the control of the Minister who made the appointment;
 - (ii) anything done in relation to that regional division, district or subdistrict prior to or on that date under a power conferred on the Minister by this Act, shall, for the purposes of this Act, be deemed to have been done by the Minister who made the appointment.

[subsection (1A) inserted by section 8(1) of [Act 102 of 1972](#)]

- (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".

10. Qualifications for appointments of judicial officers

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.

11. Existing judicial officers to continue in office

- (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.

12. Powers of judicial officers

- (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

13. Clerk of the court

- (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.

14. Messengers of the court

- (1) Subject to the provisions of the law governing the public service of the Union, the Minister may appoint for every court, or if more than one place is appointed in any district for the holding of a court for such district, in respect of every place so appointed, a person who is an officer of the said service as a messenger of such court and so many persons who are such officers as deputy-messengers of such court, as may be necessary: Provided that if the duties to be performed by any such messenger or deputy-messenger 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 such messenger or deputy-messenger in addition to his ordinary duties, or if, in the opinion of the Minister, the duties of such messenger or deputy-messenger 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 any person who is not an officer of the said service, as such messenger or deputy-messenger at such remuneration and upon such conditions as the Minister may determine.
[subsection (1) substituted by section 10(a) of [Act 40 of 1952](#)]
- (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 a messenger or his deputy by reason of the interest of such messenger or deputy in such matter or of the relation of such messenger or deputy to a party to such matter or of any other good cause of challenge, or whenever, by reason of the illness or absence of a messenger, or for any other good and sufficient reason, it is necessary to appoint an acting messenger, the magistrate may appoint a person so to act.

[subsection (6) substituted by section 10(b) of [Act 40 of 1952](#)]

- (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.

15. Service of process by the police

- (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.

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

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

17. Messengers' return to be evidence

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.

18. Suspension of messenger for misconduct

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.

19. Officers appointed previously to remain in office

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.

Chapter IV Practitioners

20. Advocates and attorneys

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

21. Articled clerks

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.

22. Agents

- (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.

23. Misconduct of practitioners

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

24. Rules of Court

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](#).

25. Rules Board

- (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.

- (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

26. Area of jurisdiction

- (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.

27. Jurisdiction of periodical courts

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.

28. Jurisdiction in respect of persons

- (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.

29. Jurisdiction in respect of causes of action

- (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.

30. Arrests and interdicts

- (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.

31. Automatic rent interdict

- (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.

32. Attachment of property in security of rent

- (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.

33. Curator ad litem

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.

34. Assessors

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.

35. Transfer from one court to another

- (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 discretion 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.

36. What judgments may be rescinded

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.

37. Incidental jurisdiction

- (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.

38. Abandonment of part claim

- (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.

39. Deduction of admitted debt

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.

40. Splitting of claims disallowed

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.

41. Joinder of plaintiffs

- (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.

42. Joinder of defendants

- (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 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.

43. Jurisdiction cumulative

- (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.

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

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.

45. Jurisdiction by consent of parties

- (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.

46. Matters beyond the jurisdiction

- (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;
 - (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.

47. Counterclaim exceeding jurisdiction

- (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.

48. Judgment

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.

49. Cession of costs

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

50. Removal of actions from court to provincial or local division

- (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 by the court not exceeding one hundred pounds, for costs already incurred 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

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

- (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 subpoenaed 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 subpoena 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 subpoenaed 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 not exceeding one month, whether or not such person is otherwise subject to the jurisdiction of the court.

- (b) If any person so subpoenaed 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
 - (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 subpoena, make an order cancelling such subpoena.

52. Interrogatories

- (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 subpoena 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 subpoenaed 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 subpoenaed to give (evidence in the court of the district in which he resides or is).

53. Commissions *de bene esse*

- (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.

54. Pre-trial procedure for formulating issues

- (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.

Chapter VIII

Recovery of small debts

55. Recovery of small debts

- (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.

56. Where no appearance is entered

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.

57. Where appearance is entered

- (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.

58. No further pleadings necessary

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.

59. Costs

- (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.

60. Procedure not compulsory

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

61. Definitions

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.

62. Power to grant or set aside a warrant

- (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.

63. Execution to be issued within three years

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.

64. Execution in case of judgment debt ceded

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.

65. Enquiry into financial position of debtor

- (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 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.

66. Manner of execution

- (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.

67. Property exempt from execution

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.

68. Property executable

- (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 amount directed to be levied by the execution so far as it is still 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.

69. Interpleader claims

- (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.

70. Sale in execution gives good title

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.

71. Surplus after execution

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.

72. Debts and emoluments may be attached

- (1) The court may on application by a judgment creditor, or under paragraph (6) 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.

73. Order for payment by instalments

- (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 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.

74. Administration orders

- (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 practicing 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.
- (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.

75. Jurisdiction to decide disputes arising out of garnishee orders

- (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.

76. Execution or payment is discharge *pro tanto*

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.

77. Saving of existing law prohibiting attachment

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.

78. Execution or suspension in case of appeal, etc.

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.

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

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

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

- (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 mentioned) 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.

81. Review of taxation

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

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

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.

83. Appeals from magistrates' courts

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.

84. Time, manner and conditions of appeal

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.

85. No peremption of appeal by satisfaction of judgment

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.

86. Respondent may abandon judgment

- (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.

87. Procedure of court of appeal

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.

88. Execution of judgment of court of appeal

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

89. Criminal jurisdiction in respect of crimes

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

90. Local limits of jurisdiction

- (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.

91. Criminal jurisdiction of periodical court

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.

92. Jurisdiction in the matter of punishments

- (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 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.

93. When summary trial to be turned into preparatory examinations

- (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

94. Cases remitted for trial or sentence

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.

95. Jurisdiction in respect of punishments in remitted cases

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:

- (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

96. What sentences subject to automatic review

- (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.

97. Submission of records and remarks to judge for consideration

Whenever a court imposes upon any person convicted of an offence any such punishment as is mentioned in sub-section (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.

98. Proceedings on review

- (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 proceedings 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 court may 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.

99. Case may be set down for argument

- (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

100. Warrant required for commitment to gaol

- (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.

101. Execution of sentence suspended under certain conditions

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.

102. Person sentenced to whipping to be detained pending review

- (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 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

103. Appeals

- (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.

104. Appeal by prosecutor

- (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.
- (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.

105. Appeal to Appellate Division of Supreme Court

- (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

106. Penalty for disobedience of order of court

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.

107. Offences relating to execution

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;
- (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 deputymessenger 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 deputymessenger 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.

108. Custody and punishment for contempt of court

- (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.

109. Judgment debtor to inform court of his address

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

110. Jurisdiction as to plea of *ultra vires*

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.

111. Amendment of proceedings

- (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.

112. Administration of oath or affirmation

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 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.

113. Settlement of conflicting decisions in different provinces

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.

114. Savings and non-application of Act

- (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.

115. Saving of pending proceedings

- (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.

116. Laws repealed

The laws specified in the Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule.

117. Short title

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
<u>Act No. 32 of 1917.</u>	Magistrates' Courts Act	The whole, except the Second Schedule
<u>Act No. 13 of 1921.</u>	Magistrates' Courts Act Amendment Act.	So much as remains unrepealed.
<u>Act No. 9 of 1923.</u>	Magistrates' Courts Act, 1917, Further Amendment Act.	So much as remains unrepealed.
<u>Act No. 39 of 1926.</u>	Criminal and Magistrates' Courts Procedure (Amendment) Act.	Sections forty-nine to sixty inclusive.
<u>Act No. 17 of 1932.</u>	Magistrates' Courts Amendment Act.	The whole.
<u>Act No. 46 of 1935.</u>	General Law Amendment Act.	Sections eighty-three to ninety-nine inclusive.
<u>Act No. 21 of 1942.</u>	Civil Imprisonment Restriction Act.	Sections one, two and three.