

No. 14, 1954.]

ACT

To amend the Magistrates' Courts Act, 1944.

(Afrikaans text signed by the Governor-General.)
(Assented to 31st March, 1954.)

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

1. Section *sixty-five* of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act), is hereby amended—

Amendment of section 65 of Act 32 of 1944, as amended by section 15 of Act 40 of 1952.

(a) by the substitution for sub-section (5) of the following new sub-section:

“(5) (a) If the judgment debtor fails to appear at the enquiry on the date specified in the notice or on any later date to which the enquiry has been postponed by the court, the court may upon the application of the judgment creditor, authorise the issue of a warrant for his arrest: Provided that the execution of any such warrant may at any time be suspended at the request of the judgment creditor or by the court for good cause: Provided further that if the judgment debtor fails to appear at the enquiry on any date to which such enquiry has been postponed by the court after any such warrant has been suspended under any provision of this sub-section, the said warrant may be re-issued by the judgment creditor without a further order of court.

(b) The warrant for the judgment debtor's arrest shall be prepared by the judgment creditor and shall be signed by the judgment creditor or his attorney and the clerk of the court and shall be executed by the messenger of the court.”;

by the insertion in sub-section (6) after the word “shall” where it occurs for the first time of the words “subject to the provisions of paragraph (b)”; by the insertion in the said sub-section after the word “enquiry” of the words “or when the judgment debtor is brought before the court on a warrant issued in terms of sub-section (5)”, and by the addition at the end of the said sub-section of the following new paragraph, the existing sub-section becoming paragraph (a):

“(b) The court may at any time in the presence of the judgment debtor, postpone the enquiry to such date as the court may determine and in that event if the judgment debtor has been brought before the court on a warrant issued in terms of sub-section (5), the court may at the same time suspend the warrant on condition that the judgment debtor appears at the enquiry on the date so determined or, if the enquiry is postponed for not more than four days, the court may, on the application of the judgment creditor and if it is satisfied that the circumstances warrant such action, by order endorsed on the said warrant commit the judgment debtor to the custody of the messenger of the court for the purpose of being brought before the court on the said date.”; and

(c) by the substitution for sub-section (9) of the following new sub-section:

“(9) (a) If the judgment debtor fails to comply with an order made in terms of paragraph (d) of sub-

section (7), the judgment creditor may issue out of either the court which made the said order or the court of the district in which the judgment debtor is for the time being residing, carrying on business or employed, a notice calling upon the judgment debtor to appear before the court in chambers on a date specified therein to show cause why he should not be committed for contempt of court.

- (b) Such notice shall be prepared by the judgment creditor, shall be signed by the judgment creditor or his attorney and the clerk of the court and shall be served in the manner set out in sub-section (3) at least seven days before the date of hearing specified therein.
- (c) Where it appears from the return of such notice that service was effected elsewhere than within the district of the court from which such notice was issued, then unless the judgment debtor appears, the proceedings shall be stayed until the court is satisfied that the judgment debtor has been paid or tendered the sum which would have been payable to him if he had been subpoenaed as a witness.
- (d) If the judgment debtor fails to appear on the said notice or to satisfy the court that he has been unable through circumstances beyond his control to comply with the order made in terms of paragraph (d) of sub-section (7), the court may, upon the application of the judgment creditor, make an order for the committal of the judgment debtor for a period not exceeding thirty days and may authorise the issue of a warrant for his arrest and detention in any gaol named in such warrant: Provided that the court may at any time suspend the execution of or altogether discharge any such order or warrant upon such conditions as may appear to the court to be fair and reasonable.
- (e) Such warrant shall be prepared by the judgment creditor, shall be signed by the judgment creditor or his attorney and the clerk of the court and shall be executed by the messenger of the court.
- (f) If the execution of any such warrant has been suspended and the judgment debtor has during the period of suspension, observed all the conditions specified in the order, the order for the committal of the judgment debtor shall not be enforced.
- (g) If the execution of any such warrant has been suspended and the judgment debtor has failed to fulfil the conditions specified in the order, the court may, on the application of the judgment creditor after notice to the judgment debtor, direct that the order of committal be carried into effect: Provided that the court may in its discretion, if it be proved to its satisfaction by the judgment debtor that he has been unable through circumstances beyond his control to perform any condition of such suspension, grant an order further suspending the execution of the warrant on such conditions as may appear to the court to be fair and reasonable.
- (h) The provisions of paragraphs (a), (b) and (c) shall apply *mutatis mutandis* to the notice referred to in paragraph (g)."; and
- (d) by the addition at the end of the said section of the following new sub-section:

"(11) In any proceedings under this section for the committal of a judgment debtor for contempt of court or for the discharge or suspension of any order or warrant or for the putting into operation of an order or warrant by reason of the judgment debtor's failure to comply with any condition specified in the order of suspension, the court may make such order as to costs as may be just."

2. Section *seventy-four* of the principal Act is hereby amended—

- Amendment of
section 74 of
Act 32 of 1944,
as amended by
section 19 of Act
40 of 1952.
- (a) by the substitution in sub-section (1) for the words after the words "or otherwise" where they occur for the second time, of the words "The court shall have jurisdiction to make such an order notwithstanding that any or all of the creditors are outside the jurisdiction of the court or that the debts of the debtor exceed the sum of two hundred pounds, provided the debts of the debtor do not exceed the sum of one thousand pounds.";
 - (b) by the deletion in sub-section (4) of the words "in chambers";
 - (c) by the substitution in paragraph (b) of sub-section (8) for the expression "sub-section (9)" of the expression "sub-sections (9) and (11)";
 - (d) by the deletion in sub-section (13) of the words "under a contract"; and
 - (e) by the substitution for sub-section (15) of the following new sub-section:

“(15) The court may, at any time after an order under sub-section (1) has been made, on the application of the debtor or any interested party, reopen the proceedings and call upon the debtor to appear for such further examination as the court may deem necessary and it may thereafter for good cause suspend, vary or rescind such order.”.

3. The following new section is hereby inserted after section *ninety-three bis* of the principal Act:

Insertion of
section 93ter in
Act 32 of 1944.

“Magistrate may be assisted by assessors. 93ter. (1) In the case of any summary trial or any trial on remittal by the Attorney-General the presiding judicial officer may, before any evidence has been led, with the approval of the Minister summon to his assistance any person who has or any two persons who have, in his opinion, experience in the administration of justice or skill in any matter which may have to be considered at the trial, to sit with him at the trial as assessor or assessors.

(2) If in a case remitted by the Attorney-General the presiding judicial officer summons to his assistance any assessor or assessors to sit with him, then the trial shall, notwithstanding anything to the contrary contained in sub-section (2) of section *two hundred and twenty-eight* of the Criminal Procedure and Evidence Act, 1917 (Act No. 31 of 1917), be commenced *de novo* before such judicial officer and assessor or assessors.

(3) Before the trial the said judicial officer shall administer an oath to the person or persons whom he has so called to his assistance that he or they will give a true verdict, according to the evidence upon the issues to be tried, and thereupon he or they shall be a member or members of the court subject to the following provisions:

- (a) any matter of law arising for decision at such trial, and any question arising thereat as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the presiding judicial officer and no assessor shall have a voice in any such decision;
- (b) the presiding judicial officer may adjourn the argument upon any such matter or question as is mentioned in paragraph (a) and may sit alone for the hearing of such argument and the decision of such matter or question;
- (c) whenever the said judicial officer shall give a decision in terms of paragraph (a) he shall give his reasons for that decision;
- (d) upon all matters of fact the decision or finding of the majority of the members of the court shall be the decision or finding of the court, except when only one assessor sits with the presiding judicial officer in which case the decision or finding of such judicial officer shall be the decision or finding of the court if there is a difference of opinion;
- (e) it shall be incumbent on the court to give reasons for its decision or finding on any matter made under paragraph (d);

(f) in the event of a conviction the question of the punishment to be inflicted shall be deemed, for the purposes of paragraph (a), to be a question of law.

(4) If any such assessor is not a person employed in a full-time capacity in the service of the State he shall be entitled to a refund of any reasonable expenditure which he may have necessarily incurred in connection with his attendance at the trial and to such remuneration for his services as assessor as is prescribed in the rules: Provided that until such remuneration has been so prescribed every such assessor shall be entitled to the fees prescribed in the rules in respect of assessors acting in civil cases."

4. This Act shall be called the Magistrates' Courts Amendment Act, 1954.