

EXTRAORDINARY



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[No. 1249.]

DEPARTMENT OF JUSTICE.

DEPARTEMENT VAN JUSTISIE.

[6th October, 1965.]

[6 Oktober 1965.]

"The following Bill, prepared by the Law Revision Committee, is published for general information. Any person desiring to offer any comment on the Bill or to submit representations thereanent should kindly submit such comment or representations to the Secretary for Justice, Private Bag 81, Pretoria, on or before the 15th November, 1965."

„Die onderstaande Wetsontwerp, wat deur die Regshersieningskomitee voorberei is, word vir algemene inligting gepubliseer. Enigiemand wat kommentaar op die Wetsontwerp wil lewer of vertoë daaromtrent wil rig, moet asseblief sodanige kommentaar of vertoë op of voor die 15de November 1965 aan die Sekretaris van Justisie, Privaatsak 81, Pretoria, stuur."

WETSONTWERP

Tot samevatting en wysiging van die wetsbepalings met betrekking tot verjaring.

(Ingedien te word deur die MINISTER VAN JUSTISIE.)

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

HOOFSTUK I.

EIENDOMSVERKRYGING DEUR VERJARING.

5

Verkryging van eiendom deur verjaring.

1. Behoudens die bepalinge van hierdie Hoofstuk en van Hoofstuk IV, word iemand deur verjaring eienaar van 'n saak wat hy openlik vir 'n ononderbroke tydperk van dertig jaar asof hy eienaar daarvan was, besit het.

Onvrywillige besitsverlies.

2. Die loop van verjaring word nie deur onvrywillige besitsverlies onderbreek nie indien geregtelike stappe binne ses maande na die verlies gedoen word om besit terug te kry en sodanige stappe besitsherwinning tot gevolg het of indien besit binne een jaar na sodanige verlies op enige ander wyse wettiglik herwin word.

15

Tydperke van besit van voorgangers in titel word bygevoeg by tydperk van besit deur besitter.

3. By die berekening van die besitsduur word die tydperke van besit van sy voorgangers in titel bygevoeg by die tydperk van besit deur die besitter mits deurgaans aan die vereistes van artikel een voldoen is.

Voltooiing van verjaring onder sekere omstandighede uitgestel.

4. (1) Indien—

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(a) die persoon teen wie verjaring loop, minderjarig of kranksinnig is, of 'n vrou is, wie se afsonderlike goed kragtens sy maritale mag deur haar man beheer word, of 'n verkwister onder kuratele is, of deur oormag verhinder word om die loop van verjaring te stuit soos in artikel vyf bedoel; of

25

(b) die persoon ten gunste van wie verjaring loop, buite die Republiek van Suid-Afrika of die gebied Suidwes-Afrika na gelang van die geval, is of getroud is met die persoon teen wie die verjaring loop of 'n bestuurslid is van 'n regspersoon teen wie die verjaring loop, word die tydperk van verjaring nie voltooi voordat drie jaar verloop het van die dag af waarop die betrokke beletsel opgehou het om te bestaan nie.

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(2) Die loop van verjaring word nie teen 'n fideicommissarius voltooi voordat drie jaar verloop het nadat sy reg op die fideikommissêre goed op hom oorgegaan het nie.

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Stuiting van verjaring deur bestelling van prosesstuk.

5. (1) Die loop van verjaring word gestuit deur die bestelling aan die besitter van enige prosesstuk waarin aanspraak gemaak word op die eiendom van die saak: Met dien verstande dat die stuiting verval indien die aanspraakmaker sy aanspraak ingevolge daardie prosesstuk nie met sukses tot finale vonnis deurvoer nie.

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(2) Indien die loop van verjaring gestuit is, soos in sub-artikel (1) bedoel, begin 'n nuwe verjaringstermyn, indien wel, eers loop op die dag waarop finale vonnis gevel word.

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Toepassing van hierdie Hoofstuk op 'n verjaring wat by die inwerking-treding van hierdie Wet nie voltooi is nie.

6. 'n Verjaring wat by die inwerkingtreding van hierdie Wet nog nie voltooi is nie, word ten opsigte van die verloop van die onverstreke gedeelte van die termyn deur die voorskrifte van hierdie Hoofstuk beheers.

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BILL

To consolidate and amend the laws relating to prescription.

(To be introduced by the MINISTER OF JUSTICE.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

CHAPTER I.

5 ACQUISITION OF OWNERSHIP BY PRESCRIPTION.

1. Subject to the provisions of this Chapter and Chapter IV, Acquisition of a person shall by prescription become the owner of a thing ownership by which he has openly possessed for an uninterrupted period of prescription. thirty years as if he were the owner thereof.
- 10 2. The running of prescription shall not be interrupted by Involuntary loss of possession if legal proceedings are instituted within six months of such loss to regain possession and such proceedings result in possession being regained, or if possession is lawfully regained in any other way within one year after such loss.
- 15 3. In calculating the period of possession, periods of possession by his predecessors in title shall be added to the period of possession by the possessor, provided that the requirements of section one have been complied with throughout. Periods of possession by predecessors in title to be added to possessor's period of possession.
- 20 4. (1) If— Completion of prescription postponed in certain circumstances.
 - (a) the person against whom prescription runs is a minor or insane or a woman, whose separate property is controlled by her husband by virtue of his marital power, or a prodigal under curatorship, or is prevented by superior force from interrupting the running of prescription as contemplated in section five; or
 - 25 (b) the person in favour of whom prescription runs, is outside the Republic of South Africa or the territory of South-West Africa, as the case may be, or is married to the person against whom the prescription runs or is a member of the governing body of a juristic person against whom the prescription runs,
 - 30 the period of prescription shall not be completed until three years have elapsed from the day on which the relevant impediment has ceased to exist.
 - 35 (2) The running of prescription shall not be completed against a fideicommissary until three years have elapsed after his right in the fideicommissary property has vested in him.
- 40 5. (1) The running of prescription shall be interrupted by Interruption of prescription by service on the possessor of any process whereby ownership in the thing is claimed: Provided that the interruption shall lapse if the claimant does not prosecute his claim under the said process to a final judgment with success.
 - (2) If the running of prescription has been interrupted as
 - 45 contemplated in sub-section (1), a new period of prescription shall commence to run, if at all, only on the day on which final judgment is given.
- 50 6. A prescription which has not been completed at the commencement of this Act, shall be governed by the provisions of this Chapter in respect of the course of the unexpired portion of the period. Application of this Chapter to a prescription not completed at commencement of this Act.

HOOFSTUK II.

VERKRYGING EN TOTNIETGAAN VAN SERVITUDE DEUR VERJARING.

Verkryging van
servitude
deur verjaring.

7. Behoudens die bepalinge van hierdie Hoofstuk en van Hoofstuk IV, verkry iemand 'n servituut deur verjaring indien hy, vir 'n ononderbroke tydperk van dertig jaar, openlik en asof hy daarop geregtig is, die regte en bevoegdhede uitgeoefen het wat iemand toekom wat op sodanige servituut geregtig is. 5

Totnietgaan van
servitude deur
verjaring.

8. 'n Servituut gaan deur verjaring tot niet indien dit vir 'n ononderbroke tydperk van dertig jaar nie uitgeoefen is nie: Met dien verstande dat 'n negatiewe servituut geag word uitgeoefen te word solank niks wat die genot van die servituut belemmer op die dienende erf verrig is nie. 10

Toepassing van
sekere bepalinge
van Hoofstuk I
op die verkryging
en totnietgaan
van servitude
deur verjaring.

9. (1) Die voorskrifte van artikels twee, drie, vier, vyf en ses geld *mutatis mutandis* vir die verkryging van 'n servituut deur verjaring. 15

(2) Die voorskrifte van artikels vier, vyf en ses geld *mutatis mutandis* vir die totnietgaan van 'n servituut deur verjaring.

Toepassing van
hierdie
Hoofstuk.

10. Die bepalinge van hierdie Hoofstuk is nie op die verkryging of die totnietgaan van publieke servitude deur verjaring van toepassing nie. 20

HOOFSTUK III.

SKULDVERJARING.

Uitwissing van
skulde deur
verjaring.

11. Behoudens die bepalinge van hierdie Hoofstuk en van Hoofstuk IV, word 'n skuld deur verjaring uitgewis na verloop van die toepaslike termyn: Met dien verstande dat voldoening van 'n verjaarde skuld deur die skuldenaar as voldoening van 'n skuld beskou word. 25

Verjarings-
termyne van
skulde.

12. Die verjaringstermyne van skulde is die volgende:

(a) ses jaar ten opsigte van 'n skuld wat ontstaan uit 'n wissel of ander verhandelbare stuk of uit 'n notariële kontrak, tensy 'n langer termyn kragtens paragraaf (b) of (c) daarop van toepassing is; 30

(b) vyftien jaar ten opsigte van enige skuld verskuldig aan die Staat, ontstaande uit of gegrond op 'n geldvoorskot of geldlening deur die Staat aan die skuldenaar toegestaan, tensy 'n langer termyn daarop van toepassing is kragtens paragraaf (c); 35

(c) dertig jaar ten opsigte van—
(i) enige skuld deur verband verseker; of
(ii) enige vonnis skuld; 40

(d) drie jaar ten opsigte van enige ander skuld.

Wanneer ver-
jaring begin
loop.

13. (1) Behoudens die bepalinge van sub-artikel (2), (3) en (4), begin verjaring loop sodra die skuld opeisbaar is.

(2) Indien die dag waarop 'n skuld opeisbaar word, eensydig deur die skuldeiser bepaal mag word, word die skuld geag opeisbaar te wees op die vroegste dag wat die skuldeiser geregtig was om te bepaal. 45

(3) Indien die skuldenaar opsetlik die skuldeiser verhinder om die bestaan van die skuld te wete te kom, begin verjaring nie loop voordat die skuldeiser van die bestaan van die skuld bewus word nie. 50

(4) 'n Skuld wat nie uit ooreenkoms ontstaan nie word nie geag opeisbaar te wees voordat die skuldeiser kennis dra van die indentiteit van die skuldenaar en van die feite waaruit die skuld ontstaan nie: Met dien verstande dat 'n skuldeiser geag word kennis te dra indien hy deur die beoefening van redelike sorg kennis kon bekom het. 55

Voltooiing van
verjaring in
sekere
omstandighede
vertraag.

14. (1) Indien—

(a) die skuldeiser minderjarig of kranksinnig of 'n verkwister onder kuratele is of deur oormag verhinder word om die loop van verjaring te stuit soos in paragraaf (b) van sub-artikel (1) van artikel vyftien bedoel; of 60

(b) die skuldenaar buite die Republiek van Suid-Afrika of die gebied Suidwes-Afrika, na gelang van die geval, is; of 65

(c) die skuldeiser en die skuldenaar met mekaar getroud is; of

(d) die skuldeiser en die skuldenaar vennote is en die skuld 'n skuld is wat uit die vennootskapverhouding ontstaan het; of 70

CHAPTER II.

ACQUISITION AND EXTINCTION OF SERVITUDES BY PRESCRIPTION.

7. Subject to the provisions of this Chapter and Chapter IV, Acquisition of
a person shall acquire a servitude by prescription if he has, for
5 an uninterrupted period of thirty years, openly and as though
he were entitled to do so, exercised the rights and powers which
a person, who has a right to such servitude, is entitled to exercise.

8. A servitude shall be extinguished by prescription if it has Extinction of
not been exercised for an uninterrupted period of thirty years: servitudes by
10 Provided that a negative servitude shall be deemed to be exer- prescription.
cised as long as nothing which impairs the enjoyment of the
servitude has been done on the servient tenement.

9. (1) The provisions of sections two, three, four, five and six Application of
shall apply *mutatis mutandis* to the acquisition of a servitude by certain provisions
15 prescription. of Chapter I to
the acquisition
and extinction of
servitudes by
prescription.

(2) The provisions of sections four, five and six shall apply
mutatis mutandis to the extinction of a servitude by prescription.

10. The provisions of this Chapter shall not apply to the Application of
acquisition or the extinction of public servitudes by prescription. this Chapter.

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CHAPTER III.

PRESCRIPTION OF DEBTS.

11. Subject to the provisions of this Chapter and Chapter IV, Extinction of
a debt shall be extinguished by prescription after the lapse of debts by
the applicable period: Provided that payment of a prescribed prescription.
25 debt by the debtor shall be regarded as payment of a debt.

12. The periods of prescription of debts shall be the following: Periods of
(a) six years in respect of a debt arising from a bill of prescription
exchange or other negotiable instrument or from of debts.
30 a notarial contract unless a longer period is applicable
thereto in terms of paragraph (b) or (c);
(b) fifteen years in respect of any debt owed to the State
arising out of or founded on an advance or loan of
money made by the State to the debtor, unless a longer
period is applicable thereto in terms of paragraph (c);
35 (c) thirty years in respect of—
(i) any debt secured by bond; or
(ii) any judgment debt;
(d) three years in respect of any other debt.

13. (1) Subject to the provisions of sub-sections (2), (3) and When
40 (4), prescription shall commence to run as soon as the debt is prescription
due. begins to run.

(2) If the day on which a debt becomes due, may be uni-
laterally determined by the creditor, the debt shall be deemed
to be due on the earliest day which the creditor was entitled to
45 determine.

(3) If the debtor wilfully prevents the creditor from coming
to know of the existence of the debt, prescription shall not
commence to run until the creditor becomes aware of the
existence of the debt.

50 (4) A debt which does not arise from contract shall not be
deemed to be due until the creditor has knowledge of the
identity of the debtor and of the facts from which the debt
arises: Provided that a creditor shall be deemed to have
knowledge if he could have acquired knowledge by exercising
55 reasonable care.

14. (1) If— Completion of
(a) the creditor is a minor or insane or a prodigal under prescription
curatorship or is prevented by superior force from inter- delayed in
rupting the running of prescription as contemplated certain
60 in paragraph (b) of sub-section (1) of section fifteen; or circumstances.
(b) the debtor is outside the Republic of South Africa or
the territory of South-West Africa, as the case may be;
or
(c) the creditor and debtor are married to each other; or
65 (d) the creditor and debtor are partners and the debt is a
debt which arose out of the partnership relationship;
or

- (e) die skuldeiser 'n regspersoon is en die skuldenaar 'n bestuurslid van die regspersoon; of
- (f) die skuld die voorwerp is van 'n geskil wat aan arbitrasie onderwerp is; of
- (g) die skuld die voorwerp is van 'n eis ingedien teen die insolvente boedel van die skuldenaar of teen 'n maatskappy in likwidasië of teen 'n applikant onder die Boere-Bystandswet, 1935 (Wet No. 48 van 1935) of die Boerebystand-ordonnansië, 1962 (Ordonnansië No. 11 van 1962), van die gebied Suidwes-Afrika; of
- (h) die skuldeiser of die skuldenaar oorlede is en 'n ekssekuteur van die betrokke boedel nog nie aangestel is nie,

word die tydperk van verjaring nie voltooi voordat 'n jaar verloop het van die dag af waarop die betrokke beletsel opgehou het om te bestaan nie.

Stuiting van verjaring.

15. (1) Die loop van verjaring word gestuit deur—

- (a) uitdruklike of stilswyende erkenning van aanspreeklikheid deur die skuldenaar; of
- (b) die bestelling aan die skuldenaar van enige prosesstuk waarin die skuldeiser betaling van die skuld vorder: Met dien verstande dat, tensy die skuldenaar aanspreeklikheid erken, die stuiting verval indien die skuldeiser sy aanspraak ingevolge daardie prosesstuk nie met sukses tot finale vonnis deurvoer nie.

(2) Indien die loop van verjaring gestuit word, soos in paragraaf (a) van sub-artikel (1) bedoel, begin verjaring van nuuts af loop vanaf die dag waarop die stuiting plaasvind: Met dien verstande dat indien partye tydens die stuiting die opeisbaarheid van die skuld uitstel, verjaring begin loop wanneer die skuld weer opeisbaar word.

(3) Indien die loop van verjaring gestuit word soos in paragraaf (b) van sub-artikel (1) bedoel, begin verjaring van nuuts af loop op die dag waarop die vonnis van die hof uitvoerbaar word.

Sinallagmatiese skulde.

16. In die geval van sinallagmatiese skulde verjaar die een skuld nie voordat die ander verjaar het nie.

Newe-skulde.

17. Deur verjaring van 'n hoofskuld word ook newe-skulde, wat daaruit ontstaan het, uitgewis.

Toepassing van hierdie Hoofstuk.

18. (1) Die bepalinge van hierdie Hoofstuk is van toepassing slegs op skulde wat na die inwerkingtreding van hierdie Wet ontstaan.

(2) Op die verjaring van skulde wat voor die inwerkingtreding van hierdie Wet ontstaan het, bly die wetsbepalinge van toepassing wat voor daardie inwerkingtreding daarop van toepassing was.

(3) Die bepalinge van hierdie Hoofstuk raak nie die bepalinge van enige wet, behalwe die in die Bylae gemelde wette, wat by die inwerkingtreding van hierdie Wet van krag is of van enige parlementswet wat na sodanige inwerkingtreding van krag word en wat bepaalde tydperke voorskryf waarin 'n eis of 'n aksie ten opsigte van 'n skuld ingestel moet word of wat voorwaardes vir die instelling van 'n aksie vir die invordering van 'n skuld opleë nie.

(4) Die bepalinge van hierdie Hoofstuk is nie van toepassing wanneer 'n saak volgens Bantoereg beslis word nie.

HOOFSTUK IV.

ALGEMEEN.

Onderneming om hom nie op verjaring te beroep nie, ongeldig.

19. Enige onderneming waarin iemand voorgee om hom te verbind om hom nie op verjaring te beroep nie, is ongeldig.

Verjaring moet in pleitstukke geopper word.

20. (1) 'n Hof neem nie uit eie beweging kennis van verjaring nie.

(2) 'n Party tot 'n geding, wat hom op verjaring beroep, doen dit in die pleitstukke: Met dien verstande dat 'n hof kan toelaat dat verjaring in enige stadium van die verrigtinge geopper word.

Wet bind die Staat.

21. Behoudens die bepalinge van artikel drie van die Wet op die Beskikking oor Staatsgrond, 1961 (Wet No. 48 van 1961), bind hierdie Wet die Staat.

- (e) the creditor is a juristic person and the debtor a member of the governing body of such juristic person; or
- (f) the debt is the object of a dispute subjected to arbitration; or
- 5 (g) the debt is the object of a claim filed against the insolvent estate of the debtor or against a company in liquidation or against an applicant under the Farmers' Assistance Act, 1935 (Act No. 48 of 1935) or the Farmers' Assistance Ordinance, 1962 (Ordinance
- 10 No. 11 of 1962), of the territory of South-West Africa; or
- (h) the creditor or the debtor is deceased and an executor of the estate in question has not yet been appointed, the period of prescription shall not be completed until a year
- 15 has elapsed from the day on which the impediment in question has ceased to exist.
15. (1) The running of prescription shall be interrupted by— Interruption of prescription.
- (a) express or tacit acknowledgment of liability by the debtor; or
- 20 (b) service on the debtor of any process whereby the creditor claims payment of the debt: Provided that, unless the debtor acknowledges liability, the interruption shall lapse if the creditor does not prosecute his claim under the said process to a final judgment with
- 25 success.
- (2) If the running of prescription is interrupted as contemplated in paragraph (a) of sub-section (1), prescription shall commence to run afresh from the day on which the interruption takes place: Provided that, if at the time of interruption the
- 30 parties postpone the due date of the debt, prescription shall commence to run when the debt again becomes due.
- (3) If the running of prescription is interrupted as contemplated in paragraph (b) of sub-section (1), prescription shall begin to run afresh on the day on which the judgment of the
- 35 court becomes executable.
16. In the case of synallagmatic debts one of the debts shall not become prescribed until the other has become prescribed. Synallagmatic debts.
17. By the prescription of a main debt, subsidiary debts, which have arisen from the main debt, shall also be extinguished. Subsidiary debts.
- 40 18. (1) The provisions of this Chapter shall apply only to debts that arise after the commencement of this Act. Application of this Chapter.
- (2) The prescription of debts which arose before the commencement of this Act shall continue to be governed by the laws which applied thereto before such commencement.
- 45 (3) The provisions of this Chapter shall not affect the provisions of any law other than the laws specified in the Schedule, in force at the commencement of this Act, or of any Act of Parliament coming into force after such commencement and prescribing a specified period within which a claim is to be made
- 50 or an action is to be instituted in respect of a debt or imposing conditions on the institution of an action for the recovery of a debt.
- (4) The provisions of this Chapter shall not apply when a case is decided according to Bantu law.

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CHAPTER IV.

GENERAL.

19. Any undertaking whereby a person purports to bind himself not to invoke prescription, shall be invalid. Undertaking not to invoke prescription invalid.
20. (1) A court shall not of its own motion take notice of prescription. Prescription to be raised in pleadings.
- (2) A party to a suit, who invokes prescription, shall do so in the pleadings: Provided that a court may allow prescription to be raised at any stage of the proceedings.
21. Subject to the provisions of section three of the State Land Disposal Act, 1961 (Act No. 48 of 1961), this Act shall bind the State. Act binds the State.

Toepassing in
Suidwes-Afrika.

22. Hierdie Wet en enige wysiging daarvan is ook van toepassing in die gebied Suidwes-Afrika met inbegrip van daardie gedeelte van genoemde gebied wat as die Oostelike Caprivi Zipfel bekend is en waarna in sub-artikel (3) van artikel *drie* van die Wysigingswet op Aangeleenthede van Suidwes-Afrika, 5 1951 (Wet No. 55 van 1951), verwys word.

Herroeping van
wette.

23. Behoudens die bepalings van sub-artikel (2) van artikel *agtien*, word die wette genoem in die Bylae by hierdie Wet hierby herroep in die mate uiteengesit in die derde kolom van daardie Bylae. 10

Kort titel en
datum van
inwerking-
treding.

24. Hierdie Wet heet die Verjaringswet, 1966, en tree in werking op 'n datum deur die Staatspresident by proklamasie in die *Staatskoerant* bepaal te word.

Bylae.

WETTE HERROEP.

No. en jaar.	Titel of Onderwerp.	Omvang van Herroeping.
Wet No. 18 van 1943.	Verjaringswet, 1943.	Die geheel.
Wet No. 46 van 1945.	Finansiewet, 1945.	Artikels <i>sewe-en-twintig</i> , <i>agt-en-twintig</i> , <i>nege-en-twintig</i> en <i>dertig</i> .
Wet No. 62 van 1955.	Algemene Regswysigingswet, 1955.	Artikel <i>drie-en-twintig</i> .
Wet No. 50 van 1956.	Algemene Regswysigingswet, 1956.	Artikel <i>sestien</i> .
Proklamasie No. 13 van 1943 van die Administrateur van die Gebied Suidwes-Afrika.	Verjaringsproklamasie, 1943.	Die geheel.
Proklamasie No. 17 van 1944 van die Administrateur van die Gebied Suidwes-Afrika.	Verjarings (Proklamasie No. 13 van 1943) Wysiging.	Die geheel.

22. This Act and any Amendment thereof shall apply also Application in the territory of South-West Africa including that portion of the said territory known as the Eastern Caprivi Zipfel and referred to in sub-section (3) of section *three* of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).

23. Subject to the provisions of sub-section (2) of section *eighteen*, the laws mentioned in the Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule. Repeal of laws.

10 24. This Act shall be called the Prescription Act, 1966, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*. Short title and date of commencement.

Schedule.

LAWS REPEALED.

No. and Year.	Title or Subject.	Extent of Repeal.
Act No. 18 of 1943.	Prescription Act, 1943.	The whole.
Act No. 46 of 1945.	Finance Act, 1945.	Sections <i>twenty-seven, twenty-eight, twenty-nine and thirty.</i>
Act No. 62 of 1955.	General Law Amendment Act, 1955.	Section <i>twenty-three.</i>
Act No. 50 of 1956.	General Law Amendment Act, 1956.	Section <i>sixteen.</i>
Proclamation No. 13 of 1943 of the Administrator of South-West Africa.	Prescription Proclamation, 1943.	The whole.
Proclamation No. 17 of 1944 of the Administrator of South-West Africa.	Prescription (Proclamation No. 13 of 1943) Amendment.	The whole.